



Supreme Court Case Studies



New York, New York Columbus, Ohio Chicago, Illinois Woodland Hills, California

To the Teacher

The *Supreme Court Case Studies* booklet contains 82 reproducible Supreme Court case studies. These cases include landmark decisions in American government that have helped and continue to shape this nation, as well as decisions dealing with current issues in American society. Every case includes background information, the constitutional issue under consideration, the court's decision, and where appropriate, dissenting opinions.

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Supreme Court Case Study 1



The Supreme Court's Power of Judicial Review

Marbury v. Madison, 1803

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

The election of 1800 transferred power in the federal government from the Federalist Party to the Republican Party. In the closing days of President John Adams's administration, the Federalists created many new government offices, appointing Federalists to fill them. One of the last-minute or "midnight" appointments was that of William Marbury. Marbury was named a justice of the peace for the District of Columbia. President Adams had signed the papers, but his secretary of state, John Marshall, somehow neglected to deliver the papers necessary to finalize the appointment.

The new president, Thomas Jefferson, was angry at the defeated Federalists' attempt to "keep a dead clutch on the patronage" and ordered his new secretary of state, James Madison, not to deliver Marbury's commission papers. Marbury took his case to the Supreme Court, of which John Marshall was now the Chief Justice, for a *writ of mandamus*—an order from a court that some action be performed—commanding Madison to deliver the commission papers in accordance with the Judiciary Act of 1789.

Constitutional Issue *****

Article III of the Constitution sets up the Supreme Court as the head of the federal judicial system. Historians believe that the Founders meant the Court to have the power of judicial review, that is, the power to review the constitutionality of acts of Congress and to invalidate those that it determines to be unconstitutional. The Constitution, however, does not specifically give the Court this right.

Chief Justice John Marshall, as a Federalist, believed strongly that the Supreme Court should have the power of judicial review. When the *Marbury* case presented the perfect opportunity to clearly establish that power, Marshall laid out several points which the court believed supported the right of judicial review. At the time, the decision was viewed as a curtailment of the power of the president, but people today recognize that the case established, once and for all, the importance of the Supreme Court in American government.

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

Justice Marshall reviewed the case on the basis of three questions: Did Marbury have a right to the commission? If so, was he entitled to some remedy under United States law? Was that remedy a writ from the Supreme Court?

Marshall decided the first question by holding that an appointment is effective once a commission has been signed and the U.S. seal affixed, as Marbury's commission had been. Therefore, Marbury had been legally appointed, and Madison's refusal to deliver the

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Supreme Court Case Study 1 (continued)

commission violated Marbury’s right to the appointment. In response to the second question, Marshall held that Marbury was entitled to some remedy under United States law.

The final question examined whether the Court had the power to issue the writ. Marshall explained that the right to issue writs like the one Marbury was requesting had been granted the Court by the Judiciary Act of 1789. This law, however, was unconstitutional and void because the Constitution did not grant Congress the right to make such a law. In his written opinion, Marshall defended the right of the Court to declare a law unconstitutional: “It is emphatically the province and duty of the judicial department to say what the law is If two laws conflict with each other, the courts must decide on the operation of each.” The Supreme Court thus became the final judge of constitutionality, thus establishing the principle of judicial review.

At the time, observers were much more interested in the practical result of the ruling—that the Court could not issue the writ, and could not, therefore, force the appointment of Marbury. Congress could not expand the Court’s original jurisdiction, and the Constitution does not give the Court the authority to issue a writ. They paid much less attention to the long-term implications of the decision. Here is how a constitutional scholar evaluates the *Marbury* decision:

“Over the passage of time [the] *Marbury* [decision] came to stand for the monumental principle, so distinctive and dominant a feature of our constitutional system, that the Court may bind the coordinate branches of the national government to its rulings on what is the supreme law of the land. That principle stands out from *Marbury* like the grin on a Cheshire cat; all else, which preoccupied national attention in 1803, disappeared in our constitutional law.”

Not until fifty years after rendering the *Marbury* decision did the Court again declare a law unconstitutional, but by then the idea of judicial review had become a time-honored principle.



Questions



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

1. Why is the *Marbury* case important in the history of the Supreme Court?
2. In what way did the *Marbury* decision enhance the system of checks and balances provided for in the Constitution?
3. Constitutional scholars have pointed out there is an inconsistency in Justice Marshall’s opinion with respect to what the Constitution specifically provides. What is that inconsistency?
4. The United States is one of the few countries in which the highest court of the land has the power to declare a law unconstitutional. Do you believe that such a power is of benefit to a country? Explain your answer.
5. Justice John Marshall was a Federalist who believed in a strong national government and certainly moved in this direction with his *Marbury* ruling. Do you think it is proper for a Supreme Court Justice to allow his or her personal political opinions to influence the rulings of the Court? Explain.

Supreme Court Case Study 2



Power of the Federal Government v. Power of the State Government

McCulloch v. Maryland, 1819

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

The Supreme Court first settled a dispute between a national and a state law in 1819. The Second Bank of the United States had been chartered by Congress in 1816. Large sections of the country, especially the West and South, bitterly opposed the Bank. The Bank’s tight credit policies contributed to an economic depression, and many states reacted against what they saw as a “ruthless money trust” and “the monster monopoly.” Two states even prohibited the bank from operating within their jurisdictions. Six other states taxed Bank operations. In 1818 the Maryland legislature placed a substantial tax on the operations of the Baltimore branch of the Bank of the United States. The cashier of the Baltimore branch, James McCulloch, issued bank notes without paying the tax. After Maryland state courts ruled against McCulloch for having broken the state law, he appealed to the United States Supreme Court.

Constitutional Issues *****

One of the issues that concerned the Founders at the Constitutional Convention was how to divide power between the federal government and state governments. Reconciling national and local interests proved difficult. In the *McCulloch* case, the Supreme Court ruled in favor of federal power.

The constitutional questions in the *McCulloch v. Maryland* case concern both the powers of Congress and the relationship between federal and state authorities.

***** The Supreme Court’s Decision *****

Chief Justice John Marshall wrote the decision for a unanimous Court. He started with the question, “Has Congress the power to incorporate a bank?”

In first determining the extent of congressional power, Marshall held that the Constitution is a creation not of the states, but of the people, acting through statewide constitutional conventions. Therefore, the states are bound in obligation to the Constitution, which is “the supreme law of the land.” Marshall summed up the decision based on the Supremacy Clause, saying, “If any one proposition could command the universal assent of mankind we might expect it to be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action The states have no power to retard, impede, burden, or in any manner control, the operation of the constitutional laws enacted by Congress.”

Although the specific powers of Congress do not include the power to charter a corporation, the section enumerating these powers includes a statement giving Congress the authority to make the laws “necessary and proper” for executing its specific tasks. In Marshall’s analysis, the terms “necessary and proper” grant Congress implied powers to carry out granted, or enumerated, powers. “Let the end be legitimate, let it be within the scope of the Constitution,

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Supreme Court Case Study 2 (continued)

and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional,” the Chief Justice wrote. The choice of means is for Congress to decide. In the *McCulloch* case, the Court held that Congress had the power to incorporate a bank.

On the question of the validity of Maryland’s bank tax, Marshall again noted the Constitution’s supremacy, but he also recognized a state’s constitutional right to impose taxes. Echoing his earlier argument, Marshall observed that a government may properly tax its subjects or their property. The federal government and its agencies, however, are not subjects of any state. A tax on a national institution by one state would be an indirect tax on citizens of other states, who would not benefit from such a tax.

Furthermore, the power to tax, if misused, is also the power to harm an institution. The power of Congress to establish an institution must imply the right to take all steps necessary for its preservation. In a conflict between the federal power to create and preserve a corporation and a state’s power to levy a tax, the state must yield. Therefore, the Court denied Maryland’s power to tax the Second Bank of the United States. In this way Marshall ensured the power of Congress to enact legislation “under a Constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.”

In conclusion, Marshall wrote, “. . . this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional”

The Court’s decision in the *McCulloch* case brought a storm of abuse raining down on the Court. Virginia passed a resolution urging that the Supreme Court be divested of its power to pass on cases in which states were parties. Ohio, which like Maryland had a tax on the United States Bank, simply continued to collect the tax. The decision was particularly offensive to believers in the strict, literal interpretation of the Constitution because it sustained the doctrine of implied powers. Nevertheless, the *McCulloch* decision, in upholding the principle of implied powers, enlarged the power of the federal government considerably and laid the constitutional foundations for the New Deal in the 1930s and the welfare state of the 1960s.



Questions

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

1. What constitutional principle did the Supreme Court establish in the *McCulloch* case?
2. What is the objective of the “necessary and proper” clause?
3. What was the basis for the Court’s ruling that Maryland could not tax the Second Bank of the United States?
4. How did the fact that Justice Marshall was a Federalist influence his ruling in the *McCulloch* case?
5. How did the *McCulloch* ruling contribute to the strength of the national government?

Supreme Court Case Study 3



The Meaning of a Contract

Dartmouth College v. Woodward, 1819

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

Dartmouth College originally had been granted a charter by the British crown in 1769, prior to American independence from Great Britain, for the purpose of educating Native Americans and promoting learning in general. In the early 1800s, the college had become involved in state politics on the side of the Federalists. In 1815 the Dartmouth College trustees decided to remove the president of the college. The state legislature, now controlled by Republicans, sided with the college president against the Federalist trustees and sought to grasp control of the college away from them. In 1816, after independence, the legislature passed a series of statutes that had the effect of converting Dartmouth, a private college, into a state university under public control. The highest court of New Hampshire sustained the state statutes.

The trustees appealed the case to the United States Supreme Court, arguing that the New Hampshire statutes impaired their contractual rights in violation of the Constitution. They had as one of their attorneys the great statesman and orator, Daniel Webster.

Constitutional Issue *****

Under common law—the principles and rules established through court decisions over the years—a contract was an agreement between two or more parties to perform certain actions. Under Article I, Section 10, of the Constitution, states were prevented from impairing the obligation of a contract.

***** The Supreme Court’s Decision *****

Chief Justice John Marshall wrote the Court’s opinion, which held that the state acts placing Dartmouth under state control constituted an impairment of contract, and thus was unconstitutional. The state treasurer, Woodward, was required to return college records, the corporate seal, and other corporate property to the trustees.

The core of the decision was the Court’s ruling that a charter for a private corporation, granted by the British crown before independence and the adoption of the Constitution, was protected by Article I, Section 10, of the Constitution. Marshall granted that this clause was not specifically designed to protect charters creating charitable, educational, or other nonprofit corporations of incorporation. “It is more than possible,” he wrote, “that the preservation of rights of this description was not particularly in the view of the framers of the constitution when the clause under consideration was introduced into that instrument.”

On the other hand, according to Marshall, the contract clause provided no exceptions with respect to private, nonprofit entities. “It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted,” Marshall wrote. Therefore, he continued, since there was no proof that the language of the Constitution would have been changed if charters incorporating nonprofit

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Supreme Court Case Study 3 (continued)

entities had been considered, the case fell under the prohibition of state interference with contracts. “There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it.” If a charter of incorporation is lawfully bestowed, the charter has “every ingredient of a complete and legitimate contract and is protected from state infringement by the contracts clause.”

The *Dartmouth College* decision made it clear that states were not permitted to take over private institutions, such as a private educational institution, and make them public. States, therefore, began to establish their own state universities. By protecting nonprofit entities, the Court was essentially protecting all corporations.

As the economy of the United States grew, the corporate form of business organization became more and more common. Corporate charters, granted by state governments, were increasingly used to establish manufacturing and commercial businesses. The *Dartmouth College* case provided a protection for owners and management interests and a climate of legal stability that promoted economic growth.



Questions



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

1. What effect did the Supreme Court’s decision have on Dartmouth College?
2. The Constitution did not mention corporations in Article I, Section 10, so how did Justice Marshall justify ruling that Dartmouth’s charter was a contract?
3. Why is the *Dartmouth* case considered to be important in the economic history of the United States?
4. Historians point out that the *Dartmouth* decision had an effect on the growth of state universities. Why do you think states established state universities after this decision?
5. Justice John Marshall believed in a strong central government. How did the *Dartmouth* decision relate to this belief?

Supreme Court Case Study 4



Regulation of Interstate Commerce

Gibbons v. Ogden, 1824

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

In 1798 the New York legislature gave Robert Fulton a monopoly for steamboat navigation in New York. In 1811 Fulton’s partner, Robert Livingston, assigned to Aaron Ogden an exclusive license to run a ferry service on the Hudson River between New York and New Jersey—a very profitable business. Seeking to take advantage of this flourishing trade, a competitor, Thomas Gibbons, secured a license from the federal government to operate a ferry between Elizabethtown, New Jersey, and New York City.

Claiming that his monopoly rights were being infringed, Ogden obtained an injunction in a New York state court forbidding Gibbons’s boat from docking in New York. (An injunction is an order by a court prohibiting a person or a group from carrying out a specific action.) Gibbons appealed the state court’s decision to the United States Supreme Court.

Constitutional Issues *****

The Constitution did not make clear what was meant by interstate commerce or the extent to which it could be regulated. At the time of this case in 1824, New York had closed its ports to vessels not owned or licensed by a monopoly chartered by the state. In retaliation, other states passed similar laws that limited access to their ports. The United States attorney maintained that the country faced a commercial “civil war.” In the absence of a clear statement of what is meant by interstate commerce, how did the federal government have the power to intervene?

The *Gibbons v. Ogden* case presented the Supreme Court with the first opportunity to consider the ramifications of the commerce clause contained in Article I, Section 8 of the Constitution. This clause gave Congress the power “to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” Several constitutional questions were involved in the case, revolving around an interpretation of the commerce clause.

The first question was whether navigation should be considered to be a part of commerce. Then, if navigation should be so considered, to what extent might Congress regulate it? Another question was whether Congress had an exclusive right to regulate interstate commerce or if this was a “concurrent” power to be shared with the states.

***** The Supreme Court’s Decision *****

The Court held in favor of Gibbons. Chief Justice John Marshall wrote that commerce “describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations which shall exclude navigation”

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Supreme Court Case Study 4 (continued)

Marshall applied the same reasoning to commerce between states. In fact, he noted, the United States government had always regulated navigation. “All America understands,” he wrote, “and has uniformly understood the word ‘commerce’ to comprehend navigation” Thus the Court held that “a power to regulate navigation is expressly granted as if that term had been added to the word ‘commerce.’”

Marshall now turned to the meaning of “among,” as in “among the several states.” He reasoned that since “among” means “intermingled with,” “commerce among the states cannot stop at the external boundary line of each state but may be introduced into the interior.” Congress had no power over commerce which was confined to one state alone, but that power was in full force as soon as a state’s boundary line had been crossed. And the power to regulate must necessarily follow any commerce in question right across those boundaries.”

Marshall concluded that, like other congressional powers, the power to regulate commerce is unlimited so long as it is applied to objects specified in the Constitution.

The case also raised the question as to whether Congress’s power to regulate is exclusive. If it is, then a state would be prevented from making its own commerce regulations. Marshall chose not to resolve this question. Instead, he wrote that in the *Gibbons* case there was a conflict between the state’s law and a federal statute. “In every such case, the act of Congress . . . is supreme; and the law of the state. . . must yield to it.” *Gibbons*’s right to operate ferry service in competition with *Ogden* was therefore upheld.

By broadening the meaning of interstate commerce, Marshall laid the groundwork for including not only such clearly interstate activities as railroads and pipelines, but also the minimum wage regulation and prohibition of child labor. Robert Jackson, a Supreme Court justice who served in the mid-1900s, was thus correct when he declared, “Chief Justice Marshall described the federal commerce power with a breadth never exceeded.”



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

1. If you operated a trucking service between San Francisco, California, and Portland, Oregon, could you be subject to regulation by either or both of the states and the federal government? Explain.
2. Why was it necessary for Marshall to take the trouble to explain why navigation should be considered as part of commerce?
3. Explain in what way Justice Jackson’s characterization of Marshall’s *Gibbons* opinion was correct.
4. In what way is Marshall’s ruling in the *Gibbons* case consistent with his other decisions, such as *McCulloch v. Maryland*, that related to federal versus state powers?
5. Do you agree with Marshall’s ruling that *Gibbons* had a right to compete with *Ogden*’s ferry line? Give reasons for your answer.

Supreme Court Case Study 5



Tribal Reservations and States' Rights

Worcester v. Georgia, 1832

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

The Cherokee people occupied lands in Georgia and several adjoining states. The Cherokee Nation had made treaties with the U.S. federal government, such as the Treaty of Hopewell in 1785. The Cherokee Nation thus claimed sovereignty—meaning it was its own nation with its own laws.

Samuel Worcester was a minister from Vermont. His mission sent him to the Cherokee capital in New Echota, Georgia, in 1827. The Georgia government saw Worcester and other missionaries as being influential in the Cherokee Nation’s resistance to Georgia’s government. Because of this, Georgia passed an act to prevent “white persons from residing within that part of . . . Georgia occupied by the Cherokee Indians” without obtaining a state permit and swearing loyalty to the state.

Worcester refused to obtain a permit or to swear loyalty to Georgia. In September 1831, Worcester and several others were arrested. They were tried, convicted, and sentenced to four years of hard labor. The missionaries, represented by lawyers hired by the Cherokee people, appealed their conviction to the United States Supreme Court.

Constitutional Issue *****

The issue was whether a state government has the authority to control contact between American citizens and the Cherokee Nation.

In 1831, the Supreme Court had considered the case of *Cherokee Nation v. Georgia* in which the state of Georgia declared Cherokee laws to be “null and void” and the Cherokee Nation responded by asking for an injunction to prevent their laws and government from being dissolved. Justice John Marshall wrote that Native Americans were “domestic dependent nations” who could not appeal in federal courts.

Samuel Worcester claimed that the Georgia courts had no jurisdiction over the Cherokee Nation. The treaties between the United States and the Cherokee Nation implied that each was a sovereign nation. Worcester’s lawyers contended that under the Indian Commerce Clause (Section 8, Article 1) of the Constitution, only Congress has the power “to regulate commerce . . . with the Indian tribes.”

***** The Supreme Court’s Decision *****

In a 6 to 1 ruling, the Supreme Court overturned the convictions of Worcester and other missionaries. The Court held that the Georgia Act violated “the Constitution, treaties, and laws of the United States.” Chief Justice John Marshall wrote the opinion.

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Supreme Court Case Study 5 (continued)

Marshall declared the Cherokee Nation to be “a distinct community occupying its own territory . . . in which the laws of Georgia can have no force.” Discussing the Treaty of Hopewell, Marshall wrote, “Protection does not imply the destruction of the protected. . . . To construe the expression ‘managing all their affairs’ into a surrender of self-government would be, we think, a perversion of their necessary meaning.” The act under which Worcester was imprisoned was thus declared unconstitutional.

President Andrew Jackson’s administration refused to enforce the Court’s decision. In 1835, the government signed a removal treaty with a small number of Cherokee. The U.S. Army resettled many Cherokee through a brutal, forced march to present-day Oklahoma. The Cherokee called this resettlement march the “Trail of Tears.” Later, the *Worcester* decision was revived and became a legal weapon against encroachments on Native American rights.

***** Dissenting Opinion *****

Justice Henry Baldwin dissented. He referred back to his opinion in *Cherokee Nation v. Georgia* (1831). In this matter, Justice Baldwin claimed that by accepting the Treaty of Hopewell, “The Indians . . . do acknowledge all the Cherokees to be under the protection of the United States.” Baldwin reasoned that this acceptance of United States protection waived all claims of Cherokee sovereignty. Furthermore, if the Court agreed to hear one such case, the federal courts would be overwhelmed with cases.



Questions *****

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

1. Why did Samuel Worcester challenge the constitutionality of the Georgia act?
2. How did the Court’s opinion in the *Cherokee Nation* case differ from *Worcester*?
3. Do you agree more with Justice Marshall’s opinion or with Justice Baldwin’s dissent? Give reasons for your answer.
4. Suppose you were a Cherokee living at the time of the *Worcester* decision. How would the Court’s ruling have affected you?
5. Why was the *Worcester* decision important in terms of Native American rights?

Supreme Court Case Study 6



The Right to Freedom of Enslaved Persons

Dred Scott v. Sandford, 1857

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

John Emerson, a United States Army surgeon, took enslaved African Dred Scott to live at military posts in Illinois, a free state in 1834, and then to posts in the territory of Upper Louisiana (now Minnesota), where slavery had been forbidden by the Missouri Compromise of 1820. In 1838 Emerson and Scott returned to Missouri.

In 1846 Scott won a suit for his freedom against Emerson’s widow in a Missouri court. Scott claimed that by having lived in free territory, he had earned his freedom. This ruling was overturned, however, by Missouri’s Supreme Court. Aided by various antislavery interests, Scott then started a new suit in a federal district court against Mrs. Emerson’s brother, John Sandford of New York, who had been acting as his sister’s agent. Since the case was a dispute between people who live in two different states, it could be heard in a federal court. When the federal court ruled that Scott was still a slave, he appealed to the United States Supreme Court.

Constitutional Issues *****

The Constitution left questions such as the legal rights of slaves for later lawmakers to solve. In 1850 Congress passed the Fugitive Slave Law, which stated that a slave was property and which required escaped slaves to be returned to their holders. Opponents of the law unsuccessfully challenged its legality before the Supreme Court.

The first major issue was whether Dred Scott—an African American—qualified as a citizen of the United States and was, therefore, entitled to sue in a federal court. The second issue concerned whether Scott had gained his freedom by moving to a free territory or state. The third issue focused on the Missouri Compromise of 1820, which banned slavery north of the southern boundary of Missouri (except for Missouri itself). Scott had lived in the non-slavery region. Did Congress have the power to prohibit slavery in the territories and to make the prohibition a condition of admission to the Union?

***** The Supreme Court’s Decision *****

The Court’s decision was written by Chief Justice Roger B. Taney, although each justice wrote his own opinion, with only one justice concurring with Taney in every respect. Two justices dissented.

Taney’s first ruling was that former Africans, “whether emancipated or not,” did not qualify as United States citizens. Taney held that only those who were state citizens when the Union was formed became federal citizens. Even though a state may emancipate a slave, give him the right to vote, and admit him to state citizenship, Taney said, none of these actions gave a slave automatic federal citizenship. The right to grant federal citizenship belonged exclusively to Congress. Taney concluded that Scott was not, and never had become, a citizen of the United States, and was not, therefore, entitled to sue in a federal court.

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Supreme Court Case Study 7



Rights of Citizens During Wartime

Ex Parte Milligan, 1866

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

In 1864 during the Civil War, Lambdin P. Milligan, a civilian resident of Indiana who was violently opposed to the war, was arrested by order of the commander of the military district of Indiana, General Hovey, for his part in a plot to free Confederate war prisoners and overthrow three state governments. He was tried in a military court even though state courts in Indiana were still functioning. The military court found Milligan guilty and sentenced him to death. This sentence was approved by President Andrew Johnson. Nine days before he was to be hanged, Milligan petitioned the United States Circuit Court for a writ of *habeas corpus*. *Habeas corpus* is an order requiring that a prisoner be brought before a court at a stated time and place to decide on the legality of his or her detention. Milligan claimed that the proceedings of his conviction were unconstitutional and that he was denied the right of a trial by jury. As a citizen of Indiana who was not in the military, Milligan claimed he should not have been tried by a military court. He appealed his case to the United States Supreme Court.

Constitutional Issues *****

The Constitution gives Congress the power to declare war and raise armies to fight the war. In order to carry on a war, the federal government often assumes powers that would be illegal in times of peace. As Chief Justice Charles Evans Hughes stated in 1934, “the war power of the Federal government . . . is a power to wage war successfully.” When the power assumed by the government in time of war is challenged, the Supreme Court most often does not declare the acts unconstitutional.

During the Civil War, for example, President Abraham Lincoln took many actions that would have been unconstitutional in peacetime.

Article I, Section 9, paragraph 2, of the Constitution provides that the “privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” The questions at issue in *Ex Parte Milligan* were whether Congress had the power to suspend the writ of habeas corpus and whether civilians may become subject to military law.

***** **The Supreme Court’s Decision** *****

For the first time, the Court faced a decision involving the right of the president to suspend the writ of *habeas corpus* and to substitute the authority of a military court for that of a civilian court. Justice David Davis, writing for a 5 to 4 majority, declared the military had exceeded its power in trying and sentencing Milligan. He wrote, “No graver question was ever considered by this Court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen when charged with a crime to be punished according to law . . .” Davis declared that Congress had not granted to the nation’s military courts the power to try civilians, and indeed could not do so, especially so long as civilian courts were still operating. “One of the plainest constitutional privileges was, therefore, infringed when Milligan

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Supreme Court Case Study 8



The Bill of Rights and State Rights

Slaughterhouse Cases, 1873

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

In 1869 the Louisiana government granted the Crescent City Stock Landing and Slaughterhouse Company a monopoly on licensed butchering in New Orleans on the grounds that the action protected public health.

Local butchers, who were excluded from the monopoly, opposed it with legal action in the state courts. Losing there, they appealed to the federal courts and then to the United States Supreme Court. The butchers argued that they had been deprived of their livelihoods by the state’s deliberate discrimination against them. Therefore, the law violated the Thirteenth Amendment’s ban on involuntary servitude, as well as the 1866 Civil Rights Act, which had been passed to enforce that ban. In addition, they argued, the state law violated the Fourteenth Amendment’s guarantees of equal protection under the law and of due process.

The state responded by claiming that no federal constitutional question was involved since both the Thirteenth and Fourteenth Amendments were irrelevant to the case. If, in fact, the Court did apply these amendments to the case, the federal system would be revolutionized by exempting individuals’ claims from state regulation.

Constitutional Issue *****

Before the Civil War, individuals who believed they had been deprived of their rights and liberties had only their state constitution to rely on for protection. According to an 1833 Supreme Court decision, the Bill of Rights of the United States Constitution applied only to the national government. In 1868, however, the Fourteenth Amendment was added to the United States Constitution. Although the amendment was intended to protect formerly enslaved people, who had been given their freedom by the Thirteenth Amendment, the Fourteenth Amendment contained a sentence that could be interpreted as applying to all persons in the United States: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

If the Supreme Court interpreted this sentence as applying to all persons, then the way was open to conveying to the national government the enforcement of rights that earlier had been limited to the states and denied to the national government.

The *Slaughterhouse* cases were the first involving the Fourteenth Amendment to be heard by the Court. The constitutional issues in the *Slaughterhouse* cases concerned the extent to which the Thirteenth and Fourteenth Amendments applied to all Americans, not only to formerly enslaved people.

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Supreme Court Case Study 8 (continued)

***** The Supreme Court’s Decision *****

A majority of the Court held that the monopoly on butchering granted by Louisiana did not violate the rights of the other butchers. Justice Samuel F. Miller, writing the Court’s opinion, dismissed the butchers’ claim that the state law violated their rights under the Thirteenth Amendment. The monopoly created by the state law, he held, could not be interpreted as imposing servitude.

Miller now turned to the Fourteenth Amendment. This amendment, he wrote, “declares that persons may be citizens of the United States without regard to their citizenship of a particular state, and it overturns the *Dred Scott* decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt.”

Justice Miller assigned to the states, rather than the federal government, the protection of basic civil liberties. This meant that everyone, not just formerly enslaved people, who had assumed the federal government was their “guardian of democracy,” had to look to the states to protect their rights. The Court agreed that there were certain “federal privileges and immunities,” such as the right to petition for redress of grievances, which states were bound to respect, but otherwise, the Court concluded, a state determined the privileges and immunities of its citizens.

***** Dissenting Opinion *****

Four justices dissented from the Court’s decision. Justice Joseph P. Bradley emphasized both the Privileges and Immunities Clause and the Due Process Clause. He insisted that both clauses protected an individual’s right to choose a vocation or business. In denying that right or subordinating it to police powers, the states abridged the privileges and immunities of citizens, thus depriving the affected persons of both liberty and property, violating the Due Process Clause.

Also dissenting, Justice Stephen J. Field argued that the Thirteenth Amendment ban on involuntary servitude had been violated by creating the butchering monopoly. As for the Fourteenth Amendment, it embraced all the fundamental rights belonging to free men. “The amendment,” he wrote, “does not attempt to confer any new privileges or immunities upon citizens or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by state legislation.”



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

1. How did the Court limit the protections of the Thirteenth and Fourteenth Amendments?
2. What effect did the Court’s ruling in the *Slaughterhouse* cases have on the *Dred Scott* decision?
3. Suppose you had been a butcher in New Orleans. How would the Court’s decision have affected you?
4. Who gained from the Court’s decision, state governments or the federal government? Explain.
5. With whose opinions do you agree, those of the Court or the dissenting justices? Explain.

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Supreme Court Case Study 9



Protection of Religious Rights

Reynolds v. United States, 1879

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

George Reynolds was a member of the Church of Jesus Christ of Latter-day Saints, also known as the Mormon Church. The Mormons believed in the religious duty of males, circumstances permitting, to practice polygamy, or to have more than one wife. Reynolds followed that teaching and was indicted for bigamy—the crime of having more than one spouse—under federal statutes governing the Utah Territory. That law, passed in 1862, had been directed specifically against the Mormons. Reynolds was sentenced to a term of imprisonment at hard labor. He appealed this decision to the United States Supreme Court.

Constitutional Issue *****

The federal law regarding bigamy read, “Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than \$500, and by imprisonment for a term of not more than five years.” *Reynolds v. United States* focused on whether this statute conflicted with the First Amendment clause guaranteeing free exercise of religion.

The First Amendment guarantees citizens the right to practice their chosen religion freely, without interference from the government. Many Supreme Court cases have reinforced this right; however, suppose a religion called for human sacrifice. Clearly that rite would not be protected by the First Amendment. Suppose a religious rite involved a practice not so obviously unlawful. Would the protections of the First Amendment apply here?

***** The Supreme Court’s Decision *****

The Court ruled unanimously that Reynolds’s conviction was legal under the Constitution. The Court subsequently ruled, however, that punishment under the law against bigamy could not include hard labor.

Chief Justice Morrison R. Waite wrote for the Court. Waite agreed that “Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion.” The question in this case was whether the law against bigamy violated this prohibition. Waite asked, “The precise point is, What is the religious freedom which has been guaranteed?”

Waite undertook a historical analysis of religion and religious freedom from the late 1600s to 1780 and the ratification of the Constitution. He concluded that “Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.”

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Supreme Court Case Study 9 *(continued)*

Waite reviewed the history of laws in England and elsewhere regarding polygamy. He found that “polygamy has always been odious among the Northern and Western Nations of Europe and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and African people.” He wrote, “We think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offense against society, cognizable [recognized] by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.”

Regarding marriage, Waite wrote, “Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations, a civil contract, and usually regulated by law.” Waite concluded, “In our opinion the statute immediately under consideration . . . is constitutional and valid . . . in all places over which the United States has control.”

The Court thus found the law against bigamy valid. There remained the matter of determining whether the Mormons should be exempted from observing bigamy laws on grounds of religious beliefs. Waite asked, “Suppose one believed that human sacrifices were a necessary part of religious worship. Would it seriously be contended that the civil government could not interfere . . . ?”

Waite continued, “So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.” In this way the Supreme Court determined that the freedom of religion, like other freedoms, has its constitutional limits. No freedom, based on the Constitution, is absolute.



Questions

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

1. According to Chief Justice Waite, what authority did Congress have to regulate religious practices in the territories?
2. Why could the religious freedom clause in the First Amendment not protect the practice of polygamy?
3. What did the Court mean when it ruled that “no freedom, based on the Constitution, is absolute”?
4. If marriage is, as the Court stated, a “sacred obligation,” how could the Court justify regulating it?
5. If polygamy was a common practice among Mormons, do you think it was fair for one person, George Reynolds, to be singled out for punishment? Explain.

Supreme Court Case Study 10



The Federal Government and Racial Discrimination

Civil Rights Cases, 1883

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

Section 1 of the Civil Rights Act of 1875 sought to “recognize the equality of all men before the law,” regardless of race, color, or “previous condition of servitude.” The Act stated that all citizens should have equal access to inns, theaters, and other public venues. Although the venues were privately owned, Congress considered them to be public. Penalties were listed in Section 2 of the Act. A person who denied anyone access to an inn or a theater on the basis of race or color could be charged with a misdemeanor and fined or jailed. Someone who violated the law could also be forced to pay \$500 to the person who had been discriminated against.

In 1883, five cases were brought before the Supreme Court in a group. They were called the *Civil Rights Cases*. All five involved defendants who had refused African Americans access to public venues. Two of the defendants were charged with denying African Americans accommodations at an inn or hotel. A third defendant allegedly denied a seat in Maguire’s theatre in San Francisco to an African American, and the fourth defendant was charged with denying a person of unstated race access to the Grand Opera House in New York. The fifth case was *Robinson & Wife v. Memphis & Charleston Railroad Company*. Robinson sued on the grounds that his wife had been denied access to the ladies’ car on a train because of her race.

Constitutional Issue *****

The question before the Court was whether the Civil Rights Act of 1875 was constitutional. No one disputed that African Americans had been denied access to public venues because of their race. The Supreme Court considered whether Congress had the authority to pass laws preventing such discrimination. The plaintiffs argued that the Thirteenth and Fourteenth Amendments gave Congress the power to prevent individual acts of discrimination. The defendants claimed that Congress had no such power.

***** The Supreme Court’s Decision *****

The Court ruled with an 8 to 1 majority that the first and second sections of the Civil Rights Act of 1875 were unconstitutional. The Court ruled that the Thirteenth and Fourteenth Amendments did not give Congress the right to legislate the actions of individuals. The Fourteenth Amendment granted Congress the power to prohibit states from passing laws denying citizens equal protection. However, Congress did not have the power to make its own law prohibiting discrimination and then prosecute individuals who violated that law. By doing so Congress violated the rights of both states and individual citizens. Justice Joseph P. Bradley wrote for the majority.

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Supreme Court Case Study 10 (continued)

“[The Civil Rights Act] steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other...without referring in any manner to any supposed action of the State or its authorities,” Bradley stated. “Individual invasion of individual rights is not the subject matter of the [Fourteenth] Amendment.”

As a result of this decision, some states passed laws that segregated public venues by race. These were known as Jim Crow laws. *Plessy v. Ferguson* (1896) was one of the first cases to challenge Jim Crow laws. However, African Americans continued to endure legal segregation until the passage of civil rights legislation in the 1960s.

***** Dissenting Opinion *****

Justice John M. Harlan dissented. He believed the Civil Rights Act was in line with the spirit of the Thirteenth and Fourteenth Amendments, which was to broaden individual rights. He stated that public venues “...are established and maintained under direct license of the law. The authority to establish and maintain them comes from the public.” He also stated that by enforcing the act, Congress did not unlawfully take power away from the states.



Questions *****

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

1. Why did the Court rule that the Civil Rights Act of 1875 was unconstitutional?
2. What did the Fourteenth Amendment have to do with the Court’s decision?
3. Why did Justice Harlan think the Civil Rights Act was constitutional?
4. How did this ruling affect the rights of African Americans?
5. Do you agree with the Court’s decision or with Justice Harlan’s dissent? Give reasons for your answer.

Supreme Court Case Study 11



Interstate Commerce

Wabash, St. Louis & Pacific Railway Co v. Illinois, 1886

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

In the nineteenth century, as a network of railroads spread across the United States, community rights and corporate rights collided. Farmers objected to the high prices rail companies charged to transport their grain, and state legislatures stepped in to regulate the rates charged by railways. Railroad companies had grown wealthy by charging whatever price the market would bear, and they resisted new regulations.

Wabash, St. Louis & Pacific Railway Co. v. Illinois originated when the state of Illinois took the Wabash railway company to court for violating state law. Illinois claimed that Wabash had illegally charged one company more than another to carry goods between Illinois and New York. One of the companies shipped its goods a slightly shorter distance than the other but had been charged a higher rate. According to the state, this practice was discriminatory. Because the shipment originated in Illinois, the state argued that the railroad’s rates were subject to Illinois law. Wabash argued that because it was transporting freight through several states, Illinois law did not apply.

After a lower court sided with Illinois in the dispute, Wabash appealed the decision to the Illinois Supreme Court and lost. Wabash then asked the United States Supreme Court to hear the case.

Constitutional Issue *****

The central issue in *Wabash* was whether railroad transport fell under the commerce clause (Article I, Section 8) of the U.S. Constitution. The commerce clause states that only Congress has the power to regulate interstate commerce.

Previous Supreme Court decisions had given states a great deal of freedom to regulate businesses within their borders. One of these cases was *Munn v. Illinois* (1876). *Munn* established the right of states to regulate private industry in order to protect the public from unfair business practices.

Cases such as *Peik v. Chicago & N. W. R. Co.* (1876) and *Chicago, B. & Q. R. Co. v. Iowa* (1876) essentially allowed state regulation of interstate commerce, provided that Congress had not already acted to regulate it. The Court had ruled that as long as a railway was situated within a state, the state could regulate it. This rule applied even if the state inadvertently regulated interstate commerce as well.

***** The Supreme Court’s Decision *****

The court ruled 6 to 3 in favor of the Wabash railway company, with Justice Samuel Miller writing for the majority.

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Supreme Court Case Study 12 *(continued)*



***** Dissenting Opinion *****

Justice John Harlan dissented. He wrote that “while the opinion of the court in this case does not declare the Act of 1890 to be unconstitutional, it defeats the main object for which it was passed.” Harlan asserted that only a “national power” could protect the public from the actions of the trusts. He further stated that that the majority opinion left the public at the mercy of business interests.



Questions *****

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

1. What distinction did the Court’s decision make between the government’s power to regulate “manufacturing” and “commerce”?
2. How would the actions of American Sugar Refining and other trusts affect the prices paid by consumers? Explain your reasoning.
3. How would the Court’s decision affect enforcement of the Sherman Anti-Trust Act?
4. Why did Justice Harlan argue in favor of the Sherman Anti-Trust Act?
5. Do you agree or disagree with the Supreme Court’s ruling in this case? Give reasons for your answer.

Supreme Court Case Study 13



Federal Control of Interstate Commerce

In re Debs, 1895

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

During the 1890s, there was a nationwide economic depression. Chicago’s Pullman Palace Car Company laid off hundreds of employees, and cut the paychecks of those that remained by an average of 25 percent. By May of 1894, tensions between the company and Pullman workers had reached a boiling point. Railway employees, angered by steep pay cuts, went on strike. They appealed to the American Railway Union (ARU) for support and received it through the ARU’s leader, Eugene V. Debs.

On June 26, Debs called for a nationwide boycott of all Pullman railcars. About 50,000 railway workers responded by striking in support of the Pullman employees, which affected railroad traffic nationwide. Since Pullman attached many of its cars to mail trains, the strike also interfered with the delivery of U.S. mail.

Affected railroad companies appealed to the federal government for assistance in stopping the strike. On July 2, a United States Circuit Court ordered an end to the strike. Debs and other leaders from the ARU ignored the order. President Grover Cleveland sent thousands of troops to Chicago to force an end to the strike. The confrontation turned bloody, but the troops broke the strike. Debs and other ARU officials were later convicted of ignoring the court’s order. In January of 1895, Debs and the other ARU officials appealed their convictions to the United States Supreme Court.

Constitutional Issue *****

In re is a Latin term meaning “in the matter of.” All of the convicted ARU officials were grouped together in the case that Eugene Debs brought before the Court.

In re Debs considered the federal government’s rights to regulate commerce between states and its ability to operate the postal service. How far could the government go in order to protect its interests in these matters? Debs and the other petitioners questioned whether the government had the power to order the striking railway employees back to work and whether the government could use force in order to do so.

***** The Supreme Court’s Decision *****

The Court ruled unanimously against Debs and the other petitioners. Justice David Brewer wrote for the Court.

Supreme Court cases prior to *In re Debs* had established Congress’s authority over the states regarding interstate commerce. If the Constitution did not allow the states to obstruct interstate commerce, Brewer argued, then unions certainly did not possess the right to do so.

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Supreme Court Case Study 13 (continued)

The federal government, as the lone authority over mail delivery and interstate commerce, was entirely within its rights to stop the Pullman strike and to arrest Debs and the others for ignoring its order. In response to the rioting and violence that had taken place, Justice Brewer wrote that “. . . no wrong, real or fancied, carries with it legal warrant to invite . . . the cooperation of a mob, with its accompanying acts of violence.”

In re Debs was a pivotal case for American labor unions. By asserting the federal government’s power to halt strikes that threatened interstate commerce, the Court struck a major blow to unions and a union’s ability to counterbalance the power of corporations. After the case was decided, the ARU disbanded. Pullman employees were allowed to return to work only if they signed a pledge promising not to join a union. Not until the New Deal legislation in the late 1930’s did labor unions begin to gain back some of the power they had lost in the wake of *Debs*.



Questions



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

1. How was *In re Debs* a significant case for labor unions in the United States?
2. What reasons did the Court give for upholding the conviction of Eugene V. Debs?
3. Do you agree with the Court’s decision in *Debs*? Give reasons for your opinion.
4. What are some benefits of Congress’s broad power to regulate interstate commerce? What are some drawbacks?
5. How might the Court’s position against mob action in *Debs* be applied to similar situations in the future?

Supreme Court Case Study 14



Legality of Segregation by Race

Plessy v. Ferguson, 1896

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

In 1890 Louisiana passed a law ordering railroads in the state to “provide equal but separate accommodations for the white and colored races.” Violations of the law carried a fine of \$25 or 20 days in jail. Railway personnel were responsible for assigning seats according to race.

On June 7, 1892, Homer A. Plessy, who was one-eighth African American, decided to test the law’s validity by sitting in the white section of a train going from New Orleans to Covington, Louisiana. When a conductor ordered Plessy to give up his seat, he refused. He was then arrested and imprisoned in a New Orleans jail. He was tried by a New Orleans court and found guilty of having violated the Louisiana law described above. He appealed to the Louisiana Supreme Court, which found the law valid. Plessy then appealed to the United States Supreme Court, claiming his conviction and the Louisiana railroad law were unconstitutional because they violated the Thirteenth and Fourteenth Amendments.

Constitutional Issue *****

In the Reconstruction period after the Civil War, although slavery had been abolished by the Thirteenth Amendment, African Americans lived in a segregated society, especially in the South. The Fourteenth Amendment banned the deprivation of life, liberty, or property without “due process of law.” Yet laws were passed in southern states that required segregated schools, theaters, parks, buses, and railroad trains. The *Plessy* case challenged the constitutionality of these so-called Jim Crow practices.

Homer A. Plessy challenged the constitutionality of segregation laws in Louisiana. He based his appeal on the Thirteenth Amendment, which abolished slavery, and the Fourteenth Amendment, which prohibited the states from denying “the equal protection of the law” to any person.

***** The Supreme Court’s Decision *****

A majority of the Court denied Plessy’s appeal and upheld the practice of segregation as required by the Louisiana law. Justice Henry Brown wrote the majority opinion. First, the ruling brushed aside the relevance to the case of the Thirteenth Amendment. Brown wrote that “a legal distinction between white and colored races . . . has no tendency to destroy the legal equality of the two races.”

The rest of the Court’s opinion, however, dealt with the applicability of the Fourteenth Amendment. Brown concluded that this amendment aimed strictly “to enforce the absolute equality of the two races before the law,” but that it “could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political, equality . . .”

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Supreme Court Case Study 15



Extending the Meaning of the Commerce Clause

Northern Securities Company v. United States, 1904

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

In 1890 Congress passed the Sherman Antitrust Act to curb the growing power of monopolies in the United States. The act made it illegal for businesses engaged in interstate commerce to combine for the purpose of reducing or restraining competition. The wording of the act was vague, however, because it did not make clear what the word *commerce* meant. In an 1895 case involving the E. C. Knight Company, the Supreme Court had ruled that the company had not violated the antitrust law, even though the purchase of four additional refineries gave the company almost complete control of the manufacturing of sugar in the United States. For the antitrust law to be effective, it was clear that the Supreme Court would have to interpret the meaning of *commerce* more broadly.

In 1901 the Northern Securities Company, a holding company, was formed by combining the ownership of two major railroads that served the Northwest, running parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean at Puget Sound. With this monopoly of ownership, consumers and businesses of the Northwest were at the mercy of one company that controlled the freight rates of goods brought into and out of the area.

In 1903 the federal government brought suit against the Northern Securities Company as part of its “trust-busting” campaign. The government charged that the company was a monopoly pursuing restraint of trade in violation of the Sherman Antitrust Act and demanded that the company be dissolved.

Constitutional Issue *****

Did Congress exceed its constitutional authority to regulate interstate commerce when it enacted the Sherman Antitrust Act?

***** **The Supreme Court’s Decision** *****

In a 5 to 4 ruling, the Court held that the Northern Securities Company should be dissolved because the arrangement was an illegal combination in restraint of interstate commerce and thus violated the Sherman Antitrust Act. Justice John Marshall Harlan wrote that a combination need not be directly involved in commerce in order to restrain it or to have the potential to restrain it. In this case Harlan found restraint of trade due to suppression of competition resulting from combining competing railroads: “. . . it is manifest that, if the Antitrust Act is held not to embrace a case such as is now before us, the plain intention of the legislative branch of the Government will be defeated. If Congress has not, by the words used in the act, described this and like cases, it would, we apprehend, be impossible to find words that would describe them.” Harlan rejected the view that the state that charters a corporation should regulate that corporation, saying: “It means nothing less than that Congress, in regulating interstate commerce, must act in subordination to the will of the States when exerting their power to create corporations. No such view can be entertained for a moment.”

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Supreme Court Case Study 16



Liberty and the Right to Work

Lochner v. New York, 1905

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

Joseph Lochner owned a small bakery in Utica, New York. In 1905, the state of New York passed what became known as the Bakeshop Act. This law prohibited bakers from working more than 10 hours a day, or 60 hours in one week. The New York law was designed to improve working conditions and protect the health and safety of bakery workers. Lochner was charged twice with violating the law by requiring an employee, Frank Couverette, to work more than 60 hours in a given week. Lochner paid a \$20 fine for his first conviction. Upon a second conviction, for which he drew a fine of \$50, Lochner decided to appeal.

After the New York appellate courts upheld the law, Lochner appealed his conviction. The case reached the Supreme Court in 1905. The law prevented Lochner from making contracts with his employees for more than 60 hours of work per week. For this reason, he argued that the Bakeshop Act violated his Fourteenth Amendment rights to the due process of law.

Constitutional Issue *****

The matter before the Supreme Court was whether the Bakeshop Act overstepped the boundaries of the state’s “police power.” Did the law violate an employer’s right to make contracts, or did the law properly protect the health and safety of bakery workers?

***** The Supreme Court’s Decision *****

The Supreme Court’s decision was split 5–4. The Court narrowly sided with Joseph Lochner, agreeing that his Fourteenth Amendment due process rights had been violated. Justice Rufus Peckham wrote the majority decision. He explained that the Court believed the New York statute “. . . interferes with the right of contract between the employer and employees concerning the number of hours in which the latter may labor in the bakery of the employer.” The Court held that the right to make business contracts is protected by the Fourteenth Amendment of the Constitution.

Justice Peckham wrote that although the bakery industry was not the healthiest of trades, the Court did not deem it unhealthy enough to allow the State to legislate the work habits and hours of its workers. In other words, the liberty of bakery workers to contract for work freely outweighed the state’s interest in limiting how many hours they could work.

Lochner was one of several decisions in this period in which the Court struck down worker protection laws due to violations of the due process clause of the Fourteenth Amendment.

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Supreme Court Case Study 16 (continued)

***** Dissenting Opinion *****

There were two dissenting opinions. Justice Oliver W. Holmes, Jr., wrote the first dissent. Justice Holmes declared that the majority of the Court’s interpretation of the Fourteenth Amendment was incorrect. The Amendment did not support either a protective principle or “the laissez-faire economic theory” that business and industry should operate with minimum interference by government. Holmes argued that the Court had upheld similar state laws in the case of *Holden v. Hardy* (1898), which upheld the law enacting an eight-hour day for miners. Justice Holmes wrote that the case of *Lochner* was no different than *Hardy*.

Justice John M. Harlan wrote the second dissent, with two other justices concurring. Justice Harlan took issue with the Court’s opinion that baking was a relatively healthy profession. Harlan concluded that baking was an unhealthy profession, citing the long hours and the lack of ventilation, forcing bakers to breathe flour-dusted air. Therefore, the state had a right to protect workers by limiting their working hours.



Questions *****

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

1. On what grounds did Joseph Lochner appeal his second conviction?
2. What was the purpose of the Bakeshop Act?
3. On what grounds did the Court overturn the Bakeshop Act?
4. What was Justice Harlan’s reasoning for his dissent?
5. How could the Fourteenth Amendment’s due process clause be applied to other worker protection laws? Give reasons for your answer.

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Supreme Court Case Study 17



Women in the Workplace

Muller v. Oregon, 1908

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

The Progressive Era was a period of labor reform that lasted roughly from 1890 to the end of World War I in 1918. Many of the state and federal laws that control employment and working conditions have their roots in this period.

In 1903, the state of Oregon passed a law limiting women’s work to no more than ten hours per day in factories or laundries. In 1905, a suit was filed against Curt Muller, the owner of the Grand Laundry in Portland, under this Oregon law. The state charged that Mr. Muller had required Mrs. E. Gotcher to work more than ten hours on September 4, 1905. Muller was found guilty and fined \$10. He appealed to the Supreme Court of Oregon, which affirmed the conviction. Muller then appealed the case to United States Supreme Court.

Constitutional Issue *****

Muller appealed his conviction on the grounds that the Oregon law interfered with his right to make contracts with his workers under the due process clause of the Fourteenth Amendment. Muller’s argument rested on *Lochner v. New York* (1905), a case that involved male bakery workers. In *Lochner*, the Supreme Court had struck down a New York law that limited bakers to a ten-hour workday. Muller argued that women workers were entitled to equal protection, and had the same rights to make contracts as men.

The Supreme Court had ruled in *Lochner* that the New York law did not relate to worker health and safety and improperly interfered with workers’ rights to work. However, it did leave open the door for state legislation, in cases where health concerns existed.

Attorney Louis D. Brandeis, who eventually became a Supreme Court justice, was chosen to defend the state law. He presented what became known as the “Brandeis brief,” using scientific data to argue the need for labor legislation. It was unusual in that it contained only two pages of legal references, and many pages of sociological statistics from different sources. It became a model for later legal documents dealing with social issues. Thus, the *Muller* case became a major test of the constitutionality of progressive “social” legislation relating to working conditions.

***** The Supreme Court’s Decision *****

The Supreme Court, in a unanimous decision, upheld the Oregon law and the judgment of the Supreme Court of Oregon. Justice David Josiah Brewer wrote the opinion for the Court.

Brewer referred directly to the *Lochner* case, saying that the New York law was an arbitrary interference with laborers’ right to make contracts. However, Brewer wrote, “This assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor.”

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Supreme Court Case Study 17 (continued)

Justice Brewer indicated that it was well established that the Fourteenth Amendment protects the right of laborers to make contracts. He argued that it is equally true that this right is “not absolute.” The state may limit an individual’s contractual rights without coming into direct conflict with the Fourteenth Amendment.

The Court relied heavily on the “Brandeis brief” in formulating its decision. Justice Brewer stated, “That woman’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious . . . [Because of this] she is properly placed in a class by herself, and legislation designed for her protection may be sustained . . .”

The Court’s view was that female workers, due to their ability to bear children, merited protection by the government. It ruled that this protection did not improperly interfere with Fourteenth Amendment rights—especially when a woman’s health was at stake.



Questions



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

1. Why did Curt Muller claim the Oregon labor law was unconstitutional?
2. What evidence convinced the Supreme Court to affirm the decision of the Oregon Supreme Court?
3. How does the Court’s decision in *Muller* differ from its decision in *Lochner*?
4. Why is *Muller v. Oregon* historically important?
5. Do you agree with the Supreme Court’s decision in *Muller*? Give reasons for your answer.

Supreme Court Case Study 18



The Exclusionary Rule

Weeks v. United States, 1914

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

Weeks was arrested at his place of business on a charge of sending lottery tickets through the mail. The police had turned over to a United States marshal the various papers found there. The marshal in turn had searched Weeks’s premises in the company of police officers and took still other papers. No warrant had ever been issued for any of the searches or for Weeks’s arrest.

Prior to his trial, Weeks asked that his papers be returned to him. The request was denied. These documents were used in evidence against Weeks at his trial, and he was found guilty. The case then reached the United States Supreme Court on appeal.

Constitutional Issue *****

The Fourth Amendment protects people from unreasonable searches and seizures. Yet for the first hundred years after the Constitution was adopted, evidence unlawfully seized by the police was routinely admitted in trials. In considering *Weeks v. United States*, the Court had to weigh not only the rights of the defendant but also the possibility that a criminal could go unpunished.

The constitutional issue in *Weeks v. United States* concerned the Fourth Amendment’s promise that “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but on probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized.”

***** The Supreme Court’s Decision *****

The Court decided that Weeks’s Fourth Amendment rights had indeed been violated. Justice William R. Day wrote for a unanimous Court.

Common law had long held that illegally seized evidence could still be admitted as evidence at a trial. The source of the evidence was held to be of no direct concern to the court. If it had been taken illegally or stolen, the remedy was to be found in a subsequent civil suit for trespass or in criminal prosecution for theft. In an 1886 ruling in *Boyd v. United States*, the Court had implicitly reversed this common law principle, but it was not until the *Weeks* case that the exclusionary rule, as it came to be known, became a definite legal standard. This new rule means that if unconstitutional evidence is used at trial to establish guilt, the remedy is a retrial without use of the “tainted” evidence.

Justice Day wrote, “The tendency of those who execute the criminal laws of this country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the federal Constitution, should find no sanction in the judgments of the courts,

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Supreme Court Case Study 18 (continued)

which are charged at all times with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights. . . .”

Day continued, “If letters and private documents can thus be seized and held and used as evidence against a citizen accused of an offense, the protection of the Fourth Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.”

Day wrote further, “We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States, acting under color of his office in direct violation of the constitutional rights of the defendant; that having made a reasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and that the court should have restored these letters to the accused. In holding them and permitting their use upon the trial, we think prejudicial error was committed.

“As to the papers and property seized by the policemen, it does not appear that they acted under any claim of federal authority such as would make the amendment applicable to such unauthorized seizures. The record shows that what they did by way of arrest and search and seizure was done before the finding of the indictment in the Federal court; under what supposed right or authority does not appear. What remedies the defendant may have against them we need not inquire, as the Fourth Amendment is not directed to individual misconduct of such officials. Its limitations reach the Federal government and its agencies.” Thus, this ruling was held to be applicable only in federal courts and/or against federal authorities. However, in the 1961 case *Mapp v. Ohio*, the exclusionary rule was made applicable to the states.

The *Weeks* decision held that if such evidence were to be admitted at trial, the courts would become as guilty as the police who seized the evidence, and the integrity of the entire judicial process would be threatened.



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

1. Why did the Supreme Court order that Weeks’s papers be returned?
2. What is the meaning of the exclusionary rule?
3. What effect do you think the Court’s ruling had on police officers?
4. How did the Court’s decision in the *Weeks* case differ from what had become common law on illegally seized evidence?
5. If you had been a Supreme Court justice hearing this case, would you have joined the other justices in supporting the exclusionary rule? Explain.

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Supreme Court Case Study 19



Wartime Freedom of Speech

Schenck v. United States, 1919

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

The freedom of speech guarantee of the First Amendment was not tested in the Supreme Court for more than 100 years after the adoption of the Constitution, despite the number of federal and state laws that placed limits on free speech during that period. When the United States entered World War I in 1917, the federal government felt that it had to protect itself against efforts to influence people to oppose the war. Therefore, it passed the Espionage Act, which made it a crime to cause or attempt to cause insubordination in the armed forces, obstruct recruitment or enlistment, and otherwise urge, incite, or advocate obstruction or resistance to the war effort.

Charles Schenck, who was general secretary of the Socialist Party in the United States, carried on a campaign encouraging young men to resist the wartime draft. He mailed thousands of circulars to men who had passed exemption boards and to men who had been drafted. In the circulars he declared that the draft was unconstitutional despotism and urged the men to assert their rights to resist the draft. Further, he claimed that the Thirteenth Amendment, which banned involuntary servitude except as punishment for committing a crime, was violated by the conscription act and that a conscript was little better than a convict. The circular declared, "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." He described arguments in favor of the draft as coming from cunning politicians and a mercenary capitalist press. For these actions Schenck was convicted of conspiracy to violate the Espionage Act by attempting to obstruct the recruitment of men into the United States's armed forces. Schenck challenged his conviction on the grounds that his First Amendment rights had been violated.

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Constitutional Issue *****

The Court had to decide whether Schenck had been properly convicted and whether the Espionage Act was constitutional in the light of the free speech guarantees of the First Amendment. Was such a broad limitation on the right of free speech as the Espionage Act allowed a violation of the First Amendment? Or was the fact that the Espionage Act was designed to protect the nation's war effort a sufficient enough reason for the Supreme Court to reject Schenck's First Amendment defense?

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

The Court ruled unanimously that the Espionage Act was constitutional and affirmed that Schenck was guilty of having violated the act. Justice Oliver Wendell Holmes, Jr., wrote the Court's opinion. The opinion was based on the idea that the First Amendment guarantees are not absolute and must be considered in the light of the setting in which supposed violations occur. Holmes wrote, "We admit that in many places and in ordinary times the defendants in

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Supreme Court Case Study 19 *(continued)*

saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.” Holmes then enunciated a principle that he felt defined the true scope of the First Amendment as it applied to political expression. “The question in every case,” Holmes wrote, “is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. . . . When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.”

The *Schenck* case clarified some limitations on free speech and supported the notion that the rights of the people are not absolute but must be balanced with national interests that are judged to be essential.



Questions



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

1. Why was the Espionage Act passed?
2. Explain the clear and present danger principle that Justice Holmes enunciated in the *Schenck* decision.
3. According to Holmes, what factor made Schenck’s actions, which at other times would have been protected by the First Amendment, illegal at the time he performed them?
4. How far do you think the government should go in trying to protect itself against threats to its policies in times of war?
5. Eight months after the *Schenck* decision, the Court again applied the clear and present danger principle. Holmes dissented in that case, stating that unlike the *Schenck* case, actions of the convicted man in the second case had little or no effect on the nation’s war effort. What do you think this reveals about Holmes’s attitude toward free speech guarantees?

Supreme Court Case Study 20



The Right of Political Radicals to Free Speech

Gitlow v. New York, 1925

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

Benjamin Gitlow was convicted of violating the 1902 New York Criminal Anarchy Act. The Act defined criminal anarchy as “the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or any of the executive officials of government or by any unlawful means.” The prohibition applied to speaking, teaching, advising, printing, publishing, circulating, selling, distributing, or publicly displaying such doctrine.

Gitlow had been charged with teaching the necessity and duty to overthrow the government in two publications based largely on Marx and Engels’s *Communist Manifesto*. Gitlow’s publications advocated “mass industrial revolts,” which would develop into “mass political strikes and mass revolutionary action for the annihilation of the parliamentary state. . . .”

Constitutional Issue *****

The First Amendment’s free speech and press guarantee is one of the most cherished of all the provisions of the Bill of Rights. The right to freedom of speech and press is relative, however, not absolute, meaning that in certain circumstances, such as during a war, some limitations to these rights may be imposed. Free speech and press cases present courts with difficult problems to sort out, such as when freedom of speech and publication must be supported, and how to limit speech and publication when these could be dangerous or destructive to the country.

The Gitlow case examined whether the protection of press and speech accorded by the First Amendment was also included under the due process clause of the Fourteenth Amendment, thus making these protections applicable to the states.

Did the Fourteenth Amendment provide a citizen, in state court, the same First Amendment protections the citizen would have in federal court? The case also considered whether “subversive speech” was protected from government regulation, control, and punishment.

***** The Supreme Court’s Decision *****

The Court voted 7 to 2 to uphold Gitlow’s conviction. Justice Edward Sanford wrote for the Court.

The more general claim, that the states were bound by the First Amendment through the due process clause, was handled almost in passing. Sanford explained, “For present purposes we may and do assume that freedom of speech and of the press . . . are among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the states. . . .”

In an earlier case, *Schenck v. United States* (1919), Justice Oliver Wendell Holmes, Jr., had

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Supreme Court Case Study 21



Laws That Punish Speech

Whitney v. California, 1927

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

In 1919 California passed the Criminal Syndicalism Act, which made membership illegal in an organization that advocates commission of crimes as a means of effecting political change. The term ‘criminal syndicalism’ is defined as “any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage . . . or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.”

Charlette Whitney, a member of the Communist Labor Party of California, was indicted for having violated the Criminal Syndicalism Act by having taken part in organizing the party and being a member of it. At her trial the Communist Labor Party was found to have been organized to advocate, teach, and abet criminal syndicalism. Whitney was convicted and sentenced to prison. Her conviction was upheld in the District Court of Appeals. Whitney then appealed her conviction to the Supreme Court on the grounds that she had been denied her Fourteenth Amendment rights of due process, including her right of free speech.

Constitutional Issue *****

In the case of *Schenck v. United States*, the Supreme Court adopted the clear and present danger principle as the basis for deciding whether, under certain circumstances, a law banning certain kinds of speech could be considered constitutional. The *Schenck* case, however, arose when the United States was involved in World War I. Would the same principle apply when the constitutionality of a law that banned certain kinds of speech in peacetime was challenged? The Court had decided that a federal law of this sort was valid in the case of *Gitlow v. United States* in 1925. In that case the Court had invoked not the clear and present danger principle, but a new one, called the bad tendency doctrine. Now, two years later, the Court had to decide whether the California Criminal Syndicalism Act could limit free speech as it did without violating a person’s constitutional rights under the due process provision of the Fourteenth Amendment.

***** The Supreme Court’s Decision *****

The Court upheld Whitney’s conviction by declaring the California law constitutional. Justice Edward Sanford wrote the Court’s opinion, finding that California’s Syndicalism Act as applied in this case was not “. . . repugnant to the due process clause as a restraint of the rights of free speech, assembly, and association.” He invoked the bad tendency test as the standard by which to evaluate speech cases. He held that “. . . the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom, and that a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical

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Supreme Court Case Study 21 (continued)

to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means. . . .” He added that “united and joint action involves even greater danger to the public peace and security than the isolated utterances and acts of individuals. . . .”

Justice Louis D. Brandeis, joined by Justice Holmes, issued a concurring opinion in which he agreed with the Court’s decision for technical reasons, but forcefully invoked the clear and present danger principle. He pointed out, “Whenever the fundamental rights of free speech and assembly are alleged to have been invaded, it must remain open to a defendant to present the issue whether there actually did exist at the time a clear danger; whether the danger, if any, was imminent, and whether the evil apprehended was one so substantial as to justify the stringent restriction imposed by the legislature. . . .” In this case, however, he noted that Whitney had not claimed that there was no clear and present danger, and there was evidence from which a jury could find that such a danger existed. He wrote: “To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time . . . to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence.” He added, “The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state.”

The Court’s decision in the *Whitney* case was overruled in 1969 in *Brandenburg v. Ohio*.



Questions



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

1. Of what crime was Whitney convicted?
2. What were the grounds for the Court’s decision?
3. How did Justice Brandeis’s concurring opinion conflict with Justice Sanford’s opinion?
4. Do you agree or disagree with a law that is designed to punish people not for any action but for membership in a particular organization a state finds offensive?
5. The *Whitney* decision was overruled in 1969 in a subsequent case. What reasons might the justices have given for their decision in that case?

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Supreme Court Case Study 22



Evidence from Tapped Phone Lines

Olmstead v. United States, 1928

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

Roy Olmstead and his partners imported and supplied alcoholic beverages. They were prosecuted, tried, and convicted in federal court for conspiracy to violate the National Prohibition Act. Much of the evidence presented at their trials was gathered by wiretapping three telephone lines used by Olmstead’s office. None of the taps had been placed as a result of physical trespass on any defendant’s property.

The Eighteenth Amendment, or Prohibition Amendment, effective from 1919 to 1933, was widely violated by ordinary citizens and so-called bootleggers, who supplied illegal liquor, yet these people were rarely prosecuted. Violations of the liquor law were so extensive that the government was unable to prosecute more than a small percentage of the bootleggers; securing evidence that would hold up in court was extremely difficult. One way of obtaining evidence against bootleggers was by wiretapping their telephones.

Constitutional Issue *****

The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” The Fifth Amendment protects a person charged with a criminal offense from being a witness against himself or herself. The question before the Court in *Olmstead v. United States* was whether either of these amendments prohibited evidence obtained from telephone wiretaps.

***** The Supreme Court’s Decision *****

The Court ruled 6 to 3 against Olmstead. Chief Justice William Howard Taft delivered the opinion of the Court.

Olmstead had argued that because the prosecution’s evidence came entirely from the wiretaps, it could not be used against him. He claimed he was protected by the Fourth Amendment against improper search and seizure, and by the Fifth Amendment against self-incrimination.

The Court confined its examination to Fourth Amendment questions. If the Fourth Amendment had not been violated, then neither had the Fifth Amendment since no one had compelled the defendants to speak over the telephone lines.

Justice Taft’s decision turned on the issue of whether or not a wiretap was the constitutional equivalent of forcible entry. If so, the evidence obtained would be inadmissible in federal courts in accordance with previous decisions, such as in *Weeks v. United States*, 1914.

Taft held that the Fourth Amendment “shows that the search is to be of material things—the person, the house, his papers or his effects. The description of the warrant necessary to make the proceedings lawful is that it must specify the place to be searched and the person or things to be seized.”

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Supreme Court Case Study 22 (continued)

Taft rejected any analogy to sealed letters, which the Court had held to be protected by the Fourth Amendment. Taft explained, “The United States takes no such care of telegraph or telephone messages as of mailed, sealed letters. The Amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants.” He insisted that it was an unwarranted expansion of the Fourth Amendment to apply it to hearing or sight.

The Court held further that telephone lines were not protected by the Fourth Amendment, since they “are not part of his house or office any more than are highways along which they are stretched. . . . The reasonable view is that one who installs . . . a telephone with connecting wires intends to project his voice to those outside, and that the wires beyond his house and messages while passing over them are not within the protection of the Fourth Amendment.”

Finally, Taft ruled that this holding was in accord with the generally accepted common rule that “if the tendered evidence was pertinent, the method of obtaining it was unimportant.” He concluded that “a standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore.”

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

Justice Louis Brandeis disagreed with the Court’s narrow view of the Fourth Amendment. He wrote, “Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.”

The decision of the Court was harshly criticized, but it stood until the 1967 *Katz* case when it was overruled on the grounds that a trespass was unnecessary for a violation of the Fourth Amendment and that the Amendment protected intangibles, including conversations.



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

1. Why did the Supreme Court hold that the Fourth Amendment did not apply to wiretaps?
2. What did the Court say about the means by which evidence is obtained?
3. Suppose you had broken a law, and the police found evidence of your crime by breaking into your home. Under the *Olmstead* ruling, would the evidence be admissible in a trial?
4. What did Justice Brandeis mean when he said that in the Court’s decision, the end justified the means?
5. Do you agree with the decision of the Court? Explain your answer.

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Supreme Court Case Study 23



Censorship of the Press Before Publication

Near v. Minnesota, 1931

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

In 1925 Minnesota passed a law that sought to prevent newspapers, magazines, and other publications from printing obscene, malicious, scandalous and defamatory material. The law, called the “Minnesota gag law”, allowed either public prosecutors or private citizens to request a court injunction to shut down such a publication as “a public nuisance.” *The Saturday Press*, published by a journalist named Near, had printed articles charging that various criminal activities were controlled by gangsters, and that the local mayor, chief of police, and county attorneys were in league with the gangsters. Using the 1925 statute, the county attorney obtained an injunction “perpetually” prohibiting Near from publishing a “malicious, scandalous or defamatory newspaper.” Near appealed to the Minnesota Supreme Court, and when that body ruled in the county’s favor, he appealed to the United States Supreme Court.

Constitutional Issue *****

One of the most treasured provisions of the Bill of Rights is the protection of freedom to publish as provided by the First Amendment. This protection applies to all kinds of publications, even those that print unpopular opinions. Most censorship cases have been attempts to suppress the written word after publication of a work. In the *Near v. Minnesota* case, however, censorship was attempted before publication by closing down the offending periodical. This attempt was made because Minnesota officials decided that the contents of Near’s periodical would be offensive to the public. In *Near v. Minnesota* the Supreme Court had to decide whether Minnesota’s statute violated the First Amendment’s guarantee of freedom of the press, as applied to the states by the due process clause of the Fourteenth Amendment.

***** The Supreme Court’s Decision *****

The Court voted 5 to 4 in Near’s favor. Chief Justice Charles Evans Hughes presented the Court’s opinion. He called the Minnesota statute “unusual, if not unique.” It pitted the undoubted liberty of the press against the “necessarily admitted” authority of the state “to promote the health, safety, morals, and general welfare of its people.” Both the state’s attorney and the liberty of the press, Hughes observed, have claims and limits that must be delineated.

Hughes declared: “If we cut through mere details of procedure, the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper . . . before a judge upon a charge . . . of publishing scandalous and defamatory matter . . . and unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt. This is of the essence of censorship.” This is not to say, however, that no forms of censorship are to be permitted, Hughes stressed. There are “exceptional cases,” such as in times

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Supreme Court Case Study 24



Denial of Right to Counsel

Powell v. Alabama, 1932

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

On March 25, 1931, a fight took place between seven young African American and seven young white men. Ozie Powell and six friends—all African Americans—were on a freight train traveling through Alabama. Also on the train were seven white boys and two white women. In the fight all but one of the white boys were thrown off the train. A message was sent ahead reporting the fight, and the African Americans were asked to get off the train. The two women testified that each of them had been sexually assaulted by the African Americans.

A sheriff’s posse seized the African Americans, and the women and the defendants were taken to the county seat in Scottsboro, Alabama.

Angry crowds had gathered in Scottsboro after hearing about the alleged assaults. The sheriff called in the militia to protect the defendants as they were escorted to Gadsden for safekeeping and back to Scottsboro for a trial a few days later. All of the defendants were described as “youthful, ignorant, and illiterate.” They lived in other states and had no relatives or friends to help them in their situation.

Powell and his friends were indicted six days later on March 31 for the rape of the two white women. Their trials began on April 6, 1931, in this hostile southern community. There were three trials, each lasting one day. Between the times of the arrest and trials, no attorney was named to represent any of the defendants. Not until the very morning of the trials was a lawyer named to represent them, but they had no time to confer with counsel. All the young men were given the death penalty.

The Alabama Supreme Court upheld the convictions, but its chief justice wrote a dissent in which he maintained that the defendants had not received a fair trial. The United States Supreme Court agreed to hear the case.

There were widespread protests, especially in liberal northern circles, against the trial court’s cursory handling of the cases. Many Americans viewed the trial as a sham aimed at finding the young men guilty as quickly as possible. Outraged people arranged for a northern attorney to become involved in the case, and some believe his participation was instrumental in having the decisions reversed.

Constitutional Issue *****

Although a number of issues were brought before the Supreme Court, the justices limited their examination to whether or not the defendants had been denied due process of the law because they had been denied the right to counsel. The question before the Court was whether the Fourteenth Amendment incorporates the Sixth Amendment right to counsel in a capital case, paid for if necessary, by the state.

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Supreme Court Case Study 24 *(continued)*

★★★★★★★★★★★★★★ The Supreme Court’s Decision ★★★★★★★★★★★★★★

Justice George Sutherland wrote the Court’s decision for the majority in a 7 to 2 ruling in favor of Powell. The decision overturned the conviction of the defendants and ordered a new trial to be held in which the defendants were to have the benefit of legal counsel. Sutherland stated, “Defendants were immediately hurried to trial. . . . [A] defendant charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.” He stated that “in a capital case [one in which the death penalty is involved] where the defendant is unable to employ counsel, and is incapable adequately of making his own defense . . . it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law.” This ruling covered not only the trial itself but provided for “effective counsel” for the defendant in preparation for the trial.

In making his decision, Justice Sutherland continued a process that had begun in previous cases that found certain rights mentioned in the Bill of Rights must be included in the Fourteenth Amendment’s description of due process of law. The hurdle over which all such reasoning by the Supreme Court had to pass was that the Fourteenth Amendment does not specifically mention any of these Bill of Rights protections. Quoting an earlier case, Justice Sutherland found that the right to counsel “is of such character that it cannot be denied without violating those ‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions’ . . .”

Sutherland acknowledged that the legal system too often delayed the enforcement of criminal law and people suffered as a result. The opposite had occurred in this case, however. Sutherland spoke for the defendants in this case as he wrote, “. . . a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob.”



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

1. Why did the Supreme Court not address the question of whether or not Powell and his friends were guilty?
2. In what way was the Fourteenth Amendment an issue in the case?
3. Why do you think no counsel was appointed for the defendants until the morning of their trials?
4. In what way was time a factor in this case?
5. Why is the right to counsel so important that it is held to be a constitutional requirement?

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Supreme Court Case Study 25



Legislative Powers

A. L. A. Schechter Poultry Corporation v. United States, 1935

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

By 1933, the United States was mired in the Great Depression. As part of their efforts to combat this economic slump, Congress passed the National Industrial Recovery Act (NIRA) in June of that year. Section 3 of the act allowed the president to set or approve “codes of fair competition.” These codes regulated employment, wages, and other business practices within individual industries.

The act also made a company’s violation of its industry’s code a criminal offense in certain cases, such as when the company was involved in interstate or international commerce. One such code became known as the “Live Poultry Code.” This code regulated the sale of poultry, such as chickens and turkeys. President Franklin D. Roosevelt approved the code on April 13, 1934.

The A. L. A. Schechter Poultry Corporation was charged with 60 counts related to violations of the Live Poultry Code. These counts included violations of rules governing wages earned and hours worked by employees as well as rules governing the sale of chickens. Schechter Poultry bought, slaughtered, and then resold poultry to butchers and other retailers in New York. Although Schechter Poultry sold their product to local, in-state customers, they regularly obtained their stock from dealers, whose supply came largely from other states.

Of the original 60 counts, 27 were dismissed by a lower court, and Schechter Poultry was acquitted of 14. Schechter Poultry was convicted on the remaining counts, including 18 violations of the Live Poultry Code and an additional count of conspiracy to commit the violations. Two of the counts were reversed by the Circuit Court of Appeals. However, the remaining 16—for a range of violations—and the conspiracy count were upheld. Schechter Poultry then appealed to the United States Supreme Court.

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Constitutional Issue *****

Section 1 of Article 1 of the Constitution states that only Congress has the power to make national laws. With Section 3 of NIRA, Congress had effectively given the ability to make laws to the president. The Supreme Court had to decide whether Congress had violated the Constitution by authorizing Section 3 of the NIRA.

***** The Supreme Court’s Decision *****

The Court voted unanimously to reverse Schechter Poultry Corporation’s convictions. This decision effectively dismissed the NIRA’s constitutionality. Chief Justice Charles Evans Hughes wrote the Court’s opinion.

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Supreme Court Case Study 25 *(continued)*

The federal government reasoned that the economic crisis of the Great Depression made it necessary for Congress to give the president extra powers. The Court rejected this reasoning. “Extraordinary conditions do not create or enlarge constitutional power,” Hughes wrote. He also cited the Tenth Amendment to the Constitution, which states “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Powers not given to Congress belonged to state legislatures, not to the executive branch.

Justice Hughes wrote that Congress had improperly given the president legislative powers. He cited Article I, Section 8, paragraph 18, stating, “Congress is authorized ‘To make all Laws which shall be necessary and proper for carrying into Execution’ its general powers.” This means that Congress may make laws to help it exercise the powers given to it by the Constitution. Further, the Court asserted, “the Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.” While Congress was allowed to make laws regulating industry, it was not allowed to authorize the president to do so.



Questions



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

1. How did the Supreme Court’s ruling support the idea of checks and balances?
2. Do you agree with the Court’s ruling in this case? Give reasons for your answer.
3. In what way was the NIRA unconstitutional?
4. Why did Chief Justice Hughes cite Article I, Section 8, paragraph 18 of the Constitution in the Court’s opinion?
5. How did Schechter Poultry benefit from the Court’s ruling?

Supreme Court Case Study 26



First Amendment Rights for Communists

DeJonge v. Oregon, 1937

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

In July 1934 Dirk DeJonge spoke at a meeting in Portland, Oregon, organized by the local Communist Party to protest police raids on workers' halls and police shootings of striking dock workers. The meeting had been clearly advertised as under the auspices of the Communist Party and its speakers, including DeJonge, as party members. About 10 to 15 percent of the 150 to 300 people present were also Communist Party members.

In his speech DeJonge protested conditions in the county jail, police tactics relating to the dock workers' strike, and other matters pertaining to the strike. He also asked those present to help support the party and to purchase Communist literature. The meeting went on in an orderly fashion until police raided the hall, arrested DeJonge and others, and seized a large quantity of Communist literature.

DeJonge was tried under an Oregon law making it illegal to publish, print, distribute, or teach criminal syndicalism, defined as "the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution." All these acts were felonies, punishable by up to 10 years in prison and/or a fine of up to \$1,000.

DeJonge was charged with taking part in a meeting of the Communist Party, an organization that the state claimed advocated criminal syndicalism and sabotage. He was convicted and sentenced to seven years' imprisonment. The judgment was supported by the Oregon Supreme Court. DeJonge then appealed his case to the United States Supreme Court.

Constitutional Issue *****

In his defense, DeJonge claimed that Oregon's criminal syndicalism law violated the Fourteenth Amendment's due process clause. The Court examined whether or not the First Amendment's guarantee of the right of peaceful assembly was included under the Fourteenth Amendment.

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

The Court held unanimously for DeJonge. Chief Justice Charles Evans Hughes wrote for the Court.

Hughes summarized the charge against DeJonge as follows: "His sole offense as charged . . . was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party." As the Chief Justice pointed out, this meant that any meeting called by the Communist Party to discuss any subject should result in every speaker at that meeting being convicted and jailed like DeJonge. So, while the Court agreed that states may defend themselves against attempts to replace orderly political action by revolutionary

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Supreme Court Case Study 26 (continued)

force and violence, “none of our decisions go to the length of sustaining such a curtailment of the right to free speech and assembly as the Oregon statute demands. . . .”

Since the Court held that First Amendment rights of speech and press were binding on the states by the Fourteenth Amendment’s due process clause, now it found that “the right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. . . . For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions, principles which the Fourteenth Amendment embodies in its due process clause.”

Based on these considerations, the Court concluded that it cannot be a crime to assemble peaceably for lawful discussion, to hold meetings for peaceable political action, or to assist at such meetings, no matter who sponsors them. Prosecutions are justified only for crimes committed elsewhere or for conspiracies against public peace and order. Hughes stated, however, “It is a different matter when the State, instead of prosecuting individuals for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.”

This decision marked one of the early cases in which the Court incorporated the freedom of speech and freedom of assembly provisions of the First Amendment into the due process clause of the Fourteenth Amendment, thus making them binding on the states.



Questions

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

1. Why was the right to assemble called fundamental by the Court?
2. What made this decision particularly significant?
3. If you had been at DeJonge’s meeting, would you have been surprised to learn that it was sponsored by the Communist Party?
4. Who stood to gain from the Court’s decision in the *DeJonge* case?
5. Do you think that any limits should be set on the right to peaceful assembly? If so, explain what circumstances might call for such limits.

Supreme Court Case Study 27



Constitutionality of Minimum Wage Laws

West Coast Hotel v. Parrish, 1937

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

In the latter years of the 1800s, many states began to enact laws limiting the number of work hours and setting minimum wages for workers. Business owners objected to such laws and appealed to the courts to have them set aside on constitutional grounds. For the most part the courts obliged, ruling the labor laws unconstitutional because they interfered with the “liberty of contract” or because they violated the due process provisions of the Fifth Amendment.

During the Great Depression of the 1930s, a number of states passed new minimum wage laws. This was also the period when President Franklin D. Roosevelt’s New Deal launched a new program of social and economic laws. The Supreme Court was very conservative at the time and rejected many such laws. Infuriated by the Court’s obstinacy, Roosevelt announced a plan to add additional justices to counterbalance the influence of the older and more conservative members. Although the country at large was thunderstruck by this attack on the Court, and it was never enacted, Roosevelt’s plan did have an effect on Court rulings, and the Court began to change its attitude toward social and economic legislation.

Elsie Parrish was employed as a chambermaid at the West Coast Hotel in Seattle, Washington. She claimed that she was paid less than the state-mandated minimum wage of \$14.50 for a 48-hour work week. She sued the hotel for the difference between what she had been paid and the minimum wage. In the trial court the hotel challenged the law on the grounds that it violated the due process clause of the Fourteenth Amendment. The trial court upheld this position, but the state supreme court reversed the trial court and sustained the minimum wage law, whereupon the hotel brought the case through the appeal process to the United States Supreme Court.

Constitutional Issue *****

In light of the Court’s previous decisions on minimum wage and related laws, would it now rule that such laws do not violate presumed constitutional rights of business, such as the freedom to enter into contracts?

***** **The Supreme Court’s Decision** *****

In a majority opinion written by Chief Justice Charles Evans Hughes, the Court ruled in favor of the constitutionality of the state of Washington’s minimum wage law. In doing so, the Court had to repudiate two earlier decisions. Hughes wrote that the Constitution does not enshrine freedom of contract and that “regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.” He declared, “What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage

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Supreme Court Case Study 27 (continued)

fairly fixed in order to meet the very necessities of existence is not an admissible answer to that end?" A minimum wage law "cannot be regarded as arbitrary or capricious, and that is all we have to decide."

Hughes also pointed to "... an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being, but casts a direct burden for their support upon the community. What these workers lose in wages, the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land."

***** Dissenting Opinion *****

Justice George Sutherland, joined by three other justices, entered a vigorous dissent in which he maintained that freedom of contract was still the rule. "The meaning of the Constitution," he wrote, "does not change with the ebb and flow of economic events."



Questions *****

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

1. What effect did the changing economic conditions of the 1930s have on the Supreme Court?
2. On what did the majority of the Court base its decision in the *West Coast Hotel* case?
3. How was the principle of precedent treated in this case?
4. A constitutional scholar has described Justice Sutherland's dissent as "an obituary for a judicial philosophy eclipsed by new realities." Explain what he meant by this statement.
5. How do you think the Supreme Court ruled the next time a case involving an economic regulation came before it?

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Supreme Court Case Study 28



Flag Salute Requirement

Minersville School District v. Gobitis, 1940

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

In 1898, after New York passed a law requiring school children to salute the American flag during opening exercises of the school day, other states began to pass similar laws. These early laws did not make the flag salute ceremony compulsory, but in later years many local school boards insisted that all students participate. Many patriotic organizations supported the flag salute requirement. Opposition came from civil libertarians and some religious groups, including the Jehovah’s Witnesses.

The Jehovah’s Witnesses is an evangelistic sect believing, among other things, that the biblical prohibition against worship of images forbids them to salute the flag. This religious group became the major opponent of the compulsory school flag salute.

Lillian and William Gobitis, aged 12 and 10 respectively, followed the Witnesses’ teaching and refused to salute the flag in their Minersville, Pennsylvania, public schools. The board of education there, which required a daily flag salute, expelled the children.

Since school attendance in Pennsylvania was compulsory, the children’s parents placed them in private schools. William Gobitis, their father, then sued the Minersville Board of Education for relief from this new financial burden. He sought an injunction that would prevent the Board of Education from requiring the flag salute as a condition of free public education.

Two lower courts held in favor of Gobitis, whereupon the Minersville School District filed an appeal with the United States Supreme Court. The *Minersville* case became the first flag salute case to reach the Supreme Court.

Constitutional Issue *****

The Court said the issue to be decided was “whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment.”

***** **The Supreme Court’s Decision** *****

The Court decided against Gobitis by an 8 to 1 majority. Justice Felix Frankfurter wrote for the Court.

Although individuals are protected by the Constitution in their religious beliefs or disbeliefs, Frankfurter explained that sometimes the “manifold character of man’s relations may bring his conception of religious duty into conflict with the secular interests of his fellow men.” As viewed by the Court, its task was “to reconcile two rights in order to prevent either from destroying the other.”

Historically, Frankfurter wrote, “the religious liberty which the Constitution protects has never excluded legislation of a general scope not directed against doctrinal loyalties of particular

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Supreme Court Case Study 28 *(continued)*

sects.” Like freedom of speech, religious freedom may sometimes necessarily be limited in order to “maintain that orderly, tranquil and free society without which religious toleration itself is unattainable.”

The Court realized that this case did not deal with societal needs or interests such as defense, taxation, health, or family protection. However, stated Frankfurter, “all these specific activities of government presuppose the existence of an organized political society. The ultimate foundation of a free society is the binding tie of cohesive sentiment.” He went on, “The precise issue, then, for us to decide is whether the legislatures of the various states . . . are barred from determining the appropriateness of various means to evoke that unifying sentiment. . . .” On that consideration, the Court declared its lack of competence to overrule the wisdom of the legislatures. “Even were we convinced of the folly of such a measure (i.e., a required flag salute), such belief would be no proof of its unconstitutionality.” Furthermore, “the court room is not the arena for debating issues of educational policy. . . . So to hold would in effect make us the school board of the country.”

The Court also declined to rule that the law was unconstitutional for not making any exception to its requirement. Frankfurter concluded, “But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for legislative judgment that such an exemption might introduce elements of difficulty into the school discipline. . . .”

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

Justice Harlan Stone wrote a powerful dissenting opinion in the case. Likewise, the Court’s decision was widely criticized and some members began to have second thoughts. Later, when a case similar to *Gobitis* came before the Court, the *Gobitis* ruling was overruled. However, more important was the fact that the *Gobitis* decision was followed by a wave of prosecutions of Jehovah’s Witnesses throughout the country.



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

1. What function, according to the Supreme Court, did the flag salute serve?
2. What were the basic reasons the Court overruled the lower courts?
3. If a flag salute case came before the Court today, what do you think the ruling would be?
4. If you had been a member of a group that did not believe in compulsory flag salutes, would you have protested, like the *Gobitis*, or accepted the board of education’s requirement? Explain your answer.
5. On what grounds do you think civil libertarians were disappointed in the Court’s *Gobitis* decision?

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Supreme Court Case Study 29



Denial of Counsel to Defendants

Betts v. Brady, 1942

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

In Carroll County, Maryland, an unemployed farm hand named Betts had been charged with robbery. At his trial Betts asked the judge to appoint counsel to represent him because he could not afford an attorney. Since local practice required free counsel to be appointed only in murder and rape cases, Betts’s request was denied.

Without withdrawing his claim to court-appointed counsel, Betts conducted his own defense. He pleaded not guilty and chose to be tried without a jury. He examined his own witnesses and cross-examined those of the prosecution. Betts was found guilty and sentenced to eight years in prison. After he was unsuccessful in his appeal to the Maryland court for a writ of habeas corpus, he appealed to the United States Supreme Court.

Constitutional Issue *****

In his appeal to the United States Supreme Court, Betts claimed that he had been denied the “due process of law” guaranteed by the Fourteenth Amendment. Specifically, Betts argued that the Sixth Amendment’s guarantee of the “assistance of counsel” in all criminal prosecutions should be applicable to state trials through the matching due process clause in the Fifth and Fourteenth Amendments.

Betts’s claim was based in part on an earlier ruling in the case of *Powell v. Alabama* (1932). Because the defendants in that case had been denied the right of counsel, the Court had overturned the rape convictions and resulting death sentences.

***** The Supreme Court’s Decision *****

The Court denied Betts’s claim for counsel in a 6 to 3 decision. Justice Owen Roberts wrote for the Court.

Justice Roberts carefully avoided making a rule that “in every case, whatever the circumstances, one charged with a crime, who is unable to obtain counsel, must be furnished counsel by the state.” Each case, he stated, must be examined separately and the “totality of the facts” considered. To deny counsel might be shocking to the universal sense of justice in one case but not in another, the justice wrote.

Roberts reaffirmed the *Powell* decision. He noted that the trial in that case had violated “every principle of fairness,” and a capital crime had been involved. Now the Court had to consider whether to enlarge that decision to include all state criminal cases.

Roberts reviewed common, colonial, and early state laws. He found that these laws could be reasonably interpreted to allow or permit a defendant to obtain counsel. However, he concluded they could not serve as a precedent “to compel the state to provide counsel for a defendant.”

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Supreme Court Case Study 30



Flag Salute Requirement

West Virginia State Board of Education v. Barnette, 1943

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

Barnette was a member of the Jehovah’s Witnesses, a religious group whose members refuse to participate in government, bear arms, serve in the military, or salute the flag. The flag salute is forbidden on grounds that it constitutes idol worship, which is forbidden in the Bible.

After the *Gobitis* decision of 1940, West Virginia instituted a compulsory flag salute in public schools. Disobedience was punishable by a child’s expulsion from the state’s schools, and the child’s parents were liable to a jail term not exceeding 30 days and a fine not to exceed \$50.

For refusing to give the required salute, Barnette’s children and the children of other parents who were Jehovah’s Witnesses were expelled from their schools. State officials also threatened to have the children sent to reformatories for criminally inclined juveniles.

Barnette sued in federal district court for an injunction against the enforcement of the flag salute law. The district court held in Barnette’s favor, after which the state Board of Education appealed to the United States Supreme Court.

Constitutional Issue *****

The Court had to decide whether the West Virginia law violated the Fourteenth Amendment’s due process clause, insofar as that clause is held to include the First Amendment’s protections of free exercise of religion and free speech. In the *Gobitis* case presented earlier, the Supreme Court had ruled that a compulsory flag salute in schools did not violate an individual’s First Amendment rights. Three years after that case, the Court was presented with essentially the same issue.

***** The Supreme Court’s Decision *****

The Court ruled 6 to 3 in Barnette’s favor on the grounds that the West Virginia statute violated the First and Fourteenth Amendments. Justice Robert H. Jackson wrote the Court’s opinion.

The Court ruled that the flag salute is a form of utterance. “It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication when coerced is an old one, well known to the Framers of the Bill of Rights. . . . To sustain the compulsory flag salute, we are required to say that a Bill of Rights, which guards the individual’s right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.”

Against this stood the *Gobitis* decision, which had “assumed” the state’s power to impose the flag salute requirement on school children in general. The Court in the West Virginia case undertook to reexamine the existence of that power. In each instance it favored the individual citizen, stressing the limited nature of government under the Constitution.

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Supreme Court Case Study 30 (continued)

Regarding citizen versus state, the Court wrote that “the Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.” In fact, Jackson explained, the “very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.”

The state’s power to regulate is properly applied to public utilities, where the legislature can impose any rational restrictions without fear of violating the due process clause. However, wrote Jackson, “freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger. . . . It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case.”

In conclusion, the Court dealt with what it called “the very heart of the *Gobitis* opinion”—“It reasons that ‘national unity is the basis of national security,’ that the authorities have ‘the right to select appropriate means for its attainment,’ and hence reaches the conclusion that such compulsory measures toward ‘national unity’ are constitutional.” The Court, however, rejected that reasoning, holding instead that “to believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. . . . We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”



Questions



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

1. According to the Court’s decision in this case, what is the relationship of the principle of free speech to the flag salute?
2. Compare the Court’s decision in this case to that of the *Gobitis* case.
3. Why does the Court believe that making a flag salute compulsory is not necessary to foster national unity?
4. The Court’s decision mentions that freedom of speech and press may be restricted under certain circumstances. Give an example of such circumstances.
5. Why might a person who objects to the religious ideas of the Jehovah’s Witnesses still support their rights under the First Amendment?

Supreme Court Case Study 31



Japanese Internment in World War II

Endo v. United States, 1944

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

Early in 1942, a few months after the United States had been attacked at Pearl Harbor by Japanese airplanes, President Franklin D. Roosevelt issued an executive order, on the grounds of national security, authorizing the evacuation of Japanese Americans and other persons of Japanese descent from the Pacific Coast region. Thousands of people were then sent to relocation centers farther inland.

Mitsuye Endo, a United States citizen, was one of the thousands of persons of Japanese ancestry who were rounded up and transported to relocation camps. In July 1942 she filed a petition for a writ of habeas corpus in a federal district court “asking that she be discharged and restored to her liberty.” She pointed out that “she was a loyal and law-abiding citizen of the United States, that no charge had been made against her, that she was being unlawfully detained, and that she was confined in the Relocation Center under armed guard and held there against her will.” The district court denied her application for a writ of habeas corpus. Endo then appealed to a United States Court of Appeals; but before the appeal was heard, the United States Supreme Court took the case.

Constitutional Issue *****

The constitutionality of the government’s relocation of United States citizens of Japanese ancestry was challenged and upheld by the Supreme Court in the *Korematsu* case. What the Court had not ruled on at that time was whether a loyal citizen of Japanese ancestry had the right to be released from a relocation center in order to return to his or her home in the evacuated region.

The Department of Justice conceded that Mitsuye Endo was a loyal and law-abiding citizen, and they made no claim that she was detained on any charge or that she was suspected of disloyalty, but they maintained that detention for an additional period after leave clearance was granted was essential to the evacuation program. Would the Supreme Court allow the continued detention of a Japanese American citizen and, if so, upon what grounds?

***** The Supreme Court’s Decision *****

Without dissent the Court ruled that Endo, like all persons of Japanese ancestry whose loyalty to the United States had been established, could not be held in a relocation center and must be unconditionally released. The Court did not rule on the constitutional issues raised; instead, it held that the War Relocation Authority had exceeded its authority in detaining loyal Americans indefinitely.

Justice William O. Douglas wrote the opinion of the Court. In the opinion, Douglas took great pains to justify Endo’s release without overruling the Court’s recent approval of the general evacuation plan. Douglas wrote that “whatever power the War Relocation Authority may

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Supreme Court Case Study 31 (continued)

have to detain other classes of citizens, it has no authority to subject citizens who are concededly loyal. . . .”

Douglas acknowledged that the Constitution gives the president and Congress broad discretion in times of war. But, Douglas said, “the Constitution is as specific in its enumeration of many of the civil rights of the individual as it is in its enumeration of the powers of . . . government. Thus it has prescribed procedural safeguards surrounding the arrest, detention and conviction of individuals.”

He continued, “We mention these constitutional provisions not to stir the constitutional issues which have been argued at the bar but to indicate the approach which we think should be made to an Act of Congress or an order of the Chief Executive that touches the sensitive area of rights specifically guaranteed by the Constitution.”

Douglas maintained that, “In interpreting a war-time measure we must assume that their purpose was to allow for the greatest possible accommodation between those liberties and the exigencies of war. We must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used. . . . A citizen who is concededly loyal presents no problem of espionage or sabotage. Loyalty is a matter of the heart and mind not of race, creed, or color. He who is loyal is by definition not a spy or a saboteur. When the power to detain is derived from the power to protect the war effort against espionage and sabotage, detention which has no relationship to that objective is unauthorized. . . . The authority to detain a citizen or grant him a conditional release as protection against espionage or sabotage is exhausted at least when his loyalty is conceded.”

Justice Frank Murphy concurred in the Court’s decision but strongly disagreed with its reasoning. He claimed the Court should have ruled earlier the entire evacuation program unconstitutional, in which case there would have been no question about releasing Endo.



Questions

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

1. What elements in Endo’s background did the Court find most important in ordering her release?
2. Based on the Court’s decision in the *Endo* case, on what grounds might other Japanese Americans have successfully sued for their release from the evacuation centers?
3. How did Justice Murphy’s view of the case differ from that of Justice Douglas?
4. If you had been a member of the Supreme Court in the *Endo* case, would you have agreed with Justice Douglas’s reasoning or with Justice Murphy’s?
5. How do you think it was possible for Endo, interned in an evacuation center, to afford the costs of appealing first to the United States Court of Appeals and then to the Supreme Court?

Supreme Court Case Study 32



The Rights of People of Suspect Ethnic Backgrounds

Korematsu v. United States, 1944

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

After the bombing of Pearl Harbor in December 1941 by Japanese planes, anti-Japanese sentiment on the West Coast rose to almost hysterical proportions. All people of Japanese ancestry, even citizens of the United States, were suspected of being pro-Japan, or worse—saboteurs and spies for Japan. Yielding to such sentiments, President Franklin D. Roosevelt issued an executive order that authorized the military to evacuate and relocate “all or any persons” in order to provide “protection against espionage and against sabotage to national defense. . . .” The military first set curfews on the West Coast for persons of Japanese ancestry. Later the military removed all persons of Japanese ancestry to war relocation centers. The order affected approximately 112,000 persons of Japanese ancestry, of whom about 70,000 were native-born American citizens. An act of Congress later reinforced the president’s order by providing penalties for violations.

Korematsu, a Japanese American citizen, refused to leave his home in California for a relocation camp. He was convicted in a federal court. His appeal to a United States circuit court failed, and he then brought the case before the United States Supreme Court.

Constitutional Issue *****

Since the president is commander in chief of the armed forces and Congress is given the power to declare war, was the executive order and its Congressional counterpart a constitutional exercise of the war power?

***** The Supreme Court’s Decision *****

The Court decided against Korematsu by a vote of 6 to 3. Justice Hugo Black wrote for the Court.

In 1943 the Court had upheld the government’s position in a similar case, *Hirabayashi v. United States*. That case concerned the legality of the West Coast curfew order. In *Hirabayashi*, as well as in *Korematsu*, the Court’s language pointed toward the necessity of giving the military the benefit of the doubt on the grounds of wartime necessity.

In the earlier case, the Court had held that “we cannot reject as unfounded the judgment of the military authorities and of Congress. . . .” Likewise, in the *Korematsu* case, the Court declared, “We are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast area at the time they did.”

Justice Black cited evidence that, following internment, “approximately five thousand citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.” Although the Court admitted awareness of the hardships internment imposed on American citizens, it stated “hardships are part of war. . . . Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier.”

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Supreme Court Case Study 33



Public Support for Non-Public Schools

Everson v. Board of Education, 1947

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

A 1941 New Jersey law gave school districts the authority to provide transportation for children to and from private and parochial, as well as public, schools. The board of education for the township of Ewing, New Jersey, established a plan to reimburse parents for the cost of public transportation to and from these schools.

A local taxpayer, Everson, objected to having his tax money used to pay for transporting children to religious schools. A New Jersey district court ruled in Everson’s favor, noting that the 1941 law was unconstitutional under the state constitution. However, New Jersey’s highest court reversed the lower court’s decision. Everson then appealed to the United States Supreme Court and the Court took the case to consider the First Amendment issues involved.

Constitutional Issue *****

The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” The Court had previously ruled that the religion clauses apply to the states through the due process clause of the Fourteenth Amendment. Everson claimed that the New Jersey statute amounted to unlawful taxation in support of religion. Such action, he maintained, violated the establishment clause of the First Amendment.

***** The Supreme Court’s Decision *****

The Court held by a 5 to 4 majority that the New Jersey law was constitutional. Justice Hugo Black wrote the majority decision. He interpreted the religious clause of the First Amendment to mean: “Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach and practice religion.” In the words of Jefferson, the clause against the establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’” However, said Justice Black, the wall had not been breached here.

Black then examined whether the New Jersey statute constituted unlawful taxation in support of religion. He also noted that the First Amendment prevents a state from hampering the free exercise of religion. He reasoned that if the statute provided only for “public welfare legislation” benefiting all citizens equally, then withholding those benefits would result in discrimination against religion. Tax subsidized bus fares, he concluded, fell into the same category as police and fire protection. Such benefits are available to the public as a whole. He went on, “The state contributes no money to the schools. It does not support them. Its legislation . . . does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.”

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Supreme Court Case Study 34



Released Time Religious Education in Public Schools

McCullum v. Board of Education, 1948

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

The Board of Education in Champaign County, Illinois, permitted teachers of religion into the public schools to provide 30 to 45 minutes of weekly religious instruction for grades four through nine in public schools. Parents signed printed cards authorizing their children to attend these classes, and absences were reported to school authorities. Children who did not attend the religious instruction were not excused from their regular classes. The religion teachers were employed by the Champaign Council on Religious Education at no cost to the schools. Classes had originally been offered for Protestant, Catholic, and Jewish students. Similar programs were popular around the country in the 1940s. They were known as “released time programs.”

Vashti McCollum, mother of a child in the Champaign school system, objected to the use of tax-supported school time and buildings for this purpose. She challenged the practice on the grounds that it violated the establishment clause of the First Amendment. A county court refused her petition to have these classes halted, and that decision was upheld by the Illinois Supreme Court. McCollum then appealed to the United States Supreme Court.

Only a year after its ruling in the *Everson* case, the Supreme Court was faced with another case involving religious education. The circumstances of these cases, however, were different. The same justice, Hugo L. Black, wrote both decisions.

Constitutional Issue *****

Did the Champaign program violate the First Amendment prohibition against any law regarding the establishment of religion as applied to the states through the Fourteenth Amendment?

***** The Supreme Court’s Decision *****

The Court voted 8 to 1 in McCollum’s favor. Justice Hugo L. Black wrote the majority opinion for the Court.

Justice Black went directly to the heart of the issue. He stated that the facts of the case “show the use of the tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. . . . This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth). . . .”

The Court denied that ruling for McCollum’s claim would “manifest a governmental hostility to religion or religious teachings. . . . The First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.”

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Supreme Court Case Study 35



Rights of a Leader of the Communist Party

Dennis v. United States, 1951

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

Many Americans have had mixed feelings about whether political radicals such as Communists should have the free speech protection provided by the First Amendment, since their presumed purpose is to overthrow the United States government. This feeling was particularly prevalent in the 1940s and during the Cold War with the Soviet Union. American Communists were suspected of being agents of the Soviet Union, and in 1940 Congress enacted the Smith Act, which made it illegal to teach or advocate the violent overthrow of the United States government.

When the government convicted Communists under the Smith Act, the Supreme Court faced the challenge of deciding whether this law was constitutional. In 1949 Eugene Dennis and 10 co-defendants, all leaders of the United States Communist Party, were convicted of violating the Smith Act during a stormy, nine-month New York District Court trial.

In his instructions to the jury, the trial judge said that it would not be enough to convict the defendants if they had only taught or conspired to teach subversion. He instructed the jury that it must be satisfied that the defendants had an intent to cause the overthrow or destruction of the government of the United States by force and violence, and as speedily as circumstances would permit. The jury convicted the defendants of having violated the Smith Act. The defendants appealed their convictions to the United States Supreme Court, maintaining that their rights to freedom of speech had been compromised.

Constitutional Issue *****

The central questions in this case were these: Did the Smith Act unconstitutionally limit the rights of free press and speech under the First Amendment? Did the act conflict with the Fifth Amendment’s guarantee of due process of law?

***** **The Supreme Court’s Decision** *****

The Court held 6 to 2 (one justice did not participate in deciding the case) that the Smith Act was constitutional. The majority opinion was written by Chief Justice Fred Vinson, although there were also two concurring opinions. The Court first supported the power of Congress to protect itself against rebellion, especially since “the existing structure of the government provides for peaceful and orderly change.” The true question, however, “is not whether Congress has such *power*, but whether the *means* conflict with the First and Fifth Amendments to the Constitution.”

The defendants had claimed that the Smith Act amounted to a prohibition even of academic discussion of Marxist or Communist thought. The Court rejected this contention, stating that the act “is directed at advocacy, not discussion.”

At this point the Court’s examination shifted to the circumstances under which free speech may be limited. The primary precedent case had been *Schenck v. United States* (1919), in which

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Supreme Court Case Study 35 (continued)

Justice Oliver Wendell Holmes had devised the “clear and present danger” test. Holmes had explained, the “question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

Vinson now attempted to develop a more precise determination of the meaning of the clear and present danger principle. He cited the opinion of the first appeals of Judge Learned Hand, who wrote the majority opinion in this case when it was in the intermediate appellate court. Hand had interpreted the principle this way: “In each case [courts] must ask whether the gravity of the ‘evil’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.” Hand adapted Holmes’s principle to a test of “clear and probable danger.” This principle made it easy for the Court to deal with the issues of conspiracy and advocacy. The Communist Party of the United States was characterized as a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders felt that the time had come for action. In other words, the danger or threat of rebellion already existed, although no overt action had been taken yet. Vinson concluded that “this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it compromises only presentation. It is the existence of the conspiracy which creates the danger. . . .”

***** Dissenting Opinion *****

Justices Hugo Black and William O. Douglas felt that the clear and present danger test had been destroyed by the majority decision. Douglas emphasized that the defendants had been charged with no overt acts. Rather, they had been charged only for their speeches and publications. He also felt that the matter of clear and present danger should have been decided by the trial court’s jury and not by the Supreme Court.



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

1. What test did the Smith Act have to meet in order to be declared constitutional?
2. What was the main difference between Justice Vinson’s opinion and the opinions of Justices Black and Douglas?
3. Suppose you had written an essay during the same time period as the *Dennis* case, in which you stated that you believed that the government of the United States should be overthrown. You did not show the essay to anyone, but someone found it among your papers. Do you think you would have been found guilty of violating the Smith Act? Explain.
4. Do you believe that people who belong to an organization whose objectives are clearly opposed to democratic principles are entitled to protection under the Constitution? Give reasons for your answer.
5. Ten years after the Court’s *Dennis* decision, the Supreme Court unanimously set aside a conviction under the Smith Act of a member of the Communist Party. What reasons might the Court have given for its 1961 decision?

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Supreme Court Case Study 36



Right of Free Speech

Feiner v. New York, 1951

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

One evening in March 1949, Irving Feiner, a student at Syracuse University, was addressing an open-air meeting on a street corner in Syracuse, New York. Feiner spoke to a mixed race crowd of about 75 people. He denounced various national and local officials and reportedly sought “to arouse the Negro people against the whites, urging that they rise up in arms and fight for equal rights.”

Two policemen, who had been watching from across the street, stepped in to urge people out of the path of traffic and back onto the sidewalk. After a while, the crowd became restless and unruly, and the officers believed that a fight was imminent. Some people in the crowd made comments to the officers about their inability to handle the crowd.

At least one person threatened violence if the police did not act. Several times over the next few minutes the police demanded that Feiner cease speaking. Feiner ignored them. Finally, the police arrested Feiner, charging him with disorderly conduct. He was later convicted by a local court. Two New York courts later upheld Feiner’s conviction, after which Feiner took his case to the United States Supreme Court.

Constitutional Issue *****

The First Amendment guarantees the right of free speech and is applicable to the states through the due process clause of the Fourteenth Amendment. The question for the Court to decide was whether the protection of these amendments prevents the police from interfering when they believe free speech threatens to incite listeners to violate public order.

***** The Supreme Court’s Decision *****

Chief Justice Fred Vinson wrote for the 6 to 3 vote upholding Feiner’s conviction as constitutional. The Court found the lower court records persuasive as to the threat of impending crowd disorder. The principle they applied was from a 1940 case in which the Court declared: “When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the state to prevent or punish is obvious.”

In agreeing with the lower courts’ finding, Vinson wrote, “It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of two New York courts approving the means which the police, faced with crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence

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Supreme Court Case Study 37



Nullifying the Separate but Equal Principle

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

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

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

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

Constitutional Issue *****

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

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

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

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

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

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

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

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

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



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 38



Limits of Congressional Investigations

Watkins v. United States, 1957

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

In the 1950s, the United States was in the grips of the Cold War. Many citizens feared Communism and anything associated with it. In 1954, John Watkins, a labor organizer, was called to testify before the House Committee on Un-American Activities (HUAC). The Committee investigated individuals and organizations thought to be disloyal to the U.S. government, especially those with ties to the Communist Party. The HUAC was often criticized for disregarding the civil liberties of those it had called to testify.

When John Watkins testified before the Committee, he answered questions about his involvement in the Communist movement. He also described his association with current Communist Party members, whom he named. However, Watkins refused to identify any individuals whom he believed were no longer involved in the Communist movement. He argued that this information was beyond the scope of the Committee’s authority. Watkins was charged with contempt of Congress. He was convicted and sentenced to one year in prison and a \$100 fine. The sentence was suspended and Watkins was released on probation. The Court of Appeals upheld his conviction, and Watkins appealed to the United States Supreme Court.

Constitutional Issue *****

The Court had previously examined this issue. In *Kilbourn v. Thompson* (1881) and *McGrain v. Daugherty* (1927), standards were set for Congressional investigations. Those with the purpose of passing new legislation were considered constitutional. Witnesses refusing to cooperate could be held in contempt of Congress.

Sinclair v. United States (1929) held that a committee could require a witness to testify before it. However, the witness could refuse to answer questions that went beyond the scope of the committee’s authority. The witness could also refuse to answer questions that were not relevant to the committee’s inquiry. *Watkins v. United States* tested this principle.

***** The Supreme Court’s Decision *****

The Court voted 6 to 1 to overturn Watkins’s conviction. Chief Justice Earl Warren wrote the majority opinion.

The Court’s decision stated that the power of Congress to investigate is not unlimited. Warren believed that HUAC’s investigation did not meet the standards set in *Kilbourn*, *McGrain*, and *Sinclair*. He wrote, “There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.” According to Warren, HUAC’s investigation went beyond the established limits of Congressional power in this regard.

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Supreme Court Case Study 38 (continued)

Watkins’s conviction was overturned under the due process clause of the Fifth Amendment. The law under which Watkins was convicted required witnesses before a congressional committee to answer questions relevant to the investigation. Since the exact subject of HUAC’s investigation was not made clear, Watkins could not know whether the questions put to him about former Communist Party members were relevant. As a result, his right to due process had been violated.

***** Dissenting Opinion *****

Justice Tom C. Clark wrote the dissent in *Watkins*. Clark held that the majority opinion ignored the workings of congressional committee investigations. Clark argued that as long as the investigation was legitimate and the questions pertinent, the Court should not interfere. This would be a clear infringement of the principle of separation of powers. Clark also concluded that Watkins had known the subject of the Committee’s inquiry. Therefore the protection of the due process clause did not apply to Watkins.



Questions *****

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

1. Why did Watkins refuse to answer questions about former Communist Party members?
2. What reasons did the majority decision give for overturning Watkins’s conviction?
3. Under what circumstances can witnesses before Congress legally refuse to answer questions?
4. What standard did the Court establish in previous cases regarding witnesses who refused to cooperate with Congressional investigations?
5. Do you agree more with Chief Justice Warren’s opinion or Justice Clark’s dissent? Give reasons for your answer.

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Supreme Court Case Study 39



Rights of Communists

Yates v. United States, 1957

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

The rights of Communists to the freedoms of the Bill of Rights was a persistent question that troubled the public in the 1950s. In *Dennis v. United States* (1951), the Supreme Court had ruled that Dennis and other Communists had been guilty of conspiracy under the Smith Act. Between 1951 and 1956, convictions were obtained in every Communist case brought to trial. With the *Yates* case, the Supreme Court took the opportunity to reexamine its policy on Communists.

Oleta O'Connor Yates was one of 14 leaders of the Communist Party in California. All were charged under the Smith Act of 1940 with conspiracy to teach and advocate the violent overthrow of the United States government and with organizing the Communist Party for that purpose. All were found guilty, fined \$10,000, and sentenced to five years in prison. They appealed their convictions to the federal courts, which upheld the trial court's judgment. However, the United States Supreme Court agreed to review their convictions (grouped under Yates's name) in order to reexamine and refine its decision in the 1951 *Dennis* case.

Constitutional Issue *****

The *Dennis* case had focused on a substantially identical question of Communist Party violations of the Smith Act. The Court had held that the Smith Act did not violate First Amendment protections of speech and press. Furthermore, the Court had concluded in *Dennis* that the defendants' purpose had been the ultimate overthrow of the United States government by force. The mere fact that they had not yet put their plans into action was not considered a defense.

The *Dennis* decision had been generally understood to be a modification of the 1919 *Schenck v. United States* case, which had held that First Amendment protection needed to be weighed against "clear and present danger" to the government. The *Dennis* case had modified this to consider whether or not some danger was not only present but also probable.

The precise question at issue, then, was whether or not advocating violent overthrow of the government was prohibited. Did advocacy have to be accompanied by actual incitement to action in order to override the First Amendment protections?

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

The Court reversed all the original convictions in the *Yates* case on constitutional grounds. However, based on the Court's review of the original trial record, five defendants were cleared and new trials were ordered for the other nine. Justice John Marshall Harlan wrote for the majority.

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Supreme Court Case Study 39 (continued)

Harlan’s opinion centered on the trial judge’s instructions to the jury. The judge had not informed the jury of the necessity to prove that any advocacy to overthrow the government had also intended to incite people to take such action. Both the prosecution and defense had suggested such instructions, but the trial judge had rejected the suggestions on the grounds that the decision made in the *Dennis* case made this unnecessary. In other words, the trial judge had interpreted the *Dennis* decision as requiring only that intent to forcibly overthrow the government needed to be shown and that it was unnecessary to prove actual incitement to action. Justice Harlan wrote, “we are thus faced with the question whether the Smith Act prohibits advocacy and teaching of forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not.”

The Court found that “the legislative history of the Smith Act and related bills shows beyond all question that Congress was aware of the distinction between the advocacy or teaching of abstract doctrine and the advocacy or teaching of action, and that it did not intend to disregard it. The statute was aimed at the advocacy and teaching of concrete action . . . and not of principles divorced from action.”

The Court defined the distinction between *Dennis* and *Yates*. In *Dennis* “advocacy was aimed at building up a seditious group and maintaining it in readiness for action at a propitious time.” The district judge in the *Yates* case had been under the impression that “mere doctrinal justification of forcible overthrow, if engaged in with the intent to accomplish overthrow, is punishable per se under the Smith Act.” Harlan called the latter “too remote from concrete action” to fall under the standard announced in *Dennis*. “The essential distinction is that those to whom the advocacy is addressed must be urged to *do* something, now or in the future, rather than merely to *believe* in something.” The Court recognized that these distinctions “are often subtle and difficult to grasp.” For that very reason, the trial judge ought to have given more adequate instructions to the jury.

It should be noted that the *Yates* decision, although it claims not to overturn the *Dennis* decision, was effectively understood as having signaled a return to the pre-*Dennis* standard that “clear and present danger” must always be proved before First Amendment rights can be limited. By virtue of the *Yates* decision, the Court, in the words of a constitutional scholar, “erected a stern new standard for evaluating convictions under the Smith Act, making conviction under the measure difficult.”



Questions



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

1. What is the difference between advocacy of a cause and incitement to action?
2. Why did the Court hold that the trial judge had erred in his instructions to the jury?
3. How did the Court’s decision in the *Yates* case differ from its decision in the *Dennis* case?
4. What was the outcome of the Court’s *Yates* decision?
5. Do you think the Court made the right decision in the *Yates* case? Give reasons for your answer.

Supreme Court Case Study 40



Congress’s Power to Punish

Barenblatt v. United States, 1959

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

In 1938 Congress set up a House committee to investigate un-American activities. The committee directed most of its efforts at unmasking left-wing groups and individuals. In 1946 the Senate authorized a competing committee, the Senate Judiciary Committee. It quickly overshadowed the House committee, but the actions of both committees alarmed civil libertarians. Witnesses were browbeaten, denied the opportunity to examine charges of so-called subversive conduct, and denied the right of cross-examination.

Many witnesses felt that any statement they made might incriminate them; they refused to testify against themselves. The committees assumed that persons pleading Fifth Amendment protection were guilty, labeling them “Fifth Amendment Communists.” Ten prominent Hollywood figures refused to testify and were jailed for contempt of Congress.

Neither the House nor the Senate committees made any effort to introduce legislation related to their investigations. When this issue arose in the case of *Watkins v. United States* (1957), the Court held that “there is no congressional power to expose for the sake of exposure.”

As part of the House Un-American Activities Committee’s investigation into education, the committee called Lloyd Barenblatt, a professor of psychology at Vassar College from 1950 until shortly before his appearance before the committee in 1954. A friend had identified Barenblatt as a Communist. Barenblatt appeared but refused to answer questions about his Communist affiliation. He contended that the committee’s charge, as set forth by the House, was vague. He argued further that the questions posed to him by the committee violated his First Amendment right of free speech.

Barenblatt was found guilty of refusing to answer pertinent questions and sentenced to six months in a federal penitentiary and fined \$250. The Supreme Court reviewed his conviction.

Constitutional Issue *****

The case involved several issues. First, did the committee have the right to compel testimony and punish those who refused to testify? Second, was the witness’s First Amendment right of free speech breached? Third, did the House committee have the right to investigate for the sake of investigation rather than for the purpose of drafting legislation?

***** The Supreme Court’s Decision *****

The Court ruled 5 to 4 against Barenblatt. Justice John Marshall Harlan wrote the majority opinion. The Court followed the *Watkins* approach of denouncing Congress’s power “to expose for the sake of exposure” and the requirement that a committee of Congress have a legislative purpose in its investigations. However, it assumed that the committee, as a branch of Congress, did have such a purpose. Justice Harlan held that the Court could not agree with Barenblatt’s contention that the vagueness of the rule setting up the committee deprived it of the right to

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compel testimony. He said the House “has steadily continued the life of the Committee . . . and has continually supported the Committee’s activities with substantial appropriations” and noted that the “Committee was raised to the level of a standing committee of the House in 1945.”

As to Barenblatt’s First Amendment rights, Harlan wrote that “the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. . . . We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended.”

★★★★★★★★★★★★★★★★★★★★ **Dissenting Opinions** ★★★★★★★★★★★★★★★★★★

Two dissenting opinions were presented. Justice Hugo L. Black’s dissent was concurred with by Chief Justice Earl Warren and Justice William O. Douglas. Black dissented on these grounds: First, that the term “un-American” in the committee’s mission was so vague as to make the committee’s mandate void under the due process clause of the Fourteenth Amendment. Second, the Court’s “balancing test” as to the applicability of First Amendment rights was not the way to determine the scope of freedom of speech, and if it were, the Court should have balanced the interest of society in “being able to join organizations, advocate causes and make political ‘mistakes’” against the government’s limited interest in making laws in the area of free speech. . . .” Third, “the chief aim, purpose, and practice of the House Un-American Activities Committee . . . is to try witnesses and punish them because they are or have been Communists or because they refuse or admit or deny Communist affiliations.”

Justice William J. Brennan, also dissenting, wrote, “. . . no purpose for the investigation of Barenblatt is revealed by the record except exposure purely for the sake of exposure. This is not the purpose to which Barenblatt’s rights under the First Amendment can validly be subordinated. An investigation in which the processes of law-making and law-evaluating are submerged entirely in exposure of individual behavior—in adjudication, of a sort, through the exposure process—is outside the constitutional pale of congressional inquiry.”



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

1. On what grounds did the Court reject Barenblatt’s claim that he had been deprived of his First Amendment rights?
2. How did the Court defend the House committee’s purpose against Barenblatt’s charge of vagueness?
3. On what issue did all the dissenting justices agree?
4. After the Court’s decision, would the House committee have to modify its procedures? Explain.
5. Do you agree with the Court’s decision or with the dissenting justices’ criticisms? Explain.

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.



Questions ★★★★★★★★★★★★★★

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.

Supreme Court Case Study 42



The Court’s Role in State Apportionment

Baker v. Carr, 1962

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

One issue throughout the history of the Supreme Court is that of how far the federal government may infringe on state matters. Early on, the Court was reluctant to allow federal authorities to “intrude” in state matters. However, for a considerable period of time in the 1900s, the issue was decided in favor of the federal government.

The constitution of the state of Tennessee provided for reapportionment of state legislative districts every ten years based on the United States census. Many people of Tennessee had moved from rural to urban and suburban districts since 1901, but no redistricting had been done. Voters in city districts felt they were second-class citizens whose needs were being neglected by the state legislature.

In 1959 Baker brought suit on his own behalf and that of other Tennessee voters to force reapportionment. He sued various Tennessee state officials in federal court for relief from denial of equal protection of the law under the Fourteenth Amendment. The court dismissed the case because it presented a political question beyond the competence of the judiciary.

Constitutional Issue *****

The central issue in the *Baker* case concerned the applicability of Article III, Section 2, of the Constitution, which deals with the power of the federal courts. The question the Supreme Court had to resolve was whether federal courts had jurisdiction to consider cases of state reapportionment.

***** The Supreme Court’s Decision *****

The Court voted 6 to 2 (one justice did not participate in the decision) in favor of the federal district’s jurisdiction. Justice William Brennan wrote the decision of the Court. He dealt simply with the question of jurisdiction. The federal district court had claimed it had no jurisdiction because the case would involve impermissible political questions. Since no political questions were present, the matter therefore had to be subject to judicial inquiry—it qualified as a case or controversy arising under the Constitution in accord with Article III, Section 2.

In addition, Brennan explained, the matter under consideration was justiciable—that is, the subject of the case was something that could be decided by a court. “The mere fact that the suit seeks protection of a political right,” Brennan noted, “does not mean it presents a political question.”

Brennan gave as examples of nonjusticiable political questions matters concerning Native American nations, foreign relations, and, in general, matters that are properly the concern of the executive or legislative branches under the separation of powers.

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Supreme Court Case Study 42 *(continued)*

“The question here,” Brennan went on to state, “is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government co-equal with this Court. . . . Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which the judicially manageable standards are lacking. Judicial standards under the equal protection clause are well-developed and familiar. . . .”

***** Dissenting Opinion *****

Justice Felix Frankfurter wrote a vigorous dissenting opinion. He wrote, “In effect, today’s decision empowers the courts of the country to devise what should constitute the proper composition of the legislatures of the fifty states.” He said that if the state courts could not solve this question, the ruling in this case now made the Supreme Court ultimately the decision-maker in such cases.

He went on, “The Framers carefully and with deliberate forethought refused to so enthrone the judiciary. In this situation . . . appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate.” In summary, Frankfurter felt that the Supreme Court should not be the source of decisions about state legislative reapportionment. He felt that there was no constitutional justification for the Court’s decision in this case and that the ruling would send the lower courts into a “mathematical quagmire.”

Chief Justice Warren called the *Baker* case the most important of the Warren court. The decision was the first to hold that federal courts could hear suits challenging voting district apportionment, and in a short time thirty-nine states started legal action to challenge local apportionment practices.



Questions *****

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

1. On what grounds did the Supreme Court claim it had a right to rule in the *Baker* case?
2. What practice did the *Baker* decision address?
3. If you felt that the legislature in your state did not reflect the population distribution of the state, what did the *Baker* decision say you could successfully do?
4. Do you agree with Justice Brennan’s majority opinion or Justice Frankfurter’s dissent? Give reasons for your answer.
5. Why do you think Chief Justice Warren called the *Baker* decision the most important of his court?

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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Supreme Court Case Study 43 *(continued)*

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.”



Questions ★★★★★★★★★★★★★★★★★★

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?

Supreme Court Case Study 44



Constitutionality of Bible Reading in the Public School

Abington School District v. Schempp, 1963

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

Two cases were decided in one opinion: *Abington School District v. Schempp* and *Murray v. Curlett*. In the *Abington* case, Pennsylvania law required that “at least ten verses from the Holy Bible shall be read, without comment, at the opening of each school day. Any child shall be excused from such Bible reading . . . upon written request of his parent or guardian.”

Two children of the Schempp family, who were Unitarians, were enrolled in Abington public schools. The Schempps objected to the readings because Unitarians do not believe that the Bible is always intelligible when read literally. Further, they objected to having their children sent out into the hallway during readings. They claimed that Bible reading violated their rights under the free exercise clause of the First Amendment and brought suit to have the practice abandoned. A federal district court sided with the Schempps and found Pennsylvania’s law unconstitutional.

In the *Murray* case, Madalyn Murray and her son William Murray III objected to a Baltimore, Maryland, school board ruling that allowed daily readings of a Bible chapter or the Lord’s Prayer in the classroom. The local statute was in accord with a state law at the time. The Murrays objected, as atheists, to the doctrine of God as the “source of all moral and spiritual values,” and to the Bible itself, which they characterized as “nauseating, historically inaccurate, replete with the ravings of madmen.” They also contended that the practice of religious reading violated their liberty of conscience by placing a premium on belief as opposed to non-belief.

A Maryland appeals court supported the school board. The state’s highest court supported this ruling, whereupon the Murrays asked the United States Supreme Court to review their case.

Constitutional Issue *****

During the *Engel* case the Court had decided that a religious prayer had no place in public schools. However, reading the Bible in schools had been a common practice for many years. Now the Court had to decide on the constitutionality of Bible reading in public schools.

The issue in both cases was whether the First Amendment’s prohibition of governmental support of the establishment of religion, made binding on the states by the due process clause of the Fourteenth Amendment, was violated by Bible recitation in public schools. (Note that the Court viewed these as establishment clause cases, not free exercise cases despite the complaints of Schempp and Murray.)

***** The Supreme Court’s Decision *****

The Court ruled in an 8 to 1 decision that “the practices at issue and the laws requiring them are unconstitutional under the establishment clause.” Justice Tom C. Clark wrote the Court’s ruling.

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Supreme Court Case Study 44 (continued)

The Court pointed to the American tradition of both religious belief and religious freedom. It reaffirmed earlier rulings that civil authority and religious activity must remain separate, and that no support of religion could be given from public sources. The Court set up a test as to whether a law violated either the establishment clause or the free exercise clause. A state program touching upon religion or religious institutions must have a valid secular purpose and must not have the primary effect of advancing or inhibiting religion.

The state in both cases insisted that its Bible reading served “secular purposes . . . the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teachings of literature.” The Court, however, found that the school districts used the Bible for religious purposes. The Bible when used for these purposes constituted a religious ceremony. The Bible may properly be used for historical or literary studies, “but the exercises here do not fall into those categories. They are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion.”

In his concluding statement, Clark echoed the sentiments of the majority of the Court as he wrote, “The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church, and the inviolable citadel of heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment.”

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

Justice Potter Stewart was the sole dissent to the *Abington* decision. His concerns were mainly that the rights of parents who wish to have their children take part in a religious prayer exercise, and the rights of the children themselves, were being denied. He made the point that the prayers in question were not being forced upon any children who did not wish to participate, and he expressed the fear that “school boards all might eventually find it impossible to administer a system of religious exercises during school hours in such a way to meet this constitutional standard. . . .”



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

1. How might schools familiarize pupils with the Bible without violating the Court’s ruling?
2. What test must laws concerning religion meet to be acceptable under the First Amendment?
3. How did the states defend the practice of Bible reading in public schools?
4. Do you agree with the Court’s ruling or with Justice Stewart’s dissent? Give reasons for your answer.
5. Suppose a school board in a largely Muslim neighborhood required a portion of the Koran to be read in classes each day. Would this be allowed under the Court’s *Abington* decision? Explain.

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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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.



Questions

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?

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 47



One Person, One Vote

Reynolds v. Sims, 1964

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

Alabama was divided into voting districts for the election of 35 senators and 106 representatives to the state legislature. Each voting district consisted of a county in the state. The Alabama constitution of 1901 established district boundaries and allocated senators and representatives, with each senatorial and house district being as nearly equal as possible. As no reapportionment of voting districts had been made for sixty years, there was a vast discrepancy in the size of the population in the voting districts. The proportion of population of largest to smallest districts was about 41 to 1.

Two different reapportionment plans had passed the legislature in 1962 for the 1966 election. Neither one, however, would result in a majority of the state's population being able to elect a majority of the legislators in either house.

A group of citizens and taxpayers sued to have the reapportionment plans declared unsatisfactory. After a district court had approved temporary use of portions of both plans, the citizens appealed to the United States Supreme Court.

Constitutional Issue *****

The question before the Court was whether or not the apportionment plans for the Alabama legislature violated the equal protection clause of the Fourteenth Amendment. In 1962 the Court had held in *Baker v. Carr* that voting districts must be substantially equal in numbers of voters. Once the Supreme Court had established its right to rule on the validity of state legislative districting, over thirty cases challenging existing state apportionments were filed in federal court. What the *Baker* case left unanswered was the question of the proper remedy in malapportionment cases. The Court now had to decide whether the equal protection clause implied that both houses of a state legislature must reflect equal numbers of people in voting districts.

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

The Court ruled 8 to 1 that the equal protection clause had been violated. Chief Justice Earl Warren wrote for the Court.

Warren wrote that "legislators are elected by voters, not farms or cities or economic interests." If voters in one area have votes whose numbers would have a disproportionately large impact in the election of representatives, then the votes of people in other areas become that much less effective. Warren held that "full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." Otherwise his vote is debased, and he is that much less a full citizen, explained Warren. The weight of a vote cannot depend on whether the voter resides in a sparsely populated rural district or a thickly populated urban area.

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Supreme Court Case Study 48



Legislative Districting

Wesberry v. Sanders, 1964

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

Like other congressional districts in Georgia, the Fifth District elected one representative to Congress. The Fifth District, however, had two to three times the population of other Georgia districts. Contending that this situation made his vote worth much less than the votes of some other Georgia citizens, Wesberry, a Georgia citizen, brought suit against Sanders, the governor of Georgia. The suit asked that Sanders be prevented from holding elections under Georgia’s statutes governing congressional district apportionment.

The federal district court which heard the case denied Wesberry’s claim. It ruled that Wesberry’s claim presented a nonjusticiable political question—one that is for the political branches rather than the courts to decide. The case reached the United States Supreme Court for decision.

Constitutional Issue *****

Wesberry’s suit raised questions under various sections of the Fourteenth Amendment and Article I, Section 2, of the Constitution. This article provides that “the House of Representatives shall be composed of members chosen . . . by the people of several states.” The Court’s decision was confined to a consideration of Article I and of *Baker v. Carr* (1962), in which the Court had ruled that voter district apportionment could be subject to judicial review.

In the case of *Baker v. Carr* the Supreme Court held that legislative districting by the states was a controversy in which the Court could get involved. The case assigned the federal district courts the task of policing the time and speed with which the redistricting was to take place. But the case left unanswered the question of the basis on which legislative districts were to be judged as meeting constitutional standards. Without such guidelines, many federal district courts had to turn to the Supreme Court for answers.

***** The Supreme Court’s Decision *****

Justice Hugo L. Black wrote for a 6 to 3 majority. The Court held that Georgia’s districting statute did violate Article I, Section 2, of the Constitution. Since the federal district court had refused to intervene in what it held to be a political question, Black’s first task was to address that view. The Court rejected that position because of the *Baker* decision, which had stated that “the right to vote is too important in our free society to be stripped of judicial protection . . . on the ground of ‘nonjusticiability.’”

Next, the Court announced that “in its historical context, the command of Article I, Section 2, . . . means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.” The remainder of the decision spells out the historical context.

Reviewing the debates of the Constitutional Convention, Black wrote that “it would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House

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Supreme Court Case Study 49



Racial Discrimination in Privately Owned Facilities

Heart of Atlanta Motel v. United States, 1964

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

The ground-breaking *Brown* decision of 1954 banned racial discrimination in public schools and was gradually extended to other public facilities. The ruling did not apply to privately owned places such as hotels and restaurants. As a result, many of these places continued to refuse to accommodate African Americans. Professional baseball teams, for example, which had become racially integrated in 1947, could do nothing when their black players were not allowed to register at the same hotels as the white players.

Civil liberties lawyers tried to find some constitutional way to make these discriminatory practices illegal. The lawyers first had to prove that the federal courts had jurisdiction over these places, and second that they violated the Civil Rights Act of 1964. This act forbade racial discrimination by hotels, restaurants, theaters, and other public accommodations.

The Heart of Atlanta Motel was located in downtown Atlanta, but had ready access to two interstate highways. The motel solicited guests from outside Georgia by advertising in various national media. It also accepted reservations for conventions from organizations outside of Georgia. About 75 percent of its business came from outside the state.

Before the passage of the Civil Rights Act, the motel refused to rent its rooms to African Americans and stated that it planned to continue to do so. In order to do so legally, the motel sued the United States government, which had the responsibility of enforcing the Civil Rights Act. Through the appeal process, the case reached the United States Supreme Court.

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Constitutional Issue *****

The motel based its appeal on three claims. First, it claimed that the Civil Rights Act was unconstitutional because it exceeded Congress’s power to regulate commerce under the commerce clause of the Constitution. Second, the motel asserted that the Civil Rights Act violated the Fifth Amendment because, in being deprived of the right to choose its customers and operate its business as it wished, its liberty and property were being taken from it without due process of law and its property was taken without just compensation. Third, it claimed that requiring the motel to rent rooms to African Americans against its will subjected it to involuntary servitude in violation of the Thirteenth Amendment.

The Court had to decide whether the Civil Rights Act deprived the motel owners of their constitutional rights.

***** The Supreme Court’s Decision *****

The Court ruled against the motel in a decision written by Justice Tom C. Clark. The Court chose to deal only with the question of whether the Civil Rights Act was constitutional because it was based on the power of Congress to regulate interstate commerce. Justice Clark cited earlier cases which dealt with the meaning of interstate commerce and Congress’s power to regulate

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Supreme Court Case Study 49 (continued)

it. As to the constitutionality of the Civil Rights Act of 1964, the Court held that the commerce clause of the Constitution permitted Congress to ban discrimination in places like the motel. Clark cited the *Gibbons v. Ogden* case and other cases that defined the meaning of “interstate commerce” in such a way as to include the business of the motel. It denied that the business of the motel was purely local since a good portion of its business was with people from other states.

Clark closed: “We . . . conclude that the action of the Congress in the adoption of the [Civil Rights] Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed—what means are to be employed—is within the sound and exclusive discretion of the Congress. It is subject only to one caveat—that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more.”

On the same day, the Court also ruled on a closely related case, *Katzenbach v. McClung*. The decision in this case, also written by Justice Clark, dealt with a Birmingham restaurant that mainly served a local clientele. It served African Americans but only at a takeout counter. About half the food the restaurant served came from out of state. The Court’s opinion indicated that this fact was not crucial in its ruling. It took the stand that discrimination in a public accommodation such as a restaurant severely hindered interstate travel by African Americans.

In a concurring opinion, Justices William O. Douglas and Arthur J. Goldberg argued that the commerce clause was not the only constitutional support for the Court’s view of interstate commerce, but also that the Fourteenth Amendment empowered Congress to impose the regulations provided in the Civil Rights Act of 1964.



Questions



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

1. What do you think the Court’s decision in the Atlanta case required the motel to do?
2. Why do you think the Court chose to deal only with the commerce clause rather than the other two questions the motel had raised as well?
3. What did the Court’s decisions in both the Atlanta and Birmingham cases have in common?
4. Justice Clark had a reputation for being a very conservative member of the Supreme Court. Do you think his rulings in the two cases described supported or detracted from this reputation?
5. Do you think the Court was correct in broadening its interpretation of the commerce clause? Explain.

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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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?

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Supreme Court Case Study 51



The Nature of a Fair Trial

Sheppard v. Maxwell, 1966

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

Dr. Samuel Sheppard was accused of murdering his pregnant wife at their home in a Cleveland, Ohio, suburb on July 4, 1954. Sheppard claimed that the murderer had been an intruder, with whom he had fought and by whom he had been knocked unconscious. At his trial Sheppard was convicted of the murder of his wife.

Events prior to his trial in October 1954 were described as a “publicity circus.” Elements in the “circus” included extensive, sensationalist newspaper articles and editorials containing allegations unfavorable to Sheppard. Coverage included a reenactment of the events of the crime as Sheppard had described it, in front of police officials and news reporters, and a story that Sheppard refused to allow authorities to inject him with “truth serum.” An inquest in a school auditorium climaxed in an attempt by Sheppard’s lawyers to place into evidence some documents that were then forcibly thrown out of the room by the coroner.

Further, the trial began two weeks before the judge and the chief prosecutor were up for election. The Cleveland newspapers published the names and addresses of the 75 people named as prospective jurors. The jurors then received many letters and phone calls concerning the case.

At the trial, the courtroom was crammed with reporters, and the rest of the court building was largely given over to the media. During the trial, witnesses, lawyers, and jurors were constantly photographed entering and leaving the courtroom. Reporters were so noisy during the trial that the public address system proved inadequate. Information about deliberations that was supposed to remain secret from the jury was leaked and printed in newspapers accessible to the jurors. Jurors were permitted to hear and read all kinds of pretrial and trial publicity, much of it damaging to Sheppard.

The trial judge denied defense motions to delay the trial, move the trial to another location, declare a mistrial, and question the jurors as to their exposure to publicity.

Sheppard was convicted of second-degree murder. His appeals were all denied, including one to the United States Supreme Court.

Several years later, Sheppard filed a writ for *habeas corpus* directed against the warden of the prison where he had been serving his sentence. *Habeas corpus* refers to an order that a prisoner be brought before a court to determine whether he or she has been denied due process. Sheppard’s petition was granted and then denied by successive federal courts. He then appealed his case to the United States Supreme Court, which granted relief; Sheppard was ordered released unless Ohio chose to retry him in an orderly proceeding.

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Constitutional Issue *****

Every citizen accused of a crime is entitled to a fair trial. But just what does a “fair trial” mean? Was Sheppard denied a fair trial, in violation of the due process clause of the Fourteenth Amendment?

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Supreme Court Case Study 51 (continued)

★★★★★★★★★★★★★ The Supreme Court’s Decision ★★★★★★★★★★★★★★

The Court ruled for Sheppard in an 8 to 1 decision. (There was no opinion written by the one dissenting justice.) Justice Tom C. Clark wrote for the Court. Clark began by noting the historical importance of a free press in the administration of criminal justice. He stressed that “the press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive scrutiny and criticism.”

At the same time, Clark said, fair and orderly judicial administration requires that “the jury’s verdict be based on evidence received in an open court, not from outside sources.” In the *Sheppard* case, the trial judge had failed to control the manner of press coverage, to shield the jury from its onslaught, or to insulate witnesses from hearing one another’s testimony.

Without forbidding press coverage, the trial judge might have taken actions such as preventing lawyers, witnesses, or court officials from discussing certain aspects of the case. He could also have requested that city and county officials regulate the dissemination of information by their employees. The press might also have been warned of the impropriety of publishing material that had not been part of the court proceedings. Had the judge, the other officers of the court, and the police placed the interests of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom—not pieced together from extra-judicial statements. The Court concluded that due process had been violated in Sheppard’s trial by the judge’s failure “to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom. . . .” In the light of these factors, the Court granted Sheppard’s *habeas corpus* petition and ordered his release unless the state retried him in an orderly fashion.



Questions ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

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

1. In what way had due process been violated in the *Sheppard* case?
2. What might the trial judge have done to insure that Sheppard received a fair trial?
3. If you had been one of the news reporters covering the trial, what might have been your reaction to the Supreme Court’s decision?
4. Many trials are now being televised. Basing your answer on the Court’s ruling, do you think televising a trial deprives a defendant of a fair trial?
5. Sheppard was given a new trial. In what way do you think the second trial probably differed from the first one?

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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 mouth-piece 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 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.



Questions *****

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 54



The Rights of Peaceful Protesters

Gregory v. Chicago, 1969

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

Dick Gregory, an African American comedian and civil rights activist, helped lead a march protesting the slow pace at which Chicago’s public schools were being desegregated. The march began at Chicago’s City Hall and ended at Mayor Richard J. Daley’s house, about five miles away.

The mayor’s neighborhood of Bridgeport was an all-white area with a history of hostility to African Americans. A hostile neighborhood crowd soon gathered, attempting in various ways to harass the protesters, most of whom were African Americans. They, in turn, were under strict orders by march leaders to remain orderly and nonviolent, which they did. Over several hours the neighborhood crowd grew from about 150 to more than 1,000 people.

The police made valiant efforts to control the crowd, which had become increasingly violent, hurling eggs and rocks as well as racial abuse at the protesters. The police made repeated requests for Gregory to lead the marchers out of the neighborhood. Three marchers accepted the offer of a police escort from the area. Those who remained, Gregory included, were then arrested and removed in police vans. He and others were later convicted for disorderly conduct.

The Supreme Court of Illinois upheld the convictions. The Illinois court suggested that the demonstrators had been arrested not so much for marching but for refusing to obey the police request to disperse. Gregory took his case to the United States Supreme Court.

Constitutional Issue *****

Group protests, such as a march of a large number of people, about a public issue present the police with a challenge, especially when bystanders who oppose the marchers’ cause taunt the marchers and even throw objects at them. If disorder then develops, the police may act in a manner that is possibly unconstitutional. Were the marchers’ First Amendment rights to free speech and assembly, as applied to the states by the due process clause of the Fourteenth Amendment, violated in this case?

***** The Supreme Court’s Decision *****

The Court ruled without dissent that the defendants had been deprived of their First Amendment rights. Chief Justice Earl Warren wrote for the Court.

Warren described the case as a simple one. “Petitioners’ march,” he wrote, “if peaceful and orderly, falls well within the sphere of conduct protected by the First Amendment.” Since there was no evidence that the marchers had been disorderly, their conduct was constitutionally

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Supreme Court Case Study 54 (continued)

protected. In other words, the demonstrators, consistent with the First Amendment, could not be arrested and convicted for holding a march to express their views.

Warren also responded to the Illinois court’s suggestion that the conviction was actually for Gregory’s refusal to obey a police officer. “However reasonable the police request may have been and however laudable the police motives, petitioners were charged and convicted for holding a demonstration, not for a refusal to obey a police officer.” Quoting an earlier Court decision, *Garner v. Louisiana*, he continued, “It is as much a denial of due process to send an accused [person] to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction.”

Warren applauded the efforts of both the police and the marchers to maintain peace and order under the most trying circumstances. He cited specifics of the case that showed that Gregory and his group of marchers had maintained a peaceful attitude in the face of an angry mob. They had been told to stop singing at 8:30 that evening and had done so. In spite of the fact that the hostile crowd threw rocks and other objects at them, the marchers did not engage in any acts of violence toward the crowd. The Court agreed the marchers were well within their First Amendment rights.

In a separate opinion, Justice Hugo L. Black concurred. He found the disorderly conduct law itself to be unconstitutionally vague. He argued that a properly drawn statute could constitutionally protect both public order and demonstrators’ First Amendment rights, “but under our democratic system of government, law-making is not entrusted to the moment-to-moment judgment of the policeman on the beat. . . . To let a policeman’s command become equivalent to a criminal statute comes dangerously near to making our government one of men rather than of laws.”



Questions



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

1. What fault did Chief Justice Warren find with the Illinois Supreme Court’s reasoning?
2. What was Justice Black’s main objection to the disorderly conduct statute?
3. What First Amendment right was reinforced by the Court’s decision in the *Gregory* case?
4. Why do you think the Chicago police chose to ask Gregory and his followers to abandon their demonstration rather than arrest the people who were creating the disturbance?
5. Does the Court’s decision make it illegal for a police officer to arrest demonstrators? Explain.

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Supreme Court Case Study 55



Censorship Prior to Publication

New York Times v. United States, 1971

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

During the turbulent years when the United States was engaged in the Vietnam War, protests against the war increased as the United States’s role escalated.

One opponent of the Vietnam War , Daniel Ellsberg, a former Defense Department official, secured lengthy classified documents related to the war, including a “History of United States Decision-Making Process of Viet Nam [sic] Policy” and another document relating to the Gulf of Tonkin incident, which the government used to justify expanding its role in the war. These documents came to be known as the “Pentagon Papers.” The government maintained that making the Pentagon Papers public might impose grave danger to the security of the United States.

Ellsberg turned the documents over to the *New York Times*, which planned to begin publishing them on July 13, 1971. The federal government sought to block publication and secured a temporary order from the Supreme Court which barred publication until the Court could hear and decide the case. The case was heard on June 26, 1971. On June 30, the Court lifted the stay and allowed the paper to go to press.

Constitutional Issue *****

The First Amendment, as applied to the states through the due process clause of the Fourteenth Amendment, guarantees the freedoms of speech and the press. The question in this case was whether the government could prevent the publication of materials on the grounds that the national security was endangered.

As had happened before, the right to criticize the government in wartime became an issue. The Supreme Court had to decide whether the government had the right to prevent publication of material that the government regarded as harmful.

***** The Supreme Court’s Decision *****

The Court ruled in favor of the *Times*, maintaining that the government had not met the “heavy burden of justification” for a prior restraint. The decision was issued only four days after the Court heard oral arguments. The justice writing the decision is not identified. All nine justices wrote opinions; 6 justices concurred with the Court’s ruling, while 3 dissented.

In his concurring opinion, Justice Hugo L. Black wrote that the Court should not even have heard oral arguments in the case, and the government’s injunction should have been automatically denied. “In my view, it is unfortunate that some of my Brethren are willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment.” To Black, by the First Amendment, “the press was protected so that it could bare the secrets of government and inform the people.” In his view, the newspapers that

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Supreme Court Case Study 56



The Extent of Equal Rights

Reed v. Reed, 1971

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

Richard Lynn Reed, a minor who lived in Idaho, died without a will. Before he died, his adoptive parents, Cecil and Sally Reed, were separated. Although Richard’s estate was small given his status as a minor, each of his adoptive parents separately sought to become the administrator of the estate. His mother first applied to the Idaho court. Before a hearing on her application could be held, the father also applied to become administrator.

The Idaho court then held a joint hearing on the two applications and ruled in favor of the father. It did so because Idaho law required that, if several persons who are equally entitled to administer an estate file a petition, “males must be preferred to females.” Sally Reed then appealed this ruling to an Idaho district court, which held that the Idaho law violated the equal protection clause of the Fourteenth Amendment. Cecil Reed then appealed this decision to the Idaho Supreme Court, which reinstated the trial court’s decision on the grounds that the distinction between the rights of men and women was required by Idaho law and that the lower court had no right to exercise its discretion in appointing the administrator of an estate. Sally Reed then appealed to the United States Supreme Court.

Constitutional Issue *****

The Court had to rule on the question of whether a state law that favored a man over a woman of equal capabilities violated the Fourteenth Amendment’s guarantee of equal protection of the law.

***** The Supreme Court’s Decision *****

Chief Justice Warren Burger wrote the decision for a unanimous court. After reviewing the facts of the case, Justice Burger wrote that “Idaho does not, of course, deny letters of administration to women altogether. . . .” He pointed out that under law, a woman whose spouse dies has a preference over any male relative of the decedent. Burger explained that in the United States, presumably due to the greater life expectancy of women, a large proportion of estates are administered by surviving widows.

Justice Burger stated that “The Equal Protection Clause . . . does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute.” Citing a previous Court decision, Burger wrote, “A classification ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’ ”

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Supreme Court Case Study 56 (continued)

Burger wrote that the Idaho Supreme Court, in upholding the Idaho law, concluded that its objective was to eliminate one possible source of conflict when two or more equally qualified persons apply to administer the same estate. Further, Burger noted that, “Clearly the objective of reducing the workload on probate courts by eliminating one class of contests is not without some legitimacy. The crucial question, however, is whether [the Idaho statute] advances that objective in a manner consistent with the command of the Equal Protection Clause. We hold that it does not. To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment; . . .”

On these grounds the Court reversed the Idaho Supreme Court’s decision.



Questions

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

1. If the dead son’s estate was so small, why do you think each adoptive parent went to such expense and trouble to be appointed administrator of the estate?
2. On what grounds did the Idaho Supreme Court reverse the intermediate Idaho appellate court’s decision?
3. Considering that decisions of the Court sometimes run to dozens or even hundreds of pages, the text of the Supreme Court’s ruling in the *Reed* case was relatively brief. Why do you think this was?
4. Can you think of any grounds upon which a Supreme Court justice might have dissented in the *Reed* case?
5. What conclusion can you draw from the Court’s decision in the *Reed* case?

Supreme Court Case Study 57



The Rights of Religious Groups

Wisconsin v. Yoder, 1972

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

The First Amendment to the Constitution, which states that Congress may pass no law respecting the establishment of religion or prohibit the exercise of any religion, builds a wall between the government and religious groups. According to legal scholars who have interpreted the amendment, neither the national government nor state governments may pass laws that violate the beliefs of a religious group. Just how far does the First Amendment go in protecting people’s religious rights? The case of *Wisconsin v. Yoder* illustrates how the Supreme Court has extended the protection of the amendment to a particular religious group.

The Amish, a Protestant sect that originated in Switzerland in the 1690s, immigrated to North America in the 1700s, settling first in Pennsylvania and later in several Midwestern states. They established farms, and even today most Amish are farmers who separate themselves from the modern world. They do not use motor-driven farm machinery or drive automobiles. They wear simple clothing, often homemade, fastened with common pins because the Amish believe that buttons and zippers are vain. Many Amish homes are lighted with kerosene lamps instead of electric lights. When travel is necessary, the Amish use horse-drawn, covered buggies. The Amish belief system and their rules, called *Ordnung*, forbid them to hold public offices, go to war, or swear oaths. To maintain their beliefs, tight-knit Amish communities operate their own elementary schools. Formal education ends when students finish the eighth grade.

Amish beliefs and customs brought them into conflict with Wisconsin state law. The case, however, had wider implications, not only because it affected Amish communities in 23 states, but also because the case tested the limits of the First Amendment. Wisconsin state law requires that all elementary school graduates attend high school until they are 16 years old. The Amish feared that attending a public high school might threaten the beliefs of their young people, and therefore refused to obey this law. Wisconsin brought suit, and a Wisconsin court convicted the Amish of violating the state education law. The Amish appealed the case to the Supreme Court.

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Constitutional Issue *****

Does the First Amendment protect a group of people from being forced to send their children to public high schools if such attendance is contrary to their religious beliefs?

***** The Supreme Court’s Decision *****

The court ruled 6-to-3 that the Amish, as a long-established religious group, may not be forced by the Wisconsin law to send their children to public high schools once they have completed the eighth grade. The Court based its decision on the religious rights provision of the First Amendment

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Supreme Court Case Study 57 (continued)

and on the Fourteenth Amendment, which extended to the state level the protections granted to the national government by the Bill of Rights.

The Court reasoned that although a state has the power to impose reasonable regulations for the education of all children, a state’s interest in universal education must be balanced against the freedom of religion provided for in the First Amendment, as well as the traditional interest of parents with respect to their religious convictions. The Court held that no matter how strong a state’s interest in universal compulsory education may be, it is by no means absolute to the exclusion of all other factors.

The Court distinguished between members of legitimate religious groups and parents who held purely secular beliefs. The latter group, the Court held, did not have the right to interfere with a state’s regulation of education. The Court described the Amish, on the other hand, as an identifiable religious sect with a long history of demonstrated, sincerely held religious beliefs.

In addition the Court found that the Amish had introduced convincing evidence to show that sending Amish children to public high schools might impair their physical or mental health and make them less likely to discharge their duties and responsibilities in the Amish community.

***** Dissenting Opinion *****

In his dissent Justice William O. Douglas agreed that the religious beliefs of the Amish are in conflict with compulsory high school education. He took issue with the majority opinion, however, on the grounds that parents’ beliefs about education should not be imposed on their children. He stated that religion is an individual experience, and that, without knowing the position of the children involved, he could not agree with the majority decision.



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

1. Do you agree with the Supreme Court’s majority opinion or with Justice Douglas’s dissenting opinion? Explain.
2. Suppose a small religious group formed in the United States about five years ago. One of its beliefs was that children should not be educated beyond the sixth grade, so it operated religious schools from grades one through six. The laws of your state, however, require that children must attend school until they are 18 years old. The group refuses to obey this law. What would be the effect of the Court’s decision on this group? Explain.
3. Orthodox Jews operate their own school systems that include high schools. Do you think Orthodox Jews would be affected by the Supreme Court’s *Wisconsin v. Yoder* decision? Explain.
4. When the Supreme Court handed down its ruling in *Wisconsin v. Yoder*, some experts in constitutional law criticized it because the decision yielded too much authority to a religious group and weakened the state’s power to regulate important educational matters. Do you agree or disagree with this criticism? Explain.

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 59



The President and Executive Privilege

United States v. Nixon, 1974

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

During President Nixon’s 1972 re-election campaign, several men were caught breaking into the Democratic National Committee’s headquarters in the Watergate apartment and office complex in Washington, D. C. It turned out that the burglars were associated with the president’s campaign. A nationwide political and public outcry mushroomed into what became known as the Watergate scandal.

The United States Department of Justice appointed a special prosecutor to carry out an independent investigation of the scandal. From the investigation, trials of various White House staff members, investigative newspaper reports, and televised Senate Select committee investigative hearings, a shocked nation learned that the White House was involved in planning and covering up the burglary.

When it was revealed that the president had taped many conversations in the White House Oval Office, both the Senate investigating committee and the special prosecutor attempted to secure the tapes. The president refused to release them, claiming separation of powers and executive privilege, the right of the president to keep his conversations confidential. The special prosecutor subpoenaed the tapes, and a federal judge ordered President Nixon to release them. Nixon refused and instead turned to the Supreme Court for a judgment on executive privilege.

Constitutional Issue *****

The question for the Court to decide was whether the president could refuse to surrender the tapes and other information to a federal court for possible use against those charged in connection with the Watergate break-in.

***** The Supreme Court’s Decision *****

The Court agreed unanimously that the president had to turn over the tapes. Chief Justice Warren E. Burger wrote for the Court. President Nixon had argued that the courts had no jurisdiction over what he claimed was a dispute between the president and his subordinate, the special prosecutor. The Court responded that it was competent to decide the case, just as it had decided similar controversies between officers and branches of the government in the past. In addition, because the material was wanted for a normal federal criminal trial, the matter fell directly under the Court’s jurisdiction through the judicial powers spelled out in Article III of the Constitution.

The president had also claimed that executive privilege shielded him from a subpoena for two reasons. First, it was necessary to protect the confidentiality of high-level presidential communications. Second, the principle of separation of powers protects the president through the independence of the executive branch.

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Supreme Court Case Study 59 (continued)

The Court found this argument insufficient, depending merely on a broad and undifferentiated claim of public interest that such conversations remain confidential. It might have been different, the chief justice wrote, if this had been a claim to protect “military, diplomatic or sensitive national security secrets. . . .”

Chief Justice Burger further reasoned that the claim based on the separation of powers would work to impair the balance of those powers. He wrote: “To read the Article II powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in the confidentiality of nonmilitary and nondiplomatic discussions would upset the constitutional balance of a ‘workable government’ and gravely impair the role of the courts under Article III.”

Against the president’s claim of executive privilege stood the Sixth Amendment rights of the accused to subpoena evidence and the Fifth Amendment guarantees against being deprived of liberty without due process of law. The Court weighed these claims and concluded, “without access to specific facts a criminal prosecution may be totally frustrated. The President’s broad interest in confidentiality . . . will not be vitiated by disclosure of a limited number of preliminary conversations shown to have some bearing on the pending criminal cases.” In short, the Court concluded, the president’s claim “cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.”

Finally, the Court ordered certain safeguards on the handling of the tapes while in the possession of the district court. These safeguards included that they be examined by the judge in private; that only relevant material would be used; and that confidentiality would be preserved as far as possible and that the material would be safely returned.

When Nixon still hesitated to turn the tapes over to the Senate committee, the House recommended that the president be impeached. Nixon then released the tapes, which revealed his role in the cover-up, and four days later he resigned the presidency, the first president in the history of the U.S. to do so.



Questions

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

1. What reasons did the president give for justifying his claim of executive privilege?
2. Did the Court hold that there are no circumstances under which executive privilege might be asserted? Explain.
3. Do you agree or disagree with the Court’s decision that a president must reveal material that he has recorded for his own use if it is needed as evidence in a criminal trial? Explain.
4. In what way did the Court’s decision lead President Nixon to resign?
5. A constitutional scholar has written that the most important contribution of the *Nixon* case is “in its reaffirmation that even the highest officer of government is not beyond the reach of the law and the courts.” Explain in your own words what this means and how this conclusion relates to the idea of a democratic government.

Supreme Court Case Study 60



Constitutionality of the Death Penalty

Gregg v. Georgia, 1976

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

The constitutionality of the death penalty is one of the most hotly debated issues the Supreme Court has dealt with because the Constitution does not directly address capital punishment. In fact, until well into the nineteenth century, capital punishment was widely accepted, and U.S. courts placed virtually no constitutional restrictions on the death penalty.

By the early twentieth century, the states had adopted laws requiring juries that found defendants guilty of murder to choose between life and death. Until the 1960s, death sentences were rather common, numbering about 200 a year. However, by then a large number of people began to raise moral and political questions about the death penalty and brought these concerns to the courts. In a 1972 case, the Court held that the death penalty as administered in the cases before it was unconstitutional, relying on the Eighth Amendment, which clearly forbids cruel and unusual punishment. In *Gregg v. Georgia* (1976), however, the Court, for the first time, concluded that the death penalty was not cruel and unusual.

Troy Leon Gregg and Floyd Allen, two hitchhikers, were picked up by Fred Simmons and Bob Moore. Later, the bodies of Moore and Simmons were discovered in a ditch. Following a description provided by a third hitchhiker who had been in the car for part of the journey, police found and arrested Gregg and Allen, who were driving Simmons’s car. The .25 caliber pistol used in the slayings was found in Gregg’s pocket.

Allen told the police that Gregg had intended to rob the two men all along, and that Gregg had done so after killing them. In his defense, Gregg claimed that he had fired in self-defense when he and Allen had been attacked by Moore and Simmons. A Georgia jury found Gregg guilty of armed robbery and murder.

In Georgia, persons convicted of murder and armed robbery were given presentencing hearings during which a jury would hear any “evidence in extenuation, mitigation, and aggravation of punishment . . .,” including a previous criminal record or its absence. If the sentence was death, an appeals process was provided for, including expedited appeal to the Georgia Supreme Court. That court had to consider whether the death penalty had been imposed “under the influence of passion, prejudice or any other arbitrary factor,” and whether the sentence was “excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.”

The Georgia Supreme Court upheld Gregg’s death sentence for murder, but not for armed robbery. Gregg petitioned the United States Supreme Court for review of his case.

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Constitutional Issue *****

The question before the Supreme Court was whether Georgia’s death penalty statute amounted to “cruel and unusual punishment” under the Eighth and Fourteenth Amendments.

Supreme Court Case Study 61



Limitation on Affirmative Action

Regents of the University of California v. Bakke, 1978

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

In the 1960s, many organizations established programs, called affirmative action, to improve opportunities for minorities and the disadvantaged. Objections to affirmative action arose when organizations, such as universities and colleges, set aside a certain number of places for minorities or disadvantaged persons. The question of the constitutionality of such practices came before the United States Supreme Court in the *Regents of the University of California v. Bakke* case.

In 1973 the Medical School of the University of California at Davis admitted 16 minority students through a special admissions process. This group of minority students collectively had substantially lower science grade point averages and Medical College Aptitude Test scores than those in the other group.

Alan Bakke, a white applicant, had a grade point average slightly below all the regular admission applicants, but his aptitude tests were substantially higher. When Bakke’s 1973 and 1974 applications to the medical school were rejected, he sued the Regents, the university’s governing board, for a place at the medical school. The California Superior Court found that the school’s special admissions program violated the federal and state constitutions, Title VI, and the Civil Rights Act of 1964, but it declined to order Bakke admitted to the school, holding that Bakke had not proven that he “would have been admitted but for the existence of the special program.”

Bakke appealed the decision to the California Supreme Court. Citing the equal protection clause of the Fourteenth Amendment, the court ordered him admitted to the medical school. The Regents then took their case to the United States Supreme Court.

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Constitutional Issue *****

The Supreme Court had to resolve two questions. First, did the establishment of special admissions criteria for minority students violate the equal protection clause of the Fourteenth Amendment? Second, are racial preference considerations always unconstitutional?

***** The Supreme Court’s Decision *****

The Court held that the university’s special admissions program for minorities violated the equal protection clause of the Fourteenth Amendment, although Justice Powell indicated that a properly devised program might well be constitutionally valid. Justice Lewis F. Powell, Jr., wrote for each of the two different five-member lineups.

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Supreme Court Case Study 61 (continued)

Powell explained that it is “no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. . . . Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white ‘majority,’ the Amendment itself was framed in universal terms, without reference to color, ethnic origins, or condition of prior servitude.” He stated, “The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.”

The Court refused to adopt the view that unless it could be shown that some proven constitutional or statutory violation existed, or that the government had some compelling justification in inflicting a burden on one individual in order to help another, the Court concluded, “the preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.”

The University program failed this test because it “imposes disadvantages upon persons like respondent [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special program are thought to have suffered.” On the other hand, a university might well use racial criteria in an effort to insure diversity in its student body. Racial identity, however, could not be the sole criterion for admission. The University would still be free to devise an admissions program “involving the competitive consideration of race and ethnic origin” by making race one factor among others in the competition for all available places.

The Court concluded, “the fatal flaw in the petitioner’s preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. Such rights are not absolute. But when a State’s distribution of benefits or imposition of burdens hinges on ancestry or the color of a person’s skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest.”



Questions

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

1. On what grounds did the Court reject the university’s affirmative action program?
2. What did the Court suggest as a way for the university to use racial criteria and not violate the Constitution?
3. Was the Court ruling a victory for Bakke? Explain.
4. If you were an African American applying for admission to the university’s medical school, would you stand a better chance for admission under the system that Bakke attacked or under the program suggested by the Court? Explain.
5. Some people complained that the Court’s ruling in the *Bakke* case marked the end of affirmative action. Do you agree with this judgment? Give reasons for your answer.

Supreme Court Case Study 62



Racial Preference in Employment

Kaiser Aluminum and Chemical Corporation (and United Steelworkers of America) v. Weber, 1979

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

Title VII of the 1964 Civil Rights Act made it unlawful to discriminate in the hiring and firing of employees on the basis of race, color, religion, sex, or national origin. Title VII also made it unlawful to “limit, segregate, or classify” employees in such a way as to deny them employment opportunities on any of those same grounds. Title VII further provided that “Nothing contained in this title shall be interpreted to require any employer . . . labor organization . . . to grant preferential treatment to any individual or to any group because of . . . race, color, religion, sex, or national origin . . . on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer. . . .” Title VII covered training, retraining, and apprenticeship programs.

In 1974 the United Steelworkers of America (USWA) and Kaiser signed a labor agreement that included a plan to open Kaiser’s Gramercy, Louisiana, nearly all-white skilled craftwork positions to African American employees. Under this plan, instead of following its usual practice of hiring from the outside, Kaiser would retrain its own workers for skilled craftwork positions. Trainees would be selected on the basis of job seniority, but 50 percent of all trainees were to be African Americans. This would continue until the percentage of African Americans among Kaiser’s skilled craftworkers had risen to 39 percent, which was the percentage of blacks in the local labor force.

One effect of the plan was that African Americans with less seniority than white employees were taken into the retraining program. Brian Weber was among a group of white employees who had been rejected for retraining although he had greater seniority than some of the African American employees selected. Weber sued, claiming that he had been discriminated against in violation of Title VII. The federal district court agreed with Weber. Kaiser and the union then appealed to the United States Court of Appeals, which again held in Weber’s favor. The company and the union then took their case to the United States Supreme Court.

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Constitutional Issue *****

The Court had to decide whether Title VII permitted a racially conscious affirmative action plan.

***** **The Supreme Court’s Decision** *****

The Court voted 5 to 2 against Weber, with Justice William J. Brennan writing for the Court. (Justices Powell and Stevens did not participate in the decision.) Brennan specified the question as “the narrow statutory issue of whether Title VII *forbids* private employers and

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Supreme Court Case Study 62 (continued)

***** The Supreme Court’s Decision *****

unions from voluntarily agreeing upon bona fide affirmative action plans that accord racial preferences in the manner and for the purpose provided in the Kaiser-USWA plan.”

The Court observed that Weber’s “argument is not without force.” However, Brennan wrote, “It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because [it is] not within its spirit, nor within the intention of its makers.”

In Brennan’s opinion Congress drafted the statue in question because it “feared that the goals of the Civil Rights Act could not be achieved unless this trend [in employment discrimination based on race] was reversed.” In reviewing the debates that took place in Congress when the Civil Rights Act was being considered, the Court was convinced that Congress had not intended “to prohibit private and voluntary affirmative action efforts as one method of solving this problem.”

The Court found that “the purposes of the plan mirror those of the statute. Both were designed to break down old patterns of racial segregation and hierarchy. Both were structured to ‘open employment opportunities for Negroes in occupations which have been traditionally closed to them.’” Finally, the Court noted that nothing in the plan would result in white workers being fired to make room for African Americans, nor were whites completely unable to obtain retraining. “Moreover,” Brennan wrote, “the plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance.”

***** Dissenting Opinion *****

Chief Justice Warren E. Burger wrote one dissent, in which he held that the Kaiser-USWA plan embodied the very discrimination the Civil Rights statute was designed to forbid. He declared that the “statute was conceived and enacted to make discrimination against *any* individual illegal, and I fail to see how ‘voluntary compliance’ with the no-discrimination principle that is the heart and soul of Title VII . . . will be achieved by permitting employers to discriminate against some individual to give preferential treatment to others.”



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

1. Why did the Court think a literal reading of the Civil Rights Act was misleading?
2. Do you think it was proper for Justice Brennan to take into account the debates that took place while Congress was considering the Civil Rights Act? Give reasons for your answer.
3. Do you agree with Justice Brennan’s majority opinion or Chief Justice Burger’s dissent? Explain.
4. The *Kaiser-USWA v. Weber* decision supported the company-union’s affirmative action plan. Without this decision, what might have occurred?
5. Would you be willing to temporarily surrender an employment opportunity to a member of a group that has historically been denied access to such an opportunity? Explain.

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Supreme Court Case Study 63



The Right to Search Students

New Jersey v. T.L.O., 1985

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

A New Jersey high school teacher discovered a 14-year-old freshman, whom the courts later referred to by her initials, T.L.O., smoking in a school lavatory. Since smoking was a violation of school rules, T.L.O. was taken to the assistant vice-principal’s office.

When questioned by the assistant vice-principal, T.L.O. denied that she had been smoking. The assistant vice-principal then searched her purse. There he found a pack of cigarettes along with rolling papers commonly used for smoking marijuana. He then searched the purse more thoroughly and found marijuana, a pipe, plastic bags, a large amount of money, an index card listing students who owed T.L.O. money, and “two letters that implicated T.L.O. in marijuana dealing.”

The assistant vice-principal notified the girl’s mother and turned the evidence of drug dealing over to the police. T.L.O. was charged, as a juvenile, with criminal activity. T.L.O., in turn, claimed the evidence of drug dealing found in her purse could not be used in court as evidence because it had been obtained through an illegal search and seizure. T.L.O.’s attorneys claimed that the Fourth Amendment protects against unreasonable search and seizure. They maintained that the Fourth Amendment requirements for a warrant and probable cause applied to T.L.O. while in high school as a student. After appeals in lower courts, the case eventually reached the United States Supreme Court.

Constitutional Issue *****

T.L.O.’s case raised the question of whether the Fourth Amendment required school officials, when conducting searches of students’ property in school, to meet the same strict standards as police officials. In most instances police officers must have probable cause to believe that the subject of a search has violated or is violating the law, and generally must obtain a warrant issued by a neutral judicial officer. If these standards are not met by the police, evidence they have gathered from a search can be excluded as evidence of guilt in a criminal trial.

***** The Supreme Court’s Decision *****

Justice Byron R. White wrote the Court’s 6-to-3 decision, which ruled against T.L.O. The Court concluded that the Fourth Amendment ban on unreasonable searches and seizures applies to searches conducted by school officials but that the search of T.L.O. was reasonable. The Court also ruled that school officials do not have to meet the same standards as police officers when conducting searches.

Justice White wrote that students have a real need to bring personal property into school and have “legitimate expectations of privacy” while in school. At the same time, however, “against the child’s interest in privacy must be set the substantial interest of teachers and

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Supreme Court Case Study 63 *(continued)*

administrators in maintaining discipline in the classroom and on school grounds.” The Court devised a plan to ease for school officials the Fourth Amendment requirements for a lawful search. Because of the significance of the school’s interests, the Court ruled that school officials need not obtain a search warrant before searching a student who is under their supervision. “The warrant requirement,” the Court held, “is unsuited to the school environment . . . [and] would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.”

Next, the Court ruled that school officials do not have to be held to the same strict probable cause standard that applies to the police when conducting searches. In earlier cases the Court had ruled that “probable cause” meant that the police must have solid information that there is a real chance the person being searched has violated or is violating the law. Declining to apply this standard to public school officials, the Court said that school officials may search a student as long as “there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” Thus, the Court replaced the “probable clause” requirement with a “reasonableness” requirement.

★★★★★★★★★★★★★★★★★★★★ **Dissenting Opinion** ★★★★★★★★★★★★★★★★★★

Justices William Brennan and two other justices disagreed strongly with letting school officials use a reasonableness standard instead of the same probable cause standard required of the police. Justice Brennan wrote that this [idea] “finds support neither in precedent nor policy and . . . [could lead to] a dangerous weakening of the purpose of the Fourth Amendment to protect the privacy and security of our citizens.”



Questions ★★★★★★★★★★★★★★★★★★

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

1. In what way does the Court differentiate between the standard set for a school official and that for a police officer regarding a search and seizure?
2. Why did the Court give school officials more freedom than the police to conduct searches?
3. Do you think the assistant vice-principal’s search was “reasonable”? Explain.
4. Under the Court’s ruling, do you think a school official has the right to search a student any time he or she wishes? Give reasons for your answer.
5. Do you agree with the Court’s decision or with the dissenting opinion? Explain.

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Supreme Court Case Study 64



Prayer in the Public Schools

Wallace v. Jaffree, 1985

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

In the 1980s, after the Supreme Court had declared many forms of prayer in the schools unconstitutional, 25 states passed laws they hoped would meet the Court’s standards for constitutionality. These were the so-called moment-of-silence laws. The laws were designed to promote a new type of school prayer. The moment-of-silence laws varied slightly, but in general they allowed teachers to set aside a moment in each public school classroom each day for students to engage in silent meditation. Often the intent of these laws was to give each student the opportunity to pray during the moment of silence.

Alabama had a law that authorized a one-minute period of silence in all public schools “for meditation or voluntary prayer.” Ishmael Jaffree, a parent of three school children in the public schools of Mobile County, Alabama, challenged the state’s moment-of-silence law. He claimed that the law violated the First Amendment prohibition against the establishment of religion.

Constitutional Issue *****

The question for the Court to decide was whether a state law authorizing a daily period of silence in all of Alabama’s public schools for the purpose of meditation or voluntary prayer violated the establishment clause of the First Amendment.

***** The Supreme Court’s Decision *****

By a 6 to 3 vote the Court ruled that the Alabama law was an endorsement of religion in the public schools and thus violated the First Amendment.

Justice John Paul Stevens wrote the majority opinion. He noted that the history of the Alabama law clearly indicated that the state “intended to change existing law and that it was motivated by the . . . purpose . . . to characterize prayer as a favored practice.” Such an endorsement, Stevens argued, “is not consistent with the established principle that the government must pursue a course of complete neutrality toward religion.”

Stevens explained that whenever government itself “speaks on a religious subject, one of the questions that we must ask is ‘whether the government intends to convey a message of endorsement or disapproval of religion.’” In Alabama the Court found that the state legislature had passed the moment-of-silence law “to convey a message of state approval of prayer activities in the public schools. . . .” The law, the Court held, did not have a valid secular purpose, but rather one that sought to return prayer to the public schools.

Two of the justices, Sandra Day O’Connor and Lewis F. Powell, Jr., wrote concurring opinions that noted that some moment-of-silence laws might be constitutional. O’Connor argued that “a state-sponsored moment of silence in the public schools was different from

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Supreme Court Case Study 64 (continued)

state-sponsored vocal prayer or Bible reading.” First, she wrote, “a moment of silence is not inherently religious. Silence, unlike prayer or Bible reading, need not be associated with a religious exercise.”

Second, a pupil who participated in a moment of silence need not compromise his or her beliefs. During a moment of silence, O’Connor wrote, “a student who objects to prayer is left to his or her own thoughts, and is not compelled to listen to the prayers or thoughts of others.” Nevertheless, she concluded that the Alabama law was unconstitutional because it was very clear from the official history of the law that its “sole purpose” was “to return voluntary prayer to the public schools.” In addition, O’Connor noted that the state legislature clearly wanted to use the law to encourage students to choose prayer over other alternatives during the moment of silence. Thus, the message actually conveyed to students and teachers was that “prayer was the endorsed activity during the state-prescribed moment of silence.”

***** Dissenting Opinion *****

Chief Justice Warren E. Burger, Justice William H. Rehnquist, and Justice Byron R. White each wrote dissenting opinions. Chief Justice Burger captured the main dissenting idea when he stated, “It makes no sense to say that Alabama has ‘endorsed prayer’ by merely enacting a new statute . . . that voluntary prayer is *one* of the authorized activities during a moment of silence.”

Thus, Burger went on to suggest that if using the word *prayer* in a moment-of-silence law unconstitutionally endorses religion, then deliberately omitting the word in a similar law “manifests hostility toward religion.” Burger maintained, “The Alabama legislature has no more ‘endorsed’ religion than a state or the Congress does when it provides legislative chaplains, or than this Court does when it opens each session with an invocation to God.”

Justice Rehnquist reviewed the history of the First Amendment and concluded that the Framers of the Constitution intended “to prohibit the designation of any church as a national one. . . . Nothing in the establishment clause, however, requires government to be strictly neutral between religion and irreligion.” Thus, according to Rehnquist, the Constitution did not prohibit Alabama from making a “generalized endorsement of prayer” by passing a moment-of-silence law that would promote prayer “as a favored practice.”



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

1. Why did Alabama pass its moment-of-silence law?
2. On what grounds did the Supreme Court declare the Alabama law unconstitutional?
3. In Justice O’Connor’s view, if the Alabama legislature had not related the moment-of-silence law to religion, do you think she would have declared it unconstitutional? Explain.
4. What was the basis of Chief Justice Burger’s dissent?
5. Do you agree with Justice Stevens’s opinion or with Chief Justice Burger’s? Explain.

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Supreme Court Case Study 65



Rights of Students to Free Speech

Bethel School District v. Fraser, 1986

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

Matthew Fraser, a student at Bethel High School in Pierce County, Washington, gave a speech to a school assembly nominating a fellow student for elective office. About 600 high school students elected to attend the assembly. Throughout his speech Fraser used “an elaborate, graphic, explicit sexual metaphor” to describe his candidate.

The assembly was a regular part of a school-sponsored educational program in self-government. Students were required to attend the assembly or report to a study hall.

Fraser had discussed his speech in advance with two of his teachers. Both warned him that the speech was “inappropriate” and that he “probably should not deliver it.” They warned him that giving the speech might have “severe consequences” for him.

Fraser chose to ignore this advice. His speech disrupted the assembly. Students “hooted and yelled.” Others appeared to be embarrassed. As a result, under the school’s disruptive conduct rule, school officials suspended Fraser from school for three days and removed his name from a list of possible graduation speakers.

The school’s rule prohibited conduct that “materially and substantially interferes with the educational process . . . including the use of obscene, profane language or gestures.” Fraser challenged the constitutionality of the school’s punishment under this rule. He claimed the school’s punishment violated his right to free speech as guaranteed by the First Amendment. Eventually the case made its way to the United States Supreme Court.

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Constitutional Issue *****

Controversies over First Amendment rights to free speech often arise from unexpected sources and circumstances, and a common question is whether these rights apply to certain individuals—for example, children.

The First Amendment does not specify whether the rights of free speech are limited to persons of any particular age. Does this mean that adults have greater freedom to use whatever language they choose than young people? Do students in high school have the same freedom as older people? Does the First Amendment protection of free speech prevent school officials from limiting obscene or vulgar speech that could disrupt the educational process?

***** The Supreme Court’s Decision *****

By a vote of 7 to 2 the Court ruled that, under the First Amendment, school officials have the authority to discipline students for lewd or indecent speech at school events. Chief Justice Warren E. Burger wrote the decision.

(continued)



Supreme Court Case Study 65 (continued)

Burger began by observing that the schools have a basic responsibility to prepare students for citizenship. Thus, it was appropriate for schools to prohibit the use of vulgar language in public discourse in school. Burger wrote, “The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society’s countervailing interest in teaching students the boundaries of socially appropriate behavior.”

The Court noted that the First Amendment gives wide freedom to adults in matters of political speech. However, the Court stated, “It does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school.”

Indeed, Burger observed that “nothing in the Constitution prohibits states from insisting that certain modes of expression are inappropriate and subject to sanctions.” Instead, Burger explained, “the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.”

In the Supreme Court decision *Tinker v. Des Moines*, the Court had protected the rights of students under the First Amendment to wear black armbands to school to protest the Vietnam War. In that decision, the Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Was using obscene speech to nominate a fellow student the same as using armbands to convey a political message about the Vietnam War?

In the *Tinker* case the Court had ruled that when school officials punished students for wearing black armbands, they were censoring students’ political ideas about the Vietnam War. In *Fraser’s* case, however, Burger pointed out that the school’s penalties “were unrelated to any political viewpoint.” Thus, Burger concluded that “the First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as [Fraser’s] would undermine the school’s basic educational mission.”



Questions

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

1. According to the Court, how did the school’s responsibility for citizenship education affect students’ First Amendment rights?
2. How did the Court distinguish between the *Tinker* case and the *Fraser* case?
3. Suppose Fraser had given the same speech to a group of students away from the school grounds but had nevertheless been punished by school officials. How do you think the Court would have ruled in that case? Give reasons for your answer.
4. What did the Court say about the difference between adults’ rights under the First Amendment and students’ rights under the same amendment?
5. Do you agree or disagree with the Court’s ruling in the *Fraser* case? Give reasons for your answer.

Supreme Court Case Study 66



Students' First Amendment Rights

Hazelwood School District v. Kuhlmeier, 1988

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

In May 1983 the principal of Hazelwood East High School in St. Louis County, Missouri, ordered that two pages from an issue of *Spectrum*, a student newspaper, be deleted. The two pages included an article on students' experiences with pregnancy and another about the impact of divorce on students at the school.

The principal objected to the story on pregnancy because he believed the girls described in the story could easily be identified even if their names were left out of the story. In addition, he said, the references in the story to sexual activity were not suitable for the younger students at the school.

The principal objected to the story on divorce because it named a student who complained about her father's behavior. The principal believed the parents should have been given a chance to respond to the story.

The school paper was written and edited by the school's journalism class as part of the school curriculum. The principal also said he had "serious doubts" that the two articles fit the journalistic rules of fairness and privacy taught in the course. Three former students who worked on the student paper in 1983 then filed a suit against the principal, the school district, and other school officials. They claimed that the principal's action had violated their First Amendment rights to free speech.

In May 1985 a federal district court judge ruled against the students. In July 1986, however, a federal appeals court overturned that ruling. The appeals court said the *Spectrum* was a public forum for student expression and was fully protected by the First Amendment. In 1987 the United States Supreme Court agreed to hear the case.

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Constitutional Issue *****

Clashes between high school students and school administrators are not uncommon. Students tend to resent being told what they cannot do or say. In some instances, such disputes reach the courts, as in the case of *Bethel School District v. Fraser*. In that case the Supreme Court ruled that under the circumstances of the case, the students were not protected by the First Amendment right of free speech.

In the *Hazelwood* case, the principal's decision to censor the school newspaper raised a basic constitutional question. Does the First Amendment guarantee of freedom of speech prevent school administrators from regulating student speech in school-sponsored publications, such as newspapers and yearbooks?

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

The Court ruled 5 to 3 against the students. (The Court had only 8 justices during this time.) Justice Byron R. White wrote the majority opinion.

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Supreme Court Case Study 67



Rights of Employees

Skinner v. Railway Labor Executives Association, 1989

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

For many years railroads have prohibited operating employees from possession of alcohol and from consuming alcohol while on duty or on call for duty. This prohibition has been extended to include the use of other drugs as well. An employee found in violation of this rule can be dismissed from his or her job.

As strict as the rules had been, the Federal Railroad Administration (FRA) recognized that alcohol and drug use by railroad employees continued to occur. After a review of accident investigations, the FRA found that between 1972 and 1983, there were a minimum of 21 significant train accidents involving 25 fatalities, with alcohol or drug use as probable causes.

In 1985, in an attempt to curb these accidents, the FRA issued new regulations that required mandatory blood and urine testing of all railroad crew members involved in major train accidents—any accident involving a fatality; “the release of hazardous material accompanied by an evacuation or reportable injury”; or damage to railroad property of \$50,000 or more would mandate the new testing.

Railway labor organizations filed suit against these FRA regulations, claiming that employees’ Fourth Amendment protection against unreasonable searches would be violated by the mandatory testing program. A trial in a federal district court ended with a decision in favor of the FRA, but the Court of Appeals reversed that decision. The case was then heard by the United States Supreme Court.

Constitutional Issue *****

Being intoxicated or under the influence of alcohol or drugs while in a position that can cause harm to oneself or others is a serious problem, and most levels of government have laws that severely punish offenders. Drunken drivers are a major cause of death on the highways. The question before the Court was whether the FRA regulation requiring mandatory blood and urine testing after a major accident was an unreasonable search under the Fourth Amendment.

***** The Supreme Court’s Decision *****

Justice Anthony M. Kennedy delivered the opinion of the Court. The Court first held that the Fourth Amendment was applicable to drug and alcohol testing mandated or authorized by FRA regulations. Nevertheless, the Court next held that the drug and alcohol tests mandated by the regulations were reasonable under the Fourth Amendment even though there was no proof that any particular employee was impaired or might be impaired. This conclusion was justified, the Court held, because the compelling government interest served by the regulations outweighed employees’ privacy concerns.

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Supreme Court Case Study 68



The Right to Die

Cruzan v. Director, Missouri Department of Health, 1990

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

After being involved in an automobile accident, Nancy Cruzan sustained injuries that resulted in permanent brain damage. Medical specialists in a Missouri state hospital where she was taken after the accident determined that she was in a “persistent vegetative state” with no operational brain functions. There were no medical expectations that she would ever recover.

Cruzan’s parents therefore requested that she be allowed to die. They asked that she be taken off artificial nutrition and hydration systems, but hospital employees refused.

Cruzan’s parents then asked a state court to authorize the hospital to take their daughter off the life-support systems. After a trial the court ruled that a person in Nancy Cruzan’s condition had a fundamental right under the state and federal constitutions to choose whether to prolong her life through artificial means. The court based this ruling on the statements of Cruzan’s former housemate, who testified that Nancy Cruzan said she would not want to be kept alive by artificial means if she were injured to the point where she could not live “at least halfway normally.”

The defendant in the case, the Missouri Department of Health, appealed the decision to the state supreme court, which reversed the lower court’s ruling. The Missouri Supreme Court ruled that the state’s “living will” statute expressed “a state policy strongly favoring the preservation of life.” Cruzan’s parents did not have the right to terminate their daughter’s medical treatment. The state high court concluded that “no person can assume the choice [death] for an incompetent in the absence of the formalities required under Missouri’s living will statutes or the clear and convincing, inherently reliable evidence absent here.” The court also ruled that Cruzan’s statements to her housemate were “unreliable for the purpose of determining her intent.” The Cruzan family then took the case to the United States Supreme Court.

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Constitutional Issue *****

The Court had to decide whether the Constitution protects the right of seriously ill patients to be free from life-sustaining medical treatment. A related issue was whether Nancy Cruzan’s parents had the right to act in her behalf to end medical treatment. Such issues arose in the public’s minds with increasing frequency during the latter decades of the twentieth century as advanced medical technology made it possible to maintain the life of seriously ill or injured patients even though they had little chance of resuming a normal life.

***** The Supreme Court’s Decision *****

The Court by a 5 to 4 vote affirmed the decision of the Missouri Supreme Court that the judgment of family members in this situation was not sufficient to end life-sustaining treatment.

Chief Justice William H. Rehnquist wrote for the Court. The Court held first that the United States Constitution did not forbid Missouri from requiring clear, convincing evidence of an

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Supreme Court Case Study 69



Limits on Government’s Right to Search

California v. Acevedo, 1991

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

On October 28, 1987, a federal drug enforcement agent in Hawaii called Officer Coleman of the Santa Ana, California, Police Department. The agent told Coleman that he had seized a Federal Express package containing marijuana which was addressed to a man named J. R. Daza living in Santa Ana. The agent sent the package to Coleman, who took it to the Federal Express office in order to arrest the person who came to claim it.

Three days later, on October 31, “a man, who identified himself as Jamie Daza,” claimed the package. Police officers followed him as he drove to his apartment and took the package inside. Shortly after, another man left the apartment carrying a knapsack that appeared to be half full. Police officers “stopped him as he was driving off, searched the knapsack, and found 1½ pounds of marijuana.” About a half hour later, Acevedo arrived and went into the apartment. He reappeared carrying a full brown paper bag, which he deposited in the trunk of his car. Police officers then stopped Acevedo, opened the trunk and the bag, and found marijuana. They arrested Acevedo.

Acevedo “was charged in state court with possession of marijuana for sale.” He demanded that evidence that the marijuana had been found in the car trunk be suppressed. The court denied his motion. Acevedo “then pleaded guilty but appealed the denial of the suppression motion” to the California Court of Appeals. The appellate court ruled that the evidence concerning the marijuana found in Acevedo’s trunk should have been suppressed. The court referred to an earlier case which held that the police needed a warrant to conduct a search of the bag. Police officers could have seized the bag and held it, but could not open it without first obtaining a warrant to do so. The State of California then appealed this decision to the California Supreme Court, which refused to review the case. California then asked the United States Supreme Court to review the state appellate court decision, and it agreed to do so.

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Constitutional Issue *****

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . .” The amendment, however, does not explain what is meant by “unreasonable” searches and seizures. The Court must consider the constitutional rights of accused persons without losing sight of society’s right to be protected from criminal acts.

***** **The Supreme Court’s Decision** *****

Justice Harry Blackmun delivered the opinion of the Court. The decision held that the police may search a container in an automobile without a warrant if there is probable cause to search the container. There does not have to be probable cause to search the entire automobile. Blackmun wrote for the Court, “The line between probable cause to search a vehicle and probable cause to

(continued)

Supreme Court Case Study 70



Exclusion of Women from Employment

International Union, UAW v. Johnson Controls, Inc., 1991

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

In the early years of industrialization in the United States, little attention was paid to protecting workers from dangerous work environments. Gradually individual states passed legislation regarding industrial safety. Then in 1970, with the passage of the Occupational Safety and Health Act, the federal government started setting safety and health standards for industry.

Meanwhile, the women’s movement in the United States worked to end discrimination against women in employment so that more women were hired for jobs that had historically not been open to women.

Johnson Controls, Inc., manufactured batteries in which lead is an ingredient in the manufacturing process. Exposure to lead involves health risks, including possible harm to the fetuses of pregnant female employees. Before the Civil Rights Act of 1964, known as Title VII, Johnson Controls did not employ any women in battery manufacturing. In 1977 the company announced a policy stating that a woman who is expecting a child should not choose a job which exposed her to lead. This policy warned that women exposed to lead had a higher rate of abortion and that it was, “medically speaking, just good sense not to run that risk. . . .”

Then in 1982 the company instituted a policy excluding all female employees medically capable of bearing children from any job that involved actual or potential lead exposure exceeding OSHA standards. Female employees who had medical proof that they could not bear children were the only women allowed to hold jobs exposing them to lead.

A group of employees, including men as well as women, filed a class action suit against the company, claiming that the company policy constituted sex discrimination in violation of the Civil Rights Act of 1964. Among those employees were Mary Craig, who had chosen to be sterilized in order to keep her job, and Elsie Nason, a 50-year-old divorcee who had suffered a loss in pay when she was transferred out of such a job. Both a federal district court and a court of appeals ruled in favor of Johnson Controls. The women, through their union, appealed the case to the United States Supreme Court.

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Constitutional Issue *****

The question before the Court was whether Johnson Controls’ policy was discriminatory in violation of employees’ civil rights as put forth in the Civil Rights Act of 1964. Under Title VII, could an employer lawfully exclude a female employee from certain jobs because of the company’s concern for the health of the children the woman might bear?

***** The Supreme Court’s Decision *****

The Court decided without dissent 6 to 3 in favor of the employees. Justice Harry A. Blackmun wrote the principal opinion of the Court, which held that an employer could not exclude a female employee from certain jobs because of concern for the health of a fetus she might conceive.

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Supreme Court Case Study 70 *(continued)*

Justice Blackmun wrote: “The bias in Johnson Controls’ policy is obvious. Fertile men, but not fertile women, are given a choice as to whether they wish to risk their reproductive health for a particular job.” The company policy violated the Civil Rights Act of 1964, which “prohibits sex-based classifications in terms of conditions of employment, in hiring and discharging decisions, and in other employment decisions that adversely affect an employee’s status.” Title VII mandates that “decisions about welfare of future children must be left to the parents who conceive, bear, support, and raise them rather than to the employers who hire those parents.”

Justice Blackmun also cited the Pregnancy Discrimination Act, which made it clear that “. . . discrimination based on a woman’s pregnancy is, on the face of it, discrimination because of her sex.” Further, “It is no more appropriate for the courts than it is for individual employers to decide whether a woman’s reproductive role is more important to herself and her family than her economic role. Congress has left this choice to the woman as hers to make.”

In regard to the safety issue, Blackmun wrote, “Our case law, therefore, makes clear that the safety exception is limited to instances in which sex or pregnancy actually interferes with the employee’s ability to perform the job.” Further, “Fertile women, as far as appears in the record, participate in the manufacture of batteries as efficiently as anyone else.”

Justice Byron R. White wrote a concurring opinion in which he said that “a fetal-protection policy would be justified [under Title VII] . . . if, for example, an employer could show that exclusion of women from certain jobs was reasonably necessary to avoid substantial tort [personal injury] responsibility.” He took the position that employers could be sued for damages by children who suffered prenatal injuries and that companies should be able to protect themselves to some extent. He agreed, however, that the policy of Johnson Controls was unacceptable.

Justice Antonin Scalia also had some reservations about the majority’s reasoning, although he concurred in the judgment. He wrote, “I think, for example, that a shipping company may refuse to hire pregnant women as crew members on long voyages because the on-board facilities for foreseeable emergencies, though quite feasible, would be inordinately expensive.”



Questions

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

1. Why did Johnson Controls order that women could not hold jobs that exposed them to lead?
2. How did the company’s policy violate the Civil Rights Act of 1964?
3. In the Court’s view, who should decide whether a woman was to work at a job that exposed her to lead?
4. Justice White mentioned a possible reason why employers might want to exclude women from certain jobs. What was that reason?
5. Do you agree or disagree with the Court’s ruling? Give reasons for your answer.

Supreme Court Case Study 71



Considering Victim Impact in Sentencing Procedures

Payne v. Tennessee, 1991

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

Pervis Tyrone Payne was convicted by a jury of killing a 28-year-old woman and her two-year-old daughter and stabbing her three-year-old son in an apartment in Millington, Tennessee, in June 1987.

In the sentencing phase of the trial, Payne’s lawyer called on Payne’s mother and father, his girlfriend, and a clinical psychologist. The girlfriend testified that Payne was a very caring person who devoted much time to her three children, that he did not drink or take drugs, and that it was inconsistent with his character to have committed the crimes of which he had been found guilty. Payne’s parents likewise testified to his good character. The psychologist testified that Payne was mentally handicapped and that he “was the most polite prisoner he had ever met.”

The state called the mother of the adult victim, who testified that her grandson, who had survived the stabbing, cried for his mother and his dead sister; and the prosecution, in its closing argument, emphasized the likely longtime deleterious effects on the boy.

The jury sentenced Payne to death, a sentence that he appealed first to the Tennessee Supreme Court and, when that court affirmed both his convictions and death sentences, then to the United States Supreme Court.

Constitutional Issue *****

In serious criminal cases in federal courts and in the courts of many states, a jury’s responsibility does not end with deciding whether an accused person is guilty. The jury is also required to hear arguments from the prosecution and the defense as to the kind of punishment it should impose or recommend. Typically, the prosecution emphasizes the seriousness of the crime and recommends the most severe punishment. The defense attorney tries to convince the jury that a less severe sentence such as life without parole would be appropriate. In addition, in recent years, both the defense and the prosecution also call witnesses who did not testify at the trial [the guilt/innocence phase of a capital proceeding]. For the prosecution, “victim impact evidence,” relating to the emotional impact of the crime on the victim or on the victim’s family, is presented. Defense witnesses, on the other hand, may try to convey to the jury that the accused had a difficult childhood, was kind to his or her relatives, and to present other evidence that puts the defendant in a favorable light.

When, despite the defense’s effort, the jury in a murder case recommends the death sentence, the defense may appeal to higher courts on the grounds that cruel and unusual punishment has been inflicted, as prohibited by the Eighth Amendment. In two such cases in the 1980s the Supreme Court ruled that the Eighth Amendment did in fact bar the admission of victim impact evidence during the penalty phases of a trial for murder. In the *Payne* case, the Supreme Court once again was asked to rule on the admissibility of victim impact evidence.

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Supreme Court Case Study 71 (continued)

★★★★★★★★★★★★★ The Supreme Court’s Decision ★★★★★★★★★★★★★★

The Court ruled 6 to 3 to uphold Payne’s convictions and death sentences, and in doing so overruled two of its earlier decisions. Chief Justice Rehnquist wrote the majority opinion, much of which was devoted to explaining why the Court believed that the decisions in two earlier cases relating to the inadmissibility of victim impact statements in capital cases were wrong. In these cases, the Court had held that the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence. Rehnquist wrote that “a State may properly conclude that for the jury to assess meaningfully the defendant’s moral culpability and blameworthiness, it should have before it at the sentencing phases evidence of the specific harm caused by the defendant.” He went on to point out that there is nothing unfair about allowing the jury to bear in mind the harm caused by a defendant’s killing at the same time it hears mitigating evidence introduced by the defendant. “We thus hold,” Rehnquist went on, “that if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar. A state may legitimately conclude that evidence about the victim and about the impact of the murder on the victim’s family is relevant to the jury’s decision as to whether or not the death penalty should be imposed.”

Overruling earlier decisions of the Court is a serious matter. The Court generally proceeds on the basis of a doctrine called *stare decisis*, a Latin term meaning “let the decision stand.” Rehnquist took pains to defend the Court’s action in not abiding by *stare decisis* in this case. He pointed out that “in the past twenty terms, [the Court had overruled] 33 of its previous constitutional decisions.” Further, he noted, the cases which it was now overruling were decided by very narrow margins and were accompanied by “spirited” dissents.



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

1. What is the meaning of the term “victim impact evidence”?
2. What two responsibilities do juries carry out in capital murder cases in federal courts and in the courts of many states?
3. In the sentencing phase of Payne’s trial, how much weight do you think the jury gave to the testimony of Payne’s witnesses? Defend your answer.
4. If you were one of the dissenting justices, what arguments would you present for your position?
5. Why is it important for the Supreme Court to be careful in overruling its previous decisions?

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Supreme Court Case Study 72



“Coerced” Confessions

Arizona v. Fulminante, 1991

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

After Oreste Fulminante’s 11-year-old stepdaughter Jeneane was murdered in Arizona, he left the state. He was later convicted of an unrelated federal crime and imprisoned in the state of New York. A fellow inmate named Anthony Sarivola was a paid informant of the FBI who befriended Fulminante.

Fulminante was the target of tough treatment from other inmates, who had heard that he was a possible child murderer. Sarivola offered Fulminante protection from other inmates if he would tell him the truth. Fulminante agreed and told Sarivola that he had, indeed, killed his stepdaughter. He provided convincing details of the crime, which he also confessed to Sarivola’s wife after he was released from prison.

On the basis of these confessions, Fulminante was indicted in Arizona for first-degree (capital) murder. Fulminante protested that his Fifth Amendment privilege against self-incrimination and his Fourteenth Amendment due process rights had been violated because his confession to Sarivola had been “coerced.” Therefore he claimed his confession should not be admissible as evidence of his guilt. A 1967 Supreme Court ruling had said that a coerced confession can never be considered “harmless error” and was always grounds for overturning a conviction.

The trial court, however, denied Fulminante’s motion to suppress the confessions and found that both confessions had been voluntary. The state introduced both confessions as evidence at trial, and Fulminante was convicted of murder and sentenced to death. The Arizona Supreme Court, however, reversed Fulminante’s conviction and ordered him to be retried without the use of the first confession, which the court judged to be coerced. Arizona successfully petitioned the United States Supreme Court to review the state supreme court’s ruling.

Constitutional Issue *****

When is a confession of guilt by an accused person considered to be acceptable evidence in a trial? The matter for the Supreme Court to judge was whether in fact Fulminante’s confessions were coerced, depriving Fulminante of his constitutional rights.

***** **The Supreme Court’s Decision** *****

Justice Byron R. White delivered one of the principal opinions of the Court, affirming the judgment of the Arizona Supreme Court. He wrote: “The Arizona Supreme Court ruled in this case that respondent Oreste Fulminante’s confession, received in evidence at his trial for murder, had been coerced and that its use against him was barred by the Fifth and Fourteenth Amendments to the United States Constitution. . . .We affirm the judgment of the Arizona court, although for different reasons than those on which that court relied.”

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Supreme Court Case Study 72 (continued)

Further explaining the Court’s decision, Justice White agreed with the Arizona Supreme Court that there was “a credible threat of physical violence unless Fulminante confessed and that was sufficient to support a finding of coercion.” White made the point that without the confessions, which relied on one another for their effect on the jury, Fulminante likely could not have been convicted. He noted that the physical evidence at the scene of the crime and other circumstantial evidence would not have been enough to convict Fulminante. White wrote, “The transcript discloses that both the trial court and the State recognized that a successful prosecution depended on the jury believing the two confessions.” He concluded: “Because a majority of the Court has determined that Fulminante’s confession to Anthony Sarivola was coerced and because a majority has determined that admitting this confession was not harmless beyond a reasonable doubt, we agree with the Arizona Supreme Court’s conclusion that Fulminante is entitled to a new trial at which the confession is not admitted. Accordingly the judgment of the Arizona Supreme Court is affirmed.”

Justice Anthony Kennedy wrote in a concurring opinion: “In the interests of providing a clear mandate to the Arizona Supreme Court in this capital case, I deem it proper to accept in the case now before us the holding of the five justices that the confession was coerced and inadmissible. I agree with a majority of the Court that admission of the confession could not be harmless error when viewed in light of all the evidence; and so I concur in the judgment to affirm the ruling of the Arizona Supreme Court.”

The key point in this case, in spite of the fact that Fulminante did receive a new trial, is that a majority of the justices agreed that a coerced confession is subject to harmless-error analysis—that is, that a coerced confession in itself does not necessarily mean that a decision of guilty must be reversed. This ruling implicitly overruled the 1967 ruling described on page 123. The ruling in the *Fulminante* case set a new precedent: that a coerced confession introduced at trial does not necessarily reverse a conviction.



Questions

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

1. What was the ruling of the original trial court? Of the Arizona Supreme Court?
2. What is the meaning of “harmless error”?
3. What was Fulminante’s argument to the Supreme Court?
4. What is the difference between the Supreme Court’s 1967 ruling on coerced confessions and its ruling in the *Fulminante* case?
5. Do you agree or disagree with the Court’s 1967 ruling that presenting a coerced confession at trial is always grounds for overturning a conviction?

Supreme Court Case Study 73



Upholding Abortion Rights

Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992

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

In its 1973 decision in *Roe v. Wade*, the Supreme Court ruled that a woman’s choice to have an abortion was a constitutionally protected right. Even after the Court’s ruling, the debate over abortion remained emotional, complicated, and divisive. States sought to place limits on the procedure, and some argued that *Roe* should be overturned entirely.

In 1988 and 1989, Pennsylvania amended its abortion law. New provisions included the following: A woman must give her informed consent prior to the procedure. A doctor had to give a woman certain information regarding abortion at least 24 hours before the procedure, a requirement that effectively created a 24-hour waiting period. A minor, or a person less than 18 years old, had to have a parent’s consent or a judge’s permission to have the procedure. A married woman must notify her husband that she intended to have an abortion and sign a statement indicating that she had done so. Lastly, abortion providers were required to fulfill certain reporting and record-keeping requirements.

Clinics and doctors challenged the Pennsylvania provisions in court, arguing that they were unconstitutional. A district court agreed and reversed all the new statutes. When the case went to a federal appeals court, the court upheld all of the district court’s decisions, except one—the spousal notification rule. In 1992, the case was argued before the Supreme Court. Some observers believed that the Court would reverse *Roe*, leaving individual state legislatures to decide the legality of abortion.

Constitutional Issue *****

The constitutional issue was whether a right to privacy existed. The Supreme Court’s opinion in *Roe* stated that it did. Although this right is not specifically mentioned in the U.S. Constitution, the Court held that it is implied by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. The Fourteenth Amendment Due Process Clause is often cited as the basis for privacy rights. The Court asserted that this general right to privacy included more specific rights, such as the right to choose to have an abortion. Laws that restricted abortion in the first trimester of pregnancy, the court ruled, were unconstitutional.

Opponents of *Roe* argued that the right to privacy is not explicitly discussed in the Constitution, and that in any case this right could not possibly be so broad that the state was prohibited from restricting it. Some critics argued that the Court’s ruling in *Roe* had essentially created a new law, in which case the Court had overstepped the bounds of its constitutional duties.

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Supreme Court Case Study 73 (continued)

***** The Supreme Court’s Decision *****

The decision in *Casey* was unusual in that it was authored by three justices: O’Connor, Kennedy, and Souter. These justices formed a plurality. While their opinion was not joined by a majority, it was still more popular than positions taken by other justices.

The Court’s opinion upheld most parts of *Roe* based on *stare decisis*, the idea that once a court has decided an issue based on a certain set of facts, other courts must follow its decision unless the facts change. The Court held that its position on abortion should not change just because there were different justices on the Court than when *Roe* was decided.

As for the Pennsylvania laws, the Court upheld all except the spousal notification provision. The Court ruled that requiring spousal notification placed an “undue burden” on a woman choosing to have an abortion. Therefore, the law violated a woman’s right to due process and so was unconstitutional. The “undue burden” standard was a new way of testing the constitutionality of restrictions on abortion. In *Roe*, the Court had ruled that the state could not regulate abortions in the first trimester of pregnancy. The decision in *Casey* effectively overturned this part of the *Roe* decision.

***** Dissenting Opinion *****

Justices Stevens and Blackmun wrote separate opinions concurring in part and dissenting in part with the decision. Both agreed with the decision to uphold *Roe*. Justice Stevens wrote that some of Pennsylvania’s record-keeping and reporting provisions were unconstitutional. Justice Blackmun, however, argued that all provisions of the Pennsylvania law were unconstitutional.

Chief Justice Rehnquist and Justice Scalia each wrote separate opinions that concurred with the plurality’s upholding of most of the Pennsylvania statutes. However, Rehnquist and Scalia dissented with the rest of the plurality’s opinion. Both argued that *Roe* should be overturned. Rehnquist recognized abortion as a form of liberty protected by the due process clause, but argued that states should be able to restrict it. Justices Scalia, Thomas, and White joined Rehnquist’s opinion. Justice Scalia’s dissent stated that abortion was not a constitutionally protected right, and that states should be able to allow or restrict it as they choose. Rehnquist, Thomas, and White joined Scalia’s dissent.



Questions *****

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

1. What is *stare decisis*? What role did it play in the *Casey* decision?
2. Why did the Court strike down Pennsylvania’s spousal notification law?
3. How did the creation of the “undue burden” standard change the Court’s position on abortion?
4. How did Justice Scalia’s opinion differ from Chief Justice Rehnquist’s?
5. The right to privacy is not specifically mentioned in the Constitution. Do you think citizens should have rights that are not specified in the Constitution? Explain your opinion.

Supreme Court Case Study 74



Race-based Congressional Districts

Shaw v. Reno, 1993

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

From the earliest days of the federal republic, parties in power in state legislatures organized congressional districts in their states so that the parties would be certain to have their representatives elected to Congress. Manipulating the boundaries of congressional districts by the political party in power, or political gerrymandering as it came to be known, was accepted as a normal part of state politics.

The physical size and shape of congressional districts became an issue after the Voting Rights Act of 1965 and its later amendments. The act had been passed to eliminate the practices that had kept African Americans and other minorities from voting. In the South particularly, registration by African Americans increased dramatically as a result of the act. Nevertheless, the impact of increased voting by African Americans tended to be diluted by including African American voters in congressional districts that were heavily white. As a result, relatively few African Americans were elected to Congress from states with large African American populations.

States covered by the Voting Rights Act—such as North Carolina—cannot change any electoral practice, i.e., they cannot redistrict, without receiving preapproval from either the attorney general or the United States District Court for the District of Columbia. When the state became entitled to a twelfth congressional district as a result of the 1990 census, it needed preapproval in order to redraw its congressional map to reflect 12 rather than 11 districts.

The North Carolina legislature adopted a redistricting plan in which 1 of the 12 congressional districts had a majority African American voting population. The state submitted this plan to the attorney general for preapproval. However, the attorney general declined to approve the plan because he believed that North Carolina should create 2 majority African American congressional districts rather than 1.

The North Carolina legislature responded by enacting a redistricting plan which contained 2 majority African American districts—Districts 1 and 12. Five white North Carolinians sued the state and federal governments over the design of the Twelfth District. The district spanned 160 miles in a snake-like pattern to include exclusively African American neighborhoods along Interstate 85. The five whites argued that the white population’s constitutional rights had been violated under the redistricting.

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Constitutional Issue *****

The legality of the redistricting turned on the Fourteenth Amendment’s equal protection clause. The people who filed the suit believed that the way the Twelfth District was redrawn was a racial gerrymander and violated their right to equal protection under the law.

(continued)



Supreme Court Case Study 74 (continued)

***** The Supreme Court’s Decision *****

The Supreme Court ruled in a 5-to-4 decision that states with irregularly shaped electoral districts, drawn with the intention of creating minority districts, could be challenged on equal protection grounds. Justice Sandra Day O’Connor, writing for the Court, stated that the “bizarre” shape of the Twelfth District resembled the “most egregious racial gerrymanders of the past” which had excluded African Americans.

Justice O’Connor stated that there are legitimate reasons for states to provide minority districts. She believed, however, that “traditional districting principles” in regard to compactness, contiguity, and respect for political divisions must be utilized. The justice drew a comparison between linking a geographical area together on the basis of skin color to that of a “political apartheid.” She was referring to the former policy of South Africa that was used to legally separate and discriminate the races.

***** Dissenting Opinion *****

The four dissenting justices believed that white voters had not been harmed by the redrawing of the Twelfth District. The dissent also criticized the emphasis on the shape of the district. They believed discriminatory gerrymandering could take place in a regularly shaped district as easily as in an oddly shaped district.

Justice John Paul Stevens stated that “the duty to govern impartially is abused when the group with power over the election process defines electoral boundaries to enhance its own political strength at the expense of any weaker groups. However, the duty to be impartial is not violated when the majority acts to facilitate the election of such a member of a group that lacks such power.”

In another dissent, Justice David Souter held that legislators have to take race into account when drawing district lines in order to avoid the dilution of the minority vote. He believed that if redistricting harms participation in the election process, then the Fourteenth Amendment is violated. He held that because no one’s participation had been harmed, the redrawing of the Twelfth District did not violate the Fourteenth Amendment.



Questions *****

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

1. Why had the Twelfth District been created by the state legislature?
2. What was the constitutional basis on which some white citizens of the Twelfth District brought the case to court?
3. What was the Court’s position on redrawing congressional districts to promote minority interests?
4. On what grounds did Justice Stevens base his dissent?
5. What is your opinion of the practice of creating congressional districts to facilitate the election of minorities to Congress?

Supreme Court Case Study 75



Illegal Anti-abortion Activity

National Organization for Women (NOW) v. Scheidler, 1994

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

In the 1973 case of *Roe v. Wade*, the Supreme Court ruled that a woman’s right to choose abortion is protected by the Constitution. The Court’s decision sparked a 25-year debate between supporters and opponents of abortion rights.

The debate, however, has not always been peaceable. Some anti-abortion activists appear to have resorted to intimidation and violence in championing their cause. In addition to picketing the homes of doctors who performed abortions, they have tried to physically restrain women from entering abortion clinics, and even murdered a physician who performed abortions.

The National Organization for Women (NOW), one of the largest and most active women’s rights organizations, filed a civil lawsuit against individuals and groups for their violent anti-abortion activities. NOW claimed that these individuals and groups had used criminal tactics, including extortion and threats, in their protests. The defendants included Joseph Scheidler, who led the Pro-Life Action League; Randall Terry, leader of Operation Rescue; the Pro-Life Direct Action League; and Project Life. Activists belonging to these groups had been charged with robbery, defacing property, throwing fire bombs at abortion clinics, and threatening doctors.

The main issue in the case was whether the anti-abortion activists and groups could be held liable under a 1970 anti-crime law known as the Racketeer Influenced and Corrupt Organizations Act (RICO). RICO makes it illegal for “an enterprise” to conduct its activities by using a pattern of racketeering—criminal activity such as bribery or extortion. Proof of two or more statutorily enumerated criminal acts constitutes a pattern of racketeering. It is also a crime to conspire to violate RICO.

A federal district court dismissed NOW’s case. It stated that the language used in RICO required an “economic motive.” The plaintiffs had not proven that the anti-abortion defendants it accused of racketeering had “some profit-generating purpose.” The court of appeals upheld the district court’s ruling, and the case was appealed to the United States Supreme Court.

The case had taken on additional importance because the Supreme Court had ruled earlier, in January 1993, that pro-choice groups could not use civil rights laws to stop anti-abortion activities. This meant that some other means had to be found to challenge the more aggressive tactics of anti-abortion protesters. The newly installed Clinton administration filed a brief in support of NOW, in part because it also wished to use RICO against terrorists who might not be motivated by monetary gain.

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Supreme Court Case Study 75 *(continued)*

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

The question before the Court was whether a civil RICO violation required proof that the defendant’s pattern of racketeering had an economic motive.

★★★★★★★★★★★★★★ **The Supreme Court’s Decision** ★★★★★★★★★★★★★★★★★★★

On January 24, 1994, the Supreme Court ruled unanimously that abortion-rights groups could use the RICO law. Chief Justice William H. Rehnquist wrote the Court’s decision. He stated that there was no question that pro-choice groups could sue anti-abortion groups and demonstrators who had supposedly organized violent and criminal acts against abortion clinics and doctors who performed abortions.

Rehnquist stated that RICO could also be used in the case, even if the group involved did not have any financial motive. He went on to say that “the fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity.” In his view, the law was not ambiguous, but was capable of handling a wide variety of cases.

In a concurring opinion, however, Justices David Souter and Anthony Kennedy sounded a note of caution. They urged courts applying RICO to use prudence because of the “First Amendment interests that could be at stake.”

The Court’s decision allowed NOW to refile its lawsuit in a district court.



Questions ★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★★

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

1. What was the original intent of the RICO Act?
2. Do you believe the Court should have enforced the statute as written, or should it have enforced the intent of Congress? Explain.
3. What was the basis of the Court’s ruling?
4. Did the Court’s decision punish Scheidler and the other defendants? Give reasons for your answers.
5. What caution did the concurring justices urge in the application of RICO?

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Supreme Court Case Study 76



Drug Testing for Student Athletes

Vernonia School District 47J v. Acton, 1995

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

Vernonia School District 47J is located in a small community in Oregon. In the 1980s, school administrators in Vernonia observed a sharp increase in drug use among students, resulting in severe disciplinary problems. Student athletes were discovered to be among the drug users. School officials adopted a Student Athlete Drug Policy, allowing for random drug testing of all students participating in athletics programs. The purpose of this policy was to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs.

In 1991, seventh grader James Acton signed up to play football. He and his parents refused to consent to drug testing, and he was denied participation. The Actons then filed suit, claiming that the school district’s policy violated the Fourth and Fourteenth Amendments to the United States Constitution. A district court denied the claims and dismissed the action. An appellate court reversed this decision, holding that the drug testing policy was unconstitutional. The Supreme Court took the case for review.

Constitutional Issue *****

The Fourth Amendment of the Constitution provides that individuals are protected against “unreasonable searches and seizures.” The amendment extends this guarantee to searches by state officers. The collection and testing of urine samples is considered such a search.

There was a previous case concerning drug testing, *Skinner v. Railway Labor Executives Assn.* (1989). In that case, the Supreme Court decided it was reasonable for railroad crewmembers to submit to mandatory blood and urine testing following a major train accident. This was ruled as reasonable even though there was no proof that employees were under the influence of drugs or alcohol. As with *Skinner*, the issue in *Vernonia* was whether the random drug testing of student athletes was reasonable.

***** The Supreme Court’s Decision *****

The Court ruled 6 to 3 that the school district’s drug testing policy was reasonable and therefore constitutional. Justice Antonin Scalia delivered the opinion of the Court.

The Court considered the legitimate expectation of privacy of student athletes. Student athletes are children, and as children, they lack some basic rights. They are subject to the control of their parents or guardians, and they are placed in the temporary custody of the state as schoolmaster. The school has a responsibility to supervise them and enforce rules of conduct. Public school children are often required to have physical examinations and to be vaccinated against diseases. Students who participate voluntarily in athletics have an even lesser expectation of privacy. They must change their clothing before each practice or event, usually in locker rooms, and must comply with other rules.

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Supreme Court Case Study 77



Aid to Parochial Schools

Agostini v. Felton, 1997

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

The Supreme Court has considered many cases which involved questions of government aid to parochial schools. Such aid is most often challenged on the basis of the First Amendment’s ban on laws respecting the establishment of religion. The Court has found reasons to allow such aid when the circumstances seemed to warrant it. In 1947, for example, the Court ruled that a New Jersey law authorizing local school boards to reimburse parents for the cost of transportation to both public and private schools was constitutional. The Court reasoned that the law was designed to protect *all* students equally and was not aid to church-related schools.

On the opposite side of the aid-to-parochial schools question was the Court’s ruling in a 1985 case, *Aguilar v. Felton*. Here the Court ruled that under a federal law that provided supplemental, remedial instruction to disadvantaged children, such aid could not be given on parochial school premises. In 1997 the question of aid to religious schools resurfaced, and the Court had to decide whether its 12-year-old ruling was still valid.

Under Title I of the Elementary and Secondary Education Act of 1965, disadvantaged children who needed remedial help were entitled to publicly funded services, whether they went to public or private schools. Many public school systems provided such help to parochial school children by having public school teachers give such instruction in parochial and other private schools.

After the Court made its 1985 *Aguilar* ruling banning aid to disadvantaged children on the premises of parochial schools, many public school systems provided the remedial instruction off-site. In some systems, parochial school students were bussed to public schools for the remedial instruction. The New York City public schools spent millions of dollars leasing vans to serve as mobile classrooms which were parked on public streets near parochial schools. Parochial school children then walked to the vans, where they were instructed by public school teachers. About 20,000 parochial school students a year were taught in the mobile classrooms.

In 1995 parents of children (including the Agostinis) who received such instruction and the New York City Board of Education asked the federal district court to rule that the *Aguilar* decision was no longer good law. The district court ruled that the Supreme Court’s ruling in the *Aguilar* case was still a binding decision. The case was argued in the United States Supreme Court in April 1997, and the Court handed down its ruling in June 1997.

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Constitutional Issue *****

Did the 1985 decision in the *Aguilar* ruling for remedial instruction still apply in 1995, or should the Court reverse the ruling since it had ruled in earlier cases that neutral, non-religious programs did not violate the establishment clause of the Constitution?

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Supreme Court Case Study 77 (continued)

***** The Supreme Court’s Decision *****

Justice Sandra Day O’Connor wrote for the Court’s 5-to-4 majority. Justice O’Connor wrote that the Court could no longer accept the premises of the *Aguilar* decision. The Court had used three presumptions for deciding whether the establishment clause of the First Amendment was applicable. These were: (1) “any public employee who works on the premises of a religious school is presumed to inculcate religion”; (2) “the presence of public employees on private school premises creates a symbolic union between church and state”; (3) “any and all public aid that directly aids the education function of religious schools impermissibly finances religious indoctrination. . . .” The Court rejected these presumptions in the *Agostini* case. In Justice O’Connor’s words, “No evidence has ever shown that any New York City Title I instructor teaching on parochial school premises attempted to inculcate religion in students.” She also wrote, “. . . a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the establishment clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here.”

***** Dissenting Opinion *****

Justice David Souter wrote the dissent in which he claimed the Court’s ruling would “authorize direct state aid to religious institutions on an unparalleled scale, in violation of the establishment clause’s central prohibition against religious subsidies by the government. . . . There is simply no line that can be drawn between the instruction paid for at taxpayers’ expense and the instruction in any subject that is not identified as formally religious.”



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

1. What was the effect of the Court’s ruling in the *Agostini* case?
2. Why would the mayor of New York City call the decision “very wise” and say the precedent that the decision overruled was “irrational”?
3. On what grounds did the Court reverse itself on the question of aid to religious schools?
4. How do you think the Supreme Court is likely to rule in future cases involving aid to parochial school children?
5. Do you agree or disagree with the Court’s decision? Give reasons for your answer.

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Supreme Court Case Study 78



Evidence Obtained in a Stop and Frisk

Illinois v. Wardlow, 2000

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

On September 9, 1995, police officers Nolan and Harvey were working in the special operations section of the Chicago Police Department. Driving in a four-car caravan, they converged on an area known for heavy narcotics trafficking. As their car passed 4035 West Van Buren, Nolan observed a man holding an opaque bag standing next to the building. The officers turned their car southbound and watched the man as he ran through the gangway and an alley. The officers stayed in their vehicle but pursued the man. When they cornered him on the street, Nolan exited his car and stopped the suspicious person. The officer conducted a pat-down search for weapons because it was common to find weapons in the area where narcotics transactions occurred.

During the frisk, Officer Nolan squeezed the bag and felt an object similar to the shape of a gun. He proceeded to open the bag and discovered a .38-caliber handgun with five live rounds of ammunition. The officer arrested Wardlow.

Wardlow’s attorney filed a motion to suppress the evidence. The Illinois trial court denied the motion, finding that the gun was recovered during a lawful stop and frisk. Wardlow was convicted of unlawful use of a weapon by a felon. Wardlow appealed the decision, and the State Appellate Court reversed the lower court. The State Appellate Court said that, under *Terry v. Ohio*, Nolan did not have reasonable suspicion to make the stop. On appeal by Illinois, the State Supreme Court upheld the ruling, determining that sudden flight in a high crime area does not create a reasonable suspicion justifying a “*Terry* stop,” because flight may simply be an exercise of the right to “go on one’s way.”

Constitutional Issue *****

In *Terry v. Ohio*, the Supreme Court had held that an officer may, consistent with the Fourth Amendment, conduct a stop and frisk when the officer has a reasonable suspicion that there is criminal activity going on. In this case, the issue is whether the mere act of fleeing from the police meets the “reasonable suspicion” requirement for a stop and frisk. If the stop and frisk meets this standard, the evidence discovered may be admitted in court.

***** The Supreme Court’s Decision *****

The United States Supreme Court granted certiorari, and Chief Justice Rehnquist delivered the majority opinion. The justices found that the officers’ actions did not violate the Fourth Amendment. Rehnquist referred to the case of *Terry v. Ohio*, under which an officer who has a “reasonable, articulable suspicion that criminal activity is afoot may conduct a brief, investigatory stop.” While an individual’s presence in a “high crime area” is not enough to support a reasonable suspicion of criminal activity, a location’s characteristics are relevant in helping determine whether the circumstances warrant further investigation. In this case, Wardlow’s

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Supreme Court Case Study 78 (continued)

unprovoked flight aroused the officers' suspicions. "Nervous, evasive behavior is another pertinent factor in determining reasonable suspicion, . . . and headlong flight is the consummate act of evasion." Because the courts do not have scientific standards of reasonable suspicion to review an officer's decision, it must be based on commonsense judgments and inferences about human behavior.

The Court said that Officer Nolan was justified in suspecting that Wardlow was involved in criminal activity and, therefore, in investigating further. Any individual, when approached, has a right to ignore the police and go about his business, but unprovoked flight is the exact opposite of "going about one's business." "Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning." The Court agreed that there is a risk that officers may stop innocent people, but *Wardlow* recognized that officers can detain individuals to resolve ambiguities in their conduct. In such instances, *Wardlow* requires that the officer be able to articulate more than an "inchoate and unparticularized suspicion or 'hunch' of criminal activity." Unprovoked flight is, however, not a mere refusal to cooperate.



Questions

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

1. What role did the area where Wardlow was standing play in the way the Court viewed the chase and stop?
2. Why did the lower courts believe that the stop and frisk were not consistent with the Fourth Amendment?
3. How would you define "reasonable suspicion"?
4. Should the fact that Wardlow was found to be carrying a weapon have been taken into consideration by any of the courts? Why or why not?
5. How will the decision in this case affect future conduct by police officers?

Supreme Court Case Study 79



Challenge to English as the Official Language

Alexander v. Sandoval, 2001

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

Martha Sandoval wanted to take her driver’s license test, but she could not take it because she did not speak English. Alabama, her home state, had stopped allowing people to take such tests in languages other than English after it amended its constitution in 1990. The amendment that made English the official language of the state was used to justify requiring all driver’s license exams to be administered in English.

From the 1970s to 1991, Alabama had administered the driver’s license test in 14 different languages. Sandoval, who spoke Spanish and understood a few English phrases, wanted to learn English and was enrolled in classes for a while, but working two jobs to support her children meant she had to drop the classes. Without a driver’s license, Sandoval was limited in her ability to go to the grocery store or pharmacy, take her children to school, or even find a good job.

On December 31, 1996, Sandoval filed a federal class action suit against the Alabama Department of Public Safety. She alleged a violation of Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal money, such as Alabama’s Department of Public Safety. The federal district court ruled against Director James Alexander and the State of Alabama, finding that the English-only policy “singles out resident non-English speaking applicants by requiring them to take their examination in English only, without the aid of interpreters or translators.” It also said that “the regulation had impermissible disparate impact on the basis of national origin in violation of Title VI.”

An 11th Circuit Court of Appeals panel affirmed the lower court’s decision. Then the Alabama Attorney General (Alexander) petitioned the U.S. Supreme Court for a writ of certiorari. He claimed that while Title VI bars intentional discrimination, it is not clear whether Congress intended to allow private people to sue their state for policies that have a discriminatory impact when the state is not intentionally discriminating and the discrimination is not related to the purpose of the federal funding. The attorney general wrote, “These cases show that the concern that this Court expressed some 34 years ago in *Washington v. Davis*, that disparate impact claims would threaten ‘a whole range of tax, welfare, public service, regulatory, and licensing statutes,’ is not misplaced.” He concluded, “This case presents this court with a clear opportunity to resolve this question.”

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Constitutional Issue *****

In 1964 Congress passed a Civil Rights Act to stop discrimination. Title VI of that act prohibits discrimination on the basis of national origin. The issue in this case was whether Title VI created a “private right of action” against unintentional discrimination. A Department of Justice regulation earlier implied that policies that have the effect of discriminating, even if that is not their purpose, should be considered as discrimination. Based on Title VI, could private citizens sue state agencies for administering federal grants in a manner that has the effect of discriminating on the basis of ethnicity (national origin)?

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Supreme Court Case Study 79 *(continued)*

★★★★★★★★★★★★★★ The Supreme Court’s Decision ★★★★★★★★★★★★★★

On September 26, 2000, the U.S. Supreme Court granted certiorari in the case. On April 24, 2001, a divided Court held 5–4 that private individuals, such as Martha Sandoval, may not recover damages under Title VI of the federal Civil Rights Act from states whose rules they consider racially or ethnically discriminatory. Justice Antonin Scalia wrote for the majority, “Neither as originally enacted nor as later amended does Title VI display an intent to create a freestanding private right of action to enforce (such) regulations.” The Court held that Sandoval could not properly invoke the regulation. Because Title VI imposed requirements beyond those specifically contemplated by Congress, the regulation could not form the basis for a private suit.

The decision clarified that individuals can sue for federal civil rights violations if there is a state-sponsored intentional discrimination. Scalia said the difference here is that the provision of the Civil Rights Act (section 602) did not focus on the individual being protected from discrimination or on the funding that state agencies receive from the federal government, but on the state agencies themselves. “So far as we can tell,” wrote Scalia, “this authorizing portion of §602 reveals no congressional intent to create a private right of action.”

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

Writing the dissenting opinion, Justice John Paul Stevens criticized the majority for creating an important exception “unfounded in our precedent and hostile to decades of settled expectations.” Stevens conceded that the Court had “never said in so many words that a private right of action exists to enforce the disparate-impact regulations” promulgated under the federal Civil Rights Act. Stevens observed, however, that the Court had effectively ruled in prior decisions that a private right of action exists. He added that he believed the majority’s decision was the “unconscious product of the majority’s profound distaste for implied causes of action rather than an attempt to discern the intent of the Congress that enacted Title VI of the Civil Rights Act of 1964.”



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

1. Why did the State of Alabama require that all driver’s license exams be given in English?
2. Why did Martha Sandoval believe that the state policy discriminated against her?
3. On what grounds did the majority of the Supreme Court rule against Sandoval?
4. What criticism did Justice Stevens level at the majority’s decision?
5. In your opinion, is a state’s decision to adopt English as the official language a form of discrimination?

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Supreme Court Case Study 80



Congress Delegates Authority to Federal Agencies

Whitman v. American Trucking Associations, 2001

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

Congress created the Environmental Protection Agency (EPA) to oversee environmental legislation. In 1997 the administrator of the Environmental Protection Agency revised the ozone and particulate matter national ambient air quality standards (NAAQS). Private parties and several states challenged the revised NAAQS on several grounds. Most important was the charge that the administrator had assumed powers that the Constitution delegates to Congress alone.

The District of Columbia Circuit Court heard the case. It reviewed the EPA administrator’s interpretation of the relevant law that instructs the EPA to set standards “the attainment and maintenance of which . . . are requisite to protect the public health” with “an adequate margin of safety.” The Circuit Court said that Congress, in breach of the Constitution, had delegated legislative power to the administrator. The Court of Appeals also ruled that the EPA may not consider implementation costs in setting the NAAQS.

Constitutional Issue *****

May Congress delegate its lawmaking power to the administrative branch? In *Whitman v. American Trucking Associations*, the Supreme Court addressed the issue of whether Congress had wrongfully delegated lawmaking power to the Environmental Protection Agency. The justices reviewed a provision of the Clean Air Act that authorized the EPA to write air quality regulations that “are requisite to the public health.” The case presented the following questions: (1) Did the Clean Air Act delegate legislative power to the administrator of the Environmental Protection Agency? (2) May the administrator consider the costs of implementation in setting national ambient air quality standards? (3) Does the Court of Appeals have jurisdiction to review the EPA’s interpretation of the Clean Air Act with respect to implementing the revised ozone NAAQS? (4) If so, was the EPA’s interpretation permissible?

***** The Supreme Court’s Decision *****

The lower court had said that because the statutory term “public health” was so vague, the Clean Air Act allowed the EPA to enact whatever rules it wanted. The Supreme Court conceded that Congress cannot simply delegate all its authority to federal agencies. It cannot pass the buck for matters of basic public policy to bureaucrats. The Supreme Court, however, overturned the lower federal court ruling that a provision of the Clean Air Act was unconstitutional. The justices unanimously recognized that Congress lacks the time and expertise to write all of the administrative laws needed to govern our complex society. The Court held that when Congress gave the EPA general guidelines, it satisfied its constitutional duty and provided the EPA with sufficient guidance to do its job.

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Supreme Court Case Study 80 (continued)

Justice Scalia delivered the unanimous opinion, stating that the Court agreed with the Solicitor General that the text of the Clean Air Act “at a minimum requires that [f]or a discrete set of pollutants and based on published air quality criteria that reflect the latest scientific knowledge, [the] EPA must establish uniform national standards at a level that is requisite to protect public health from the adverse effects of the pollutant in the ambient air.”

The ruling in *American Trucking* was important because it rejected a view that could have paralyzed federal regulatory agencies. Some people believe that limiting Congress’s ability to delegate rule-making authority to federal agencies would return power from the agencies to Congress. However, such a view would thwart the regulatory power of Congress. The legislature does not have the capacity to do the job currently done by the agencies.

Historically, courts have tended to support the notion that a federal agency must interpret the laws Congress requires the agency to administer. Provided that the agency’s approach is “reasonable,” a court usually upholds it. The agency’s ruling carries the force of law.

This decision was not the Supreme Court’s final word on the issue. Following the *Whitman* decision, the Court ruled in *United States v. Mead Corp.* that an agency’s ruling does not carry the force of law unless there is some affirmative indication that Congress intended to give the agency that power. Taken together, the Court’s rulings in *American Trucking* and in *Mead Corp.* show that the Court will give Congress wide latitude to accomplish goals that are within its powers. To accomplish these goals, Congress may delegate power to administrative agencies if the legislation specifies the areas in which those agencies’ decisions will have the force of law.



Questions



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

1. What duty and responsibility of the legislative branch was in question in this case?
2. Why did two lower courts rule that the EPA administrator’s actions were unconstitutional?
3. What did the majority of the Supreme Court believe in regard to the power that Congress gave the EPA?
4. Why must Congress be careful in writing laws that will be enforced by federal administrative agencies?
5. How does this decision help federal regulatory agencies?

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Supreme Court Case Study 81



Individual Rights and Terrorism

Hamdi v. Rumsfeld, 2004

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

Following the terrorist attacks against Americans on September 11, 2001, President George W. Bush declared a war against terrorism. As part of this effort, U.S. forces invaded Afghanistan to remove the Taliban, a group of Muslim extremists who supported terrorists, from power. During the fighting American troops captured Yasser Hamdi, an American citizen who was with the Taliban fighters. Hamdi was born in Louisiana and raised in Saudi Arabia. His father claimed that Hamdi was serving as a relief worker in Afghanistan. The U.S. government, however, said that Hamdi was an “enemy combatant” fighting for the Taliban.

The government claimed that, as an enemy combatant, Hamdi could be imprisoned indefinitely without being brought to trial or given a chance to show that he was wrongfully captured. As a result, Hamdi was held without a judicial hearing for two and a half years at a navy prison in South Carolina. The Bush administration argued that the government needed sweeping powers to imprison such people in order to successfully pursue terrorists. It claimed that during wartime, the president should have broad discretion to declare a U.S. citizen an enemy combatant without having to seek approval by judges. Lawyers for Hamdi argued that he had the right to be told why he was being held and to make his case before a neutral judge.

Constitutional Issue *****

The Constitution safeguards individuals charged with crimes against arbitrary actions by the government. The Sixth Amendment requires that an accused person be given a “speedy” trial to ensure that he or she will not be held in jail for a lengthy period and, in essence, punished without a trial. The Fourteenth Amendment states that no person shall be deprived of liberty without “due process” of law. Do such protections apply to citizens named by the government as “enemy combatants”—that is, people accused of taking up arms against the United States during wartime? This case illustrates the basic tension in a democracy between the need to protect individual rights and the need to maintain security during times of national emergency.

***** **The Supreme Court’s Decision** *****

The Court ruled eight to one that a U.S. citizen held as an enemy combatant has a fundamental right to take his or her case to court. Justice Sandra Day O’Connor wrote for the Court: “We reaffirm today the fundamental nature of a citizen’s right to be free from involuntary confinement by his own government without due process of law. . . .” O’Connor explained that “even a state of war is not a blank check for the president when it comes to the rights of the nation’s citizens.” She added, “Striking the proper constitutional balance here is of great importance to the nation during this period of ongoing combat.”

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The Court did recognize that citizens who take up arms for the enemy during times of war pose a serious threat. Still, O'Connor stated that "history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others. . . ." She added, "We must preserve our commitment at home to the principles for which we fight abroad."

The eight justices agreed that these principles guarantee a citizen like Hamdi notice of the factual basis for his detention and a "meaningful" judicial hearing to rebut such claims. The Court did note that such hearings might not have to be very extensive. Judges could, the Court said, speed up such hearings by relaxing the rules for admitting evidence and shifting more of the burden of proof to the accused. Five of the justices noted that military tribunals might be able to provide acceptable judicial hearings. No such tribunal had reviewed Hamdi's case. Lawyers for the government indicated that the administration would create a process to address the Court's requirement that so-called enemy combatants be given a hearing.

Five justices, including O'Connor, further stated that a congressional resolution passed after the September 11 attacks did give President Bush the power to declare a citizen an enemy combatant and have such a person imprisoned. The resolution authorized the president to "use all necessary and appropriate force" against those involved in the attacks. Four justices, however, dissented from this idea. They claimed that the president has no constitutional power to detain Americans as enemy combatants without an express authorization by Congress.

Many observers noted that the Court's decision seemed to be an attempt by the Court to keep a constitutional balance in the ongoing war against terrorism. On the one hand, the Court recognized the need for U.S. leaders to try to protect the nation from another terrorist attack. At the same time, the Court's decision affirmed its belief that the government should not abandon the constitutional principles of freedom that make American democracy a model for other countries. One legal scholar said the Court's decision was aimed at sending a message to the world: "We're behind the rule of law and fair treatment."



Questions



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

1. On what basis did the Court uphold the rights of citizens held as enemy combatants?
2. How did the Court's decision in this case demonstrate the principle of checks and balances?
3. What compromises did the Court make in its requirement that detained citizens must be granted hearings?
4. Historically, presidents have been permitted broader powers during national emergencies. Do you believe that constitutional limits on presidential power should be relaxed during national crises? Give reasons for your answer.
5. Do you agree with the congressional resolution that gives the president authority to detain American citizens as enemy combatants? Give reasons for your answer.

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Private Property and Public Use

Kelo v. City of New London, 2005

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

In the late 1990s, the city of New London, Connecticut suffered from a shrinking population and a struggling economy. In 2000, city officials made a plan to improve New London’s economy. They decided to redevelop a waterfront area, including a neighborhood known as Fort Trumbull. The city planned to acquire the waterfront property—including more than 115 residences—from current owners. They would then sell the property to private developers. The homes would be torn down and replaced with restaurants, retail stores, offices, a hotel, other commercial ventures, and new residences. City leaders hoped the new waterfront area would attract tourists, create new jobs, and increase tax revenue. Most Fort Trumbull residents willingly sold their property to the city.

Other Fort Trumbull property owners, including Susette Kelo, were not willing to sell their property. Some residents had lived in their homes for years. Many properties had been owned by the same families for generations. The city invoked its eminent domain statute, which allows the government to seize privately owned property for public use as long as just compensation is paid to the owners. Cities often invoked eminent domain to redevelop run-down areas or to make way for projects benefiting the public, such as highways or parks. In December of 2000, Susette Kelo, with eight other petitioners, sued New London to prevent the city from seizing their property.

Constitutional Issue *****

The Fifth Amendment states that “private property [shall not] be taken for public use, without just compensation.” This is known as the “takings clause,” with takings referring to the seizing of properties under eminent domain laws.

Kelo and the other petitioners argued that the city of New London’s takings were not justified by the Fifth Amendment. The land, they argued, was being sold to private developers, which did not qualify as “public use.” A state court ruled to prohibit some of New London’s takings but not others. The Connecticut Supreme Court, however, “affirmed in part and reversed in part, upholding all of the proposed takings.” The case came before the United States Supreme Court, which had to decide whether New London’s move to seize property solely for economic development was consistent with the Fifth Amendment.

***** **The Supreme Court’s Decision** *****

A majority of five justices voted to affirm the Connecticut Supreme Court’s judgment. Justice John Paul Stevens wrote the opinion for the majority.

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