



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
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The Mirror of Justice Is it Blind?

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by Henry A. Rhodes

The scales of justice in the United States are supposedly being held by a blindfolded woman, thus giving the impression that justice is being handed out in the courts without regard to one's race, gender, or social background. The major objective of my unit is to have my students explore how one's race and social background affects the type of justice you receive in U.S. courts. If a question was posed to the average African-American or any minority of color concerning whether one's race affected the type of justice a person received in the United States, I would not be surprised to hear them respond that race is a detrimental determinant of the justice received by an individual in the U.S. judicial system. However, the O.J. Simpson trial seems to be a serious challenge to this belief, in my opinion. I think the Simpson trial offers my students a unique opportunity to examine whether one's social background can overcome the race stigma that has clouded the fairness of the U.S. court system. There are two other criminal cases I would like to expose my students to during the course of my unit. They are the Claus von Bulow case and the William James case. Claus von Bulow, a wealthy white socialite, was accused twice of causing his wife, 'Sunny' von Bulow, to be in a coma by injecting her with an overdose of insulin. William James is an African American who lives in New Haven who is accused of murdering his live-in girl friend, Sherry Drakes. My unit is intended for an 8th grade Social Studies class. It also may be used in a high school American history course. The unit will take 4-6 weeks to teach.

I must be honest from the onset with anyone who decides to read or use my curriculum unit that I developed this unit with the belief that minorities, especially African Americans, are not treated fairly by the U.S. justice system. The research evidence that I have found seems to support my belief strongly. It is not my intent to provide my students, many of whom are minorities, with information that will foster hatred within them against the U.S. judicial system. I hope to give my students a better understanding of how the judicial system deals with minorities with the belief that if one day they find themselves, their relatives, or their friends entwined in the U.S. court system, they will have knowledge they can use to their advantage against a judicial system which has historically been biased against minorities. Also, one day some of my students might find themselves in positions of responsibility in which they may effectuate changes in our judicial system that will be to the benefit of all Americans.

In my unit I will examine several aspects of the judicial system and discuss how minorities are treated by these segments of our justice system. In these discussions I will briefly examine how the O.J. Simpson, Claus von Bulow, and William James cases fared with each of these segments of the U.S. judicial system. Before beginning my unit I want to ask my students to predict what is going to happen in the O.J. Simpson, Claus von

Bulow, and William James cases. I realize that many, if not all of my students, may have very little or no knowledge of the Claus von Bulow and William James cases. I will provide them with the basic information concerning each of these cases. I also realize that the Claus von Bulow case has already been resolved in the Rhode Island courts. The information that I will provide my students with concerning Claus von Bulow will be the basic scenario that led up to his arrest, withholding the court results. I don't feel it is necessary to provide my students with any information about the O.J. Simpson case because of the vast media coverage.

Claus von Bulow was born in Copenhagen, Denmark on August 11, 1926. Claus married Martha ('Sunny') von Auersperg on June 6, 1966. Martha's maiden name was Crawford. (Martha acquired the last name of von Auersperg when she married Prince Alfred von Auersperg on July 20, 1957.) Martha's father, George Crawford, had amassed a huge fortune from founding Columbia Gas and Electric. At his death this company was valued at three quarters of a billion dollars.(Dershowitz, p. xx) There were two major events that led to von Bulow's arrest. One was Maria Schralihammer's, 'Sunny's' private maid or lady-in-waiting, testimony that Claus waited an extremely long time in summoning a doctor the first time 'Sunny' lapsed into a coma on December 27, 1979. Maria also testified that she found a bottle of insulin in a black bag belonging to Claus prior to 'Sunny' lapsing into her second coma (which she still suffers from). The Rhode Island authorities claim that each of these comas were the result of insulin overdoses. Two, at the time of 'Sunny's' second coma Claus von Bulow was involved in an extramarital affair with the soap-opera actress Alexandra Isles. The Rhode Island authorities claim that Ms. Isles had given Claus an ultimatum that either he divorce his wife or that she would end their relationship. It was shortly after this ultimatum that 'Sunny' lapsed into her second coma on December 21, 1980. It is at this point I will ask my students to make their prediction on what they believe would be Claus von Bulow fate in the Rhode Island courts.

The third case I will ask my student's to predict the outcome of involves William James, a 67 year old African American from New Haven who is accused of murdering his livein girlfriend on June 29, 1994. James claims that he shot Sherry Drakes in self-defense during a fight in the kitchen. Prior to this incident James had shot Drakes twice in two separate prior incidents. The court records also state that Sherry Drakes had stabbed and had hit James in two prior incidents also. It is at this point I will ask my students to make a prediction on the outcome of this case. I will also have my students follow this case throughout the teaching of this unit because this case is still pending.

Before beginning my unit I feel it is important that my students become familiar with some of the legal terminology associated with the judicial system. Thus, one of the first lessons of my unit will involve administering a pre-test for prior knowledge of some of the legal terminology that I will be exposing my students to throughout my unit. I will also administer a post-test involving this terminology at the conclusion of this unit. The pre/post test is located on one of the resource pages found at the end of the unit. Some of the legal terms included on these tests will not be used directly in my unit. However, my students will be exposed to this terminology via other sources that I will use in conjunction with my unit.(i.e. films, a court visitation, speakers-judges, lawyers, and taped coverage of the Simpson trial)

The first area of the U.S. justice system I wish to examine with my student after the pre-test has been administered are the police and certain law enforcement agencies. This seems like a logical place to begin because most individuals who are introduced to the U.S. judicial system have their first contact with the judicial system as a result of some contact with a law enforcement agency. There are two recent incidents which typify why minorities tend to be distrustful of law enforcement officers. The first incident is the Rodney King beating. Rodney King was shot with a stun gun, beaten with police batons, kicked, stomped, and struck at least 56 times. However, most of the police officers involved in this incident were cleared of using excessive

force. Former chief of police of Los Angeles, Daryl Gates, referred to the King incident as an aberration (Mann, p. 134). Gates felt that this incident did not typify the actions of the Los Angeles police. I find this hard to believe because in the previous year to the King beating the city of Los Angeles paid out 8.1 million dollars in similar cases of excessive force according to Coramae Richey Mann in her book *Unequal Justice: A Question of Color*. Mann goes on to state that in 1990 more than 600 complaints of excessive force were lodged against the Los Angeles police and 127 more were lodged with the Police Misconduct Lawyer Referral Service in the first two months of 1991. In addition, the American Civil Liberties Union of Southern California reports receiving fifty-five complaints against the police every week from African Americans and Hispanic citizens. What is alarming about these facts is the fact that these statistics from the state of California only represent a fraction of such police practices taking place daily nationwide, according to Mann.

The other incident which typifies why minorities tend to be distrustful of law enforcement agencies involves a recent social roundup held by Alcohol Tobacco and Firearm (ATF) agents reported by the New York Times in its July 18, 1995 issue. The reason I bring this issue to the forefront is because of a discussion we had in our seminar concerning law enforcement agencies. We talked about how it might be common in some local and state enforcement agencies to find racism and brutality against minorities in certain areas of the United States but that we felt that generally minorities were treated more fairly by federal authorities. However, this New York Times article illustrated how this belief was untrue. This article told how a group of ATF agents were at a roundup in which racial bigotry was openly displayed and enthusiastically supported. It was first reported that there would not be any legal action taken against these ATF agents because the roundup occurred on their own time, however, it has been recently reported that they may face sanctions from the ATF agency or the Justice Department. It has also come to light that the video showing this roundup was taken by a right-wing militia group with the intent of embarrassing the ATF. It is alleged that the derogatory sign with the word 'Niggers' was posted by this militia group. This still does not excuse the ATF agents for the other bigoted activities that were alleged to have happened at the roundup. It is ludicrous to believe that these ATF agents check their racial bigotry at the door when they return to work and do their job without showing their bias toward minorities. Congress is currently investigating charges of rape and drug use at this ATF roundup. It must be noted that leaders of the ATF and the FBI don't condone this type of behavior and racial bigotry. These two incidents illustrate why minorities are at times distrustful of the police and law enforcement agencies.

In a study of police personnel statistics by Brian Reaves in 1990 entitled *State and Local Police Departments* he reports that in the cities and law enforcement agencies in his study there were 793,020 police employees, of which 595,869 were sworn police officers. Most of were white males. The percentage breakdown was as follow: 83% white, 10.5% African American, 5.2% Hispanic, 1.3% other racial ethnic groups. This large number of white law enforcement officers can pose a serious problem to a minority's liberty because it is at the police officer's discretion in most cases whether an arrest is made. Police are supposed to enforce all laws equally without regard to a particular offender's race. Reaves' report was published by the U.S. Government Printing Office in Washington, D.C.

According to Mann in *Unequal Justice: A Question of Color* there are a variety of laws that are so broad or ambiguous that a police officer is in a position to stop or arrest an individual based on a personal interpretation. In my opinion, one such law in which a police officer is given a wide range of discretionary power is the 'interfering with the police' statute. I personally have seen this law used against individuals (especially minorities, many whom have been African Americans) for simply questioning a police officer in a situation where the officer's safety was not in jeopardy and in cases where there was not a crowd which could have been incited. The point that concerns me is when a law enforcement officer who is racially biased is left

to interpret an ambiguous law when a minority is involved injustices can result. The chances of this minority being arrested are greater just because they are a minority and because the officer happens to be racially biased, which is not fair. Even in cases when the law is not ambiguous minority members can be arrested if they are being confronted by a law enforcement officer who is racially biased. For example, how can one of the ATF agents who was at the roundup be trusted to enforce the law in an impartial manner when he is racially biased? O.J. Simpson's defense lawyers have argued that Mark Fuhrman, a Los Angeles police detective involved in the investigation of the case, is racially biased and that he acted on these feelings by planting some incriminating evidence against their client O.J. Simpson. I intend on asking my students if they believe it is true what O.J.'s defense attorneys have said about Mark Fuhrman. I will also ask my students on what facts they have based their opinion.

When one examines police attitudes toward minorities one must examine what Mann refers to as 'street justice' or 'order maintenance policing'. Mann quotes Carl B. Klockars, the author of *Street Justice: Some Micro-Moral Reservations-Comment on Sykes*, as saying that police understand 'street justice' to be appropriate and necessary (i.e. morally justifiable and socially desirable) in situations where the law and courts would be likely to refuse to punish with the severity that police themselves believe the offense warrants. Klockars adds that 'street justice' is usually invoked when an offense is against a police officer. This would involve any incident that insults a police officer or causes the officer to lose face. For example, if an officer has to chase an individual over fences, through alleys, or through back yards this would warrant one or two good punches once the offender is caught. The more severe the offense is perceived by the police officer the more severe the 'street justice'. According to Klockars assaulting a police officer justifies 'street justice' severe enough to send the offender to the hospital. Shooting a police officer justifies 'street justice' severe enough to send the offender to a trip to the morgue. 'Street justice', in my opinion, is something that is learned at a very early age by minorities. I know that it was told to me that never make a cop chase you because when he catches you, you are going to pay for it. I intend to ask my students if they are familiar with this concept of police 'street justice'.

The notion that some police officers are prejudiced against minorities is not a debatable question in my opinion. I believe that police officers reflect American society. It may be 1995, but racism is still alive in America. I think this is supported by the Rodney King incident and the ATF round-up. Mann quotes Lawrence W. Sherman, the author of *Causes of Police Behavior: The Current State of Quantitative Research* (1980) as stating that 'the more white officers dislike blacks, the more likely they were to arrest black suspects.' This makes one wonder about the arrest record of those ATF agents who attended the roundup in regards to African Americans. More important is my concern about what I want my students to learn from the information I will present to them concerning the police and law enforcement agencies. One of the Fellows in my seminar, Gary Highsmith, made a statement that I intend to impart to my students. It goes like this, 'I would rather deal with the sad truth than deal with a merry lie'. The sad truth that my students have to deal with is that racism does exist in police departments and law enforcement agencies and that these officers will act upon their bigoted feelings if given the opportunity. Once my students have acknowledged this fact, they must take preventive steps so as not to suffer at the hands of these police officers who may be racially biased. My students must take what they have learned about police and use it to their advantage by not giving a police officer an opportunity to inflict 'street justice' on them by antagonizing the officer in any of the ways that were discussed earlier in the unit. I also will strongly emphasize to my students that all white police officers are not racially biased. I have found that just telling students something like this will not change their opinions if they have already established some strong opinions on the subject. I intend to have several police officers visit my class and talk about the issues we have discussed in relation to 'street justice' and their racial views. Some may argue that a prejudiced police officer can mask his true feelings in a situation like this. Even if this is true,

I strongly believe that this type of officer would have a hard time continuing to act in a racially biased manner with minority arrest victims having talked to and looked into the eyes of my minority students and professing that they treat all prisoners fairly according to proper police procedure. Finally, I will encourage my students to think about becoming police officers because sometimes the best way to effectuate a change in an organization is from the inside. I will also try to get my students to understand that many police departments and law enforcement agencies actively recruit minorities in the hopes of ridding their departments of racism.

The next aspect of the judicial system I wish to review with my student is the bail system. The *New College Edition of The American Heritage Dictionary of the English Language*, 1981, published by Houghton Mifflin Company, defines bail as security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of his appearance for trial. In the case of O.J. Simpson he was denied bail because in the state of California a person who is accused of a capital felony is not afforded the privilege of bail. Even though O.J. Simpson was not denied bail because of his race, the fact that he was not able to be released on bail can have an adverse affect on his case. The reasons why this is the case will be discussed later in this unit. In the case of Claus von Bulow he was released on a \$100,000 surety bond during his first trial and was released on a \$1,000,000 bail during the appeal of his conviction. The fact that Claus von Bulow was afforded the privilege of bail would work to his advantage in proving his innocence. William James, a retired machine operator living on Social Security was unable to pay his \$150,000 dollar bail. James' situation reflects what normally happens to a minority citizen who happens not to be affluent. I will discuss in detail all of the disadvantages James will face because of this situation at another point in the unit. Even though both O.J. Simpson and William James are at a disadvantage by not being released on bail, O.J. has a definite advantage that William James does not possess. O.J. Simpson has a multi-million dollar defense team at his disposal while James has a public defender representing him.

There are several problems faced by an individual who is denied bail or can not afford bail. One, the individual is denied their freedom. Even though an individual is assumed innocent until proven guilty, individuals who are not released on bail are usually not convicted but are held in the same facilities which house convicted criminals. This environment is extremely dangerous. Stabbings, murders, and rapes are common occurrences in these facilities. Imagine the affect this can have on an individual, especially if the person is innocent. Two, people that are denied bail are not able to assist in the adequate preparation of their defense. Some people may argue that in O.J.'s case that the fact that he was not released on bail will not hamper his defense because of the high priced lawyers and detectives he has working on his behalf. I would disagree. One would just have to look at the Claus von Bulow case to understand why that is not true. It was not until Claus was out on bail during his appeal that he was able to hire Alan Dershowitz. This only came about because while Claus was out on bail he consulted with Gilbert Verbit, a law professor at Boston University Law School who had family connections who were part of the Newport society. When Claus asked Gilbert to recommend a lawyer who specialized in criminal appeals he recommended Dershowitz(Dershowitz, p. 49). It should be noted that Alan Dershowitz is a part of the Simpson defense team. Also, while Claus von Bulow was released he was in a better environment in which to make some critical decisions concerning his case without fearing for his personal safety. The argument could be made that O.J. Simpson is being held in isolation, so there is no threat to his personal safety and that any critical decisions he had to make he was doing in a safe environment. To anyone who would put forth this argument I would like to ask them how clear would you be thinking if the only person you had to talk to when you were not in court or in conference with your lawyers was a guard for a year. O.J. does have occasional visitors, but it is still not the same as being freed and in an environment that you are accustomed to, especially when making critical decisions which can affect the rest of your life. In the case of William James he is incarcerated at the Whalley Avenue Jail because he was unable to make bail. James has the Assistant Public Defender Jerome Rosenblum representing him in court. According to the New

Haven Register Rosenblum is currently involved in some 50 felony cases. One must wonder how much time he has to devote to the James' case. If James' was out on bail he would be assisting in the preparation of his case and looking for witnesses to support his claim that he acted in self-defense. Another disadvantage according to Mann for the pretrial detained is that they usually receive a more severe sentence if convicted. Also, if the person happens not to be affluent, not making bail can disrupt their employment.

Mann goes on to cite the National Minority Advisory Council on Criminal Justice, a national fact finding body, that minorities usually experience the following with the current bail system and denial of bail—

1. legal maximum bail setting
2. exorbitant bail for alleged major crimes and conspiracies
3. extremely high bails for minor offenses
4. overcharges at arrest with concomitant high, impossible bail
5. the application of multiple charges, with bail imposed on each charge
6. defendant has to suffer ghastly jail conditions
7. defendants who are detained in jail are thereby coerced into plea negotiations to settle matter more rapidly
8. research has demonstrated repeatedly that detainees are more likely to be indicted, convicted, and sentenced more harshly than released defendants.

When the idea of bail first was instituted, its intent was to ensure that a person accused of a crime would appear for trial. Mann claims it loses its significance when minorities are the defendants, because the reliance on money to make bail works against the economically disadvantaged and minorities. The failure of William James being able to afford his \$150,000 bail illustrates this point. It seems that the bail system favors the affluent who usually have no problem posting exorbitant bails, such as was the case with Claus von Bulow. There was a project conducted by the Vera Institute of Justice in New York City called the Manhattan Bail Project between 1961-1964 in which defendants were released on their own recognizance (ROR). Mann reports that a majority of the defendants did appear for trial. Coramae Mann also cites a study by James Austin, Barry Krisberg, and Paul Litsky in 1985 entitled *Evaluation of the Field Test of Supervised Pretrial Release: Final Report* in which 90% of the felony defendants released on supervised pretrial release (SPR) did not flee and were not rearrested. In addition, 75% of these SPRs were minorities. Why then are minorities still facing this repressive bail system that is based on money? It seems that judges are intent on acquiescing to the public belief that society needs to be protected from what they refer to as the dangerous elements of society. This leads judges to set bail so high that they are assured that these types of defendants don't have any chance of raising or acquiring the bail necessary for release. Unfortunately, usually many African Americans and other minorities are stereotyped as dangerous and must suffer from this social and judicial

bias.

It has been determined that a defendant's demeanor and appearance can have an effect on a defendant's pre-trial release, especially if the defendant is trying to get released on his own recognizance. In 1979 Charles E. Frazier in his study called *Appearance, Demeanor, and Backstage Negotiations: Bases of Discretion in a First Appearance in Court* claims that he observed in a court serving a six county Florida jurisdiction that there was a greater chance of receiving a more severe bond disposition for persons who were unconventional in appearance and who were less respectful in demeanor. In 1980 Frazier would define what he meant by unconventional dress in a study entitled *Pretrial Release and Bail Decisions: The Effects of Legal, Community, and Personal Variables* as an individual who wore his clothes sloppily, failed to comb his hair and generally displayed an unkempt appearance. Thus, the 'Afro', the Jamaican dreadlocks, and the baggy clothes worn by the young people of today would be classified as 'unconventional dress'. In Frazier's 1980 study he stated that a defendant's demeanor was more influential in a judge's decision on whether to release an individual on his own recognizance than his appearance. Seeing as a majority of African American defendants did not feel it is possible to get a fair trial in this country according to a study by Derrick A. Bell in 1973 called *Racism in American Courts: Cause for Black Disruption or Despair?* it is not surprising that African American defendants demonstrate disrespect toward the courts through their postures, expressions of disgust, or smirks of levity. I intend of showing the film *Reversal of Fortune* to my class at the end of my unit. I will direct my student's attention to the dress of Claus von Bulow during both of his bond procedures. O.J. Simpson did not have the option of any bail hearings as did Mr. von Bulow, but I will ask my students how O.J. dressed for each day of his trial just so that my students can understand how important it is to come to court dressed neatly. I will also ask my students how they think William James came to court dressed for his bail hearing.

The 8th Amendment specifies that excessive bail shall not be required. However, this does not seem to apply to minorities. Even when predetermined bail amounts were instituted for specific crimes to prevent defendants from being subject to the capricious wishes of a judge who was intent on setting unwarranted exorbitant bails did little to alleviate this problem. The judicial system countered this action by simply overcharging defendants with a multitude of charges. Each charge carrying with it a specific bail amount. When all of these amounts were added up, once again the defendant was unable to make bail. There are three factor taken into consideration in setting bail in most states, according to Mann. They are: 1. the seriousness of the crime 2. prior criminal record 3. strength of the state's case based on the premise that the greater the chance of conviction, the stronger the interest in fleeing. With most bail systems a defendant usually only has to put up 10% in cash of the posted bond and have some sort of collateral for the remaining amount. A defendant can also try to use the services of a bail bondsman in order to get released on bail. The bondsman usually charges 10% of the bail amount. The existence of bail bondsmen does not always guarantee a minority's release from jail. Mann states that many bondsmen are Euro-American and harbor prejudices against African Americans and will not offer their services to minorities. Some bondsmen will not accept cases with low bails. Also, some bondsmen adopt stereotypical attitudes that minorities are poor bail risks. There are bondsmen that are as crooked, they will take a defendants few possessions as additional security and never return them after the case has been resolved. Students need to be made aware that if a person fails to show up for their court appearance they lose the entire bail amount. This includes anything that was put up for collateral. This is why some relatives and friends are hesitant to use their homes and other worldly possessions for bail. The bail system is another area of the U.S. judicial system in which my students must realize that minorities are not treated fairly. I will emphasize to my students that it is important that they maintain a clean police record and a good employment record. This will increase their chance of being released on their own recognizance. In addition, I will remind my students that their dress and demeanor in court can have an effect on whether a judge will decided to release them on their on recognizance. I will also

inform my students that if they ever contemplate committing a serious crime, they better realize that if they caught that their chances of being released on bail are slim unless their parents are wealthy and willing to take the risk of putting their possessions up for collateral for bail.

The 6th Amendment states that an individual has a right to an impartial jury trial in criminal cases by one's peers. This is the next area of the U.S. judicial system I wish to explore with my students. I intend to talk about the grand jury and the trial jury. I think that a majority of my students might not understand the function of the grand jury. The grand jury can indict people based on a majority vote arrived at privately and secretly without the accused or the accused's defense counsel being present. The grand jury can refuse to criminally indict the defendant, at which point the defendant is released. The grand jury can alter or reduce the charges. The grand jury system was put in place to make sure U.S. citizens could not just be forced to go to court on trumped up charges by a local, state, or federal prosecutor. At one point when the grand jury was established one of its main purposes was to make sure that the charges that were levied against a citizen had some legal merit. Also, they, were usually composed by using the 'key man' method according to Mann. That is not the case for the most part now. 'Key men' are usually prominent members of the community in the places that still employ this method. Usually they are white males. Some states use these 'key men' for the purpose of selecting prospective jurors. One major problem with this 'key man' method is that 'key men' usually select people like themselves for jury duty, thus excluding minorities. The methods most used for selecting prospective jurors today rely on automobile registration lists, property tax rolls, and registered voter's lists. Each of these methods have built in biases favoring the white middle class. Each list just cited excludes many minorities because many minorities do not own cars, homes, and fail to register to vote. The book *Unequal Justice: A Question of Color* offers several suggestions to remedy this situation so that a better representative cross section of the community is selected for prospective jury duty. Prospective jury lists could be drawn from telephone directories, driver license lists, utility customer lists or the welfare rolls. This would ensure minority representation .

Another obstacle which has excluded minorities from jury duty was the peremptory challenge in which the prosecutor and the defense attorneys had a specified number opportunities in which they can exclude an individual from jury duty without explaining why they chose to do so. The Supreme Court upheld the right of prosecutors to eliminate all prospective African Americans jurors via their peremptory challenge in trials with African American defendants in *Swain v. Alabama* (1965) because they feared that blacks would be prejudiced in favor of the black defendant. How then could prosecutors justify having an all white jury when a white defendant was involved, should they not also be afraid that a white jury might be prejudiced in favor of the white defendant? Prosecutors' prejudice was clearly shown in presenting such an argument. The fact that the Supreme Court backed such an argument is even more appalling. It took the Supreme Court until 1986 to see the folly in this argument. It was in the case *Batson v. Kentucky* (1986) that the Court ruled 7 to 2 that prosecutors have the burden of proving that their peremptory challenges were not based on race. As discussed earlier, it is still possible to exclude blacks from jury duty by using the 'key man' selection process. Another method used to exclude blacks from prospective jury lists was gerrymandering(dividing a state, county, or city into voting districts so as to give an unfair advantage) which resulted in blacks being excluded from voting lists that were used for prospective jury selection. In O.J. Simpson's case a majority of the jurors happen to be African American. Seeing as this was a high profile case with mass media coverage, it would not have been possible to exclude blacks from the jury intentionally without creating a public uproar. But as they say anything is possible in the Los Angeles courts. In the case of Rodney King his case was transferred to a white rural community outside of L.A. which resulted in a predominantly white jury which exonerated most of the officers involved in the horrendous beating. When my class views *Reversal of Fortune* I will have them examine the racial makeup of the Claus von Bulow, then if the William James case goes to trial while this unit

is taught, we will also examine the racial makeup of his jury if he chooses to have a jury trial.

I would now like to have my students turn their attention to the actions of predominantly white juries and what has happened to African Americans and other minorities defendants in relation to the death penalty. The death penalty was being so capriciously and arbitrarily applied to African Americans that the Supreme Court in *Furman v. Georgia* (1972) decided that the death penalty as then administered was unconstitutional and constituted cruel and unusual punishment in violation of the 8th Amendment. Why did white juries, especially in the South, hand out the death penalty to blacks quicker than they could blink their eyes? I think the answer to this question lies in the fact that in cases in which the victim was white, the predominantly white juries were more apt to hand down the death penalty. Samuel R. Gross and Robert Mauro in their study in 1989 entitled *Death and Discrimination: Racial Disparities in Capital Punishment* assert that jurors are more horrified by a murder in which they can empathize or identify with a victim who is similar to themselves, a friend, or a relative. As a consequence, when the victim is white and the jurors are white and the defendant is a minority with whom the jurors can not identify, Gross and Mauro assert that the horror of the murder is intensified for the white juror. As a result, the white jury reacts more punitively toward the killer of a white. The race of the victim has played a great role in whether a defendant receives the death penalty in the United States. It shouldn't but it does. The statistics back up this gruesome fact. Robert Bohm in his article 'Race and the Death Penalty in the United States' in the book *Race and the Criminal Justice System* states that between January 17, 1977 (the first post-Furman execution) and September 21, 1990 one hundred forty persons were executed in the United States. 56% were white, 39% were black, 5% were Hispanic. Of the one hundred forty-two victims, 85% were white, 11% were black, 3% were Hispanic, and about 1% were Asian. Even though blacks are murdered at a higher rate than whites. Robert Bohm got these statistics from *Death Row, U.S.A.*, 1990, published in New York by the Legal Defense and Educational Fund of the NAACP in its September 21st issue. All seventy-eight whites that were executed during this period had killed whites. Of the fifty-five blacks executed during this period 71% were executed for killing whites and 29% of this group were executed for killing a black. The most alarming fact during this post-Furman period is that no whites were executed for the killing of a minority.

Bohm goes on to assert that in Florida between 1973 and 1977, a person that was convicted of aggravated murder of a white, regardless of whether the perpetrator was white or black, was more likely to receive the death penalty than a person of either race convicted of aggravated murder of a black. Bohm reported that a black person convicted of an aggravated murder of a white was more than seven times more likely to receive the death sentence than was a black who killed a black, while a white person convicted of an aggravated murder of a white was five times more likely to receive the death penalty. In Florida, a white person convicted of an aggravated murder of a black almost never received the death sentence. These statistics speaks volumes to how the victim's race is a major determinant in a defendant receiving the death sentence. Bohm asserts that prosecutors are not immune to this process of victim identification, which may also help to account why the death sentence is more actively pursued when the victim is white. The Susan Smith case is a good example of this, the victims were white and the prosecutor sought the death penalty. Bohm said there are several other factors that may influence a prosecutor to seek the death sentence. One being the fact that there are scarce resources available a prosecutor must take into consideration whether a conviction can be obtained. Prosecutors may feel according to Bohm that white victim cases are more visible and disturbing and are more winnable than black victim cases. Also, Bohm feels that since in many jurisdictions where prosecutors are elected officials, some of them may believe that white victim cases are the ones that the majority of their community are most interested in seeing prosecuted. The victims in the O.J. Simpson case were white. One of major decisions of the prosecutors early in the Simpson case was whether they were going to seek the death penalty if O.J. was convicted. The L.A. District Attorney Office decided that they were not

going to seek the death penalty. Many lawyers observing the case felt that the death penalty was not sought because they felt .O.J. Simpson's celebrity status meant that even if a conviction resulted, the jury would never vote for the death penalty. This seems to support the fact that prosecutors are more likely to seek the death sentence only if they think one is obtainable at the onset of the case. In Claus von Bulow's case the death penalty was never considered because his wife 'Sunny' is still alive even though she is in a comatose state. As far as the William James case the prosecution has not stated whether it will seek the death sentence. However, I seriously doubt that the state of Connecticut will pursue the death penalty because they would have to prove that intent along with several other aggravating circumstances existed while the capital crime was being committed. For example, the murder had to have been committed in a cruel and heinous manner. I will also point out to my students that the victim is black and ask them if they believe this will affect the prosecutor's decision on seeking the death penalty.

Earlier in this segment of the unit I discussed that the Supreme Court had struck down the death penalty as it then existed in the United States with its ruling in the *Furman v Georgia* (1972) case. This decision did not completely close the door on the death sentence in the U.S. Within four years Georgia would rewrite its death penalty statute so that it followed the guidelines that the Supreme Court had established as a result of the *Furman* case. The guidelines included two trials, one trial to convict an individual of a capital offense and a second trial to decide if the death sentence should be exacted. In 1976 the Supreme Court upheld the new Georgia death penalty law in *Gregg v. Georgia* (1976), stating that capital punishment was not cruel or excessive if it fits the crime. Also, the Supreme Court stated it is not incongruous with contemporary moral standards if juries are willing to impose it. The Court went on to state in the *Gregg* case that retribution provides a sufficient rationale for the death penalty. There were two other guidelines that a state's death penalty had to meet according to the Supreme Court. The death penalty statute had to have provisions in which mitigating circumstances of the crime and the defendant were considered. And if the death penalty was imposed, there had to be an automatic state supreme court review provision in the statutes to make sure all criminal legal procedures had been properly met.

In my opinion these guidelines still failed to address racial discrimination in the handing out of the death sentence. The Legal Defense and Educational Fund of the NAACP reported that in 1992 there were 2,588 defendants on death row, with almost half or 48.6% of them being minorities(38.9% were African Americans, 7.1% were Hispanic, 1.8% Native American, .073% Asian American) One factor that may contribute to this high number of minorities receiving the death sentence is that individuals can be excluded from a jury if the potential juror states that he or she does not favor the death penalty. Mann in *Unequal Justice: A Question of Color* refers to these juries as 'death-qualified' juries because they don't contain any jurors who do not believe in administering the death penalty. Criticism against 'death qualified' juries have come from several sources. One of them being Craig Haney in an article entitled *Juries and the Deaths Penalty: Readdressing the Wtherspoon Question* written in 1980 in the publication 'Crime and Delinquency'. Haney states that "death-qualified' juries are unrepresentative of the larger community are inclined to support the prosecution, and are predisposed to convict, since lengthy discussion by the judge and the attorneys prior to jury selection reinforces a suggestion of the defendant's guilt.' Haney goes on to point out that in experimental studies, the acceptance of pro-capital punishment attitudes made subjects more inclined to convict and recommend the death penalty in hypothetical capital cases. Mann states in her book that some opponents of 'death-qualified' juries feel that these juries violate an individual's Sixth Amendment right to a jury which represents a cross-section of the community, since a large number of blacks and women who view the death penalty less favorably are excluded. Seeing that blacks are disproportionately charged with capital offenses, it makes sense that they be represented on death penalty juries.

The next aspect of the judicial system I wish to review with my students concerns the type of legal representation afforded minorities who are unable to acquire high priced lawyers. The Sixth Amendment of the U.S. Constitution also provides for assistance of counsel for an individual's defense. There are a number of cases which established a defendant's right to counsel. One was Johnson v. Zerbst (1928), which required that counsel be appointed in federal cases. This decision was not applicable to the states. This would be partly rectified by the Supreme Court in Powell v. Alabama (1932), in which it required state courts to provide defendants with counsel for defendants who were charged with a capital offense. In 1963 with Gideon v. Wainwright, the Supreme Court declared that anyone who was charged with a felony had to be provided with counsel if they could not afford counsel. With Argersinger v. Hansen in 1972 the right to counsel was extended to misdemeanor cases which would lead to incarceration. Over time the right to counsel would include every critical step in the prosecution journey—arraignment, preliminary hearing, plea entry, and sentencing.

There are three primary types of public defense systems used by states for defendants who can not afford to hire private counsel, according to Mann. One of these systems is called the assigned council system. In this type of system the judge appoints an attorney for the defendant. One drawback to this system, especially in the South and Midwest, is the reliance on the 'good old boy system' to appoint counsel for the defendants which tended to be rooted in nepotism and favoritism which resulted in the exclusion of minority and nonminority lawyers inclined toward protecting the defendant's civil rights and were concerned with obtaining justice for their client. Another system used by states was referred to as the contract system. In this type of system the county would enter into contracts with a lawyer, a law firm, or a bar association to provide legal services for an individual who could not afford to pay for private counsel. Once again nepotism and favoritism can be major drawbacks to this system. In addition, local politics can come into play in selecting who would acquire this legal contract. Obtaining the best legal representation for these individuals becoming a secondary consideration. The third type public defense employed by some states is the public defender program. In this system a state establishes a public defender's office which hires attorneys who will represent defendants who can not afford to hire their own attorneys. Public defender attorneys are usually inexperienced and just out of law school. Mann in her book *Unequal Justice: A Question of Color* states that there is a common problem shared by all three of these public defender systems. Since these public defenders work on a daily basis with the same prosecutors, there is a tendency for these attorneys to become coopted. Mann means by this that these public defenders might fight less in one case in order to get a better deal in another case. This is especially true, claims Mann, if a public defender knows a particular judge may be irritated by jury trials. Claus von Bulow and O.J. Simpson were wealthy enough that they could afford the best attorneys that money could buy. Unfortunately for William James he has to rely on the public defender system that the state of Connecticut employs. I intend on having a lawyer from the public defender come to my class to speak so my students can get first hand information about Connecticut's public defender system.

Many legal scholars believe that privately hired counsel can provide a defendant the best legal representation in most cases. Mann cites a study by James Eisenstein and Herbert Jacobs entitled *Felony Justice: An Organizational Analysis of Criminal Courts* in 1977, which states that even though the conviction rate of public defenders was slightly higher than that of private or assigned counsel, public defenders do a better job for their clients than assigned counsel or contract counsel in receiving shorter sentences.

The lawyers that were hired to represent Claus von Bulow and O.J. Simpson were some of the best lawyers in the United States. In the case of Claus, his team was comprised of Heral Price Fahringer who served as chief defense attorney during Claus' first trial. Fahringer left Claus' defense team during the appeal because he could not work with Alan Dershowitz. Alan Dershowitz was the chief counsel for the appeal and the new trial

motion. Dershowitz also was the strategist and the consultant for the second trial. John Sheehan was an experienced and successful Rhode Island trial lawyer who served as co-counsel at both trials. There are two more lawyers that deserve mentioning that were a part of Claus von Bulow's defense team. They are John 'Terry' MacFadyen, a Rhode Island lawyer and former public defender, who was retained by Dershowitz as local counsel and associate for the appeal and the new trial, and Thomas Puccio who was chief trial lawyer for the second trial. The reason that I have mentioned all of these lawyers is that I intend to show the film *Reversal of Fortune* at this point. Thus, I wanted to list some of the key lawyers in the case. I would strongly recommend that prior to showing this film that the teacher read Alan W. Dershowitz's book *Reversal of Fortune*. O.J. Simpson has over forty lawyers working on his behalf. The key players are John Cochran(lead attorney), Robert Shapiro, F. Lee Bailey, and Alan Dershowitz. Each of the remaining forty lawyers are among the top in their area of expertise. I am very confident that once O.J.'s trial has ended there will be an excellent documentary or film covering what has been called the 'trial of the century'. I will use this film to help spur the discussion of the trial. At the pace the trial is going it will be over before the end of the summer, barring a conviction and the appeal. If there is a hung jury(the jury is unable to reach an unanimous decision) or if O.J. is convicted, there certainly will be a delay in the production of the documentary and/or film. The only person that William James will have representing him will be Jerome Rosenblum, Assistant Public Defender, as stated earlier.

The last aspect of the U.S. judicial system I wish to cover with my students is plea bargaining. In the O.J. Simpson and Claus von Bulow cases there were no plea bargaining offered, at least not publicly. And if there were any plea bargains offered, they were obviously rejected. In the case of William James there was a plea bargain offered by Gary Nicholson, assistant state attorney. James' lawyer recommended that James reject the offer because any substantial sentence would be too much for a 67 year old man. James agreed and opted for a jury trial. Plea bargaining goes back until the time of the Roman Empire, according to Mann, when it was referred to as 'judicial confessions'. A majority of felony defendants plead guilty to offenses in order to avoid trial and to achieve a lesser charge or a reduced sentence. The prosecutor plays an integral role in the plea bargaining process, because he determines the concessions that are to be made to the accused as they relate to the charges the accused faces or the sentence the accused will receive. A prosecutorial practice of overcharging an individual when initially indicting the defendant with the most serious charge(one that is usually unsustainable) is commonly used as a lever to induce a plea of guilty on a lesser charge. Since prosecutors are usually judged by the number of convictions they get, they tend to be more amenable to accepting guilty pleas to lesser offenses in order to save time and money on a risky major trial. Plea bargaining is also appealing to public defenders and judges because they reduce their case load. Plea bargains are presented on a 'take-it-or-leave-it' basis. Mann asserts that a fear of a determination of guilt or a harsh sentence if they go to trial often convinces many minorities to plead guilty to a lesser charge. A minority's defendant inability to make bail can also contribute to a decision to accept a plea bargain. Instead of waiting months in jail for your trial to begin, a minority defendant sometimes will accept the plea bargain in order to get released as soon as possible. William James has been in the Whalley Avenue Jail for over a year now awaiting for his trial to begin. As stated earlier, he refused to accept the plea bargain, so he sits in jail and waits. Mann says there are drawbacks to plea bargaining even though it is appealing to a minority defendant when he is trying to get his case resolved as quickly as possible. When a defendant agrees to a plea bargain, the defendant is surrendering numerous constitutional rights that can not be recovered once their guilty plea has been accepted and they are sentenced. For example, their rights guaranteed under the Fifth and Sixth Amendments, which give them the following rights-the right to remain silent, the right to confront witnesses, the right to proven guilty beyond a reasonable doubt, the right to a trial by a jury. Students need to understand that plea bargains, are not always as good as they appear to be.

I have attempted with my unit to examine several key segments of the judicial system and discuss how minorities are treated by them. At the same time I have taken three specific cases and related them to the different aspects of the judicial system that I have discussed. It was not my intention to show my students by using the Claus von Bulow case that if an individual is wealthy in the United States that they can buy an innocent verdict. In my opinion, I do believe that a great deal of money is sometimes necessary in order to get the right type of lawyer to ensure that different segments of the judicial system will treat you fairly. I believe that the O.J. Simpson's case is an example of what I have just stated. O.J.'s lawyers are not leaving a single stone unturned their efforts to prove his innocence. Throughout my unit I think I have shown how one's race can affect the type of justice an individual receives in the United States. I believe that certain parts of the William James case that I have highlighted throughout my unit exemplifies this point. The final question I will want my students to answer is, 'Does the O.J. Simpson case serve as an example that if a minority has a great deal of money he can overcome the disadvantages that commonly afflict the average minority when they are involved with the U.S. judicial system?' One final conclusion that I have come to as a result of my unit and that is that the mirror of justice in the United States is not blind, it knows when a Claus von Bulow's and a O.J. Simpson's images are being reflected in its mirror, as well as when there is a William James image is being reflected in its justice mirror, and it acts and reacts accordingly. To ensure that the justice system never gets the images confused, we have public defender lawyers and Johnnie Cochran type lawyers.

Lesson 1-2 Legal Terminology

Objective:

Students will take a pre-test concerning the legal terminology that will be used throughout this unit.

Content Outline:

Pre-Test of Legal Terminology.

Procedure:

1. Inform students that they are going to take a pretest on some legal terminology that they will be encountering with the teaching of this unit.
2. Tell students that the results from the test will not count, but that a post-test will be administered at the end of the unit that will be graded.
3. Administer the test
4. Once students have completed the pretest I will have them exchange papers and we will correct the tests.
5. I will then collect the tests so at the end of the unit we will be able to compare these results with their post-test results.

**This activity may take two lesson because as we review the terminology I will discuss some pertinent facts relating to each legal term were applicable.

Lesson 3 Police Speakers

Objective:

Students will question police officers concerning their views on police 'street justice' and their racial attitudes

Content Outline:

1. Student generated list of questions to ask police officers concerning 'street justice' and police racial attitudes.
2. At least 2 police officers will be needed to participate in this discussion. It is vital that one of the police officers be a nonminority.

Pre-class assignment

1. After I have discussed the segment of my unit concerning police 'street justice' and police racial attitudes toward minorities with my students, I am going to ask each student to create at least 5 questions they would like to ask two New Haven police officers concerning these subjects that we have discussed in class.
2. Prior to my students meeting the officers, I will take part of a class period to review and discuss the student generated questions to make sure that their questions cover all the major aspects of the subjects that we have discussed in class. I also want to ensure that each student will be able to ask a question without duplicating a question.
3. When I arrange for the police officers to come to my class, I will inform them of the subjects to be discussed.

Procedure:

1. I will introduce the officers to the class and ask the officers to tell the class a little about themselves.
2. Next, I will allow each student to ask the officers a question.
3. I will act as a facilitator during this class to make sure all of the major aspects of the two subjects are covered and to make sure the discussion does not focus on one point too long.

Homework:

Students will have to write a 1-2 page essay concerning their reaction and feelings to the police interview. We will discuss their reactions the following day.

Lesson 4 'Reversal of Fortune'

Objective:

Students will view the movie 'Reversal of Fortune' concerning the Claus von Bulow trial(s) and be able to state some of the major details relating to the case.

Content Outline:

1. Film 'Reversal of Fortune'
2. List of questions about major details of film.

Questions:

1. What was the name of Claus von Bulow's wife?
2. What happened to Claus' wife? Where did these events occur and when?
3. Briefly identify the following people as you view the film:
 - a. Alexander von Auersperg
 - b. Annie Laurie (Kneiss) von Auersperg
 - c. Cosima von Bulow
 - d. Maria Schrollhammer
 - d. Alexandra Isles
 - f. Richard Kuh
 - g. Stephen Famiglietti
 - h. Heral Price Fahringer
 - i. John Sheehan
 - j. Alan Dershowitz
 - k. John 'Terry' MacFadyen
 - l. Thomas Puccio
4. After Claus was arrested, what was his bail?
5. What was the verdict of Claus von Bulow first trial? What state did it take place in?
6. What was Claus' bail during his appeal?
7. Why did the Rhode Island Supreme Court order a new trial after Claus' conviction?
8. What was the final outcome of Claus' case? Do you agree with the final verdict? Why or why not?

Legal Terminology Pre/Post Test

Name:

Directions:

Answer the Questions below using the terms provided.

pre-trial

discovery

arraignment

on his own recognizance

sequestration

hung jury

mistrial

felony

misdemeanor

booked

arrested

grand jury

indictment

defendant

pre-sentence investigation report

verdict

bail

judge

prosecutor

defense attorney

jury

warrant

- a. the decision reached by jury or judge at the end of a trial:
- b. when the police record the charges in police records and take fingerprints and a photograph of a subject:
- c. a jury that can not agree on a decision:
- d. when the prosecutor and defense attorney exchange evidence that they will use in the trial prior to the beginning of the trial:
- e. a group of 6, 9, or 12 people form a body sworn to judge and a decision on some matter:
- f. security, usually a sum of money, exchanged for the release of an arrested person, as a guarantee of his appearance:
- g. a trial that becomes invalid because of basic error in procedure or an inconclusive trial, such as one in which the jurors fail to agree on a decision:
- h. a public official who hears and decides cases brought before a court of law for the purpose of administering justice:
- i. this report contains recommendations for sentencing from the victim, the prosecutor, and the presentence investigator:
- j. an attorney who prosecutes cases on behalf of a government and the people:
- k. a person is released based upon their promise that they will appear for their trial:
- l. the act or procedure of formally summoning a prisoner in a law court to answer an indictment.:
- m to seize and hold under authority of law:
- n. when the jury is kept in isolation for the duration of the trial:
- o. a written statement charging a party with the commission of a crime, drawn up by the prosecuting attorney and presented by the grand jury:
- p. a person against whom a legal action is brought:
- q. a jury of 1 to 23 persons convened in private session to evaluate accusations against persons with the purpose of determining if the evidence warrants a bill of indictment:
- r. the attorney who represents the person accused of a crime:
- s. a judicial writ(order) authorizing a police officer to make a search, seizure, or arrest, or to execute a judgment:
- t. an offense of less gravity than a felony, for which punishment may be a fine or imprisonment in a local rather than a state institution:
- u. any of several crimes, such as murder, rape, or burglary, considered more serious than a misdemeanor and punishable by a more stringent sentence:

COURT VISITATION

I intend to have my class visit a criminal trial while it is in progress. I have been told that is possible at times for the judge who is presiding over the case to speak to the class. The person to contact to arrange a court visitation is: George Manning, Supervisor of the State of Connecticut Family Relations Division, Superior Court, 235 Church Street New Haven, CT 06510 (203) 789-7903. Even though Mr. Manning is the Supervisor for the Family Relations Division of the Superior Court he said that he can put you in contact with the person in charge of the criminal division. Mr. Manning also advised me that if a teacher wanted to have a lawyer visit their class to speak to their students that they should contact the local bar association., which I plan to do.

STUDENT BIBLIOGRAPHY/RESOURCES

Connecticut Judicial Department. *Searching for Justice: Connecticut Courts, 1990*. Good source on Connecticut courts. I strongly recommend its use in discussing the William James case. This publication provides a detail account of an individual as they proceed through the Connecticut Courts. You can order copies for your entire class by writing: External Affairs Unit, 231 Capitol Avenue, Drawer N. Station A, Hartford, CT 06106, (203) 566-8219

Dershowitz, M. Alan. *Reversal of Fortune: Inside the von Bulow Case*. New York: Random House, 1986. Excellent source for information on the von Bulow case. It provides a comprehensive background on the case by one of its main participants. It is written at such a level that an 8th grade student would be able to comprehend the information contained in the book**

**Book is also recommended for teacher's use.

FILM

'REVERSAL OF FORTUNE' This film may be found in most video stores. It details the account of the Claus von Bulow case. It is based on the work of Alan M. Dershowitz who was a major player in the case.

TEACHER BIBLIOGRAPHY/RESOURCES

Friedman, M. Lawrence. *Crime and Punishment in American History*. New York, NY: BasicBooks, A Division of HarperCollins Publishers, 1993. This book provides a general history of the American criminal justice system from its beginning in the seventeenth century to the present time.

Kaplan, John and Jerome H. Skolnick. *Criminal Justice: Introductory and Materials*. 3rd ed. Mineola, New York: Foundation Press, 1982. This book details how our justice system actually works. It uses actual cases to illustrate at times how different segments of our judicial system works.

Lynch, J. Michael and E. Britt Patterson, eds. *Race and Criminal Justice*. New York: Harrow and Heston Publishers, 1991. There are two chapters in this book that I found very useful in preparing my unit. They were entitled 'Bias in Formalized Bail Procedures' written by E. Britt Patterson and Michael J. Lynch and 'Race and the Death Penalty in the United States' written by Robert Bohm. These works

contained important statistics and opinions concerning the justice system and minorities that I found valuable.

Mann, Richey Cormae. *Unequal Justice: A Question of Color*. Bloomington and Indianapolis: Indiana University Press, 1993. Chapter 5 'Unequal Justice: A Question of Color' presents an excellent overview of how minorities are treated by different segments of the U.S. justice system. I relied heavily on this text/chapter for information presented in my unit.

*Throughout my unit I have cited many research studies. Each study I cited was contained in two books I have listed in my bibliography. They were either cited from *Unequal Justice: A Question of Color* or *Race and Criminal Justice*. At the time of each citing I listed the year and the name of the researchers who conducted the research. For any further information concerning these research studies please check the bibliographies of these texts.

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