

Unit 3: Law and Order – Courts and the American Legal System
Part I – Judicial Branch (Civics, Mr. McDonald)

Guided Reading Activity 8-1

The Federal Court System



Reading Tip

Before reading a section, skim the text. Try to organize the material by categorizing it or sequencing it. Write down your categories or sequence and add details from the text. Then go back and make any needed corrections as you read and after you read the section.

DIRECTIONS: Write an answer to each question in the space provided.

1. **Recalling** What did the Supreme Court decide in the *Ex parte Endo* case?

2. **Explaining** Why do we need courts?

3. **Defining** What is the goal of the U.S. court system?

4. **Defining** What is jurisdiction?

5. **Identifying** If a case involves the Constitution, which court hears the case?

6. **Comparing** What is the difference between exclusive jurisdiction and concurrent jurisdiction?

7. **Identifying** Which article of the Constitution lists the jurisdiction of federal courts?

Guided Reading Activity 8-2

How Federal Courts Are Organized



Reading Tip

Skim the section before you read it. Write down what you think you already know about the topics covered. After you read, go back and look at what you wrote. Were you right? What can you add to your notes?

DIRECTIONS: Write an answer to each question in the space provided.

1. **Identifying** How many district courts are in the United States?

2. **Defining** What are district courts?

3. **Explaining** What is the purpose of federal district courts?

4. **Explaining** What is the job of appeals courts?

5. **Identifying** Which court hears cases involving patent law or international trade?

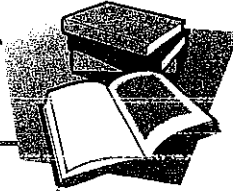
6. **Describing** What does it mean if a judge remands a case?

7. **Evaluating** Why is writing an opinion an important part of a court's decision?

8. **Recalling** How long may federal judges hold their positions?

9. **Defining** What is senatorial courtesy?

Releaching Activity 8



The Judicial Branch

The Constitution gives the judicial branch the important job of ensuring that our nation's laws are justly enforced. These laws must not interfere with the rights the Constitution guarantees. Federal courts have exclusive jurisdiction over federal cases, which fall into eight categories. The 50 separate state court systems exist alongside the federal court system.

DIRECTIONS: Making a Chart There are three levels of courts in the federal court system. Complete the chart below by writing the letter of the characteristics that correspond to each level of federal court. Some choices will be used more than once.

	U.S. District Courts	U.S. Courts of Appeals	U.S. Supreme Court
Number of Courts			
Number of Judges/Justices			
Type of Jurisdiction			
Type of Cases			
Type of Court Decisions			
Jury Trials or Panel of judges			

Number of Courts

- A. 13
- B. 94
- C. 1

Number of Judges/Justices

- D. 9 justices
- E. more than 550
- F. each court—between 6 to 27 judges

Type of Jurisdiction

- G. original
- H. appellate

Type of Cases

- I. criminal
- J. civil

Type of Court Decisions

- K. defendant's guilt or innocence
- L. for plaintiff or defendant in civil cases
- M. uphold the original decision, reverse that decision, or remand the case

Jury Trials or Panel of Judges

- N. jury
- O. panel of judges/justices

Guided Reading Activity 8-3



The United States Supreme Court



Before reading each section of the text, write down a prediction. For example, "I think that this section will describe the duties of Supreme Court justices." After you read, review your prediction. Were you correct?

DIRECTIONS: Write an answer for each question in the space provided.

1. **Explaining** How are Supreme Court justices selected?

2. **Identifying** Who makes up the Supreme Court?

3. **Identifying** Who was the first African American to sit on the Supreme Court?

4. **Defining** What does "constitutional" mean? What happens if a law is found to be unconstitutional?

5. **Explaining** What important power did the *Marbury* case establish?

6. **Summarizing** How can Congress get around a Supreme Court ruling?

7. **Inferring** How can the president check the power of the Supreme Court?



Guided Reading Activity 8-4



Deciding Cases at the Supreme Court



Reading Tip

Instead of stopping each time you don't understand a part of the reading, read straight through a section of the text. Then go back and reread the parts you didn't understand the first time.

DIRECTIONS: Write an answer to each question in the space provided.

- 1. Recalling** When is the Supreme Court in session?

- 2. Identifying** How many justices have to agree before the Court will accept a case?

- 3. Defining** What is a Court "docket"?

- 4. Explaining** Why do lawyers prepare briefs for the Court?

- 5. Comparing** What is the difference between a majority opinion, a dissenting opinion, and a concurring opinion?

- 6. Concluding** Why must the Supreme Court print its opinions?

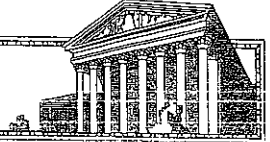
- 7. Concluding** What are four reasons behind Supreme Court decisions?

- 8. Summarizing** Why are precedents important in Supreme Court decision making?





Supreme Court Case Study I



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.

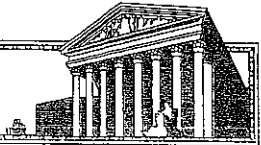


Questions

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 5



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 5 (continued)



Taney next examined the question of whether Scott had gained his freedom when he entered the Upper Louisiana Territory. The Chief Justice attacked the Missouri Compromise as an unconstitutional exercise of congressional authority. Congress cannot forbid a state or a territory from making slavery legal. Taney explained that as long as slavery is authorized by the Constitution, Congress cannot alter the right of a person to own slaves or any other kind of property. In viewing the Missouri Compromise as unconstitutional, the Court determined that Scott's status did not change when he entered free territory. The Court held that Scott had been a slave in Illinois and had returned to Missouri as a slave. On his return to Missouri, he became subject to Missouri law alone. Taney ordered the suit dismissed for lack of jurisdiction.

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

Justice Benjamin R. Curtis dissented. Curtis noted that free African Americans were among those who had voted to ratify the Constitution in a number of states. Nothing in the Constitution stripped these free African Americans of their citizenship. Curtis maintained that "under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States . . ."

The Court's decision is one example of judicial power being exercised in favor of racial segregation. It is also the first time that a major federal law was ruled unconstitutional.



***** Questions *****

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

1. What was the relationship between the Missouri Compromise and the Court's decision in the *Dred Scott* case?
2. What effect do you think the Court's decision in the *Dred Scott* case had on the efforts of many Americans to end slavery?
3. If you were a plantation owner in the South who held many slaves, how would you have reacted to the *Dred Scott* decision?
4. What did the Court say about enslaved African Americans' position in the United States?
5. Why is the *Dred Scott* decision regarded as one of the most important cases in the history of the Supreme Court?



Supreme Court Case Study 9



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 9 *(continued)*



Laws requiring segregation “do not necessarily imply the inferiority of either race to the other . . .” The majority noted that this was the “underlying fallacy” of Plessy’s case. Just as valid under the Fourteenth Amendment would be a similar law enacted by an African American-controlled legislature with respect to whites or other races.

The Court ruled, then, that the matter ultimately depended on whether Louisiana’s law was “reasonable.” Segregation laws “have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police powers.” In such matters, a legislature is free to take into account “established usages, customs, and traditions of the people,” as well as “the preservation of public peace and good order.”

Finally, the Court rejected the notion that “social prejudices may be overcome by legislation.” Brown maintained, “If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane.”

The Court, in effect, enunciated a doctrine that came to be called the separate-but-equal principle. If African Americans saw this as “a badge of inferiority,” it was solely “because the colored race chooses to put that construction upon it.”

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

Justice John Marshall Harlan entered a vigorous dissent from the majority’s decision. He “regretted that this high tribunal . . . has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their rights solely upon the basis of race.” He saw segregation on racial lines as “a badge of servitude wholly inconsistent with the civil freedom and equality before the law established by the Constitution . . . The thin disguise of ‘equal’ accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done.” Harlan saw the Constitution as “color-blind, and neither knows nor tolerates classes among citizens.”

The separate-but-equal principle was finally overturned in a series of civil rights decisions of the Court in the 1950s, most notably in *Brown v. Board of Education*.



Questions *****

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

1. Explain how the Supreme Court justified the practice of segregating railroad passengers in Louisiana by race.
2. What is the meaning of the separate-but-equal principle?
3. On what grounds did Justice Harlan criticize the majority’s ruling?
4. Why do you think Plessy based his appeal in part on the Thirteenth Amendment?
5. What do you think was the effect of the *Plessy* decision on the nation, especially on the Southern states?

Supreme Court Case Study 24



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 24 (continued)



The question of racial prejudice “merely confuses the issue,” said the Court. The true issues are related to determining “military dangers” and “military urgency.” These issues demanded that citizens of Japanese ancestry be relocated by the military authorities. Black observed, “Congress, reposing its confidence in this time of war in our military leaders. . . , determined that they should have the power to do just this. . . . The need for action was great, and the time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.”

***** Dissenting Opinions *****

Justices Frank Murphy and Robert H. Jackson wrote separate dissents. Murphy called the Court’s decision “legalization of racism.” He objected particularly on the grounds that the Japanese Americans affected had been deprived of equal protection of the law as guaranteed by the Fifth Amendment. Further, Murphy wrote, as no provision had been made for hearings “this order also deprives them of all their constitutional rights to procedural due process.” He saw no reason why the United States could not have done as Great Britain had done earlier in hearings during which about 74,000 German and Austrians residing in Britain were examined. Of these, only 2,000 had been interned.

In his dissent, Justice Jackson conceded that there might have been reasonable grounds for the internment orders. But, he wrote, “Even if they were permissible military procedures, I deny that it follows that they are constitutional. . . . A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution.”

After the war, many people realized the injustice of the Court’s decision. Finally, in 1988, Congress issued a formal apology to all internees and voted to give every survivor of the camps \$20,000 in reparation.

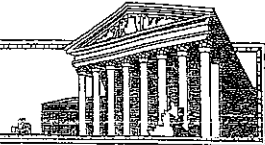


Questions *****

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

1. On what constitutional basis did the Supreme Court deny Korematsu’s appeal?
2. If you had been a native-born Japanese American in 1942, what do you think would have been your reaction to the internment order?
3. Justice Black became known as one of the staunchest defenders of the rights provided in the first ten amendments. Is his decision in the *Korematsu* case in keeping with his reputation?
4. What was the constitutional basis of Justice Murphy’s dissent?
5. The Court’s decision in the *Korematsu* case has been described as involving “the most alarming use of military authority in our nation’s history.” Do you think this description of the case is justified?

Supreme Court Case Study 29



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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Supreme Court Case Study 29 (continued)

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

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

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

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

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



Questions

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

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

Supreme Court Case Study 48



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.

An 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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(continued)

Supreme Court Case Study 48 (continued)



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

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

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

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

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



Questions *****

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

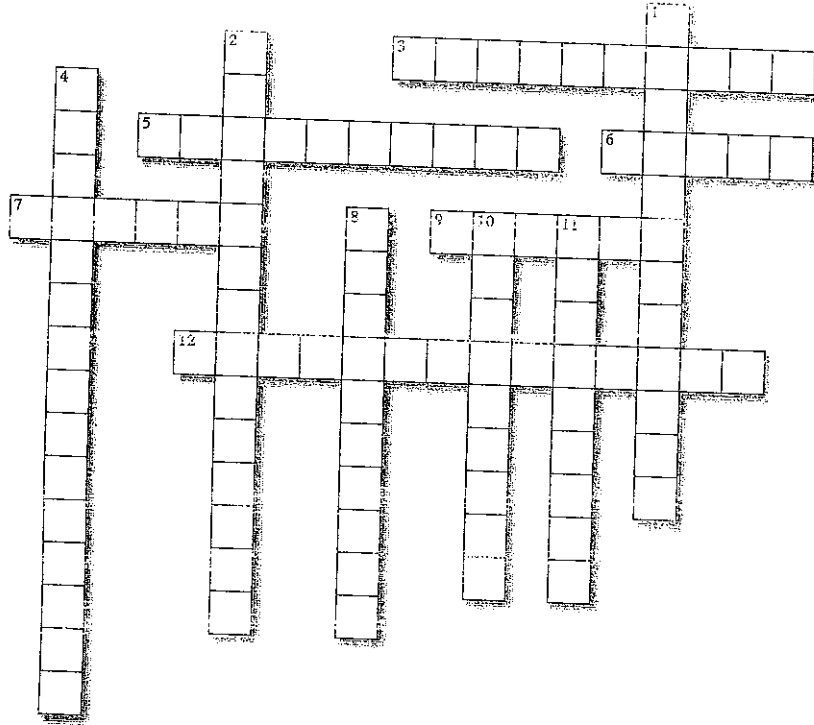
1. In what way did the Court break new ground in its ruling in the *Roe* case?
2. Explain the role of the state in abortion matters under the Court's ruling.
3. How did medical science play a role in the Court's ruling?
4. Where did Justice Rehnquist stand on the right to abortion?
5. Justice Rehnquist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

Vocabulary Activity 8



The Judicial Branch

DIRECTIONS: Complete the crossword puzzle by spelling out the terms called for in the clues below.



CHAPTER 6

ACROSS

- 3 opinion written by a Supreme Court justice who votes against the final decision
- 5 type of jurisdiction for cases that can be decided by either state or federal courts
- 6 written argument outlining one side's position on a case
- 7 calendar of the Court
- 9 appeals court's decision to send a case back to the lower court to be tried again
- 12 principle allowing the Supreme Court to strike down laws as unconstitutional

DOWN

- 1 guiding principle for courts that makes decisions predictable and consistent
- 2 It is the Supreme Court's job to decide whether laws are _____.
- 4 It outlines the facts of the cases, announces the ruling, and explains the Court's reasoning.
- 8 decision written by a Supreme Court justice who agrees with the finding but for different reasons
- 10 type of jurisdiction for cases that only federal courts can decide
- 11 these courts have the authority to try a case already heard in a lower court

