

Social Science Docket

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Fifty Years After the “Brown” Decision It is Time to Ask “What did the Civil Rights Movement Accomplish?”

by Alan Singer, Editor, *Social Science Docket*

In 1954 the Supreme Court, in an unanimous opinion written by Chief Justice Earl Warren, declared that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” With this historic decision in *Brown v. Board of Education of Topeka, Kansas*, the justices reversed a position permitting segregation taken by a majority of the court in 1896 in *Plessy v. Ferguson*. This reversal by the court, a major step in the struggle for African American Civil Rights in the United States, was the product of an intensive twenty year legal campaign to overturn segregation by Thurgood Marshall and the National Association for the Advancement of Colored People (NAACP).

In his keynote address at the 2003 New York State Council for the Social Studies annual convention, historian Eric Foner reminded us that “(t)he owl of Minerva takes flight at dusk – historians, that is, prefer to wait until events have concluded before subjecting them to historical analysis.” The fiftieth anniversary of the *Brown* decision is a fitting time for historians, social studies teachers and students to examine the long term impact of the case and to ask “What did the struggle for African American Civil Rights in the United States accomplish?”

No one denies that the United States has changed enormously in the last fifty years. In 1960, less than 20% of eligible Black voters were registered to vote in Virginia, Alabama, South Carolina and Mississippi. In 1964, less than 1% of African American children in Arkansas, Alabama, Louisiana, Georgia, South Carolina, North Carolina and Mississippi attended interracial schools. Equality before the law has created new opportunities and African Americans have responded by becoming important cultural, political and economic leaders. They are a visible presence in virtually every area of American society. The struggle for civil rights for African Americans has reinvigorated and redefined democracy in this country. It has helped to extend rights to women, ethnic and racial minorities and to gays and lesbians. It has also and been the major force behind broadening the school curriculum so that it has more of a multicultural focus.

Yet despite significant gains, in the area of race relations, serious problems persist in the United States.

Fifty years since *Brown*, statistics (from the 1998-99 school year) show that school segregation intensified during the 1990s. According to Gary Orfield (“Schools More Separate, Consequences of a Decade of Resegregation” in *Rethinking Schools*, 16/1, Fall 2001), more than 70% of the Black students in the United States attend predominantly minority schools today, up significantly from the low point in school segregation in 1980. While segregation for Blacks students is still below its 1969 level, it has actually increased for Latino students. In 1968, 45% of Latino students attended majority White schools. By 1998, more than three-fourths of Latino students were in predominantly minority schools. Whites students today on average attend schools where less than a fifth of the students are from all of the other groups combined. Orfield blames this renewed school segregation on three major Supreme Court decisions in the 1990s “authorizing a return to segregated neighborhood schools and limiting the reach and duration of desegregation orders.”

Fifty years since *Brown*, the life expectancy of African American men (67.6 years) is approximately seven years less than the life expectancy for White men (74.5 years) in the United States; 24% of the Black population of the United States lives in poverty compared to 10% of the White population; and the average income for Black families is \$18,000 per year less than the income for the average White family.

Fifty years since *Brown*, African-American children with asthma are hospitalized more often and are more likely to die of the disease than White children; mortality rates for African American women with breast cancer remain higher than mortality rates for White women; for men and women combined, Blacks have a cancer death rate about 35% higher than that for Whites. The death rate for cancer for Black men is about 50% higher than it is for White men. The rate of diabetes in Blacks is approximately 70% higher than Whites and the rate for Latinos is nearly double that of Whites.

Fifty years since *Brown*, racial profiling remains a major problem in the United States. According to the American Civil Liberties Union, “Racial profiling is prevalent in America. Despite the civil rights victories of 30 years ago, official racial prejudice is still reflected throughout the criminal justice system. . . . Today skin

color makes you a suspect in America. It makes you more likely to be stopped, more likely to be searched, and more likely to be arrested and imprisoned.”

Fifty years since *Brown*, 1.2 million African Americans are imprisoned in the United States, many for victimless crimes such as drug possession. Black men had a 32.2 % chance of going to prison in 2001, while Hispanic men had a 17.2 % chance and White males only a 5.9 % chance. African Americans constitute 13 % of drug users but 35 % of drug arrests, 55 % of drug convictions and 74 % of prison sentences. For non-drug offenses, African Americans get prison terms that average about 10 % longer than Whites for similar crimes. A study from the Justice Policy Institute found that there are more African American men in jail or prison than in college. One in every three Black American men faces the possibility of imprisonment during his lifetime.

Last year, 2003, marked the one hundredth anniversary of the publication of W.E.B. Dubois’ “*The Souls of Black Folk*” and the fortieth anniversary of the 1963 March on Washington. This year, 2004, is the 50th anniversary of the *Brown v. Topeka, Kansas Board of Education* decision by the United States Supreme Court. It is time that historians, social studies teachers and students ask “What did the struggle for African American Civil Rights in the United States accomplish?”

Teachers Respond - Was the Civil Rights Movement a Success?

Our goal is to have every issue of *Social Science Docket* include an essay on a key social studies concept or controversy in order to stimulate responses from readers and debate in the journal and in the New York and New Jersey Councils for the Social Studies. The question, “Was the Civil Rights Movement a Success?”, elicited our biggest response yet. Some of the comments are quite extensive and include the retelling of personal experience. For the sake of space, the phrase Civil Rights Movement is abbreviated as CRM.

Rhonda Morman, MS 61, Brooklyn, NY: “I remember it as very difficult.”

I grew up in Brooklyn, New York, downtown near the Navy Yard. In 1961, I was one of the first kids in my neighborhood to be bussed to a predominately White public school, PS 169 in Sunset Park. My parents, who grew up in the segregated South, felt that I would get a better education if I was part of a program designed to achieve racial balance. Looking back at that experience, I remember it as very difficult.

In my new school, I kept having to answer questions about myself. There were big cultural differences in the school and small things really bothered me. For example, none of the other girls had pierced ears. There were also many negative stereotypes about the Fort Greene neighborhood. The White students had heard stories that it was full of guns and drugs. I ended up resenting the fact that I was an African American child around all of these White kids who had not been exposed to a Black child before. Because of this I was not able to focus on my education.

I do remember one elderly White woman teacher at the junior high school who was a radical. She believed that the assassination of Patrice Lumumba in the Congo was part of a conspiracy to silence him and stop the movement for African independence. Years later I still remember the things she introduced

us to about the world. She was a good teacher and one of the most positive experiences I had in school.

I attended Fort Hamilton High School which was in Bay Ridge. I remember one teacher who liked to think of himself as a big liberal, but I discovered he really was not. The class was having a debate about joining the youth movement of the Sixties. I said “I’m not joining any youth movement. I have to join the Black movement because I’m going to be Black a lot longer than I am going to be young.” The entire class disagreed with me and instead of refereeing the debate, he just left me hanging to struggle by myself.

I did not become personally active in the struggle for Black Liberation until I was in college. I attended meetings in Harlem where I met Minister Louis Farrakhan, the Reverend Jesse Jackson, and people from the Black Panther Party. I have a friend from those days who still sings with Berenice Reagan and the vocal group Sweet Honey and the Rock. Their music is a music of political protest. They tell the truth about conditions in the world and sing about the struggle to make it a better place.

My experience as a teenager and college student has shaped my philosophy as a teacher. I learned the advantages that White students have because of their experiences and schools. As a teacher, I try to make sure that children of color have all of these educational experiences. When I started teaching at

MS 61 in 1982, there were very few Black teachers. Today there are many more. This is one positive result of the CRM. Because of our experience with racism in the United States, African Americans are a very compassionate people. This quality makes us good teachers.

On the balance, I cannot describe the CRM as a success. I think racial prejudice in the United States is worse today. It is harder to put your finger on it but it is still there. If you say that a government policy like unequal school funding or the actions of some police officers are racist, your statements are dismissed as stale. White politicians accuse Black people of “crying wolf” and ignore us. They use that as an excuse not to deal with inequality and our demands.

Timothy Donnelly, Passaic Valley HS, Little Falls, NJ: “About struggles of ordinary people.”

I teach United States history in northern New Jersey, about 25 miles west of New York City. My students are predominantly 15 to 17 year olds who are from middle-income White families. I am not old enough to comment from personal experience on changes brought by the CRM. While there is still discrimination, I think our society has become more racially integrated and that people are generally more tolerant of difference. I want high school students to know that the CRM was primarily about struggles of ordinary people. While there were great leaders that emerged from the movement, their role was really to prompt and encourage ordinary citizens like us to work for social change. I want students to understand that ordinary people can change the world.

John R. Wade, North Bellmore, NY: “It brought America to the point where it could confront its history.”

The CRM was a success. By spurts and trickles it brought America to the point where it could confront its history and accept the humanity, culture and citizenship of its African American population. The Supreme Court and the Brown decision were a major part of this process. The legacy of the CRM is laws that establish all Americans are entitled to every protection and benefit of American society. Black America with its allies and supporters must use this sword of justice to protect and expand these legal rights. They must be the force that insists that America live up to its promise that “All men are created equal and endowed by their creator with

certain inalienable rights. And that among these rights are the right to life, liberty and happiness.” I am a social studies teacher because I believe that an educated citizenry is the best force to respond to injustice and falsehoods. Americans can use the hard earned achievements of the CRM to build a better country with justice for all.

Douglas Cioffi, Kellenberg Middle School, Uniondale, NY: “Their intentions are good, but their methods are misguided.”

Racial segregation was the biggest block against the so-called “American Dream.” Is the United States a completely equal society today? The answer is obviously “No.” Is the United States better off than it was fifty years ago? There has been a considerable amount of progress towards civil rights. There is a different problem that exists today among people who are trying to create a more equal, fair and integrated society. Sometimes their intentions are good, but their methods are misguided. An example of this is present in today’s sports world. National Football League commissioner Paul Tagliabue fined the Detroit Lions \$200,000 for failing to interview a minority candidate for their head coaching position. Major League Baseball has mandated that teams must interview minority candidates as well. It is being done only for show. People should be interviewed and hired because of their merits, not because of their race.

Janet Parker, Social Studies Supervisor, Toms River Intermediate Schools, Toms River, NJ: “Civil rights are for all people.”

As an African American who grew up in Newark, N.J. during the nineteen-sixties, I would have to say the CRM was a success. Looking back on my experiences, and that of my siblings, I know that many doors opened for us as a direct result of the CRM. During the early and mid sixties, Newark was a culturally diverse city. I consider myself fortunate to have grown up living among people of various racial and ethnic backgrounds. The CRM allowed my family to broaden our perspective about the world, racial equality, oppression, human rights, and justice. I want the teachers and students in my district to know of the important role of the CRM in the history of this country, and that it still has a tremendous role for the future. Fifty years after the Brown decision, there are still inequities in educational opportunities. We need a fair and equitable system of school funding that does not benefit some districts and penalize others, or unfairly

burden taxpayers. I also think the CRM has to move beyond being perceived as for “Black people.” Civil Rights are for all people. It should be the responsibility of all teachers of social studies to help their students understand this. At a time when hate groups are on the increase, there is still much to be done protect all Americans against social injustice and racism.

Chris Van Orden, Hardyston Township School, Franklin, NJ (President, NJCSS): “Unless each generation learns these values, the rights of people can be trampled on.”

I believe that the CRM has to be considered as success. In our society there is certainly a much greater awareness of the rights of all citizens and knowledge about the lives of people from a variety of different backgrounds. As social studies teacher, my challenge is to help my 8th grade students to understand the role the CRM played in changing the way people in the United States treat each other. I grew up in a rural area in northwestern New Jersey and work in a school in where 98 percent of the students are of European ancestry. There is probably an even split between Protestants and Catholics. I normally spend a great deal of time at the beginning of the school year discussing the Bill of Rights and the Enlightenment and the philosophy that all people are endowed with certain natural rights. We talk about the rights and responsibilities of citizens and I introduce *Brown v. Board of Education of Topeka, Kansas* as part of a unit on major Supreme Court cases. I also use the movie, *Separate but Equal*, to give students an opportunity to see the Supreme Court at work. I especially like the scene when the Chief Justice, Earl Warren, goes to Gettysburg, Pennsylvania. He comes out of his hotel the next morning and discovers his chauffeur, an African American man, sleeping in the car because he could not find a place to stay. For a middle school student today, that is a shocking revelation about the past. The movie helps the students to become immersed in the culture of the post-World War II era and leads into a general discussion about why people were treated that way. They also begin to discuss the way they treat each other. I want students to realize that stereotyping and discrimination can happen again if we are not guardians of our rights. We need to study history and ideas about government and political philosophy so we can defend our rights. Unless each generation learns these values, the rights of people can be trampled on.

Monica Longo, Kennedy High School, Bellmore, NY: “A limited success.”

The CRM was a limited success. It brought legal changes such as the outlawing of segregation in schools and other public facilities and it helped to extend the right to vote to all citizens. However, minority groups, especially African Americans, continue to face discrimination. Prejudice and intolerance remain deeply embedded within American society and they are difficult to erase. On Long Island, where I teach, through gerrymandering and reliance on local property taxes for school funding, political leaders have ensured that most minority students attend segregated and under-funded schools. These schools often lack modern technology, highly motivated teachers, supplies. And the support services needed to achieve success. In order for the CRM to be considered a success, the U.S. must make a conscious effort to fight against the racism and discrimination that still confront minority groups all over the country.

Steven Keyser, Lindenhurst, NY: “A valuable foundation was laid.”

While it is important to show the progress accomplished over the past fifty years, it is equally important to note what needs to be done over the next fifty years. To overlook or trivialize the work of people since 1954 would undermine struggles in the future. The situation has changed for the better since the *Brown* decision. Even if the United States still is not an equal society, a valuable foundation was laid.

Darren Luskoff, Mineola High School, Garden City Park, NY: “Government cannot overcome the final hurdle of racial inequality.”

Since the *Brown* decision, the federal government has implemented countless policies, laws and decisions in an effort to reverse the destructive impact slavery and racism. As a result, African Americans today have a higher standard of living than any other African Diaspora population. This can directly be credited to the efforts of the federal government. It is a mistake to blame government policy for continuing economic inequality. A close look at census bureau statistics A closer look at the census bureau statistics (www.census.gov) reveals a correlation between the lack of economic success with single parent families. With 48% of African American children being raised by single mothers in one parent families, their chances of success are greatly impaired. Government cannot overcome the

final hurdle of racial inequality in this country. Individuals must address the choices they make that reinforce economic and social inequality. Because of this, I believe that programs such as affirmative action are misguided. They harm African Americans and undermine the goals of the CRM by suppressing the individual's creativity and competitive drive and replacing them with lower expectations.

Pablo Muriel, University Heights High School, Bronx, NY: "Some Americans have the audacity to declare the end of racism."

Fifty years after *Brown*, urban, predominately African American and Latino communities remain poor. Schools that were supposed to be integrated continue to be segregated. Conditions in minority schools such as the one I teach in are horrendous in comparison to schools in affluent, suburban, predominately white communities. The CRM may have unintentionally impeded the advancement of minority groups in America by providing an illusion of "equality." After four hundred years of slavery, oppression and disenfranchisement, some Americans have the audacity to declare the CRM a success and the end of racism. The achievements of the CRM were an inadequate Band-Aid applied to a very deep and infected wound. It is a wound that continues to fester.

Christine Jacovina, Holy Trinity High School, Hicksville, NY: "A continuing process that goes on today."

The CRM in the 1950s and 1960s and the women's rights movement resulted in legislation that secured fundamental rights for all Americans. They should be viewed as steps in a continuing process that goes on today. The CRM will not be completely successful until there is no discrimination and people of all races and backgrounds and both genders are equal politically, economically and socially.

Nancy Shakir, Supervisor of Social Studies and English Education, Orange, New Jersey: "One of the most successful struggles in the history of the United States."

I was born in Jersey City, as were my parents. My grandparents came to New Jersey in the late 1800s to escape the terrorism of Ku Klux Klan activities in Alamance County, North Carolina. My first encounter with institutional racism was when I traveled to Baltimore, Maryland with my church youth group and saw "Whites Only" signs. These signs shocked and angered me. I was active in the

CRM from the time I was 12 or 13 because I belonged to a very progressive Methodist Church, Clair Memorial. I marched against Woolworth stores in New York, Newark and Jersey City because they would not hire African Americans. There was segregation in Jersey City when I grew up, and although there were no signs, it was not that different from segregation in the South. There were restaurants and clubs that you did not enter because they would not serve you if you were Black. There were few African American teachers when I was young and I never had a Black teacher until I went to college. I was one of the first group of young Black women hired by an insurance company (Equitable Life Assurance) in downtown New York City. I participated in the 1963 March on Washington. Busloads and cars full of people organized by the NAACP, churches and community organizations traveled from Jersey City. I saw Dr. King again in Jersey City just before he was assassinated. I'm glad I went to see him. I recognize the greatness of the man and the movement, although I was not committed to peaceful tactics when violence was being used against us. I thought we should fight back instead of turning the other cheek. The CRM was one of the most successful struggles in the history of the United States. It helped to expand democracy and set an example for other people. It spawned the American Indian and Women's movements and CRMs in South Africa and Ireland. I fear we are losing some of its legacy. Students need to learn about the CRM so that a commitment to struggle for human rights for all people is revitalized.

Kerri Creegan, Massapequa High School, Massapequa, NY: "The CRM has yet to transform its visions and dreams into reality."

According to Gunnar Myrdal (*An American Dilemma*, 1940), Americans fail to realize that "people are all much alike on a fundamental level. And they are all good people. They want to be rational and just. They all plead to their conscience that they meant well even when things went wrong." I think Myrdal's insights still explain a lot about the continuing fight for social justice in the United States. Many White suburbanites claim they believe in social justice and are willing to help disadvantaged and minority youth. But when this support means new taxes or involves their own children, they immediately protest against any reforms. A major achievement of the CRM is that most White Americans admit that racial segregation is wrong. However, they also believe that their success is a

result of hard work, not racism. Because of their resistance, the CRM has yet to transform its visions and dreams into reality.

Ron Widelec, IS 238, Queens, NY: "Educational segregation has survived in America."

Although no longer legal, educational segregation has survived in America due to the persistence of residential segregation. Schools in New York City and its surrounding suburbs demonstrate this point. Upper income and lower socio-economic class families live only blocks away from each other, yet their children attend completely different, and unequal, school systems. Needless to say, the minority schools tend to be the ones that are under-funded.

Felicia Gillispie, August Martin High School, Queens, NY: "We have not yet reached the promised land."

Looking at the statistics in the opening essay, it does not appear as if the CRM was successful at all. But if we look at the history of the United States, I think we get a different picture. The struggle of ordinary people, both Black and White, in the 1950s and 1960s profoundly transformed this country. There has been racism in the United States since it was founded. It continues to today. Since 1990, the school I teach in has become increasingly segregated by race because of government policies. We have not yet reached the promised land. We need to revitalize the CRM.

Mary Kennedy Carter, Southside Middle School (retired), Rockville Centre, NY: "South in the North."

I was born in the small town of Franklin in southern Ohio in 1934. Franklin had a population of about 6,000 people with about 50 black families. I was the youngest child in a family with six children. Franklin was a very prejudiced town. I call that area of Ohio the "South in the North." My brother Joseph was a football star and an all-around athlete. The football hero-of-the-week always received a special treat at the local ice cream shop. When my brother won, he was forced to stand outside the store to eat his award. My older sister was by-passed when it came time for her to be selected for the school's honor society. In that town they always found an excuse.

Franklin was a paper mill town. The wealthy people, who were all White, were paper merchants.

There were also many poor White families. Most Blacks worked as maids and butlers in the wealthy White homes. My mother attended Knoxville College in Tennessee and was a teacher. In Ohio, she could not teach in the public schools because she was Black. She had to work in white folks' kitchen. However she also taught in a program for adults.

My father was a barber who worked out of our home. He was the oldest in his family and had gone to work so that his sisters could be college educated. His father was a Black man who came to the United States from Ireland and his mother was a Cherokee. On my mother's side we trace our ancestors back to a governor of Virginia who was both an ancestor and the owner of my people.

My mother and father always wanted their children to go to college and become professionals, which was not the norm for local Black families at that time. All of us went to college, three ended up with doctorates, two with masters degrees, and one attended medical school. I became a teacher.

From primary through high school there were two Black students in my classes, another girl and myself. We always had White teachers. When we learned about Africa we were taught that it was a place with savages, jungles and Tarzan. At home, my parents spoke about Africa as a place with kings and queens and pyramids and power. This inspired me to want to visit the home of my ancestors.

Black and White children were friends until we entered junior high school, even though we seldom went to each other's homes. When people started dating, we generally went our separate ways. Hamilton, Ohio was about thirty-five miles from Franklin, and the town had a roller skating rink. Blacks could only skate there on Monday nights. The rest of the time it was for Whites only. The nearest swimming pool that allowed Blacks to swim was about ten miles away. It was a Black only pool.

Classmates would say in class without hesitation, "Black people are okay in their place." I used to respond, "Our place is the same as yours. We want equal rights." When I graduated from high school I was scheduled to be the valedictorian. That year school officials decided to also select other students to share the honors. Six students with the highest grades were pictured in the local newspapers and two of us from the six spoke at graduation.

I attended Ohio State University and graduated in 1956. At Ohio State I had my first experience with a significant number of Black people. I also learned that the world was more than just Black and White and that even amongst these groups there was a lot

of diversity. The main reason I became an elementary teacher was because in that area of Ohio it was one of the few professional jobs that had opened up for Black women. My first position as a teacher was in Cleveland, Ohio where I taught in a predominately Polish immigrant community. There were other Black teachers there and we were well received.

In 1963 I received a fellowship to study Curriculum and Teaching at Columbia University in New York City. The fellowship made it possible for me to fulfill my dream of travelling to and living in Africa. From 1964 until 1966, I taught history at a teachers' college in Northern Uganda and worked in a demonstration school with local elementary school teachers. I was the first Black American that most of the people in Northern Uganda had met. I felt as if I had come home and people treated me that way.

When I returned to New York I lived in an apartment that had been used by Malcolm X and his followers, so our phones were tapped. I later met Althea Gibson, Jackie Robinson and Betty Shabazz. Betty and I became friends.

During my teaching career I worked in the Roosevelt Schools from 1969 until 1972 where I was asked to develop a Black History curriculum. I later taught in a predominately White school district in Rockville Centre. In the Rockville Centre Middle School I developed a very successful Human Relations program. I also started a club dedicated to eradicating prejudice and discrimination. That club at the time of this writing is still functioning fifteen years later. I also served on a New York State committee which was supposed to promote Multicultural Education.

Looking back at the past fifty years, I believe that in many respects the CRM was a success. In the 1950's and 1960's Black men with Ph.D. and law degrees could only find jobs in the post office or the military. My husband could not get a job as a chemist in Maryland because he was Black. For this reason he moved to New York where he did get a job as a chemist in one of the largest food corporations at that time. I was channeled into elementary education because it was the only place I could be assured of a job. As a result of the CRM my niece today is a vice-president of one of the country's largest food chains. My nephew is a lawyer for a large clothing chain that includes the Limited and Victoria's Secrets. Both of my sons have executive positions in private industry. This would never have been possible if not for the struggle for civil rights.

My biggest reservation is about the schools. Racism remains a problem in America and with segregated housing we have segregated schools and unequal education. People in our society still do not know each other and about each other. Negative stereotypes about Blacks are widespread. Even in interracial schools tracking by race prevails.

Multicultural education offered a solution to these problems but it was deliberately distorted by opponents and railroaded. Teachers need to be more aware of all of the differences that are found in children and be prepared to teach all of the children in their classes. Young teachers with whom I work often say to me that they thought they were not supposed to recognize race. I respond that we always see race. The issue is whether we openly confront our biases and recognize the beauty that is in all people.

Cathy Petoske, Massapequa, NY: "The United States needs to resurrect the CRM."

The United States needs to resurrect the CRM. With an new influx of new immigrants, prejudice and racism are rearing their ugly heads again. Homosexuals are forced to fight an ongoing battle to end discrimination and achieve basic rights. Many African American families continue to live in segregated housing and public school segregation appears to be intensifying.

Diane Maier, Long Beach Middle School, Long Beach, NY: "A success on paper."

The CRM was a success on paper. Men and women of all different backgrounds are technically given the same opportunities. An African American man who wants to run for office has the right to, as does an Hispanic female who aspires to head a Fortune 500 company. But the reality is that these opportunities are available only to the few. Most members of minority groups are still trapped in the inequalities that plague our society.

Adam Stevens, Paul Robeson HS, Brooklyn, NY: "Teach students to view history with a critical eye."

My parents were 1960s activists. They were involved in the anti-war movement and SDS. My father was briefly a member of the Black Panthers. Later they were both trade union activists. This is the environment in which I grew up and I have become a political activist in my own right.

The fundamental achievement of the CRM was that taught people in the United States how to fight

for their rights and challenge racism. It was part of a global questioning of the promises made by the capitalist social order after World War II that included struggles to end colonialism in Africa and Asia. Unfortunately, many of the actual accomplishments of the CRM in the United States proved to be minimal or ephemeral.

As social studies teachers, how can we in good conscience claim that school segregation ended with the Brown decision when it is still so prevalent in this country. The harsh laws that enforced racial segregation have been eliminated, but the economic, social and culture barriers are just as strong today. I teach in a school where there are no White students and racial segregation remains a real part of student lives. I often wonder how many teachers around the country teach in classrooms where there are no Black students and how they explain the reasons for this to their students. I know that when we discuss the achievements of the CRM, I face a healthy amount of cynicism from my students. Continuing racism is like an elephant standing in the classroom and it is hard to ignore.

Teachers cannot permit recognition of the fiftieth anniversary of the Brown decision to become a celebration of the American myth instead of an opportunity to teach students to view history with a critical eye. Too often Brown is just part of the “patriotic chorus.” We had slavery, “YES”, but Lincoln freed the slaves. Women were oppressed, “YES”, but now they can work and vote. Child labor and unemployment were horrible, “YES”, but FDR gave us the New Deal. There was Jim Crow and racial segregation, “YES”, but Earl Warren and Thurgood Marshall made them go away.

I grapple with how to teach students who have been abandoned or neglected in a segregated school system and who, as a result, often have serious academic problems. Many of the teachers in my department avoid an in-depth discussion of the CRM because the results were so contradictory and they just do not know what to say. A big problem with the entire social studies curriculum is that it is designed to convince students that the America system is basically sound, flexible and self-correcting, if they are just patient. It is an ideological view of the past that argues that radical change in basic economic, social, and political relationships are unnecessary. I rather students understand that there is a dichotomy in this country between the ideal of equality and the reality of injustice.

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Brown v. Board of Education of Topeka, Kansas: A document package with lesson ideas

In 1954 the Supreme Court, in an unanimous opinion written by Chief Justice Earl Warren, declared that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” With this historic decision in *Brown v. Board of Education of Topeka, Kansas*, the justices reversed a position permitting segregation taken by a majority of the court in 1896 in *Plessy v. Ferguson*. This reversal by the court, a major step in the struggle for African American Civil Rights in the United States, was the product of a century of struggle and an intensive twenty year legal campaign to overturn segregation by Thurgood Marshall and the National Association for the Advancement of Colored People (NAACP).

African American parents challenged racial segregation in public education as early as 1849 in the case of *Roberts v. City of Boston, Massachusetts*. The *Brown* case in Topeka was initiated by the NAACP. It recruited African American parents for a class action suit against the public school board because Topeka had segregated elementary schools for Black and White children. Oliver Brown was the only male parent in the Kansas group. As part of the NAACP’s legal and public relations strategy, he was listed as the lead plaintiff.

The Supreme Court decision combined five cases from different parts of the country: *Belton v. Gebhardt* (Delaware), *Brown v. Board of Education* (Kansas), *Briggs v. Elliot* (South Carolina), *Davis v. Prince Edwards County School Board* (Virginia), and *Bolling v. Sharpe* (District of Columbia). *Brown* was made the lead case because educational facilities in Topeka were comparatively “equal.” By focusing on Topeka it was easier to make the argument that segregated schools were inherently unequal.

Historic Significance of the Brown Decision

The *Brown* decision is historically significant for a number of reasons. It was national in scope. It extended Fourteenth Amendment legal protection to all citizens of the United States. It was perhaps the most important step in the elimination of *de jure* (legal) segregation in the United States. In the midst of the Cold War between the United States and the Soviet Union, the *Brown* decision reaffirmed this country’s commitment to basic democratic values. In legal terms, *Brown* established the precedent that social science evidence could be applied in evaluating the impact of laws. The *Brown* decision also points out the limited power of court decrees to establish broader social justice. The court ruled that school desegregation had to proceed at all deliberate speed, a time frame that proved to be virtually open ended. And while *de jure* segregation has ended, *de facto* segregation remains a problem in the United States.

The fiftieth anniversary of the *Brown* decision is a fitting time for historians, social studies teachers and students to examine the long term impact of the case and to ask “What did the Brown decision and the struggle for African American Civil Rights in the United States accomplish?” The United States has changed enormously in the last fifty years. In 1960, less than 20% of eligible Black voters were registered to vote in Virginia, Alabama, South Carolina and Mississippi. In 1964, less than 1% of African American children in Arkansas, Alabama, Louisiana, Georgia, South Carolina, North Carolina and Mississippi attended interracial schools. Equality before the law has created new opportunities and African Americans have responded by becoming important cultural, political and economic leaders. They are a visible presence in virtually every area of American society. The struggle to gain full civil rights for African Americans has reinvigorated and redefined democracy in this country, helped to extend rights to women, ethnic and racial minorities and to gays and lesbians, and been the major force behind broadening the school curriculum so that it has more of a multicultural focus.

This package reproduces primary source documents from different historical era. Because of this, Africans Americans are referred to as “Negroes,” “colored” and “Black.” We recommend that teachers discuss the use of language with their classes. For more information on the *Brown* case visit the website of the Brown Foundation for Educational Equity, Excellence and Research at <http://brownvboard.org>. – Alan Singer, editor, *Social Science Docket*

1. Plessy v. Ferguson and the Debate over “Separate but Equal”

Introduction: In 1865, the 13th Amendment to the United States Constitution ended slavery and involuntary servitude. The 14th Amendment, ratified in 1868, defined national citizenship for the first time and extended citizenship rights and the equal protection of the laws to newly emancipated African Americans. The 15th Amendment, added in 1870, was intended to insure the right to vote of African American males. In 1890, Louisiana passed a law requiring that White and Black passengers ride in separate railway and street cars. The penalty for violating the law was either a fine of \$25 or 20 days in jail. This law was one of a large number of “Jim Crow” laws promoting racial segregation that were passed in the South at the end of Reconstruction. In New Orleans in 1892, a thirty-year-old African American man named Homer Plessy challenged the law and insisted on riding in a car designated for “White” passengers. John Ferguson was the judge who initially ruled against Plessy. The case was eventually appealed to the United States Supreme Court, which by a vote of 7 to 1, upheld the constitutionality of the Louisiana law. Associate Justice Henry Brown delivered the majority opinion for the Court. The lone dissenting vote was cast by Associate Justice John Harlan. Harlan was from Kentucky and was a former slave owner. Many of his views on segregation and the law were later included in the *Brown v. Topeka, Kansas Board of Education* decision that overturned *de jure* (legal) racial segregation in the United States.

A. Section 1 of the Fourteenth Amendment to the United States Constitution (1868)

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Associate Justice Henry Brown Presents the Majority View in Plessy v. Ferguson (1896)

a. The object of the [14th] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality. . . . Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children

b. [T]he case reduces itself to the question whether the statute of Louisiana is a reasonable regulation. . . . In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

c. We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. . . .

d. Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane. . . .

C. Associate Justice John Harlan Dissents in Plessy v. Ferguson.

a. [S]uch legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within the

United States. . . . [I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race. . . .

b. The present decision . . . will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. Sixty millions of whites are in no danger from the presence here of eight millions of blacks. 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. . . .

c. If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. . . .

d. (T)he statute of Louisiana is inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and letter of the Constitution of the United States. If laws of like character should be enacted in the several States of the Union, the effect would be in the highest degree mischievous. Slavery, as an institution tolerated by law would . . . have disappeared from our country, but there would remain a power in the States, by sinister legislation, to interfere with the full enjoyment of the blessings of freedom. . . .

D. Louisiana's Separate Car Law. Source: *The New York Times*, May 19, 1896

The Supreme Court to-day, in an opinion read by Justice Brown, sustained the constitutionality of the law of Louisiana requiring the railroads of the State to provide separate cars for white and colored passengers. There was no inter State commerce feature in the case, for the railroad upon which the incident occurred giving rise to the case - Plessy vs. Ferguson - the East Louisiana Railroad - was and is operated wholly within the State. The opinion states that by analogy to the laws of Congress and of many of the States, requiring the establishment of separate schools for children of the two races, and other similar laws, the statute in question was within the competency of the Louisiana Legislature, exercising the police power of the State. The judgment of the Supreme Court of the State, upholding the law, was therefore affirmed. Mr. Justice Harlan announced a very vigorous dissent, saying that he saw nothing but mischief in all such laws. In his view of the case, no power in the land had the right to regulate the enjoyment civil rights upon the basis of race. It would be just as reasonable and proper, he said, for states to pass laws requiring separate cars to be furnished for Catholics and Protestants, or for descendants of those of the Teutonic race and those of the Latin race.

Questions

1. According to the Fourteenth Amendment, who is considered a citizen of the United States?
2. What limitations are placed on the power of the states by the Fourteenth Amendment?
3. The majority opinion of the court accepts that the Fourteenth Amendment established the "absolute equality of the two races before the law," yet still rules that segregated railway cars are legal. How does Justice Brown explain this position?
4. Why did Justice Harlan disagree with the majority opinion of the court?
5. Why are public schools mentioned by Justice Brown and in *The New York Times* article as justification for the majority decision?
6. According to Justice Harlan, this court decision allows state governments "to interfere with the full enjoyment of the blessings of freedom" promised by the abolition of slavery. Do you agree or disagree with Justice Harlan? Explain your view.

2. The Niagara Declaration of Principles (1905)

Introduction: In 1905, W.E.B. DuBois and a group of African American supporters met on the Canadian side of Niagara Falls to launch a campaign to challenge *Plessy v. Ferguson* and racial inequality in the United States. In 1909, the principles of the Niagara Movement were adopted by a newly formed civil rights organization, the National Association for the Advancement of Colored People.

1. Progress: The members of the conference, known as the Niagara Movement, . . . congratulate the Negro-Americans on certain undoubted evidences of progress in the last decade, particularly the increase of intelligence, the buying of property, the checking of crime, the uplift in home life, the advance in literature and art, and the demonstration of constructive and executive ability in the conduct of great religious, economic and educational institutions.
2. Suffrage: At the same time, we believe that this class of American citizens should protest emphatically and continually against the curtailment of their political rights. We believe in manhood suffrage; we believe that no man is so good, intelligent or wealthy as to be entrusted wholly with the welfare of his neighbor.
3. Civil Liberty: We believe also in protest against the curtailment of our civil rights. All American citizens have the right to equal treatment in places of public entertainment according to their behavior and deserts.
4. Education: Common school education should be free to all American children and compulsory. High school training should be adequately provided for all, and college training should be the monopoly of no class or race in any section of our common country. We believe that, in defense of our own institutions, the United States should aid common school education, particularly in the South, and we especially recommend concerted agitation to this end. . . .
5. Courts: We demand upright judges in courts, juries selected without discrimination on account of color and the same measure of punishment and the same efforts at reformation for black as for white offenders. . . .
6. Public Opinion: We note with alarm the evident retrogression in this land of sound public opinion on the subject of manhood rights, republican government and human brotherhood, and we pray God that this nation will not degenerate into a mob of boasters and oppressors, but rather will return to the faith of the fathers, that all men were created free and equal, with certain unalienable rights.
7. Protest: We refuse to allow the impression to remain that the Negro-American assents to inferiority, is submissive under oppression and apologetic before insults. Through helplessness we may submit, but the voice of protest of ten million Americans must never cease to assail the ears of their fellows, so long as America is unjust.
8. Color-Line: Any discrimination based simply on race or color is barbarous, we care not how hallowed it be by custom, expediency or prejudice. . . .
9. Oppression: We repudiate the monstrous doctrine that the oppressor should be the sole authority as to the rights of the oppressed. The Negro race in America stolen, ravished and degraded, struggling up through difficulties and oppression, needs sympathy and receives criticism; needs help and is given hindrance, needs protection and is given mob-violence, needs justice and is given charity, needs leadership and is given cowardice and apology, needs bread and is given a stone. This nation will never stand justified before God until these things are changed.
10. Agitation: Of the above grievances we do not hesitate to complain, and to complain loudly and insistently. To ignore, overlook, or apologize for these wrongs is to prove ourselves unworthy of freedom. Persistent manly agitation is the way to liberty, and toward this goal the Niagara Movement has started and asks the cooperation of all men of all races.

Questions

1. What were the major goals of the Niagara Movement?
2. How did the Niagara Movement want to change education in the United States?
3. How did the founders of the Niagara Movement plan to achieve their goals?
4. In your opinion, have the goals of the Niagara Movement been achieved in the United States? Explain your view.

3. Charles Houston, “Educational Inequalities Must Go!” *Crisis* (October 1935).

Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 30-31.

Introduction: The NAACP legal campaign to overturn the majority decision in *Plessy v. Ferguson* was organized by Professor Charles Houston, Dean of the School of Law at Howard University. Houston was a Special Counsel to the NAACP. He used his law classes at Howard University as a laboratory for preparing a generation of lawyers, including Thurgood Marshall, to challenge segregation in the courts. This passage is from an article by Houston in the NAACP magazine *Crisis*.

a. The National Association for the Advancement of Colored People is launching an active campaign against race discrimination in public education. The campaign will reach all levels of public education from the nursery school through the university. The ultimate objective of the association is the abolition of all forms of segregation in public education, whether in the admission of activities of students, the appointment or advancement of teachers, or administrative control. The association will resist any attempt to extend segregated schools. Where possible it will attack segregation in schools. Where segregation is so firmly entrenched by law that a frontal attack cannot be made, the association will throw its immediate force toward bringing Negro schools up to an absolute equality with white schools. If the white South insists upon its separate schools, it must not squeeze the Negro schools to pay for them. . . .

b. The N.A.A.C.P. proposes to use every legitimate means at its disposal to accomplish actual equality of educational opportunity for Negroes. A legislative program is being formulated. Court action has already begun in Maryland to compel the University of Maryland to admit a qualified Negro boy to the law school of the university. Court action is imminent in Virginia to compel the University of Virginia to admit a qualified Negro girl in the graduate department of that university. Activity in politics will be fostered due to the political set-up of and control over public school systems. The press and the public forum will be enlisted to explain to the public the issues involved and to make both whites and Negroes realize the blight which inferior education throws over them, their children and their communities.

c. The campaign for equality of educational opportunity is indissolubly linked with all the other major activities of the association. . . . The N.A.A.C.P. recognizes the fact that the discrimination which the Negro suffers in education are merely part of the general pattern of race prejudice in American life, and it knows that no attack on discrimination in education can have any far reaching effect unless it is bound to a general attack on discrimination and segregation in all phases of American life. . . .

Questions

1. Who was Charles Houston?
2. What is the goal of the NAACP?
3. What strategies will the NAACP use to achieve its goals?
4. According to Houston, “no attack on discrimination in education can have any far reaching effect unless it is bound to a general attack on discrimination and segregation in all phases of American life.” Do you agree or disagree with his position? Explain your view.

Contributors to this package include Douglas Cioffi, Kellenberg Memorial High School, Uniondale, NY; Kerri Creegan, Massapequa High School, Massapequa, NY; Felicia Gillispie, August Martin High School, Queens, NY; Christine Jacovina, Holy Trinity High School, Hicksville, NY; Steven Keyser, Lindenhurst, NY; Monica Longo, Kennedy High School, Bellmore, NY; Darren Luskoff, Mineola HS, Garden City Park, NY; Diane Maier, Long Beach Middle School, Lido Beach, NY; Pablo Muriel, University Heights High School, Bronx, NY; Hanae Okita, Oceanside CSD, Oceanside, NY; Gaurav Passi, Farmingdale High School, Farmingdale, NY; Cathy Petoske, Massapequa High School, Massapequa, NY; Christine Roblin, Carey High School, Franklin Square, NY; John Wade, North Bellmore, NY; Alex Webster, Schriber High School, Port Washington, NY; Ron Widelec, IS 238, Queens, NY.

5. Preliminary Actions in the Campaign to Overturn Plessy v. Ferguson

Introduction: In order to establish new legal precedents in their campaign to overturn the Supreme Court's Plessy v. Ferguson decision, Thurgood Marshall and the NAACP challenged segregation in schools on a number of fronts. In 1946, Heman Sweatt, an African American letter carrier was denied admission to the University of Texas Law school because of his race. State and university officials offered to allow Sweatt to attend a separate law program. In 1948, George McLaurin, an African American student at the University of Oklahoma was permitted to use the same classrooms, library and cafeteria as White students, but was assigned to sit in separate sections designated for African American or Negro students. In both cases the court's decision was delivered by Chief Justice Vinson and the Supreme Court ruled that these were examples of illegal racial segregation. In 1951, Marshall and the NAACP challenged racial segregation in South Carolina public schools in the case of Briggs v. Elliot. The major decision of the District Court called for reform of the "Jim Crow" system and a gradual elimination of the disparity between Black and White schools in the state. A minority position declared school segregation inherently unequal. This case was later combined with Brown v. Topeka, Kansas Board of Education and covered under the Supreme Court's Brown decision.

A. Sweatt v. Painter (1950)

[A]lthough the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.

B. McLaurin v. Oklahoma State Regents (1950)

It is said that the separations imposed by the State in this case are in form merely nominal. . . . But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession. Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained.

C. Briggs v. Elliot, Majority Opinion delivered by Circuit Judge John Parker (1951)

There can be no question but that where separate schools are maintained for Negroes and whites, the educational facilities and opportunities afforded by them must be equal. . . . How this shall be done is a matter for the school authorities and not for the court, so long as it is done in good faith and equality of facilities is afforded. . . . [S]egregation of the races in the public schools, so long as equality of rights is preserved, is a matter of legislative policy for the several states, with which the federal courts are powerless to interfere. . . . In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole. . . . We conclude, therefore, that if equal facilities are offered, segregation of the races in the public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the Amendment. We think that this conclusion is supported by overwhelming authority which we are not at liberty to disregard on the basis of theories advanced by a few educators and sociologists.

D. District Judge J. Waties Waring's Dissent in *Briggs v. Elliot* (1951)

The courts of this land have stricken down discrimination in higher education and have declared unequivocally that segregation is not equality. But these decisions have pruned away only the noxious fruits. Here in this case, we are asked to strike its very root. . . . To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-cover suppression of the rights of any of our citizens because of the pigmentation of their skins.

Questions

1. In *Sweatt v. Painter* the court rules that the separate law school creates an “academic vacuum” that hinders the ability of students to learn. Why does the court take this position? Do you agree or disagree? Explain your view.
2. In *McLaurin v. Oklahoma State Regents*, the court argues that students under McLaurin’s guidance would also be adversely affected by this plan. Why? Do you agree or disagree? Explain your view.
3. In your opinion, are the *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents* sufficient to overturn the courts ruling in *Plessy v. Ferguson*? Explain your view.
4. What is the opinion of the majority of the court in *Briggs v. Elliot*?
5. Why does Judge Waring disagree with the majority opinion?
6. In *Briggs v. Elliot*, Judge Parker, writing for the majority, argued: “In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole.” This statement was used to justify segregated schools. Write a statement expressing your own views that replies to Judge Parker.

Picture Books about the Civil Rights Movement and Related Stories

by Judith Y. Singer

Several picture books are available to help younger children learn about the Civil Rights Movement. David Adler has written biographies of famous people, including Martin Luther King, Jr., Thurgood Marshall, and Rosa Parks (NY: Holiday House). *I Am Rosa Parks*, a book written for young readers by Rosa Parks tells about her childhood and how she worked as an adult to improve conditions for Black people (NY: Puffin Books). *If a Bus Could Talk: The Story of Rosa Parks* is a picture book with vivid paintings of Rosa’s story. It was written and illustrated by Faith Ringgold (NY: Aladdin, 1999). Two books about Martin Luther King, Jr. build on his famous “I Have a Dream” speech. *Martin’s Big Words: the Life of Martin Luther King, Jr.*, written by Doreen Rappaport (B. Collier, illustrator), uses excerpts from the speech and colorful paintings to show King’s life-long struggle for social justice (NY: Hyperion Books, 2001). In *I Have a Dream* passages from the speech are interspersed with paintings that help interpret it for readers (NY: Scholastic, 1997). *The Story of Ruby Bridges* by Robert Coles (G. Ford, illustrator) tells of a six-year-old Black girl who is the first African American child to enter an all-White elementary school in Mississippi (NY: Scholastic, 1995). *In My Own Words* is Ruby Bridges’ own retelling of this experience (NY: Scholastic, 1999). *Granddaddy’s Gift*, written by Margaree K. Mitchell (L. Johnson, illustrator) is the story of one Black man’s determination to register to vote in segregated Mississippi. It was written as a legacy to his granddaughter (Bridge Water Paperback, 1997).

The Day Gogo Went to Vote, written by Elinor B. Sisulu and illustrated by Sharon Wilson, takes place in South Africa at the end of apartheid. It reminds us that the struggle for justice throughout the world never ceases (Boston: Little, Brown, 1996). The last books in this selection bring us up to the present and provide some hope that children can find ways to reach out across their differences. *Amazing Grace*, written by Mary Hoffman and illustrated by Caroline Binch, is the story of a six-year-old girl who wants to be Peter Pan in the class play. She is told she can’t be Peter Pan because she is a girl and because she is Black. Grace’s grandmother helps her discover that, in fact, she can be Peter Pan (NY: Dial Books for Young Readers). *The Other Side*, written by Jacqueline Woodson (E. B. Lewis, illustrator) is about two little girls, one Black and one White, who decide to sit together on a fence that divides them from one another (NY: Putnam’s Sons, 2001).

5. “Appendix to Appellants’ Brief,” *Brown v. Board of Education, Topeka, Kansas, September 1952.*

Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 34-36.

Introduction: This statement was developed by a team of social scientists including Dr. Kenneth Clark, a psychologist at the City College of New York. It presents social science research documenting the painful effects of racial segregation on African American children. It includes conclusions based on Dr. Clark’s research that used dolls of different colors to study the attitudes of young Black children toward their own identity. In 1951, Clark tested sixteen Black children in Clarendon County, South Carolina. The children were all between the ages of six and nine years old. Eleven of the children characterized an African American doll as the “bad” doll. Nine selected a White doll as the “nice” doll. Seven of the African American children selected the White doll as the one that looked most like them.

a. The problem of segregation of racial and ethnic groups constitutes one of the major problems facing the American people today. It seems desirable, therefore, to summarize the contributions which contemporary social science can make toward its resolution. . . .

b. At the recent Mid-century White House Conference on Children and Youth, a fact-finding report on the effect of prejudice, discrimination and segregation on the personality of children was prepared as a basis for some of the deliberations. . . . It highlighted the fact that segregation, prejudices and discriminations, and their social concomitants potentially damage the personality of all children – the children of the majority group in a somewhat different way than the more obviously damaged children of the minority group.

c. The report indicates that as minority group children learn the inferior status to which they are assigned – as they observe the fact that they are almost always segregated and kept apart from others who are treated with more respect by the society as a whole – they often react with feelings of inferiority and a sense of personal humiliation. Many of them become confused about their own personal worth. On the one hand, like all other human beings they require a sense of personal dignity; on the other hand, almost nowhere in the larger society do they find their own dignity as human beings respected by others. . . .

d. The report indicates that minority group children of all social and economic classes often react with a generally defeatist attitude and a lowering of personal ambitions. This, for example, is reflected in lower pupil morale and a depression of the educational aspiration level among minority group children in segregated schools. In producing such effects, segregated schools impair the ability of the child to profit from the educational opportunities provided him. . . .

Questions

1. In your opinion, how can the attitude of children toward dolls of different colors be used to study the attitudes of young Black children toward their own identity?
2. Why would school segregation by race lead to a “defeatist attitude and a lowering of personal ambitions” among African American children?
3. According to this report, “segregation, prejudices and discriminations, . . . potentially damage the personality of all children – the children of the majority group in a somewhat different way than the more obviously damaged children of the minority group.” Do you agree or disagree with this position? Explain your view.
4. Many children in the United States still attend racially segregated schools. In your view, does school segregation continue to negatively affect the education of minority children? Explain.

6. The Challenge to Racial Segregation Moves Through the Courts

Introduction: The NAACP launched a series of court cases in four states and Washington DC to challenge racial segregation in public schools and overturn the Plessy v. Ferguson decision of 1896. Thurgood Marshall, the chief counsel for the NAACP argued that segregation perpetuated slavery and violated the 14th Amendment to the United States Constitution. In a brief to the Supreme Court, the United States Department of Justice advised that the Supreme Court had the constitutional authority to outlaw racial segregation in the public schools.

A. Supreme Court Asked to End School Segregation in Nation (1952)

Source: Luther A. Huston , *The New York Times*, December 10, 1952

a. Arguments began in the Supreme Court today on the question whether segregation of white and Negro students in separate schools violated the Federal Constitution. The arguments will continue through Thursday, but officials familiar with court procedure believed that it might be months before the nine justices rendered an opinion. Questions from the bench today indicated that the members of the court were gravely aware of the political, economic and social implications of the decision they were called on to make. When a participating lawyer remarked that “tough problems” were involved Justice Felix Frankfurter said, “That is why we are here.” The proceedings are concerned with an attack, spearheaded by the National Association for the Advancement of Colored People, on the school segregation laws of four states, and the District of Columbia. Thirteen other states in which segregation is practiced will be affected by the high court’s ruling. The basic laws before the court is the enduring one of the state’s rights. The opponents of the segregation laws centered their case almost entirely on the argument that such statutes violated the section of the Fourteenth Amendment to the Constitution providing that no state “shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” The defense replied that no constitutional rights of Negro citizens were impaired by state segregation statutes. . . .

b. Thurgood Marshall, Negro counsel for the National Association for the Advancement of Colored People, who opened the argument in the South Carolina case, asserted that “slavery is perpetuated in these statutes.” The original suit in South Carolina was filed on behalf of sixty-seven Negro children and their parents. They asked an injunction enjoining school officials in Clarendon County from “making a distinction on account of race and color, in maintaining public schools for Negro children which are inferior to those maintained for white children.” The suit was filed in May, 1950. In June, 1951, a three-judge Federal court handed down a two-to-one decision upholding segregation but ordering the school board to furnish Negroes with “educational facilities, equipment, curricula and opportunities equal to their furnished white pupils.” South Carolina had levied a 3 percent sales tax and floated a \$75,000,000 bond issue to provide equal school facilities for white and Negro students, and a program designed to end admitted inequalities in facilities was under way. Mr. Marshall argued today, however, that the attack on the decision was not made on equality of facilities but on constitutional grounds. He asserted that the mandatory segregation provision of the South Carolina Constitution denied to Negroes the equal protection guaranteed under the Fourteenth Amendment.

B. High Court Urged To End School Bias (1953)

Source: Luther A. Huston, *The New York Times*, November 28, 1953

The Department of Justice advised the Supreme Court today that it had ample constitutional power to outlaw racial segregation in the public schools and should do so. It was a question, “not of legislative policy but of constitutional power,” the department asserted in a brief filed with the clerk of the court, and “must ultimately be determined by this court on the basis of its construction of the Fourteenth Amendment.” The Justice Department construed that amendment to compel “a state to grant the benefits of public education to all its people equally, without regard to differences of race or color.”

Questions

1. What issue will the Supreme Court decide in the *Brown v. Topeka, Kansas Board of Education* case?
2. Why do opponents of the Brown case define the issue as a defense of States’ rights?
3. What is the advise of the Department of Justice to the Supreme Court?

7. Supreme Court Decision, *Brown v. Topeka, Kansas Board of Education* (1954)

Introduction: The Supreme Court consolidated the NAACP legal challenges to racial segregation in public schools in Kansas, South Carolina, Virginia, and Delaware into one case known as *Brown v. Topeka, Kansas Board of Education*. On May 17, 1954, the Supreme Court issued an unanimous ruling overturning *Plessy v. Ferguson* and opposing legal, or *de jure*, racial segregation in public schools. Chief Justice Earl Warren delivered the opinion of the Court and ordered the school districts and the states that were defendants in the case to return to the Supreme Court with proposals to eliminate racial segregation in their school systems.

a. 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. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. 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.

b. We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . .

c. To separate them [African American children] 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. . . .

d. Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. . . . We conclude that, in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.

Questions

1. What legal precedent was established by the *Plessy v. Ferguson* decision?
2. The *Plessy* decision referred specifically to segregated railway cars. Why did it have a major impact on education?
3. According to the unanimous opinion of the court in *Brown v. Topeka, Kansas Board of Education*, why is racial segregation in public schools such a pressing national issue?
4. According to the unanimous opinion of the court, what is the impact of racial segregation on African American children?
5. In your opinion, why was it important that *Brown* was a unanimous opinion of the court?

8. Public Responses to the Brown Decision

Source: *The New York Times*, May 18, 1954

A. Breathing Spell for Adjustment Tempers Region's Feelings by John N. Popham

a. The South's reaction to the Supreme Court's decision outlawing racial segregation in public schools appeared to be tempered considerably today. The time lag allowed for carrying out the required transitions seemed to be the major factor in that reaction. Southern leaders of both races in political, educational and community service fields expressed comment that covered a wide range. Some spoke bitter words that verged on defiance. Others ranged from sharp disagreement to predictions of peaceful and successful adjustment in accord with the ruling. But underneath the surface of much of the comment, it was evident that many Southerners recognized that the decision had laid down the legal principle rejecting segregation in public education facilities. They also noted that it had left open a challenge to the region to join in working out a program of necessary changes in the present biracial school systems. Three of the most illustrative viewpoints were those expressed by Govs. James F. Byrnes of South Carolina and Herman Talmadge of Georgia, and Harold Fleming, a spokesman for the Southern Regional Council, the most effective interracial organization in the South.

b. Governor Byrnes, who has vigorously defended the doctrine of separate but equal facilities in education, said that he was "shocked to learn that the court has reversed itself" with regard to past rulings on that doctrine. However, Governor Byrnes, a former Associate Justice of the Supreme Court, noted that the tribunal had not yet delivered its final decree setting forth the time and terms for ending segregation in the schools. Pointing out that South Carolina, a party in the litigation before the court, had until October to present arguments on how the Supreme Court should order the implementation of the decision. Governor Byrnes declared "I urge all of our people, white and colored, to exercise restraint and preserve order." Governor Talmadge repeatedly has vowed there "will never be mixed schools while I am Governor."

B. Historians Laud Court's Decision

Source: *The New York Times*, May 18, 1954

a. Dr. Merle Curti, Professor of History at the University of Wisconsin, said that the decision was momentous, and more so because it was unanimous. The court, he added, upheld the great principles of human dignity and equality of opportunity. "It is a great thing," he declared. "As far as what immediate effect the decision will have, it is hard to say. I think that temporarily the situation may cause some confusion. In the long run it will have a desirable effect on education. Education means living together and this is a great step toward that end. "The decision is important to the world. This shows the world that we have taken a great stride toward the principles in which we believe. It is a tremendous victory for us."

b. Dr. Arthur M. Schlesinger, Sr., History Professor at Harvard University, declared that "this is wonderful." The Supreme Court has finally reconciled the Constitution with the preamble of the Declaration of Independence," Dr. Schlesinger declared. "There will be a good many outcries against the decision and efforts to evade it by legislation. The decision will be a very great aid in clarifying to the world our conception of democracy."

c. Prof. Thomas Clark of the University of Kentucky said that segregation in this country was on its way out. Moreover, he added, if we are to present ourselves correctly to the rest of the world it must be on its way out. "It is the only decision the Supreme Court could make," said Professor Clark. "The decision will have a wholesome effect on the rest of the world where we are always hammered on the race question. The decision comes at a good time."

Questions

1. Why was the "time lag" for implementing the Brown decision viewed as important?
2. How did Governors Byrnes of South Carolina and Herman Talmadge of Georgia respond to the decision?
3. In your view, why were these historians so positive in their reaction to the court's decision?

C. The African American Press Responds

Daily World (Atlanta) "The Decision of a Century," May 18, 1954

This case has attracted world attention; its import will be of great significance in these trying times when democracy itself is struggling to envision a free world. It will strengthen the position of our nation in carrying out the imposed duties of world leadership. Coming at this particular time, the decision serves as a boost to the spirit of Democracy, it accelerates the faith of intense devoutness in minorities, who have long believed in and trusted the courts. However, it has added significance to the citizens of Georgia who are now confronted with a proposed state constitutional amendment to turn the schools from public to private hands in the event the court did just what it has done. We predict now the defeat of this amendment.

Courier (Pittsburgh) "Will Stun Communists," May 18, 1954

The conscience of America has spoken through its constitutional voice. This clarion announcement will also stun and silence America's Communist traducers behind the Iron Curtain. It will effectively impress upon millions of colored people in Asia and Africa the fact that idealism and social morality can and do prevail in the United States, regardless of race, creed or color.

1. Why would this case attract world-wide attention and enhance the U.S. position in the world?
2. How does this decision boost the "spirit of democracy"?

9. The Southern Manifesto (1956)

Source: Congressional Record, 84th Congress Second Session. Vol. 102, part 4, March 12, 1956 (www.people.fas.harvard.edu/~bnjohns/SouthernManifesto.htm).

Introduction: In response to the Supreme Court's decision in *Brown v. Topeka, Kansas Board of Education*, nineteen United States Senators representing eleven southern states and seventy-seven members of the House of Representatives issued a "Declaration Of Constitutional Principles." In the declaration, they accused the Supreme Court of issuing an "unwarrented decision" and of exceeding its constitutional authority. They pledged "to use all lawful means to bring about a reversal of this decision."

a. The Founding Fathers gave us a Constitution of checks and balances because they realized the inescapable lesson of history that no man or group of men can be safely entrusted with unlimited power. . . . We regard the decisions of the Supreme Court in the school cases as a clear abuse of judicial power. It climaxes a trend in the Federal Judiciary undertaking to . . . encroach upon the reserved rights of the States and the people.

b. The original Constitution does not mention education. Neither does the 14th Amendment nor any other amendment. The debates preceding the submission of the 14th Amendment clearly show that there was no intent that it should affect the system of education maintained by the States. The very Congress which proposed the amendment subsequently provided for segregated schools in the District of Columbia.

c. In the case of *Plessy v. Ferguson* in 1896 the Supreme Court expressly declared that under the 14th Amendment no person was denied any of his rights if the States provided separate but equal facilities. . . . This interpretation, restated time and again, became a part of the life of the people of many of the States and confirmed their habits, traditions, and way of life. It is founded on elemental humanity and commonsense, for parents should not be deprived by Government of the right to direct the lives and education of their own children. . . .

d. This unwarranted exercise of power by the Court, contrary to the Constitution, is creating chaos and confusion in the States principally affected. It is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship and understanding. Without regard to the consent of the governed, outside mediators are threatening immediate and revolutionary changes in our public schools systems. If done, this is certain to destroy the system of public education in some of the States.

e. We reaffirm our reliance on the Constitution as the fundamental law of the land. We decry the Supreme Court's encroachment on the rights reserved to the States and to the people, contrary to established law, and to the Constitution. We commend the motives of those States which have declared the intention to resist forced integration by any lawful means. We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

Questions

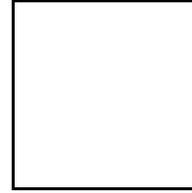
1. According to the members of the Senate and House of Representatives who signed this manifesto, why was the *Brown* decision incorrect?
2. In your opinion, what would have been the impact of this manifesto on efforts to implement the court ruling? Explain.
3. Imagine one of the signers of this manifesto was your elected representative. Write him a letter expressing your views on the Supreme Court decision and the manifesto.

10. Enforcing the Decision: President Eisenhower’s “Address on Little Rock,” September 25, 1957.

Source: Peter Levy, ed. (1992). *Let Freedom Ring, A Documentary History of the Modern Civil Rights Movement*. NY: Praeger. p. 46-48.

Introduction: The unanimous Supreme Court decision in *Brown v. the Topeka Kansas Board of Education* allowed segregated school systems to propose their own plans to reorganize. Many districts, especially in the South, actively resisted implementing the decision. In Little Rock, Arkansas, Governor Faubus and mobs of local Whites actively tried to block school desegregation.

President Eisenhower, who had not spoken publicly about the integration of public schools or the Brown decision, finally acted to defend the federal courts and enforce “the law of the land.” The photo on the right shows a hostile crowd harassing an African American student. (Source: www.spartacus.schoolnet.co.uk/USALittleRock.htm).



a. My fellow citizens. . . . I must speak to you about the serious situation that has arisen in Little Rock. . . . In that city, under the leadership of demagogic extremists, disorderly mobs have deliberately prevented the carrying out of proper orders from a federal court. Local authorities have not eliminated that violent opposition and, under the law, I yesterday issued a proclamation calling upon the mob to disperse. This morning the mob again gathered in front of the Central High School of Little Rock, obviously for the purpose of again preventing the carrying out of the court’s order relating to the admission of Negro children to that school. Whenever normal agencies prove inadequate to the task and it becomes necessary for the executive branch of the federal government to use its powers and authority to uphold federal courts, the President’s responsibility is inescapable. In accordance with that responsibility, I have today issued an Executive Order directing the use of troops under federal authority to aid in the execution of federal law at Little Rock, Arkansas.

b. During the past several years, many communities in our southern states have instituted public school plans for gradual progress in the enrollment and attendance of school children of all races in order to bring themselves into compliance with the law of the land. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. . . . A foundation of our American way of life is our national respect for law. In the South, as elsewhere, citizens are keenly aware of the tremendous disservice that has been done to the people of Arkansas in the eyes of the nation, and that has been done to the nation in the eyes of the world.

c. At a time when we face grave situations abroad because of the hatred that communism bears toward a system of government based on human rights, it would be difficult to exaggerate the harm that is being done to the prestige and influence, and indeed to the safety, of our nation and the world. Our enemies are gloating over this incident and using it everywhere to misrepresent our whole nation. We are portrayed as a violator of those standards of conduct which the people of the world united to proclaim in the Charter of the United Nations. There they affirmed “faith in fundamental human rights” and “in the dignity and worth of the human person” and they did so “without distinction as to race, sex, language or religion.”

d. I call upon the citizens of the State of Arkansas to assist in bringing an immediate end to all interference with the law and its processes. If resistance to the federal court orders ceases at once, the further presence of federal troops will be unnecessary and the City of Little Rock will return to its normal habits of peace and order and a blot upon the fair name and high honor of our nation in the world will be removed. Thus will be restored the image of America and all its parts as one nation, indivisible, with liberty and justice for all.

Questions

1. Why does President Eisenhower believe a “disservice” was done to the people of Arkansas?
2. Why does President Eisenhower believe that resistance to the desegregation of schools is damaging the image of the United States?
3. In your opinion, why do you think President Eisenhower decided to send federal troops into Little Rock? Do you agree or disagree with his decision? Explain your view.

11. The Legacy of the Brown Decision

Introduction: The Civil Rights Movement and the African American community's challenge to racial segregation via the courts and through non-violent civil disobedience fundamentally transformed the United States. However it has not ended all forms of racial discrimination and social inequality. In August, 1963, nine years after the Brown decision, Martin Luther King, Jr. demanded that the United States should finally live up to the promise of its Declaration of Independence and Constitution. In 1964 and 1965, new federal Civil Rights legislation signaled a new government effort to enforce the principal of equality before the law. However, many in the African American community, including Malcolm X, were skeptical about progress in the 1960s, and whether these laws would ever be effective. For example, Title IV of the 1964 Civil Rights Act authorized but did not require withdrawal of federal funds from programs that practice discrimination. Many African Americans continue to be skeptical about the possibility for equality fifty years after the Brown v. Topeka, Kansas Board of Education decision.

A. "I Have A Dream" by Martin Luther King, Jr., delivered on the steps at the Lincoln Memorial in Washington D.C. on August 28, 1963: "Five score years ago, a great American, in whose symbolic shadow we stand signed the Emancipation Proclamation. . . . But one hundred years later, we must face the tragic fact that the Negro is still not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize an appalling condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness. . . . I say to you today, my friends, that in spite of the difficulties and frustrations of the moment, I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal." . . . And if America is to be a great nation this must become true. So let freedom ring. When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, 'Free at last! free at last! thank God Almighty, we are free at last!'"

B. Malcolm X declares "It's The Ballot Or The Bullet" (April 3, 1964): "If we don't do something real soon, I think you'll have to agree that we're going to be forced either to use the ballot or the bullet. It's one or the other in 1964. It isn't that time is running out - time has run out! 1964 threatens to be the most explosive year America has ever witnessed. . . . I'm not an American. I'm one of the 22 million black people who are the victims of Americanism. One of the 22 million black people who are the victims of democracy, nothing but disguised hypocrisy. So, I'm not standing here speaking to you as an American, or a patriot, or a flag-saluter, or a flag-waver-no, not I. I'm speaking as a victim of this American system. And I see America through the eyes of the victim. I don't see any American dream; I see an American nightmare. . . . This government has failed the Negro. This so-called democracy has failed the Negro. And all these white liberals have definitely failed the Negro."

C. Excerpt from the Civil Rights Act of 1964: "An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunities, and for other purposes."

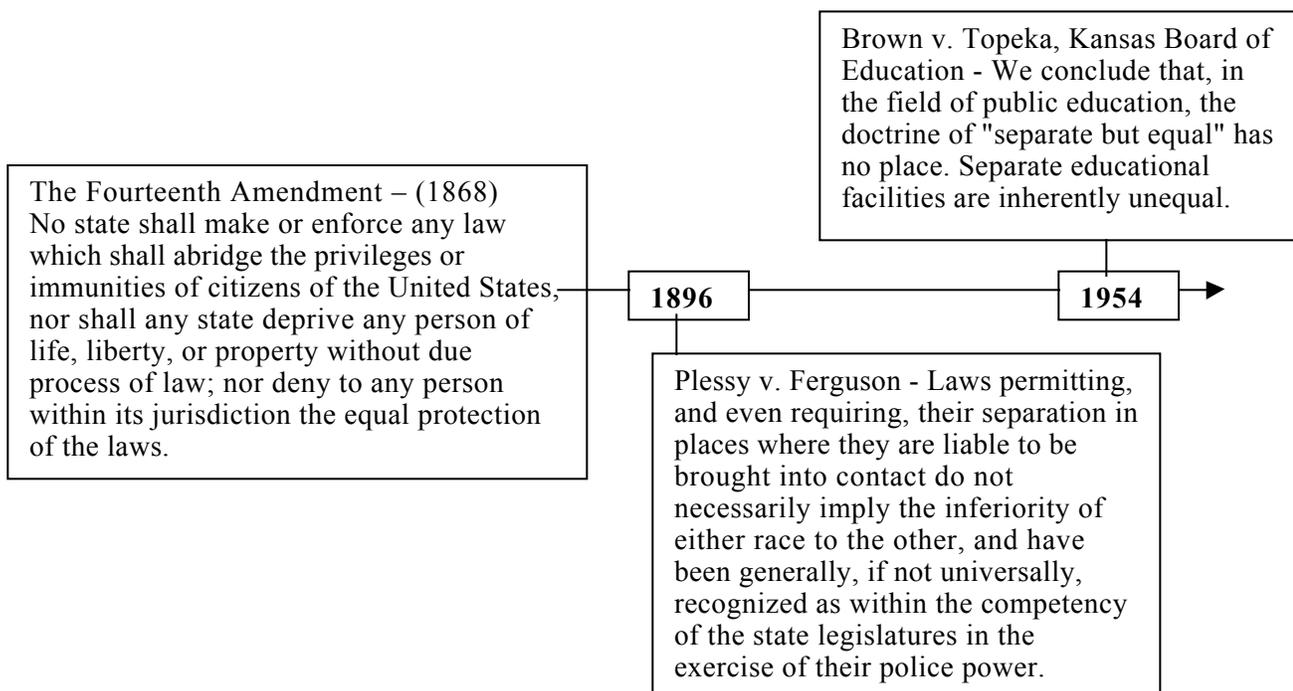
D. Lyndon Baines Johnson speaking on the Voting Rights Act (March 15, 1965): "Every American citizen must have an equal right to vote. Yet the harsh fact is that in many places in this country men and women are kept from voting simply because they are Negroes. Every device of which human ingenuity is

capable has been used to deny this rights. The Negro citizen may go to register only to be told that the day is wrong, or the hour is late, or the official in charge is late, or the official in charge is absent. And if he persists and he manages to present himself to register, he may be disqualified because he did not spell out his middle name or because he abbreviated a word on his application. And if he manages to fill out an application he is given a test. The register is the sole judge of whether he passes his test. He may be asked to recite the entire constitution, or explain the most complex provisions of state laws. And even a college degree cannot be used to prove that he can read and write. For the fact is that the only way to pass these barriers is to show a white skin. This bill will strike down restrictions to voting in all elections - federal, State, and local - which have been used to deny Negroes the right to vote.”

Questions

1. In your opinion, did Martin Luther King, Jr. agree or disagree with the goals established in the *Brown* decision? Explain your view.
2. Why did Malcolm X consider African Americans the victims of “Americanism”?
3. How did the Civil Rights Act of 1964 attempt to broaden the *Brown* decision?
4. Why did President Johnson strongly support the Voting Rights Act?
5. In your view, were the Civil Rights Act and the Voting Rights Act major events in the effort to make the United States a more equal society? Explain your view.
6. Compare and contrast the views of Dr. King and Malcolm X on the position of African Americans in the United States.
7. In your opinion, whose opinion, King or Malcom X, has proven to be a more accurate picture of race relations in the United States during the last forty years? Explain your view.

12. Activity: “Separate But Equal?” Time Line



1. Summarize the 14th Amendment in your own words.
2. What was the Supreme Court decision in Plessy v. Ferguson?
3. What was decided in Brown v. Topeka, Kansas Board of Education?
4. In your opinion, why was the Plessy v. Ferguson decision reversed?

13. Activity: Sweatt v. Painter & McLaurin v. Oklahoma State Regents

In *Plessy v. Ferguson* (1896), the Supreme Court declared the doctrine of “Separate but Equal” was constitutional. This case established a precedent to continue the racist practice of segregation. The following two cases deal with later Supreme Court decisions rethinking the principle of “Separate but Equal.”

Sweatt v. Painter (1950)

Brief: In 1946, Heman Sweatt, a black letter carrier, sought admission to the University of Texas Law School. He was denied admission due to race he sued the university. The state of Texas response was to build an entirely separate law school for blacks in Houston. While that was happening, a makeshift law school specifically for blacks would be established in Austin.

Decision: The court ruled in favor of Heman Sweatt, and stated the following reasons: “In terms of number of faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activity, the University of Texas Law School is superior [to the negro law school version]. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement...to name but a few, reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.”

1. According to this excerpt from the courts decision, why did the court side with Sweatt?
2. Do you agree with the decision? Explain your view.



Heman Sweatt registering for classes
Source: www.law.utexas.edu/rare/gifsexhibit/sweatt.gif

McLaurin v. Oklahoma State Regents (1950)

Brief: McLaurin, A Negro citizen of Oklahoma State with a master's degree was admitted to the University of Oklahoma in 1948. George McLaurin wanted to advance his education. He was permitted to use the same classroom, library and cafeteria as white students, however, he was assigned to a seat in the classroom in a row specified for Negro students, was assigned to a special table in the library, and, although permitted to eat in the cafeteria at the same time as other students, was assigned to a special table there.

Decision: The Court rules in favor of George McLaurin, and stated the following reasons: “These restrictions...set McLaurin apart from the other students. The result is that the appellant [McLaurin] is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession...[the] appellant, having been admitted to a state supported graduate school, must receive the same treatment at the hands of the state as students of other races.”

1. According to this document, why did the court side with McLaurin?
2. Do you agree with the courts decision? Explain your view.
3. Which Amendment was most likely cited by the court in both cases?
4. Do either of these cases reverse the decision of the court in *Plessy v. Ferguson* and remove the doctrine of ‘Separate but equal’? Why?

14. Activity: Separate But Equal Schools?

A. Photo images of Black and White schools in Prince Edward County, Virginia were taken by Dr. Edward H. Peeples, Jr. from 1961 through 1963. The images illustrate the differences between the resources that the county provided for its Black students and White students. According to Dr. Peeples' research, in 1951 all but one of the 15 black school buildings were wooden frame structures with no indoor toilet facilities, and had either wood, coal, or kerosene stoves for heat. All the white schools were made of brick, had indoor toilets, with steam or hot water heat. Compare the sets of pictures. In your opinion, are these racially segregated schools really "equal"? Explain your views.



(Source: www.library.vcu.edu/jbc/speccoll/pec02.html).

This "temporary" building was built in 1949 and used for grades 2-3. It was covered with roofing paper and had a pupil capacity of 40 students. The building had no windows, heat or indoor plumbing.



(Source: www.library.vcu.edu/jbc/speccoll/pec02.html).

The Darlington Heights Elementary School for White students was built in 1927. An addition to the structure was added in 1937. The building had steam heat and indoor plumbing.

B. Photo images of the struggle to desegregate public schools.



www.ferris.edu/news/jimcrow/links/misclink/plessy/schoolroom.jpg



brownvboard.org/foundatn/vidbroc.htm



www.spartacus.schoolnet.co.uk/USALittleRock.htm

Writing Activities

1. Write a paragraph describing what you see in each of the pictures.
2. Using one of the pictures and additional research, write a newspaper story about the event shown in the picture.
3. Use the pictures, your descriptions, and your other research to write a report about the struggle to end racially segregated schools.

15. The Rights of African Americans in Post-Civil War America – A Time Line

1. The Fourteenth Amendment, 1868: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
2. Supreme Court decision, Civil Rights Cases, 1883: “The court holds that the 14th Amendment applies only to state action. Individual invasion of individual rights is not the subject of the Amendment. The wrongful act of an individual, unsupported by any such state authority, is simply a private wrong.”
3. Justice Harlan Dissents, 1883: “In every material sense, railroad corporations, keepers of inns, and managers of public amusement are agents or instrumentalities of the state, because they are charged with public duties . . . a denial to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the state.”
4. Plessy v. Ferguson, 1896: “The underlying fallacy of the plaintiff’s argument consists in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it . . . The argument also assumes that social prejudice may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition . . . If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”
5. Justice Harlan dissents, 1896: “It seems that we have yet, in some of the states, a dominant race, a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race . . . We boast of the freedom enjoyed by our people . . . but it is difficult to reconcile that boast with a state of the law which, practically, put the brand of servitude and degradation upon a large class of our fellow citizens.”
6. Chief Justice Warren, Brown v. Topeka, Kansas Board of Education, 1954: “Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational activities? We believe that it does . . . To separate them 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 be undone.”
7. President Eisenhower, 1957: “The federal law and orders of a United States District Court, implementing that law, cannot be flouted with impunity by any individual or any mob of extremists . . . I will use the full power of the United States, including whatever force may be necessary to prevent any obstruction of the law . . . Such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States.”
8. Civil Rights Act of 1964: “An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunities, and for other purposes.”

Changing Legal Views of Racial Equality in the United States

by David R. Goldberg

From *Roberts vs. the City of Boston* in 1850 to *Brown vs. the Topeka, Kansas Board of Education* in 1954, the American judiciary, particularly the Supreme Court of the United States, reexamined the principal of racial equality and the citizenship rights of African Americans. Decisions tended to reflect the dominant attitude toward race by the White majority in each period. Among notable court decisions were:

1. *Roberts vs. The City of Boston* (1850) : Charles Sumner and Robert Morris, a young black abolitionist and lawyer, brought suit charging that segregated schools in Boston violated the Massachusetts Constitution. In their brief to the court they argued that “The school is the little world where the child is trained for the larger world of life. . . [a]nd since, according to our institutions, all classes, without distinction of color, meet in the performance of civil duties, so should they all, without distinction of color, meet in the school. . . . Nothing is more clear than that the welfare of classes, as well as of individuals, is promoted by mutual acquaintance. Prejudice is the child of ignorance. It is sure to prevail, where people do not know each other.” While the suit was dismissed, in 1855 the Massachusetts Legislature amended state laws to prohibit discrimination in schools on the basis of race, color, or religious opinions. In 1896, the ruling in *Roberts vs. The City of Boston* was cited by the Supreme Court in its *Plessy v. Ferguson* decision.
1. *The Dred Scott Case* (1857): The Supreme Court ruled that Dred Scott, a slave, could not sue as a citizen of the United States to obtain his freedom. It argued that Congress had no power to exclude slavery from the territories that were in the northern part of the former Louisiana Purchase.
1. *Dallas vs. Fosdick* (1869): A New York State Court sustained a provision in the Charter of the City of Buffalo requiring separate schools on the grounds that under state law there was no “right” to education.
2. *Strauder vs. West Virginia* (1880): The Supreme Court invalidated a West Virginia law excluding Blacks from juries as a denial of the equal protection guaranteed by the Fifth Amendment.
3. *Plessy vs. Ferguson* (1896): This case established the famous “separate but equal” doctrine later overturned in the *Brown vs. the Topeka, Kansas Board of Education* decision. In an 8-to-1 ruling, the Supreme Court held that segregation on railroad trains was not unconstitutional if separate but equal facilities were provided for “white persons and Negroes.”
4. *Nixon vs. Herndon* (1927): The Supreme Court ruled that a state law excluding Blacks from participation in primary elections was a direct and obvious infringement of rights guaranteed by the 14th Amendment.
5. *Missouri vs. Canada* (1938): The Supreme Court ruled that Missouri could not deny Black students admission to the state university’s law school because no alternative program existed. This decision established limits on the power of states to prevent Blacks from attending public educational institutions.
6. *McLaurin vs. Oklahoma State Regents*(1950): The Supreme Court held that a Black graduate student must be admitted to a state university on the same basis with the same privileges as students of other races.
7. *Sweatt vs. Painter* (1950): This decision ordered Texas to admit a Black college student to classes with White students on the grounds that segregation deprived him of his personal right to equal protection of the law.
8. *The Thompson Restaurant Case* (1953): The Supreme Court ruled that restaurants in the District of Columbia could not legally refuse to serve meals to Blacks, ending a segregation practice that had prevailed there since before the Civil War.
9. *Brown vs. the Board of Education of Topeka, Kansas* (1954): This landmark case overturned the Court’s 1896 decision in *Plessy vs. Ferguson*. The court stated: “We conclude that, in the field of public education, the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.” The justices argued that they were compelled to consider public education in light of its full development and current place in American life.

The Civil Rights Cases (1883)

Supreme Court of the United States, 109 U.S. 3; 3 S. Ct. 18; 27 L. Ed. 835 (1883)

by Kerri Creegan

Facts of the Case: The Civil Rights Act of 1875 affirmed the equality of all persons in the enjoyment of transportation facilities, in hotels and inns, and in theaters and places of public amusement. Though privately owned, these businesses were like public utilities, exercising public functions for the benefit of the public and, thus, subject to public regulation. In five separate cases, a Black person was denied the same accommodations as a White person in violation of the 1875 Act. In Tennessee, a conductor of the Memphis and Charleston Railroad Company denied a woman access to the ladies' car of the train. She claimed she was denied access because of her African descent. The conductor claimed that he denied her access because she was an "improper person." In Kansas and Missouri, persons of African descent were denied accommodations in a hotel. In New York, a staff member of the Grand Opera House theater denied a person, whose race was not stated, the full enjoyment of the Opera House. In California, a staff member of Maguire's Theatre in San Francisco refused to seat a person of African descent in the dress circle.

In the majority opinion of the court, Justice Bradley wrote that "it is the purpose of the law to declare that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theaters, and other places of public amusement, no distinction shall be made between citizens of different race or color, or between those who have, and those who have not, been slaves. . . . On the whole, we are of opinion that no countenance of authority for the passage of the law in question can be found in either the thirteenth or fourteenth amendment of the constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several states is concerned."

Justice Harlan, who later cast the only dissenting vote in the Plessy v. Ferguson case, disagreed with this decision. He charged that in the majority opinion, "The substance and spirit of the recent amendments of the constitution have been sacrificed by a subtle and ingenious verbal criticism. . . . Constitutional provisions, adopted in the interest of liberty, and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law."

Question to decide: Does the Civil Rights Act of 1875 violate the 10th Amendment of the Constitution?

Sources: <http://caselaw.lp.findlaw.com>; <http://www.oyez.org>; <http://oyez.nwu.edu>

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Activities: The Civil Rights Cases (1883)

1. Five separate cases were combined in the “Civil Rights Cases.” All of the cases were brought to the Supreme Court after being tried in the Circuit Courts of the United States. The essential issue in these cases was whether the actions in each case were in violation of the 10th, 13th and 14th Amendments to the Constitution and the Civil Rights Act of 1875 and whether the Civil Rights Act itself was consistent with the requirements of the Constitution. Examine the description of these laws and the people, places and actions involved in the Civil Rights Cases and then answer the questions that follow.

Civil Rights Act of 1875: The Civil Rights Act affirmed the equality of all persons in the enjoyment of transportation facilities, in hotels and inns, and in theaters and places of public amusement.

Amendment 10: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 13: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. . . . Congress shall have power to enforce this article by appropriate legislation.

Amendment 14: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . . The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Tennessee
A conductor of the Memphis and Charleston R.R. Company denied Mr. Robinson’s wife access to the ladies’ car of the train. Mrs. Robinson claims she was denied access because of her African descent. The conductor claimed that he denied her access because she was an “improper person” because she was in company with a young man whom he supposed to be a white man and was having “improper relations” with the man.

New York
Mr. Singleton denied to another person, whose color was not stated, the full enjoyment of the accommodation of the Grand Opera House theatre. He claims that this denial was “not being made for any reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude.”

California
Mr. Ryan refused a “colored person” a seat in the dress circle of Maguire’s Theatre in San Francisco.

Kansas
Mr. Stanley denied to persons of color the privileges of a hotel.

Missouri
Mr. Nichols denied to persons of color the accommodations and privileges of a hotel.

Questions:

1. List 3 facts that these cases have in common.
2. In your view, were these acts committed in a *private* or *public* facility? Explain your answer.
3. In your opinion, is the Civil Rights Act constitutional? Explain.

2. Fill in the chart below based on your opinion of the Cases, the Acts and Amendments

	<i>YES</i>	<i>NO</i>	<i>WHY OR WHY NOT?</i>
Were the defendants in violation of the Civil Rights Act of 1875?			
Based on the Thirteenth Amendment, is the Civil Rights Act of 1875 Constitutional?			
Based on the Fourteenth Amendment, is the Civil Rights Act of 1875 Constitutional?			
Based on the Tenth Amendment, is the Civil Rights Act of 1875 Constitutional?			

After a careful evaluation of the law, the amendments and the cases, in your overall view, was the Civil Rights Act of 1875 constitutional? Explain.

3. The opinion of the court in the Civil Rights Cases

The Majority Opinion (8 judges) by Justice Bradley

We must not forget that the province and scope of the thirteenth and fourteenth amendments are different: the former simply abolished slavery: the latter prohibited the states from abridging the privileges or immunities of citizens of the United States, from depriving them of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of congress under them are different . . . Under the thirteenth amendment, it has only to do with slavery and its incidents. Under the fourteenth amendment, it has power to counteract and render nugatory [unconstitutional] all state laws and proceedings which have the effect to abridge any of the privileges or immunities which have the effect to abridge any deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws.

We are forced to the conclusion that such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it is violative of any right of the party, his redress is to be sought under the laws of the state; or, if those laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which congress has adopted, or may adopt, for counteracting the effect of state laws, or state action, prohibited by the fourteenth amendment. . . . On the whole, we are of opinion that no countenance of authority for the passage of the law in question can be found in either the thirteenth or fourteenth amendment of the constitution.

The first and second sections of the act of congress of March 1, 1875, entitled ‘An act to protect all citizens in their civil and legal rights,’ are unconstitutional and void, and that judgment should be rendered upon the several indictments in those cases accordingly. And it is so ordered.

Questions:

1. According to the Majority Opinion, why is the Civil Rights Act of 1875 unconstitutional?
2. Do you agree with their ruling? Why or why not?

The Dissent (1 Judge) by Justice Harlan

I am of opinion that such discrimination is a badge of servitude, the imposition of which congress may prevent under its power, through appropriate legislation, to enforce the thirteenth amendment; and consequently, without reference to its enlarged power under the fourteenth amendment, the act of March 1, 1875, is not, in my judgment, repugnant to the constitution.

At some future time it may be some other race that will fall under the ban. If the constitutional amendments be enforced, according to the intent with which, as I conceive, they were adopted, there cannot be, in this republic, any class of human beings in practical subjection to another class, with power in the latter to dole out to the former just such privileges as they may choose to grant. The supreme law of the land has decreed that no authority shall be exercised in this country upon the basis of discrimination, in respect of civil rights, against freemen and citizens because of their race, color, or previous condition of servitude. To that decree-for the due enforcement of which, by appropriate legislation, congress has been invested with express power-every one must bow, whatever may have been, or whatever now are, his individual views as to the wisdom or policy, either of the recent changes in the fundamental law, or of the legislation which has been enacted to give them effect.

Questions:

1. According to Justice Harlan, why is the Civil Rights Act of 1875 constitutional? Why or why not?
2. Do you agree with Justice Harlan? Why or why not?

Brown v. Board of Education Changed Everything...Or Did It? A Documents-Based History Mystery for Elementary Students

by Andrea S. Libresco

In elementary schools, teaching about the Civil Rights Movement is often confined to certain months, as teachers deal with the topic as a series of biographies. Martin Luther King, Jr. is studied in January (the week of the national holiday in his name), and Rosa Parks and, perhaps, Ruby Bridges, in February (Black History Month) or March (Women's History Month). While it is important to study the acts of these important and courageous figures as patriots and role models for children, there are several problems with this curricular conception. First, the pool of civil rights figures is too small. Where are the studies of Thurgood Marshall, Malcolm X, and Fannie Lou Hamer, to name a few? Second, the other figures usually thrown into the Black and Women's History biography basket generally include Harriet Tubman and Frederick Douglass. As a result of lumping together figures from the abolition and modern civil rights movement, elementary students often have difficulty distinguishing between the two time periods. A third problem is inherent in a study of great leaders divorced from their historical time period. Students tend to see the leaders as the sole actors on the stage, indispensable figures, unique to their time, as opposed to heroes and heroines who were part of a much larger and more varied movement that occurred at that particular time for very particular reasons. Finally, if civil rights issues are inextricably tied to a few particular actors, it naturally follows for elementary students that when those actors exit the stage, the entire play is over. The tragic ending of Martin Luther King Jr.'s life is all too often the end of the study of civil rights in elementary classrooms.

This "history mystery" on the impact of *Brown v. Board of Education* decision is designed to supplement, not replace, the oft-studied great men and women of the Civil Rights Movement, using school segregation and integration as its theme. The *Brown* case is important for teaching for many reasons, including the fact that students may well be able to identify with conditions in school since they, themselves, spend a good portion of their lives in school. Additionally, the use of this court case as a watershed event may go a long way toward helping students understand the significance of the judicial branch of government. For far too many elementary students, their understandings of government is synonymous with the presidency. The issues in *Brown* also have the advantage of being measurable over time. The segregation, desegregation, and re-segregation of schools in parts of America are well documented. Looking at the racial make-up of schools over time gives students the sense that the questions raised by *Brown* are not frozen in time. On the contrary, W.E.B. DuBois' observation that "problem of the twentieth century is the problem of the color line" can all too easily be transposed to the twenty-first.

History mysteries should be questions of real import on which thoughtful people may disagree. This history mystery provides students with print and visual documents to help them come to a conclusion regarding the extent of the changes brought about by the landmark court case. While *Brown* has been depicted as a watershed by many historians, it is also true that, since the court case, the data does not reveal continuous progress toward integration of schools across the country. When students examine the primary and secondary sources, the data may well lead students to different conclusions, prompting well-reasoned, well-supported class discussion about both the impact of *Brown*, and future steps in the ongoing civil rights movement. The questions that follow can help guide class discussion and student research on the Civil Rights movement.

1. What were the conditions in schools before the *Brown* decision in 1954?
2. What particular language do you find most powerful in the *Brown* opinion?
3. What was the reaction of White Southerners to *Brown*?
4. How integrated were the schools in the South immediately following *Brown*?
5. How was busing received as a solution to integration?
6. How important was the *Brown* decision in making progress in civil rights in America?
7. Gather data on your own district versus other districts in your area that have a different racial make-up from you own. Are there disparities in per pupil spending, teacher pay, condition of the buildings, other resources?
8. Develop a plan for an ongoing civil rights movement. What goals and tactics would you emphasize?

“Brown v. Board of Education Changed Everything!” – History Mystery

Directions: Use the documents in the packet to respond to the following statement: “Brown v. Board of Education changed everything!” To help you decide where you stand on this statement, read each document and categorize the information as either supporting or disproving the statement (It may, in part, do both; if so, put it in both categories). Record the source of each piece of evidence to help you decide if it is reliable. Pay special attention to the date of each document. Note whether the event it describes happened before or after the Brown decision, and, if after, how long after. Keep a list of questions raised by your research.

History Mystery Documents:

1. The schools that made up the Brown v. Board of Education lawsuit. Williams, J. (2004). “Poetic Justice,” *The New York Times*, Education Life 1/18/04. “In Clarendon County, South Carolina, white schools got 60 percent of the school board’s funds even though three-quarters of the schoolchildren were black. In Prince Edward County, Virginia, there was one high school for blacks, and it had no cafeteria or gym and was crammed with twice the number of students it was built for. In Topeka, Kansas, a 7-year-old girl, Linda Brown, had to walk past a white school and across railroad tracks to catch a bus to take her to a black school.”

2. Eyewitness to Jim Crow: Joan Johns Cobb Remembers. “In 1951 I was a freshman in high school. The school I attended was Robert R. Moton High School in Farmville, Virginia. The school was for black students only. There was a white school in Farmville. I believe the name of it was Prince Edward School. We had separate facilities and most of the school supplies that we got were torn and tattered, and we didn’t have enough supplies to write with. The school we went to was overcrowded. Consequently, the county decided to build three tarpaper shacks for us to hold classes in. A tarpaper shack looks like a dilapidated black building, which is similar to a chicken coop on a farm. It’s very unsightly. In winter the school was very cold. And a lot of times we had to put on our jackets. Now, the students that sat closest to the wood stove were very warm and the ones who sat farthest away were very cold. And I remember being cold a lot of times and sitting in the classroom with my jacket on. When it rained, we would get water through the ceiling. So there were lots of pails sitting around the classroom. And sometimes we had to raise our umbrellas to keep the water off our heads. It was a very difficult setting for trying to learn.”

3. Chief Justice Earl Warren reads the unanimous opinion of the Supreme Court in Brown v. Board of Education on May 17, 1954. “To separate [African American children] from others of similar age and qualification solely because of their race generates a feeling of inferiority as to their status in the community that may affect their habits and minds in a way very unlikely ever to be undone....We conclude that, in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

4 (Left). Integration of the schools in Little Rock, Arkansas, 1957 requires federal support.

“Elizabeth Eckford is jeered after being turned away from Central High School in Little Rock by the Arkansas National Guard. Later, she and eight other black students entered the school under the protection of federal troops.” Will Counts/Arkansas Democrat Gazette/Associated Press.



5. A newly integrated classroom in Fort Myer, Virginia in the 1950’s. The New York Public Library.

6. Joan Johns Cobb remembers what happened to schooling for Black kids after Brown. “The decision was made to close the schools rather than to integrate the schools. . . . We wondered why no one intervened and said that this was illegal. My husband’s brothers were affected and they had to go away to school. . . There were some white people who were Quakers who came to Prince Edward County and decided to see that some of the students went to school. So they placed them in homes--in most cases, in white homes. I have three brother-in-laws who went to school in different states and they were placed with white families and that’s how they got their education. And I understand there were a lot of other students in the community that were able to go to other schools through the Quakers. However, there were a lot of students who weren’t able to go and never got an education at all. I was talking to one of the students who did not get an education about two years ago and he was very bitter about what had happened. He said they were forgotten.”

7. Busing as a brief means of integration in the North. Adapted from: Cohen, A. (2004). “The Supreme Struggle,” *The New York Times*, Education Life 1/18/04. In Boston and other northern cities, segregation of public schools resulted from housing patterns, rather than segregation laws. But black schools were often inferior to white schools. In 1971, the Supreme Court upheld the remedy of busing students outside their neighborhoods to achieve racial balance in the schools. The court’s tough-minded approach may have been controversial, but it was effective. By the 1972-73 school year, about 37 percent of black children in the 11 states of the Old South were attending majority white schools. Busing also responded to the nation’s growing segregation in housing. Post-World War II suburbanization had transformed America’s metropolitan areas into segregated doughnuts, with blacks in the urban center and whites in a suburban ring. A federal court in Detroit had found that it was impossible to desegregate the city’s schools, which had become 72 percent black, except by mixing them with suburban children, but the suburbs insisted there was no legal basis for including them. In 1974, almost exactly 20 years after Brown, the Supreme Court -- influenced, no doubt, by the anti-busing protests and the growing power of the suburbs -- overturned the metropolitan-area plan by a 5-to-4 vote. Thurgood Marshall, who had argued Brown, and who had been named to the court by President Lyndon B. Johnson, lamented that “after 20 years of small, often difficult steps” toward equality, “the court today takes a giant step backward.”

8. “You Can’t Come Here.” Busing in Boston remembered by Ruth Batson. In Monk, L.R. (1994). *Ordinary Americans: U.S. History Through the Eyes of Everyday People* (Alexandria, VA: Close Up Publishing), 237-238. “We knew that there was more money being spent in certain schools, white schools than there was being spent in black schools. Therefore, our theory was move our kids into those schools where they’re putting all of the resources so that they can get a better education. It was a horrible time to live in Boston. All kinds of hate mail....They just made it very clear that they didn’t like Black people. I was prepared for them not to want black students coming to the school. . . . I never heard any public official come and say, ‘This is a good thing. We should all learn together.’ There was no encouragement from anybody. When you saw what the kids had to go through - I was just as proud of some of the white kids that stuck through it, because there were white families who made their kids go and stay in that school. I thought that the kids who went through this were just wonderful kids. And most of them weren’t kids who were determined. There was a movement. And they felt part of a movement. . . .”

9. Most Segregated States for Black Students, 2001-02. Source: 2001-2 NCES Common Core of Data.

Rank / State	Black Students in Majority White Schools	Rank / State	Black Students in Majority White Schools
1 California	13.5%	11 Connecticut	27.4%
2 New York	13.9%	12 Wisconsin	28.1%
3 Michigan	18.0%	13 Pennsylvania	28.5%
4 Illinois	18.0%	14 Ohio	29.8%
5 Maryland	20.8%	15 Alabama	29.9%
6 Mississippi	22.9%	16 Massachusetts	31.8%
7 Texas	23.2%	17 Arkansas	31.8%
8 Louisiana	23.2%	18 Missouri	32.6%
9 New Jersey	23.4%	19 Florida	34.4%
10 Georgia	27.2%	20 Rhode Island	35.4%

Using Children's Literature to Teach about the Civil Rights Movement: An Author Study of the Works of Mildred Taylor

by Judith Y. Singer

It is difficult today for most of us to appreciate the degree of humiliation and intimidation experienced by African Americans living in the segregated South. Children's literature can help students in the upper elementary grades and their teachers imagine what life was like in this time and place. We are fortunate to have the works of Mildred Taylor, which reflect many of the experiences of her own family during this era. Taylor begins each book with an acknowledgement that the stories she writes are based on stories her father used to tell her. In the author's note to "Roll of Thunder, Hear My Cry," Taylor explains, "I learned a history not then written in books but one passed from generation to generation on the steps of moonlit porches and beside dying fires in one-room houses, a history of great-grandparents and of slavery and of the days following slavery; of those who lived still not free, yet would not let their spirits be enslaved."

Over the course of eight children's books and young adult novels, Mildred Taylor chronicles the lives of the Logan family living in the segregated South during the Great Depression. The Logans (Papa, Mama, Big Ma, Uncle Hammer, and four children, Stacie, Cassie, Christopher-John, and Little-Man), own four hundred acres of land. This sets them apart from their neighbors, almost all of whom are share-croppers or tenant farmers, trying to manage by farming on someone else's lands. The trouble with the share-cropping system is the farmers always remain beholden to the landlords, who charge interest on all loans and advances made to them through a company-owned store. Workers, both Blacks and Whites, are never free from debt. The Logans will do anything to hold onto their land. It is their ticket to dignity and independence. Papa travels to Memphis part of each year to help lay track for the railroad so he can have "cash money" to pay the taxes on the farm.

The books I describe are presented in historical order. In the first one, Little Man is four years old, Stacey is ten, Cassie is eight, and Christopher-John is five. With each of the books, the children grow a little older. The books depict the adventures of the children as they maneuver in a segregated world, standing up for one another and trying to keep out of trouble. The central characters of the first six books are Stacie, Cassie, Christopher-John, Little Man and a White boy named Jeremy Simms. Cassie is the narrator of all but one of these books.

Mississippi Bridge. (1990). Illustrated by Max Ginsburg. NY: A Bantam Skylark Book. This book is told from Jeremy's point of view. Folks are waiting by the Wallace store in the pouring rain for the bus down from Jackson. When the children help Big Ma get on the bus, Cassie wants to know why Big Ma walks all the way to the back. Big Ma tells her, "Hush up, girl! Ya hush up and come on!" (p. 31). On this particular day it seems like everyone is traveling, and all the "colored" folk are forced to give up their seats to several White latecomers. As a result of weeks of rain, a bridge is weakened, the bus goes over the side of the bridge, and several of the passengers drown. Jeremy helps rescue those who are alive, and the Logan children are relieved to learn that Big Ma escaped drowning along with the other "colored" folk who were taken off the bus to make room for Whites. There is no happy ending to this story, but it can begin a discussion with elementary school children about the meaning of segregation.

The Friendship. (1987). Illustrated by Max Ginsburg. NY: Puffin Books. In this story, the Logan children find themselves at the Wallace store again. Although their parents have forbidden them to go to the Wallace store on their own, they have also been taught to listen to their elders, and Aunt Callie has begged them to get her some head medicine. Inside the store, Stacie warns the others not to touch anything, but Little Man cannot help himself. Because of this, the five year old boy is humiliated by two White men. On their way out of the store, the children overhear Mr. Tom Bee, an elderly Black man, calling John Wallace, the owner of the store, "John." Cassie comments on her surprise. "All the white grown folks I knew expected to be addressed proper with the "Mister" and Missus" sounding ahead of their names. No, I didn't understand it. But I knew enough to know Mr. Tom Bee could be in trouble standing up in this store calling Dewberry and Thurston's father John straight out" (p. 28).

Song of the Trees. (1975). Illustrated by Jerry Pinkney. NY: Bantam Doubleday Dell. This story introduces the readers to the Logan family's struggle to keep their land. Papa is in Louisiana laying track for the railroad. Mr. Anderson, a White man, tries to convince Big Ma to sell their trees for lumber, and he starts chopping them down without permission. Riding on Lady, their golden mare, Stacie races to bring Papa home while Little Man, Christopher-John and Cassie try to stop the chopping down of their forest. Papa returns armed with dynamite to blow up the forest if necessary. He tells Mr. Anderson, "One thing you don't seem to understand is that a black man's always gotta be ready to die. And it don't make me any difference if I die today or tomorrow. Just as long as I die right" (p. 49).

Roll of Thunder, Hear My Cry. (1976). Illustrated by Jerry Pinkey. NY: Puffin Books. In this full-length young adult novel, we begin to know the Logan family in greater depth. Twelve year old Stacie is struggling to take on the responsibilities of a man while Papa is away. Nine year old Cassie refuses to accept the indignities thrust upon her as a black girl in a segregated world. Seven year old Christopher-John is more timid than the others but doesn't like to be left behind. Six year old Little Man wants to be included, but he doesn't like to get dirty. In this novel, the reader is confronted with the inequalities of segregated schooling, Klan violence, an attempted lynching of a friend of Stacie's and an unexplained fire in the Logan cotton field. We learn of the strengths of this family and their determination to raise their children with dignity.

Let the Circle Be Unbroken. (1981). NY: Bantam Books. In this young adult novel, Stacie is almost fourteen, Cassie is eleven, Christopher-John is nine, and Little Man is eight. A friend of theirs is framed by two White men and tried for murder. Despite the efforts of Mr. Jamison, a White lawyer and supporter of racial justice, he is found guilty and sentenced to be executed. Uncle Hammer lectures Stacie and Cassie about the dangers of having relationships with White people, particularly Black boys with White girls and White boys with Black girls. The Logans make their barn available for a meeting of a Farmworkers Union made up of both blacks and Whites. Meanwhile, Mrs. Lee Annie, an older friend of the family is determined to register and vote. She decides to study the Mississippi constitution even though she knows it can be dangerous for a Black person to try to vote in Mississippi. Mrs. Lee Annie explains, "All my life, whenever I wanted to do something and the white folks didn't like it, I didn't do it . . . But now I's sixty-four years old and I figure I's deserving of doing something I wants to do, white folks like it or not" (p. 168).

The Road to Memphis. (1990). NY: Puffin Books. Stacie is twenty years old and working in a box factory in Jackson. Following in the tradition of his Uncle Hammer, Stacie has purchased himself a car which receives general admiration when he drives it home. Cassie is studying in Jackson and planning to go to law school. Christopher-John and Little Man are teenagers still at home on the family farm. Rumbblings of World War II hover in the background. Some of the local young men enlist, hoping the army will give them a new chance. Others wonder why a Black man should fight for a country where humiliation is a daily event meted out to them by White people. Cassie says to her friend Moe, "it doesn't make a lick of sense to me for colored folks to be going way over to Europe somewhere fighting in somebody's war and getting killed. Colored folks want to get killed so bad, they can stay right here in Mississippi and do that" (p. 96). On the day he plans to enlist, mild-mannered Moe is pushed one time too many, and he finally explodes, assaulting three of his tormentors with a crowbar. Stacie and Cassie have to find a way to hide Moe and get him to Uncle Hammer up North in Chicago.

Two more books about the Logan family take place before the ones described above. *The Well* (NY: Puffin Books, 1998) takes place when David (Papa) and Uncle Hammer are ten and thirteen, respectively. Ten-year-old David tells the story of a drought in a summer when only the Logans have a working well. *The Land* (NY: Penguin Group, 2001) is the story of Paul-Edward Logan, the grand-daddy of Stacie, Cassie, Christopher-John, and Little Man, and how he came to purchase the Logan land. A third book, *The Gold Cadillac* (NY: Puffin Books 1998), is not part of the Logan family saga. In this book, Mildred Taylor writes about an extended Black family living in Toledo, Ohio in the 1950's. Two little girls, who may be Mildred and her sister, are introduced to legal segregation when their father decides to take his newly purchased gold Cadillac and show it off to the folks still living in Mississippi.

School Segregation in the Rural South

These stories are from the opening chapter of the book *Roll of Thunder Hear My Cry* by Mildred Taylor (NY: Puffin, 1976). They take place in rural Mississippi on the first day of school in 1933. The Logan's are an African American family. In the first story, the four Logan children are walking along a country road. Their walk to school takes about an hour. Cassie is the only girl. She keeps telling her youngest brother, nicknamed "Little Man," to hurry up or else they will be late. He is six years old and going to school for the first time. The second story is about getting new school books.

The Walk to School

We were nearing the second crossroads, where deep gullies lined both sides of the road and the dense forest crept to the very edges of high, jagged, clay-walled banks. Suddenly Stacey turned. "Quick!" he cried. "Off the road!" Without another word, all of us but Little Man scrambled up the steep right bank into the forest.

"Get up here, Man," Stacey ordered, but Little man only gazed at the ragged red bank sparsely covered with scraggly brown briars and kept on walking. "Come on, do like I say."

"But I'll get my clothes dirty!" protested Little Man.

"You're gonna get them a whole lot dirtier you stay down there. Look!"

Little Man turned around and watched saucer-eyed as a bus bore down on him spewing clouds of red dust like a huge yellow dragon breathing fire. Little Man headed toward the bank, but it was too steep. He ran frantically along the road looking for a foothold and, finding one, hopped onto the bank, but not before the bus had sped past enveloping him in a scarlet haze while laughing white faces pressed against the bus window. Little Man shook a threatening fist into the thick air, then looked dismally down at himself.

"Come on Man," Stacey said, "and next time do like I tell ya."

Little Man hopped down from the bank. "How's come they did that Stacey, huh?" he asked, dusting himself off. "How's come they didn't even stop for us?"

"'Cause they like to see us run and it ain't our bus," Stacey said, balling his fists and jamming them tightly into his pockets.

"Well, where's our bus?" demanded Little Man.

"We ain't got one."

"Well, why not?"

"Ask Mama," Stacey replied.

The New School Books

Miss Crocker made a startling announcement: This year we would all have books. Everyone gasped, for most of the students had never handled a book at all besides the family Bible. I admit that even I was somewhat excited. Although Mama had several books, I had never had one of my very own.

“Now we’re very fortunate to get these readers,” Miss Crocket explained. “The county superintendent of schools himself brought these books down here for our use and we must take extra-good care of them.”

Sitting so close to the desk, I could see that the covers of the books, a motley red, were badly worn and that the gray edges of the pages had been marred by pencils, crayons, and ink. I glanced across at Little Man, his face lit in eager excitement. I knew that he could not see the soiled covers or the marred pages from where he sat, and even though his penchant for cleanliness was often annoying, I did not like to think of his disappointment when he saw the books as they really were. But there was nothing I could do about it, so I opened my book to its center and began browsing through the spotted pages. I found a story about a boy and his dog lost in a cave and began reading while Miss Crocker’s voice droned on monotonously.

Suddenly I grew conscious of a break in that monotonous tone and I looked up. Miss Crocker was sitting at Miss Davis’ desk with the first grade books stacked before her, staring fiercely down at Little Man, who was pushing a book back upon the desk. “What’s that you said, Clayton Chester Logan?” she asked. The room became gravely silent. “I - I said may I have another book please, ma’am,” he squeaked. “That one’s dirty.”

“Dirty! And just who do you think you are, Clayton Chester? Here the county is giving us these wonderful books during these hard times and you’re going to stand there and tell me that the book’s too dirty? Now you take that book or get nothing at all!”

“Some people around here seem to be giving themselves airs. I’ll tolerate no more of that,” she scowled.

Holding the book up to her, I said, “See Miz Crocker, see what it says. They give us these ole books when they didn’t want ’em no more.”

Questions for Discussion:

Have you ever been in a similar situation? How did it make you feel? Why?

What would you have done if you were one of the Logan children and the bus passed you by? Why?

Why were Little Man and Cassie so upset by the “new” school books?

Activities:

Draw pictures illustrating the scenes in these stories.

Act out and discuss the two stories.

Using Literature in Secondary Schools to Teach about the African American Struggle for Civil Rights

by Esther Fusco

Students often believe that slavery and the oppression of African Americans ended with the Civil War. Integrating literature into the secondary school social studies class provides the opportunity to explore in depth critical issues such as when African Americans gained their freedom and when, how and if they were able to achieve civil rights, equal opportunity and legal justice.

In my experience, brief selections, bland paragraphs in social studies textbooks, and other related materials do not portray the dehumanization that has existed in our country for many African Americans. Literature provides a realistic and sometimes shocking vehicle to support a discussion related to racism and sexism which this community of people endured. In fiction, the description of characters and issues and the impact of economic factors on the African American community are vividly brought to life. While fiction does not necessarily represent actual events, novels can clearly describe what it was like to live during these times.

Teachers can effectively use literature circles as a technique to broaden students' knowledge about a topic. Literature circles are small student led book discussion groups. Teachers select a series of books on a particular theme. Students then have the chance to choose a book from the group of books that will be read. Book groups are then established and the students take on the responsibility of carefully discussing the story. Students rotate leadership, vary roles and decide how much they will read prior to each discussion session. In the process of their reading, they formulate questions, investigate new words and select meaningful passages to read aloud from their book. As the group progresses through the story, they construct a negotiated understanding of the themes, perspectives and cultural values of the time. When the groups have completed their reading, students come back together to share their experiences and connect the knowledge they have acquired to the related social studies concepts they are learning. A teacher can then pose a variety of essential questions related to the main points in the literature and connect these to relevant standards in social studies.

Novels such as *To Kill a Mocking Bird*, *Dreamer*, and *Lay That Trumpet In Our Hands* are appropriate for younger or less mature high school readers. Novels such as *Color Purple*, *Your Blues Ain't Like Mine*, *Color of Law* and *Native Son*, because of their language and content, are suitable for the more mature classes. These books powerfully present how communities segregated Blacks from Whites and the impact on education, employment and families. Each book dramatically details the events that kept the Blacks poor, powerless and silenced by the wealthier White society. While the authors vary the topics, the theme of civil rights and justice for all is a common thread. A book like *Color of Law* explores the legal system and how political leaders were willing to cover up crimes against African Americans. Novels like *Dreamer* and *Lay That Trumpet*

Essential Questions for Examining Literature about the Struggle for Civil Rights

1. How do the authors of these books challenge the cultural values of the White middle class?
2. What social and economic problems does the author build into the story? What were the implicit or explicit roles of local, state and national government during this time?
3. How does your author incorporate the concept of civil rights? Describe the ways in which the author deals with racism and sexism in the story.
4. As the authors present a portrait of the life in the United States during this time period, is it consistent with the media account? Is the information consistent with the details found in the textbooks and other resources you have available? Why do you believe this the case?
5. How did the attitudes of the characters vary in the story regarding the rights of African American? Compare this attitude to how women were treated during the same period. Can you draw any conclusions from this?
6. Which characters in the books you have read achieved equality? Why did this happen? Which characters had dreams and achieved them?
7. What were the significant choices the characters made in your novel? Why did they make these choices? What were the consequences of their actions? How does this connect to the concept of civil rights?

In Our Hands present real people and specific events and embed them in historical fiction. These connections help students understand the political events and the consequences in a different manner. Woven within each of these novels is the atmosphere that surrounds the continual struggle that Black experienced in their fight for civil rights in the United States. They all paint an amazing backdrop for social studies teachers who wish to put a voice and a face to the on-going struggle for civil rights.

Teachers who include literature circles in their thematic instruction usually create a focus for the unit by providing students with a series of essential questions. It is important to remember that students will have other questions that emerge in their discussion groups that can facilitate class discussion.

Teachers can also use these books to explore the lives of the authors. Through their writing, many authors have made immeasurable contributions by reporting on conditions in our society. By tapping into an author's writing, we discover something about the author's experience, intelligence, spirit and life. While discussing the major themes in each of these books, students have the opportunity to connect to the author's life, the characters' plight and the issues that existed in society. An example of such a classroom conversation might begin with: Who is Richard Wright and what in his life contributed to his writing *Native Son*? How did Wright's life experience contribute to the birth of Bigger Thomas? How does this book impact your views on racism and justice for all? How does Wright portray the life of an African American in our country? Is Bigger Thomas' rebellion an appropriate reaction to the oppression and humiliation he experiences?

Each of the books that I am recommending also examines the experience of women during this period of time. In *The Color Purple*, Alice Walker sensitively describes the relationship between two sisters Celie and Nettie. Their struggle and the atrocities inflicted upon them engulf the reader. As teachers and students read Celie and Nettie's accountings of their lives, there is a sense of wonderment in how these women endured such treatment. Students can contrast Celie and Nettie to Harper Lee's character Mayella Ewell in *To Kill A Mockingbird*. Readers can also consider how Harper Lee presents her view of the role and rights of women.

It is important that students discuss whether the fictional accounts by these authors provide reliable pictures of the past. In *To Kill A Mockingbird*, Scout attempts to describe to a new teacher why Walter does not have his lunch. The teacher whips Scout for her explanation. Students can compare this section with information from primary source documents to determine whether it is an accurate portrayal of the issues and time period. Susan Carol McCarthy in *Lay That Trumpet In Our Hands* integrates real historical figures and events into her story. A character named Luther visits the McMahan family and they discuss voter registration in the United States during the 1950s. Luther proudly boasts that he can finally vote in the primary elections. Thurgood Marshall, the lead lawyer in the *Brown v. Topeka, Kansas Board of Education* case and later a Supreme Court Justice, comments that Florida, unlike the rest of the South, was making great strides. Thirty percent of eligible Black voters were registered, compared to only four percent in other areas of the South.

Character development can be an important aspect to explore in these novels. Each character adds a different dimension to the quality of the story. As we read about the circumstances that surround the character the times become more alive to us. If the characters are believable they bring alive the story and readers can hear their distinct, individual voices. In *Dreamer*, Martin Luther King, Jr. comes alive to the reader as Matthew tells about his days with the famous civil rights leader. Sometimes, if a relationship is built with the characters and the reader, their voices become part of the reader's voice. Teachers should explore with students how and why this phenomenon occurs. After completing the books, teachers should engage students in conversations about the impact of characters upon them. Questions to explore include: Do you continue to think about any of the characters after you have completed the reading? Why do you think this is the case? How does the character's life influence your attitude toward race equality and the struggle by African Americans for civil rights?

Ideas for Follow-up Activities

Show and discuss selections from movie versions of these book. Invite an older African American member of the community to discuss their experiences with your classes. Discuss the use of non-standard English in some of these novels. Have the students discuss their reactions to how the White community is portrayed by the authors. Discuss barriers that African Americans continue to face in the United States.

Recommended Literature for Teaching about the African American Struggle for Civil Rights

The books in this list have different strengths and weaknesses. They all provide the reader with a dramatic recounting of a period of time in United States history and how society dealt with the complex issues of race and equality.

Campbell, Bebe Moore (1992). *Your Blues Ain't Like Mine*. New York: Ballantine.

This vividly written novel tells how a young Black teenager is murdered because he speaks to a White woman. The racist and sexist attitudes found in Mississippi in the mid 50's is so realistically portrayed that the reader is quickly drawn into the lives of the characters. The senseless shooting of Armstrong continues to impact the lives of all characters long after his death. The writing is powerful as is the content.

Lee, Harper (1990). *To Kill A Mockingbird*. New York: Warner Books.

Jean Louise Finch (Scout) tells the story of an African American man, Tom Robinson, who is accused of raping a White woman. Scout's father, Atticus Finch, is the lawyer for Tom. The characters and their attitudes, actions, and relationships, in this memorable novel, speak to the issue of how we should treat one another.

Johnson, Charles (1998). *Dreamer*. New York: Scribner.

This absorbing historical fiction novel builds the story around the life of Martin Luther King Jr. It is a compelling novel that shows the courage, strength and humanness of this leader. The story retells the events of the racial wars that were occurring in the United States during the last part of King's life. The Prologue of the book is a wonderful chapter to read aloud to students prior to a discussion of the life of Dr. King.

Milofsky, David. (2000) *Color of Law*. Boulder Colorado: University Press of Colorado.

Jimmy Norman, a young black man, is shot by John Rogan, a motorcycle police officer. The killing is ruled a justifiable homicide. The truth unravels twenty years later when Tommy Paley, the other White police officer comes forward. His life has been destroyed by what occurred. The only way he can clear his conscience and survive is to tell the truth about what happened. The depiction of how the political forces in cities, like Milwaukee, handle civil rights cases is well developed in this novel. It presents the issue of civil right from a very different perspective.

McCarthy, Susan Carol (2002). *Lay That Trumpet In Our Hands*. New York: Bantam Books.

This novel connects fiction with the real events in the contemporary fight for civil rights. It is based upon the murder of Marvin Cully, a black citrus picker by the Florida Klan. Reesa (Marie Louise) McMahon's unfolds the details surrounding the killing of her best friend Luther and how her family helped involve the NAACP, Thurgood Marshall and J. Edgar Hoover.

Walker, Alice (1982). *The Color Purple*. New York: Pocket Books/Simon & Schuster.

This powerful saga vividly describes the harsh lives that Celie and Nettie face. It is a story of their struggle to survive in a world that treats African American women brutally. Somehow these characters find the courage to endure and grow as people in spite of the circumstances of their worlds.

Wright, Richard (1940). *Native Son*. New York: HarperCollins.

Bigger Thomas is a victim of the poverty and ignorance that surrounds him in the ghetto. His daily life is filled with frustration and rejection. In a moment of panic, his life spirals out of control and he kills a young White woman. This story realistically presents the division in our society and the hostility that African Americans experienced.

Battling Over the First Amendment

In a number of Supreme Court decisions involving New York State or its residents, the court has addressed first amendment rights. *Abrams v. United States* (1919), *Schenck v. United States* (1919), *Gitlow v. New York* (1925), *Dennis v. United States* (1951), *Ward v. Rock Against Racism* (1989), and *Schenck v. Pro-Choice Network of Western New York* (1997) each involved the freedom of speech of radical individuals or political organizations. In *New York Times v. Sullivan* (1964), *New York Times Co. v. United States* (1971) *Simon & Schuster v. New York Crime Victims Board* (1991), *Masson v. New Yorker Magazine* (1991), and *Board of Education, Island Tress School District v. Pico* (1982), the court ruled on efforts to censor the press or books. In *Engel v. Vitale* (1962), *Walz v Tax Commission of the City of New York* (1970), *Lamb's Chapel v. Center Moriches School District* (1993), and *Good News Club v. Milford Central School* (2001) the court explored the boundary between church and state. This package was assembled by Steven Keyer, Monica Longo, Pablo Muriel, Hanae Okita, Gaurav Passi, Cathy Petoske, John Wade and Ron Widelec.

Board of Education, Island Trees School District v. Pico, 457 U.S. 853 (1982)

Facts about the Case: The Board of Education of the Island Trees District in New York ordered that nine books be removed from the districts junior high and high school libraries. In defense of its actions, the board argued that the books were “anti-American, anti-Christian, anti-Semitic, and just plain filthy.” Some of the books that were included were: *The Fixer*, *Soul on Ice*, *Slaughterhouse Five*, *Go Ask Alice*, *The Best Stories by Negro Writers*, *Laughing Boy*, *Black Boy*, *The Naked Ape*, *Down these Mean Streets*. The Board’s opinions and actions were contrary to the opinions of parents and students. Four students from the high school and one from the junior high sued the school district. These students argued that the removal of the books was a violation of the First Amendment’s guarantee of freedom of speech. The Supreme Court of the United States ruled 5-to-4 that banning certain books from libraries was in violation of the First Amendment. The court’s majority decided that the removal of certain books from school libraries denied students their first amendment rights. Students have the right to learn and attain information on their own which is provided by libraries. School libraries uphold the freedoms of speech and press and provide students with various opinions and ideas regarding the world. As a result, schools can not control their libraries because they do not like the content of certain books. A minority opinion argued that elected school boards should be able to decide the education policy of public schools to help shape the nation’s youth during their formative and impressionable years.

Essential Question: Do school boards violate the First Amendment if they ban books from junior high and high school libraries based on their content?

Sources: [http:// www.oyez.org/oyez/resource/case/1060/print](http://www.oyez.org/oyez/resource/case/1060/print)

Ward v. Rock Against Racism, 491 U.S. 781 (1989)

Facts about the Case: New York City, responding to complaints of high-decibel concerts adjoining residential neighborhoods, mandated the use of city-provided sound systems and technicians for concerts in Central Park. In 1986, New York City hired its own professional sound engineer, or “mixer,” to regulate the level of sound at the Central Park band shell. Rock Against Racism, a political advocacy group that held annual all-day concerts in the park, balked at the requirement. It regarded the mixer as a skilled band member and claimed that the inability to use their own sound equipment and technicians interfered with their First Amendment rights. With William Kunstler as its high-profile attorney, the organization won a preliminary injunction against the city. Three years later the Supreme Court, in a six-to-three decision delivered by Justice Anthony Kennedy, held the city’s regulation was reasonable and constitutional. Disagreement within the Court reflected a fundamental conflict in viewpoints over the relationship between individual rights and the common good. A furious dissent by Justice Thurgood Marshall quoted a well-known musical scholar who said that “New music always sounds loud to old ears. Beethoven seemed to make more noise than Mozart; Liszt was noisier than Beethoven; Schoenberg and Stravinsky noisier than their predecessors.”

Essential Question: Can a city regulation designed to limit noise violate freedom of expression?

Sources: <http://www.oyez.org/oyez/resource/case/431/print>
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/ward.html>

New York Times v. Sullivan, 376 U.S 254 (1964)

Facts about the Case: In 1960, *The New York Times* published a fund-raising advertisement for the civil rights movement. The advertisement, which contained several minor errors of fact, charged that the arrest of Dr. Martin Luther King, Jr. for perjury in Alabama was part of a campaign to undermine efforts to integrate public facilities and encourage blacks to vote. L. B. Sullivan, who supervised the Montgomery, Alabama police department, sued *The New York Times* for libel. Under Alabama law, Sullivan did not have to prove that he had been harmed by the article and a jury granted him damages of \$500,000. On appeal, the case was combined with a companion suit, *Abernathy v. Sullivan*, which charged the four local ministers who had signed the advertisement with libel. The Supreme Court held that the First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when statements are made with actual malice (with knowledge that they are false or in reckless disregard of their truth or falsity). Under this standard, the jury verdict in the Sullivan case was overturned.

Essential Question: Do laws that punish newspapers for publishing factual errors unconstitutionally infringe on the First Amendment by silencing dissent?

Sources:

http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvullivan.html

<http://www.oyez.org/oyez/resource/case/277/participants>

Dennis v. United States, 341 U.S. 494 (1951)

Facts about the Case: In 1948, leaders of the Communist Party of the United States were convicted of violating the Smith Act which states “it is a crime for any person knowingly or willfully to advocate the overthrow or destruction of the government of the United States by force or violence, to organize or help any group which does so, or to conspire to do so”. After being convicted, the communist party members appealed, charging that the Smith Act was an unconstitutional violation of the first amendment’s right to freedom of speech. The Smith Act was found to be constitutional and the defendant’s convictions were upheld by a vote of 6-2. The majority position simply stated that “As construed and applied in this case [the sections of] the Smith act...do not violate the first amendment or other provisions of the Bill of Rights. . . .” Justice Black responded that “These petitioners were not charged with an attempt to overthrow the Government. They were not charged with overt acts of any kind designed to overthrow the Government. They were not even charged with saying anything or writing anything designed to overthrow the Government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date. . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids.”

Essential Question: Is freedom of speech ever so dangerous that the right of United States citizens to express their beliefs must be restricted?

Sources: www.oyez.org/oyez/resource/case/100/print

Masson v. New Yorker Magazine, Inc. et al., 501 U.S. 496 (1991)

Facts about the Case: Jeffrey Masson was a director of the Sigmund Freud Archives and was fired after he become disillusioned with Freudian psychology. After being fired, Masson was interviewed by a writer from *New Yorker* magazine. Several quotes were attributed to Masson that he claimed he never said. Lawyers for the writer and the publisher of the magazine argued that the first amendment allows interpretations to be used as quotes. Masson replied that the supposed quotes were not even accurate interpretations of what he said. Lower courts ruled in favor of the publishers because the errors were not made with “malice” or the intent to injure the person being interviewed. The Supreme Court overturned these rulings and sent the case back to lower courts to be reexamined. While the vote of the Supreme Court unanimous, two judges expressed reservations about the majority opinion.

Essential Question: Should writers be allowed to use quotations marks when passages are actually interpretations of what was said?

Sources: http://www.bc.edu/bc_org/avp/cas/comm/free_speech/masson.html

<http://www.oyez.org/oyez/resource/case/1056/print>

<http://supct.law.cornell.edu/supct/html/89-1799.ZS.html>

Gitlow v. New York, 268 U.S. 652 (1925)

Facts about the Case: Benjamin Gitlow was arrested for distributing copies of a socialist magazine that called for the establishment of socialism through protests such as strikes. Gitlow was prosecuted under a state criminal anarchy law which punished advocating the overthrow of the government. Gitlow's attorneys argued that New York could not show that any harm had occurred from his exercise of freedom of speech and press, and that the Constitution protected his speech unless it presented a "clear and present danger" to society. In fact, his attorneys argued there was no evidence that anyone had been influenced to any action by Gitlow's pamphlet. They claimed that the New York law was an unconstitutional limit imposed by a State on a right guaranteed in the 1st Amendment. In a 7-2 decision, the Court upheld the conviction and ruled the New York State law constitutional.

Essential Question: Is calling for the overthrow of government a "clear and present" danger to society?

Sources: <http://www.oyez.org/oyez/resource/case/140/print>

http://www.bc.edu/bc_org/avp/cas/comm/free_speech/gitlow.html

Lamb's Chapel v. Center Moriches School District, 508 U.S. 384 (1993)

Good News Club v. Milford Central School, 533 U.S. 98(2001)

Facts about the Cases: Lamb's Chapel requested the use of public schools facilities after school hours to show a religious-oriented film on family values and child-rearing. The Center Moriches school district on Long Island denied Lamb's Chapel's request because of a state law that prohibited the use of public schools for after hours religious activities. In a 9-0 decision, the Supreme Court ruled that the school district violated the first Amendment and freedom of speech by refusing the Lamb's Chapel request. The Supreme Court ruled use of school facilities by the Chapel did not violate the separation of church and state because the showing of the films was school sponsored, shown during school hours or closed to the public. Milford is a small community west of Albany, New York. The Good News Club, a non-denominational Christian organization, was denied the ability to use school facilities for club meetings after school hours because members said prayers at meetings. In a 6 to 3 decision, the Supreme Court ruled in favor of the right of the club to hold meetings using public facilities.

Essential Question: Does a school district violate the First Amendment's freedom of speech and religion rights of a religious group if it denies the group the ability to use public school facilities when school is not in session?

Source: <http://supct.law.cornell.edu/supct/html/>

Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970)

Facts about the Case: Frederick Walz owned real estate in Richmond County, NY. He sued the tax commission to challenge the property tax exemption for churches. He argued that the exemption indirectly put tax payers in a position of contributing to the churches. The Supreme Court ruled 7-1 that the tax exemption was not a violation of the First Amendment.

Essential Question: Do tax exemptions for religious institutions violate the separation of Church and State?

Sources: http://religiousfreedom.lib.virginia.edu/court/walz_v_taxc.html

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=397&invol=664>

Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357 (1997)

Facts of the Case: The Pro-Choice Network of Western New York (Pro-Choice) and other health care providers charged Operation Rescue, Project Rescue Western New York, and Project Life of Rochester with staging blockades and other illegal activities in front of abortion clinics in the Rochester and Buffalo areas. A District Court created "fixed buffer zones" which prohibited demonstrations within fifteen feet of entrances to abortion clinics, parking lots, or driveways and "floating buffer zones" prohibiting demonstrators from coming within fifteen feet of people or vehicles seeking access to the clinics. By a 6 to 3 vote, the Supreme Court ruled that the "fixed buffer zones" were constitutional because they protected public safety by preventing protesters from engaging in unlawful conduct. However the "floating buffer zones" were declared unconstitutionally violations of freedom of speech and assembly.

Essential Question: When do the rights of protesters interfere with the privacy rights of individuals?

Source: www.oyez.org/oyez/resource/case/838/

Do school boards violate the First Amendment if they ban books from junior high and high school libraries?

Directions: Working either individually or in your team, read the excerpts from the Supreme Court’s majority (Brennan) and minority (Burger) opinions. Answer the questions at the end of each segment. Write a newspaper editorial expressing your view of the case.

A. Constitution of the United States, Amendment I:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.”

1. What freedoms are guaranteed under the First Amendment of the Constitution?
2. Which of these freedoms do you think is the most important to protect? Why?
3. What would you be willing to do to protect these freedoms? What would you not do?

B. Justice Brennan, Majority Opinion, Board of Education, Island Trees School District v. Pico (1982)

“The First Amendment imposes limitations upon a local school board’s exercise of its discretion to remove books from high school and junior high school libraries. Local school boards have broad discretion in the management of school affairs, but such discretion must be exercised in a manner that violates the First Amendment. . . . Petitioners possess significant discretion to determine the content of their school libraries, but that discretion may not be exercised in a narrowly partisan or political manner. Whether petitioners’ removal of books from the libraries denied respondents their First Amendment rights depends upon the motivation behind petitioners’ actions. Local school boards may not remove books from school libraries simply because they dislike the ideas contained in those books and seek by their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” If such an intention was the decisive factor in petitioners’ decision, then petitioners have exercised their discretion in violation of the Constitution. . . . “

1. What is censorship and why is it considered a problem?
2. According to the Supreme Court, is the removal of books from a school library ever acceptable? Explain.
3. Why does the majority of the court believe this action violates the First Amendment?

C. Justice Burger, Dissenting Opinion, Board of Education, Island Trees School District v. Pico (1982)

“I agree with the fundamental proposition that “students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate or prohibit a student from expressing certain views, so long as that expression does not disrupt the educational process. Here, however, no restraints of any kind are placed on the students. They are free to read the books in question, which are available at public libraries and bookstores; they are free to discuss them in the classroom or elsewhere. Despite this absence of any direct external control on the students’ ability to express themselves, the plurality suggests that there is a new First Amendment “entitlement” to have access to particular books in a school library. How are “fundamental values” to be inculcated except by having school boards make content-based decisions about the appropriateness of retaining materials in the school library and curriculum. In order to fulfill its function, an elected school board must express its views on the subjects which are taught to its students. In doing so those elected officials express the views of their community; they may err, of course, and the voters may remove them. We can all agree that as a matter of educational policy students should have wide access to information and ideas. But the people elect school boards, who in turn select administrators, who select the teachers, and these are the individuals best able to determine the substance of that policy. A school board is not a giant bureaucracy far removed from accountability for its actions; it is truly “of the people and by the people.”

1. What “fundamental proposition” does Justice Burger agree with?
2. Why does Justice Burger believe that a school board should be allowed to make this decision?
3. According to Justice Burger, why isn’t book banning a violation of the First Amendment in this case?

Addressing Conflicting Rights

Directions: Student teams should examine a conflicting rights statement and prepare a position paper expressing their views on a dispute. Be prepared to present the issues in the case and your views to the class.

1. Factual Error, Legitimate Criticism or Libel?

A. Respondents claim, *New York Times v. Sullivan* (1964)

“[A]n elected official in Montgomery, Alabama, brought suit in a state court alleging that he had been libeled by an advertisement in corporate petitioner’s newspaper, the text of which appeared over the names of the four individual petitioners and many others. The advertisement included statements, some of which were false, about police action allegedly directed against students who participated in a civil rights demonstration and against a leader of the civil rights movement; respondent claimed the statements referred to him because his duties included supervision of the police department. The trial judge instructed the jury that such statements were “libelous per se,” legal injury being implied without proof of actual damages, and that, for the purpose of compensatory damages, malice was presumed, so that such damages could be awarded against petitioners if the statements were found to have been published by them and to have related to respondent. . . . The jury found for respondent, and the State Supreme Court affirmed.”

B. Justice Brennan, Unanimous Decision of the Court, *New York Times v. Sullivan* (1964)

“If liability can attach to political criticism because it damages the reputation of a public official as a public official, then no critical citizen can safely utter anything but faint praise about the government or its officials. The vigorous criticism by press and citizen of the conduct of the government of the day by the officials of the day will soon yield to silence if officials in control of government agencies, instead of answering criticisms, can resort to friendly juries to forestall criticism of their official conduct. . . . As Mr. Justice Brandeis correctly observed, ‘sunlight is the most powerful of all disinfectants.’ For these reasons, I strongly believe that the Constitution accords citizens and press an unconditional freedom to criticize official conduct. It necessarily follows that in a case such as this, where all agree that the allegedly defamatory statements related to official conduct, the judgments for libel cannot constitutionally be sustained.

6. Protecting the Country from Dangerous Enemies or Destroying Freedom of Speech?

2. The Smith Act (1940) declares the following actions illegal:

“Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States . . . or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof.”

3. Justice Black, Dissenting Opinion, *Dennis v. United States*, (1951)

“I want to emphasize what the crime involved in this case is, and what it is not. These petitioners were not charged with an attempt to overthrow the Government. They were not charged with overt acts of any kind designed to overthrow the Government. They were not even charged with saying anything or writing anything designed to overthrow the Government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date. The indictment is that they conspired to organize the Communist Party and to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the Government. No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids.”

7. Freedom of Expression or Unnecessary Noise?

A. Justice Kennedy, Majority Opinion, *Ward v. Rock Against Racism* (1989)

“The city’s sound-amplification guideline is narrowly tailored to serve the substantial and content-neutral governmental interests of avoiding excessive sound volume and providing sufficient amplification within the band shell concert ground, and the guideline leaves open ample channels of communication. Accordingly, it is valid under the First Amendment as a reasonable regulation of the place and manner of expression.”

B. Justice Marshall, Dissenting Opinion, *Ward v. Rock Against Racism* (1989)

“Until today, a key safeguard of free speech has been government’s obligation to adopt the least intrusive restriction necessary to achieve its goals. By abandoning the requirement that time, place, and manner regulations must be narrowly tailored, the majority replaces constitutional scrutiny with mandatory deference. The majority’s willingness to give government officials a free hand in achieving their policy ends extends so far as to permit, in this case, government control of speech in advance of its dissemination. Because New York City’s Use Guidelines (Guidelines) are not narrowly tailored to serve its interest in regulating loud noise, and because they constitute an impermissible prior restraint, I dissent.”

4. Are tax exemptions illegal subsidies to religious organizations?

A. Justice Burger, Majority Opinion, *Walz v. Tax Commission of the City of New York* (1970)

The tax exempt status granted to all houses of worship is the same privilege given to other nonprofit organizations (hospitals, libraries, playgrounds, ect.). New York . . . has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its moral and mental improvement, should not be inhibited in their activities by property taxation or the hazard of loss of properties for nonpayment of taxes.

10. Justice Brennan, Concurring Opinion, *Walz v. Tax Commission of the City of New York* (1970)

The grant of tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state.

11. Justice Douglas, Dissenting Opinion, *Walz v. Tax Commission of the City of New York* (1970)

The financial support rendered here is to the church, a place of worship. A tax exemption is a subsidy. Is my Brother Brennan [Justice Brennan, author of the concurring opinion] correct in saying that we would hold that state and federal grants to churches. . . to construct the edifice [structure] itself would be unconstitutional? What is the differences between that kind of subsidy and the present subsidy?

5. Should the courts be checking quotation marks?

A. Justice Kennedy, Majority Opinion, *Masson v. New Yorker Magazine* (1991)

In general, quotation marks around a passage indicate to the reader that the passage reproduces the speaker’s words verbatim. A self-condemnatory quotation may carry more force than criticism by another. . . . By eliminating any method of distinguishing between the statements of the subject and the interpretation of the author, we would diminish to a great degree the trustworthiness of the printed word and eliminate the real meaning of quotations. Not only public figures but the press doubtless would suffer under such a rule. Newsworthy figures might become more wary of journalists, knowing that any comment could be transmuted and attributed to the subject, so long as bounds of rational interpretation were not exceeded. We would ill serve the values of the First Amendment if we were to grant near absolute, constitutional protection for such a practice. We doubt the suggestion that a general rule readers will assume that direct quotations are but a rational interpretation of the speaker’s words, and we decline to adopt any such presumption in determining the permissible interpretations of the quotations in question here.

B. Justice White, Dissenting Opinion, *Masson v. New Yorker Magazine* (1991)

My principal disagreement is with the holding, that “a deliberate alteration of the words uttered by a plaintiff does not equate with knowledge of falsity . . . unless the alteration results in a material change in the meaning conveyed by the statement . . . the Court states that deliberate misquotation does not amount to . . . malice unless it results in a material change in the meaning conveyed by the statement. . . . The falsehood, apparently, must be substantial; the reporter may lie a little, but not too much. This standard is not only a less manageable one than the traditional approach, but it also assigns to the courts issues that are for the jury to decide. For the court to ask whether a misquotation substantially alters the meaning of spoken words in a

defamatory manner is a far different inquiry from whether reasonable jurors could find that the misquotation was different enough to be libelous.

6. Unfair Restriction or Separation of Church and State?

A. Lamb's Chapel v. Center Moriches School District (1993): "Goes to Top Court," *Newsday*, February 21, 1993, A1: "Many community organizations are allowed to use the schools in the evening, but under longstanding interpretation of state law, religious programs are not allowed. Most political or commercial uses also are prohibited. . . . The church backed by conservatives and liberal groups, maintains that its First Amendment rights of free speech and free exercise of religion have been violated. . . . The school board also relies on the First Amendment saying that to open school buildings to religious groups would violate the prohibition against government establishment of religion. Such a policy would provide financial aid to religious institutions and entangle government with religion, it maintains. . . . In recent years the court has ruled that religious groups do have free speech rights on government property if that property has been open for use to the general public. Center Moriches has allowed programs by a New Age psychologist, a Salvation Army Band and gospel music, which Lamb's Chapel maintains is proof the schools have been open to other religious purposes."

B. Opposing views on Good News Club v. Milford Central School (2001):

Justice Clarence Thomas, Majority Opinion: When Milford denied the Good News Club access to the school's limited public forum on the ground that the Club was religious in nature, it discriminated against the Club because of its religious viewpoint in violation of the Free Speech Clause of the First Amendment.

Justice Stevens, Dissenting: The Milford Central School has invited the public to use its facilities for educational and recreational purposes, but not for "religious purposes" . . . [T]he school district could (and did) permissibly exclude from its limited public forum proselytizing religious speech that does not rise to the level of actual worship.

Justice Souter, Dissenting: There is a good case that Good News's exercises blur the line between public classroom instruction and private religious indoctrination, leaving a reasonable elementary school pupil unable to appreciate that the former instruction is the business of the school while the latter evangelism is not.

7. Did the legal restrictions or the protesters go too far?

A. Justice Rehnquist, Majority Opinion, Schenck v. Pro-Choice Network of Western New York (1997): We strike down the floating buffer zones around people entering and leaving the clinics because they burden more speech than is necessary to serve the relevant governmental interests. The floating buffer zones prevent defendants . . . from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks. This is a broad prohibition, both because of the type of speech that is restricted and the nature of the location. Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum. . . . We uphold the fixed buffer zones around the doorways, driveways, and driveway entrances. These buffer zones are necessary to ensure that people and vehicles trying to enter or exit the clinic property or clinic parking lots can do so.

B. Justice Scalia, Minority Opinion, Schenck v. Pro-Choice Network of Western New York (1997): Today's opinion makes a destructive inroad upon First Amendment law in holding that the validity of an injunction against speech is to be determined by an appellate court on the basis of what the issuing court might reasonably have found as to necessity, rather than on the basis of what it in fact found. And it makes a destructive inroad upon the separation of powers in holding that an injunction may contain measures justified by the public interest apart from remediation of the legal wrong that is the subject of the complaint. Insofar as the first point is concerned, the Court might properly have upheld the fixed buffer zone without the cease and desist provision, since the District Court evidently did conclude (with proper factual support, in my view) that limiting the protesters to two was necessary to prevent repetition of the obstruction of access that had occurred in the past. But even that more limited injunction would be invalidated by the second point: the fact that no cause of action related to obstruction of access was properly found to support the injunction. Accordingly, I dissent from the Court's judgment upholding the fixed buffer zone, and would reverse the decision of the Court of Appeals in its entirety.

Gitlow v. New York (1924)



A. Cartoon Analysis

1. What was Mr. Gitlow advocating?
2. Why was he arrested?
3. What amendment can Mr. Gitlow claim protects his freedom?

B. Now let's read what Gitlow actually said. "The world is in crisis. Capitalism, the prevailing system of society, is in process of disintegration and collapse. ... Humanity can be saved from its last excesses only by the Communist Revolution. There can now be only the Socialism. . . it is necessary to destroy the parliamentary state, and construct a new state of the organized producers, which will deprive the bourgeoisie of political power, and function as a revolutionary dictatorship of the proletariat ."

1. What is Gitlow arguing?
2. Is it important for the first amendment to protect this kind of speech?
3. You be the judge. How would you rule on this case? Why?

C. The Supreme Court ruled in a 7-2 vote, that the New York law against advocating anarchy was constitutional.

In the majority opinion, Justice Stanford wrote that "It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom..." In the minority opinion, Justice Homes wrote that "whatever may be thought of the...discourse before us, [the manifesto] had no chance of starting a present conflagration. . . ." Therefore, it presented no "clear and present danger," and Gitlow's conviction should be overturned.

1. What does Stanford mean when he says "freedom of speech and of press. . . does not confer an absolute right to speak or publish without responsibility"?
2. Do you agree with Stanford's opinion?
3. What is the main argument of Justice Homes?
4. Do you think it matters that there was "no clear and present danger?"

New Jersey Decisions Lead the Way

by Arlene Gardner

From the earliest days, New Jersey courts have provided precedent-setting cases. New Jersey's initial state constitution was quickly written on July 2, 1776 in Burlington, NJ, as the British were pounding the New Jersey shore. It explicitly maintained "That the Common Law of England. . . shall still remain in Force, until they shall be altered by a future Law of the Legislature, and such Parts only excepted as are repugnant to the Rights and Privileges contained in this Charter; and that the inestimable Right of Trial by Jury shall remain confirmed, as a Part of the Law of this Colony without Repeal for ever." As a result of of this constitutional provision, when the New Jersey Legislature allowed six member juries in certain cases, the law was successfully challenged in the courts as inconsistent with the twelve-man jury required by common law. The decision in this case, *Holmes v. Walton* (1780), is one of the earliest examples of pre-*Marbury v. Madison* judicial review.

In 1947, the United States (US) Supreme Court upheld a state statute allowing local boards of education to reimburse parents for fares paid for the transportation of children attending public and Catholic schools in *Everson v. Board of Education*. A taxpayer in Ewing Township, NJ, had sued claiming that this statute violated the First and Fourteenth Amendments. The New Jersey Court of Errors and Appeals and the US Supreme Court both held that the statute was not inconsistent with the establishment clause. They reasoned that no state money was being contributed to the schools, but rather that the legislation, as applied, merely provided "a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools." This 5-4 decision was the first in a continuing series of controversial US Supreme Court cases attempting to define the limitations of the establishment clause and public funding for nonpublic school expenses.

Landmark Cases

Since 1947, the New Jersey (NJ) Supreme Court has frequently been in the forefront on major legal issues. In the landmark case, *In re Quinlan*, the NJ Supreme Court found a state constitutional basis for the right to refuse medical treatment. The US Supreme Court left this decision standing and it has become the law of the land. In *Doe v. Portiz* (1995), the NJ Supreme Court upheld the provisions of the

Registration and Community Notification Laws, commonly known as Megan's Law, that required certain information about a sex offender to be made publicly available, but mandated that a hearing be held before public notification. Other states and the federal government have followed this lead. In *Right to Choose v. Byrne* (1982), the NJ Supreme Court interpreted a statute authorizing the funding of abortions to preserve a woman's life to include abortions necessary to preserve a woman's health. In *re Baby M* (1988), the NJ Supreme Court found the surrogacy contract that provided for a woman to be paid for carrying and delivering a baby for a couple was invalid and refused to force the surrogate mother to honor her promise to give up the baby. The court decided the case on the basis of long-standing state policy against baby selling and the need for strong evidence to terminate parental rights.

In 1975, the NJ Supreme Court in *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel* held that municipal land use regulations that effectively exclude the poor were unconstitutional. In a second Mt. Laurel decision eight years later, the court affirmed the need to determine each municipality's fair share of the regional need for low and moderate income housing. The Legislature responded with a Fair Housing Act, which created a state agency to calculate and determine the housing needs of different regions of the state.

A Right to Privacy

The NJ Supreme Court has provided broader privacy protections under the state constitution than the US Supreme Court has under the federal constitution in a number of areas, most notably telephone billing records and discarded garbage. It has also recognized the rights of students. In *T.L.O. v. NJ* (1985), a case from Piscataway, NJ, the NJ Supreme Court determined that a school assistant principal did not have reasonable ground to believe that a student was concealing evidence of criminal or other activity that would interfere with school rules and thus sustained a motion to suppress evidence. The US Supreme Court disagreed and concluded that since the students had been found smoking in the lavatory, it was reasonable for the assistant principal to search for cigarettes in her purse and the evidence of drug dealing found when he continued to search her purse did not violate the Fourth Amendment.

Different perspectives in balancing individual rights can be seen in the case of *Boy Scouts of America v. Dale* (2000). In that case, the Boy Scouts of America and its Monmouth County Council revoked the assistant scoutmaster position of Jim Dale when they learned that he was a homosexual and gay rights activist. They asserted that homosexual conduct was inconsistent with the Scouts' value system. Dale filed suit claiming that the Boy Scouts violated the state statute prohibiting discrimination on the basis of sexual orientation. The NJ Supreme Court held that there was a compelling state interest in eliminating discrimination and that Dale's inclusion would not significantly violate the Boy Scouts' right of association or affect its ability to carry out its purposes. However, the US Supreme Court found that requiring the Boy Scouts to admit Dale violated the Boy Scout's First Amendment right of expressive association.

Financing Public Education

School funding is an area where the New Jersey courts have been forceful and far ahead of their brethren in other states. Beginning in 1970, when students in poor urban school districts brought suit challenging the constitutionality of the state's funding system, there has been almost continuous litigation on this issue. In *Robinson v. Cahill* (1972), a New Jersey trial court held that funding education based on local property taxes was unconstitutional under the federal equal protection clause. When the US Supreme Court did not support this position in a similar case from Texas, the NJ Supreme Court found New Jersey's system of financing public education unconstitutional based on the state constitution's guarantee of a "thorough and efficient system of free public schools for the instruction of all the children in the State." This was the first time that a state supreme court relied exclusively on a state constitutional provision as a basis for school finance reform. Eventually the State legislature enacted the Public Education Act of 1975, which specified how the state would provide a thorough and efficient education for all children and a state income tax to fund the new education law.

A second round of litigation began in 1981 when public school students from Camden, East Orange, Irvington and Jersey City challenged the effectiveness of the 1975 Act. In *Abbott v. Burke* (Abbott I, 1985), the NJ Supreme Court confirmed that poor urban school districts were not providing a thorough and efficient education and that the 1975 Act was

unconstitutional. The Court, in *Abbott II* (1990), required that the level of funding "be adequate to provide for the special educational needs of these poorer urban districts" and "address their extreme disadvantages." The Legislature then enacted the Quality Education Act of 1990. In a 1994 decision, the State Supreme Court found this statute unconstitutional as applied to the special needs districts because it failed to ensure parity of educational funding (*Abbott III*). In response, the Legislature passed the Comprehensive Educational Improvement and Financing Act, which adopted substantive "Core Curriculum Content Standards" to define a thorough and efficient education. The NJ Supreme Court ruled that this statute failed to guarantee sufficient funds to enable students in special needs districts to achieve the requisite academic standards. In 1998 (*Abbott IV*), the NJ Supreme Court issued a far reaching plan for the special needs school districts which required whole school reform, full-day kindergarten and half-day pre-school, technology, accountability, alternative schools, school to work programs, supplemental programs, and secure funds to cover remedial and infrastructure deficiencies and initiate effective control over school construction.

New Jersey has been the source of a broad array of important court decisions. Whether this forward looking approach to novel issues will continue with a changed membership on the New Jersey State Supreme Court, and a greater similarity of problems across the country, is not clear.

An excellent resource guide is Robert F. Williams (1990). *New Jersey Constitutional History* (New Brunswick, NJ: Rutgers University Press). The New Jersey State Constitution is online at <http://njleg.state.nj.us/lawconstitution.consearch.asp>. For more information on these court cases, visit <http://law-library.rutgers.edu/ilg> and the Legal Information Institute at Cornell University website at <http://www.law.cornell.edu/>.

The New Jersey Center for Civic and Law-Related Education

The New Jersey Center for Civic and Law-Related Education is located at Rutgers, The State University of New Jersey in Piscataway, NJ. It provides professional development programs in civics, humanities, and law-related education for teachers, and materials and programs for students. For more information, visit its website at <http://civiced.rutgers.edu/>.

Should Students Have Full Fourth Amendment *Due Process* Rights?

by Diane Castino and Felicia Gillispie

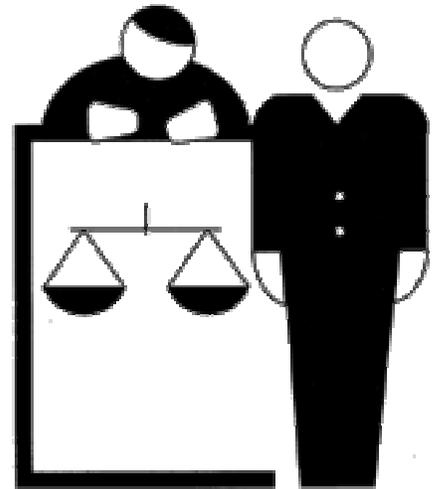
New Jersey v. T.L.O., 469 U.S. 325 (1985)

In 1980, T.L.O. was a fourteen-year-old freshman at Piscataway High School in Piscataway, New Jersey. She is identified as T.L.O. because at the time of the incident she was legally a minor. A teacher found her and another female student smoking in the bathroom. The school's assistant principal questioned T.L.O., searched her purse, and discovered a bag of marijuana and drug paraphernalia. At the police station, T.L.O. admitted that she had been selling marijuana at school. The juvenile court held that a school official may search a student if the official has a "reasonable suspicion that a crime has been or is in the process of being committed, or reasonable cause to believe that the search is necessary to maintain school discipline or enforce school policies." The Supreme Court of New Jersey reversed lower court rulings and ordered the evidence found in T.L.O.'s purse suppressed.

By a 6 to 3 vote, the Supreme Court overruled the New Jersey Supreme Court and abandoned its requirement that searches be conducted only when a "probable cause" exists that an individual violated the law. It allowed a less strict standard of "reasonableness" because T.L.O. was a student and a minor. In this case the Supreme Court defined a middle position between competing versions of the relationship between the Constitution and the public schools. It rejected the argument that the Fourth Amendment's limitations on search and seizure do not apply as well as the argument that the limits apply with full force.

Essential Question: As a student and an adolescent, how does the Bill of Rights protect your freedom?

Teaching Ideas: The New Jersey v. T.L.O. case gives civics teachers an opportunity to involve students in exploring real life issues concerning their constitutional rights while addressing a number of New Jersey, New York and N.C.S.S. standards and thematic strands. It is worth investing at least three days to examine this case carefully. On the first day, the class reads and discusses background information on the case and students do individual or group research using the internet. Students can be divided up into teams representing the plaintiff, the defendant, constitutional experts, and the media and research the topic from different angles. On the second day teams meet to review their notes and prepare statements and then they report to the full class. On the third day, the class can analyze the school's student handbook, particularly policies on searches and seizures, to decide if the policies are consistent with the New Jersey v. T.L.O. decision. As a culminating assignment, individual students can research and write reports on other cases that address student rights and responsibilities and/or write newspaper editorials expressing their personal views on the New Jersey v. T.L.O. decision.



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Debating the New Jersey v. T.L.O (1985) Decision

Directions: In *New Jersey v. T.L.O.*, the United States Supreme Court abandoned its requirement that legal searches can only be conducted by government officials when a “probable cause” exists that an individual violated the law. In a 6 to 3 decision, the court allowed a less strict standard of “reasonableness” because T.L.O. was a student and a minor. Read the excerpts from opinions written by the Justices and the newspaper article about the public response. Write a newspaper editorial expressing your view of the case.

A. Excerpts from the Majority Opinion by Justice Byron White

Against the child’s interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. . . . Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship. . . . [T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. . . . Under ordinary circumstances, a search of a student by a teacher or other school official will be “justified at its inception” when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. . . . We recognize that the “reasonable grounds” standard applied by the New Jersey Supreme Court in its consideration of this question is not substantially different from the standard that we have adopted today. Nonetheless, we believe that the New Jersey court’s application of that standard to strike down the search of T. L. O.’s purse reflects a somewhat crabbed notion of reasonableness. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.

B. Excerpt from the Dissenting Opinion by Justice William Brennan

Today’s decision sanctions school officials to conduct full-scale searches on a “reasonableness” standard whose only definite content is that it is not the same test as the “probable cause” standard found in the text of the Fourth Amendment. In adopting this unclear, unprecedented, and unnecessary departure from generally applicable Fourth Amendment standards, the Court carves out a broad exception to standards that this Court has developed over years of considering Fourth Amendment problems. Its decision is supported neither by precedent nor even by a fair application of the “balancing test” it proclaims in this very opinion. . . . I agree that schoolteachers or principals, when not acting as agents of law enforcement authorities, generally may conduct a search of their students’ belongings without first obtaining a warrant. . . . I emphatically disagree with the Court’s decision to cast aside the constitutional probable-cause standard when assessing the constitutional validity of a schoolhouse search. . . . This innovation finds support neither in precedent nor policy and portends a dangerous weakening of the purpose of the Fourth Amendment to protect the privacy and security of our citizens.

C. Excerpt from the Dissenting Opinion by Justice John Paul Stevens

The majority holds that “a search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” This standard will permit teachers and school administrators to search students when they suspect that the search will reveal evidence of even the most trivial school regulation or . . . guideline for student behavior. . . . For the Court, a search for curlers and sunglasses in order to enforce the school dress code is apparently just as important as a search for evidence of heroin addiction or violent gang activity. . . . A standard better attuned to this concern would permit teachers and school administrators to search a student when they have reason to believe that the search will uncover evidence that the student is violating the law or engaging in conduct that is seriously disruptive of school order, or the educational process. . . . Criminal law has traditionally recognized a distinction between essentially regulatory offenses and serious violations of the peace, and graduated the response of the criminal justice system depending on the character of the violation.

D. Excerpt from the Concurring Opinion by Justice Harry Blackmun

Education “is perhaps the most important function” of government, and government has a heightened obligation to safeguard students whom it compels to attend school. The special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself justifies the Court in excepting school searches from the warrant and probable-cause requirement, and in applying a standard determined by balancing the relevant interests. I agree with the standard the Court has announced, and with its application of the standard to the facts of this case. I therefore concur in its judgment.

E. Excerpt from “Principal Extols Searches Decision - Students See Problem”

Alfonso A. Naravez, *New York Times*, January 16, 1985. pg.17

The principal of Piscataway High School today hailed the United States Supreme Court ruling involving the school that allows staff members to search students suspected of violating the law or school regulations. But some students expressed reservations. “I think it’s one of the greatest decisions in education in the last decade,” said the principal, James R. Koch. “I think the Supreme Court is fantastic. It reaffirmed my faith in the Democratic process.”

The court ruled on a case that began in 1980, when an administrator at the school caught a 14 year old girl smoking, looked in her purse and found drug paraphernalia. The girl was ordered expelled, but litigation postponed the action. She graduated last June. Mr. Koch said the court’s decision reaffirms the right of school administrators to effectively run the schools and to weed out elements that can be destructive to education. The Court ruled, 6 to 3, that such searches are permitted by the Constitution as long as there are “reasonable grounds” for believing the search will yield evidence of a rule violation. “We’re not talking about strip searches,” Mr. Koch said. “We’re talking about walking up to someone and asking would you mind showing me what’s in your purse or would you mind showing me what’s in your pockets. That to me is certainly reasonable. It’s something a parent would do.”

Several seniors, however, said they feared that the ruling could lead to unreasonable searches of their belongings. “I think they should be able to search through certain things if they have reasonable cause, if they suspect that you have something that can hurt someone or drugs or something like that,” said Kenneth S. Stewart, president of the school’s Student Government Association. “But I don’t think that they should be able to just go through your stuff, just walk up to you and say I want to go through your stuff without reasonable cause, a suspicion that you have something illegal.”

Another senior, Sandra D. Fry, said: “I don’t think they should be able to just look into your things. A pocketbook is personal and it’s yours and you can keep what you want in it.” She said that while students should not be permitted to bring drugs into the school and sell it, school officials should have a strong suspicion that a student is doing something wrong before a search is made, and not just be able to walk up to someone and check their bag or purse with no cause. “If someone saw her selling,” Miss Fry added, “then they had the right for suspicion and for searching her.”

Mr. Koch, the principal, added: “I think the law clearly states that we were acting in the place of parents, and if you’re going to be a good parent you’re going to check out all the information you have.” He said that administrators would be derelict in their duty if they failed to follow up leads about students suspected of dealing in drugs or carrying weapons into the school.

Boy Scouts of America v. Dale (2000): A Document-based Essay Question

by Christine Roblin

Document-based Question: Did the state of New Jersey's anti-discrimination law violate the first amendment rights of the Boy Scouts of America?

Background/Historical Context: *Boy Scouts of America v. Dale* (2000) examines the tension between constitutionally guaranteed freedoms of expression and the right to protection from discrimination. James Dale joined the Boy Scouts of America (BSA) as an adolescent and he eventually became a scout leader. Dale served as a leader for 16 months, until he was fired in July 1990. He was fired in response to a newspaper article where James Dale identified himself as a homosexual. Dale was told that the reason for his firing was that he had explicitly defied the standards and mission of the BSA by divulging the fact that he was gay. He sued for reinstatement as a Boy Scout leader claiming that his removal violated New Jersey's anti-discrimination law. Dale won the case in the New Jersey courts, but the Boy Scouts appealed to the U.S. Supreme Court. By a 5-4 vote, the Supreme Court overturned the New Jersey court rulings. It ruled that forcing the Scouts to accept gay troop leaders would violate the organization's rights of free expression and free association under the Constitution's First Amendment.

Task: Examine documents 1 through 7 and answer the accompanying questions. Use the documents and your answers to write a 1,000 word essay that answers the document-based question. In your answer, explain the controversy surrounding the Dale case, the Supreme Court decision, and the impact of this decision on the individuals involved, the Boy Scouts of America and the nation. Conclude with a well-organized statement of your position on the issues in the case.

Document 1: "Boy Scouts' dismissal of gay leader ruled discriminatory," *The Washington Times*, March 3, 1998. "The 1990 dismissal of a New Jersey Boy Scout leader because he was a homosexual was wrongful and discriminatory, a New Jersey appeals court ruled yesterday. 'There is absolutely no evidence for us, empirical or otherwise, supporting a conclusion that a gay scoutmaster, solely because he is homosexual, does not possess the strength of character necessary to properly care for, or to impart the Boy Scouts of America humanitarian ideals to the young boys in his charge.'"

2. How did the New Jersey court of appeals rule on the Boy Scouts of America's dismissal of Dale? What reasons did the court give to support this decision?

Document 2 : "Ruling on Gay Scouts is an Assault on Freedoms," *The Record* (Bergen County), March 5, 1998. "The appellate court effectively ordered this old and noble organization to abandon their moral principles. Freedom of association and religious liberty, as well as the right of private organizations to teach moral principles, are all being trammelled to promote homosexuality as a civil right. Under American civil rights law, once a group becomes a protected minority, the full weight of the Constitution is called to its defense"

1. How does this editorial respond to the New Jersey Court's decision?

Document 3: "Boy Scouts vs. Homosexuals," *World Net Daily* (<http://www.worldnetdaily.com>), January 15, 2000. "Lawyers for the Boy Scouts of America maintain that the NJ discrimination law violates the organization's first amendment rights to free speech and association. 'Scouting adheres to a moral belief . . . that homosexuality is not moral' said the Boy Scouts of America's attorney George Davidson after the nation's highest court announced it will decide the case. Davidson stated that an openly gay person would not be a proper Scout role model and that "boy Scouting is about sending messages. The message is that you should be morally straight."

12. Why did the Boy Scouts believe that the New Jersey appellate court decision was unconstitutional?

Document 4: "Unanimous New Jersey Supreme Court Strikes Down Boy Scout Anti-Gay Ban," Lambda Legal Defense and Educational Fund, August 5, 1999. Source: <http://www.lambdalegal.org>. "A unanimous New Jersey Supreme Court has unequivocally rejected the Boy Scout's anti-gay policies, a phenomenal victory hailed by Lambda Legal Defense and Education Fund both for its client, the exemplary Eagle Scout James Dale, and for all who believe in Scouting values. 'The highly respected New Jersey Supreme Court handed down a win-win-win ruling: a victory for an outstanding Eagle Scout; a victory for gay youth who should be included, not

excluded, from scouting; and a victory for all members of scouting, who join because they value honesty, community service, self-reliance, and respect for others not discrimination,' said Lambda Senior Staff Attorney Evan Wolfson, who argued the case in January. The 7-0 decision Wednesday by the New Jersey Supreme Court is the first ever ruling by a state high court to strike down the Boy Scouts of America's (BSA) ban on gay members, and vindicates Dale's nine-year struggle with the organization that kicked him out solely because he is gay."

13. What is the Lambda Legal Defense and Educational Fund's view of the New Jersey Court decision?

Document 5: Chief Justice William H. Rehnquist, U.S. Supreme Court Majority Opinion, *Boy Scouts of America v. Dale* (2000). Source: <http://www.streetlaw.org/boyscoutsvdale.html>. "Forcing the Boy Scouts of America to include Dale as a scout leader would significantly affect their ability to express their viewpoints because it would force them to deliver a point of view contrary to their own beliefs. The Boy Scouts of America does not want to promote homosexual conduct as a legitimate form of behavior. Homosexual conduct is inconsistent with their viewpoints represented in the parts of their oath that make reference to being 'morally straight' and 'clean'."

3. What position does the United States Supreme Court take on this controversy? Why?

Document 6: Political cartoon. http://www.mndaily.com/daily/2000/06/30/editorial_cartoons/



1. How does this cartoon portray the Boy Scouts of America and the United States Supreme Court?

Document 7: "Atheist Scout given a week to declare belief," October 31, 2002 (<http://www.cnn.com>). "Last week, Darrell Lambert was given roughly a week by the Boy Scouts' regional executive to declare belief in a supreme being and comply with Boy Scout policy, or quit the Scouts. . . Lambert, who has been a Scout since he was 9, said he wouldn't profess a belief he doesn't feel, saying it amounts to a lie. "I wouldn't be a good scout then, would I?". . . As a private organization, the Boy Scouts are permitted to exclude certain people from membership. The organization bans gays and atheists."

2. What are the broader implications of the Supreme Court decision in the *Boy Scouts of America v. Dale*?

Battle over School Prayer on Long Island

by John McManus and Diane Maier

Document-based Essay Question: Why was the Herricks School District, Long Island and the United States divided over the issue of school prayers?

For many years, a particular ritual marked the beginning of each school day all across America. Teachers led their students through the Pledge of Allegiance, a short prayer, the singing of a patriotic song, and possibly, some readings from the Bible. The choice was often a matter of state law, local custom or the preferences of teachers and principals. The situation was no different on Long Island.

One day in the fall of 1958, Steven Engel visited his son's classroom in the Searingtown Elementary School in the Herricks school district. Engel, a Jew, was not prepared for what he witnessed. According to Engel, "I saw one of my children with his hands clasped and his head bent. After, I asked him, 'What were you doing?' He said, 'I was saying my prayers.' I said, 'That's not the way we say prayers.'"

The prayer in question was New York State Regents-endorsed, school board-approved and non-sectarian, and students were not required to say it. In 1959, it was challenged in the courts by Engel and four other district families. After its legality was upheld by New York State's highest court, the prayer was ruled unconstitutional in 1962 by the U.S. Supreme Court in a landmark First Amendment decision, *Engel v. Vitale* (William Vitale was the local school board president).

Opponents of the prayer argued that it was an infringement of their religious freedom, as well as a violation of the principle of "separation of church and state." Attorneys for the district countered that no child was compelled to join in the short prayer recital. During the legal proceedings, the Constitution of the United States, the Declaration of Independence, and the Pledge of Allegiance were each cited in support of the idea that the Bill of Rights and earlier court decisions permitted references to God in official documents and government sponsored activities.

In a 6-1 decision, the Supreme Court concluded that the prayer violated the First Amendment, which begins, "Congress shall make no law respecting an establishment of religion ..." The majority opinion was written by Justice Hugo Black.

The *Engel v. Vitale* decision unleashed a firestorm of criticism of the Supreme Court. It has abated from time to time, but has never completely died out. In recent years, debate over *Engel v. Vitale* resurfaced in arguments over the phrase "under God" in the Pledge of Allegiance and the playing of "God Bless America" at many public ceremonies. Whether you support the *Engel v. Vitale* ruling or not, it clearly was a landmark decision in the effort to define what freedom of religion means in a democratic society. To learn more about the impact of the case, see George DeWan, "School Prayer Divides LI" in *Long Island, Our Story* (Melville, NY: Newsday, 1998)– John McManus

Document 1. New York State's Regents-Endorsed Voluntary School Prayer (1951)

"Almighty God, we acknowledge our dependence on Thee and we beg Thy blessings upon us, our parents, our teachers and our country."

8. Why might this prayer be considered a violation of the First Amendment to the United States Constitution?

Document 2. Excerpt from the majority opinion written by Justice Hugo Black (1982)

"In this country it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government. . . . By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State."

4. What did Justice Black argue about the legality of state-sponsored prayers in public schools?

Document 3. Legal Arguments (Newsday, June 25, 1962)

In arguing against the prayer, lawyers for the plaintiffs cited the Constitution's First Amendment, which declares, "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof. . . ."

They also cited the 14th Amendment, "No state shall make or enforce any law which shall abridge the privileges of citizens. . . ." and mentioned Article 1 of the State Constitution, which declares, "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind." We object both to the saying of the prayer and the manner in which it is said. . . . We do not believe children should be compelled to pray." The Regents, in recommending the prayer, had said that its purpose was "to ever intensify in the child the love of God, of parents, and of the home. . . . That's the Constitutional issue here. Does it have the right to ever intensify the love of God?"

Lawyers for the school board contended that both federal and state Constitutions "recognize the almighty God as part of our national heritage" and noted that Congress opened its sessions with a daily prayer. They cited the reference to "one nation, under God" in the Pledge of Allegiance and the section in the Declaration of Independence saying that all men are "endowed by their Creator with certain inalienable rights."

4. Which arguments do you consider strongest? Why?

Document 4. Plaintiffs in the Court Case (Newsday, June 26, 1962)

"When the original decision to fight prayer recitations in the Herricks schools was made four years ago, 50 Long Islanders promised to see the fight through to the end. When the end came, in the United States Supreme Court yesterday, five of the 50 were left. Said their attorney: "They were the ones who were able to stick it out."

Some of the original 50 changed their views on the advisability of allowing religious prayers in schools. Some were forced to drop out of the battle when they moved away from Long Island. But others were worn down by community pressure. They were bombarded with crank letters and obscene and threatening telephone calls from people calling them Communists and atheists. Roth, a quiet-spoken man who likes to discuss literature, found himself talking on the phone one night to a man who, in a calm and friendly voice, told him that his home was going to be blown up. There were more subtle pressures, too. An employer of one of the men mentioned to him that it was "foolish to get mixed up" in an unpopular cause. And the children of the five families found school increasingly unpleasant. Says Danny Roth. . . . "There were arguments and pushing and name-calling. In the halls, kids would yell out: 'You're a Commie!' or 'Go back to Russia!'" Once a teacher started to subtly kid Danny about his parents' stand."

5. Why did the plaintiffs in the court case face such difficulties?

Document 5. New York Civil Liberties Union Endorses Supreme Court Ruling (Newsday, June 26, 1962)

"The most enthusiastic endorsement of the high court decision came from the New York Civil Liberties Union which hailed it as "a milestone in the development of guarantees of separation of church and state. George E. Rendquist, executive director of the organization, said that the court's decision is in no way an attack on religion. It simply makes crystal clear that a state-written and imposed prayer has no place in the public schools, and that the maintenance of separation of church and state is the best guarantee of religious freedom."

14. Why would the NYCLU see this as a "milestone in the development of guarantees of separation of church and state"?

Document 6. Local Reactions to the Court Decision (Newsday, June 27, 1962)

Robert S. Hoshino, board president, Levittown School District: "Most documents of government in America, including the Mayflower Compact of 1620, the Declaration of Independence of 1776, and the Constitution of 1789, give recognition of God. . . . This ruling by the Supreme Court plays right into Khrushchev's hands."

Rep. Steven B. Derounian (R-Roslyn) said the ruling was "most unfortunate." He added: "I think to ask for Divine guidance is right anytime and anywhere. I'm wondering whether the court will now declare the words of 'under God' in the Pledge of Allegiance as invalid, too. I'm very disappointed."

Shirley Gould, West Hempstead, bookkeeper : "I agree with the decision. It's a very good decision for education in this country. The Constitution very clearly states the separation of church and state. Any infringement on the Constitution should be corrected."

Muriel Schenk, secretary, Patchogue Chamber of Commerce: "I think that prayer is a very good thing to have in schools at the start of the day. Besides, that prayer was a harmless thing that couldn't offend anyone's beliefs."

Effery Haspell, Bayside, salesman: "I heartily agree with the Supreme Court ruling. I'm not against religion - but persons who have no belief in God must have their rights protected. I would wholeheartedly support a meditation period which allowed students the choice of praying, studying, or just sitting, as they wished."

Anna Cestaro, Mineola, housewife: "What's wrong with saying a little prayer? Prayers are more important today than ever. It's especially important today. It emphasizes the difference between the U.S. and Soviet Russia."

James F. Murphy, East Meadow, Sperry worker: "The Supreme Court is nuts. In a country like this, not to believe in God is a crime. Take God out and you have Soviet Russia. I see nothing wrong in the prayer. Even our patriotic songs have God in them. I'm totally against anything like this ruling."

3. Why was local opinion divided over the Supreme Court decision?

Document 7. Official Reactions (Newsday, June 28, 1962)

"President Kennedy yesterday called for support of the Supreme Court's ban on official prayers in public schools and suggested that parents do more to teach their children the 'true meaning' of religious exercise. 'We can pray a good deal more at home and attend our churches with a good deal more fidelity,' the President said in his first public comment on the court's ruling that classroom use of the New York State Board of Regents prayer was unconstitutional. Kennedy's appeal for support of the court's decisions 'even when we may not agree with them,' came a short time after several attacks from the Senate challenged the court."

"Governor Rockefeller said he hoped that 'adjustments' could be made in the Regents' prayer so that it could continue to be used. He said he considered it very important to inculcate belief 'in the brotherhood of man and the fatherhood of God' in young people."

4. How did President Kennedy and New York State Governor Rockefeller respond to the court decision?

Document 8. Proposed Constitutional Amendment (Newsday, June 27, 1962)

Several members of Congress . . . called for the adoption of a constitutional amendment sanctioning the recital of prayers in public schools. Both the House and Senate heard bitter denunciations of the Supreme Court's ban on the continued use of the New York State Board of Regents nondenominational prayer, but influential members of both chambers warned that an amendment aimed at nullifying the court's decision might undermine the traditional "wall of separation" between church and state.

The adoption of a constitutional amendment reserving the court's decision "would pose great difficulties" because of the procedure involved-approval by a two-thirds majority in both the House and Senate and ratification by the legislatures of three-fourths of the states. But he said he believed it would be "entirely possible to get the necessary support for such a properly drawn amendment."

2. Why was a Constitutional Amendment proposed in Congress?

Document 9. National Opposition to the Court Decision (Newsday, June 26 and 27, 1962)

Former President Herbert Hoover: “A disintegration of one of the most sacred of American heritage. . . The Congress should at once submit an amendment to the Constitution which establishes the right to religious devotion in all governmental agencies - national, state, and local.”

Rep. George Andrews (D-Alabama) : “They put the Negroes in the schools and now they’ve driven God out of them.”

Rep. George Grant (D- Alabama) : “They can’t keep us from praying for the Supreme Court.”

Rep. William M. Colmer (D-Miss) : “Is this another step toward the adoption of Communist philosophy?”

Rep. John J. Rooney (D-NY) : “Ridiculous, blasphemous, anti-Christian, almost atheistic - and all in the name of freedom of something or other.”

Sen. Herman Talmadge (D-Georgia): “Violated every tenet of American law and every principle of the spirituality of man. . . .It has dealt a blow to the faith of every believer in a supreme being, and it has given aid and comfort to the disciples of atheism. . . .”

Rep. John Bell Williams (D-Miss.): “A deliberate and carefully planned conspiracy to substitute materialism for spiritual values.”

Rep. Mendel Rivers (D-SC): “The court has now officially stated its disbelief in God. . . . 90 per cent of this gang’s time is taken up protecting Communists, fellow travelers and problems affecting the National Association for the Advancement of Colored People.”

3. What common themes are introduced by these quotes?

Law, Youth and Citizenship Program (www.nysba.org)

The Law, Youth and Citizenship (LYC) Program promotes citizenship and law-related education in schools throughout New York State. LYC assists educators in creating opportunities for students to become effective citizens able to participate fully in our democratic society. Established in 1974 in partnership with the New York State Bar Association (NYSBA) and the New York State Education Department (SED), LYC strives to: instruct teachers to use law-related education (LRE) methodology with their students to meet SED Standards and Project SAVE requirements; develop and distribute LRE publications, teachers guides, and other resource materials; involve attorneys and judges in educational programs, both in and out of the classroom; and provide assistance to schools to teach students about the law and government and encourage civic engagement. Its annual Statewide High School Mock Trial Tournament provides students with hands-on opportunities to further their understanding of the law, court procedures, and our legal system, while honing their speaking, listening, reading, and reasoning skills. Six teams meeting in Albany for the statewide finals each May.

Robert Jackson Center, Jamestown, New York (www.roberthjackson.org)

Robert H. Jackson was a former “country lawyer” from Chautauqua County, New York, Solicitor General of the United States, Attorney General, Justice of the Supreme Court, and Chief United States Prosecutor before the International Military Tribunal at Nuremberg. Through his writings and actions, Justice Jackson came to personify the American ideals of fairness and justice for all. His approach at Nuremberg - applying international law to aggressive war, war crimes and crimes against humanity - set the standards that are used to address such issues today. The Robert H. Jackson Center, 305 East Fourth Street, Jamestown, New York 14701 honors Justice Jackson and advances his legacy through education and exhibitry, and by pursuing the relevance of his ideas for our present generation.

After Nuremberg, Justice Jackson returned to United States Supreme Court where he continued to build his reputation as being one of the brightest and most articulate judges ever to serve on that Court. Shortly after participating in the unanimous decision in the famous desegregation case of 1954, Brown vs. Board of Education, Robert Jackson suffered a fatal heart attack. He was buried in the Maple Grove Cemetery in Frewsburg, New York. On November 21, 1945, Justice Jackson made his opening statement to the International Military Tribunal in Case No. 1, The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics v. Hermann Wilhelm Göring, et al. The full text is available on the web, as part of the the full record of the proceedings through the Avalon Project at Yale Law School (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>).

Classroom Activity: Engel et al. vs. Vitale et al., 370 U.S. 421 (1962)

Facts about the case: The New York State Board of Regents created the following nondenominational prayer to be said every morning in public schools: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.” Students could be excused from saying the prayer if requested by the parents. A group of parents from New Hyde Park, Long Island brought the case to court, arguing that the prayer was against the beliefs and religious practices of both themselves and their children. The New York State Courts upheld the right of the State to issue a school prayer. The United States Supreme Court decided by a vote of 6 to 1 (two judges did not take part in the decision), that the prayer violated the First Amendment’s ban against the establishment of religion.

Essential Question: Does the reading of a nondenominational prayer at the start of the school day violate the “establishment of religion” clause of the First Amendment?

United States Constitution:

Amendment I: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.”

Amendment XIV, Section 1: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

Majority Opinion by Justice Black:

“We think that by using its [New York States] public school system to encourage recitation of the Regents’ prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York’s program of daily classroom invocation of God’s blessings as prescribed in the Regents’ prayer is a religious activity. . . . For this reason the State’s use of the Regents’ prayer in its public school system breaches the constitutional wall of separation between Church and State.”

Minority Opinion by Justice Stewart:

“The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody’s religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so... I cannot see how an “official religion” is established by letting those who want to say a prayer say it..... At the opening of each day’s Session of this Court we stand... our Crier has said “God save the United States and this Honorable Court.” Since 1865 the words “In God We Trust” have been impressed on our coins.”

Questions:

1. How does the First amendment apply to this case?
2. How does the Fourteenth Amendment support the First Amendment in this case?
3. Compare and contrast how the Majority Opinion and the Minority Opinion interpreted the First Amendment.
4. If you were on the Supreme Court, how would you have decided this case? Why?
5. In your opinion, is it acceptable to have the phrase “In God We Trust ” on money and a reference to God in the Pledge of Allegiance, but a ban on organized prayers in public schools? Explain your view.

New York and New Jersey: Conflict in the Courts

by Douglas Cioffi and John Wade

Two well-known Supreme Court cases, *Gibbons v. Ogden* (1824) and *New Jersey v. New York* (1998, the Ellis Island case) directly pitted New York and New Jersey or residents of the states against each other. *Gibbons v. Ogden* (1824) was an important case for defining the division of powers between the federal government and the states and the interstate commerce clause. The Ellis Island case is important because it applies old laws to new circumstances, the creation of “new land” in New York harbor using land fill.

Gibbons v. Ogden (1824), Supreme Court of the United States, 22 U.S. 1

Facts of the Case: In 1808, Robert Fulton and Robert Livingston were granted a monopoly from the New York state government to operate steamboats on the state’s waters. Only their steamboats could operate on the waterways of New York, including interstate waterways that stretched between states. This monopoly extended to both people and goods and was very profitable. Aaron Ogden held a Fulton-Livingston license and operated steamboats between New Jersey and New York. Thomas Gibbons competed with Aaron Ogden on this route using federal (national) coasting license granted under a 1793 act of Congress. Ogden filed a complaint against Gibbons asking the court to stop him from operating his boats between New York and New Jersey. The New York State Court of Chancery and the New York Court of Errors decided in favor of Ogden. Gibbon appealed the New York court decisions to the Supreme Court of the United States. The Supreme Court ruled that New York’s licensing requirement for out-of-state operators was inconsistent with a congressional act regulating the coastal trade. The New York law was invalid by virtue of the Supremacy Clause. Chief Justice Marshall used the court’s opinion to developed a clearer definition of commerce and the phrase “among the several states.” According to Marshall, “We do not find, in the history of the formation and adoption of the constitution, that any man speaks of a general concurrent power, in the regulation of foreign and domestic trade, as still residing in the States. The very object intended, more than any other, was to take away such power. If it had not so provided, the constitution would not have been worth accepting. . . . Henceforth, the commerce of the States was to be an unit; and the system by which it was to exist and be governed, must necessarily be complete, entire, and uniform. Its character was to be described in the flag which waved over it, E PLURIBUS UNUM.”

Essential Question: Had the State of New York interfered with the authority of Congress to regulate interstate commerce?

Sources: <http://www.landmarkcases.org/gibbons/keyopinion.html>

<http://www.oyez.org/oyez/resource/case/137/print>; <http://www.landmarkcases.org/gibbons/home.html>

New Jersey v. New York (1998), Supreme Court of the United States, 523 U.S. 767

Facts of the Case: In 1834, New York and New Jersey agreed that Ellis Island would be part of New York State, however that the submerged lands in that part of the harbor were part of New Jersey. When Ellis Island was the hub of immigration to the United States from 1890 to 1924, the federal government added over 24.5 acres to its original size. After Ellis Island closed its doors to immigrants in 1954, New York and New Jersey filed claims over the added portions. The court voted 6 to 3 to grant sovereignty to New Jersey. The Court decided that the creation of new lands did not alter the 1834 boundaries. Since New Jersey had possession of these “lands” when they were submerged portions, they maintained ownership when they were raised above the water line. Justice Breyer wrote the majority decision.



Essential Question: Who owns Ellis Island? How can old laws be applied to new circumstances?

Sources: <http://caselaw.lp.findlaw.com/>

<http://www.washingtonpost.com/wp-srv/national/longterm/supcourt/1997-98/newjersey.htm>

Regulating Interstate Commerce

According to Article 1 Section 8 of the United States Constitution, “Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.” This statement has come to be known as the “Commerce Clause” and grants the federal government the power to regulate interstate commerce. Over the years the idea of what constitutes interstate commerce has repeatedly been redefined by the Supreme Court. *Gibbons v. Ogden* (1824) was one of the first cases where the court tackled this difficult problem.

15. List **three** areas of “interstate commerce” today that did not exist at the time the United States Constitution was written. In your opinion, why are these areas regulated by Congress under the “Commerce Clause.”

16. The following bills were being discussed in Congress in 2003-2004. Working individually or with a team, you must decide if the proposed bill has a “strong” or “weak” connection to interstate commerce. Rate each bill on a scale of 1 (weak) to five (strong). Be prepared to discuss your ratings with the class.

Proposed Law	Link to Commerce?	Strength of Link (1 to 5)
Weapons of Mass Destruction Prohibition Improvement Act of 2003. To strengthen and enhance the prevention and prosecution of crimes using weapons of mass destruction.		
The Hate Crimes Prevention Act of 2003. To enhance Federal enforcement of hate crimes, and for other purposes.		
The Freedom of Union Violence Act of 2003. To amend the Hobbs Act to include Interference with commerce by threats or violence.		
Holocaust Victims Insurance Relief Act of 2003. To provide for the establishment of the Holocaust Insurance Registry by the Archivist of the U.S. and to require certain disclosures by insurers to the Secretary of Commerce.		

Who Owns Ellis Island? You Decide!

Directions: Working either individually or in your team, read the excerpts from the Supreme Court’s majority (Beyer) and minority (Stevens) opinions. Answer the questions at the end of each segment. Write a newspaper editorial expressing your view of the case.

Justice Stevens Voted in the Minority in Favor of New York

In my judgment a preponderance of that evidence supports a finding that all interested parties shared the belief that the filled portions, as well as the original three acres, of Ellis Island were a part of the State of New York for over 60 years. . . . New York acquired the power to govern the entire Island by prescription. There is no evidence that any of those people ever believed that any part of Ellis Island was in the State of New Jersey. What evidence is available uniformly supports the proposition that whenever a question of state authority was considered by any members of that multitude of immigrants and citizens, both they and the responsible authorities in New York assumed that all of Ellis Island was a part of New York. . . . [W]ith one temporary exception, the authorities in New Jersey shared that belief. . . . [H]undreds of marriages were performed on Ellis Island from 1892 to 1907. The exact number is uncertain, but it is undisputed that they were solemnized under New York law. Moreover, after a 1907 amendment to New York’s domestic relations law, Ellis Island residents obtained their marriage licenses at City Hall in New York City. There is no evidence of any Ellis Island resident being married under New Jersey law. The evidence indicates that the millions of immigrants entering the country, as well as the hundreds of residents of the Island, believed that Ellis Island was located in New York. For many of the immigrants, their journey to America began with a steamship ticket with the destination listed as “New York.” Upon arrival, the “certificate of arrival” for each newcomer was marked “Ellis Island, New York”; given this evidence, it is certainly fair to infer that the new immigrants believed that they had arrived in New York. Documents executed by residents of the Island during the relevant period consistently referred to their address either as “Ellis Island, N. Y.,” or as “Ellis Island, New York.” These references appear not only in voting records, but in other miscellaneous documents as well. Given the fact that the U. S. Postal Service placed the Island in a New York postal zone, presumably the residents regularly received mail addressed to “Ellis Island, N. Y.” There is no evidence that any of those residents prepared or received any mail or other documents describing their residence as in New Jersey.

1. What evidence that Justice Stevens offer to show that all of Ellis Island was considered part of New York?
2. Justice Stevens argues that New York State “acquired the power to govern the entire Island by prescription.” Based on his argument, what do you think “prescription” means in legal terms?

Justice Breyer Voted in the Majority in Favor of New Jersey

Many of us have parents or grandparents who landed as immigrants at “Ellis Island, New York.” And when this case was argued, I assumed that history would bear out that Ellis Island was part and parcel of New York. But that is not what the record has revealed. Rather, it contains a set of facts, . . . which shows, in my view, that the filled portion of Ellis Island belongs to New Jersey. . . . Nor can I agree with Justice Stevens that New Jersey lost through prescription what once rightfully was its own. Too much of the evidence upon which he relies is evidence of events that took place during the time that neither New York nor New Jersey, but the Federal Government, controlled Ellis Island. . . . The Federal Government’s virtually exclusive authority over the Island means that New Jersey could well have thought about the same. . . . [O]ne cannot reasonably expect New Jersey to have mounted a major protest against New York’s assertions of “sovereignty” (modest as they were) over territory that was within the control of the Federal Government. . . . Nor can one expect the immigrants themselves to have taken a particular interest in state boundaries, for most would have thought, not in terms of “New York” or “New Jersey,” but of a New World that offered them opportunities denied them by the Old. For these reasons, in particular, and others, I must conclude that the filled portion of Ellis Island belongs, not to New York, but to New Jersey.

1. What did Justice Breyer think at the beginning of the case?
2. Why does Justice Breyer believe that New Jersey did not forfeit its rights?
3. Justice Breyer believes that this decision will not effect immigrants or immigration history. Why?

Re-Defining the Commerce Clause and the Legal Status of Puerto Rico: De Lima v. Bidwell (1901), Supreme Court of the United States, 182 U.S. 1

by Kerri Creegan

In *Gibbons v. Ogden* (1824), *DeLima v. Bidwell* (1901), *Lochner v. New York* (1905) and *Schechter Poultry Corp. v. United States* (1935), cases involving New York State helped to define the power of the states and of Congress to regulate commerce. *Gibbons v. Ogden* (1824) involved a dispute over who had the right to grant licenses for operating ferries on the Hudson River. In *DeLima v. Bidwell* (1901), the courts had to decide whether imports from Puerto Rico, which at the time was a colony of the United States, were subject to tariff duties. In *Lochner v. New York*, the plaintiff challenged the right of New York State to regulate the maximum hours and the minimum wages of the company's employees. During the Great Depression, the majority ruling in *Schechter Poultry Corp. v. United States* held that the New Deal's National Industrial Recovery Act was unconstitutional. *DeLima v. Bidwell* is also interesting because it helped to define the legal status of Puerto Rico and its residents.

Facts of the Case: On December 10, 1898, as a result of the Spanish-American War, the United States annexed Puerto Rico from Spain. De Lima & Co., the plaintiffs in this case, paid the port of New York duties on sugar imported from San Juan, Puerto Rico, in the autumn of 1899. De Lima & Co. alleged that the duties paid on the imported sugar were illegally collected because Puerto Rico had become a territory of the United States. As a result, duties and tariffs paid on goods imported from other foreign countries should not apply.

Questions for the Court to decide: The Supreme Court had to answer two questions in dealing with this case. First, does territory acquired by the United States by cession from a foreign power remain a "foreign country" within the meaning of the tariff laws? Second, what is the legal status of the newly annexed territory of Puerto Rico?

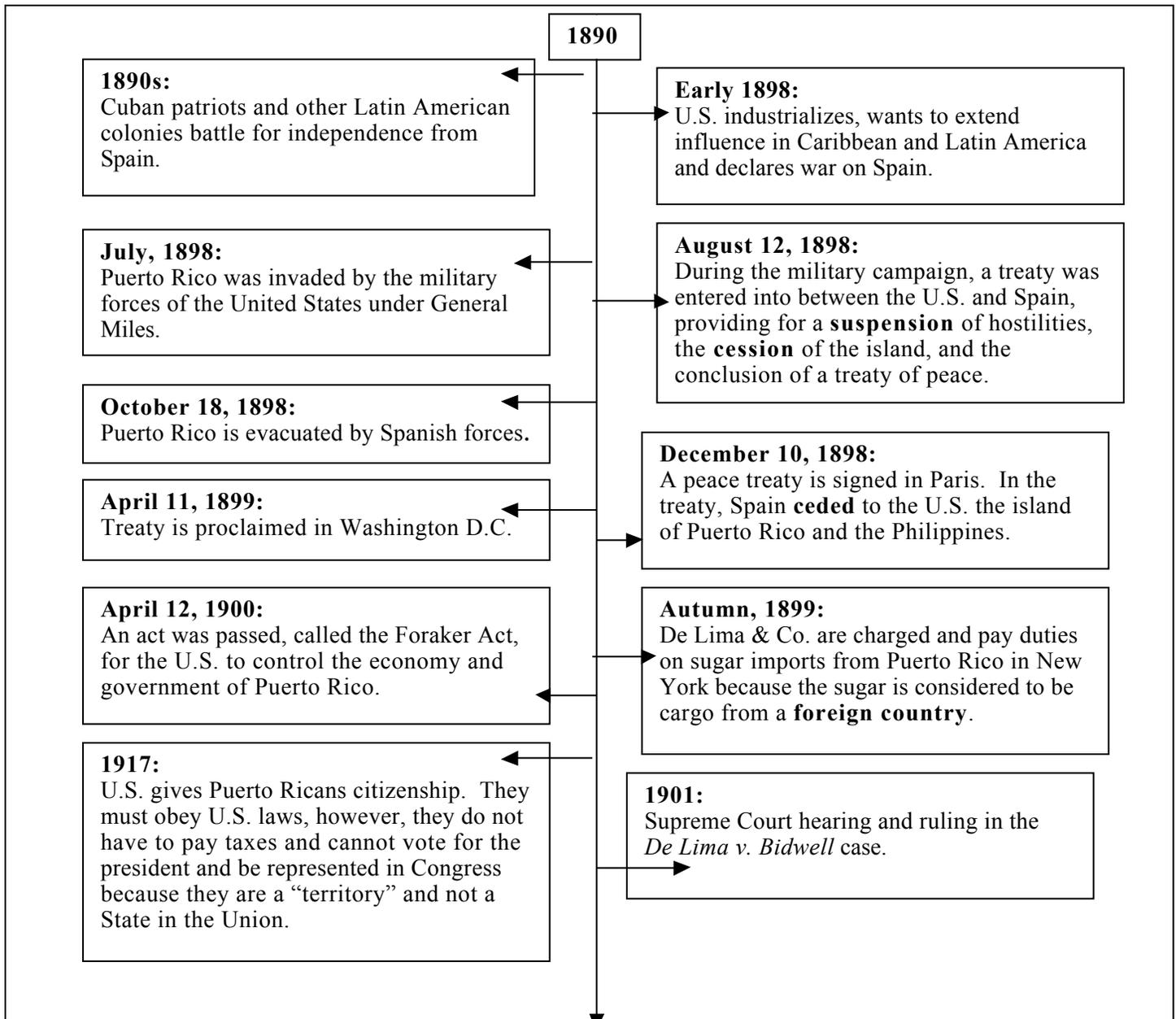
The Court's Decision: To clarify the constitutional legal status of the newly annexed Puerto Rico (and other territories), the Supreme Court issued three decisions in 1901 collectively known as the "Insular Cases" (*De Lima v. Bidwell*, *Dooly v. U.S.*, and *Downes v. Bidwell*). In *De Lima v. Bidwell*, by a 5 to 4 vote, the Supreme Court ruled that Puerto Rico was no longer a foreign nation and, therefore, no duties could be levied against its products. In *Dooly v. U.S.*, the Supreme Court upheld the De Lima decision on the basis that "the Constitution follows the flag." In *Downes v. Bidwell*, the Supreme Court reversed itself and stated that the constitution did not automatically apply to annexed territories, but that the constitutional privileges of U.S. citizens could only be extended by Congress through legislation. The Insular Cases led to the enactment of the Jones Act (1917). Under this act, citizenship was extended to Puerto Rico residents. The cases also introduced the concept of Puerto Rico as a "non-incorporated territory" of the U.S. under the sovereignty of Congress that could eventually become either a State of the Union or an independent nation.

Majority Opinion by Justice Brown: "The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country. . . . We are of opinion that at the time these duties were levied Puerto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States, that the duties were illegally exacted, and that the plaintiffs are entitled to recover them back."

Dissenting Opinion by Justice McKenna: "Puerto Rico occupied a relation to the United States between that of being a foreign country absolutely and of being domestic territory absolutely, and because of that relation its products were subject to the duties imposed. . . . [This fact] enables the United States to have – what it was intended to have- 'an equal station among Powers of the earth,' and to do all 'Acts and Things which Independent States may of right do,' and confidently do, able to secure the fullest fruits of their performance."

Sources: <http://www.abbott.com/ai/abbottowns/puertorico.html>
<http://www.tourolaw.edu/patch/DeLima/>; <http://www.elboricua.com/WilfredoSantiagoValiente.html>
<http://www.caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=182&invol=1>
<http://www.thewebdepot.com/twd/signup.html>; <http://www.katha.org/Plumbum>

History Timeline: Puerto Rico and the United States



Timeline Questions:

1. Puerto Rico was a territory of which country in July, 1898?
2. Why do you think the U.S. got involved in the war against Spain?
3. How did Puerto Rico become a U.S. territory?
4. What is the difference between being a U.S. citizen in a *territory* and being a citizen in a *state*?
5. What happened to De Lima and Co. in 1899? In your opinion, during this time, was Puerto Rico a foreign country?

The Future Status of Puerto Rico

	Benefits	Drawbacks	Support/Oppose/Why?
Puerto Rico should remain a territory of the U.S.	U.S.	U.S.	
	Puerto Rico	Puerto Rico	
Puerto Rico should gain its independence from the U.S.	U.S.	U.S.	
	Puerto Rico	Puerto Rico	
Puerto Rico should become a State in the U.S.	U.S.	U.S.	
	Puerto Rico	Puerto Rico	
<p>Why do you think that Puerto Rico is still a territory of the U.S.? Who benefits more from this fact? Explain.</p>			

Leveling the Playing Field?: Affirmative Action Policies at the University of Michigan

by Jane Bolgatz

Racism in the United States is a complicated historical and current phenomenon that students need to understand if they are going to grapple effectively with the ongoing racial tensions in our society. One way for students to examine questions of equity is by examining the legality of affirmative action programs. In 2003, the Supreme Court heard two cases about affirmative action at the University of Michigan: *Gratz v. Bollinger* and *Grutter v. Bollinger*. Studying these cases allows students to examine how racism is both perpetuated and contested by our social institutions. It also allows students to practice the skills required for New York States' social studies tests. This article describes affirmative action and the two court cases and then explains how the cases can be used in teaching.

Affirmative action policies were created to help correct the effects of discrimination by improving opportunities for *qualified* individuals (typically people of color, White women and veterans) in employment and education. In 1961 President Kennedy issued Executive Order 10925 which stated that employers "will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." In a commencement speech at Howard University in 1965, President Johnson eloquently explained the reasoning for affirmative action: "You do not wipe away the scars of centuries by saying, 'Now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair" (Johnson, June 4, 1965).

Impact of Affirmative Action

Although the United States government has for more than 4 decades, particularly in the Civil Rights Act of 1964, voiced an interest in equalizing opportunities among different racial groups, discrimination continues to affect people of color in the United States in housing, employment, education and other areas. (Ironically, the people who have benefited most from affirmative action employment

policies have been White women. See, for example, Locke, 1998.) In Michigan, as in many places, Blacks have endured and continue to suffer from inequity in housing, jobs and voting rights (Sugrue, 1999). Latinos, particularly Mexicans who were recruited to do poorly paid migrant work, have often been barred from decent education or housing. Native Americans have been forced to live on reservations where it is very difficult to grow food and where there are very few other resources. Even in cities, Native Americans could only attend ill-equipped schools either for reasons of poverty or enforced segregation. Housing choices, and thus access to schooling, has been limited for people of color originally by law, and more recently by real estate agents steering clients so that neighborhoods stay segregated (Sugrue, 1999).

To compensate for the limited access to schooling that such a history has fostered, institutions such as the University of Michigan implement policies to "level the playing field" in access to education. When Jennifer Gratz, a White high school senior, applied to the University of Michigan in 1994, the undergraduate admissions program awarded 20 points on a scale of 150 to Black, Hispanic or American Indian applicants, recruited athletes, men in nursing, students who had a socioeconomic disadvantage or others at the discretion of the provost (Kantrowitz & Wingert, 2003). Jennifer Gratz and another White student, Patrick Hamacher, were denied admission to the University for the fall of 1995 and 1997 respectively. With the help of the Center for Individual Rights, they sued the University, arguing that the University of Michigan's admissions policies violated the equal protection clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. In a similar situation, Barbara Grutter, a 43 year old White applicant to the University of Michigan law school, was turned down. She, too, sued the University. The law school does not have a point system, but regularly admitted Black, Hispanic or American Indian applicants who had lower grades and test scores than their White counterparts (Greenhouse, 2003). The Supreme Court heard the cases together in 2003.

Making up for past and current discrimination is not the main reason that the University of Michigan wanted to use race as a factor in its admissions decisions. As part of their argument, the University described the benefits of a diverse student body in terms of allowing all students to learn how to live with those who are different from them, and to hear opinions that they might not hear in a more homogenous setting. Most Michigan communities are extraordinarily segregated, and the University argued that in order to prepare their students to interact in a global society, they needed to recruit a diverse student body. The District Court, which heard the case before it went to the Supreme Court, stated in its ruling that the “connection between race and [diversity of] viewpoints is tenuous at best” (United States Amicus Brief "Grutter v. Bollinger," 2003), but the Supreme Court ruled that “the law school has a compelling interest in a diverse student body.”

University Defends Policy

The University argued that race was only one among a number of factors in deciding whom to admit to their undergraduate college. “We consider race as one of a number of factors,” explained Walter Harrison, vice president for university relations. “It’s not the most important factor. It’s not even close. GPA--that is to say your high school academics--would be the most important thing we look at. So in the case of Jennifer Gratz, in the year that she applied, there are White students with her grades and test scores who were accepted. And there are Black students with her grades and test scores who were rejected. ‘Why is that?’ you say. Because of all these other factors and all these other things the counselor is looking at” (PBS, 1997).

The Supreme Court allowed the law school to continue using race as a factor in admissions but rejected the more rigid point system of the undergraduate college. The decisions and dissenting opinions raise several interesting questions:

1. Do schools have a responsibility or right to try to make up for or remedy societal discrimination?
2. How much do individuals represent a point of view because they are members of a certain group?
3. When is there a “critical mass” of students representing minority groups so that those students are not isolated?
4. Is affirmative action an effective way to combat or right the wrongs of racism?

These and other such cases make for useful curricula. In a variety of tasks, students can ponder the effects of discrimination and the legitimacy and effect of using racial categories in admissions decisions. They can test their judgments in a debate of the legal questions or even participate in a moot court. They might make a statement to the Supreme Court justices as if they were lawyers in the case, or file an amicus (friend of the court) brief such as the ones submitted by business, military, political and academic leaders. The class can concentrate on one case or they might break in to groups to look at both cases.

In order for students to be able to argue the merits of the cases, they need to consider the history of discrimination against Blacks, Latinos and Native Americans, as well as the potential benefits of interacting in heterogeneous groups. Students also must examine the meanings and nuances of affirmative action, and the various ways affirmative action policies have been implemented. In addition, they need to think critically about how a person’s perspective and interests influence the construction and presentation of an argument. Although I have worked with students as young as fourth graders in grappling with these issues, 8th graders and high school students are generally better equipped to handle the complexity of the question of affirmative action. They would be better prepared to do so, however, if in the younger grades there had been more instruction about the history of discrimination and struggles for racial equity.

Document-based Instruction

Documents such as the arguments, expert reports, amicus briefs and court decisions in the Michigan cases (see The Center for Individual Rights <http://www.cir-usa.org>, and the University of Michigan, <http://www.umich.edu/~urel/admissions/>) allow students to examine historical and current racism and arguments for why the university is right or wrong in using race as a factor in admissions. In order to investigate and understand how cultural assumptions, frames of reference and perspectives influence the ways in which knowledge is constructed (Banks, 1997), students can study how these and other documents are slanted or biased. For example, students might examine the way the *Amsterdam News*, a traditionally Black newspaper published in New York City, represented the case compared to the way President George W. Bush discussed it.

Documents can give students new ways to think about educational equity. In one classroom I

observed a group of fourth graders study a chart of school funding by district in Michigan. The students figured out the differences in per pupil spending across the districts. They talked about what difference the funding might make in the college readiness of the students in each district, and whether the discrepancy was fair. This led to even more profound questions: “Is being smart the same as being well-trained?” and “Should colleges admit students based on their potential or their past performance?” For students who had never questioned what it meant to be intelligent or why some students do better in school than others, this discussion allowed them to question the validity of academic criteria and the fairness of their own and others’ educational opportunities. This was an important critical reflection on institutionalized discrimination.

Besides the critical thinking skills involved in arguing the merits of various kinds of affirmative action, students studying the cases used a variety of social studies and language arts skills. In interpreting Johnson’s speech and other arguments, they had to decipher figurative language and metaphors. When they looked at charts of poverty levels, school spending and admission rates, they had to interpret data and make meaning of statistics. When they acted out portions of a version of the *60 Minutes* television show about the Michigan cases from the Center for Individual Rights website (CIR, 2000), students used speaking and listening skills and the arguments came alive. Deciphering the sometimes circuitous legal documents and making sense of the varied interests of the parties, students practiced the interpretive skills that they will use on typical document-based questions. Finally, although not information that will be tested on the Regents, students learned how college admissions worked at

one selective public university. This exposure can help demystify the process of getting in to college.

Gratz v. Bollinger and *Grutter v. Bollinger*, then, are relevant to any student interested in social justice or simply interested in getting into college. What begins as a simple question, “Should Jennifer Gratz, Patrick Hamacher or Barbara Grutter have gotten in to the University of Michigan?”, expands to push students to think about larger concerns of educational discrimination and equity, and individual rights and social responsibility, as well as questions of bias and perspective. Affirmative action policies can be contentious. If they are to become effective citizens in a diverse democracy, students need practice debating these important but controversial issues.

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New York Civil Liberties Union

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a statewide organization dedicated to the protection and enhancement of New Yorkers’ civil liberties as enumerated in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. It was founded in 1951 as the New York affiliate of the American Civil Liberties Union. It has local chapters in the Capital Region, Genesee Valley, Nassau County, Suffolk County, and Westchester and a Western Regional Office. The NYCLU sponsors a traveling photo-journal exhibit called “Faces of Liberty” that highlights significant NYCLU court cases over the last three decades. It features high school students denied the right to read library books, gays denied a parade permit because they were “non-traditional,” black male college students subject to a wholesale sweep in search of a suspect, and women students denied the right to join a public organization. The “Faces of Liberty” exhibit began circulating in September 1999 and included fourteen cases. By the spring of 2004, the exhibits will have been displayed in 55 public libraries, 17 college or university libraries, 7 law schools, and galleries at 2 airports. For more information about the NYCLU and the “Faces of Liberty” exhibit, check their website, <http://www.nyclu.org/>.

Grutter v. Bollinger: The Supreme Court Decision on Affirmative Action (6/23/03)

Source: <http://www.teachablemoment.org/high/affirmativeaction.html>

From the Decision by Justice O'Connor: “[S]tudent body diversity is a compelling state interest that can justify the use of race in university admissions. . . . The law school’s interest is not simply to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin. That would amount to outright racial balancing, which is patently unconstitutional. Rather, the law school’s concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce. These benefits are substantial. . . . [N]umerous studies show that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals. . . . In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions. . . . [A] race-conscious admissions program cannot use a quota system. . . . Instead a university may consider race or ethnicity only as a ‘plus’ in a particular applicant’s file without insulating the individual from comparison with all other candidates. . . . We are satisfied that the law school’s admissions program. . . does not operate as a quota. . . and is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race or ethnicity the defining feature of his or her application. The importance of this individualized consideration in the context of a race-conscious admissions program is paramount.”

From the Dissent by Chief Justice Rehnquist: “The Law School claims it must take the steps it does to achieve a ‘critical mass’ of underrepresented minority students. But its actual program bears no relation to this asserted goal . . . [S]chool administrators explain generally that ‘critical mass’ means a sufficient number of underrepresented minority students to achieve several objectives: To ensure that minority students do not feel isolated. . . . ; to provide adequate opportunities for the type of interaction upon which the educational benefits of diversity depend; and to challenge all students to think critically and re-examine stereotypes. . . . In practice the law school’s program bears little or no relation to its asserted goal of achieving ‘critical mass’. . . . If the law school is admitting between 91 and 108 African-Americans in order to achieve ‘critical mass,’ thereby preventing African-American students from feeling ‘isolated’. . . one would think that a number of the same order of magnitude would be necessary to accomplish the same purpose for Hispanics and Native Americans. . . [T]he law school’s disparate admissions practices with respect to these minority groups demonstrate that its alleged goal is simply a sham. . . . [W]e are bound to conclude that the law school has managed its admissions program, not to achieve a ‘critical mass,’ but to extend offers of admission to members of selected minority groups in proportion to their statistical representation in the applicant pool. But this is precisely the type of racial balancing that the Court itself calls ‘patently unconstitutional.’”

Questions for discussion

1. Why does the Court view student body diversity as “a compelling state interest that can justify the use of race in university admissions”?
2. What does the Court mean by its reference to “leaders with legitimacy in the eyes of the citizenry”?
3. What does the Court regard as an unconstitutional use of race and ethnicity by a university admissions program? How can the use of race and ethnicity by a university admissions program be constitutional?
4. According to Justice Rehnquist, why is the university’s stated “critical mass” goal “simply a sham”?
5. Why does he conclude that the university’s admissions program is unconstitutional?
6. Which of the two opinions do you favor? Why?

TeachableMoment.Org is a project of Educators for Social Responsibility Metropolitan Area. It provides educators with timely teaching ideas to encourage critical thinking on issues of the day and foster a positive classroom environment. Topical activities are available for elementary school, middle school, and high school levels. For more information about ESR Metro contact info@esrmetro.org

Black Armbands and Student Protest: The Legal Meaning of *Tinker v. Des Moines*

by Charles F. Howlett

In light of the new assessments in social studies developed by the New York State Board of Regents, more emphasis will be devoted to an analysis of Supreme Court cases and their implications for governing American society. As teachers of history and social studies how are we to explain the significance of Supreme Court cases in the classroom? More importantly, how skilled are we in terms of explaining the legal ramifications of such cases and their impact on students, in particular? Are there any such cases which deal directly with students and can assist in classroom learning? One particular case serves that purpose: the 1969 ruling in *Tinker v. Des Moines*.

To begin, the troubling “question of freedom and restraint” involving public school students remains a subject of considerable interest. Encouraging high schoolers to question administrators and challenge the orderly process inside and outside the classroom has never been widely promoted both by those in charge and those who pay taxes in support of public education. Discipline and respect for national values remain the cornerstones of public school education. School officials have always been sensitive to parental concerns and community opinion. Controversial topics such as antiwar dissent are discouraged out of fear. Little consideration has been given to promoting student inquiry on such issues in order “to establish adherence to conventional forms of patriotic observance. . . .” (Friedenberg, 1971).

Urgent Desire For Change

The Vietnam era witnessed for the first time in American history the replacement of student apathy in American secondary schools with an urgent desire for change. The draft, Vietnam War, freedom of the press, racism, poverty, student power, and abolition of the “tracking system” generated considerable debate during this period. For instance, David Romano, a high school student in suburban Westport, Connecticut, noted cynically that “the federal government and the power structure of this country, the military- industrial complex, has become corrupt to the point where there is no longer any hope of a reform movement, or a government-sponsored movement, bringing about any real change (Romano, 1970, 9).” The war tended to sensitize student awareness to the need for change and empowerment. “Without a doubt,” wrote Eric Oakstein, a student in New York City, “the most radicalizing influence on me was the Vietnam War. . . . I certainly didn’t want to have any kind of revolution. However, once I became involved in the antiwar movement, I also became sensitive to many of the other wrongs in America. I saw that while Americans spend millions to ‘Bring Democracy to Southeast Asia,’ democracy was being forgotten in our cities and in our rural areas. It became logical at that point not only to oppose the war but to oppose American racism and poverty at the same time (Oakstein, 1970, 207).” The New York City-based High School Independent Press Service, moreover, acted as a sounding board for underground student papers throughout the country. Illinois student Howard Swerdloff typified the feelings of many high school revolutionaries writing in the *Free Press*: “I used to be the biggest patriot in the country. I . . . marched proudly in my Boy Scout uniform on Memorial Day. This country was the greatest in the world -- it stood for decency, humanity, peace, justice, freedom. . . . I’m 17 now. My throat is red and raspy from the riot-gas of the Illinois National Guard. My head is swollen from the ‘Sons of Liberty’ who beat me up because I’m a ‘hippy-Jew.’ My voice is hoarse from trying to explain the way I feel (Divoky , 1969, 291-292).”

Across the nation high school students were demanding change. Events and opinions regarding the war in Vietnam also reflected the rapidly changing views occurring within the country’s legal system (Birmingham, J, 1970). The first clear signal of changing judicial opinions involving free expression in public schools was found in the Supreme Court ruling in *Tinker v. Des Moines*. The *Tinker* ruling demonstrated “that the process of education in a democracy must be democratic (*Tinker v. Des Moines*, 1969, 503-526).” Symbolic protests devoid of classroom disruption would now be permitted. It marked a fundamental step in the evolution of the rights of students to protest inside schoolhouse gates.

School administrators in the Des Moines Public School System, in Iowa, could not have envisioned the legal consequences of their attempts to ban anti-Vietnam War protests. In 1965, school principals in the city caught wind of plans by some students to stage a silent protest against the war by wearing black armbands to

school. The protest was scheduled to take place just prior to the Christmas holidays. Administrators responded with a warning that any student coming to school wearing armbands would be asked to take them off. Public school officials noted that students would be suspended from school until such time that they agreed not to wear the arm bands. Administrators echoed their own objections to the planned protest: “The schools are no place for demonstrations” and “If the students don’t like the way our elected officials are handling things, they should deliver their message through the ballot box and not in the halls of our public schools (Hentoff, 1980, 6-8).”

Witness of Armbands

The ballot box was not sufficient in the eyes of 15 year-old John Tinker, his sister, Mary Beth, and their friend, Christopher Eckhardt, sixteen. Along with their parents, the Tinker children gathered at the Eckhardt home to plan a silent “witness of armbands” from December 16 to January 1. The protest was to coincide with the Christmas vacation in order that the students would not miss many classes. Both families were closely tied to pacifist organizations. The Reverend Leonard Tinker was Secretary for Peace and Education of the American Friends Service Committee -- the action branch of the Society of Friends, or Quakers. Christopher’s mother was the local chapter president of the Woman’s International League for Peace and Freedom (*Tinker v. Des Moines*, 1969, 503-505). On December 16, 1965, as planned, the Tinker children wore their black armband to class. The following day, Christopher came to school with his on. To stem the tide, school officials promptly suspended the three, along with two other students. The Tinker and Eckhardt parents promptly filed a lawsuit in Federal District Court requesting the judge to withdraw the school suspensions.

School district officials sought to avoid the growing problem of antiwar feelings. Yet, they were unwilling to ban all political symbols and insignias. Some students were permitted to wear political campaign buttons in the hallways and classrooms. Some even wore the Iron Cross. The order banning black armbands did not apply to those other symbols. Why the double standard?

Federal District Court dismissed the parents’ complaint on the grounds that the regulation was within the school board’s power despite the absence of any finding of substantial interference with school conduct. Outside the classroom, a few students made angry remarks to the protestors. But no serious threats or acts of violence took place on school grounds. The court found it convenient to rule that this kind of symbolic protest might disturb school discipline. The parents appealed the decision. The United States Court of Appeals for the Eighth Circuit was divided equally (4-4). Feelings were deeply mixed and confusing. Consequently, the lower court decision was upheld (Hentoff, 1980).

United States Supreme Court

The last step in the judicial process was to argue the case before the United States Supreme Court. The argument was heard before the Court on November 12, 1968. The Tinkers, as petitioners, were represented by Dan L. Johnston. He introduced one piece of key evidence. Johnston argued before the high court that “before anyone wore an armband really on the basis of pure conjecture that the policy was adopted frankly for the purpose -- and the administration and teachers say this over and over again -- it was the principle of the demonstration, the idea of expressing political beliefs that they were opposed to in this context, and the students were suspended for violating that policy and not suspended for causing any disruption in the class room.” Finally, on February 24, 1969, in a 7-2 ruling, the Court addressed the issue of free speech rights for public school students. Mr. Justice Abe Fortas presented the majority opinion: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate (*Tinker v. Des Moines*, 1969, 506).” The disruption standard does not apply when attempting to curtail a student’s right to free speech. “In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. . . . In our system, students may not be regarded as closed-circuit recipients of only that which the state wishes to communicate. . . .” (*Tinker v. Des Moines*, 1969, 510-511). The Justices emphasized that “personal communication among the students. . . is an important part of the educational process” and despite the expression of unpopular views “our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, and often disputatious society” (Cutlip, 1969, 119-125).

Despite Mr. Justice Black's dissenting opinion "that the court should not usurp the school authorities power to make the decision as to which disciplinary regulations are reasonable," the *Tinker* decision established the basic framework for deciding free speech issues in public education. Equally significant, students were immune from discipline unless school officials were able to prove that there were facts that reasonably led them to forecast substantial disruption or material interference in the daily operations of the school.

The ruling in *Tinker*, however, did not give students "carte blanc." Students free speech rights can be held in check if the speech activity involves the "invasion of the rights of others." Public schools have a significant interest in promoting respect for authority and for its proper functioning. On this point the courts have remained adamant. Although *Tinker* permitted the "wearing of black armbands in the classroom, it does not allow, for example, that a student may voice his opinion of the Vietnam War in the middle of a math class (Nahmod, 1970, 280)."

When teaching this case students should be reminded that the Supreme Court's decision sought to delineate between "pure speech" and those "acts constituting 'symbolic speech.'" The basic issue of the case involved a standard of permissible regulation which varied "according to which is being regulated, in that greater limitations are placed on state regulation of 'pure speech' than of 'symbolic speech.'" The subtleties are confusing, but nonetheless legally important. In other words, when "symbolic speech" is by nature peaceful then it is "regulated by the rules relating to 'pure speech.'" This implies that either "a material and substantial interference with discipline" or interfering and hindering the rights of others would be necessary before some form of regulation could occur. The Supreme Court held that the Tinker Act was more "akin to 'pure speech'" and that "it was unconstitutional for the school authorities to prohibit the students from wearing the armbands." *Tinker* thus treated "'personal intercommunication among the students. . . [as an] important part of the educational process,' which occurs on school premises both inside and outside the classroom (Nahmod, 1970, 280)."

Apart from this brief historical analysis and the case's usefulness as a Document Based Question, *Tinker*, in particular, lends itself nicely to classroom participation. To test this hypothesis, I assigned this case for students to read and analyze. I then asked them to write their own scripts to be performed in class. I also allowed them to work in pairs to alleviate anxiety. To assist them in the techniques of writing dialogue and stage setting, I made available Ralph Boas and Edwin Smith, *An Introduction to the Study of Literature*(1925), and Josefina Niggli, *New Pointers on Playwriting*(1967). The Boas and Smith work is a time-tested and instructive book. Chapter Five is devoted entirely to the principles of dramatic construction - plot, characters, plot complication, setting, and artistic economy. The authors dutifully explain why drama as literature is of permanent value. Students found it helpful that at the chapter's end there are thirty-seven skill exercises reinforcing the principles of drama. Niggli's work includes examples from classical and modern plays to illustrate how a play "works" on stage. She also discusses how to handle exposition, develop a story line, understand the protagonist-antagonist relationship, write dialogue, and make effective transitions.

Interestingly, students' roles examined every facet of the case, from its legal interpretations involving free speech and symbolic expression to the historical significance of antiwar protest. When enacted in class the student audience hung on every word and found itself sharing the same feelings and dilemmas encountered by the Tinkers and Eckhardt. In addition, the series of questions derived from the drama resulted in a number of lengthy and intelligent discussions. Student involvement was intense, and the class was able to understand why there were protests against the war in Vietnam and how the legal system operates in its application of the constitutional right to free speech in a democracy. History came alive and so did student appreciation for teaching Supreme Court cases in the American history curriculum.

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Should We Teach Corporate Curriculum?

by Mark Maier

This is a slightly edited version of an article that appeared in *Rethinking Schools*, Summer 2002, 16(4). A longer version was published in *Dollars & Sense, The Magazine of Economic Justice*. *D & S* offers “left perspectives on current economic affairs.” It prints articles by journalists, activists, and scholars on a range of topics with an economic theme: the economy, housing, labor, government regulation, unemployment, the environment, urban conflict, and activism. To subscribe check their website at [http:// www.dollarsandsense.org](http://www.dollarsandsense.org).

Every year, more than one million high school students take an economics course, usually in their senior year. Many of those students are learning from textbooks, classroom activities, and websites paid for by corporate donors whose ideological influence goes unrecognized. Many people, even economists and high school teacher, don't know how decisions about economics courses are made. But corporate foundations, particularly those with an extreme conservative bent, have paid very close attention to high school economics. As a result, textbooks, classroom activities, websites, and new national standards depend increasingly on corporate donors whose ideological influence often goes unrecognized. With national economics testing due to begin in 2005, and corporate-driven course materials even more widely disseminated, economics courses are likely to swing even more toward a “free-market” ideology. When high school economics courses were first introduced in many states during the 1970s and 1980s, publishers filled the textbook void. But teachers, many of whom had no formal economics background, needed lesson plans. Corporations and nonprofit organizations, often working together, stepped in with a wide range of supplementary readings, classroom activities and, in recent years, websites.

Influential Organizations

Junior Achievement, a privately funded nonprofit organization, claims to reach four million U.S. students every year with its “free enterprise message of hope and opportunity.” Founded in 1919 as an after-school program in which students set up small businesses, Junior Achievement first entered the classroom in 1975. Since then, it has broadened its scope to include a kindergarten through 12th-grade economics curriculum with a high school economics course taught by business executives. UPS, ExxonMobil, Goldman Sachs, and New York Life Insurance are among the corporations that have provided large grants to Junior Achievement. Kraft

Foods is the largest single provider of volunteer economics instructors for Junior Achievement.

The Foundation for Teaching Economics (FTE), a nonprofit organization endorsed by Junior Achievement, has also offered classroom activities since 1975. The foundation is supported by two of the largest donors to right-wing causes, the Coors family and Richard Scaiffe (heir to the Mellon oil and banking fortune). It also uses an environmental curriculum funded by Coca-Cola and written by the Political Economy Research Center, a Montana based research organization that has led opposition to the Endangered Species Act and the Superfund.

The group most influential in pre-college economics is the National Council on Economic Education (NCEE), the largest provider of curriculum materials for use in kindergarten through 12th grade. The council has also created a network of councils in all 50 states as well as more than 200 affiliated university centers for training primary and secondary school teachers. The council receives generous support from corporations such as State Farm Insurance, International Paper, NASDAQ, and UPS. The council's website is well stocked with lesson plans, current events articles, and a growing list of publications. These classroom materials actively engage students in cooperative group projects with clever titles such as “Great Economic Mysteries” and “Hey, Mom! What's for Breakfast?” On occasion, the conflict of interest between the subject matter and the funding source is obvious. For example, the Securities Industry Association, a trade group representing banks, brokers, and mutual fund companies, sponsors the NCEE's Stock Market Game curriculum. Teacher instructions and student activities give the mistaken impression of equal ownership of stocks across income groups, and downplay negative consequences such as stock market bubbles.

Usually, corporate influence is more noticeable in what is left out of the curriculum. For example, Bank of America pitched in over \$3 million for the NCEE's Financial Fitness for Life, attractive

teaching materials coauthored by accomplished but decidedly conservative economics educator Mark Schug. The first lesson plan tempts students, “How to Really Be a Millionaire,” based on the content of two bestsellers, *Getting Rich in America* and *The Millionaire Next Door*. The “millionaire” approach reinforces unrealistic expectations among many youth. A recent poll by Junior Achievement found that nearly one quarter of teens believe they will have \$1 million in assets by age 40, while 15 percent think they will earn more than \$1 million a year. Aside from being unlikely (the actual proportion of current million-dollar earners is about one in a thousand) the curriculum downplays the impact of inheritance and the earnings of corporate executives, both important starting points for understanding the U.S. economy.

Standards Take Over

In 1994, Congress mandated economics as one of nine core subjects for which national standards should be developed, and the U.S. Department of Education designated the NCEE to lead the effort. In 1997, with assistance from the Foundation for Teaching Economics, AT&T and others, the NCEE produced the Voluntary National Content Standards, a list of 20 standards and accompanying teaching strategies for students in kindergarten through 12th grade. The economics standards were published with little fanfare, a remarkable non-event in comparison with other disciplines in which standards evoked furious debate. The economics standards were widely accepted by committees of the American Economic Association, teachers, and administrators. The economics standards reflect the free-market bias shared by most economists, tempered with a nod toward federal government intervention to prevent unemployment or inflation. Practically the only published criticism of this bias came from the journal, *Feminist Economics*, where economists outside the mainstream of the America Economic Association pointed out that the standards’ focus on free-market principles causes the curriculum to overlook issues of gender, race, class, the environment, and unequal development between rich and poor countries.

Testing On The Way

More than half of all states already include some economics content in their required social studies tests. Economics is also one of the fastest growing Advanced Placement (AP) test subjects (although only 1 percent of high school graduates have taken AP-level economics.) Even greater change will come

in 2005 when the congressionally mandated National Assessment of Education Progress begins testing 12th graders in economics, giving extensive media attention to economics in the “The Nation’s Report Card” already distributed for reading, writing, math, science, and history. The test content is under debate, in particular whether it should focus on the economics curriculum as reflected in the NCEE standards, or on practical consumer finance topics favored by some as more appropriate for pre-college students. Most likely, the NCEE standards - and their pro-market bias - will win out because they are already the basis for some state tests, and because the NCEE curriculum is used so widely.

Although national testing may push instructors toward the NCEE’s ideologically driven standards, teachers can still challenge students to reflect critically on the choices they will face in the real world. Corporate-sponsored resources do provide a wide range of attractive, ready-to-go classroom handouts, so teachers strapped for course materials may want to use them as a starting point. For example, the onesided materials in Financial Fitness for Life might be used in combination with sources recommended by the PBS program, *Affluenza*, a television special that explores the high social and environmental costs of materialism and overconsumption. Also, teachers can ask their students to assess the authors’ biases in, for example, materials from Junior Achievement and the Foundation for Teaching Economics. In addition to warning against credit scams, personal finance courses should examine pervasive consumerism and unnecessary advertising in the U.S. economy. The curriculum should introduce students to empirical facts about income and wealth distribution, pointing out the role of race, sex, unionization, and executive compensation. Teachers can obtain many thoughtful lesson ideas for little or no cost. United for a Fair Economy sells books and workshop kits; Rethinking Schools offers classroom activities, including some for lower grades; the Center for Economic Conversion provides a full curriculum on sustainable economics; and other materials are available from the Human Rights Resource Center.

The corporations and foundations that support course materials with a pro-corporate bias have deep pockets. And as a result, many high school economics courses already follow a conservative ideology. Without more careful attention from teachers, economists, and interested citizens, students are likely to receive increasingly one-sided indoctrination in the “free market” point of view.

Is This How The Economy Works?

by Parag Joshi

At the National Council for the Social Studies annual conference in November, 2003, a representative of the National Council on Economic Education (NCEE) commented that their organization's Content Standards in Economics were intended to teach students "how the economy works." The NCEE's goal is to explain the workings of the economy *as it is*. If the economy were an automobile, then the standards would help teachers and students make sense of what they saw if they lifted up the hood and peered inside.

My reading of these economics standards is very different. Putting aside the idea of whether or not it is possible to see the economy without bias, it is important that we acknowledge the lens we do use to see it. The main flaw with the NCEE standards is that they do not inform the reader that these standards come from a particular ideological perspective, that of neo-classical economics. While their ideological assumptions are often hidden beneath the clothing of empiricism, they are in reality cast from a neo-classical perspective. This is a serious concern for economics teachers since neo-classical arguments are often couched in empirical language giving the impression that it is ideology-free. The online lessons (<http://www.ncee.net/resources/lessons.php>) and published materials from the NCEE are useful to economics teachers. But the consumption of this material in high school economics classes must be done in such a way as to reveal their underlying ideological baggage. The following are five main critiques of the NCEE standards:

1. Many of the standards assume that to achieve optimal allocative efficiency the economy must be near conditions of perfect competition (perfect information, countless buyers and sellers, commodity products, etc.). This model is theoretically useful for imagining what an economic policy could try to achieve, but it does not represent how the United States economy actually works.

2. By explicating a world in which government is a force that interferes in the economy to create inefficiencies, these standards are making a value statement. To understand how the economy actually works, students must examine modern mixed economies in which governments play a vital and often positive role. For 2002, government spending at all levels in the U.S. comprised fully 18% (or \$1.8 trillion) of Gross Domestic Product, employing

approximately 14% of the nation's labor force. In addition to spending and employment, government produces certain goods under monopoly conditions (such as military defense) and competes with private industry in other markets (such as express mail). Government also is heavily involved in the private economy through regulations, tariffs, taxes, subsidies, quotas, transfer payments, counter-cyclical policy, international trade and currency agreements and participation in world trade organizations.

The main standards that look at government in the economy are standards 16 and 17. According to standard 16, "There is an economic role for government in a market economy whenever the benefits of a government policy outweigh its costs." Accepting this maxim, the important question becomes how the cost-benefit determination is to be made and by whom. This is a very complicated question. One could conceivably envision a planned economy where decisions about government intervention were made based entirely on this one principle, a state of affairs surely abhorrent to the NCEE. The standard goes on to state that "most government policies also redistribute income." If the market economy is largely self-correcting and people respond predictably to incentives, it seems curious why government would ever wish to do so.

The explanatory text which follows the standard does yield some sympathetic language toward the role of government and even includes the possibility that markets may fail in some way. However the only example offered is highway construction. In the benchmarks for Standard 16 there are some neutral and thoughtful questions about the role of government, such as "Explain why there is usually only one local water supplier." But many of the benchmarks lead students to the conclusion that government involvement is quite likely to be counter-productive or unfair. For example, "What would happen to some land they own . . . if they found crude oil on this land but had no right to sell it?" The picture grows even more ideological when Standard 17 is scrutinized. The only non-ideological portion of this standard is the title, "Using Cost/Benefit Analysis to Evaluate Government Programs." It might more appropriately have been called, "Using cost/benefit analysis to evaluate government programs leads to the conclusion that special interests co-opt policy toward expensive and

inefficient programs.” The explication of this standard presents the view that government is concerned, not with the general welfare of society, but exclusively with maximizing political goals. One of the 12th grade benchmarks is “Explain why a political leader would support an idea that helps only a few while harming many, such as a tariff on imported luggage or import quotas on sugar.” It is legitimate and necessary that government functions and actions be critiqued. But the contrast in the tone and foci of Standards 16 and 17 indicate that government, rather than business, is the institution that must be reformed in order to improve the general welfare.

3. A consistent theme of the NCEE standards is that public welfare is best served when individual consumers get what they want. The assumption is that such wants are, in fact, in the best interests of those consumers. Nowhere in the standards is the pernicious impact of advertising on consumer demand discussed. The economist John Kenneth Galbraith once said, “What is called a high standard of living consists, in considerable measure, in arrangements for avoiding muscular energy, increasing sensual pleasure and for enhancing caloric intake above any conceivable nutritional requirement.”

4. While the subject of market failure is taken up half-heartedly, market power is completely absent from the standards. By failing to address the subject of market power (the ability of a firm or consumer to influence price), the standards present an underlying neo--classical view that firms and workers are equal in market power. The situation of individual laborers being forced to negotiate wages and work conditions with large firms does not receive any attention even though the Bureau of Labor Statistics reports that only 13% of the American labor force was unionized in 2002. Also missing is the way market power affects competition between large and small firms.

5. The NCEE standards are ahistorical and present economic ideas and economic principles as if they were scientific truths. Such thinking is dangerous. Markets, scarcity, wants, firms, and property are all constructs - linguistic, legal, philosophic, and historic. If the objective is to set out “how the economy works,” then there must be a discussion in economics education of how these constructs were created historically. A charting of the intellectual history of economic thought is necessary in order to understand the multiple ways in which we might see and understand economic

phenomena. But the standards make no place for the ideas of Smith, Marx, Marshall, Keynes, and Friedman. Each of these important thinkers came to see economics principles through the context of his time. It is necessary that any standard of teaching and learning economics include this notion. Implications for the Social Studies I want to emphasize that I do not believe that the NCEE had a sinister motive in creating neoclassical standards for economics education. The standards may, in fact, reflect the views of many economists. The question of how economics educators should respond is an important one. By adopting standards that are ahistorical and value-laden, the NCEE has incurred an important social studies cost: the loss of economics as a contested space. More than any other academic school subject, the social studies deal head-on with issues that are live and controversial.

It is instructive to contrast the NCEE standards with the National Council for the Social Studies curriculum standards. Within the social studies strand “Production, Distribution, and Consumption” the following four questions are posed: “What is to be produced? How is production to be organized? How are goods and services to be distributed? What is the most effective allocation of the factors of production (land, labor, capital, and management)?” Another alternative approach is taken by economists Thomas Swartz and Frank Bonello in *Taking Sides: Clashing Views on Controversial Economic Issues*. A series of issues (e.g. “Should Social Security Be Privatized?”) are presented and addressed in opposing essays. According to the editors, their aim is to help students “achieve a critical and informed view of the economic issue at stake” and to ensure that “the views presented should be used as starting points.” I want to offer a concrete alternative to the benchmark for Standard 17 which suggests that removing price controls is “good economics but bad politics.” One of the most important examples of price controls is the minimum wage. Standard supply and demand theory predicts that a loss of jobs will result if wages are raised above the equilibrium level by government fiat. In fact, studies by Princeton economists David Card and Alan Krueger conclude that fast-food employment was unaffected after the increase in the minimum wage in New Jersey in the early 1990s. While their methodological work has come under fire, the important lesson for economics educators is that the impact of the minimum wage on employment is not an open-and-shut case.

Teachers Respond: Is This How The Economy Works?

Riza Laudin, Herricks High School, New Hyde Park, NY: We have to accept the fact that we are living in a capitalist economy in the United States. One of the functions of schools is to educate students so they are knowledgeable about our political and economic systems and understand how they work. Obviously, there is going to be aspects of capitalism in the economics standards and in the curriculum. But there is also a unit on comparative economics systems. In this unit, we examine the way that traditional economic systems operate. We also look at Marxist ideas and how Marx's theories have led to both democratic and authoritarian socialism. The main idea we want students to understand is that there is a spectrum of policies that range from a total free market to total centralized control of an economy. I have students discuss the pros and cons of these different systems.

Another unit explores the goals of the American economy. We examine concepts of economic equity, economic security, the profit motive and public vs. private good. There are conflicts between these goals and students have to discuss how they would resolve them. There are many instances throughout the curriculum where teachers are getting students to think critically about the workings of a capitalist economic system and showing how the economy has changed and how capitalism has evolved. We explore economic theory from Adam Smith through John Maynard Keynes and contemporary supply side ideas and discover a much higher level of government intervention in the economy than envisioned by traditional 19th century thinkers.

Study of the entrepreneur does promote respect for capitalism, but that is not a bad thing. Capitalism defines the society and the economy where our students live and will eventually work. I do my own version of a stock market project in my economics classes because it effectively engages students in employing economic concepts in practice. They have to understand supply and demand, the role of the media in the economy, and the meaning of economic indicators. A very important goal is to teach financial literacy. As students become part of the workforce they will be investing in the stock market, either directly or through pension plans. They have to know where their money is going, how it is being used and what risks they are taking, so they can protect their interests. Ignorance of the

workings of the stock market and of our capitalist economy would leave them at an individual competitive disadvantage and not benefit our society as a whole

John McNamara, West Windsor-Plainsboro, New Jersey Regional School District: Economics is not a separate required course for graduation in New Jersey. Instead, economics principles are infused into World History and United States history courses. In our district, economics is also offered as a year-long academic level social studies elective. There are generally two sections in each of the district's high schools. In these classes, students explore a number of economic principles and practices. These include the operation of the market system, supply and demand, the role of scarcity in shaping economic decisions, the development of the corporation and other forms of businesses, and the function of financial markets in a capitalist economy. They also examine the role of government in a mixed economy, including restrictions on certain business practices and the importance of monetary and fiscal policies to regulate the economic system. Another major concern is the history of labor unions and the problems that face people as both workers and consumers. Some teachers in our district utilize stock market simulations or other "virtual" economics formats.

In the regular United States history classes, students learn that economic decisions were a major concern at the beginning of the new nation and continued to be important as political leaders debated over tariffs, a banking system and the financing of internal improvements. The rise of big business, the development of the corporation, the power of monopolies and trusts and the clashes between industry and organized workers are major themes in the decades after the Civil War and the beginning of twentieth century. In World history students learn about the importance of trade in traditional societies, the medieval world and as a force behind European colonialism and imperialism. In the nineteenth and twentieth centuries that study capitalism and its critiques when they explore industrialization and the Russian and Chinese revolutions. In both United States and World History, students learn about the impact of unregulated capitalism as one of the causes of the

Great Depression of the 1930s and the development of active government intervention in economies to prevent mass hardship and promote economic development.

Whether they are teaching an independent economics class or integrating economics into the core curriculum, teachers should be presenting students with a balanced selection of source materials, questions to explore and issues to debate. Teaching at its best presents students with opportunities to examine topics with some depth, critically assess different explanations and research and develop their own views.

I do not think anyone one pretends that the United States is a pure free market economy, that the market is completely self-regulating or that one particular version of capitalism is ideal. The American economy is clearly a mixed economy infused with “New Deal” era ideas. These include government as an insurer (Medicare), as a regulator (the Federal Reserve) and even as an economic player (Amtrak). It can stop stock transactions or through the power to investigate questionable practices, it can prosecute corporate malfeasance, such as it did in the Martha Stewart case. I would describe the United States economy as a capitalist framework with a socialist support system and safety net. Students must learn implications of this so that as citizens they can influence government policies in the future.

Thomas Maxwell, Patchogue-Medford High School, Patchogue, NY: Equilibrium is defined as “the market clearing price.” At the point where supply equals demand in the market, a balance is established. Equilibrium is an important economic concept and this balance should be applied when “teaching how the economy works.” John Maynard Keynes and Friedrich Von Hayek were contemporaries, however their theories offer different explanations of historical events and social impact. When educators present the origins of classical, neo-classical and Keynesian economic theory, students should be given information on the social implications of each thinker so that balance is established.

In real world markets and economies the conditions for perfect competition do not exist. Examples of perfect competition are used to explain market structure. Teaching market structure should be balanced with examples of oligopolistic competition, monopoly (industrial production) and monopolistic competition (retail) (Standards 16 and

17). Cost benefit analysis is a useful tool when discussing market failure and government action. The market failure of the highway system should be balanced against the failure of the health care system. Cost benefit analysis takes on a new meaning when it is applied to the human condition (Standards 16 and 17). The impact of price floors (i.e., minimum wage) is not an open-and-shut case. The demand for labor is affected and price floors historically do not work. There should be discussion of which groups of workers (generally the unskilled, but also minorities) are impacted. Educators should give their students a balanced view of theory and practice when teaching economics.

Gavin Kalner, Oceanside High School, Oceanside, NY: There is an apparent lack of “humanism” in the current economic standards as indicated by the artful writing of Mr. Joshi. There is also a more pressing issue as we teach our students economics for the 21st century. Neil Schultz of New Rochelle High School presented a workshop at Oceanside High School that focused on the work of Paul Kennedy and the widening gap between countries that are “developed” and “developing.” It became apparent that comparative economics is missing in the current curriculum. Here are two issues I believe economics teachers need to address in their classes.

The debate over guns v. butter, wheat v. cloth or food v. medicine does not address problems arising in countries such as Somalia where resources are either absent or are not being allocated efficiently or in economies overwhelmed by the HIV/AIDS epidemic. Instead of presenting simple formulas or abstract concepts, we must teach students to examine the historical, political and social contexts in which economic decisions are made and the impact of political decision-making on production, distribution, labor, scarcity and shortages.

I recently visited Thailand where I was able to witness sweatshops and the impact of “out-sourcing” on that country. Benjamin Barber predicted global conflict between countries that pride themselves on their on regional and local cultures and forms of social organization and those who stretch their capitalist claws into all four corners of the globe. He called this conflict “Jihad vs. McWorld.” I believe that Barber effectively identified the source of the rise of terrorism in the modern world in the resistance to globalization and the values associated with it.

Economics Lesson Ideas

by Gavin Kalner

Modern educational scholarship has placed much emphasis on bringing social studies concepts to life. Howard Gardner's "multiple intelligences" theory has taught teachers to be flexible when focusing on student learning abilities. Theodore Sizer prompts us to focus on a more "student-centered" approach to education. At Oceanside School High School, teachers use an "essential questions" approach to teaching economics that reflects the ideas of Gardner and Sizer. It organizes lessons around activities where possible and places a greater responsibility on students to understand rather than just to absorb formulas and information.

1. How much is too much?

In this lesson, students learn by doing. Bring in 8 orders of dumplings (or three packs of chuckles) and challenge a student to an eating contest. Physically restructure the desks so you are facing the student. Have students interview the players after each set (two dumplings) is eaten and draw bar graphs on the board reflecting the utility or satisfaction gained after consumption. The other students are also drawing graphs as the results are being tabulated. The "satisfaction" scoring system is based on a simple one to ten scale. Repeat the activity until both players can consume no more dumplings (or chuckles). After completing the task, ask the following questions: 1. How much is too much? Why? 2. How does this activity affect consumption and savings decisions? Have the students write a paragraph response and



then discuss their answers with the class. Students produce a graphical analysis of the data and understand a more human view of the law of Diminishing Marginal Utility.

2. How do we decide how much something is worth?

This activity teaches the following economics concepts to 12th graders: trade-off, opportunity cost, Law of Diminishing Returns, Marginal Utility, Utility, and Thinking at the Margin. First, you will need to supply some background on John Stuart Mill's theory of Utilitarianism. I suggest excerpts from Mill's "On Liberty" and Bentham's "Utilitarianism." For this lesson, students hypothetically receive "items" such as a new Mercedes, an apartment by the beach, a new computer, a slice of pizza, a new pet, a parking ticket, a detention for being late, an early curfew, a break-up in a relationship, and a "D" on a paper. The class identifies which of these has a negative utility (pain) and which has a positive value (pleasure). Assign scores to each "item" on a scale ranging from negative 5 to positive 5. This helps students recognize the human value inherent in economic theory and leads to great discussions.

3. What is the opportunity cost of getting married?

Provide students with statistics on divorce rates from 1920-2000. Divorce rate statistics should be broken down based on the duration of marriage. Students explain possible reasons for a rising divorce rate. Compare the divorce rates with different econometric models that indicate a growing education rate for women as well as increased entry into the labor force during this time period.

4. What is economics all about?

On the first day of classes, hand out a flyer informing students that new classrooms are to be built on the student parking lot because the building is overcrowded. To add to the seriousness of the flyer, print it on school stationary and include information on why their parking privileges are being taken away and new bus services. The objective is to help students understand that economics is about making social and individual choices and not just about about money.

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