



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
2004 Volume I: The Supreme Court in American Political History

The Legacy of the Warren Court

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Introduction

The curriculum unit presented will examine and analyze some of the major the decisions of the Warren Court, which dominated American politics to varying degrees from 1953-1969. Teachers will find this unit helpful when examining the Constitution as part of a civics course or chronologically, when studying United States History II.

In the past some of the Courts exerted relatively little influence over constitutional history. As a matter of fact, their decisions had little precedential value. However, that was not the case with the Warren Court. Many people have at least heard of the phrase the Warren Court, but how many people have heard of the Vinson Court or even the Rehnquist Court? The Warren Court decided a number of important constitutional issues during its time and those decisions continue to influence our daily lives. (Urofsky 253)

It is not unusual for the Supreme Court to take on the personality and views of its Chief Justice, and such was the case with Earl Warren. Warren was appointed Chief Justice in 1953 by President Eisenhower. It has been suggested that during his 16-year tenure, he was one of the most influential advocates for social progress in the United States. During his term he dealt with controversial cases on civil rights and civil liberties and the very nature of the political system. According to Lucas Powe in *The Warren Court and American Politics*, the Warren Court “created the image of the Supreme Court as a revolutionary body, a powerful force for social change.” Teachers should point out to students that the Supreme Court has been viewed in the same way at other times in history. Students might be assigned the task of researching other Supreme Courts that have been categorized as activist courts. In 1953 few Americans would have realized that the Warren Court would be classified as the greatest liberal Court in the twentieth century.

Powe breaks down the years of the Warren Court into three categories. From 1953-1956 much of the time of the Court was spent on school desegregation cases. The years 1957-1961 were characterized as a stalemate when few controversial cases were heard. The years 1962-1968 are often referred to as the “heyday of the Warren Court” when it moved in an aggressively liberal direction on numerous constitutional issues ranging from racial to civil rights, to legislative apportionment, to church state relations, to freedom of speech, to criminal justice. It should be pointed out that liberals did not hold a majority on the Supreme Court until 1962. At this time Justice Felix Frankfurter retired and was replaced by Arthur Goldberg, a Kennedy appointment.

According to Peter Irons in *A People's History of the Supreme Court*, this was the Court that "liberals cheered and conservatives booed." Remind students that the Supreme Court does not really work in a vacuum; its decisions on important constitutional questions can only be fully understood when viewed against the background of history and politics. Precedents are usually broken when society demands that they should be broken and sometimes society can be divided on a variety of issues. I think the present day is a great example of a society that is polarized on a variety of topics. Teachers might assign students to research a present day issue on which people strongly agree or disagree. Topics like late term abortion and affirmative action are a couple of possibilities. Ask students to write a persuasive essay using a minimum of three sources that support their own point of view on the topic. As Professor Irons states, "the justices are not simply black robed repositories of objective wisdom, but rather are influenced by politics, by society, each bringing to the Court their individual legal philosophies and moral attitudes that come out of his or her background." Ask students what they think Irons meant by this statement? Do they think that the present Supreme Court is influenced by public opinion? Ask students to consider the recent cases in front of the U.S. Supreme Court. Teachers might assign interested students the task of researching the case *Elk Grove Unified District v. Newdow* which deals with whether or not the words "under God" should be kept in the Pledge of Allegiance.

As one can imagine, from 1954 on, many members of Congress criticized the Supreme Court for its controversial decisions. Students should be able to adequately explain the system of separation of powers as well as the system of checks and balances. Teachers might consider this an appropriate time to review with students the reasons the Founding Fathers were concerned with balancing the three branches of government. Teachers might want to assign students the task of researching any present day conflict between Congress and the courts. Students might be interested in the present day conflicts over legalizing gay marriage, especially in light of the court decision in Massachusetts. Ask students if they believe the court often deals with problems that the legislature seems to conveniently avoid.

Does the Supreme Court really stand outside of American politics or is it in fact a part of it? Does judicial independence actually exist or is it just a myth? These are questions that teachers should be addressing in the classroom that I believe will create engaging discussions. Are we creatures of nature or nurture? Aren't we all influenced by our background and experiences that help to shape our personalities? So why should the "nine men and women in black" be any different? Ask students to consider their own qualities. Why do they think they are the way they are? Are they similar in nature and outlook to other members of their family and if so why do they think this is the case?

Three objectives will be addressed in this unit. First, the background of Chief Justice Earl Warren will be examined. Students will understand how your background and life experiences can often times reflect on behavior and attitudes in later life. What experiences in the life of Earl Warren might have influenced his decisions on the Supreme Court? What in his background might account for his viewpoints about life and the law? These are questions that will be discussed in this objective and can also provide for some very stimulating classroom discussions.

The second objective to be considered is to have students trace and understand the development of the *Brown I* case and *Brown II* case. Students should be reminded that *Brown v. the Board of Education* did not just appear out of nowhere. According to Morton Horowitz in *The Warren Court and the Pursuit of Justice* "...the stage was already set for Brown by earlier struggles over racial segregation." These earlier struggles will be examined in this unit so that students can understand that this was not an overnight journey, but a long road. Teachers might wish to discuss some of the earlier cases that began to set the stage for the Brown case. Such cases dealt with the idea of an unequal education. These include cases such as *Sweatt v. Painter* 1950, and

McLaurin v. Oklahoma Board of Regents 1950.

The third objective of this unit is to have students analyze and understand those cases that affected criminal procedure. Most of the cases to be examined occurred between the years 1961 and 1968. The Warren Court is well known for its active defense of the rights of people accused of crimes and teachers will be able to engage students in spirited discussions on topics that involve our individual rights. Cases to be studied for this objective will include *Gideon v. Wainwright* 1963, *Escobedo v. Illinois* 1964, *Miranda v. Arizona* 1966, and *In Re Gault* , 1967. Teachers not only will be provided with the background of these cases, but also with the decision of each case. Students usually show great interest in the topic of individual rights. Teachers should point out that these were bold decisions for the times, especially the decision in the *Miranda* case. According to Ed Cray in *A Biography of Earl Warren*," the *Miranda* decision imposed limits on police interrogation that no state had even mentioned." As with all decisions that seemed extreme, the outcry from the public and the police was very vocal. Calls for Warren's impeachment were heard around the country, mostly from the John Birch society. Teachers might assign students to investigate the John Birch Society. What type of organization was it? What were its goals? Why was this organization calling for the impeachment of Warren? Teachers should be able to easily engage students on the topic of police procedure. When discussing the *Miranda* case and the *Escobedo* case ask students if they feel the Court was justified in these decisions. Do they believe that accused people have too many protections as a result of these two cases? What do they think should happen if they know someone is guilty or even confessed to a crime, yet the proper police procedure was not followed? For many students this creates a dilemma and allows the teacher to direct the class in a very engaging discussion.

It has been thirty-eight years since the *Miranda* decision was handed down and it remains in the view of many as the Supreme Court's most contentious criminal procedure ruling. The Court has revisited this ruling nearly fifty times, expanding and clarifying the right and establishing exceptions that allow police to use some confessions even if a proper warning was not given. Teachers might wish to assign students the task of researching some of the Supreme Court cases that have modified some of the earlier decisions on police procedure. Cases that students might consider for further examination include *Harris v. New York* , 1971, *Michigan v. Tucker* , 1974, *Edwards v. Arizona* , 1981, *New York v. Quarles* , 1984, *Oregon v. Elstad* , 1985, *Minnick v. Mississippi* 1990, and *Dickerson v. United States* , 2000. Students should be able to explain the facts of these cases as well as the decisions. Ask students if they feel modifications were made because of changing societal values. Consider then if the Supreme Court adjusts its views to match those of society or is it truly an independent body?

A separate category for juvenile procedure will be considered by examining the case of *In Re Gault* 1967. According to Edward Cray, Warren had a genuine respect for young people and their concerns and felt the need to extend the Bill of Rights even to the youngest Americans. Students usually find the facts of this case especially appealing. Teachers should compare and contrast the criminal procedures in an adult and a juvenile court system. Ask students if they feel any special preference should be given to a juvenile. What do students believe should be the main goal of each system? Ask students what rights Gerald Gault would have had in 1966 if he were treated like an adult offender. Justice Fortas was especially concerned about the rights or non-rights of juveniles. According to Laura Kalman in *Abe Fortas*, he referred to some juvenile procedure as the "never never land" of juvenile justice. (Kalman 251) Ask students what they think he meant by this statement.

Objectives and Strategies

The first objective is to examine the background of Chief Justice Earl Warren who sat on the Supreme Court from 1953-1969. He was born on March 19, 1891 in Los Angeles, California; however, he grew up in Bakersfield. His parents were Scandinavians who had emigrated to the U.S. as young children. His mother Christine Hernlund came from Sweden, his father Methias Varan from Norway. Earl's uncle changed the family name to Warren after they settled in the United States. Teachers might ask students why his uncle might have changed the family name. Suggest to students that sometimes immigrants changed their surnames to be more American. According to Christine Compton in *Earl Warren, Justice for All*, Earl's parents were eager to take advantage of the opportunities in America. His father worked as a car repairman for the Southern Pacific Railroad, but lost his job in 1894 after joining the famous Pullman strike. As a young boy Earl worked for the Southern Pacific Railroad as a callboy for the train and engine crew. As he explains in his memoirs, the money he made was his to keep and to save for his future. According to Warren he was often embarrassed when people tried to suggest that he worked his way through school and supported the family. While it was true that he held many odd jobs, Warren emphatically states that the money he made did not support his family. (Warren 23) According to Morton J. Horwitz in *The Warren Court and the Pursuit of Justice*, Warren experienced firsthand while working on the railroad the inequality of power between large corporations and vulnerable and unorganized workers. (Horwitz 6) Teachers might engage students in a discussion on how early experiences might shape a person's belief in later life. Ask students if they have any memories of significant events in their early lives that they believe might have helped to shape their personality today. Students might also be encouraged to ask their parents and relatives about their early childhood experiences. Have these experiences had any impact on their lives?

The Warrens were very private people and were reluctant to show their feelings. According to Christine Compton in *Earl Warren, Justice For All*, Earl maintained this reserve throughout his entire life as a public servant. Warren attended the University of California at Berkeley and its law school, Boalt Hall. He served briefly in the army during World War I and then joined the district attorney's office in Alameda County for what he thought would be a short term. He ended up staying for 18 years, 13 of them as district attorney where ironically he had probably slighted the rights of the accused. Although his intellect was never really praised he was notable for being warm, sincere, outgoing, honest and hardworking. (Powe 24) He proved to be an effective as well as a tough prosecutor, but showed his philosophy of fairness by fighting for a public defender's office for indigents. A 1932 survey listed Warren as the best district attorney in the United States, a fact often ignored by those who accused him later in life as being "soft on crime". (Urofsky 32) Teachers should ask students if they understand the expression "soft on crime." Have they heard any one in recent times accused of being "soft on crime"? Such a phrase is popularly used especially during election years. Teachers should ask students to watch for examples of elected officials who have been labeled as such. They might want to research the 1988 presidential campaign in which the name of Willie Horton became a household phrase when considering a candidate who might be labeled "soft on crime"

In 1938 Warren ran successfully for attorney general of California. Warren is remembered most for his role in demanding the relocation and evacuation of the Japanese from the west coast during World War II. Though his actions seemed inconsistent with his future decisions while on the Supreme Court, Warren maintained that at the time it seemed like the right thing to do. He later acknowledged in his memoirs that he deeply regretted his action in favor of internment. (Warren 147) Students should be reminded that during World War II Japanese Americans were locked up in U.S. internment camps. For them, the war was a daily struggle to maintain their

dignity in the face of an injustice. Many young men escaped the camps by volunteering for military service. Teachers might engage students in a lively discussion by asking them to take a point of view concerning the internment. Divide students into groups and have them debate the two different points of view. First, the Japanese internment was necessary for the national defense of America during World War II or second, the Japanese American internment was an unnecessary and a racist act.

Warren also served three terms as governor of California. The popular candidate easily won the election for the first time in 1942, being considered a nonpartisan Republican. Teachers should ask students if they understand the term non-partisan. Do they think politics today is non-partisan? Students should be encouraged to bring in examples of programs or laws that have been recently passed that have had the support of both the Democratic and Republican parties in Congress.

In 1952 Warren played a key role in the election of Dwight Eisenhower to the presidency of the United States. Warren agreed to end his own political ambitions to be president and throw his support behind Dwight D. Eisenhower. In return Eisenhower promised to appoint Warren to the United States Supreme Court. Warren had campaigned for Eisenhower bringing both Republican and Democratic support from the state of California. Warren had been such a popular governor that he had previously won the support in both the Democratic and Republican primaries. It is believed that as a result of his support for the candidate Eisenhower, Warren was promised the first vacancy on the Supreme Court. Ask students if they feel this is part of a spoils system. Remind students that this system was one in which faithful political supporters were rewarded government jobs. Do the students believe this is a fair practice? What if a person is truly qualified for the appointment? Should that person be penalized because they also happen to support the winning candidate? Warren had actually been willing to serve as U.S. Solicitor General until he felt better prepared to sit in the Supreme Court. Howitz suggests that Warren knew he was not yet ready to sit on the Supreme Court because the atmosphere of the court was "intellectually high powered." (Horwitz 7) As a result of the unexpected death of the present Chief Justice Fred Vinson, Warren was appointed before he could become Solicitor General. It has been suggested that Eisenhower tried to go back on his promise of a Court seat for Warren especially since the first vacant seat was that of Chief Justice. (Howitz 8) Teachers should ask students why they think Eisenhower was trying to back out of his promise. What was there about Warren that might have troubled Eisenhower? Was it that he was not considered an intellectual heavy weight? What qualities do they think are necessary to be a judge? Is legal brilliance really necessary and what role do the law clerks play in helping a justice research a case? Ask students also to consider what was it about Warren that have many legal historians considering him to be rated as one of the greatest Chief Justices in the Court's history. According to Bernard Schwartz in *A History of the Supreme Court* "there have been scholars and there have been great justices on the Supreme Court. But the scholars have not always been great justices and the great justices have not always been scholars." (Schwartz 265) Ask students what Schwartz meant by this statement. Do they believe that scholarship is necessary for excellent leadership? Warren clearly was not the most scholarly justice on the Court; however, his leadership abilities and skill as a statesman enabled him to be an extremely effective Chief Justice. Students interested in the other Chief Justices of the Supreme Court might want to research others who were not considered to be the most scholarly member of the Court, but clearly excelled at leading the Court in the direction they wanted to go in. The Chief Justice occupies the center seat on the Court, and while his or her vote is no greater than any other, the Chief presides over the oral arguments as well as the conferences at which the justices decide cases. The Chief Justice also has the power to assign the writing of opinions. A strong Chief Justice can have a major impact on the work of the Court while a weak Chief Justice can find himself overpowered by his strong colleagues and end up presiding over a judicial battlefield.

The second objective to be considered is to have students trace and understand the development of the

Brown I case and *Brown II* case. On May 17, 1954 Earl Warren had been sitting on the Court as Chief Justice for only a year when the *Brown v the Board of Education* decision was handed down. The nine justices of the Supreme Court agreed that “in the field of public education the doctrine of separate but equal has no place” Writing for the Court Chief Justice Warren concluded that “in the field of public education the doctrine of separate but equal has no place.” According to Lucas Powe, Warren had done what Chief Justices have done since John Marshall. When a controversial case is being decided where the prestige of the Court is on the line, the Court speaks through the Chief Justice. (Powe 27) The Court had just struck down more than a half century of constitutional law stemming from the decision put forth by *Plessy v. Ferguson* , 1896 where “separate but equal” was legal. By putting his name on the opinion, the Chief Justice put the prestige of the Court on the line. The character of the Court was beginning to take shape, as Warren was able to maneuver a unanimous decision.

Where had it all begun? Before examining the *Brown* case teachers will need to explain the origin of the phrase “separate but equal”. Encourage interested students to research the arguments and decisions presented in the case *Plessy v. Ferguson*, 1896. Students should be assigned the task of writing a brief or creating a dramatization in which small groups of students present each side of the argument to their classmates. Explain to students that this case arose out of a carefully planned strategy to test the legality of a Louisiana state law. This law gave constitutional sanction to virtually all forms of segregation in the United States until after World War II.

In September 1891, “elite persons of color” in New Orleans formed the Citizens Committee to test the constitutionality of the separate railroad car law for blacks and whites. The committee raised three thousand dollars for the cost of a test case. The attorney who agreed to take this case was a white man by the name of Albion Tourgee. He was considered to be one of the nation’s leading advisors for African American rights. Tell students that Tourgee agreed to work on this case without pay. Students might be interested in researching any present day civil rights cases where the attorneys have agreed to work for no fee. Ask students to consider the effect that “free” publicity might have on a present day case as compared to the year 1892. Ask students to consider the various types of media that exist today that did not exist in the time of Tourgee.

The case of Plessy v. Ferguson, 1896

It all began in June, 1882, when Homer Plessy, a black man purchased a first class ticket on the East Louisiana Railroad and sat down in a car reserved for whites. When he was asked to move to the car where blacks were restricted, he refused. Subsequently, he was arrested and arraigned before Judge John Ferguson. Plessy then sued to prevent Ferguson from conducting any further proceedings against him. Eventually his challenge reached the United States Supreme Court.

Before the Court, Tourgee argued that segregation violated the Thirteenth Amendment’s prohibition of involuntary servitude and denied blacks equal protection of the laws, which was guaranteed by the Fourteenth Amendment. These amendments along with the Declaration of Independence, gave Americans affirmative rights against discrimination. The lawyers for the Louisiana railroad disagreed. They argued that the separate facilities for black passengers were just as good as the facilities for the white passengers.

The Supreme Court sided with the railroad and ruled that the separation of the races in public accommodations was legal and did not violate the Fourteenth Amendment. The decision established the doctrine of “separate but equal” which allowed the states to maintain separate facilities for blacks and whites so long as they provided equal service. In other words, “if the cars for blacks were of equal quality to those enjoyed by white passengers,” the Court said, then the demands of the Constitution had been satisfied and

the rights of black people had not been violated. The vote in this case was 8 to 1 with Justice Henry Brown writing the majority decision and Justice John Marshall Harlan writing the dissenting opinion. In his decision Justice Brown wrote "...if one race is considered to be inferior to the other socially, the Constitution of the United States cannot put them on the same plane..." Ask students to interpret the words of Justice Brown. This case left the door wide open for the many Jim Crow laws that were passed that segregated the races in just about every public facility. Students should be encouraged to research the origin of Jim Crow and report back to the class. Only one Justice dissented in this case. Justice John Marshall Harlan wrote "...The thin disguise of equal accommodations for passengers in railroad coaches will not mislead anyone or atone for the wrong this day done..." Harlan added, "what can more certainly arouse hate, what can more certainly create and perpetuate a feeling of distrust between these races than state enactment which in fact proceed on the grounds that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens..." Ask students to interpret the words of Harlan. Do they agree with him? Tell students that more than five decades would pass before the Supreme Court would reverse this decision and the South would build a legal system rooted in social segregation. Plessy left racial attitudes to the states; something that the southern states embraced as an old fashioned state's rights issue. Social equality became unattainable as Plessy denied that law could change attitudes. Tell students that by 1899 blacks and whites were separated in schools, restaurants, in restrooms, at drinking fountains, hospitals, and even cemeteries, as Jim Crow began to show its ugly head. The rights of the Thirteenth, Fourteenth, and Fifteenth Amendments, as well as the Civil Rights Act of 1876 were ignored when it came to African-American citizens. Teachers might want to assign students the task of researching the content of the stated Amendments and Act and have the students report back to the class. Teachers should tell students to imagine being unable to attend the school of their choice because of their race or being forced to attend a school with inferior facilities. How do they think they would feel or react? This was the situation that African Americans, especially in the South were faced with every day of their lives.

Background to Brown v. the Board of Education, 1954

The road to *Brown v. the Board of Education* began with decisions that chipped away at the segregationist's tenets of *Plessy v. Ferguson*. The NAACP had been fighting the battle of racial segregation since 1909. One influential figure in this campaign was a brilliant Howard University professor named Charles Hamilton Houston. Houston served as chief counsel for the NAACP from 1934-1938. In deciding the legal strategy he considered the blatant inequality between the separate schools that many states provided for the two races. It was not uncommon for states to spend ten times as much money educating a white child as it did educating a black child. It was to this injustice that Howard chose to focus his energy and the limited resources of the organization. For help, Howard recruited some of his most able law students to prepare a battery of cases to take before the Supreme Court. In 1938 he placed his team under the direction of a young lawyer named Thurgood Marshall. Over the next 23 years Marshall and his NAACP lawyers would win many cases involving segregation. Interested students should be assigned to research the life of Thurgood Marshall. Have them find obituaries in national news magazines such as *Time*, *Newsweek*, etc. Then ask them to summarize the obituaries for the rest of the class.

Several of the cases that Marshall and his team won became legal milestones towards the Brown decision. One of the first challenges came in 1938 when the Court ordered that a black student, Lloyd Gaines be admitted to an all-white law school at the University of Missouri. Missouri had no law school for African Americans. The state's offer to pay for the tuition of Gaines to attend an out of state law school was unacceptable because Gaines was a citizen of Missouri and planned to open a law practice in that state. (Goode 35) A similar challenge arose in 1950 in the case *Sweatt v. Painter*. Mr. Sweatt had been denied

admission to the University of Texas law school solely on the basis of race. The law school had denied him admission because the educational facilities had been made available to blacks at a recently established law school in Texas. The Supreme Court agreed unanimously that the Texas law school for whites was far superior. In his written decision Chief Justice Vinson stated "Texas law schools for whites offered a far greater degree of those qualities which are incapable of objective measurement, but which make for greatness in a law school. These qualities were reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions, and prestige." The Texas law school had none of these qualities and the Court ordered the white law school to admit Mr. Sweatt. The decision in this case upheld the plaintiff's complaint that the Texas Law School for blacks could not be held to the same high standards as the white Texas Law School. This decision did not override "separate but equal", but it challenged it. Interested students should be assigned the task of investigating in more detail the facts of this case and offer then to the rest of the class. Why do they think Marshall started his challenges with graduate schools rather than high schools or elementary schools?

By July 28, 1947 Houston and Marshall were ready to bring the challenge of racial segregation from the graduate school level to the public school level. Between the years 1947 and 1954 there were five cases that challenged racial segregation in public schools. These cases came from four different states and the District of Columbia. A good overview of this situation may be presented by having students view the film *Separate but Equal* starring Sydney Poitier. This film is an extremely factual account of Thurgood Marshall's campaign against segregated schools in the South. It shows how he had to convince the NAACP lawyers to support the lawsuits of these parents suing their respective states and the District of Columbia for fair and equal treatment. It was not easy to convince parents to be plaintiffs in lawsuits challenging the segregation laws. Ask students what do they think would be some of the fears of these African-American parents. Why would they be reluctant to put their name on a lawsuit? The Court lumped the cases together in a single ruling named for the case concerning nine-year-old Linda Brown. Her father, Oliver Brown, had charged the Board of Education in Topeka Kansas with violating Linda's rights by denying her admission to an all white elementary school four blocks from her home. The state had directed that Linda attend the all black elementary school, which was much farther away. As a matter of fact, Linda would have to cross a railroad yard and then take a bus to the school located 21 blocks from her home. Parents in the other three states were also outraged. Harry Briggs of Clarendon, South Carolina was incensed that his five children had to attend schools that operated on one fourth the amount of money given to white schools. (Irons 383) Ethel Belton took her complaints to the Delaware Board of Education when her children were forced to ride a bus for nearly two hours each day instead of walking to the school nearest their home. In Farmville, Virginia 16-year-old Barbara Johns led her fellow students on a strike for a better school. All over the country, black students and parents were angered over the conditions of their schools. NAACP lawyers studied their grievances and decided it was not enough to keep fighting for equal facilities, but rather they wanted all schools integrated. It seemed as if the time was now right for the Supreme Court to finally revisit the "separate but equal ruling" that had been the law for over fifty years.

The case of Brown v. the Board of Education, Topeka Kansas, 1954

The *Brown* case first came before the Supreme Court during the 1952 term when Fred Vinson was the Chief Justice. This case was actually a collection of five cases from four states and the District of Columbia. Court scheduling put the *Brown* case before *Briggs* on the Supreme Court docket when the five cases were combined for argument and decision. The five cases included *Gebhart v. Belton* , (Delaware) *Brown v. Board of Education* , (Kansas) *Briggs v. Elliott* , (South Carolina) *Davis v. County School Board of Prince Edward County (Virginia)* and *Bolling v. Sharpe (District of Columbia)* The Court heard them all together under the name of

Brown because they all dealt with the same issue of racially segregated schools. Teachers might want to divide the class into four groups. Assign each group one of the above cases. Have the students research the facts of each case and report their findings back to the entire class

There were probably five justices leaning toward overruling *Plessy* after the first argument, but the remaining four justices Vinson, Reed, Jackson, and Clark seemed far away from agreeing. Justice Frankfurter succeeded in postponing the case until the next term by requesting reargument “specifically directed to the question of the historical scope of the Fourteenth Amendment.” The reasoning was that maybe a delay would help and it did. (Horwitz 12) On September 8, 1953, Vinson died of a heart attack. This was, Frankfurter commented privately to his law clerks, “the first indication that I have ever had that there is a God.”(Powe 24)

With the death of Chief Justice Vinson, a vacancy now had to be filled on the Supreme Court. Although he scarcely knew him President Eisenhower, prior to being elected President had promised the first opening on the Supreme Court to Earl Warren. Warren had been responsible for delivering the support of the Republican delegates to Eisenhower at the National Convention. What role would the new Chief play in the *Brown* decision? As it soon became apparent, Warren was able to use his skills of governing to steer the decision of the Court to overturn the *Plessy* decision. No one praised Warren for his strong intellect, but almost everyone acknowledged his warmth and sincerity, his principles and strong work ethic. He was admired for his moral leadership. As governor he learned the philosophy of governing. (Powe 190) Warren, as well as Frankfurter was concerned over the necessity of having a unanimous decision in such an important case. Frankfurter was anxious over the prestige of the Court. According to Powe the oral arguments in the *Brown* case should debunk any notion that it was an easy decision to gain unanimity. Frankfurter was noted as saying...“you do not argue for ten hours a question that is self-evident...” Once Warren took over he requested that the justices take no vote and avoid a hard-line decision, until discussion had taken place in Conference.” The Court was thoroughly conscious of the importance of the decision to be arrived at and the impact it would have on the nation and we realized the necessity for secrecy and for achieving unanimity... (Warren 282).

It was clear from the outset that *Brown* case had the five necessary votes to overturn *Plessy*, but that is not the route that Warren wanted to travel. There are many stories about how Chief Justice Warren patiently brought Justices Reed, Jackson, and Clark aboard. I am sure his personality played a role in convincing some of these justices. He has been described as having warmth, sincerity, strong principles and the ability to provide moral leadership. In a manner that was to become his judicial trademark, Warren immediately framed the question before the Court as a moral issue. (Horwitz 24) The decision itself was short, only eleven pages. Warren wanted it this way. As a former politician he knew the importance of getting his message across and a short decision could be printed in the newspaper in its entirety. (Powe 29) Students should be encouraged to research Warren’s role in securing a unanimous decision. Students should present their findings to the class. Students should also be encouraged to research the arguments presented to the Court by Attorney Thurgood Marshall. Marshall’s argument rested on the psychological effects of segregation. He produced expert testimony demonstrating that segregation lowers the esteem of African American children, thus segregation violated the equal protection clause of the Fourteenth Amendment. The decision was read in Court by the Chief Justice which said in part, “...to separate those 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 the hearts and minds in a way unlikely ever to be undone...Separate educational facilities are inherently unequal...Any language in *Plessy v. Ferguson* contrary to these findings is rejected.” Warren was careful in his decision not to place blame on any group for the years of discrimination. Ask students if they feel that the Warren Court should have gone further in its decision and remarked about the inequity of the schools or the years that African-American children were made to feel inferior to white children. Do they believe it is up to

the Supreme Court to lay blame or should citizens as a whole step up to the plate and take responsibility for their own actions. Students might be interested in researching the headlines in southern and northern newspapers of the time. Do they see any difference in the attitudes of the southerners or the northerners in their reactions to the decision of the Supreme Court and if so, why do they think that was the case?

One of the dominant southern themes concerning this decision was that instead of applying the law, the Court had imposed its will. Some critics especially southern Senators even accused the Warren Court of being a lawless Court. Ask students if they believe the Court has the right to impose morality on the people. Remind them that the Supreme Court has no direct responsibility to the people of the United States and that they are not accountable to any electorate. Shouldn't Congress be the branch to pass a law dealing with segregated schools? Remind students that southern Democrats who were virtually responsible to an all white electorate dominated Congress in 1950. There was no way they were about to pass a law dealing with segregated schools. Tell students that Justice Jackson addressed this question in his unpublished opinion. "The Constitution must be interpreted in light of current conditions to accommodate current needs." Jackson went on to say "...I suppose that the reason this case is here is that action couldn't be obtained from Congress"

The Brown II case

In May 1955 the Supreme Court handed down the implementation decision that came to be known as Brown II. Again it was unanimous. The crucial phrase in the "all deliberate speed" belonged to Justice Frankfurter who had borrowed the phrase from an opinion of Justice Oliver Wendell Holmes. (Simon 224) This phrase was a signal from the Court that they understood the South's dilemma in implementing such a decision and they would be given time. But how much time? Maybe the Supreme Court was being too optimistic and assumed that the Brown decision would lead to prompt desegregation of schools. Remind students that states considered to be in the upper south, Maryland, West Virginia, Kentucky, Missouri, and Oklahoma took steps to comply with the "new law of the land" So did the western states that had permitted segregation. But Virginia and the Deep South held back. Exactly what does the phrase "with all deliberate speed" mean? Students often engage in a lively discussion of this topic. If I say to my students that they have an important research project to hand in that will make up a large percentage of their grade, they would naturally be quite anxious over when it is exactly due. If I said to them that they were to work on this with "all deliberate speed" they would probably react with the question- exactly what do you mean by "with all deliberate speed"? Does that mean we can hand it in whenever we are finished or is there an exact date this paper is due? Is it to be on my time schedule or your time schedule? What do you mean? And herein lays the problem with *Brown II*. It was left up to the states to decide when they would begin to enforce the Court's ruling.

Some of the southern states were resisting because they felt they had the right to impose their own social order. Even President Eisenhower was reluctant to take sides in the desegregation battle. He believed that voluntary action by southern states, rather than federal force would lead to the quickest progress with the fewest problems. (Powe 36) As time went on problems erupted. Calls for massive resistance were heard from Mississippians to resist integration and preserve all white schools. Violence broke out and membership in the Ku Klux Klan increased. Lynching of African-Americans was on the rise, the murder of a young teenage boy in Mississippi, Emmett Till occurred and rioting took place at the University of Mississippi when an African-American student, Autherine Lucy was admitted. In 1956, one hundred southern members of Congress signed the Southern Manifesto denouncing the decision of the Supreme Court as a clear use of judicial power and urged the states to use all lawful means to defy it. Citing the state rights interpretation of the Constitution, Mississippi, Alabama, Georgia, and Florida declared the Brown decision null and void. Now what! Teachers

should engage students in discussion on what should have been done next. Ask students if they believe the Supreme Court overstepped its authority? Do they have the right to make laws when the federal law conflicts with state laws or must the states always bow to the decisions of the federal courts? How do they think the struggle for school desegregation between 1954 and 1957 might have been different if the federal government had acted more forcefully? Many of the students at Wilbur Cross High School have relatives who are from the South. Teachers should assign students the task of interviewing their grandparents, great aunts and great uncles to find out what it was like for them living in a southern state during this time. Tell them they will be conducting an oral history. Encourage them to video or tape their conversations and bring them in to share with the class. Students often tell me that their grandparents never shared this information with them until they actually sat down with them and showed their interest by asking questions. This activity brings this time period in history closer to home for many of our students and makes history come alive.

Many people feel that the *Brown II* "all deliberate speed" formula failed. They point to what happened at Central High School in Little Rock, Arkansas as an example. In the summer of 1957 two years after the *Brown II* decision the city of Little Rock made plans to desegregate its public schools. Its school board had voted unanimously for a plan starting the desegregation of the high school to be followed in 1958 by the middle and elementary schools. But the smooth transition to the school's integration was not to be. *The Ernest Green Story* is a dramatic recreation of this event. It examines the desegregation of Central High School and at the same time shows racism at its ugliest and determination at its most magnificent. This is the story in the lives of nine teenage students and their year at Central High School. The Governor of the state, Orval Faubus tries to block the federal court order by calling out the Arkansas National Guard. He says it's to keep the peace, but everyone realizes it is to keep the black students out of the school. After two and a half weeks President Eisenhower called out the 101st airborne division to go to Little Rock and enforce the court order. I have shown this film every year to my students and they love it. It leads to lively discussions, not only about the Civil Rights movement and racism, but also the concept of states rights v. federal rights. Earl Warren was incensed that any state governor should try to tell the Court what was legal or illegal about school desegregation, which Faubus sought to do. (Warren 290) Students usually react very strongly to viewing the film *The Ernest Green Story* that accurately documents the desegregation of Central High School in 1957 in Little Rock Arkansas. So where are we now? It has been 50 years since the *Brown* decision. Some believe it was the most important case of the 20th century. Many believe that the *Brown* decision was the catalyst that opened up freedom and official recognition of equality. Others believe inequality still exists in the schools today. Teachers should open up discussion on the issue of whether or not the *Brown* decision has failed in its basic mission: to provide an equal and integrated education for minority students. How is integration possible in a city that has a majority of minority students? Today, children in New Haven attend a school system that is 89% minority. One of the realities of today is that urban areas are often non-white. So maybe the question then should be how do we guarantee to all students an equal and high quality education? Do the schools have to be integrated in order to do this and if not how do you go about trying to balance then racially?

The third objective of this unit is to have students analyze and understand those cases that affected criminal procedure. Teachers might want to begin studying this objective by having students examine the case *Gideon v Wainwright* 1963. This case mandating that the court provide an attorney for indigents was probably the Warren Court's only popular criminal procedure decision. (Powe 379) Earl Warren felt a commitment to establish rules governing criminal procedure-intended to extend the rights contained in the Fifth, Sixth, and Eighth Amendments to all individuals accused of criminal acts. The rulings in the cases will demonstrate the principles of equal justice under the law. Teachers should remind students that Warren had a background as a prosecutor in the state of California for more than a dozen years. He was well acquainted with how law enforcement operates and was committed to correcting the inequalities caused by social and economic

differences. His goal in these cases was to establish clear guidelines for putting into effect the rights guaranteed in the Constitution that all Americans, not just the wealthy would be protected from unfair practices. (Urofsky 170) Considered one of the most famous cases, *Gideon v. Wainwright*, 1963 held that the right to counsel is "...fundamental and essential to trial and for that reason must be honored in state as well as in federal courts..." This decision overturned the 1942 case of *Betts v. Brady*. Students should be assigned the task of researching the facts and the decision in the *Betts* case. Teachers should point out that Warren had instructed his law clerks to look for a case that would allow the court to revisit the decision set by *Betts v. Brady*. They found such a case in the petition of Clarence Earl Gideon.

The case of Gideon v. Wainwright, 1963

Clarence Earl Gideon was arrested in Florida for breaking and entering into a poolroom and stealing coin from the vending machines there. Brought to trial, he asked the judge to appoint a lawyer for him. He had no money to pay for an attorney. The judge informed Mr. Gideon that the state of Florida only had to provide a court appointed attorney in capital crimes. Gideon then tried to act as his own attorney and put on a defense for himself. Unfortunately, he did an extremely poor job. Although the trial judge tried to assist him, he did not know what questions to ask or the procedure to follow. The jury found him guilty and he was sentenced to jail time in the Florida State prison. While in prison he petitioned the Supreme Court requesting that the justices review his case on the grounds that the Sixth amendment, made applicable to the states by the Fourteenth amendment, guarantees the right to counsel. Gideon was mistaken on this point for the states were not required by the Constitution to provide a free attorney. This only applied in federal courts.

Once the Supreme Court accepted the appeal from Gideon, Chief Justice Warren appointed a brilliant attorney Abe Fortas to defend Gideon's argument in front of the Supreme Court. In the end the justices ruled unanimously to overturn the 1942 ruling in *Betts v. Brady* case. Defendants in state court accused of a felony now must be provided with a free court appointed attorney.

Teachers might want to have the students view the film *Gideon's Trumpet* starring Henry Fonda as Clarence Earl Gideon. Anthony Lewis bases this film on the book *Gideon's Trumpet*. It offers a remarkable recreation of the entire judicial process from the arrest of Gideon to the final vote by the Supreme Court. The film usually engages students in lively discussions about whether or not a person can have a fair trial without a lawyer. Ask students what is a lawyer able to do for his client that a person defending himself cannot do. Do they believe the Florida law unfairly discriminated against people who were poor? Ask students what they think of Justice Black's 1956 remark made in the case *Griffin v. Illinois* "...There can be no justice where the kind of trial a man gets depends on the amount of money he has." Is there any truth to the idea that the absence of counsel means the absence of justice? Do students believe that today a poor man receives the same justice as a rich man? I remind students that although they are entitled to a court appointed attorney for felonies and some misdemeanors, the attorneys are still being paid by the state. Often they are overworked and underpaid and cannot devote the same attention to your case that a high priced lawyer probably will be able to do. Is this fair? Maybe all cases should be defended by public defenders? Would that guarantee equal justice for all or just bad justice for all? Students really enjoy discussing this topic in class.

The case of Escobedo v. Illinois, 1964

The second case to be examined is *Escobedo v. Illinois*, 1964. The decision in this case expanded the meaning of the right of counsel guaranteed by the Sixth amendment to include not only one's defense at a criminal trial, but also during a police interrogation. The Court ruled by a slim vote of five to four "... that when the investigation is no longer a general inquiry... but has begun to focus on a particular suspect...and where the

suspect has been taken into custody...and the suspect has requested a lawyer...and the police have not informed him of his rights to remain silent, the accused has been denied...counsel in violation of the sixth Amendment.”

The Supreme Court ruled in this case that the confession of Daniel Escobedo must be thrown out and held that the accused must be allowed to consult with a lawyer once he becomes a prime suspect in a case. This case dates back to the one night in January 1960 when Escobedo and an accomplice were arrested for the murder of Escobedo’s brother-in-law. The police questioned the two men separately. While being interrogated Escobedo asked several times that his lawyer be present, but the police told him that his lawyer did not want to see him. In fact, his lawyer came to the police station, but the police would not let him see his client. Escobedo’s lawyer, a man named Walter Wolfson got to the police station shortly after Escobedo arrived. He remained at the police station waiting to have a chance to talk to Escobedo. Once Wolfson even saw Escobedo briefly through a doorway, but was not allowed to get close enough to talk to him. One of the police officers at the Chicago station knew Escobedo and his family. He spoke to Daniel for about 15 minutes alone and in private. Escobedo told the officer that Benedict DeGerlando had murdered his brother-in-law. This was the first time that Daniel had admitted to any knowledge of the crime. Shortly after the District Attorney took a statement from him. After this formal confession Daniel’s lawyer was finally allowed to see him. At his trial Escobedo said that the police told him that he and his sister could go home if he admitted that his friend DeGerlando had committed the crime. The officer stated that this was not true and no deal was ever made with Daniel. Escobedo was found guilty of murder and sentenced to 20 years in the state prison. The Illinois Supreme Court upheld his conviction. The case was then appealed to the U.S. Supreme Court. The Court reversed the decision in a very close vote. Justice Arthur Goldberg wrote the Court’s decision and Chief Justice Warren, and Justices Black, Brennan, and Douglas joined him.

Teachers should present the facts of this case to the class without telling them the decision of the Court. Ask the students at what time should a person be told that they are a suspect in a crime. At what time should a person be told that they have the right to an attorney? If Escobedo had been provided with an attorney during questioning, do they think he would have confessed? Remind students that some people become very “anxious” when they feel threatened in any way. Ask them how they would feel if they were suddenly sent down to the principle’s office, accused of a wrongdoing and not allowed to call their parents. Would they feel scared in any way? Would they feel isolated? Might they just say anything to get out of that office? Sometimes being around people who are perceived to have some authority makes other people very nervous. Teachers should also open up discussion to students concerning the reaction of the public in 1964 when this decision was handed down. Many people felt the Court was now coddling criminals. They started to question whether the Court was going too far in handing out right to the accused. They felt that the justices were becoming “soft on crime” and giving the advantage to the defendant. Some even felt the Court was preventing the police from doing their job. Others however, felt this would make the police act in a more professional manner. Some people even believed that the decision in this case affected the presidential election of 1968. Republicans made an issue out of the belief that that the Court was soft on criminals and that the police were demoralized and were not able to adequately do their job. Bumper stickers once again appeared calling for the impeachment of Earl Warren.

The case of *Miranda v. Arizona*, 1966

The third case to be examined concerning criminal procedure came to the Court in the summer of 1965. Earl Warren instructed his clerks to look for cases that would lay out the groundwork for police procedure. Four cases were chosen including *Miranda v. Arizona* . This case became one of the most controversial cases in

criminal procedure during the entire Warren era. Teachers should first relate the facts of the case to students. Ernesto Miranda was arrested for the kidnapping and rape of a woman in Arizona. He was taken to the police station where after two hours of police questioning he signed a confession statement. He was never told of his right to remain silent or his right to see a lawyer. At his trial his signed confession was used against him and he was found guilty of the crimes. While in prison he appealed his case to the Supreme Court arguing that his confession should not have been used at his trial because the police had not told him of his rights and he answered questions because he did not know he could remain silent. His lawyer said that he was frightened while in custody and the police atmosphere was intimidating. Tell students that the issue here was whether the confession should have been used as evidence at the trial. Did the police follow the proper procedures when they got the confession from Miranda? Were Miranda's constitutional rights protected?

Warren announced the Miranda decision on June 23, 1966. Justices Black, Brennan, Douglas, and Fortes made up the majority along with Warren. Miranda begins with the statement of the four things the police must state before they question suspects. They have the right to remain silent; anything they say can be used against them; they have the right to counsel, and if they cannot pay for counsel, lawyers will be provided for them. Students are usually quite familiar with the Miranda rights having heard them on television or film. Critics of this decision became very vocal. Warren was accused of overstepping the bounds of the judicial role and stepping into legislative role. (Powe 395) Ask students if they feel the Court should have the ability to make changes when they feel an injustice is being done or is this role one that should be undertaken by the legislative branch. Warren felt he was turning constitutional principles into practical policies. Those who supported him believed he was exercising fairness, equality and justice. They agreed with Warren in that these rights would help to protect those who were less fortunate; the weak, the illiterate, or the poor defendant against the possibility of Fifth Amendment violations. He believed that people should have the same rights as the rich, the organized criminal and the knowledgeable who will always insist on their right to counsel. (Warren, 201) Ask students how they think the police reacted to this decision at the time. Tell them in fact many of the police were aghast. One high-ranking police official is quoted as saying "I guess now we will have to supply all squad cars with lawyers." Ask students what they think he meant by this statement. By 1966 it was becoming apparent that crime was a major domestic issue and public opinion was showing that some people felt the Warren Court was too soft on crime.

The final case to be examined can be found in the classroom activities section of this unit. *In Re Gault*, 1967 considered the rights of juveniles.

Classroom Activities

Lesson Plan One-The Rights of Juveniles A study of *In Re Gault* , 1967 *Objective*

Students will understand the significance of the Gault case, which changed the way the courts must treat juveniles.

Procedure

Teachers will need to present to students the summary of the case that is offered in this lesson and then split the class into groups for discussion. Once the questions are addressed, the group should select a leader who

will present the group's findings back to the class.

Summary of the Case

In June of 1964, in Gila County, Arizona a complaint was filed by a Mrs. Cook to the local sheriff stating that she had received an obscene phone call. Although the call was traced to the Gault home there was no proof as to exactly who had made the call or spoken the obscene words. The local sheriff went to the Gault house and arrested Gerald Gault, age 15 and his friend Ronald Lewis, also age 15. Both boys were brought to the juvenile detention home in Globe to await a hearing from a juvenile officer. Gerald had been in trouble before and was already on probation in the state of Arizona. When the sheriff took Gerald into custody his parents were not at home. In fact, his father worked several hundred miles away and his mother was at work. Not even a note was left by the sheriff to inform the Gault's of their son's whereabouts. When Marjorie Gault returned home from work she found out that her son was being held at the juvenile detention center. That night she went to the center to speak to her son and also the center's superintendent, Charles Flagg. Mr. Flagg told Mrs. Gault that Gerald would have a hearing the next day. That night a probation officer questioned Gerald about the phone call. He also questioned Ronnie Lewis to see if boy's stories matched. Though he had no proof that Gerald had made the call, Mr. Flagg filed a petition with the juvenile court describing Gerald as a delinquent minor and asked the court for a hearing as well as an order regarding his care and custody. Since no record of the hearing was kept, no one knows exactly what was said. According to later testimony, the judge asked some questions about the phone call.

A few days later Gerald was released from the detention center. Mrs. Gault received a note saying that a second hearing would be held in six days. At the second hearing Mr. and Mrs. Gault admitted that their son had dialed the woman's number, however, they believed that Ronald Lewis had done the talking. They asked that the woman who had made the complaint to come in and identify which boy's voice she had heard on the phone. Their request was denied. In fact, the judge never talked to Mrs. Cook to check the details of the case. On the basis of these two hearings the judge found Gerald to be delinquent. According to an Arizona state law "people were not allowed to use vulgar, abusive or obscene language in the hearing of a woman or a child." Supposedly, Gerald confessed at his hearing, but he had no legal representation. He was sentenced to six years of confinement at the Fort Grant Industrial School. If he were in an adult court he would probably receive two months in jail and a fifty-dollar fine. When Gerald was at the Industrial School his parents appealed his conviction to the Arizona Supreme Court. They said the state had taken away their son's right to due process and violated the limits of the Fourteenth Amendment amendment. Furthermore, they said that Gerald should be entitled to the same rights at his hearing that an adult had at a trial. The Arizona State Supreme Court upheld the juvenile court judge's ruling. The Gault's then appealed their case to the U.S. Supreme Court.

The Court decided that juveniles accused of wrongdoing should have many of the same protections that are required in an adult trial under the Bill of Rights. The Court believed that neither the Fourteenth Amendment nor the Bill of Rights is for adults alone. Furthermore, "the condition of being a boy does not justify a kangaroo court." Justice Abe Fortas wrote the detailed and strongly worded opinion for the Court. Chief Justice Warren complimented Fortas on his opinion by calling it the Magna Carta for Juveniles. Joining Justice Fortas in the opinion were Chief Justice Warren and Justices Brennan, Clark and Douglas. Justices Black and White concurred with the majority decision. Justice Harlan wrote a separate opinion concurring in part and dissenting in part. Justice Black stated, "he agreed with the majority, but felt that the ruling "strikes a fatal blow to much of what is unique about the juvenile court system..." Justice Stewart dissented from the majority. In his dissent

he acknowledged that "...the justice system has not been perfect, but he said, juvenile proceedings are not criminal trials. He felt the Court was taking a step backwards into the nineteenth century when children were tried as adults..." (Billitteri 88)

As a result of the Gault case the following elements of due process must be guaranteed to juveniles The Court decided that juveniles should have the same rights as adults at the time of the trial. Gerald and his parents should have been notified of the hearing before it occurred so that they could have prepared a defense. Gerald should have been told that he had the right to a lawyer and should have been provided with free counsel if necessary. Gerald should have been told that he had the right to remain silent and not testify against himself. Gerald should have the right to confront the witness against him and to cross-examine the witness. Finally, the Supreme Court said that the state of Arizona did not give Gerald these rights and he should be given a new hearing.

At this time teachers might want to present a recent case in which the Court refused to require special treatment for young people under questioning by the police. In a very close vote (5 to 4) the Supreme Court clashed over whether the police must take special care when questioning young people about crimes. The case *Yarborough v. Alvarado, 2004* involved statements made by 17 year old Michael Alvarado while he was being questioned by the police, but not under arrest. In this case no warnings were given to the youth when his parents brought him to a California police station for questioning. His parents were told to wait outside the interrogation room while the police questioned him. He was later convicted of second-degree murder and incriminating statements obtained during that interrogation were used at the trial. Alvarado did not receive Miranda warnings prior to the interrogation in question. The California trial court rejected the defense motion to suppress his incriminating statements. It concluded that he was not in custody during the interrogation and therefore, was not entitled to warnings. Teachers might assign students to research the various decisions in this very close vote. Students report back on the majority decision written by Justice Kennedy, as well as the concurring opinion written by Justice O'Connor and the dissenting opinion written by Justice Stephen Breyer.

Questions for Discussion

Once students have had the time to read and discuss the facts and the decision they should be divided into groups of four. Ask them to address the following questions in their group. They should select a group leader who will present their answers back to the entire class.

1. Should juveniles and adults have the same rights as guaranteed by the United States Constitution?
2. What rights would Gerald have had if his case were being heard in an adult court?
3. What do you think is the goal of a juvenile court? What is the goal of an adult court?
4. Do you think juvenile courts are too soft on the youth of today?
5. What consequences do you think Gerald Gault should have faced for his actions?
6. Discuss the discrepancy between the juvenile punishment and the adult punishment for the same crime.
7. What do you think Warren meant when he stated that the written opinion of Justice Fortas would be known as the Magna Carta for juveniles?
8. What arguments do you think were presented by the lawyers representing the state of Arizona at the U.S. Supreme Court hearing?
9. What do you think Justice Fortas meant when he referred to the "never, never land of juvenile justice?" Where did this phrase originate?

10. For more than a century the juvenile court system has operated separately from the adult criminal courts. Juvenile courts were designed to provide flexibility to young people in trouble. The philosophy behind juvenile justice has always been to rehabilitate young offenders rather than punish them. But the trade-off means that juveniles have fewer due process rights than adults. Do you think this is fair?

Lesson Plan Two TimeLine of Significant Events, People & Laws

Objective

Students will be able to identify the events, people in chronological order and understand the impact they might have had on the time.

Procedure

Teachers will need to label 5x7 index cards with the items listed below. Divide the class into groups and distribute one index card with a person or event written on the card to each student in the group. Time will be allotted for research in the library. Students will research their topic and be able to discuss the topic itself and the impact it had, not only with their group, but also with the rest of the class. Finally, each member of the group will place their event on a time line that will then be placed around the room. Teachers may have the students use a long roll of white paper or individual poster size boards that can be tacked up next to one another on a large bulletin board.

Chronology

1953

September Chief Justice Fred Vinson dies of a heart attack

October President Eisenhower nominates Earl Warren as Chief Justice

1954

May

Brown v. Board of Education

1955

May *Brown v. Board of Education II*

December Montgomery Bus Boycott

1956

February Authorine Lucy turned away from the University of Alabama
March Southern Manifesto against desegregation

1957

September Civil Rights Act passed; first since Reconstruction

September Arkansas National Guard blocks the entrance to Central High School in Little Rock, Arkansas

1958

June *NAACP v. Alabama*

September *Cooper v. Aaron*

1959

September Price Edward County, Virginia closes Schools

1960

February Sit-in, Greensboro, North Carolina

November John Kennedy elected President of the U.S.

1961

May Freedom Rides begin

June *Mapp v. Ohio*

1962

March *Baker v. Carr*

June *Engel v. Vitale*

1963

March *Gideon v. Wainwright*

March *Douglas v. California*

June Medgar Evers assassinated in Mississippi

June *Abingdon School District v. Schempp*

August March on Washington

September Church bombing kills four girls in Birmingham, Alabama

November President Kennedy assassinated, Lyndon Johnson becomes president

March *New York Times v. Sullivan*

1964

June Freedom Summer begins

June *Reynolds v. Sims*

June *Escobedo v. Illinois*

June 1964 Civil Rights law

November Lyndon Johnson elected president

1965

January *Cox v. Louisiana*

February Malcolm X assassinated

March *Griswold v. Connecticut*

August Voting Rights Act

1966

June *Miranda v. Arizona*

1967

May "Long Hot Summer" of urban rioting begins

June *Loving v. Virginia*

July Rioting in Newark and Detroit

1968

April Martin Luther King assassinated

April *Ginsburg v. New York*

June *Terry v. Ohio*

June Earl Warren announces retirement

November Richard Nixon elected president

1969

February *Tinker v Des Moines*

June *Powell v. McCormack*

June *Chimmel v. California*

June Warren Burger replaces Chief Justice Warren

Materials used

3x5 index cards, construction paper

Lesson Plan Three Glossary of Terms

Objective

Students must know and understand the meanings of those terms associated with legal situations and the Warren Court.

Procedure

Instruct the students to divide their paper in quarters and then cut them evenly. On the front side of the paper they will be writing the terms the teacher has written on the board. On the backside they are to write the correct definition or description of the term as provided by the teacher. They now have created a flash card. Students should study these terms at home and the next day the teacher should reinforce the meanings and concepts of these terms by playing jeopardy with the class. The teacher will provide the meaning and the students will provide the correct term in the form of a question. Teachers might divide the class into five or six teams. The winning team might be rewarded with extra credit points on the test for this unit.

Terms to know

1. affirm An appellate court ruling that upholds the judgment of a lower court, in effect stating the decision of the lower court is correct.
2. appeal A process by which a final judgment of a lower court is revised by a higher court.
3. appellate jurisdiction Authority of a superior court to review decisions of inferior courts.
4. brief A document containing arguments on a matter under consideration by a court
5. certiorari Latin word meaning to be informed of, to be made certain in regard to. A writ or order to a court whose decision is being challenged on appeal to send the records of the case to enable a higher court to review the case.
6. Civil Rights Acts of government designed to further the achievement of political or social equality as well as protect persons against arbitrary and discriminatory treaty from the government.
7. concurring opinion An opinion by a judge that agrees with the decision of the majority, but

disagrees with the majority's rationale. A judge who presents a concurring opinion has arrived at the same conclusion but for different reasons.

8. conference The regular meeting in which the Supreme Court justices conduct all business associated with deciding cases, including determining which cases will be reviewed, discussing the merits of cases after oral arguments and voting on which party in a case will prevail. Conferences are closed to all but the justices.

9. dissenting opinion The opinion of a judge who disagrees with the result reached by the majority.

10. due process The concept that the Constitution's due process clauses require the government to follow fair procedures when interfering with a person's life, liberty, or property.

11. judgment of the court The final conclusion reached by a court

12. judicial activism An interventionist approach or role orientation for appellate decision-making. Judicial activism is seen by critics as legislating by justices to achieve outcome in line with their own social priorities.

13. judicial review The power of the court to examine the actions of the legislative and executive branches with the possibility that these actions could be declared unconstitutional.

14. judicial self-restraint A role view that minimizes the extent to which judges apply their personal views to the legal judgments they render. Courts should defer to the policy judgments made by the elected branches of government.

15. living Constitution The belief that the Constitution was intended to endure for the ages and thus can be adapted by courts to changing social and economic conditions.

16. opinion of the court The statement of the court that expresses the reasoning upon which a decision is based. The opinion summarizes the principles that apply in a given case and represents the opinion of the majority of court members.

17. oral arguments The arguments presented by counsel before the Court, usually limited to thirty minutes a side before the Supreme Court.

18. plurality An opinion announcing a court's judgment and supporting reasoning in a case, but is not supported by a majority of the justices hearing the case. Such an opinion arises when a majority of justices support the court's ruling in a case, but do not support the majority's reasoning behind it.

19. precedent The theory that decisions reached in earlier cases with similar fact patterns should determine the judgment in subsequent case.

20. reversal An action by an appellate court setting aside or changing a decision of a lower court

Other Suggested Materials

Films

The Ernest Green Story This film is a remarkable dramatization of the integration of Central High School in Little Rock, Arkansas, 1957.

Separate But Equal A great film that tells the story of the events leading up to and including *Brown v. the Board of Education*.

Gideon's Trumpet A dramatization of the case *Gideon v. Wainwright*.

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This book is an extremely readable account of the Warren Court that demonstrates how the Court was affected by the culture and politics of the time.

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This book offers an overview of the Warren Court as well as a critique of many of the decisions.

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This book describes the constitutional and personal battle between Justice Frankfurter and Justice Black.

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This book analyzes the decisions of the Warren court in simple manner.

Warren, Earl. *The Memoirs of Earl Warren*. New York: Doubleday & Company, 1977.

An autobiography of Earl Warren that is relatively frank and personal.

Wikkinson, Harvie. *From Brown to Bakke* .New York: Oxford University Press.1979.

This book focuses on landmark cases and studies them from political and social points of view

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Billitteri, Thomas J. *The Gault Case* . Berkeley Heights: Enslow Publisher, 2000.

This book is part of a Landmark Series of Supreme Court cases that offer students an easy read in narrative form.

Farish, Leah. *Tinker v. Des Moines* . Springfield: Enslow Publishers.1997.

This book is also part of the Landmark Series that offers a description of the case in understandable language for students.

Frank, John P. *The Warren Court* . New York: The Macmillan Company, 1964.

This book offers a photographic portrait of the justices of the Warren Court.

Goode, Stephen *The Controversial Court* . New York: Jillian Messner, 1982.

This is a clear and concise book that explains the difference between judicial activism and judicial restraint.

Hogrogian, John. *Miranda v. Arizona* . San Diego: Lucent Books, 1999.

This book covers in a clear way the Miranda case from beginning to end.

Persico, Deborah. *Mapp v. Ohio* . Springfield: Enslow Publishers, 1997.

This book brings to life the people involved in this landmark case that set forth the exclusionary rule.

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