



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute  
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## **Playing the Race Card: Two Famous Criminal Trials**

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This curriculum unit is intended for high school seniors in a Contemporary Law class at Co-operative High School in New Haven. The course is designed to acquaint students with issues of criminal and civil law and courtroom procedures. A field trip to the New Haven County Superior Courthouse and the viewing of an actual trial in progress is an essential part of the course and one of its highlights for my students. One of the goals of this proposed unit, then, is to familiarize my students with basic courtroom procedures and terminology so that they can appreciate the experience and not be too confused by it. Another goal of this unit is to get students to enter into issues the criminal justice system has a responsibility to address, particularly the race question. One of the questions often asked before the O.J. Simpson case began was, "Can he get a fair trial?" If this question was appropriate for Simpson, with his "Dream Team" of attorneys, then what about those accused persons who must rely on overworked Public Defenders who often have precious little time to investigate adequately. How many under-represented defendants, many of them black, are victimized by the system because of factors beyond their control? Can our criminal justice system do better? What can we learn about the system that will lessen the chances of becoming unwitting victims ourselves? Most of my students have first-hand experiences with crime and the police. How can a knowledge of courtroom procedures help both students and teacher to learn more about society's racial attitudes and fears? How can events such as the O.J. Simpson trial help our awareness of how deeply divided our nation is over the question of race, and how real the consequences of racism are in a society which continues to play the "race card" on a daily basis?

In the Law course I teach, we study various issues facing the criminal justice system, one of which is the Fourteenth Amendment's "equal protection clause," as it applies to race. Within its historical context, obviously, the primary issue was legal status of the newly freed slaves. Today, the issue is fairness. Is justice really justice unless it is fair for all people, regardless of race or ethnic background? In the aftermath of the Simpson case, many white Americans were made aware of the perception by non-whites that there is not one but two systems of justice in our country, one for blacks and one for whites. This was not news for African Americans; but it is an important issue that needs to be pursued and disabled. What better form than my classroom, with the Simpson case helping to focus students' attention in such a way that discussion can flow naturally and non-threateningly. The recent public fascination with the Simpson case has been a social studies teacher's dream in many ways. The interest my students have shown in this trial, and their willingness to discuss the implications of then legal and social issues the trial has raised is something I wish to capitalize on in my law course. Now is the time, while the so-called iron is hot and recollections of Simpson fresh in people's minds, to create a unit in which students "face themselves" in the sense that they examine their own racial feelings within the context of how "fair" the legal system was to O.J. Simpson, and to what extent race

continues to be a factor in the criminal justice system.

## GOALS AND STRATEGIES

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On Tuesday, April 23, 1996, a Bronx jury of four blacks and two Hispanics deliberated four and one-half hours before ruling unanimously that the white subway gunman, Bernard Goetz, had “acted recklessly and without justification” in shooting Darrell Cabey twelve years earlier. Cabey, now 30 years old and paralyzed by Goetz’ final bullet, was awarded \$18 million in compensatory damages and \$25 million in primitive damages. Cabey’s lawyer, Ronald Kuby, said the jury’s decision “sends a message to all racists with guns who think young black lives are worth nothing—they’re worth a lot.” ( *New Haven Register* , April 24, 1996, page 1)

Race and violence. Two of the nation’s obsessions. Justice is served, and the book is closed on the infamous “subway vigilante” once and for all. But was Goetz a racist, or just a very frightened man trying to defend himself from being mugged on a New York subway on the afternoon of December 22, 1984? Goetz criminal trial ended in June of 1987 and a jury of 12 had “reasonable doubt” that Goetz was guilty of either reckless endangerment or attempted murder. They interpreted Goetz’s actions as justified self-defense. How could these two juries be so far apart? Was there new evidence? Did the rules change? Are there circumstances other than “evidence” that affect a jury’s deliberations and ultimately a just verdict? These are just a few of the questions students will attempt to answer as they are taken on a legal journey that should unravel some of the mysteries of the United States legal system.

Because of certain similarities that exist in trial procedures, and the issue of race in a high-profile criminal trial, this unit will compare the Goetz criminal case to the Simpson case. Students will study each case from grand jury to lawyer selection to jury selection; from opening statements to testimony to cross-examination to closing statements to verdict and beyond. In the process, students will be asked to role-play different parts in the two cases, forcing them to try to experience how it feels to be first a defense witness, for example, then a prosecution witness. In one case, a student might be preparing a legal brief for the defense of an accused murderer, in the next, for the state attorney’s office. The wealth of information available on both these cases makes them ideal for student research. An addition to research skills, this unit will stress writing, listening and verbal skills as well. Hopefully, through case studies such as these, students will develop a more balanced view of the law and reasons why the criminal justice system operates the way it does. This unit, I believe, will be a useful classroom resource for high school and middle school social studies teachers who want to challenge their students to become more involved in issues surrounding the criminal justice system and issues of minority rights.

## RACE AND RACISM IN THE UNITED STATES: A BRIEF BACKGROUND TO THE GOETZ AND SIMPSON CASES

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It would be a formidable task, if not an impossible one, to attempt to collect all the books and articles written on race and racism in America. To be sure, the twin topics of race and racism tend to be highly subjective ones, depending on the attitudes of the writer. Personal racial experiences, and one’s racial identity play an important role in an individual’s interpretation of not only why something happened, but even what happened,

when racial incidents occur. Where do my sympathies lie? Can I be totally objective in assessing the facts of a case? What are the facts, and how do they affect my feelings about race in America and my own attitudes toward those of another race? Often, what we believe to be the “facts” of the case differ because we tend to be intuitive about what the “evidence” means. What may seem to one person to be an objective piece of evidence, may seem tainted or plotted to a person who believes in a police conspiracy.

Racial mistrust in America is certainly nothing new. One hundred fifty years ago, French observer to the United States, Alexis de Tocqueville, stated, “The most formidable of all the ills that threaten the future of the Union arises from the presence of a black population upon its territory.” He went on to make comments that seem as appropriate in the America of the twenty-first century as they did when they were written: “The danger of a conflict between the white and black inhabitants perpetually haunts the imagination of the Americans, like a painful dream.” Fifty years ago, Swedish sociologist Gunnar Myrdal, in his classic study of race in America, “An American Dilemma: The Negro Problem and Modern Democracy,” concluded that race is the primary factor that helps determine a person’s future economic and social status. The racism and discrimination Myrdal documented in his book poses an obvious “dilemma” for the United States, since our founding principles of equal justice and equal opportunities are supposedly the birthright of all Americans, regardless of race. In the courtroom, Myrdal reported that a Negro is “far more severely punished than a white man for the same offense,” and found that “where crimes of Negro against Negro came to court the offender was dismissed lightly, but that in Northern areas there was less differentiation on the basis of race.” (Quoted in Greenberg, page 334) Certainly, there have been gains for black Americans since 1944, when Myrdal wrote his book; few would argue, however, that equal treatment of the races has become reality, by any stretch of the imagination.

Historically, race consciousness has always existed for black Americans; to identify a positive concept of self has been part of the struggle for equal treatment under the law. In 1941, the “Brown American Magazine” reported the following: “Trying to be black and an American is such a complicated task, it’s remarkable that so many of us have kept at it as long as we have.” (Quoted in Berry, page 388) According to W.E.B. Du Bois at the turn of the century, to be called “black” was to be despised, corrupt and evil; many blacks, he said unconsciously “glorified whiteness . . . because the world had taught them to be ashamed of their color, because for 500 years men had hated and despised and abused black folk.” (Quoted in Berry, page 395) This abuse of power by whites, especially in the South, resulted in intimidation and fear among black Americans. To quote a modern black social historian, Andrew Hacker, “Given the panoply of power (blacks) faced, the most common posture was resignation: a minority held down and apart with barely an avenue of appeal.” Acceptance? How long would fear of the police and separate treatment under the law continue to promote these feelings of fear and frustration? How long would it be before black Americans would be guaranteed the full citizenship described in the Fourteenth Amendment? Would the federal courts and Congress ever cut the legally imposed chains of segregation that imprisoned so many African American citizens?

Then, during the fighting of World War II, when black men gained the right to fight and die on an equal basis with white members of the armed forces, and black civilians were offered jobs by employers who had previously excluded them, the ball of economic opportunity and social equality began to roll in earnest. When North Carolina college students in the early 1960’s demanded the right to order a sandwich at a local lunch counter, and black citizens began to march to demand Constitutional rights to vote, and Martin Luther King invited whites to join in this nonviolent protest, more white Americans saw these activities as legitimate and responsible. A number of Supreme Court decisions in the 1940’s and 1950’s, including, “Brown v. Board of Education” appeared to put the moral and legal forces of government squarely behind the civil rights movement, right into the 1960’s. Until the mid-1960’s at least, civil rights for black citizens was a cause for all

Americans of good will, black and white alike.

Next came the looting and burning of the riots in Watts, Detroit and Newark. The police and National Guard were called in and many blacks lost their lives. With the advent of “Black Power” and separatist demands by members of the Black Panther Party, there was an irrevocable split in the so-called “Negro Movement.” White attitudes began to change as black demands became more militant. Inflammatory rhetoric flowed from newspapers such as Black America the newspaper of the Revolutionary Action Movement, which reported that its purpose was “to present a revolutionary program of national liberation and self-determination for the African captives enslaved in the racist United States of America, to forge a revolutionary unity among peoples of African descent . . . and to fight for the liberation of oppressed peoples everywhere.” (Quoted in Berry, page 420) The black historian concludes that after the riots of the mid-1960’s:

“ . . . race relations never returned to their former plane. . . . (Whites) saw a resentful and rebellious multitude, intent on imposing its presence on the rest of the society. Blacks were seen as trying to force themselves into places where they were not wanted or for which they lacked the competence. As the 1970s started, so came a rise in crimes, all too many of them with black perpetrators. . . . Worsening relations between the races were seen as largely due to the behavior of blacks, who had abused the invitations to equal citizenship white America had been tendering.” (Hacker, page 22)

With the assassination of Martin Luther King in Memphis in 1968, most hopes for the success of an integrated nonviolent end to black oppression ended. By the early 1970s, the police and the FBI’s attacks on Black Panthers, harassment of Black Muslims and wiretaps of other black nationalist groups were proving successful in destroying their effectiveness. There was widespread despair within the black community and disillusionment among whites. Racism’s ugly head was rearing itself once again spawned by violence and resulting in mistrust and fear.

Further questions of race are refused by statistics generated by our criminal justice system. When people worry about “crime,” they worry about violent crime—rape, robbery, assault and murder. Although blacks make up 12 to 13 percent of the general population, in almost all categories of crime the crime rates for blacks are disproportional to their share of the population. (see Table 1, “Arrests, Percentages and Proportions,” below) Blacks account for over half of the arrests for wrongful death and close to half in cases of rape; and account for 55.1% of all murder and manslaughter arrests. Of all robberies reported, blacks account for 60% of them, a number 5 times greater than for whites. Can students suggest reasons for this disparity in numbers? Furthermore, statistics show that more blacks are victimized by black robbers than are whites; although the crime of robbery is the one where more whites are victimized by blacks than other crimes. (Hacker, pp. 187-188) Why are whites often victims of this type of “inter-racial crime”? Are these economic-motivated crimes also racially motivated? These questions we will return to when we consider the case of Bernard Goetz.

Why are black Americans responsible for so large a ratio of crimes involving violence or the threat of violence? One explanation may be economic: Census figures show that blacks, aged 25-30 have a median income of \$14,754, a third lower than for whites, who earn \$20,436. In 1993, the unemployment rate for black men in their mid-to-late twenties was 12.4%, nearly double the white rate of 6.8%, and does not include those in prison (nearly 1 million individuals) or those no longer looking for work. Although criminals come from all levels of society, thieves who commit so-called “white collar crime” (who are more often white than black) have a wider choice of crimes with less chance of detection and arrest. Does economics play a significant role in the commission of crimes, especially potentially violent ones? Are people who are victims of poverty more

or less likely to commit illegal acts? These are excellent debate questions for students to discuss, especially in light of the statistics available. (See Tables 2 and 32 “Violent Crimes By Race,” below)

In the past, most homicide victims are the same race as the assailant; furthermore, most slayings involved acquaintances or relatives, resulting in many more solved crimes. Today, however, many more murders occur during robberies, which means that many more people are killing strangers, so that many more of these homicides are unsolved. In racial terms, there has been a sharp rise in black youths killing each other, so that homicide has become this group’s foremost cause of death. These tragic deaths are only part of the story, though. There is also a fear of police overstepping their authority and kill members of the black community or members of white gangs do the same. Two examples from the 1980s follow to illustrate the climate of fear that often exists.

## **RACIAL INCIDENTS IN NEW YORK CITY NEIGHBORHOODS IN THE 1980S**

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The first case occurred in 1987, and involved a black drug dealer named Larry Davis, who had run from the police, who were trying to arrest him. Shots rang out as the police entered the apartment where Davis was hiding. Several police were wounded. Davis claimed he was in fear for his life, and only fired in self-defense. This case is unusual because Davis used a self-defense plea against the police. The Bronx jury believed Davis and unanimously acquitted him of attempted murder charges. The jury members, blacks and Hispanics, all lived in or near high-crime neighborhoods; all were law-abiding citizens who were gainfully employed. They could understand the need for more police protection in high-crime neighborhoods, but, at the same time they recognized the fear that their black neighbors have of police brutality.

Normally, citizens should have no fear of being killed by law officers, who use their weapons for self-protection only. This attitude of police as impartial and trusted and from whom you have nothing to fear is hardly the accepted view of most black Americans. Ask students to respond the question, “Do the police really care what happens in black neighborhoods?” Ask students in class if they have any personal experiences to relate.

In Queens, New York, the Howard Beach incident occurred when a car with three black men in it broke down in an all-white neighborhood. Some white youths began to threaten the men, severely beating one of the men. One of the occupants of the car was killed when struck by a speeding car while trying to escape being killed by the whites. In Bensonhurst, in Brooklyn, a black youth was gunned down by a white youth, because it was rumored that this group of blacks had come to their neighborhood to make trouble. In fact, they were just shopping for a used car. Juries in these cases resulted in convictions for those guilty. Both these incidents were reported in the national media, and were seen as evidence that for black citizens, there are many places in America that are off-limits. One author concludes that

“Blacks do not consider it paranoid to wonder whether they might someday find themselves behind barbed-wire enclosures, as happened to Americans of Japanese descent during the Second World War. The white race, after all, has had a long history of dealing harshly with human beings it considered its inferiors.” (Hacker, page 203)

Now that the teacher has introduced evidence that racism in America has divided its black and white citizens into groups with widely different experiences and attitudes toward one another and towards the criminal justice system, we are ready to explore issues of race and racism in the criminal trials of Bernard Goetz and O.J. Simpson.

## ISSUES OF RACISM WITH THE TRIAL OF BERNARD GOETZ

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Racism was an obvious theme, but very much played down in the criminal trial of Bernard Goetz. Goetz, an electronics expert, had been previously attacked by a group of black youths, and seriously injured in a New York subway station in 1981. The youths were charged with criminal mischief rather than attempted robbery and never brought to trial. This left Goetz bitter and disillusioned with the police and shortly thereafter began carrying a gun of his own, for which he was denied a permit, but carried it anyway for self-protection. Goetz' fear of being beaten up again apparently haunted Goetz. On one other occasion, he went for an evening walk in Central Park near Harlem and had to pull his gun to chase away attempted muggers. Goetz felt he had every right to live where he wanted to, to walk where he wanted, to sit on a subway car where he wanted, even if it meant putting himself into potential danger. He was determined to exercise his basic freedom as a free citizen of the United States.

Three years later, in December, 1984, in a subway car, he was accosted by another group (his attorney would refer to them as a "gang") of young black men, who demanded Goetz give them some money. (They would claim they only "asked" him for a few dollars.) After Goetz asked one of the youths to repeat his demand, Goetz drew his gun and fired, wounding each of them. He then went over to a bleeding Darrell Cabey and said, "You seem to be doing all right; here's another," and shot him again. After comforting two women in the car who were visibly shaken by the experience, he mysteriously disappeared into the subway tunnel, reappearing in Concord, New Hampshire a week later, where he made a full confession. A week later the "subway vigilante" was released on \$50,000 bail, so to stand trial for assault, attempted murder and reckless endangerment.

One obvious question for students in this case is, Why does a man who breaks the law by carrying an unregistered handgun and disappears from the scene of a shooting become a hero in the eyes of many citizens of New York City? If a white police officer had shot four black youths demanding money from a subway rider, there certainly would have been cries of racism and police brutality. Was this mysterious white stranger an "avenger" for those who feared being attacked themselves? Consider also the news reports of the four teen-age victims, all with criminal records and the effect it had on the general public. Darrell Cabey had a previous arrest for armed robbery. Both James Ramseur and Troy Canty had served time for petty thievery. Barry Allen was found guilty of disorderly conduct on two occasions. Three screwdrivers (rumored to be sharpened), the tools of petty thieves, were found in the boys' pockets. The youths' behavior on the subway was described as "loud and boisterous," causing the other passengers to move to the other end of the car. People wanted to know, who were the three victims here? Were these boys really young thugs and thieves who, as one witness would later testify, "had it coming?"

Another question for students to ponder is this: If a black man were accused of shooting four white youths would there be any question of a grand jury indicting the man for attempted murder? In the Goetz case, the first grand jury listened to Goetz self-defense plea and his taped statements, but heard none of the victims testify against Goetz. This group of citizens indicted him only for three counts of illegal gun possession, a misdemeanor. No attempted murder. No assault. No reckless endangerment. No wonder there was pressure on the local prosecutors to do better.

By the time the second grand jury met, the district attorney granted immunity to two of the wounded victims who testified that indeed Goetz picked the fight, not the victims. They also heard about the soon-to-be famous "fifth shot" from Goetz' gun and his remark, "You seem to be all right; here's another," to Darrell Cabey. This

time the citizens indicted Goetz on charges of violence, including assault, attempted murder and reckless endangerment, for a total of thirteen counts of breaking the law.

As the trial in the classroom opens, student; should try understand the complexity of Bernie Goetz. Showing his videotaped statement to the police from the video, “The Trial of Bernard Goetz” should accomplish this. In the videotaped “confession” he compares himself to a cornered rat:

“you start poking it with . . . red hot needles and . . . you wind up doing it again . . . and if the rat turns viciously on you and just becomes a vicious killer, which is really what I was, then don’t go passing statements of morality. . . .”

Does anyone have the moral or legal right to take action such as he did? If not, the jury must find Goetz guilty. If so, they must find him not guilty. Either way, a moral judgment must be made. That was the jury’s job. And the students job as well. In Goetz’ own words, he insists that we judge him for his actions.

“You decide. I became a vicious animal and if you think that is so terrible, I just wish anyone could have been there in my place. Anyone who is going to judge me, fine, I was vicious. My intent was to kill ‘em, and, and you decide what’s right and wrong.” (Quoted in Fletcher, page 17)

Very clearly, the Goetz case comes down to understanding what legal self-defense is. Goetz’ understanding was something called the “individualist theory” of self-defense:

“No one can ever take away your inalienable right to protect your property or your life or your family. No one can walk up to me and say, ‘give me that watch,’ ‘give me your ring,’ ‘give me five dollars.’ And if they do, heaven help them if I’m armed, because I know what the law allows.” (Quoted in Fletcher, page 33)

On the other hand, the “social theory” of self-defense demands that the person being attacked consider the attacker as a human being, not just as a force intending on a person’s safety. Under these guidelines, muggers and burglars have legal rights too (see “People v. Ceballos”), and the rights of victims are restricted in responding to those who would take their property. But what about the risk, even slight risk, that an intruder might want more than to just robe you of your wallet or your watch? What then? In defending oneself and one’s property, there are legitimate emotions to be dealt with, such as anger and fear. Was Goetz acting in self-defense according to legal definitions and theories of self-defense, (see “Appendix 1” below) or was he the aggressor, possibly acting in retaliation for past wrongs done to him by others? And what about the question of race? All of Goetz’ attackers were black. Was this part of his fear and anger?

Didn’t Goetz have alternatives available to him? Was he really under attack? Was his response the only one that could have thwarted the attack? Or were his fears excessive and therefore his actions unreasonable? Goetz’ shooting required the jury to make it moral judgement about Goetz’ actions, whether or not he did what a reasonable person would do under similar circumstances. Could Goetz have ignored Canty’s request for five dollars and thereby avoided a violent confrontation? What would have happened if Goetz had waved his gun at his potential assailants? The jury could only speculate; and this is precisely what makes a case like this an interesting one. Which side, defense or prosecution, can convince the jury that his interpretation of events is the most believable? (See “Appendix 2,” below)

## THE RACE CARD IN THE O.J. SIMPSON CASE

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The case of “The People v. O.J. Simpson” was unique in many ways. It was called the “trial of the century” because of all the media interest it created. It provided a soap-opera like addiction for many viewers who insisted on getting their almost daily O.J. “fix.” It was unique in other ways as well. It should be pointed out that almost 97 percent of criminal cases never reach trial because of plea bargaining.

It is rare for anyone to assemble a team of twelve lawyers to defend them; most people accused of a crime can’t even afford one. Despite the many legal advantages O.J.’s attorneys brought to this case, the system is weighted heavily on the side of the prosecution. Of the ten percent of cases that go to trial nationally, the prosecution is victorious in 83 percent of them.

Racial overtones were established right from the beginning of the case. A black man was accused of killing his white ex-wife and her white male friend. The lead detective in the case, Mark Furhman, was clearly a bigot and hated persons of African American descent. Robert Shapiro, one of Simpson’s attorneys said that Simpson’s legal team chose to “play the race card,” adding that “we dealt it from the bottom of the deck.” This is not a very pretty statement, but an effective one. Of all the hundreds of witnesses that paraded to the stand in the Simpson case, certainly Mark Furhman and his use of the “N-word” was the prosecution’s gift to the defense that may have turned the tide decisively in Simpson’s favor. Despite the “mountain of evidence” prepared by the prosecution that included DNA evidence, 911 audio tapes from Nicole and a “bloody glove,” the jury quickly concluded that the prosecution had not proven beyond a reasonable doubt that O.J. Simpson was guilty of these horrific crimes. One masterful stroke employed by the defense to agree to have O.J. “try on” the glove for the jury and the whole world to see? What better way to reinforce their twin theories of sloppy police lab work and a police conspiracy to finger Simpson? Johnny Cochran’s rhyming couplet after O.J. struggled to put on the glove, rang true to the jury, “If it doesn’t fit, you must acquit.” And acquit they did, much to the anger of some and the cheers of others. (For the Simpson trial timeline, see “Appendix 3” below)

Who was angry? Who cheered? The so-called “second verdict” in the Simpson case had more to do with one’s race than any other factor. Whites tended to look at whether or not a famous celebrity had in fact committed a brutal double murder. Blacks tended to ask an additional question. Were the police and prosecutors up to the same old dirty tricks to put a black man on trial for something he didn’t do?

## THE NOT GUILTY VERDICT

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This relates to a concern by a majority of black Americans that the police not only are incompetent, but tend to be out and out corrupt, especially when a black person is a suspect. Consider the fact that one in every three young black men is in prison or may be sent there if they lose their probation or parole. In 1996, over three-quarters of a million black men are incarcerated. Consider that O.J. had reached the top by playing by the rules. Many blacks believe that if a black man or woman rises too high, moves may be made to bring him or her down. Witness the recent troubles of people like Mike Tyson, Darrell Strawberry, Marion Berry, Lani Guinier and Jocelyn Elders. Was the arrest of O.J. Simpson a bit too hasty? In some people’s minds, real doubts arose from the beginning that the police were hard at work trying to blame O.J. Simpson.

To illustrate the police incompetence, recall that a detective brought a vial of crime-scene blood back to his



home overnight. A police pathologist got rid of the contents of Nicole Brown Simpson's stomach by mistake, which would have given police a much more accurate time of death. Finally, the Ford Bronco was parked in an insecure area, which allowed at least one person to tamper with it. Recall the lies, particularly Mark Furhman, who found the bloody glove behind Simpson's house, after scaling the wall of his home without a proper warrant. Would a man who would lie under oath about using the "N-word" forty-one times also lie about how pieces of evidence were gathered?

Other questions raised by the defense were concerning the fact that after such a brutal double murder, there were no traces of blood found on O.J., on the carpet in his home, and only tiny drops in the Bronco. How could he have had time to clean himself and the car and the house before departing for the airport? And what about the bloody clothing he would have had to dispose of? And the murder weapon? They were never found.

## THE GUILTY VERDICT

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Suffice it to say that most white observers of the Simpson trial have more faith in police testimony and give more credit to prosecution experts than black Americans do. For example, few whites would find the theory of a police conspiracy credible, at least initially. Even though Furhman committed perjury, he may have been telling the truth about finding the glove. And even if the police made some procedural mistakes, this is no reason to let a killer go free.

Reasons to believe in O.J.'s guilt begin with O.J.'s escape from his Rockingham estate and the appearance of a getaway attempt. Why else would he have his passport and a few thousand dollars in cash? The "window of opportunity" for Simpson to have committed the murders was sufficient, given the fact that Rockingham and Bundy were only several minutes apart; there would have been plenty of time to wash and dispose of his bloody clothing. And there was the incriminating drops of blood in the Bronco, on the sock in the bedroom, and the glove in the walkway. Many accept the imprints of the shoes at the murder scene were O.J.'s. Simpson's record of earlier assaults on Nicole demonstrate that he was a batterer; and most women who are murdered by men close to them have been previously abused. So there remain real doubts about O.J.'s innocence. Most whites did not agree with the jury's verdict, and were shocked by the fact that the jury deliberated such a short time.

Other questions raised about the verdict has to do with the fact that nine of the twelve jurors were African American. Could they be truly objective in a trial such as this? In other words, was this, as Johnnie Cochran suggested, "time to send a message?"

The Simpson trial has sent several messages to the people of America. Perhaps one of the most significant is that juries will continue to judge cases on evidence. Police must be responsible to police themselves so that the Mark Furhmans are not allowed to continue to make a mockery of the criminal justice system. Police testimony must be credible. Evidence brought against a suspect must be gathered lawfully. The Simpson trial "put our criminal court system on public display," as Alan Dershowitz said in his book, "warts and all." Though battered and in need of reform, the jury system still works, and is an "important safeguard of democracy, an insurance policy against government overreacting . As with all insurance policies, we may bemoan the premiums we have to pay, but they are worth it." (Dershowitz, page 201)

Was the Simpson case the "trial of the century" Perhaps. But long after the endless debates over the verdict

are over, our tradition and belief as a nation of laws will continue to endure.

## **SAMPLE LESSON PLANS**

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LESSON ONE: Jury Selection in the Bernard Goetz Trial

### **OBJECTIVES:**

1. To acquaint students with the jury selection process;
2. To familiarize students with courtroom terminology such as VOIR DIRE, JURY POOL, PEREMPTORY CHALLENGE;
3. To challenge students to distinguish issues of overt and benign racism.

### **MATERIALS:**

Jury Questionnaire (below); Jury Member Role Cards (below)

### **PROCEDURES:**

1. Arrange students into three groups: Prosecution Legal Team, Defense Legal Team, Jury Pool (Jury Pool could come from students in another class). Use the suggested "Jury Questionnaire" below or allow students to create one.
2. As potential jury member fill out the questionnaire, Legal Team members are thinking of questions to ask jurors to weed out people who may be prejudicial to their case.
3. After all questionnaires have been handed in (each jury member needs to complete two identical ones; one for each Team), the jury members take the stand and questions begin. After each potential juror has finished, the Teams vote whether to accept or not accept the person. If accepted, the juror is assigned a number. If not accepted, the reasons are stated, and the person is excused by the judge (teacher) Each team gets one "peremptory challenge" (no reason needed to veto a potential juror)

## “JURY POOL QUESTIONNAIRE”

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**SAMPLE QUESTIONS** *Do you favor the death penalty for certain crimes? Do any of your family members belong, to the police department? Do you regularly take public transportation? Have you ever ridden on the NY City Subways? Do you think that people should have the right to carry a gun if they have a good reason? Is it a fundamental right to defend yourself if you feel you are about to be attacked? Have you ever been the victim of a crime? (Explain.) Do you know the defendant in this case? Have you ever heard the name Bernard Goetz?*

## “POTENTIAL JURORS ROLE CARDS”

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JUROR A. White, middle-aged woman from the suburbs. Sending kids, ages 7, 9 and 12, to private schools because of fear of violence in public schools. Children have never invited black friends into her home, although she wants; her kids to have friends; from all races. No interracial dating however. She is a housewife. Husband is a stockbroker.

JUROR B. Black woman, lives in suburbs, mid-20s. Works as a teachers’ aid in her daughter’s elementary school. She moved out of the city because of threats from drug dealers in her old neighborhood. She likes the quiet and good education her child is getting. She is a member of the NAACP. Husband is a policeman in New York who also coaches basketball.

JUROR C. Black man in his late 20’s. Grew up in NY City. Completed his GED in the Marine Corps, from which he was honorably discharged 2 years ago. He had some difficulty getting along with some of the white officers in the MC. Works as a security guard and owns a gun. Thinks that blacks can get ahead if they work hard. Not married. Member of the Police Auxillary and the Police Athletic League.

JUROR D. Hispanic male in his late 40’s. Math teacher and coach in Brooklyn. Runs an afterschool tutoring program for Hispanic kids who are behind. Thinks legal system discriminates against minorities unfairly. Owns a registered gun which he keeps locked up. Has 2 kids in college and wife works as a bank teller. Was mistakenly picked up by police once because he “resembled s criminal they were looking for.”

JUROR E. White female, 35, married to a grocery store owner. Lives in the Bronx. Works in the store with her husband. Dislikes teenage boys who come in and “rob the store blind.” It seems it’s especially the black and Spanish who are the trouble makers, although not all of them are like that. No children. Was mugged in the subway once. Her purse was stolen but she wasn’t hurt.

### **LESSON TWO. The Goetz Trial (3 days to complete)**

#### **OBJECTIVES**

1. To acquaint students with the testimony of eyewitnesses and expert witnesses in the criminal trial of Bernard Goetz;
2. To familiarize students with the procedures in a mock trial;

3. To challenge students to plan a court room strategy that will enable them to convince the jurors of the guilt or innocence of the defendant.

**MATERIALS:**

Reading: "Issues of Racism Within the Trial of Bernard Goetz" (text, above)

**PROCEDURES:**

1. (DAY 1) Students have been given an initial reading about the Bernard Goetz case.  
Teacher summarizes the major issues. The teacher then assigns students into three groups: Prosecution Team; Defense Team and Witnesses. Students from another class make up an ideal jury. (See LESSON ONE: above) Legal Teams each get a Witness List and begin strategy sessions (order of witnesses, self-defense issues, etc.)
2. After OPENING STATEMENTS to the jury (DAY 2), witnesses are called.
3. Witnesses are asked to read their testimony, then cross-examined, then recrossed if necessary, until all witnesses have been called.
4. After all witnesses are called (some may be called a second time), the lawyers give their CLOSING STATEMENT to the jury. (DAY 3)
5. The Jury retires and renders a verdict on the charges against the defendant.  
(Individual verdicts may be read by each jury member, or a unanimous verdict, if one can be reached)

**LESSON 3: Attitudes of Race and Racism: Historical and Autobiographical**

**OBJECTIVES:**

1. To explore reasons why attitudes of racial prejudice exist in America;
2. To explore experiences of blacks and whites within the criminal justice system in the United States;
3. To challenge students to examine their own racial attitudes in light of their own experiences and belief systems.

**MATERIALS Reading: “Race and Racism in the United States: A Brief Background to the Goetz and Simpson Cases” (see text, above).**

Tables 1, 2, and 3 (“Crimes and Race”) below.

**PROCEDURES:**

1. Assign Reading, “Race and Racism” in text of unit. (4 pages long) Ask them to write down 3 or 4 discussion questions that come out of the reading.
2. Suggestion: Teacher prepares list of the following terms: Race, Racism, Objective and Subjective evidence, Alexis de Tocqueville, “BROWN V. BOARD OF EDUCATION”, civil rights movement, “Black Power,” Black Panthers, crime rates, violent crime, victims of crime, causes of crime.
3. Ask students to share their questions with the entire class. Write them down on chalkboard. One from each student, if possible. If necessary, use Teacher List.
4. Have students discuss in groups: When did “race” begin to have meaning in your life? Share a personal experience with racism you have had. Share one incident a family member has had. How did these make you feel? After the groups finish, arrange students in a circle and ask them to share from their discussions.
5. Pass out Tables 1, 2 and 3. What do the statistics on each one suggest?
  - TABLE 1 Shows that for 16 of 17 crimes, the black arrest rate was disproportionately higher.
  - TABLE 2 shows that black murder and robbery rates are higher; for rape, white rates higher.
  - TABLE 3 shows that murders are mostly the same race; robberies have more black-on-whites and rapes are more white-on-white. No reported cases of white-on-black rape. (Remind students that figures are “reported” cases.)

Key Question: Why are black Americans responsible for so large a ratio of crimes involving violence or the threat of violence? The reading suggests that there are economic factors which affect the rates of violent crime and crime in general. What are the detection and arrest rates for so-called “white collar crime”?
6. Have students conclude with ways they can combat racism in their families, schools and neighborhoods.

TABLE 1—ARRESTS, PERCENTAGES AND PROPORTIONS

*(figure available in print form)*

## TABLE 2—VIOLENT CRIMES BY RACE

*(figure available in print form)*

## TABLE 3—VIOLENT CRIMES BY RACE, PART 2

*(figure available in print form)*

### **APPENDIX 1 Theories of Self-Defense in the Goetz Criminal Case**

It is important to know the arguments which self-defense are based on. When the state cannot supply protection from harm, citizens have a right to protect themselves. Self-defense is justifiable when an attack on a person is IMMEDIATE. By immediate, the law simply means that the time for a response cannot wait any longer. The response to violent threat cannot be too early (a preemptive strike), because then it would be based on presumption that an enemy might attack you, but he is not actually exhibiting threatening behavior at the moment you decide to ward off an attack. Also, self-defense, to be legally justifiable cannot be in retaliation for something done to you in the past. This kind of attack seeks to “even the score” for past wrongs, but is clearly not self-defense; rather it is “taking the law into one’s own hands.”

A second requirement for legal self-defense is that the attack be NECESSARY and PROPORTIONAL. To be necessary, the option used (shooting the attackers) must be the best option under the circumstances. What other options were possible (showing the gun or shooting a warning shot)? The proportional requirement deals with the amount of force necessary to stop the attack, that it not be excessive force. In order to prove that his actions were proportionally legal according to New York state law, Goetz would have to show that he was either threatened with deadly force or that a robbery about to happen.

The last requirement of self-defense is that of having knowledge of an attack and of having the INTENTION of stopping or repelling the attack. The victim must, in other words, have a good reason for his attack; he must believe his life is being threatened by his attackers. In other words, the defense lawyer, Slotnick, would have to convince the jurors that the victims got what “the law allowed,” not what “they deserved” by bothering Mr. Goetz for “five dollars.”

### **APPENDIX 2 Legal Strategy for the Defense in the Goetz Criminal Case**

Legal strategy is revealed in opening statements by the two lawyers. The Assistant District Attorney, Gregory Waples made his attack on Goetz a personal one, calling him “an emotionally troubled individual, . . . an emotional powder-keg, one step away from the insane asylum.” As his first piece of evidence in the trial, he chose to play Goetz two-hour videotaped “confession” nine days after the shooting, which revealed Goetz to be easily agitated, coherent but rambling in his remarks, judgmental of police and legal authority, with a tendency to be aggressive toward his adversaries.

Barry Slotnick, Goetz’ lawyer, chose to vilify Goetz’ victims as attackers, calling, them the “gang of four” who were “savages” and “predators” on society. The defense could have objected to the showing of Goetz’s videotaped “statement” (rather than the “confession” Waples referred to) because it allowed the defendant to speak to the jury without being cross-examined. Slotnick would stress the impressions of Goetz’ obvious fears at the time of the shooting fears that led him to defend himself in a way he believed to be legally appropriate. Slotnick made no bones about his role as prosecutor of Canty, Allen, Ramseur and Cabey as “vultures” and “criminals.” If the defense could bring into evidence all of the victims’ prior criminal acts and others that could be confirmed by witnesses, the defense would be able to prove that the four were likely to be the aggressors

in the subway . Slotnick got his chance when Waples asked Troy Canty on the stand if he had intended to “rob or attack Goetz” to which Canty answered “no.” After an intense argument by both lawyers, Justice Crane ruled that since Waples had “opened the door” to debate the intent of the victims, the Judge would allow the defense to let into evidence prior criminal acts of the victims. Slotnick’s use of language was effective in painting a negative image of the victims. He was able to get Canty to admit he engaged in *robbing* video games, when actually he was engaged in *larceny* from the cash boxes of video games. From this use of the word robbery, Slotnick was able to create confusion and ambiguity about how Goetz may have feared he was about to be robbed by an admitted “robber.”

### **APPENDIX 3 The O.J. Simpson Case Timeline**

#### **1994**

June 12. Nicole Brown Simpson and Ronald Lyle Goldman are stabbed to death, their bodies found in the front courtyard of Nicole’s Arentwood condominium on Bundy Drive.

June 13. In Chicago, O.J. Simpson is notified of his former wife’s death. He returns to Los Angeles and is taken to the police station for questioning.

June 17. As he is about to be arrested for murder, O.J. slips out of Robert Kardashian’s home and goes on Bronco ride, pursued by police, with his friend, A.C. Cowlings. Simpson is taken into custody upon his return to his home in Rockingham.

June 24. Grand jury impaneled to investigate evidence.

July 8. Judge Kathleen Kennedy-Powell rules that O.J. Simpson shall stand trial on two counts of first-degree murder.

July 22. O.J. pleads “absolutely 100 percent not guilty” of the charges. Judge Lance A. Ito assigned to the case.

Sept. 19. Judge Ito upholds the legality of the police search of Simpson’s home.

Sept 26. First day of jury selection.

Nov. 3. Jury panel selected, five weeks later. Eight black, one white, one Hispanic, two mixed race; Eight women, four men.

#### **1995**

Jan 11. Jury sequestered. Hearing held about defense arguments against admissibility of domestic-abuse evidence.

Jan. 13. Prosecutor Christopher Darden and defense attorney Johnnie Cochran have heated exchange over racist language, specifically the “n” word, regarding the upcoming testimony of Detective Mark Furhman.

Jan. 24. First day of trial. Prosecutors Marcia Clark and Christopher Darden deliver opening arguments.

Jan. 25. Johnnie Cochran makes opening statement for the defense.

Feb. 3. Nicole Brown’s sister, Denise, testifies to O.J.’s mistreatment of her sister.

Feb. 12. Jurors, judge, and attorneys take field trip to O.J.'s home and Bundy Drive crime scene.

March 15. Det. Mark Furhman, cross-examined by F. Lee Bailey, denies using the word "nigger" at any time in previous ten years.

April 11. L.A.P.D. criminalist Dennis Fung testifies and concedes there were police errors in the gathering of evidence

May 4. Wrongful death civil suit filed against O.J. by Ron Goldman's father and sister.

May 10. DNA testimony begins with testimony of Dr. Robin Cotton.

May 15. O.J. tries on the bloody gloves in front of the jury. They don't fit.

July 6. The prosecution rests its case against O.J. Simpson.

July 10. Arnelle Simpson, O.J.'s daughter, is first witness called in defense case.

Aug. 15. Controversy over possible conflict of interest regarding Judge Ito, his police captain wife, and the Mark Furhman tapes.

Aug. 29. Portions of Furhman tapes are played in court, with jury absent.

Aug. 31. Judge Ito rules that jury will only hear two excerpts of controversial tapes.

Sept. 6. With jury absent, Mark Furhman appears in court involving his Fifth Amendment privilege against self-incrimination.

Sept. 7. The defense announces that O.J. Simpson will not testify on his own behalf.

Sept 8. Appeals court reject Ito's proposed jury instruction that Furhman did not appear again in court because of his invoking the Fifth Amendment.

Sept. 21. Ito Gives jury the option of finding O.J. guilty of second-degree murder.

Sept. 22. Both defense and prosecution rest their cases. In a statement to judge waiving his right to testify, O.J. says, "I did not, could not and would not have committed this crime." Judge Ito gives jury instructions.

Sept. 26 and 27. Clark and Darden deliver prosecution's closing arguments.

Sept. 27 and 28. Cochran and Scheck deliver defense's closing statements. Cochran makes controversial statements to the jury comparing Furhman to Hitler.

Oct. 2. After less than four hours, the jury announces that it has reached a verdict.

Oct. 3. Jury finds O.J. Simpson not guilty.

Source: Shapiro, Robert L. *The Search for Justice*



## Annotated Bibliography

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### A. FOR TEACHERS

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Berry, Mary Frances and John W. Blassingame. *Long Memory. The Black Experience in America*. New York: Oxford University Press, 1982. 486 pages.

A compelling history, from Africa, to Black Nationalism of the 1960s and 70s. Especially useful was Chapter 7: "Blacks and Criminal Justice." (pages 227-260)

Blauner, Robert. *Black Lives, White Lives. Three Decades of Race Relations in America*. Berkeley: University of California Press, 1989. 347 pages.

A fascinating series of essays in which 12 whites and 16 blacks confront issues of race over a 25-year span, from the 1960s to the late 1980s. Good student materials here.

Bullock, Charles S., III and Harrell R. Rodgers. *Racial Equality in America. In Search of an Unfulfilled Goal*. Pacific Palisades, CA: Goodyear Publishing Co., 1978. 178 pages.

Part of a series, "Law and Social Change and Black Political Attitudes". Discusses caricatured black roles in film and television. Good section on legal remedies for discrimination in voting, public accommodations, *de jure* segregation, and overt and institutional racism.

Darden, Christopher A. *In Contempt*. New York: Regan Books, 1996. 387 pages.

Personal reminiscences of a key player in the Simpson trial. Insightful, personal and pulls no punches on Ito, Cochran, O.J., and Marcia Clark.

Dershowitz, Alan M. *Reasonable Doubts. The O.J. Simpson Case and the Criminal Justice System*. New York: Simon and Schuster, 1996. 238 pages.

More on his own career as a lawyer and the system. Nothing really new here.

Fletcher, George F. *A Crime of Self-Defense: Bernard Goetz and the Law on Trial*. New York: Collier MacMillan, 1988. 253 pages.

Meticulously detailed account of the Goetz criminal case; a very thorough analysis of Goetz and the legal strategy behind his defense. Includes chapters such as "What the Jury Saw and Heard," and "Mixed Messages."

Greenberg, Jack. *Race Relations and American Law*. New York: Columbia University Press, 1959. 481 pages.

Author's thesis is that law can and has changed race relations. Filled with examples of changes in race relations that have come about by changes in the law. Chapter one helpful to my paper.

Hacker, Andrew. *Two Nations: Black and White, Separate, Hostile, Unequal* . New York: Ballantine Books, 1995. 283 pages.

Excellent treatment of the subject from an historical, psychological and sociological viewpoint. Chapters 11, 12 and 13 deal directly with the role of race in crime and the “Two Verdicts” (black and white) in the Simpson trial. Must reading for social studies teachers. Filled with Tables and Charts.

Massey, Douglas S. and Nancy A. Dentin. *American Apartheid, Segregation and the Making of the Underclass* . Cambridge, MA: Harvard University Press, 1993, 292 pages.

Warns that racial inequality increases, so will fears, prejudices and hostilities. The authors urge the U.S. to dismantle residential segregation patterns, which is presently poisoning us and maintaining two societies, “separate and unequal.”

Shapiro, Robert L. *The Search for Justice: A Defense Attorney’s Brief on the O.J. Simpson Case* . New York: Warner Books, 1996. 363 pages.

Predictable. Reveals internal, sometimes infernal workings of the so-called “Dream Team,” most of whom the author had little respect for. Staunchly maintains O.J.’s innocence.

Uelmen, Gerald F. *Lessons from the Trial, The People v. O.J. Simpson* , Kansas City, MO: Andrews and McMeel, 1996. 223 pages.

Disappointingly uninspired treatment of the aftermath of the trial and the demands by some of reform the system; most of which he acknowledges but poo-pooes.

## **B. FOR STUDENTS**

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Altmani, Dave. “Lee Believes Forensics Played no Part in Verdict”. *New Haven Register* , (March 16, 1996): A6.

Connecticut Forensic expert Henry Lee believes jurors had their minds made up months before the forensic evidence was brought up and that it was “too overwhelming” for them to comprehend.

Arnold, Lomi. “Race, Justice, and O.J. Students speak out on the Simpson Verdict”. *Scholastic Update* , (April, 1996): 20.

One page of reactions from black and white high school students. Touches on issues of money, police and the criminal justice system.

“Darden Slams Ito, Says He’d Like to Hit Cochran”. *New Haven Register* , (March 16, 1996): A14.

Prosecutor Chris Darden expresses anger at the way the defense played the race card, and believes the jury acquitted Simpson to “get even for years of racial injustice.” He claims Ito allowed O.J.’s lawyers to take control of the case.

“Goetz’s Victim Wins Big”. *New Haven Register* , (April 24, 1996): A1, A11.

Results of the \$43 million civil settlement won by Darrell Cabey, paralyzed by “murderous racist” Goetz in 1984. Defense case took only 2-1/2 hours.

Kita, Walter. “O.J. Trial Affirms How Race Divides”. *New Haven Register* , (March 1, 1996): A1, A6.

Written before the verdict. Discusses how blacks and whites typically perceive the judicial system. Kita claims the defense had no choice but to play the race card to create reasonable doubt. Also discusses racist attitudes among police officers.

McClenden, David. “Essence of Blackness Rolled Into Just One Word”. *New Haven Register* , (March 31, 1996): A6.

Black columnist’s personal ambivalence about using the ‘N-word’ and his personal conclusions. Should provoke student discussion. Use with Zavadsky’s article.

“Second O.J. Trial May Prove What the First One Didn’t”. *New Haven Register* , (June 9, 1996): B6, B7.

Includes a “What They’ve Said” section of quotations from the civil trial of O.J. Discusses the issues that the plaintiffs will raise in the case, scheduled to begin in September, 1996.

“To Minorities, Court Staff Far From Black and White”. *New Haven Register* , (April 24, 1996): A1, A11.

A Connecticut Task Force’s report that claims minorities don’t get fair treatment in the courts, often a result of cultural and economic factors.

Zavadsky, Susan A. “The ‘N-word’. Two Syllables Equal Racism”. *New Haven Register* , (March 31, 1996): A1, A5.

Cites Mark Furhman as a springboard to discuss local racial incidents from 1995-96, with statements from local black leaders and academics. Good discussion starter.

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