



You're the Justice! A Landmark Case in Supreme Court History

In 1954, the United States Supreme Court issued a decision that declared “separate education facilities [were] inherently unequal” and violated the 14th Amendment guarantee of “equal protection of the laws” for all citizens. It was a reversal of the 1896 *Plessy v. Ferguson* decision, which established the doctrine of “separate but equal.”

As early as 1881, African-American parents in Kansas challenged the segregated school system. As a result, there were at least 11 school integration cases in Kansas prior to 1954. Each of these cases reached the Kansas Supreme Court. In 1950, the National Association for the Advancement of Colored People (NAACP) stepped up efforts to change the segregated educational system of Topeka, Kansas. From 1948 to 1950, the NAACP attempted to persuade the Board of Education to integrate their schools, but were met with resistance.

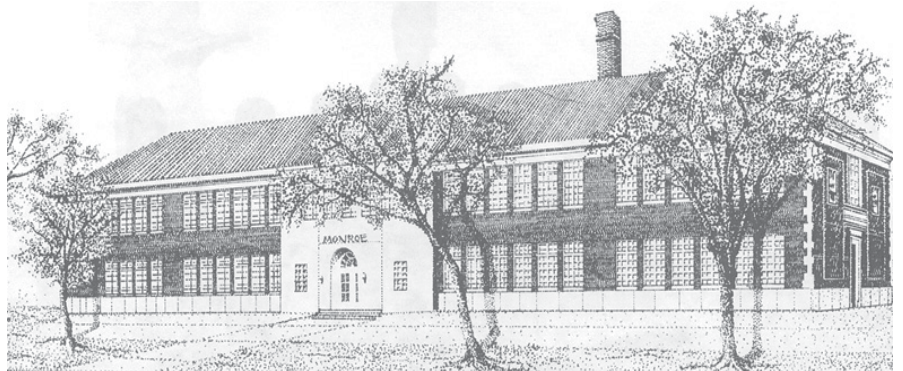
After several African-American children were denied enrollment in the all-white schools, the NAACP filed a class action lawsuit against the Board of Education of Topeka Public Schools. Thirteen parents joined the fight and lent their names to the lawsuit. In 1951, the lawsuit was officially filed as *Oliver L. Brown et al. v. Board of Education of Topeka*. Oliver Brown served as the lead plaintiff because he was listed first on the lawsuit.

The *Brown* case was only geared towards elementary schools because junior and senior high classrooms in Topeka were integrated although extracurricular activities remained segregated. The first ruling came in

Arkansas History Frameworks (grades 9-12): TCC1.2, TCC1.3, TCC2.3, PPE1.1, PDC1.1, PAG4.1, PAG4.2, PAG4.3, PAG4.4, SSPS1.1, SSPS1.2, SSPS1.3, SSPS1.4, SSPS1.5, SSPS1.6.

U.S. Social Studies Frameworks (grades 9-12): TCC1.2, TCC1.3, TCC1.4, TCC2.1, TCC2.2, TCC2.4, PPE1.1, PPE1.1, PPE2.7, PDC1.1, PAG1.1, PAG1.2, PAG1.3, PAG1.4, PAG1.5, PAG1.6, PAG2.1, PAG2.2, PAG2.3, SSPS1.1, SSPS1.2, SSPS1.3, SSPS1.4, SSPS2.1, SSPS2.2, SSPS2.4, SSPS2.5, SSPS2.6, SSPS2.7

“Brown was the beginning...” in understanding the nature and expectations of how the Supreme Court interpreted the Constitution. -- Alexander M. Bickel



Line drawing of Monroe Elementary in Topeka, Kansas, ca. 1950s. This is the school that some African-American children attended before the *Brown v. Board of Education* desegregation decision. Courtesy of Brown v. Board National Historic Site.

favor of the Topeka Board of Education. As a result, the NAACP filed an appeal to the U.S. Supreme Court. When it reached the high court, it was combined with similar lawsuits, all styled as *Oliver L. Brown et al. v. Board of Education of Topeka, Kansas, et. al.*

The *Brown* lawsuit was not only about Topeka, but also included Delaware (2), the District of Columbia, South Carolina, and Virginia. The court consolidated the cases under one name, although

one (*Bolling v. Sharpe*) required a separate opinion because it was filed in Washington, D.C. . The justices felt that it was better to have representative cases from different parts of the country.

In 1896, the U.S. Supreme Court decided that segregation did not conflict with the 14th Amendment (*Plessy v. Ferguson*). However, by the 1950s, the U.S. Supreme Court overturned the *Plessy v. Ferguson* case and ruled that segregation in public education was an injustice.

The United States Supreme Court and the *Brown Decision*

Decided May 17, 1954 with a vote of 9 to 0; *Brown II* decided in May 1955 by a vote of 9 to 0.

“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.”

-- Chief Justice Earl Warren, 1954

U.S. Supreme Court Justices of the *Brown Decision*

Earl Warren, Chief Justice

Hugo Black, Assoc. Justice

Stanley Reed, Assoc. Justice

Felix Frankfurter, Assoc. Justice

William O. Douglas, Assoc. Justice

Robert H. Johnson, Assoc. Justice

Harold Burton, Assoc. Justice

Tom Clark, Assoc. Justice

Sherman Minton, Assoc. Justice

In the *Brown* decision, the NAACP called for immediate desegregation of schools (or at least desegregation with firm deadlines). States involved in desegregation cases, including Arkansas, deemed this timetable unworkable. The U.S. Supreme Court, fearing hostility and violence, felt that using a timetable would be more suitable and less likely to cause confrontation. After a second round of arguments in 1955 (*Brown II*), the justices declared that desegregation had to be done with “all deliberate speed.”



Photo: School segregation protest, ca. 1960s. Courtesy of the National Archives and Records Administration.

CASES IN *BROWN V. BOARD*

Although *Brown v. Board of Education of Topeka* was the decision instrumental in mandating the desegregation of public schools in the United States, several lawsuits involving desegregation were filed prior to 1954. The lawsuits that made up the *Brown v. Board of Education* decision include:

1) *Belton v. Gebhart* (1951) and *Bulah v. Gebhart* (1951) were filed in Delaware. *Belton v. Gebhart* was brought by parents whose children attended a rundown segregated high school in a community miles from their own home. *Bulah v. Gebhart* represented a parent whose child did not receive transportation by public school buses, even though the school bus went by her home twice a day. The lawyer who represented the plaintiffs was Louis Redding, Delaware’s first black attorney. Assisting Redding was a representative from the NAACP Legal Defense and Educational Fund. The Delaware Court of Chancery, ruled that the plaintiffs were indeed being denied equal protection of the law and ordered that the children be admitted to the white schools in Wilmington and Hockessin, Delaware. The ruling, however, did not overturn the state’s segregation law.

2) *Bolling v. Sharpe* (1952) Local parents petitioned to end segregated schooling in Washington, D.C. Eleven African-American students tried to enroll at the new John Phillip Sousa Junior High School but were turned away despite ample classroom space. The NAACP - and later, Howard University - provided legal representation for the plaintiffs. The United States District Court dismissed the case on the basis that segregated schools were constitutional in the District of Columbia (*Carr v. Corning*). An appeal was filed by James Nabrit and the U.S. Supreme Court indicated its interest in hearing the case with four other pending segregation cases. However, the court rendered a separate decision on *Bolling v. Sharpe* since the 14th Amendment to the U.S. Constitution was not applicable in the District of Columbia.

NAACP lawyer Thurgood Marshall, Daisy Bates, Dorothy Frazier, and Minnijean Brown leave the courtroom, ca. 1957. Photograph by Will Counts. Courtesy of the Arkansas History Commission.



3) *Briggs v. Elliott* (1950) was named for Harry Briggs, one of 20 parents who brought suit against a South Carolina school district to challenge segregation. Initially, the parents only petitioned for transportation for their children, but after their demands were ignored, they filed suit challenging segregation. Thurgood Marshall, an NAACP lawyer, was lead counsel for the *Briggs v. Elliott* case in the fall of 1950.

Despite substantial psychological evidence on the conditions of African-American school conditions and its resulting effect on children's learning, the U.S. District Court denied the plaintiff's request to abolish school segregation. Instead, it ordered the district to equalize schools. As a result of the case, the lone judge who adamantly opposed segregation, J. Waties Waring, had to leave the state rather than face retaliation from irate segregationists, and several of the plaintiff's parents lost their jobs.

4) *Davis v. County School Board of Prince Edward County* (1951) School students from Farmville, Virginia, organized a student strike to protest poor school conditions. After two weeks, the strike committee requested assistance from the NAACP. The NAACP filed a lawsuit on behalf of many students asking that segregated school laws be struck down in Virginia. The U.S. District Court rejected the request but did order the school district to equalize schools. After the 1954 *Brown* decision, this particular school district refused to appropriate any funds for the school board - closing the public schools from 1959 to 1964 rather than integrating them.

All of these cases - many of them appealed - were rolled into the *Oliver L. Brown et. al. v. Board of Education of Topeka, Kansas, et. al.* lawsuit heard by the U.S. Supreme Court in 1953-1954. For more information on the cases, see www.nps.gov/brvb.

Teacher Notes:

The United States Supreme Court

The U.S. Supreme Court is the chief authority of the judicial branch of government. It hears decisions from the lower federal courts and state supreme courts, and it resolves issues of constitutional and federal law. It is the ultimate authority in constitutional interpretation, and its decisions can only be changed by a constitutional amendment. All federal courts must abide by the Supreme Court's decisions, but the Supreme Court cannot interpret state law or issues arising under state constitutions. It cannot supervise state court operations.

Nine judges sit on the Court - one chief justice and eight associate justices. They are appointed for life by the President of the United States, but the U.S. Senate must approve each appointment with a majority vote.



United States Supreme Court, ca. 1941. Courtesy of the Library of Congress.

The goal of the Supreme Court is to decide cases that raise a question about the Constitution. The Court will decide if a law or action violates the Constitution. This is known as judicial review. With review, the Court can invalidate both federal and state laws that conflict with interpretation of the Constitution. Therefore, the Court has a pivotal role in American politics - as referees among the branches of government and as the ultimate authority for many of the most important issues in the country - from the economy to business, to freedom of speech and religion. For example, in *Brown v. Board of Education* (1954), the decision affected the life of every American.

**“May I Have
Your Attention”**

**“If four of nine
will lend an ear;
An issue gray
will soon be clear.”**

The U. S. Supreme Court hears cases at the court's discretion. Four justices must agree to hear a case before they will accept it. This is known as granting *writ of certiorari*. The court often takes cases where the issue(s) have been decided in diverse ways by various lower courts - both state and federal.

The U.S. Supreme Court was established in 1789 with the **Judiciary Act**. Given authority under the U.S. Constitution, it is equal to the executive and legislative branches of government. In the Constitution, the U.S. Supreme Court was given the authority to review broad classes of cases. In *Marbury v. Madison* (1803), the Court gave itself the power to strike down unconstitutional acts of government and created judicial review - the system of checks and balances that safeguards Americans from government abuses of power.

The U.S. Supreme Court has two types of power: **appellate** (power to hear appeals of cases decided in lower federal courts and state supreme courts) and **original jurisdiction** (where the Court issues the most far-reaching constitutional decisions and major rulings involving federal law - this is rarely used). Appellate cases include seven types:

- * Cases arising under the Constitution, federal law, or treaty;
- * Those involving admiralty and maritime matters;
- * Those in which the U.S. is a party;
- * Cases between two or more states;

* Cases between citizens of the same state if they are disputing ownership of land given by different states;

* Cases between a state and individuals or foreign countries;

* Cases between citizens of different states and foreign countries.

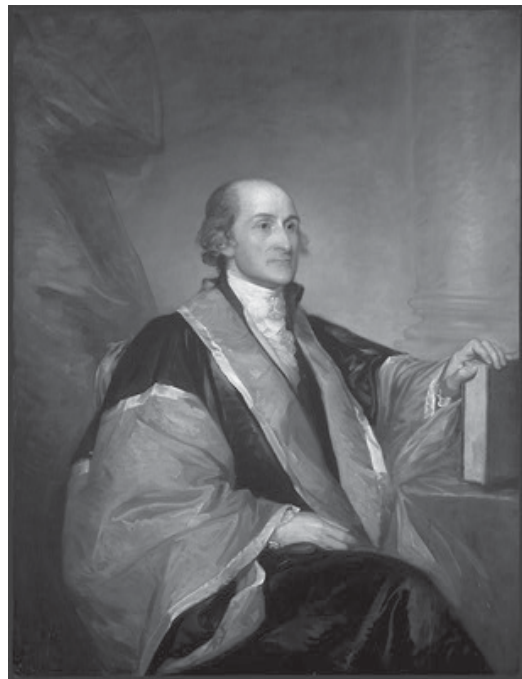
The Supreme Court has the power of **judicial review** - the right to declare laws unconstitutional. This power was given expressly by the U.S. Constitution in 1803. This power is real and often controversial since the Court decides what the Constitution means.

The U.S. Constitution does not specify the number of Supreme Court justices. In 1789, the Court consisted of five justices. They traveled through the countryside to hear cases in federal circuit courts. A sixth seat was added in 1790, and a seventh in 1809. The eighth and ninth seats were added in 1837 and stayed at nine until 1863, when a tenth seat was added but abolished in 1865. In 1867, Congress limited the number to seven justices but restored the number to nine in 1869. In 1891, Congress abolished the circuit riding responsibilities of the justices. Since then, the number of justices has remained fixed at nine - making a tie vote among justices unlikely.

Most justices have served as lawyers prior to being appointed to the Supreme Court. Most pursued legal and political careers before serving on the Court. Many were members of Congress, governors, or members of presidential cabinets. One was a president - William Howard Taft. Some came from private law practice, others were professors. Many of the justices in the late 20th century had judicial experience in lower courts.

Justices are appointed by the President and must be confirmed by a majority vote in the U.S. Senate. The president chooses nominees carefully because they must have a strong chance for confirmation. He/she also often chooses prospective justices based on geographic and regional background, religion, race, ethnicity, and gender. The first African-American justice was Thurgood Marshall (1967). The first woman justice was Sandra Day O'Connor (1981). Today, the Court's membership reflects a diverse variety of ethnic, racial, religious, and geographic backgrounds.

Confirmation hearings are of great interest - they are either quiet affairs or high political dramas that grip the nation. Once appointed, justices serve for the remainder of their lives, unless they elect to step down. Once on the Court, they remove themselves from politics and do not speak publicly about controversial issues or pending legislation. They can make public speeches confined to subjects related to the law in general and the federal court



John Jay, Chief Justice of the first U. S. Supreme Court (1789-1795). Courtesy of the National Gallery of Art.

system, and usually follow the American Bar Association (ABA) Code of Judicial Conduct. They can be removed by impeachment. Only one justice on the national level, Samuel Chase, was impeached in 1804/05 for improper outbursts during a trial, but the U.S. Senate did not convict him.

Books for U.S. Supreme Court and *Brown v. Board of Education*

Brown v. Board: Civil Rights Milestone
(young reader) by Diane L. Good
(Children's Book Press, March 2004).

Brown v. Board: Equal Schooling for All
(young reader) by Harvey Fireside
(Enslow Publisher, 1994).

Brown v. Board: School Desegregation
(9-12) by Mark Dudley
(21st Century Books, 1995).

Linda Brown, You Are Not Alone: The Brown v. Board of Education Decision
(9-12) by Joyce C. Thomas
(Jump at the Sun Publishers, 2003).

The Oxford Companion Guide to United States Supreme Court Decisions
by Kermit L. Hall
(New York: Oxford University Press, 1999).

Internet Resources for the U.S. Supreme Court and *Brown v. Board of Education of Topeka*

Brown v. Board National Historic Site
nps.gov/brvb

[www.Brown v. Board.org](http://www.Brown.v.Board.org)

Landmark Decisions of the Supreme Court
landmarkcases.org

National Park Service Civil Rights Landmarks
cr.nps.gov/nr/travel/civilrights.kar.htm

U.S. Supreme Court
supremecourtus.gov

U.S. Supreme Court Historical Society
supremecourthistory.org

The Supreme Court only hears a tiny fraction of the cases that come before it. If the Court declines to hear a case, the decision of the lower court is the law. Usually, the Court will hear around 7,000 cases per session. The session begins the first Monday in October and usually runs through the end of June. The Court does not always meet in formal sessions during its nine month term. Instead, it has four related activities:

- * Time allocated to reading thousands of petitions for review of cases that come annually to the Court;
- * Blocks of time for oral arguments - live discussions with lawyers;
- * Private discussions of how each justice will vote on the case heard;
- * Time for writing their opinions - statements of what the justices have decided and their reasoning in the case.

The chief justice presides at justice conferences and assigns a justice to write opinions. The chief justice is the spokesperson for the Court and the federal judicial system. He/she supervises the Court's budget and staff. But in terms of deciding cases, the chief and associate justices are equals.

The Little Rock Crisis and the U.S. Supreme Court *Cooper v. Aaron (1957)*

In 1957, the desegregation of Little Rock Central High School caused a constitutional crisis that reached the U.S. Supreme Court. Governor Orval Faubus, claiming public disturbances would result from desegregation, ordered the Arkansas National Guard to prevent the entrance of nine African-American students into the school. For three weeks, Governor Faubus and President Dwight D. Eisenhower, the Little Rock School Board, the African-American community, the NAACP, segregationists, and the federal court were embroiled in the confrontation. The federal court in Little Rock found the governor's assertions for disorder baseless and Faubus withdrew the guard. However, when the nine students entered the school on September 23, a mob gathered outside and threatened to storm the school. The Little Rock police removed the nine for their safety. President Eisenhower dispatched combat-ready soldiers from the U.S. Army's 101st Airborne Division at Fort Campbell, Kentucky, to enforce the federal court's original desegregation order. By September 25, the nine students were attending Central High School under federal troop protection.

At the end of the school year, Little Rock School District officials requested and received from the federal court a two and a half year delay in implementing the desegregation plan. The NAACP appealed the case, *Cooper v. Aaron*, to the U.S. Supreme Court in 1958. *Cooper* was the first significant legal test of the *Brown* decision. The issues at hand in the lawsuit were as follows: 1) was good faith desegregation a violation of the rights of African-Americans students? 2) were the governor and legislature of Arkansas bound by decisions of the U.S. Supreme Court?

In an unprecedented action, all nine justices of the U.S. Supreme Court signed the opinion. They maintained that the nine students would have their rights violated if desegregation were postponed in the interest of public safety and such action would violate the Equal Protection Clause. No delay would be allowed. Secondly, state legislatures and governors were bound by the Supremacy Clause of the U.S. Constitution and bound to uphold the decisions of the Supreme Court. The court ruled that no governor has the right to annul judgments of the federal courts.

Not until the administrations of President John F. Kennedy and President Lyndon B. Johnson supported desegregation, as well as the success of nonviolent protests by civil rights activists like Dr. Martin Luther King, Jr., did the **Civil Rights Act** pass in 1964. Afterwards, plaintiffs filed more lawsuits against school districts demanding immediate desegregation.

More importantly, Title VI, which cut off federal funds to institutions practicing racial discrimination, was used by the Department of Health, Education, and Welfare to compel compliance by threatening to withhold federal school funds.

Chief Justice

Earl Warren
(1891-1974)

Earl Warren served as Chief Justice of the U.S. Supreme Court during one of the most controversial times in our history. During his tenure, the court decided cases involving civil rights, civil liberties, and the nature of the U.S. political system.

Warren was born in California and worked on the railroad as a young man. While working on the railroads, he came into contact with many ethnic groups, including Asians and Asian-Americans.

After graduating from law school, Warren served in the U.S. Army during World War I. After the conflict, he worked as district attorney for Alameda County, California. In this job, he fought to secure public defenders for people who could not afford one. He was named the best district attorney in the U.S. in 1931.

As attorney general of California between 1932 and 1941, Warren supported removing Japanese-Americans to relocation camps during World War II. Later, he acknowledged this action was wrong.

Warren became governor of California and supported Dwight Eisenhower. Eisenhower rewarded Warren's loyalty by appointing him Chief Justice of the Supreme Court in 1952. Warren took over a deeply divided court and was known to "massage" the court on difficult issues, including the *Brown v Board of Education* case - one of the first he had to deal with as Chief Justice. Warren made sure that, after the *Brown* decisions, the Supreme Court took a more active role in defending individual rights as no court before it had done. Warren considered this proper since, in his view, courts should be active, not passive.

While many criticize the *Brown* decision as lacking constitutional analysis, its finding was a key decision in American history and in support of the 14th Amendment. The decision emphasized common sense, justice, and fairness. Warren carved a powerful position for the Supreme Court as a protector of civil rights and civil liberties.



Earl Warren, 30th Governor of California, ca. 1940s. Courtesy of the San Francisco Public Library.

The Lawyer

Thurgood Marshall (1908-1993)

Thurgood Marshall was the great-grandson of slaves and son of a dining car waiter and schoolteacher. He was the first African-American justice of the Supreme Court. He studied law at Howard University Law School - a school known for its support of civil rights litigation. After graduating first in his class at Howard in 1933, he worked with the National Association for the Advancement of Colored People (NAACP) in Houston, Texas.

Marshall was devoted to civil rights. While Dr. Martin Luther King, Jr. was a leading public figure who preached nonviolent resistance and love, Marshall worked through the court system to eradicate the legacy of slavery and the racist segregation system of Jim Crow with its lasting effect on race relations in the United States.

Marshall served as council for the NAACP and then director of the NAACP Legal Defense and Education Fund. He was the mastermind behind the litigation strategy that challenged racial oppression in education, housing, transportation, electoral politics, and criminal justice. His most famous case was in representing Linda Brown and other students in *Oliver L. Brown et. al. v. Board of Education of Topeka, Kansas, et. al.* (1954). After the crisis at Little Rock Central High School in 1957, a lawsuit filed by the Little Rock School District in federal court asked for a two -and- a- half- year extension on desegregating schools. The NAACP, led by Marshall as counsel, filed an appeal that was known as *Cooper v. Aaron*.

In 1967, President Johnson nominated Marshall as an associate justice of the Supreme Court. He served in this position until 1991 and was a strong advocate for equal protection of the law. Marshall also worked on behalf of African-Americans but also supported civil rights for all Americans. As a justice, he helped decide cases upholding equal protection of the law for women, children, prisoners, and the homeless and he held the conviction that only through equal rights could people of all races rise and fall based on their own abilities.



Thurgood Marshall (center), ca. 1954). Courtesy of the Library of Congress.

“Thurgood Marshall is the living embodiment of how far we Americans have come on the major concern in our history, race, and how far we’ve got to go,” says Drew Days, professor of law at Yale and former assistant attorney general for civil rights. “He has been a conscience. In the law he remains our supreme conscience.”

Vocabulary:

Appellate: Having the power to hear court appeals and review court decisions.

Cooper v. Aaron: 1958 Supreme Court decision that invalidated racial segregation in the public schools and discarded the separate but equal doctrine laid forth in *Plessy v. Ferguson* (1896). After the 1957 crisis at Little Rock Central High School, the Little Rock School District asked for and received from the federal district court a two-and-a-half year delay in implementing desegregation. The NAACP appealed the case to the Supreme Court. *Aaron* was the first legal test of the enforcement of the *Brown* decision. In an unprecedented move, all nine Supreme Court justices signed the opinion, overturning the delay and ordering the school districts to proceed with desegregation.

Associate Justice: There are nine justices on the U.S. Supreme Court - one chief justice and eight associate justices. They are appointed by the president and must be confirmed by a majority vote in the Senate. The president must also be careful to choose a nominee with strong chances for Senate confirmation, otherwise the administration may lose prestige in a bruising confirmation battle with the Senate. Presidents often try to secure Senate support by balancing the Court members' geographic and regional backgrounds. Many 20th century presidents have also tried to balance the Court's religious, racial, ethnic, and gender makeup.

Oliver L. Brown et. al. v. Board of Education of Topeka, Kansas et. al. : Landmark court case of 1954 in which the Supreme Court of the United States unanimously declared that it was unconstitutional to create separate schools for children on the basis of race. The *Brown* ruling ranks as one of the most important Supreme Court decisions of the 20th century. At the time of the decision, 17 southern states and the District of Columbia required that all public schools be racially segregated. A few northern and western states, including Kansas, left the issue of segregation up to individual school districts with 15,000 or more students.

Chief Justice: In the United States judicial system, title of the presiding judge of the Supreme Court of the United States and of the presiding justices of the highest tribunals in most of the states. The chief justice of the United States is the highest judicial officer of the nation and is appointed for life by the president with the approval of the Senate. The chief justice orders the business of the Supreme Court and administers the oath of office to the president and vice president upon their inaugurations. According to Article 1, Section 3, of the Constitution of the United States, the chief justice is also empowered to preside over the Senate in the event that it sits as a court to impeach the president.

Civil Rights Act of 1964: Landmark legislative act that improves the quality of life for African-Americans and other minority groups. Although civil rights had a long history as a political and legislative issue, the 1960s marked a period of intense activity by the federal government to protect minority rights. The Act did not resolve all problems of discrimination, but it opened the door for further progress by lessening racial restrictions on the use of public facilities, provided more job opportunities, strengthened voting laws, and limited federal funding of discriminatory aid programs.

Fourteenth Amendment: An amendment to the Constitution of the United States adopted in 1868; extends the guarantees of the Bill of Rights to the states, as well as to the federal government.

Judicial Review: Review by a court of law of actions of a government official or entity of some other legally appointed person or body or the review by an appellate court of the decision of a trial court.

Judiciary Act: The First Congress provided the detailed organization of a federal judiciary system in 1789 in the Judiciary Act. Acting on its constitutional authority, Congress instituted a three-tiered judiciary. The Supreme Court consisted of a chief justice and five associate justices. In each state and in Kentucky and Maine (then parts of other states), a federal judge presided over a U.S. district court, which heard admiralty and maritime cases, and some other minor cases. The middle-tier of the judiciary consisted of the U.S. circuit courts, which served as the principal trial courts in the federal system and exercised limited appellate jurisdiction. Two Supreme Court justices and the local district judge presided in the circuit courts. Under the practice known as "circuit riding," each justice was assigned to one of three geographical circuits and traveled to the designated meeting places within the districts of that circuit.

Marbury v. Madison: Landmark court case of 1803 in which the Supreme Court of the United States established its authority to review and invalidate government actions that conflict with the U.S. Constitution.

Thurgood Marshall (1908-1993): American jurist who served as the first African-American associate justice of the U.S. Supreme Court from 1967 to 1991. As a lawyer for the NAACP Legal Defense Fund, Marshall argued 32 cases before the Supreme Court, winning 29 of them, including *Brown v. Board of Education of Topeka* (1954), which brought an end to legal segregation in public schools.

National Association for the Advancement of Colored People (NAACP): Organization founded in 1909 in New York City for the purpose of improving the conditions under which African-Americans lived at the time. Although these conditions have improved enormously, many differences still exist in the rights of U.S. citizens solely because of race or ethnic origin. The NAACP continues to seek a single class of citizenship for every American.

Original Jurisdiction: If parties are in dispute and cannot settle the matter (e.g.: two states), then the U.S. Supreme Court has authority under the U.S. Constitution to take over deciding the matter.

Petitioner: One who presents a petition.

Plessy v. Ferguson (1896): Supreme Court decision that set the precedent that “separate” facilities for African Americans and whites were constitutional as long as they were equal. The “separate but equal” doctrine was quickly extended to cover many areas of public life, such as restaurants, theaters, restrooms, and public schools. Not until 1954, in the *Brown* decision, was the “separate but equal” doctrine struck down.

Respondent: Being a defendant.

Title VI: Enacted as part of the landmark Civil Rights Act of 1964, Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. If a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action.

United States Supreme Court: Highest court in the United States and the chief authority in the judicial branch, one of the three branches of the United States federal government. The Supreme Court hears appeals from decisions of lower federal courts and state supreme courts, and it resolves issues of constitutional and federal law. It stands as the ultimate authority in constitutional interpretation, and its decisions can be changed only by a constitutional amendment.

Earl Warren (1891 -1974): American jurist who served as chief justice of the U.S. Supreme Court from 1953 to 1969 and who handed down the *Brown* decision in 1954.



Chief Justices of the Supreme Court, ca. 1894. Lithograph by Kurz and Allison. Courtesy of the Library of Congress; Photo Page 12: Supreme Court room at the Capitol, Washington, D.C., c. 1904, Photograph by William Henry Jackson. Courtesy of the Library of Congress.

Suggested Teacher Activities:

1) **Questions to Consider (BT: Knowledge, Comprehension, Application, Analysis, Synthesis, Evaluation):** Discuss and comprehend with your students.

- * Analyze what rights the Fourteenth Amendment gives citizens.
- * Identify problems African-Americans encountered in Topeka and other cities involved in the *Brown* decision that eventually resulted in this case. What about in Little Rock?
- * What precedent did the *Plessy v. Ferguson* (1896) ruling establish? How was that precedent related to *Brown*? How did the case of *Plessy v. Ferguson* (1896) affect segregation?
- * Illustrate what it meant to have segregated schools.
- * Recognize that it is important in *Brown v. Board* to determine what “equal” means. Analyze what you think equality meant to the Brown family and the other parents. Conclude what you think equality meant to the Board of Education of Topeka.

2) **The Court (BT: Knowledge, Comprehension, Application, Analysis, Synthesis, Evaluation)** Have a working knowledge of the United States Supreme Court by conducting the following:

- * Summarize the history and role of the United States Supreme Court in this country and within the three branches of government) by using information and interpretation of facts.

SOURCES OF INFORMATION AND MATERIAL ABOUT HOW TO TEACH THE LAW USING SUPREME COURT CASES: Information and materials on Supreme Court cases can be obtained from the organizations listed below:

American Bar Association; Special Committee on Youth Education for Citizenship, 541 N. Fairbanks Avenue, Chicago, IL 60611-3314, (312) 988-5735.

Center for Civic Education (CCE), 5146 Douglas Fir Road, Calabasas, CA 91302, (818) 340-9320.

Center for Research and Development in Law- Related Education (CRADLE), Wake Forest University, School of Law; Box 7206, Reynolda Station, Winston-Salem, NC 27109, (918) 761-5872.

Constitutional Rights Foundation (CRF), 601 S. Kingsley Drive, Los Angeles, CA 90005, (213) 487-5590. Chicago Office of the CRF, Suite 1700, 407 South Dearborn, Chicago, IL 60605, (312) 663-9057.

National Institute for Citizenship Education in the Law (NICEL), 711 G Street, SE, Washington, DC 20003, (202) 546-6644.

Phi Alpha Delta Public Service Center (PAD), 7315 Wisconsin Avenue, Suite 325E, Bethesda, MD 20814, (301) 986-9406.

* Teach the *Brown v. Board*, *Brown II*, and *Cooper v. Aaron* Supreme Court cases in historical context so that the constitutional issue is cast within the social forces that generated it.

3) **If You Were A Supreme Court Justice...** (BT: Knowledge, Comprehension, Application, Analysis, Synthesis, Evaluation)*: Read the excerpts, discuss with class as if they were justices, and analyze the U.S. Supreme Court decision. How did the class decisions compare with the true decisions?

The *Brown v. Board of Education* decision did not dictate how schools should desegregate. Many systems did not want to desegregate and experimented with ways to get around the Court decision in *Brown* to take advantage of the vague mandate. Many lawsuits were filed by minority students, the NAACP, and the Justice Department to force school districts to comply with the *Brown* decision. The law, however, was not always clear.



U.S. Supreme Court Chamber, ca. 1904. Courtesy of the Library of Congress.

As groups or as individuals, read the following descriptions of school segregation cases that came before the Supreme Court of the United States after the *Brown v. Board of Education* decision. Taking into consideration what you know about the *Brown* case and the spirit in which it was written, how would you decide each one? After you discuss each case, read how the actual Supreme Court of the United States decided the case.

Key Excerpts from the Majority Opinion, *Brown II* (1956)

The decision was unanimous.

Chief Justice Earl Warren delivered the opinion of the Court

“These cases [all four cases of *Brown*] were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded. . . Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. . . .

While giving weight to . . . public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems.

. . . [T]he cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.”

Questions to Consider:

- * On the basis of this decision, explain what segregated school districts were required to do to comply with the 14th Amendment.
- * Assess the problems that the Court foresees with the desegregation process.
- * Do you conclude from this ruling that school districts must desegregate immediately? Why or why not?

Milliken v. Bradley (Detroit, MI, 1974)

This case concerned the segregation practices of the Detroit school district, which was the fifth largest in the nation in 1970. Several black students and the NAACP filed the suit against the Detroit school district alleging past and present discrimination in the Detroit system, particularly in the drawing of school district and attendance zone boundaries. Lower courts found that there was discrimination and ordered the system to desegregate. Because of white flight to the suburbs, the Detroit school district was largely black, making it difficult to truly desegregate. A plan was devised to include surrounding majority white school districts in the desegregation plan, even though those districts had not engaged in any illegal segregation. This was believed necessary because without their participation, there could not be a racial balance in Detroit's schools.

If you were a Supreme Court justice, would you approve the plan to desegregate multiple school districts even though only one school district had been found to have illegally discriminated?

Milliken v. Bradley Court Decision (1974)

In this decision, the Supreme Court blocked efforts for interdistrict, city-suburban desegregation remedies as a means to integrate racially isolated city schools. The Court prohibited such remedies unless plaintiffs could demonstrate that the suburbs or the state took actions that contributed to segregation in the city. Because proving suburban and state liability is often difficult, *Milliken* effectively shut off the option of drawing from heavily white suburbs in order to integrate city districts with very large minority populations.

Green v. County School Board of New Kent County, VA (1968)

States and counties adopted many different plans to desegregate their schools. In 1965, the New Kent County school board adopted a "freedom-of-choice plan," which essentially allowed students in the rural, residentially integrated district to choose which of the two schools they wished to attend- the formerly all-black Watkins School or the formerly all-white New Kent School. After three years of the new plan, no whites had elected to attend Watkins and only 115 blacks attended New Kent. The black school children in this case contended that the "freedom-of-choice plan" in practice operated to perpetuate the racially dual (segregated) school system. It placed the burden of desegregation on the black children's shoulders.

If you were a Supreme Court justice, would you rule this "freedom-of-choice plan" constitutional?

Green v. County School Board of New Kent County, VA Court Decision (1968):

In *Green*, the Supreme Court ruled that schools must dismantle segregated dual (or segregated) systems "root and branch" and that desegregation must be achieved with respect to facilities, staff, faculty, extracurricular activities, and transportation. Subsequently, courts used these "*Green* factors" as a guide in crafting desegregation plans. More importantly, however, the factors have become a standard by which to determine whether school districts have achieved "unitary status," or fully integrated schools.

All cases taken from Orfield, Gary, Susan E. Eaton, and the Harvard School Project on School Desegregation. *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education* (New York: The New Press, 1996).

*Swann v. Charlotte-Mecklenberg
Board of Education, NC (1971)*

The school district in question was a part-urban, part-rural district covering 550 square miles and serving 84,000 pupils in 101 schools. The school population was 29 percent black and those pupils were concentrated in one quadrant of Charlotte. Even after the *Brown v. Board of Education* decision, more than half of the black students attended schools without any white students or teachers. After the Green decision, the federal district court adopted a plan to scatter the highly concentrated African-American student population by transporting students. The plan would involve 13,000 students and require 100 new buses at a cost of millions of dollars.

If you were a Supreme Court justice, would you order the desegregation of this school district through a busing system to disperse students?

*Keyes v. School District No. 1,
Denver, CO (1973)*

This was one of the first cases dealing with school segregation outside of the South. In this case, the lower courts found that the Denver School District deliberately engaged in discrimination in the Park Hill section of the district by building schools in certain areas, gerrymandering student attendance zones, and by the excessive use of mobile classroom units, among other things. The petitioners in the case not only wanted the Park Hill section of the city to be desegregated, but wanted the courts to order desegregation of all segregated schools in the city of Denver, particularly the heavily segregated schools in the core city area, even though there was no evidence of a deliberate attempt to segregate students in all-black schools there.

If you were a Supreme Court justice, would you order the entire district desegregated, or just the Park Hill area?

*Swann v. Charlotte-Mecklenberg
Board of Education, NC Court Decision (1971):*

This decision struck down “racially neutral” student assignment plans that produced segregation by relying on existing residential patterns in the South. The Court in *Swann* ruled that desegregation must be achieved in each of a district’s schools to the greatest possible extent and approved busing as a means to do so.

*Keyes v. School District No. 1
Denver, CO Court Decision (1973)*

This was the first ruling on school segregation in the North and West, where there were no explicit statutes requiring segregation in the past. Under *Keyes*, school districts were responsible for policies that resulted in racial segregation in the school system, including constructing schools in racially isolated neighborhoods and gerrymandering attendance zones. Once intentional segregation was found on the part of the school board in a portion of the district, the whole district was presumed to be illegally segregated. The case also recognized Latino’s right to desegregation, as well as that of African-American students.

4) **Using the Media Coverage to Teach Landmark Cases (BT: Comprehension, Application, Analysis, Synthesis, Evaluation)** Most Americans learn about the Supreme Court from the media. However, only a handful of reporters have a full-time beat at the Court. Invite a print media reporter to the classroom to discuss how journalists view the Supreme Court. Conduct the following exercise by using a Supreme Court decision in teaching strategy number 3 (pages 14-15). Remember: The Supreme Court of the U.S. is the highest court in the land and the court of last resort. A decision by the Supreme Court is the law of the land. The Court, composed of a panel of justices, is asked to rule on a lower court’s decision. There is no trial, no witnesses are called, and the basic facts in a case are not disputed.

For this activity, you will be preparing and writing news reports. Your job is to:

* Listen to the preparation of the **petitioners** and **respondents**. Take notes on the most compelling statements or arguments (do not disturb the discussion of the group as you move through the groups - you are just observing).

* Write the lead paragraph for the daily news in your hometown. The first sentence could include: “Today, the U.S. Supreme Court will hear oral arguments in the case of...”

* Post the stories through a newspaper format, posters, etc.

Teacher Notes:

**Join the Little Rock Central High School
National Historic Site
Mailing List!**

Fill out the bottom and return to the following address:

Education Specialist
Little Rock Central High School National Historic Site
700 West Capitol Avenue, Suite 3527
Little Rock, AR 72201

501-374-3067 (phone)
501-301-7762 (fax)
Lea_Baker@nps.gov (e-mail)
www.nps.gov/chsc (web site)

To schedule a guided tour, please contact:

Little Rock Central High School National Historic Site
2125 Daisy L. Gatson Bates Drive
Little Rock, AR 72202

501-374-1957 (phone)
501-376-4728 (fax)
Chsc_visitor_center@nps.gov
www.nps.gov/chsc



NAME: _____

TITLE: _____

SCHOOL/INSTITUTION: _____

ADDRESS: _____

CITY: _____ COUNTY: _____

ZIP: _____

E-MAIL (OPTIONAL): _____

EXPERIENCE YOUR AMERICA

The National Park Service cares for special places saved by the American people so that all may experience our heritage.