

LAW ★ DAY 2021



ADVANCING THE RULE OF LAW NOW

Law Day is May 1.

The 2021 Law Day theme — ***Advancing the Rule of Law NOW*** — reminds all of us that we the people share the responsibility to promote the rule of law, defend liberty, and pursue justice.

The rule of law is the bedrock of American rights and liberties — in times of calm and unrest alike.

Every day, for the next 7 days, we will highlight case law and news events to help illustrate and explain the key principles of the rule of law.

As you think about the following ideals, remember to reflect on the importance each of us has in ensuring we uphold the law and the continued challenges we face in safeguarding that:

- No one is above the law,
- Everyone is treated equally under the law,
- Everyone is held accountable to the same laws,
- There are clear and fair processes for enforcing laws,
- There is an independent judiciary, and
- Human rights are guaranteed for all.



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No one is above the law

The United States Constitution is the “supreme law of the land.” All laws, rules, and regulations at the state and local level must agree with the constitution. Everyone, including state and national elected officials, executive and judicial officers are, under the authority of the constitution, bound by oath to support the constitution and obligated equally to obey the law.

United States v. Nixon (1974)

In 1972, an election year, several men broke into the Democratic National Committee headquarters located in the Watergate Office Building in Washington, D.C. FBI agents, journalists, including Carl Bernstein and Bob Woodward, and congressional investigations of the break-in led to discoveries that these men had significant ties to President Nixon’s administration. Under continued scrutiny, many members of Nixon’s administration were also linked to the break-in and indicted by a grand jury of participating in a cover-up.

During the hearings, a White House aide revealed that President Nixon recorded Oval Office conversations. The special prosecutor obtained a subpoena that required President Nixon to turn over the audio recordings as evidence in the criminal proceedings. The president released over 1,200 pages of edited transcripts, but refused to turn over the tapes citing “executive privilege.” Nixon argued he had the power to withhold the tapes from other government branches in order to maintain confidential communications within the executive branch and to secure the national interest. Both the special prosecutor and Nixon filed special petitions to have the issue heard immediately by the U.S. Supreme Court.

In July 1974, a unanimous Court ruled against the president. In the decision, Chief Justice Burger indicated that the president doesn’t have “absolute, unqualified, presidential privilege.”

Nixon was ordered to turn the tapes over to the Court. After a judge listened to the tapes to determine if they were relevant to the trial of the former Nixon aides, the Court ordered them released to the public. About two weeks after the Supreme Court’s decision, President Nixon resigned from office.

Newspaper Activities: In print or online, look for investigative news reports into government wrongdoing. Who or what is being investigated? Are records being withheld?

Look for news of people being held accountable for breaking the law. Discuss what you find as a class.

Next installment: **Everyone is treated equally under the law**

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Everyone is treated equally under the law

The 14th Amendment to the U.S. Constitution, ratified in 1868, granted citizenship to all persons born or naturalized in the U.S. — including former enslaved people — and guaranteed all citizens “equal protection of the laws.” Shortly after the 14th Amendment was ratified, state and local laws enforcing racial segregation, also known as Jim Crow laws, were created across the American south. The following case, involving a young student, was an important step toward dismantling the “separate but equal” doctrine.

Brown v. Board (1954)

Linda Brown was a seven-year old Black girl who lived five blocks from a local elementary school. She was denied enrollment in that school and was required to attend a school 21 blocks across town which was exclusively for students of color. Her father sued the board of education to allow her to attend the school closest to their home. Their suit was ultimately combined with other similar cases involving Black students also denied access to certain public schools because of race and was heard by the Supreme Court.

The Court was asked to decide if segregation of students in public education based solely on race violates the equal protection clause of the Fourteenth Amendment. The Court ruled unanimously that education was perhaps the most vital function of state and local governments, and racial segregation of any kind deprived African Americans of equal protection under the Fourteenth Amendment.

Chief Justice Warren wrote, *“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. ... Any language contrary to this finding is rejected. We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”*

For many the *Brown v. Board (1954)* decision signaled the start of the civil rights movement of the 1950s and 1960s and the continued fight for equal justice under the law.

Newspaper Activities: In print or online, look for news about groups or individuals seeking equal treatment. Share your findings as a class. Compare and contrast with Linda Brown.

Look through the news for important issues in education today, such as school violence, equal access to technology, standardized testing, etc. Select one and, as a class, brainstorm possible solutions.

Next installment: **Everyone is held accountable to the same laws**

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Everyone is held accountable to the same laws

Section 1983 of Title 42 of the United States Code (42 U.S.C. § 1983) gives an individual the right to sue state and local government entities acting “under color of state law” for civil rights violations. The following case is an example of this type of civil action brought by two high school students who had their personal privacy violated.

Robbins v. Lower Merion School District (2010)

At the start of the 2009-10 school year, the district issued laptops to its high school students for use at school and home. Each computer had a webcam and was loaded with remote activation tracking software.

As an anti-theft measure, without the knowledge or consent of students or parents, officials at the district activated the surveillance software, took photos through the webcam as well as screenshots, and stored them on the district’s servers for review by staff. Many of the images were captured in the students’ homes.

The webcam surveillance program was brought to light in November 2009, when Blake Robbins, a sophomore, was confronted by Vice Principal Lindy Matsko, accusing Robbins of illegal drug use. A photo taken with the laptop webcam of Blake at home in his bedroom was Matsko’s “proof.” Blake’s parents were notified. They disputed the school’s claim of their son’s behavior. The school did not pursue disciplinary action but noted the incident in Blake’s school file. Blake’s parents filed suit on his behalf on Feb. 11, 2010, citing invasion of privacy.

On Feb. 22, a federal judge ordered the school district to stop using the tracking software. In July 2010, a second similar suit was filed against the district by the mother of student Jalil Hasan.

County officials, the U.S. District Attorney and the FBI conducted investigations to determine whether the school district had violated criminal laws. No criminal charges were filed because no evidence was found “...that would establish beyond a reasonable doubt that anyone involved had criminal intent.”

In October 2010, the Lower Merion School District agreed to pay \$610,000 to settle lawsuits over its tracking of student laptop computers. \$175,000 was put in trust for Blake Robbins, \$10,000 was paid to Jalil Hasan and \$425,000 in legal fees was paid to their attorney.

Newspaper Activity: Look through the news, in print or online, for someone holding a government official or entity accountable for wrongdoing. Compare and contrast this action with that of the Lower Merion SD.

Next installment: **There are clear & fair processes for enforcing laws**

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There are clear and fair processes for enforcing laws

The Fifth and Fourteenth Amendments of the United States Constitution include language that the “due process of law” be a part of any proceeding that denies a citizen “life, liberty or property.” This provision should protect the legal rights of everyone involved. The following Supreme Court case describes how this principle of the rule of law applies even in the case of young students.

Goss v. Lopez (1975)

Eight high school students and one middle school girl, in Columbus, Ohio, were given 10-day suspensions for a variety of disruptive or disobedient behavior. Among them, Dwight Lopez was suspended for damaging school property during a lunchroom commotion. Lopez claimed he was not involved and was simply an innocent bystander. There was no hearing either before or shortly after the suspensions and Ohio law did not require it. Their principals’ actions were challenged, and a federal court found that the students’ rights had been violated. The case was then appealed to the Supreme Court.

Attorneys for Lopez and others argued that students have a legitimate property right in their education, which is protected by the “due process clause.” This right cannot be taken away without appropriate procedural hearings.

In a 5-to-4 decision, the Court ruled for the students, explaining that once the state provides an education for all of its citizens, it cannot deprive them of it without ensuring due process protections. The Court found that students facing suspension should at a minimum be given notice and afforded some kind of hearing. However, the Court also agreed with the District Court indicating, “Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable...”

Follow up: Research the policies and procedures for dealing with misconduct at your school. Are they easy to find, clearly written and easy to understand?

Newspaper Activities: Read the newspaper, in-print or online, and check other news sources to search for current examples of due process of enforcing the law. Discuss what you find as a class.

Look for news reports about recent court cases. How are the rights of everyone involved in the proceeding being protected?

Next installment: **There is an independent judiciary**

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There is an independent judiciary

In addition to a separation from the executive and legislative branches of government, the judiciary must be free from undue influence from political affiliations, personal interests, or retribution and must remain committed to the preservation of the rule of law and the protection of individual rights and liberties. The example below is dated before U.S. independence from England but is no less a valid example of the power of an independent judiciary.

The Crown v. John Peter Zenger (1735)

In the early 1730s, John Peter Zenger, a German immigrant, started publishing *The New-York Weekly Journal*. In it, he printed articles by opponents of Governor William Cosby criticizing his removal of the colony's Chief Justice from office. These articles mocked Cosby while warning against leaders who put themselves above the law. Outraged, Governor Cosby ordered copies of select issues seized and burnt and Zenger was eventually indicted for seditious* libel.

After months in jail, Zenger's trial began, but his lawyers were disbarred and prevented from defending their client. Andrew Hamilton, a Philadelphia lawyer, took over the case and offered a defense that went against traditional English law.

In England, proof of publication was all that was necessary to convict a publisher of libel. Whether the alleged libel was true or not didn't matter. Hamilton insisted that the truth should make a difference: if Zenger had published the truth, he couldn't be guilty of libel.

When the court rejected Hamilton's argument, the lawyer urged jurors to decide for themselves. They acquitted Zenger, setting a precedent in favor of truth that was later affirmed by courts in England and the United States. Thus, a jury of regular men helped lay the foundation for one of the freedoms in the First Amendment of the U.S. Constitution.

*Sedition: word or action inciting rebellion against the authority of a state.

Newspaper Activity: Read the newspaper, in print or online, and check other news sources to look for reports about jury trials. Research and review the basic facts about the case. As a class, discuss why it is important in upholding the rule of law to have an independent judiciary. How might this same issue be handled in an authoritarian form of government?

Next installment: **Human rights are guaranteed for all**

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Human rights are guaranteed for all

In the Declaration of Independence Thomas Jefferson wrote, “*all men are created equal ... and are endowed by their Creator with certain unalienable Rights.*” Many of these human rights have been expressly protected by U.S. laws. The following case is an example of the Court’s role in balancing individual human rights with the safety and security of others.

Hamdi v. Rumsfeld (2004)

Yaser Esam Hamdi was an American citizen born in Louisiana in 1980. Later that year his family moved to Saudi Arabia, where he also established citizenship.

He was captured by U.S. led coalition forces in Afghanistan shortly after the events of 9/11 and was held as an enemy combatant. Hamdi claimed to be a relief worker. He was kept in prison without access to a lawyer or the courts. His father filed a writ of habeas corpus — a petition asking the court to decide if his son’s imprisonment was legal.

Hamdi argued that the government had violated his Fifth Amendment right to due process. The government claimed that as an enemy combatant Hamdi did not have the right to speak to a lawyer or to ask a court to review his case. The government claimed that the Executive Branch, during war time, had the authority to act without oversight from any other branch of government. After several appeals, the case made it to the Supreme Court.

The justices disagreed on important issues of law. The 6-3 plurality decision opinion held that Congress had authorized the use of military force, which gave the president the authority to label U.S. citizens “enemy combatants” as well as detain them. But the Executive Branch *does not* have the power to both declare someone an enemy combatant and then hold them *indefinitely* without due process. The Court agreed that Hamdi could only be held as long as the U.S. was involved in armed conflict with the Taliban.

The Court held that the Constitution’s separation of powers require that courts review presidential decisions; Hamdi had the right to bring his case before a “neutral decision maker.”

In a plea agreement, Hamdi renounced his American citizenship and he was returned to Saudi Arabia.

Newspaper Activities: Look for current examples of balancing individual rights and security in the news. Compare and contrast this modern example with *Hamdi v. Rumsfeld*.

Look for news reports about the protection of human rights and discuss what you find as a class.

Next installment: **Continuing to fight to reach the ideal**

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Continuing to fight to reach the ideal

According to the World Justice Project, research shows that rule of law correlates to higher economic growth, greater peace, less inequality, improved health outcomes, and more education.

Ideally, the rule of law ensures that no entity — including the government itself, prominent business and political leaders — is above the law. Everyone should be treated equally under the law and held accountable to the same laws. All laws should be enforced fairly, by an independent judiciary. Basic human rights should be protected.

No country, including the United States, is perfect when it comes to the rule of law. As illustrated in this short series, the ideal of forming a “more perfect union” is still very much a work in progress. Repeatedly, in our nation’s history, ordinary citizens have challenged authority to seek to correct an injustice.

With a quick scan of any newspaper, one can find examples of inequality under the law. But, examples of ordinary citizens speaking out and openly protesting to protect and defend the rights of others can also be found in those same pages.

From student-led protests seeking changes in gun laws following mass shootings to marchers proclaiming a need for police reforms following the deaths of George Floyd, Breonna Taylor and others, people across the United States have demonstrated the need to continue to advance the rule of law.

In her poem, “The Hill We Climb,” read at President Biden’s inauguration, Amanda Gorman stated, “Somehow we’ve weathered and witnessed, a nation that isn’t broken, but simply unfinished.”

As Ms. Gorman finished her poem with these words of hope — The new dawn blooms as we free it, For there is always light, if only we’re brave enough to see it
If only we’re brave enough to be it — let us remember that it is up to each of us to be brave enough to protect and defend the rule of law, not just for ourselves but for everyone, now and for the future.

Newspaper Activities: Look for current examples of inequality under the law. What, if anything, is being done to remedy this injustice?

Look for news reports of individuals or groups of people standing up for what they believe is fair. Select one, do you agree or disagree with them and why?

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