



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute  
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## **Racism, Discrimination, and the Law**

Curriculum Unit 94.01.02  
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As a teacher in the Talented and Gifted Program in New Haven, I have the opportunity to work with a very diverse group of students. Although the New Haven Public School System is still a very segregated one, the gifted program brings students together who would otherwise not meet. This year's seventh grade class included African-American, Portuguese, Puerto Rican, Jamaican, Italian and German-American students.

Through the use of my curriculum unit written last year, students have been able to learn about other cultures through the use of dramatic plays. These plays, written by various members of racial and ethnic groups, allowed the students the opportunity to peer into the experience of others. Students have also learned that throughout the history of the United States, there have been laws and policies that have discriminated against various groups of people. Although these unjust laws existed, whites and blacks have been able to come together in a show of brotherhood to combat these laws and other forms of racism and discrimination. When studying the injustices of slavery, "Jim Crow" laws, and the interment of Japanese Americans, my students would sigh in disbelief. I often responded to their angry questions and statements by saying, "It was allowed by law. What was done, was perfectly legal."

This year, I have written a unit that further explores the legality of racism and discrimination as it existed in America. My unit will present a description of the legal system, explore the U.S. Constitution, for whom it was written, and address its exclusionary clauses. It will explore the effects of racism in education, and present several cases argued in lower courts, that were brought before the Supreme Court, in hopes of a just decision.

My unit discusses the U.S. Constitution as it pertains to equal protection, civil rights and liberties. I also present Article IV, Section 3, (Slavery) Section 1 of Amendment 13, (Abolition of Slavery) 1865, Amendment 14, (Civil Rights) 1868, and Amendment 15, (Negro Suffrage) 1870. This unit will also discuss historical events that took place as a means of redress for unjust laws, such as the civil disobedience of the 1960's. I will discuss the Civil Rights Act and its impact on America.

After a discussion of portions of the Constitution, I will present students with actual cases that were brought before the Supreme Court. Students will learn the details of The Dred Scott Decision, 1857, in which a white slave owner encouraged one of his slaves to bring suit against him, Plessy v. Ferguson, 1896, in which a 1890 Louisiana statute required separate but equal accommodations on railroads, and made it a criminal offense for anyone to try to occupy facilities set aside for those of another race. The interment of Japanese Americans will be discussed in the Korematsu v. United States case of 1944. Students will also argue the case of Sweatt v.

Painter, 1950, in which an African American male, was denied admission into the University of Texas Law School because of his race.

The history changing case of Brown v. Board of Education of Topeka I, 1954, will also be presented, in which Attorney Thurgood Marshall was able to convince the Supreme Court to overthrow the Plessy ruling and end the practice of school segregation. The 1968 discrimination case denying “illegitimate” children Equal Protection under the Fourteenth Amendment will be presented. Students will study and debate the Alan Bakke case of 1978, in which a white male was denied admission to a medical school in California with a quota system. Students will argue these cases based on the tenets of the constitution as it existed at that time. Upon reaching a decision, students will read what the Supreme Court Justices of that day, had to say.

Unfortunately, America has not always dealt justly with all of its inhabitants. Although there has always been racism and hatred, there also has been brotherhood and love. Students will discuss the mentality of the founding fathers and what they believed about racial superiority. They will discuss how prevalent these attitudes are today and if in fact, Americans can be Americans, or if we’re doomed to be a race conscious society. Students will be challenged to think through the possible effects of racism on children during the time periods presented. As youngsters who will probably be in decision making positions in the future, students will be asked to write amendments to the constitution and to write new laws that ensure happiness and freedom for all.

## **The Judicial Systems Of The United States**

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In the United States, there are two coexisting judicial systems, the state and federal systems. In the state system, there are city, county and state trial courts. These courts are the lowest level of the state legal system. The lower level courts handle civil cases that involve small amounts of money and criminal cases that are usually misdemeanors. Large cities usually have specialized courts. One court may handle only family problems, while another may handle city violations or safety regulations.

Above the trial courts in the judicial pyramid are the appellate courts. It is in these courts that lower court decisions may be appealed. In the appellate courts, there are always an uneven number of judges, and decisions made are based on a majority vote. The appellate court has the power to send a case back for retrial, make changes in a decision, set aside, reverse, or uphold a decision. An appeal of a decision made in the appellate court would go directly to the U.S. Supreme Court.

The Federal Court System was developed after the birth of the Constitution. The Constitution of The United States and federal laws supersede any law made at the state level. It is the job of the federal courts to interpret the Constitution as well as laws passed by Congress.

At the base of the federal system, are ninety-seven federal district courts. Each state has at least one of these courts, while other states have several. The next level of the pyramid contains ten Courts of Appeal. These courts are located in judicial districts which are made up of several states. One of these courts is also located in Washington, D.C. The highest court in the land is the Supreme Court of the United States.

As in the state system, one may appeal a lower court decision to a higher court. The appellate court decides which cases it will hear. Yearly, the U.S. Supreme Court is asked to review several thousand cases. Because of

the staggering numbers, the court usually selects approximately one out of ten cases. These are the cases the Court feels are most important and require an interpretation of federal law or the Constitution itself. The decisions made in these cases affect the entire nation.

## The Constitution

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The Constitution was originally written as a very exclusive document. Its rights were intended for white male citizens. In Section 3 of Article 1, the Constitution explains how the number of representatives per state to the House of Representatives would be determined. In calculating the number of people in that state, Indians were excluded and “all other persons, “ meaning non-white men and indentured servants, counted as three fifths of a person. In Section 2 of this same article, it is very clear that non-white males could never aspire to a place in the U.S. government as one must “been seven years a citizen of the United States.” As African-Americans were denied citizenship, they were automatically excluded from any governmental office.

Slavery was upheld in the Constitution. In Article IV, Section 3, it reads, “No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.” Although this article did not pertain exclusively to African-American slavery, it was used to uphold the legality of it and the return of runaway slaves and indentured servants to their “owners. “

Until the year 1865, and the Thirteenth Amendment to the Constitution, slavery was legal in many states. Section 1 of this amendment outlawed slavery, while Section 2 gave Congress the power to enforce the former with legislation. The Thirteenth Amendment reads, “Neither slavery or 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.”

In 1868, citizenship was granted to non-white Americans. Prior to this amendment, only whites were deemed citizens of this country. The Fourteenth Amendment reads as follows: “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 any person within its jurisdiction the equal protection of the laws.”

Although the Thirteenth and Fourteenth Amendments to the Constitution served to redress maltreatment and denial of basic rights to non-white Americans, African-Americans were denied the right to vote. It was not until the Fifteenth Amendment in 1870, that Blacks were constitutionally granted that right. The Fifteenth Amendment reads: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” Although voting rights existed for African-Americans as a result of this amendment, various states prohibited blacks from voting by the use of “laws or clauses” that would ensure their ineligibility. The “Grandfather Clause” was used in some states. One could not vote if his grandfather was not allowed to vote. Because African-Americans were not deemed citizens prior to 1868, they were not allowed to vote. Since the pre-Fifteenth Amendment African-American was denied voting rights, so was his post-Fifteenth Amendment grandson. Some states used strict guidelines that required uneducated or under-educated Blacks to read lengthy statements loaded with

words they were unable to read. Often the very Constitution that afforded them this voting right, was used as a measurement of their eligibility to vote. If they could not read it without error, they were not allowed to vote.

One may argue that the Constitution of The United States was a racial exclusive document, while others may see it to be inclusive, but narrowly interpreted by racist people. The amendments that followed sought to grant citizenship to those previously denied it, and equal protection to all. Students will learn from the following cases that many laws were written by men with strong racial prejudices. Many of the laws that supported segregation, were written with the comfort of the majority group in mind. Because of the master-slave relationship that existed for centuries, people had to learn to put away feelings of superiority and inferiority. These feelings accompanied by segregation, prohibited people from learning about each other. In this unit, students will be forced to rethink the Black/White issue in America. Students will explore the changes in attitude of African-Americans as well as Whites. Students will learn that change only came when people of all races joined together to fight injustice. Students will explore the plight of Whites who participated in freedom marches, freedom rides and sit-ins. Students will learn that in the struggle for African-American freedom, whites died too. Students will be challenged to get inside the mind and heart of the courageous people, both Black and White, of that time.

Students will also be challenged to think through many legal issues. How does a Supreme Court Justice decide to overturn a lower court decision that is greatly supported by the majority group as in the Plessy case. Is affirmative action good for all, and should present day Whites pay for past discrimination as in the Bakke case? Are any laws flawless, and should constitutional rights ever be suspended for national security as in the Korematsu case? The aforementioned cases and others will present many legal dilemmas, and major decisions handed down by the Supreme Court.

## **Civil Rights and Liberties**

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As earlier stated, The U.S. Constitution was not effective in ensuring the rights and liberties of all people. Because race, servitude, religion and national origin were grounds for legal discrimination, the Fourteenth Amendment was passed to eradicate “invidious discrimination.” The Fourteenth Amendment provided equal protection under the law for all people. It made it illegal to discriminate against any person or group for any reason. Although the purpose of this amendment was quite clear, the Supreme Court vacillated between decisions that served to uphold the intent of the amendment and those that rationalized the racial discrimination meant to be eradicated.

### **Dred Scott Decision (1857)**

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Dred Scott was probably born in Southampton County, Virginia, in the late 1700’s. He was born to parents who had been enslaved by a man named Peter Blow, who also became his owner. About thirty years later, Blow and his family moved to St. Louis, Missouri. They took Dred Scott and several other slaves with them. Blow died a few years later and Scott was sold to Dr. John Emerson, an army physician. At this point, Dr. Emerson was living in Jefferson Barracks, Missouri. He was later transferred to Illinois and Wisconsin, taking Dred Scott with him. According to the Missouri Compromise of 1820, Missouri was a slave state, while Illinois and Minnesota were part of a free territory, where slavery was illegal.

When Dr. Emerson returned to Missouri, he brought Scott, his wife, and two daughters with him. Although they had lived in free states, they were still deemed slaves. Dr. Emerson died, leaving the Scotts to his widow, who in turn gave them to the sons of their original owner. These sons, Henry and Taylor Blow, were opposed to slavery. Although they had the authority to free the Scott family, they chose to finance a lengthy legal battle of behalf of Scott, to have he and his family gain their freedom through the courts. The Blows knew that winning such a legal battle in the highest court in the land would deal a death blow to the system of slavery.

The basis of Scott's suit, filed in 1846, was that he and his family had lived in a free territory for a period of years, and that his residency should have made him a free man upon his return to Missouri, a slave state.

This case went on for years, until finally a lower court decided in his favor. In 1852, however, a Missouri State Supreme Court reversed the decision. By this time, Scott's title had been transferred to the brother-in-law of his former owner, Dr. Emerson. The case appeared again in court in 1854. This time, it went to the Missouri Federal Circuit Court as Scott V. Sandford.

When the Dred Scott case came before the Supreme Court, Chief Justice Roger B. Taney was one of the five justices from states where slavery was legal. These five justices were the majority on the court, and believed that although the Missouri Compromise existed, a slave owner had the right to take his slaves anywhere he wished without fear that someone would remove his property from him. It was their feeling that regardless of the fact that Dred had lived in so called "free states," he was still his owner's property.

On March 6, 1857, Justice Taney stated that Dred Scott had no right to bring a law suit in Federal Court, because the Constitution only afforded that right to U.S. citizens. Since Scott was a slave, he was not a citizen. He went on to say that the founding fathers, who authored the Constitution, "agreed that Negroes were beings of inferior order and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect." (1) Although Taney tried to make it clear that these were not necessarily his views, but those of the framers of the constitution, these words were very explosive.

After the Supreme Court decided against Dred Scott, he was given his freedom by his owner, who had held him as a slave in name only.

## **Strauder v. West Virginia (1880)**

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In the Strauder case, Strauder, a Black man, was charged with murder. Since the laws in West Virginia did not allow Blacks to serve on juries, Strauder petitioned the Supreme Court to have his case moved to a federal court. The Supreme Court accepted his petition based on the intent of the Fourteenth Amendment. They felt this amendment afforded African-Americans the right to be exempt from unfriendly legislation against them as well as exemption from legal distinctions that imply inferiority. These legal distinctions were used to deny people of color rights others enjoyed.

According to Justice Strong, the fact that African-Americans were singled out and not allowed to serve as jurors, was "practically a brand upon them, affixed by the law, an assertion of their inferiority and a stimulant to that race prejudice which is an impediment to securing to individuals of that race that equal justice which the law aims to secure to all others." (2)

Although the justices saw and fought against the inequity evident in the Strauder case, they did not allow the Strauder decision to set a legal precedent in the conviction of Plessy.

## **Plessy v. Ferguson (1896)**

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In 1890, there was a Louisiana Statute that required all railroad companies to provide separate but equal accommodations for blacks and whites. The law made it a crime for anyone to insist upon occupying an area not designated for his race. Plessy, who was seven-eighths white and one -eighth black, was charged for refusing to give up a seat designated for white passengers. During the course of his trial, he petitioned the state supreme to enjoin the trial judge, John Ferguson, to stop the proceedings against him. His petition was rejected at the state level, so Plessy petitioned the U.S. Supreme Court. Plessy argued that the Louisiana Law violated guarantees afforded him by the Thirteenth and Fourteenth Amendments.

Surprisingly, the Supreme Court upheld the Plessy conviction. In Strauder, the justices felt that racial distinctions branded Black people, but in the Plessy case, that thinking was changed to one that upheld the states' right to prohibit the commingling of the races. They felt that if Blacks felt inferior as a result of these separate facilities, it was because they allowed themselves to feel that way. The justices also cited the need for comfort and the preservation of the public peace and good order as determining factors. Also, the justices argued that separate schools for blacks and white children had been consistently upheld as proper, as have laws forbidding intermarriage.

It is important to note that there was one dissenting justice, Justice Harlan. Justice Harlan felt that this decision was in direct contradiction to the Thirteenth and Fourteenth Amendments. He stated that the survival of the races depended upon the ability of the two to coexist peacefully. He argued that blacks were not a threat to whites, and that this decision proceeded "on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens. That, as all will admit, is the real legislation as was enacted in Louisiana." (3)

Because Plessy was defeated in his quest for exoneration, racial discrimination remained the status quo. Blacks had been deemed unworthy, once again, and the Fourteenth Amendment rights had taken on a new meaning; nothing. In 1950, the case of Sweatt v. Painter came before the supreme court. Although not as earth shattering as Brown v. Board of Education, this case set the tone for that landmark decision of 1954.

## **Korematsu v. United States (1944)**

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In March of 1942, Congress passed legislation that would allow the president the power to restrict the movement or residence of certain people for the sake of national security. Following the attack on Pearl Harbor, an attack on the West Coast was greatly feared. There was growing anti-Japanese sentiment and the loyalty of residents of Japanese ancestry, both alien and citizen, was under great suspicion. There were tens of thousands of Japanese -Americans living along the coast, and people feared that they were strategically placed to aid in an attack from within. For the sake of national security, President Roosevelt issued Executive Order 9066. This order declared that "the successful prosecution of the war requires every possible protection

against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities.” This order was applied to Japanese-Americans and restrictions ranged from curfews placed on them only, and their forced removal to relocation centers that were much further inland.

The Korematsu case came as a result of Exclusion Order No. 34. This order issued by General Dewitt, in May of 1942, barred everyone of Japanese descent from the military area of San Leandro, California. Because he refused to leave this military area where he lived, Korematsu, an American citizen, was convicted of violating an act of Congress. The U.S. Circuit Court of Appeals affirmed his conviction and Mr. Korematsu appealed to the United States Supreme Court.

The U.S. Supreme Court upheld Korematsu’s conviction. The court felt that Mr. Korematsu was not being denied rights because of racial prejudice, but his and the rights of others with his ancestry had to be suspended for the greater good, national security. The court stated that there were numerous Japanese-American citizens who still had allegiance to Japan and that it was not possible to quickly and effectively establish which members of the community had loyalties that lined up with the U.S. It was therefore deemed necessary to impose executive orders to protect America.

Justice Black’s majority opinion referred to a legal precedent set by an earlier case, *Hirabayashi v. United States*. In this case, Mr. Hirabayashi challenged the 1942 Act as an unconstitutional delegation of power. He also argued that the curfew orders and others were beyond the war powers of Congress and the President. Lastly, he contended that because the curfew order only applied to those of Japanese ancestry, the U.S. was in violation of the Constitution’s prohibition of discrimination based solely on race. His ancestry could not be an indicator of his loyalty or lack of loyalty to the U.S. In the *Hirabayashi* case, the court also found in favor of the United States. The curfew order was upheld as a necessary step to prevent espionage and sabotage in areas threatened to be attacked by the Japanese. Justice Black said:

In the light of the principles we announced in the *Hirabayashi* case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one’s home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a. m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. (4)

In the cases presented, the Constitutional rights of Japanese-Americans were suspended because there appeared to be a threat to national security. Was this fair? Should rights ever be suspended? What would happen if we were ever at war with Russia, Israel or Africa? Should the rights of American citizens with those ancestries be suspended for fear of sabotage from within? Let the children decide.

## **Sweatt v. Painter (1950)**

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Homan Sweatt was denied admission into the University of Texas Law School because he was an African-American. He brought suit against the school officials who denied him entrance, more particularly, Theophilis Painter. The purpose of the suit was to force the school to admit him as a student. The Texas court did not demand his acceptance, but gave the state six months to open a law school for blacks. Sweatt refused to

attend the black law school, and continued his court action against the officials of the university. The Texas civil court of appeal affirmed the trial courts decision, so Sweatt appealed to the U.S. Supreme Court. The Supreme Court found gross inequities between the two law schools. The University of Texas Law School had sixteen full time and three part-time professors, some who were nationally recognized in their field. Their library contained over 65,000 volumes, and it had 850 students. Its law students had access to a law review, moot court facilities, and scholarship funds. Because many of its alumni occupied the most distinguished positions in their practices and in their public lives, it was considered to be one of the nation's ranking law schools. The law school for blacks had five full time professors, twenty-three students, 16,500 volumes, a practice court, a legal aid association, and one alumnus who had become a member of the Texas Bar Association. The justices in this case said they could not find any real equity between the two law schools. They argued that Mr. Sweatt was entitled to all the opportunities afforded by the white law school. They felt it was important to share ideas in an open arena with the very people he would surely meet in his practice. The justices argued that many things that make a law school great are often intangibles such as, the reputation of the faculty, the position and influence of the alumni and their standing in the community. Finally the justices noted that the school in which they were willing to allow Mr. Sweat to attend excluded whites, which comprised 85% of the people with whom he would be dealing with in actual practice of the law. The Supreme Court reversed the lower court decision based on the Equal Protection Clause of the Fourteenth Amendment. The University of Texas was required to accept Mr Sweatt as a student.

## **Brown v. Board of Education (1954)**

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Although this landmark case was a case dealing with racial discrimination in America's public schools, Its decision had a ripple effect that caused major changes in race relations throughout America. Before Brown, there was a "separate but equal" doctrine in education. This doctrine was upheld by the Plessy decision rendered almost a century before. It was legal for states to have separate public schools for black and white children as long as the schools were equal. At the time of the Brown case, there were approximately 17 states that adhered to a system of separate but equal education. Most of these states were in the south and southwest. A young African-American lawyer named Thurgood Marshall, began a campaign against the separate, but equal doctrine. He lodged numerous lawsuits against local school districts because of their segregated schools. The courts always cited Plessy v. Ferguson as a legal precedent. Separate, said the courts, could be equal. Thurgood Marshall was not satisfied with the decisions of the local and state supreme courts, so he took his case to the U.S. Supreme Court. Although the courts received legal briefs describing all of the cases, the one that grabbed their attention was that of Linda Brown v. Board of Education of Topeka Kansas. In the Brown brief, Attorney Marshall wrote:

The evidence makes it clear that it was the intent of the proponents of the Fourteenth Amendment that it could of its own force, prohibit all state action based upon race or color and all segregation in public education. The "separate but equal" rule of Plessy v. Ferguson was conceived in error and should be reversed forthwith. Moreover, any delay in executing the judgement of the court would involve insurmountable difficulties, so that the plaintiff in question should be admitted at once without distinctions of race or color to the school of her choice. (5)

Along with his brief, Attorney Marshall submitted evidence compiled by his staff, aided by volunteers. These studies showed the detrimental effect the separate but equal rule had on black children. It showed how a system that demanded that one remain separate, caused deep feelings of inferiority and inadequacy. The



sentiments of the justices in 1954, were in keeping with the sentiments of the justices in the Strauder case of 1880. This landmark case overturned Plessy!!! The decision was read by Justice Earl Warren.

School segregation by state law causes a feeling of inferiority in black children that inflicts damage to their hearts and minds that may never be undone. Public school segregation by state law, therefore, violates the equal protection clause of the Fourteenth Amendment... The old Plessy "separate but equal" rule is herewith formally overruled. (6)

As a direct result of the Brown v. Board of Education decision, Jim Crow Laws were challenged all over the country. These challenges came in the form of sit-ins, freedom rides, bus boycotts, and other means of protest. Blacks and whites, as so often in the past, came together to fight against racial injustice. Many, both black and white, lost their lives in the struggle for civil rights in the sixties.

The most sweeping developments that grew out of the Brown case were the 1964 Civil Rights Act and the Voting Rights Act of 1965. The Civil Rights Act made the U.S. Justice Department responsible for enforcing school desegregation programs, while the Voting Rights Act, secured the right of every African-American adult to vote in local and national elections.

The next case will allow students a further opportunity to peer into the minds of lawmakers and interpreters of the law. This case provides an opportunity to explore other forms of discrimination. Students will explore the challenge set before the Supreme Court to change an unfair practice of discrimination against children born to an unwed mother. Because it is very sensitive in nature, teachers should handle its presentation very carefully.

## **Levy v. Louisiana (1968)**

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Prior to 1968 in Louisiana, the equal protection clause of the Fourteenth Amendment was not applied to all citizens of that state. Under Louisiana law, children could recover two kinds of damages from the wrongful death of their mother. The children could receive damages for the loss of their mother as well as damages based on any cause of action the mother had at the time of her death for pain and suffering.

Thelma Levy bought suit on behalf of five children, against an insurance company and a doctor who treated their unmarried mother. The mother, who gave birth to these children out of wedlock, supported her children by working as a housekeeper. The trial court dismissed the case and a Louisiana appellate court ruled, as did the lower court, that "children" entitled to recover damages under the statute meant only "legitimate children." The State Supreme Court refused to hear the case, so the plaintiff took the case to the U.S. Supreme Court. The court was asked to review the statute on the grounds that in precluding recovery of damages by illegitimate children, the statute denied them equal protection under the law.

Justice Douglas delivered the findings of the court. He stated that lower courts were starting from the premise that illegitimate children were "nonpersons." The court felt that the state was wrong, and that these children were clearly "persons," and under the Equal Protection Clause of the Fourteenth Amendment. They pointed out that regardless of his status at birth, one is still a citizen, responsible for paying taxes, obeying laws, and subject to the Selective Service Act. It was grossly unfair to allow those who had deprived these children of their mother, to walk away without any liability, because the children were born out of wedlock. The lower

court decision was reversed, as Justice Douglas said:

Legitimacy or Illegitimacy of birth has no relation to the nature of the wrong inflicted on the mother. These children, though illegitimate, were dependent on her; she cared for them and nurtured them; they were indeed hers in the biological and in the spiritual sense in her death they suffered wrong in the sense that any dependent would. We conclude that it is invidious to discriminate against them when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother. (7)

## Reverse Discrimination?

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In an attempt to redress the wrongs done to blacks through hundreds of years of slavery and racism, affirmative action programs were implemented in many segments of the society. Affirmative action was designed to give minorities more accessibility to jobs and educational opportunities that they had been previously kept out of. In Chicago, a quota system was established based upon the ratio of blacks and whites in the city's total population. Once the ratio was determined, a certain percentage of new employees in the police and fire departments had to reflect the numbers found for that racial group in the city's survey.

Gradually the quota system moved into the higher education arena. Because institutions of higher learning are heavily funded with government money, it was imperative that were in accordance with the stipulations set forth by Title VI of the Civil Rights Act. This title forbids discrimination in any activity or program that receives federal financial assistance. Medical schools were among the first in education to institute quotas. Prior to the 1960's, most medical students in the U.S. were white. To provide opportunities for minorities who were previously unrepresented, or under-represented, medical schools would preserve a certain number of class positions for minority applicants.

## The Bakke Case:

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At the University of California's medical facility, a great effort was made to increase the numbers of minority students in its medical school. At its Davis campus, minority enrollment was up from about 3% in 1968 to 16% in 1972. Although praised for such a valiant effort to correct past wrongs, it was reported that minority applicants were being judged on a different and more favorable set of criterion. In some cases, it was said that Blacks with lower test scores, were being admitted, while white with higher scores were being denied admission.

Alan Bakke, a thirty-two year old white male, desired to become a doctor. Bakke had graduated with honors in mechanical engineering and served with distinction in the Vietnam War. After the war ended, Bakke earned his Master's Degree in engineering from Stanford University, and also took a few pre-med courses. It was in 1972 that Bakke applied to twelve medical schools, including the Davis campus.

Because of his age, Bakke felt that medical schools might be a little reluctant to admit him, but felt his more than adequate grades would compensate for his lack of youth. Much to his surprise and dismay, he was denied admission by all twelve schools. Bakke wrote to the Davis campus' admissions director requesting a standby position or the opportunity to take courses as a special student. When he did not receive a response

from the school, he wrote:

I feel compelled to pursue a further course of action. Applicants chosen to be our doctors should be those presenting the best qualifications, both academic and personal. I am convinced a significant fraction is judged by a separate criterion. I am referring to quotas, open or covert, for racial minorities. I realize the rationale for the quotas is that they attempt to atone for past racial discrimination. But instituting a new racial bias in favor of minorities is not a just solution. In fact, I believe that admissions quotas based on race are illegal. For this reason I am inquiring of friends about the possibility of formally challenging these quotas through the courts. My main reason would be to secure admissions for my self. I consider the goal worth fighting for in every legal or ethical way. (8)

This time Bakke received a response suggesting that he reapply to Davis in the fall of 1974. Bakke reapplied, and was once again rejected. He retained a lawyer, Reynold Colvin, who had strong opinions about reverse discrimination, to represent him. At first Colvin tried to get Davis to admit Bakke, but they refused. He then lodged a suit against the university claiming reverse discrimination. The California Supreme court found in favor of Bakke in September of 1976. The court said:

We conclude that the program, as administered by the university, violates the constitutional rights of non-minority applicants, because it affords preference on the basis of race to persons who, by the university's own standards, are not as qualified for the study of medicine as nonminority applicants denied admission. (9)

The University of California appealed to the U.S. Supreme Court. On October 12, 1977, Bakke's case was heard. The university's lawyer argued that the quota system was used as a simple way of redressing years of discrimination, while Bakke's lawyer argued that it was his client who had been discriminated against. The Supreme Court Justices were split on this case. There were four for, four against and one undecided. On June 28, 1978, Nine months later, a decision was rendered. The courts found in favor of Bakke. They ruled that Davis' special admissions program was illegal because the racial quota was invalid. They said that Bakke had to be admitted to the medical school.

As one may see, America has come a long way in its efforts to protect all of its people. It is my hope that the children who use this unit will see that being a multi-racial, and multiethnic society has not been easy. Attitudes toward racial differences have changed for some people. Others possess the mentality of the founding fathers, and adhere to a philosophy of racial superiority. We find some on the receiving end of discrimination to be angry, and accepting of a doctrine of hatred. As these students work together sorting out feelings, and exploring attitudes, I trust that they will conclude that it takes all of us working together, to make America great.

## **Lesson Plan 1**

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*Objective:*

Students will participate in a mock trial. Students will argue and testify for and against slavery in the case of Dred Scott.

*Procedure:*

The teacher will distribute the facts of the Dred Scott case and a copy of the pre-Fourteenth Amendment Constitution. This information may be taken directly from the unit or the teacher may adapt what was written, for younger students. While arguing this case, students will not be aware of the courts findings. They must present arguments based on the facts presented.

Basically, students will line up on both sides of the slavery issue. Students who are arguing for slavery, must try to understand the thinking of those in the 17th, 18th and 19th century. Why were Africans enslaved anyway? What are the benefits of slavery? Hasn't slavery saved the African from a life of Hedonism? Students should be given excerpts from Uncle Tom's Cabin or other books that show the thinking of people at that time.

Students who argue against slavery should try to feel the pain of an enslaved African-American. Students should read excerpts from "Incidents In The Life Of A Slave Girl" or other slave narratives that make the plight of the slave very clear.

Students will choose roles of Supreme Court Justices, attorney for the plaintiff, (Mr. Scott), defense attorney, bailiff, court stenographer, witnesses for the defense, witnesses for the prosecution, Mr. Scott, his wife, and two daughters.

1) There will be opening arguments by both attorneys.

In the opening argument, both attorneys will set forth what it is that they intend to prove. Students should be encouraged to strengthen these arguments by including references to the Constitution as it applies.

2) The attorney for the plaintiff will call his witnesses and allow cross-examination by the defense attorney.

During this portion of the trial, attorneys should be cautioned against badgering and leading the witness. The nine Justices will hear all arguments and render a majority decision. One should note that Justices may dissent, or vote in opposition, but it is the majority vote that counts.

3) Dred Scott, his wife and children will be called to present their lives as slaves. They will also discuss what life was like for them living in a free territory, yet held as slaves.

Students should be encouraged to really role play these parts. Students should be creatively within the limits of the facts. Although dialogue between Mr. Scott, his family, attorneys and owners are not included, students should create that dialogue in order to give a convincing and moving testimony. Once again, although creativity is a must, students must remain with the facts of the case.

4) The lawyer for the defense will call his witnesses and allow for cross-examination.

5) The Justices will render a decision.

One Supreme Court Justice will read the ruling of the court. That ruling should include constitutional interpretation and legal precedent if it exists (did they rule that way because of the ruling of a previous case). In the event of a dissenting Justice or Justices, their views may be openly presented to the court. These dissenting Justices must use the Constitution to support their findings.

6) The teacher will read the findings of the actual U.S. Supreme Court.

7) Students will then be allowed an opportunity to discuss what they were feeling while role-playing. Students will be able to freely express their views of this case, and whether or not they would have ruled the way the court of that day ruled and why. Students will be asked to try to peer into the minds of the justices of that day.

This particular outline may be used to role-play any of the cases presented in the unit. While an excellent way to get students to read and write, students must draw upon higher level thinking skills such as synthesis and evaluation. Students should be given ample time to research, interview and formulate opinions. The teacher should adjust the lesson plans to meet the abilities and needs of his/her students.

## Lesson Plan 2

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### *Objective:*

Students will use role-playing to argue the case for or against reverse discrimination.

### *Procedure:*

- 1) Students will read the Alan Bakke case without the courts ruling.
- 2) Students will hear and present arguments for and against affirmative action, and quotas.
- 3) Arguments will be presented as a meeting of the Board of Trustees of the University of California's Davis Campus.
- 4) There will be eleven board members.
- 5) Students on both sides of the argument must discuss why minorities should or should not receive preferential treatment. (Students should consider that many minorities had lower test scores because they were often educated in inferior educational systems, not because of inferior intelligence.)
- 6) The board members will decide if they are willing to fight Bakke in court, or to allow him admission into the medical school.

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## Endnotes

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1. Don Lawson. *Landmark Supreme Court Cases* . (Hillside: Enslow Publishers, Inc., 1987), p.26.
2. Chase, Harold; Ducat Craig R. *Constitutional Interpretation* . Minn. West Publishing Co., 1974. p. 772
3. Ibid. p. 784
4. Ibid. p.365
5. Lawson, *Landmark Supreme Court Cases* . p.34
6. Ibid. p. 35
7. Chase, Ducat, *Constitutional Interpretation* . p. 892
8. Lawson, *Landmark Supreme Court Cases* . p.43

9. Ibid. p. 44

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