

Criminal Law: Stare Decisis

Quote #1

Justice Sandra Day O'Connor and Stephen G. Breyer in a taped interview with students participating in a question and answer session. When asked about what might influence the justices to overturn a precedent, **Justice O'Connor** said:

"Well I think you have to be able to persuade at least five members of this nine-member Court that an earlier judgment and opinion decided by this Court is now clearly wrong. That is possible to do. We can be persuaded at times that something we decided earlier has become, over time, no longer defensible.

"And the most clear big example of that was in Brown v. Board of Education when the Supreme Court decided to overrule the old Plessy v. Ferguson principle that you could have separate public facilities for people based on race provided they were roughly the same. You know, the same school, one for people of the black race, one for people of the white race. That's what Plessy said was all right. The members of this Court unanimously concluded that just was not valid and it overturned it [Plessy].

"So what standard is required? It's just a standard of persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation."

Quote #2

Justice Sandra Day O'Connor and Stephen G. Breyer in a taped interview with students participating in a question and answer session. After Justice O'Connor's answer about what might influence the justices to overturn a precedent, **Justice Breyer** added:

"That last phrase [persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation] is very important. Every one of us understands that if you change the law too often, even when it was wrong before, people cannot live their lives. They can't plan how to live; they can't plan their societies. So no one

thinks just because a case is wrong that you are going to overturn it. They have to both think it was wrong and think it's harmful and causing a lot of trouble.

"Now, if you said never overturn a case, we'd still live in a society that had racial segregation. That would be terrible. So, of course, sometimes you have to overturn a case. But five people [justices] have to agree it was wrong then and it's wrong now and it's causing a lot of harm to the point where even though people have to plan their lives, we better get rid of it. That happens very rarely."

Quote #3

John Roberts at his United States Senate confirmation hearing, September 2005:

"... the principles of stare decisis look at a number of factors. Settled expectations is one of them... Whether or not particular precedents have proved to be unworkable is another consideration on the other side ...I do think it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness."

Quote #4

Stephen Breyer, writing for the Court in *Randall v. Sorrell*, the Vermont campaign finance reform decision, 2006:

"The Court has often recognized the fundamental importance of stare decisis, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. The court has pointed out that stare decisis ``promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'"

"Stare decisis thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm. Departure from precedent is exceptional and requires special justification."
