

Brown v. Board of Education (1954)

"We conclude that the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

—Chief Justice Earl Warren



Chicago Defender, June 12, 1954

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TABLE OF CONTENTS

Resources

- 2 [About landmarkcases.org](#)
- 3 [Teaching Recommendations Based on Your Time](#)
- 4 Background Summary and Questions
 - [Reading Level](#)
 - [Reading Level](#)
 - [Reading Level](#)
- 12 [Diagram of How the Case Moved Through the Court System](#)
- 13 Biographies:
[Earl Warren](#)
[Thurgood Marshall](#)
- 15 [Key Excerpts from the Majority Opinion *Brown I*](#)
- 17 [Key Excerpts from the Majority Opinion *Brown II*](#)

[Full Text of the Majority Opinion \(online only\)](#)

Activities

The Case

- 19 [Does Treating People Equally Mean Treating Them the Same?](#)
- 22 [Classifying Arguments for Each Side of the Case](#)
- 23 [How a Dissent Can Presage a Ruling: The Case of Justice Harlan](#)
- 26 [Immediate Reaction to the Decision: Comparing Regional Media Coverage](#)
- 28 [Political Cartoon Analysis](#)

After The Case

- 30 [All Deliberate Speed?](#)

[Case Study of Integration - Little Rock \(online only\)](#)
- 32 [If You Were a Supreme Court Justice](#)
- 35 [Was the Promise of *Brown* Fulfilled?](#)

About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

Teaching Recommendations Based on Your Time

If you have one day . . .

- Begin with the activity titled "[Does Treating People Equally Mean Treating Them the Same?](#)"
- Read the "Background" as a class. Have students identify the arguments for each side and predict the outcome.
- For homework, have students read the "[Key Excerpts from the Majority Opinion](#)" and answer the accompanying questions.

If you have two days . . .

- Complete all activities for the first day.
- Next, complete the activity titled "[Classifying Arguments in the Case.](#)"
- On the second day, read and discuss the Key Excerpts from the Majority Opinion.
- Complete the activity "[How a Dissent Can Presage a Ruling: The Case of Justice Harlan.](#)"

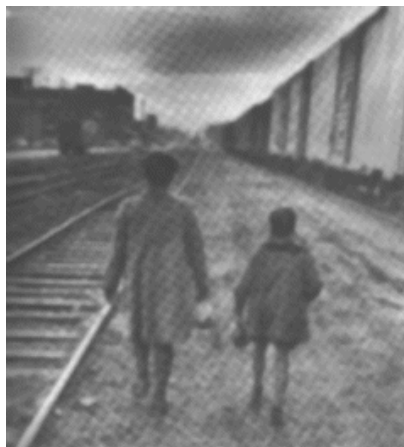
If you have three days . . .

- Complete all activities suggested for the first and second days.
- On the third day, have students analyze the media coverage of the decision and the political cartoons.
- For homework, have students complete the activity titled "[All Deliberate Speed?](#)"

If you have four days . . .

- Complete all the activities for the first and second days.
- On the fourth day, students should complete the Web-based activity "[Case Study of Integration - Little Rock.](#)" You could discuss the activity the students completed for homework, "All Deliberate Speed" and then complete "[If You Were a Supreme Court Justice . . .](#)"

Background Summary and Questions • • •



Carl Iwasaki, Life Magazine © Time, Inc.

In the early 1950s, Linda Brown was a young African American student in the Topeka, Kansas school district. Every day she and her sister, Terry Lynn, had to walk through the Rock Island Railroad Switchyard to get to the bus stop for the ride to the all-black Monroe School. Linda Brown tried to gain admission to the Sumner School, which was closer to her house, but her application was denied by the Board of Education of Topeka because of her race. The Sumner School was for white children only.



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Under the laws of the time, many public facilities were segregated by race. The precedent-setting *Plessy v. Ferguson* case, which was decided by the Supreme Court of the United States in 1896, allowed for such segregation. In that case, a black man, Homer Plessy, challenged a Louisiana law that required railroad companies to provide equal, but separate, accommodations for the white and African American races. He claimed that the Louisiana law violated the Fourteenth Amendment, which demands that states provide "equal protection of the laws." However, the Supreme Court of the United States held that as long as segregated facilities were qualitatively equal, segregation did not violate the Fourteenth Amendment. In doing so, the Court classified segregation as a matter of social equality, out of the control of the justice system concerned with maintaining legal equality. The Court stated, "If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane."

At the time of the Brown case, a Kansas statute permitted, but did not require, cities of more than 15,000 people to maintain separate school facilities for black and white students. On that basis, the Board of Education of Topeka elected to establish segregated elementary schools. Other public schools in the community were operated on a nonsegregated, or unitary, basis.

The Browns felt that the decision of the Board violated the Constitution. They sued the Board of Education of Topeka, alleging that the segregated school system deprived Linda Brown of the equal protection of the laws required under the Fourteenth Amendment.

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

—Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution

Brown v. Board of Education



Thurgood Marshall, an attorney for the National Association for the Advancement of Colored People (NAACP), argued the Brown's case. Marshall would later become a Supreme Court justice.

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The three-judge federal district court found that segregation in public education had a detrimental effect upon black children, but the court denied that there was any violation of Brown's rights because of the "separate but equal" doctrine established in the Supreme Court's 1896 *Plessy* decision. The court found that the schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. The Browns appealed their case to the Supreme Court of the United States, claiming that the segregated schools were not equal and could never be made equal. The Court combined the case with several similar cases from South Carolina, Virginia, and Delaware. The ruling in the *Brown v. Board of Education* case came in 1954.

Background Summary and Questions • • •

Questions to Consider:

1. What right does the Fourteenth Amendment give citizens?
2. What problems did Linda Brown encounter in Topeka that eventually resulted in this case?
3. What precedent did the *Plessy v. Ferguson* (1896) ruling establish? How was that precedent related to *Brown*?
4. This case is based on what the concept of "equality" means. What are the conflicting points of view on this concept in this case?

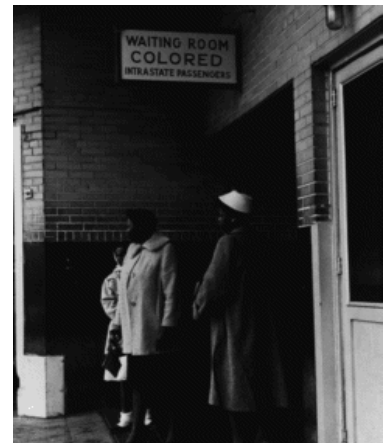
Background Summary and Questions • •



Carl Iwasaki, Life Magazine © Time, Inc.

In Topeka, Kansas in the 1950s, schools were segregated by race. Each day, Linda Brown and her sister, Terry Lynn, had to walk through a dangerous railroad switchyard to get to the bus stop for the ride to their all-black elementary school. There was a school closer to the Brown's house, but it was only for white students.

Topeka was not the only town to experience segregation. Segregation in schools and other public places was common throughout the South and elsewhere. This segregation based on race was legal because of a landmark Supreme Court case called *Plessy v. Ferguson*, which was decided in 1896. In that case, the Court said that as long as segregated facilities were equal in quality segregation did not violate the Constitution. However, the Browns disagreed. Linda Brown and her family believed that the segregated school system did violate the Constitution. In particular, they believed that the system violated the Fourteenth Amendment guaranteeing that people will be treated equally under the law.



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No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

—Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution



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The National Association for the Advancement of Colored People (NAACP) helped the Browns. Thurgood Marshall was the attorney who argued the case for the Browns. He would later become a Supreme Court justice.

The case was first heard in a federal district court, the lowest court in the federal system. The federal district court decided that segregation in public education was harmful to black children. However, the court said that the all-black schools were equal to the all-white schools because the buildings, transportation, curricula, and educational qualifications of the teachers were similar; therefore the segregation was legal.

The Browns, however, believed that even if the facilities were similar, segregated schools could never be equal to one another. They appealed their case to the Supreme Court of the United States. The Court combined the Brown's case with other cases from South Carolina, Virginia, and Delaware. The ruling in the *Brown v. Board of Education* case came in 1954.

Background Summary and Questions • •

Questions to Consider:

1. What does it mean to have segregated schools?
2. What right does the Fourteenth Amendment give citizens?
3. How did the case of *Plessy v. Ferguson* (1896) affect segregation?
4. It is important for this case to determine what "equal" means. What do you think equality means to the Browns? What do you think equality means to the Board of Education of Topeka?

Background Summary and Questions •

Vocabulary

to segregate (segregation)

Define:

Use in a sentence:

facility (facilities)

Define:

Use in a sentence:

legal (illegal)

Define:

Use in a sentence:

to sue (sued)

Define:

Use in a sentence:

district court

Define:

Use in a sentence:

to appeal (appealed)

Define:

Use in a sentence:



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In the early 1950s, many students went to different schools because of their race. White children went to one school and black children went to a different school. This system was called *segregation*. During this time, segregation was legal. Many other public *facilities* were also segregated.

Segregation was legal because of past court decisions. In 1896, the Supreme Court of the United States decided a case called *Plessy v. Ferguson*. In this case, the Court said that segregation was legal when the facilities for both races (trains, bathrooms, restaurants, etc.) were similar in quality.

Under segregation, all-white and all-black schools sometimes had similar buildings, busses, and teachers. Sometimes, the buildings, busses, and teachers for the all-black schools were lower in quality. Often, black children had to travel far to get to their school. In Topeka, Kansas, a black student named Linda Brown had to walk through a dangerous railroad to get to her all-black school. Her family believed that segregated schools should be *illegal*.

The Brown family sued the school system (Board of Education of Topeka). The district court said that segregation hurt black children. However, the *district court* also said the schools were equal. Therefore, the segregation was legal.

The Browns disagreed with the decision. They believed that the segregated school system did violate the Constitution. They thought that the system violated the Fourteenth Amendment guaranteeing that people will be treated equally under the law.

No State shall ... deny to any person within its jurisdiction the equal protection of the laws.

—Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution

The Browns *appealed* the case to a higher court. The Supreme Court of the United States agreed to hear the case.



Carl Iwasaki, Life Magazine © Time, Inc.

Background Summary and Questions •

Questions to Consider:

1. What does it mean to have segregated schools?
2. What right does the Fourteenth Amendment give citizens?
3. How did the case of *Plessy v. Ferguson* (1896) affect segregation?
4. It is important for this case to determine what "equal" means. What do you think equality means to the Browns? What do you think equality means to the Board of Education of Topeka?

Diagram of How the Case Moved Through the Court System

Supreme Court of the United States (1955)
Declared that schools should be desegregated with "all deliberate speed."

The case was reargued to determine how the violation of the Fourteenth Amendment should be fixed.



Supreme Court of the United States (1954)
Ruling determined that segregated schools are "inherently unequal" and violate the Fourteenth Amendment.

Court also rules on the companion case, [Bolling v. Sharpe](#), which holds the District of Columbia segregated schools violate the Fifth Amendment.

Brown case is combined with others from Virginia, South Carolina, and Delaware and bypasses the circuit court.



U.S. District Court for the District of Kansas (1951)

The court found that segregation has a negative effect on black children, but it decided that segregated schools did not violate the Fourteenth Amendment because facilities, transportation, teachers, and other factors were equal.

Landmark Case Biography Earl Warren (1891–1974)

Earl Warren was Chief Justice during one of the most turbulent times in our nation's history. During his tenure, the Court dealt with controversial cases on civil rights and civil liberties and the very nature of the political system.

Warren was born in Los Angeles, but grew up in Bakersfield, California where his father worked as a railroad car repairman. Bakersfield was a rough and tumble frontier town where Warren recalled seeing "crime and vice of all kinds countenanced by a corrupt government." He worked on the railroad himself in the summer, which left him with knowledge about working people and their problems, as well as with the anti-Asian racism then rampant on the West Coast.

Warren attended the University of California at Berkeley and its law school. After serving a brief stint in the army during World War I, he worked for the Alameda County district attorney's office for eighteen years. During that time he proved to be a tough prosecutor, but he was also sensitive to the rights of the accused and personally fought to secure a public defender for people who could not afford one. A 1931 survey concluded that Earl Warren was the best district attorney in the United States.

From 1938 to 1942, Earl Warren was attorney general of California and was then elected governor. Warren is remembered mostly for his role in demanding the evacuation of Japanese from the West Coast. Though the action seemed inconsistent with his future decisions, Warren maintained during his lifetime that it seemed like the right action at the time. In his memoirs, however, he acknowledged error.

Warren served three terms as governor of California and played a key role in Dwight Eisenhower's nomination for the presidency in 1952. Eisenhower rewarded Warren with the Chief Justice position in 1953. Warren took over a court that was deeply divided between those justices who advocated a more active role for the court and those who supported judicial restraint. He proved skillful at "massing the court" and securing consensus as is evidenced by the unanimous decision in the *Brown v. Board of Education* case, one of the first cases that he had to deal with as Chief Justice.

The *Brown* case was the first in a long string of judgments that marked a more active role for the Supreme Court of the United States in American life. The Warren Court took on the defense of individual rights as no court before it. Warren considered this a proper role for the courts; he never saw the role of the judiciary as passive, or somehow inferior to the other two branches of government.

Warren's opinion in *Brown* has been criticized for its lack of constitutional analysis. In *Brown* the key finding does not appeal to precedent or to the history of the Fourteenth Amendment. Rather there is an emphasis on common sense, justice, and fairness that can be seen in Warren's reliance on social science and psychological research. Warren was not antigovernment, but he believed that the Constitution prohibited the government from acting unfairly against the individual. In taking this position, he carved out a powerful position for the Court as a protector of civil rights and civil liberties.

Online Activity

Read letters written to Chief Justice Warren by other justices remarking on his *Brown v. Board of Education* decision. What do the letters reveal about Justice Warren, his decision in the *Brown* case, and his relationship with the other justices? Why was a unanimous decision in the *Brown* case so important?

Letters:

Landmark Case Biography Thurgood Marshall (1908–1993)

Thurgood Marshall was the great-grandson of a slave and the son of a dining car waiter and a schoolteacher. He was the first African American justice of the Supreme Court of the United States. He studied law at Howard University Law School in Washington, D.C. under Charles Hamilton Houston, who has been credited with transforming Howard into a laboratory for civil rights litigation.

Marshall graduated first in his class from Howard in 1933, and he was drafted by Houston to help with the civil rights battles then being waged by the National Association for the Advancement of Colored People (NAACP). He first served as special counsel for the NAACP and then as the 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. In one of his most famous cases and victories, he represented Linda Brown in the *Brown v. Board of Education* (1954) case.

In 1967, President Johnson nominated Marshall to be associate justice of the Supreme Court of the United States. He served in this position until 1991. During his tenure, Marshall was a strong advocate for equal protection of the law. He was an ardent supporter of affirmative action and probably influenced court decisions that upheld the use of affirmative action in some cases. Marshall believed that the Constitution was inherently defective in its acceptance of slavery and gave much credit to those who "refused to acquiesce in outdated notions of 'liberty,' 'justice,' and 'equality,' and who worked to better them. The true miracle of the Constitution was not the birth of the Constitution, but its life."



What message was the artist of this cartoon trying to convey about the life of Thurgood Marshall?

Key Excerpts from the Majority Opinion, *Brown I*

The decision was unanimous.

Chief Justice Earl Warren delivered the opinion of the Court.

. . . Here . . . there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications, and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of these cases. We must look instead to the effect of segregation itself on public education. . . .

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . . .

To separate them [children in grade and high schools] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone. . . . Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. . . .

We conclude 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 other similarly situated . . . are . . . deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

After the decision in *Brown* was reached, the Court decided a companion case *Bolling v. Sharpe* regarding the same issue of segregation in the District of Columbia. The Court notes first that although the Fourteenth Amendment is only applicable to states, the Fifth Amendment is applicable to the District of Columbia. The Court then held that while the Fifth Amendment does not contain an equal protection clause it does contain a due process clause, the concepts both stemming from the American ideal of fairness, and discrimination can be so unjustifiable it can be deemed violative of due process.

Key Excerpts from the Majority Opinion, *Brown I*

Questions to Consider:

1. In Chief Justice Warren's opinion, how valuable is education? Why?
2. What does the Court mean by the "tangible" factors of equality? Are these tangible factors the only factors the Court considered when determining whether the Fourteenth Amendment was violated?
3. According to the Supreme Court of the United States, what "intangible" factors play a role in whether school facilities are truly equal?
4. Can you find any weaknesses in the basis of the Court's decision?
5. What would your school be like if *Brown* had been decided differently and *Plessy* had never been reversed? How would education be different for white and African American students?
6. Do you think that there are still consequences resulting from schools being segregated in the past?

Key Excerpts from the Majority Opinion, *Brown II*

**The decision was unanimous.
Chief Justice Earl Warren delivered the opinion of the Court.**

These cases [*Brown* and others] 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.

Does Treating People Equally Mean Treating Them the Same?

Think about the following question and discuss or write an answer:

Does treating people equally mean treating them the same?

What would it mean to treat people equally in the following situations?



A man and a woman apply for a job as a shoe sales person. What would the employer have to do to treat these two applicants equally?



Two patients come to a doctor with a headache. The doctor determines that one patient has a brain tumor and the other patient has a run-of-the mill headache. What would the doctor have to do to treat these two patients equally?



Two students try to enter a school that has stairs leading to the entrance. One student is handicapped and the other is not. What would the school have to do to treat these two students equally?



Two students live in the same school district. The students are the same age, but they are different races. What does the school district have to do to treat these two students equally.

More on the Equal = Same Dilemma

"No State shall ... deny to any person within its jurisdiction the equal protection of the laws."

—Equal Protection Clause of the Fourteenth Amendment

When you first read this excerpt from the Fourteenth Amendment, its meaning seems clear. The states (as well as the federal government by implication) must treat people equally. It is easy to assume that we all know what the term "equal" means, but sometimes what it means to be equal is not so clear. People have different, and legitimate, understandings of what it means to be equal. This helps us understand why the Supreme Court of the United States has had so much trouble interpreting the Fourteenth Amendment.

For example, we all expect our doctors to treat everyone equally. Imagine that you went to the doctor complaining of a headache. After the doctor examined you, she determined that you had a brain tumor, and she advises that you take two aspirin and get some bed rest. You are shocked. Shouldn't you have an operation or some other treatment to get rid of the tumor? "No," the doctor replies, because she prescribes aspirin to all of her headache patients. After all she must treat everyone equally, right?

Here's another example. There are probably students with disabilities in your school. Most schools have special accommodations like ramps at the entrance, larger bathroom stalls for wheelchairs, and special education teachers. This means that some students are treated differently from others. But the different treatment helps those students get an equal education.

These are two examples of how different treatment can lead to equal treatment. However, no one would deny that sometimes treating people equally means treating them exactly the same. For instance, if two people, a man and a woman applied for a job as a shoe sales person, we would expect that they would be given the same chance for the job.

You can probably see how conflicting ideas about what it means to treat people equally could present problems for a court. When the Supreme Court of the United States must decide cases where people who have been treated differently sue claiming a violation of their Fourteenth Amendment, the justices must determine whether the different treatment leads to inequality. This is not an easy task.

Classifying Arguments for Each Side of the Case

The following is a list of arguments in the *Brown v. Board of Education* court case. Read through each argument and decide whether it supports Brown's side against segregation (LB), Board of Education of Topeka's position in favor of segregation (TOP), both sides (BOTH), or neither side (N).

1. The Equal Protection Clause of the Fourteenth Amendment of the Constitution states:

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

The Fourteenth Amendment precludes a state from imposing distinctions based upon race. Racial segregation in public schools reduces the benefits of public education to one group solely on the basis of race and is unconstitutional.

2. The Fourteenth Amendment states that people should be treated equally; it does not state that people should be treated the same. Treating people equally means giving them what they need. This could include providing an educational environment in which they are most comfortable learning. White students are probably more comfortable learning with other white students; black students are probably more comfortable learning with other black students. These students do not have to attend the same schools to be treated equally under the law; they must simply be given an equal environment for learning. The U.S. District Court found that the facilities provided for black children in Topeka were equal to those of white children.
3. Psychological studies have shown that segregation has negative effects on black children. By segregating white students from black students, a badge of inferiority is placed on the black students, a system of separation beyond school is perpetuated, and the unequal benefits accorded to white students as a result of their informal contacts with one another is reinforced. The U.S. District Court found that segregation did have negative effects on black children.
4. No psychological studies have been done on children in the Topeka, Kansas school district. The findings of the psychological studies that demonstrate the negative effects of segregation cannot be stretched to the Topeka school district. There is no indication of personal harm to the appellants.

Brown v. Board of Education

5. In 1896 the Supreme Court of the United States decided the case of *Plessy v. Ferguson*. In this case, Homer Plessy sued, alleging that his Fourteenth Amendment rights were violated by a Louisiana law requiring the railroad companies to provide equal, but separate, facilities for white and black passengers. The Court declared that segregation was legal as long as facilities provided to each race were equal. The Court declared that the legal separation of the races did not automatically imply that the black race was inferior. Legislation and court rulings could not overcome social prejudices, according to Justice Brown. "If one race be inferior to the other socially, the constitution of the United States cannot put them on the same plane."

6. In 1950 the Supreme Court of the United States decided the case of *Sweatt v. Painter*. In this case Herman Sweatt was rejected from the University of Texas Law School because he was black. He sued school officials alleging a violation of the Fourteenth Amendment rights. The Court examined the educational opportunities at the University of Texas Law School and a new law school at the Texas State University for Negroes and determined that the facilities, curricula, faculty and other tangible factors were not equal. Furthermore, the justices argued that other factors such as the reputation of the faculty and position and influence of the alumni could not be equalized. They therefore ruled in favor of Sweatt.

7. The United States has a federal system of government that leaves educational decision making to state and local legislatures.

8. At the time the Fourteenth Amendment of the Constitution was drafted, widespread public education had not yet taken hold. Education was usually in the hands of private organizations. Most black children received no education at all. It is unlikely that those involved with passing the Fourteenth Amendment thought about its implications for education.

9. Housing and schooling have become interdependent. The segregation of schools has reinforced segregation in housing, making it likely that a change in school admission policies will have a dramatic effect on neighborhoods, placing a heavy burden on local government to deal with the changes. The local conditions of an area must be taken into consideration.

How a Dissent Can Presage a Ruling: The Case of Justice Harlan

The *Brown v. Board of Education I* case was decided unanimously. However, sometimes there are a few justices on the Supreme Court of the United States who do not agree with the majority decision. These justices often write dissenting opinions that express how they disagree with the majority decision.

Though dissents do not have the force of law that majority opinions do, they are important because they often show the public the battle between different interpretations of the law. Sometimes, the dissent in one case becomes the prevailing viewpoint in a future case that overturns an earlier decision. One such case where a dissent presaged a future decision occurred in the *Plessy* and *Brown* cases.

In the *Plessy v. Ferguson* (1896) case, Justice Harlan disagreed with the majority of his colleagues. The majority declared that it was possible for segregated facilities to be equal, therefore segregation did not violate the Fourteenth Amendment. Justice Harlan wrote a dissent stating that segregation violated the Fourteenth Amendment because it used the law to sanction inequality among races. Later, in the *Brown v. Board of Education I* (1954) case Chief Justice Earl Warren also declared that separate facilities violated the Constitution, though he based his argument on slightly different premises.

Read the excerpts from Justice Harlan's dissent and Chief Justice Warren's majority opinion on the next page. The justices clearly share the same opinion of the constitutionality of segregation. Can you determine how their opinions differ?

***Plessy v. Ferguson*
(1896)
Justice Harlan's Dissent**

"Our constitution is color-blind, and neither knows nor tolerates classes among citizens. . . .

"The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana."

***Brown v. Board of Education* (1954)
Chief Justice Warren**

Today, education is perhaps the most important function of state and local governments. . . . Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. . .

"To separate [children in grade and high schools] from others of similar age and qualifications solely because of their race 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. . . .

"We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate education facilities are inherently unequal."

Both justices clearly share the same opinion of the constitutionality of segregation. Can you determine how their opinions differ?

Harlan & Warren's Differences

Answer

Harlan focuses on the purpose of segregation, which is clearly to use law to enforce social inferiority of African Americans. He has a distinct focus on law and the intentions of those who use the law for segregation. Warren, however, focuses more on the psychological effects of segregation. He states that because segregation makes people feel inferior it cannot be constitutional, regardless of the purpose of those who desire segregation.

Immediate Reaction to the Decision: Comparing Regional Media Coverage

As reprinted in "Editorial Excerpts from the Nation's Press on Segregation Ruling," *New York Times*, May 18, 1954.

Read the following excerpts from editorials in newspapers and consider these questions:

1. Does the editorial seem to support or reject the Supreme Court's decision in *Brown*? Find sentences that support your position.
2. How are the editorials similar? How are they different? What do you believe accounts for the differences in perspectives?

***Times (New York)* "All God's Chillun" May 18, 1954**

. . . It is true, of course, that the court is not talking of that sort of "equality" which produces interracial marriages. It is not talking of a social system at all. It is talking of a system of human rights which is foreshadowed in the second paragraph of the Declaration of Independence, which stated "that all men are created equal." Mr. Jefferson and the others who were responsible for the Declaration did not intend to say that all men are equally intelligent, equally good or equal in height or weight. They meant to say that all men were, and ought to be, equal before the law. If men are equal, children are equal, too. There is an even greater necessity in the case of children, whose opportunities to advance themselves and to be useful to the community may be lost if they do not have the right to be educated.

No one can deny that the mingling of the races in the schools of the seventeen states which have required segregation and the three states which have permitted it will create problems. The folkways in southern communities will have to be adapted to new conditions if white and Negro children, together with white and Negro teachers, are to enjoy not only equal facilities but the same facilities in the same schools.

. . . The highest court in the land, the guardian of our national conscience, has reaffirmed its faith-and the undying American faith-in the equality of all men and all children before the law.

***Defender (Chicago)* "End of Dual Society" May 18, 1954**

Neither the atom bomb nor the hydrogen bomb will ever be as meaningful to our democracy as the unanimous decision of the Supreme Court of the United States that racial segregation violates the spirit and letter of our Constitution. This means the beginning of the end of the dual society in American life and the . . . segregation which supported it.

***Post and Times Herald (Washington, D.C.)* "A 'Healing' Decision" May 18, 1954**

The Supreme Court's resolution yesterday of the school segregation cases affords all Americans an occasion for pride and gratification. The decision will prove, we are sure-whatever transient difficulties it may create and whatever irritations it may arouse-a profoundly healthy and healing one. It will serve-and speedily-to close an ancient wound too long allowed to fester. It will bring to an end a painful disparity between American principals and American practices. It will help to refurbish American prestige in a world

Brown v. Board of Education

which looks to this land for moral inspiration and restore the faith of Americans themselves in their own great values and traditions.

Daily News (Jackson, Mississippi)
"Bloodstains On White Marble Steps"
May 18, 1954

. . . Human blood may stain Southern soil in many places because of this decision but the dark red stains of that blood will be on the marble steps of the United States Supreme Court building.

White and Negro children in the same schools will lead to miscegenation. Miscegenation leads to mixed marriages and mixed marriages lead to mongrelization of the human race.

Constitution (Atlanta)
"The Supreme Court Has Given Us Time"
May 18, 1954

. . . The court decision does not mean that Negro and white children will go to school together this fall. The court itself provides for a "cooling off" period. Not until next autumn will it even begin to hear arguments from the attorneys general of the 17 states involved on how to implement the ruling.

Meanwhile, it is no time for hasty or ill-considered actions. It is no time to indulge demagogues on either side nor to listen to those who always are ready to incite violence and hate.

It is a time for Georgia to think clearly. Our best minds must be put to work, not to destroy, but to seek out constructive conclusions.

Herald (Boston)
"Equality Redefined"
May 18, 1954

The Supreme Court's history-making decision against racial segregation in the public schools proves more than anything else that the Constitution is still a live and growing document.

. . . The segregation ruling is frankly expedient. It recognizes the growing national feeling that the separation of Negro (or other minority) children from the majority race at school age is an abuse of the democratic process and the democratic principle. But it is also the culmination of a series of judicial opinions which circumspectly prepared the way for change.

Cavalier Daily (University of Virginia)
" 'Violates' Way of Life"
May 18, 1954

It is too early to tell what effect the Supreme Court decision to abolish segregated schools will have on the South. . . . Although it is hard from a strict legal point of view to justify any action contrary to law, we feel that the people of the South are justified in their bitterness concerning this decision. To many people this decision is contrary to a way of life and violates the way in which they have thought since 1619.

Political Cartoon Analysis

Analyze the cartoons in terms of their relation to the *Brown v. Board of Education* case.

1. What do you see in the cartoon? Make a list.
2. Which of the items on the list from Question 1 are symbols? What does each stand for?
3. What is the artist's message in the cartoons? Is there a political bias in the cartoons? Who would agree with the message? Who would disagree?

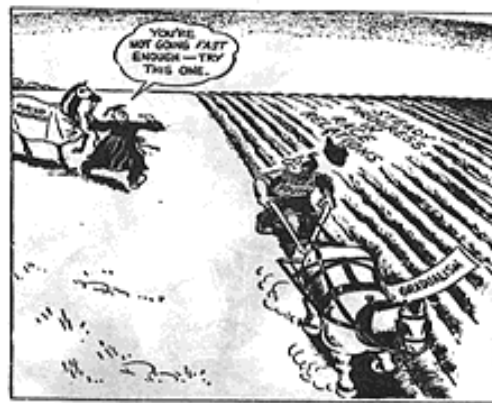
Chronicle (San Francisco)
May 18, 1954

©The San Francisco Chronicle.
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Democrat (Arkansas)
May 22, 1954

John Kennedy Arkansas Democrat.
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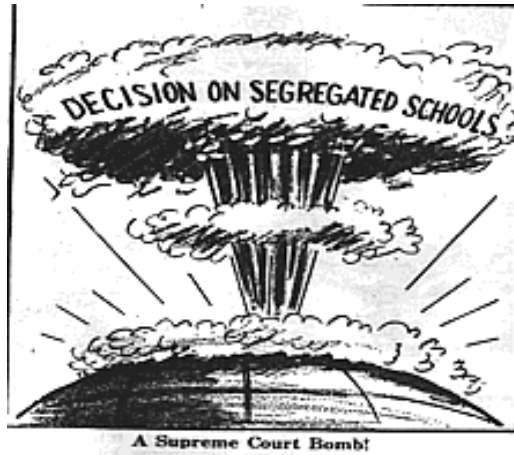
Defender (Chicago)
June 12, 1954

Reprinted by permission from the *Chicago Defender*.



Afro-American (Richmond)
May 22, 1954

AFRO-American Archives & Research Center. Reprinted by permission.



All Deliberate Speed?

After the decision, how quickly should schools be desegregated?
How quickly were schools desegregated?

The decision in *Brown v. Board of Education* came in two parts. First, the justices considered whether segregation was constitutional. The *Brown I* decision determined that it was not, but there still remained the tricky question about how to end segregation. On this question, the Court heard arguments during the following term.

In 1955, the Supreme Court of the United States determined that segregation should be ended as soon as possible, but the Court also recognized that it would be difficult for communities to deal with the change and that there were many institutional, political, and social circumstances to be worked out. The Court struggled with how to phrase the order to desegregate schools and what kind of time frames should be attached to the order. The NAACP advocated for schools to be desegregated "forthwith," which implies a quick timetable. However, Justice Warren adopted the advice of Justice Frankfurter and chose other language.

Brown v. Board of Education

Online Activity

Read Justice Frankfurter's notes on this issue and answer the questions that follow.
(http://www.landmarkcases.org/brown/landmarkframe_frank.html)

1. On page two of the typed notes, Justice Frankfurter writes his original recommendation for how quickly desegregation should occur. What does he say? (This is the typed version, not the handwritten version.)
2. Justice Frankfurter then crosses out point 5 and changes point 6 to point 5. He also changes his recommendation for how quickly desegregation should occur. How does he alter his recommendation? (This is the handwritten note.)
3. Why do you suppose Justice Frankfurter changed his mind? Think about what actions might be involved in desegregating schools at the local level.
4. What do Justice Frankfurter's notes tell you about how Supreme Court decisions are written?
5. The Court's recommendation that schools should desegregate "with all deliberate speed" had enormous consequences for the speed of desegregation.

Online Activity

Read a letter from Roy Wilkins to President Kennedy regarding desegregation in Prince Edward County, Virginia. (http://www.landmarkcases.org/brown/landmarkframe_roy.html). What does the letter tell you about how quickly desegregation occurred?

If You Were a Supreme Court Justice . . .

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 law suits 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.

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.

Green v. County School Board of New Kent County (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?

Swann v. Charlotte-Mecklenberg Board of Education (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 black-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, Colorado (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?

Brown v. Board of Education

Milliken v. Bradley (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?

Summaries of Decisions from *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education*

Green v. County School Board of New Kent County (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.

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 (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.

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.

Keys v. Denver School District No. 1 (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 *Keys*, 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.

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.

Milliken v. Bradley (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.

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.

Resegregation of the Public Schools: Was the Promise of *Brown* Fulfilled?

Tolerance.org, a web project of the Southern Poverty Law Center, has created a series of classroom activities for teaching about *Brown v. Board*. These can be accessed at:

<http://www.tolerance.org/teach/magazine/features.jsp?p=0&is=34&ar=491>

While all of the activities are worthwhile, the following are particularly useful in exploring the aftermath of *Brown* and the question "Was the Promise of *Brown* Fulfilled?"

[Where are We Now?](#) Students begin by analyzing an essay about the resegregation of American schools. They go on to explore the issue of integration in their own community.

[General Discussion Questions](#) Students examine Tolerance magazine's special anniversary section on *Brown v. Board*, then go on to answer a series of questions. Numbers 4, 6, 7 and 8 specifically address the re-segregation of public schools.

[What Brown Means Today](#) Students explore the impact of *Brown v. Board* on school segregation first by reading interviews and then by conducting interviews of their own. Of particular interest is the link to creating "Mix it Up" Dialogue groups.

The NEA has created a noteworthy 50th anniversary site, with a section titled [Are Schools Becoming "Resegregated?"](#) (<http://www.nea.org/brownvboard/index2.html#resegregation>). Be sure to click on the link to "Brown at 50: King's Dream or Plessy's Nightmare?," a study conducted by the Civil Rights Project at Harvard University.