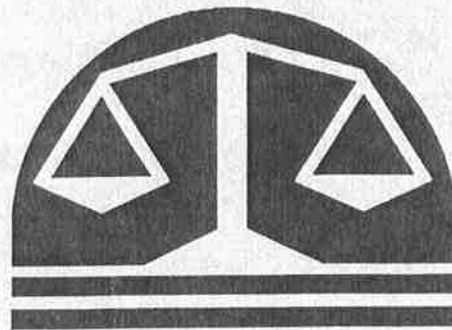


# BROWN V. THE TOPEKA BOARD OF EDUCATION



KANSAS BAR FOUNDATION

**LAW RELATED EDUCATION**

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## The judicial Power of the United States...

### LANDMARK DECISIONS OF THE SUPREME COURT OF THE UNITED STATES

Since shortly after the beginnings of our nation over 200 years ago, the Supreme Court of the United States has been a pivotal part of our self-government. The U. S. Supreme Court is the most powerful judicial body in the world. It is in that unique position by design. Our revolutionary system of checks and balances and separation of powers, including a separate and equal judiciary with powers of judicial review, has proven to be a successful, if not always smooth way to solve an enormous problem confronted by the founders. That challenge was how to have a government strong enough to protect us and encourage prosperity and happiness, while keeping that same government under control so it could not become tyrannical.

During the 20<sup>th</sup> century there were many landmark U. S. Supreme Court decisions that greatly influenced the direction our society has taken. These materials include edited recreations of oral arguments presented to the Court on three landmark cases and supplemental written materials. The Kansas Bar Association and many lawyers and judges have worked together to create this collection of videos and written materials to help students and others better understand these important decisions.

The cases we present are *Brown v. The Topeka Board of Education* (1954), *New York Times Co. v. Sullivan* (1964) and *Miranda v. Arizona* (1966). These cases have had a great impact on race relations, freedom of speech, and the rights of persons accused of crimes, respectively, in America.

The actual oral arguments made to the Supreme Court were much longer than our edited versions. We believe the important elements of the arguments have been preserved and are more easily understood in the form used. We hope the written materials we have included will help the classroom teacher explain the important issues involved. We will add other landmark case arguments and materials in the future if this approach proves to be a valuable and useful tool for teachers.

## SUMMARY OF BROWN V. THE TOPEKA BOARD OF EDUCATION (1954)

Called by some “The Case of the Century,” *Brown v. The Topeka Board of Education* was a giant step forward in bringing equal rights to African-Americans. Brown was the lead name in the Kansas case, which was brought with four other cases that were heard by the United States Supreme Court on the issue of whether public schools could be segregated on the basis of race.

The Brown decision was the culmination of a legal campaign by the National Committee for the Advancement of Colored People, through its Legal Defense Fund, to reverse the 1896 decision of *Plessy v. Ferguson*. *Plessy* had held that public accommodations, a train in the *Plessy* case, could be racially segregated as long as there were provided “separate but equal” facilities for both races. As a practical matter, the separate facilities provided for blacks were often not equal, and this was certainly true for most segregated schools.

Thurgood Marshall, the lead attorney for the Brown plaintiffs, who would later become the first black U. S. Supreme Court justice, and his associated counsel, argued that racially segregated facilities, by their very nature, could not be equal. They appealed to common sense and some social science studies to support their arguments. They specifically argued that the Fourteenth Amendment to the U. S. Constitution, which was passed after the Civil War to protect the rights of blacks, was violated by racial segregation of schools.

John W. Davis and the other attorneys representing the states supporting segregation of schools made strong arguments that the drafters of the Fourteenth Amendment did not intend to prohibit segregated schools and that the weight of Supreme Court precedent supported their position.

Due to its complexity, the case was argued twice. Chief Justice Fred Vinson died and was replaced by Earl Warren between the arguments. This may have been a key event as it appeared that Vinson was willing to allow segregated schools to continue and Warren opposed them. After re-argument those justices who initially opposed segregation were able to convince all nine justice to join in a unanimous decision striking down school segregation. A united court opinion was important in helping to convince the nation that the decision was correct.

There was massive resistance to the decision in the South and elsewhere and the desegregation of schools has often been difficult and not entirely successful. But Brown clearly signaled that, at least in the nation’s highest court, discrimination against citizens based on race would not be tolerated.

Students and teachers may wish to visit the *Brown v. Board* historical site in Topeka, which has many displays and programs available to help explain the case. The books “Simple Justice,” by Richard Kluger and “A Time To Lose,” by Paul Wilson, are suggested for those wanting a more detailed telling of this very important story.

## QUESTIONS AND ANSWERS TO ACCOMPANY BROWN V. BOARD OF EDUCATION

Q. What U. S. constitutional amendment did the Brown plaintiffs claim gave the U. S. Supreme Court the power to declare racial segregation of public schools in the United States unconstitutional ?

A. The 14<sup>th</sup>.

Q. How many cases were consolidated together to constitute the case known as Brown v. Board of Education ?

A. Five.

Q. What was the name of the lead attorney for the Brown plaintiffs who later became the first black United States Supreme Court justice ?

A. Thurgood Marshall.

Q. What was the name of the 1896 U. S. Supreme Court decision which had held that it did not violate the 14<sup>th</sup> Amendment to racially segregate public accommodations as long as they were "separate but equal?"

A. Plessy v. Ferguson.

Q. The Brown case was argued twice. Between the two arguments Chief Justice Fred Vinson died. Who replaced him as Chief Justice ?

A. Earl Warren

Q. After the court ruled that racial segregation of public schools was unconstitutional how fast did the court say that segregation should be eliminated ?

A. "With all deliberate speed."

Q. What was the vote on the Supreme Court to declare racial segregation of public school to be unconstitutional ?

A. 9-0.

Q. What strong arguments did the lawyers representing the states who wished to keep racial segregation of the schools have to challenge the argument that the 14<sup>th</sup> Amendment made racial segregation of public schools unconstitutional ?

A. There was evidence that many who had helped pass the 14<sup>th</sup> Amendment appeared to have no objection to racial segregation in public schools, and previous U. S. Supreme Court decisions seemed to support the position.

## GLOSSARY

The Bill of Rights--The first ten amendments to the constitution of the United States which were submitted to the American people for consideration and became effective in 1791. The Bill of Rights specifically enumerate rights of the people that could not be violated by the American federal government.

Black Letter Law--The majority rule. The general consensus on a legal issue.

Case or controversy--The phrase which indicates that there is an actual legal dispute over which the court called upon to rule can exercise jurisdiction. Courts are to only decide real cases and not give mere advisory opinions on legal questions.

Checks and Balances--A theory in American government that different branches of government in the United States, besides performing certain tasks, also help keep the other branches from exceeding their rightful authority.

Concurrence--A decision by a judge which agrees with the outcome of a case but which suggests another basis for the decision.

Constitution--The system of fundamental principles according to which a nation, state, or other body is governed.

De facto racial segregation--Racial segregation that occurs due to things such as housing patterns and not because segregation is required by law.

De jure racial segregation--Racial segregation that occurs because it is required by law.

Defamation, defamatory--Synonymous with libel, slander, and injurious to reputation.

Words which produce a perceptible injury to the reputation of another. Defamation per se refers to words which by their nature and without proof of damage are held to injure the reputation of a person if believed.

Directed verdict--A full or partial verdict in a case entered by the judge because the evidence presented can legally support only the verdict directed by the judge.

Dissent--A disagreement by one or more of the judges of a court with the decision arrived at by the majority of the judges on a case.

Exclusionary rule--A rule whereby evidence that is gained in violation of law by the state may be excluded from evidence in prosecution of the person whose rights were violated.

Fifteenth Amendment—One of the “Civil War Amendments” (See also the Thirteenth and Fourteenth Amendments) which were passed to protect the rights of newly freed black slaves. The Fifteenth Amendment dealt with the right to vote.

Fifth Amendment—A provision of our Bill of Rights which deals with a number of rights we have concerning criminal prosecutions and other government attempts to deprive persons of life, liberty or property.

First Amendment--The first amendment to the United States Constitution in the Bill of Rights. It deals with freedom of religion, speech, press, assembly and the right to peaceably assemble and petition the government for a redress of grievance (receive satisfaction for an injury sustained).

Fourteenth Amendment--One of the "Civil War Amendments," (See also the Thirteenth and Fifteenth Amendments) it was enacted in 1868 and, among other things, forbade the individual states from denying U.S. citizens basic rights, such as their privileges and immunities as citizens. It also specifically forbade any state depriving any person of life, liberty or property, without due process of law, or denying equal protection of the laws to any person within its jurisdiction.

Fourth Amendment—One of the provisions in our Bill of Rights which deals with the right of the people to be free of unreasonable searches and seizures.

Incorporation doctrine--The constitutional theory that the Fourteenth Amendment "incorporates" many, if not all, of the rights in the Bill of Rights so that they also apply to protection from actions of State governments.

Jurisdiction—The authority by which courts can hear and decide cases.

Libel--Written defamation. Seditious libel was defined in English law as words intended to cause "disaffection against the king or the government and constitution as by law established, or either house of parliament, or the administration of justice . . ." Laws against "seditious libel" were intended to discourage any criticism of the government.

James Madison--The fourth president of the United States who has been called the "Father of the United States Constitution" for his heavy involvement in drafting it and obtaining its ratification. He was similarly a main draftsman of the Bill of Rights and the Virginia Resolutions, which opposed the Sedition Act of 1798.

Magna Carta--"The great charter." Forced on King John of England by the English barons in 1215, it contained many provisions to secure rights in many important areas and is justly regarded as the foundation of English constitutional liberty.

Malice--The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict some kind of injury, or under circumstances where the law will imply an evil intent.

*Marbury v. Madison*--An 1803 U.S. Supreme Court decision which established what we call "judicial review." In the decision, written by Chief Justice John Marshall, the principle was declared that the Supreme Court of the United States has the authority to interpret what the U.S. Constitution means, even if this interpretation differs from that held by the President, the Congress of the United States, or a state government.

Precedent--An adjudicated case or decision of a court that is believed to provide a basis for deciding an identical or similar question of law. (See, stare decisis.)

Qualified Privilege--Also known as a conditional privilege; not an absolute privilege. In libel and slander law a qualified privilege allows full freedom to speak or write, even if there are errors in what is presented, as long as certain conditions are met.

Sedition Act of 1798--A federal law passed in the United States which allowed for the punishment of newspaper editors and others who severely criticized the U.S. government and its officials. The Act expired in 1801 after a number of persons had been convicted under it. President Thomas Jefferson pardoned all who had been convicted under it. The act was probably unconstitutional.

Separate but equal--The phrase used in the decision of Plessy v. Ferguson (1897) where the Supreme Court of the United States said certain public facilities and services could be segregated by race as long as they were separate but equal. However, the separate facilities provided were usually not equal. This was struck down as it applied to schools by Brown v. Board of Education (1954).

Separation of Powers--Like checks and balances, a theory of American government that the executive, legislative, and judicial branches are "co-equal" branches of government, each with its own powers that cannot be breached by the other branches. Exactly what the separate powers are is sometimes not clear.

Sixth Amendment—A provision of our Bill of Rights which allows a person to have a number of rights when accused of a crime, including the right to have assistance of counsel.

Stare decisis—A Latin term meaning to abide by, or adhere to, decided cases. (See, precedent.)

Thirteenth Amendment—One of the “Civil War Amendments,” (See also the Fourteenth and Fifteenth Amendments) passed to protect the rights of newly freed black slaves. The Thirteenth Amendment abolished slavery.

The Virginia Resolutions--Formal arguments, largely drafted by James Madison, that challenged the Sedition Act of 1798 as being an unconstitutional violation of the First Amendment.

Writ of Certiorari--An order by which the Supreme Court of the United States directs that a case in a lower court be sent to the Supreme Court for consideration.

John Peter Zenger (1697-1749)--A New York newspaper publisher who was tried for seditious libel in 1735 for his criticism of the governor of New York who had been appointed the King. He was acquitted by a jury who refused to convict him although he

probably had violated a very strict British law which severely limited the criticism of royal authorities.