Growing Strong Citizens
Dear Law Day Participant:

The Pennsylvania Bar Association, in conjunction with the Pennsylvania Bar Foundation, is pleased to present the ninth annual K-College Law Day Lesson Plan Guide. This unique resource provides judges, lawyers, educators and students with exciting and informational lesson plans, as well as links to other civic learning organizations and materials from around the country. The PBA hopes you will find this guide very valuable in your activities.

Teaching kids about their legal rights and responsibilities is what our Law Day program is all about. The theme for Pennsylvania’s celebration this year is “Growing Strong Citizens.” Several lessons in this guide were submitted by Pennsylvania educators. The PBA thanks them for sharing their knowledge and talent with others. I also would like to draw your attention to the section called “Quick Classroom Lessons.” This section provides lawyers and judges with quick, fun lessons when they only have a few minutes to stop by a classroom. Educators will enjoy them, too.

As we celebrate the 50th anniversary this year of Law Day, we are delighted to celebrate the collaboration of the Pennsylvania Bar Association with Third Circuit Court of Appeals Judge and Pennsylvania First Lady Marjorie O. Rendell in the Pennsylvania Coalition for Representative Democracy (PennCORD). This initiative, founded by Judge Rendell, the PBA, the Pennsylvania Department of Education and the National Constitution Center, is a unique union of educational, advocacy, and governmental organizations that are committed to improving civic learning for students in grades K-12. The PennCORD mission underscores the fifty-year history of Law Day as we celebrate the Rule of Law. You can learn more about the PBA and PennCORD by visiting our Web site at www.pabar.org.

I know we all recognize the importance of civic learning. I thank you for your participation in our Law Day program and for your willingness to make a difference in the lives of Pennsylvania’s young people. Let’s join together to make this 50th anniversary observance of Law Day a truly special one.

Sincerely,

Andrew F. Susko
President
Pennsylvania Bar Association
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** Please note that the PBA received a number of outstanding lesson plans from Pennsylvania teachers for this year’s lesson plan guide. Due to limited space, some of the lessons are being featured on the PBA Web site at www.pabar.org/public/education/lawday/lawdayinformation.asp. Be sure to visit the Web site and review the lessons.
In the Civic Mission of Schools (CMS), the consensus goal of civic education was identified as helping students gain and apply citizenship skills, knowledge and attitudes. This is also the goal of public education in Pennsylvania as outlined in the Public School Act of 1949 and the goal of the PennCORD initiative, in which the PBA is proud to be a leading partner. CMS recognized the need to provide resources and encouragement to ensure that all students can become the kind of competent and responsible citizens who are:

- Informed and thoughtful;
- Involved in their communities;
- Active politically; and
- Concerned for the rights and welfare of others.

CMS offered six promising approaches for civic education. The approaches of the report, which are outlined below, provide a strong framework for law-related education and civic learning in Pennsylvania:

1. **Provide instruction in government, history, law and democracy.** Formal instruction in U.S. government, history and democracy increases civic knowledge. This is a valuable goal in itself and may also contribute to young people’s tendency to engage in civic and political activities over the long term. However, schools should avoid teaching only rote facts about dry procedures, which is unlikely to benefit students and may actually alienate them from politics. History is full of great stories, both “his” and “her” stories, and there is significant commercial material available to fulfill this most basic aspect of civic education. There are wonderful ways that schools and communities have enriched this education such as the efforts by the Chester County Bar Association and local judges who produced a scripted mock trial of a real life 1821 case involving a former slave who killed two of the men who tried to kidnap him back into slavery.

2. **Incorporate discussion of current local, national and international issues and events into the classroom, particularly those that young people view as important to their own lives.** When young people have opportunity to discuss current issues in a classroom setting, they tend to have greater interest in politics, improved critical thinking and communications skills, more civic knowledge and more interest in discussing public affairs out of school. Conversations, however, should be carefully moderated so that students feel welcome to speak from a variety of perspectives. Both students and teachers need support in broaching controversial issues in classrooms since they may risk criticism or sanctions if they do so.

3. **Design and implement programs that provide students with the opportunity to apply what they learn through performing community service that is linked to the formal curriculum and classroom instruction.** Service programs are now common in K-12 schools. The ones that best develop engaged citizens are linked to the curriculum; consciously pursue civic outcomes, rather than seek only to improve academic performance or to promote higher self-esteem; allow students to engage in meaningful work on serious public issues; give students a role in choosing and designing their projects; provide students with opportunities to reflect on the service work; allow
Getting Started: Importance of Civic Learning (continued)

students—especially older ones—to pursue political responses to problems consistent with laws that require public schools to be nonpartisan, and see service-learning as part of a broader philosophy toward education, not just a program that is adopted for a finite period in a particular course. Some school service programs involve the creation of mediation programs for the school or for the larger community such as those created through Project PEACE, which is a joint program of the Office of Pennsylvania’s Attorney General and the Pennsylvania Bar Association. Other programs involve cross-age teaching of conflict resolution skills.

4. Offer extracurricular activities that provide opportunities for young people to get involved in their schools or communities. Long-term studies of Americans show that those who participate in extracurricular activities in high school remain more civically engaged than their contemporaries even decades later. Thus, everyone should have opportunities to join school groups, and such participation should be valued. Group participation means interaction with peers and others as part of that participation, thus providing real-life experience in grassroots democratic practices.

5. Encourage student participation in school governance. A long tradition of research suggests that giving students more opportunities to participate in the management of their own classrooms and schools builds their civic skills and attitudes. Thus, giving students a voice in school governance is a promising way to encourage all young people to be engaged civically. The conflicts associated with school governance often mirror the conflicts found in political life in the larger society, and the need for skill development is vital if the experience is to be positive for students. Although a developmentally appropriate approach is needed, there is room at every level for students to participate in school governance—with the level of participation growing as the students mature.

6. Encourage students’ participation in simulations of democratic processes and procedures. Recent evidence indicates that simulations of voting, trials, legislative deliberation and diplomacy in schools can lead to heightened political knowledge and interest. The data is not conclusive, but these approaches show promise and should be considered when developing programs and curriculum. The Pennsylvania Statewide Mock Trial Competition, sponsored by the Pennsylvania Bar Association in high schools throughout the state, provides a wonderful example of this kind of simulated process.

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1CMS was sponsored by CIRCLE (Center for Information and Research on Civic Learning and Engagement) and the Carnegie Corporation of New York in cooperation with the Corporation for National and Community Service. See www.civicmissionofschools.org for the complete findings of CMS. The CMS report was the creation of a diverse and talented group of civic scholars and practitioners and was accepted by the Bush Administration as an important document that demands careful review.

2In other words, students in such service activities should be graded, paid for their work or rewarded in some significant fashion.
A Few Notes About Visiting a Classroom

These ideas come from a variety of sources and are meant to help a presenter feel more comfortable when heading into a classroom.


Who?
Who refers to your audience. Are you visiting an elementary, middle or high school class? Is the school public, private or parochial? How many students are in the class? Are you presenting before more than one class? Is there anything special about the students, teacher or school that you should know before making your presentation? It would be helpful for you to talk with the classroom teacher prior to the presentation to answer these questions. Most teachers will appreciate your efforts to work with them on your program.

What?
What refers to the content of your civic learning presentation. Are you focusing on a specific topic, or are you giving a general overview of the law? If you have been asked to cover a specific content area, please feel free to use the lessons provided in this guide or to contact any of the civic learning providers listed in this guide for additional lessons (see Civic Learning Support Organizations). If you are going to develop your own materials, please see the lesson planning suggestions provided in this guide (see Lesson Planning Ideas).

The following are some useful content and delivery tips to help you get started:

› Be prepared and have a plan that covers the time allotted. Build into your plan the capacity to deviate from it if circumstances, or questions from students, dictate that a change is needed.

› Whatever you cover, be prepared for wide-ranging questions from the students. Answer the questions as best you can and be cautious — some students will try to draw you into making a judgment about an action of a parent, teacher, school administrator or local law/justice official.

› Always try to present both sides of an issue and use the teacher’s old trick of turning the question back on the student who asked it.

› Be prepared for students to share their personal experiences (or their parents’ experiences) with the law. Always try to respect their points of view while encouraging them to expand on those perspectives.
Getting Started: Judges & Lawyers (continued)

Try to focus your presentation on the students by actively involving them. Remember: lecturing is the least effective means of teaching (see Glasser’s Percentages of What Students Learn in the Lesson Planning Ideas section). Think back to times when you were excited about learning and model your lessons on those memories.

Finally, try not to promise the students anything that you will be unable to deliver in the future. If you say you will get back to the class with the answer to a question, make sure you do. If you promise to visit later in the year, make sure that visit takes place.

Where?
Where refers to directions within the school to the classroom. The often overlooked part of knowing where you are going is determining what the school’s rules are for visitors. Do you have to report to the main office? Must you have a pass to walk in the building? Even if you have visited the same school for many years, the problems with school violence have led many schools to tighten visitor controls.

You also will need directions for moving both yourself and the students around in the classroom. When working with students, try not to get yourself locked into one place. There are many different ways to direct students around the classroom and some of the best ways are detailed in the included lesson plans. The easiest and best way to involve students more completely in a lesson is by dividing the large group into smaller groups of four to six students. Ask the teacher if the students already have cooperative learning groups established. You can utilize those groupings for any small group work you wish to do during your presentation.

When?
When refers to the time of your session — both beginning and ending times. Schools run the gamut with regard to scheduling: some schools have 42-minute periods, while others have 90-minute periods. Make every effort to follow the schedule the school sets up for you. In addition, try to get to your class a few minutes early to observe the students entering the classroom. This will give you some hints about the class and also will create anticipation among the students. End the class on time, too. The students will need to move on to their next class. A good way to make sure you end on time is to ask someone (a student, the teacher) to give you a five-minute warning that the class is close to ending.

Why?
Why refers to the purpose of your presentation. Why are you making this presentation? Why is this class having you visit? Knowing these answers will help you plan your presentation effectively.

This lesson plan guide is filled with lessons that get to the heart of our country’s democracy. If there is a topic you wish to teach that is not in the guide, visit the PBA Web site for dozens of archived lessons from past Law Day and Celebrate the Constitution programs. The lessons may be found at www.pabar.org/public/education/educationprograms.asp. If you decide to create a new lesson or even just tweak one of ours, let us know. We enjoy featuring the work of others in our materials (see Civic Learning Support Organizations).
This lesson plan guide is designed to help you, and judges/lawyers, introduce civic learning lessons into the classroom with ease. The lessons are fun, informative and easy-to-use, and appropriate handouts have been included.

All of the lesson plans have been linked to Pennsylvania’s Academic Standards for Civics and Government. The lessons also meet many of the other standards, especially in social studies. The Academic Standards for Civics and Government, which became final upon their publication in the Pennsylvania Bulletin on Jan. 11, 2003, describe what students should know and be able to do in four areas:

- Principles and Documents of Government
- Rights and Responsibilities of Citizenship
- How Government Works
- How International Relationships Function

“The Pennsylvania Constitution of 1790 was the basis for the Free Public School Act of 1834, which is the underpinning of today’s system of schools operating throughout the commonwealth. Schools were created to educate children to be useful citizens, loyal to the principles upon which our republic was founded and aware of their duties as citizens to maintain those ideals. Today, social studies education continues the mission of promoting citizenship.” — Pa. Dept. of Education Web site. Visit www.pde.state.pa.us/social_studies to learn more about the standards.

In addition, this lesson plan guide offers you the unique opportunity to invite local judges and lawyers into your classroom to help with teaching the lessons. As you know, students often respond well to outside people who share with them their knowledge and experience in certain subject areas, such as the law.

Do not, however, feel restricted only to use these lessons during the Law Day celebration. This guide was created to be a year-long civics and government teaching tool for educators across Pennsylvania. Please also feel free to contact the civic learning organizations listed in this guide for additional civic learning resources (see Civic Learning Support Organizations).
Lesson Planning Ideas

There is probably a civic learning lesson for any topic you might like to present. There are a variety of lessons found in past PBA Law Day and Celebrate the Constitution booklets, which are posted in the Public Education area of the PBA Web site at www.pabar.org/public/education/educationprograms.asp. If you decide to create a new lesson — or even just break one of ours — let us know. Send your lesson planning ideas, as well as news of your presentation efforts, to the PBA (see Civic Learning Support Organizations). The PBA likes to feature the work of Pennsylvania lawyers, judges and educators. In fact, some of the lessons in this guide originally were developed by educators, lawyers and judges for classroom visits. For additional civic learning lessons, contact one of the other organizations listed on the Civic Learning Support Organizations page.

If you decide to create your own lesson, the following overview provides a time-tested model for creating an original lesson.

Glasser’s Percentages of What Students Learn

<table>
<thead>
<tr>
<th>Students Remember:</th>
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<tbody>
<tr>
<td>10% of what they read</td>
</tr>
<tr>
<td>20% of what they hear</td>
</tr>
<tr>
<td>30% of what they see</td>
</tr>
<tr>
<td>50% of what they see and hear</td>
</tr>
<tr>
<td>70% of what they discuss with others</td>
</tr>
<tr>
<td>80% of what they experience personally (that involves feelings)</td>
</tr>
<tr>
<td>95% of what they teach someone else</td>
</tr>
</tbody>
</table>

As such, do not distribute a lot of handouts and then lecture. Whenever possible, try to involve the students in interactive learning activities. Conducting a mock trial with the students will teach them much more about how courts operate than a lecture on the structure of the courts. Role-playing a police stop is a far better way to teach about police powers than reading the opinion in Terry v. Ohio.

What Are the Essential Elements of a Good Civic Learning Lesson?

The lesson should:

• develop substantive knowledge about a legal/constitutional concept that is of interest to young people;
• present a balanced view of the topic as well as the legal system;
• develop a wide range of cognitive and affective behaviors, as well as critical thinking skills;
• stress interactive learning processes such as small-group activities;
• provide a debriefing procedure that leads participants to evaluate their own learning; and
• relate to students’ daily lives and be appropriate to the students’ ages and levels of understanding.
What Are the Steps of a Good Civic Learning Lesson?

1. Have at least one activity during the main lesson other than you talking (see the ideas below). You might want to use a number of different activities during the class (for example — start by asking a question, then move on to a role-play or simulation, have the students brainstorm some ideas, ask them to visualize a scene, read a passage from a case and close with a survey you provide).

2. End with a wrap-up, something that brings closure to the presentation. You might simply ask them to reflect on the lesson. If the teacher thinks a homework assignment is a good idea, give the students an assignment such as this: “Here’s the address of your senator — write the senator and explain how you feel about _______.

ACTIVITIES THAT HELP STUDENTS ATTACH MEANINGS TO LEARNING EXPERIENCES2

- **Writing Logs/Diaries** — Students document reactions to events and interpret what happened.
- **Naming Themes** — Students think of a personal lesson that was learned and try to derive an abstract meaning from the experience. The question, “What does it remind you of?” encourages students to find themes.
- **Imagining** — Students imagine “What if?” or create alternative outcomes.
- **Evaluate** — Students rate or rank an experience in relationship to other similar experiences they may have had.
- **Role-Playing** — Students express their understanding of problems by acting out their interpretations of the elements of the experience (mini-mock trials are great for presentations).
- **Drawing** — Students identify major themes or issues and draw pictures identifying the meaning derived from the experience.
- **Comparing** — Students relate reading or taking a field trip to another similar experience. This helps them identify features they consider relevant.
- **Concept Mapping** — Students visualize and draw the relationships among concepts with a series of links or chains.

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Quick Classroom Lessons

What Does a Nation of Laws Look Like?

- **Grade Levels:** K-College
- **Academic Standards:** Various Academic Standards for Civics and Government are met by this lesson.
- **Time Required:** This can be done in as little as 10 minutes or over the length of a full class, depending on the depth of the lesson.
- **Materials:** Art supplies, depending on the medium used.

**OBJECTIVES:**
As a result, students will be able to:
1. Provide a visual interpretation of what it means to be a nation of laws; and
2. List rights and responsibilities enjoyed by Americans.

State to the students that Law Day celebrates the United States as a nation of laws. Ask students for their ideas on what this means. Ask the students to illustrate what is meant by the phrase by creating a picture, collage, human sculpture, or whatever artistic medium you decide to pursue.

This is a great opportunity to involve the art or gym teacher in a Law Day lesson.

What Would Your Proclamation Say?

- **Grade Levels:** 5-College
- **Academic Standards:** Various Academic Standards for Civics and Government are met by this lesson depending on what is proclaimed, but 5.2 Rights and Responsibilities of Citizenship seems the most likely area of focus.
- **Time Required:** This can be done in as little as 10 minutes or over a full class, depending on the depth of the lesson.
- **Materials:** You’ll need to have copies of the original Law Day proclamation by President Dwight Eisenhower, which is provided.

**OBJECTIVES:**
As a result, students will be able to:
1. Identify the circumstances under which Law Day originally was instituted; and
2. Examine the rights and responsibilities of citizens in a nation ruled by law.

Walk into the class and explain that you are here to celebrate the 50th anniversary of Law Day. Ask the students if they have ever heard of Law Day. Explain that President Dwight Eisenhower wrote the following proclamation about the first Law Day in 1958 — then read it to the students or have then read it to themselves. Note that every president since Eisenhower has always written a Law Day proclamation, and ask the students what they would emphasize in their Law Day proclamation if they were president. The class can write a single proclamation together or small groups can prepare separate ones. Individual proclama-
tions might be assigned as homework, and the final products might be shared with both the media and political leaders.
WHEREAS it is fitting that the people of this Nation should remember with pride and vigilantly guard the great heritage of liberty, justice and equality under law which our forefathers bequeathed to us; and

WHEREAS it is our moral and civic obligation as free men and as Americans to preserve and strengthen that great heritage; and

WHEREAS the principle of guaranteed fundamental rights of individuals under the law is the heart and sinew of our Nation, and distinguishes our governmental system from the type of government that rules by might alone; and

WHEREAS our government has served as an inspiration and a beacon light for oppressed peoples of the World seeking freedom, justice and equality of the individual under law; and

WHEREAS universal application of the principles of the rule of law in the settlement of international disputes would greatly enhance the cause of a just and enduring peace; and

WHEREAS a day of national dedication to the principle of government under law would afford us an opportunity better to understand and appreciate the manifold virtues of such a government and to focus the attention of the World upon them;

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby designate Thursday, May 1, 1958 as Law Day - USA. I urge the people of the United States to observe the designated day with appropriate ceremonies and activities, and I especially urge the legal profession, the press, and the radio, television and motion picture industries to promote and to participate in the observance of that date.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this Third Day of February in the Year of our Lord Nineteen Hundred and Fifty-eight, and of the Independence of the United States of America the One Hundred and Eighty-second.

(Signed) DWIGHT D. EISENHOWER By the President

JOHN FOSTER DULLES Secretary of State

The White House

February 3, 1958
Quick Classroom Lessons — 50 Years Later

Law Day — 50 Years Later

- **Grade Levels:** 5-College
- **Academic Standards:** Various Academic Standards for Civics and Government are met by this lesson.
- **Time Required:** This lesson can take a few moments or, with homework assignments, cover a number of class periods.
- **Materials:** None needed, though you might want to review certain sources such as Wikipedia (see http://en.wikipedia.org/wiki/1958 for a view back to that time period) so you have some examples of how things used to be to share with the students (unless you happen to be old enough to remember and, even then, you might want to check just to be sure of your memories!)

**OBJECTIVES:**
As a result, students will be able to:
1. Compare and contrast what is happening today with what was happening 50 years ago; and
2. Explore how changes over those 50 years have impacted the rights and responsibilities enjoyed by Americans.

Ask the students to list the 10 things they would most like to do today. They will probably list playing sports, using the computer, playing video games, being with their families and friends, and other such things in their lives today. Take a few items from the list and ask them if they think students in 1958 would have listed the same things. There was television in 1958, but TVs only had a few channels and most went off the air overnight. No one had a personal computer; the computers that existed were large and very expensive, generally owned by the military and colleges. Sports were played in 1958, but girls had far fewer opportunities to play sports. See what the students come up with and then ask them whether the changes have made things better or worse for us today. Older classes can explore how the law has changed over the past 50 years. In 1958, many of the constitutional protections we take for granted had not been provided. State and local police were not bound by the exclusionary rule under the Fourth Amendment, and the civil rights movement was just beginning to win the victories that would be codified in the law in the years ahead.

Why Law Day?

- **Grade Levels:** High School-College
- **Academic Standards:** Various Academic Standards for Civics and Government.
- **Time Required:** This can be done in as little as 10 minutes or over the length of a full class, depending on the depth of the lesson.

**OBJECTIVES:**
As a result, students will be able to:
1. Explain the origins of Law Day; and

Walk into the class and explain that you are here to celebrate Law Day. Ask the students if they have ever heard of Law Day. Explain that Charles Rhyne, the president of the American Bar Association in 1957 who is credited with being the person who thought up the idea of Law Day USA, said in a speech in 2000 looking back on the founding of the event that "The justifications for a Law Day were two-fold, one timeless and one very much a product of its times. ... The timeless notion was the use of law to achieve individual and social justice. The application of that notion to the Cold War, to contrast democracy with Communism, was a product of its times, but one which, I think, is relevant to the new democracies which have replaced the Communist regimes."

Ask the students to tell you whether they agree or disagree with attorney Rhyne on whether law can be used to achieve individual and social justice. Ask students to support their answers by reference to examples. Follow up with a question on the second part of Rhyne’s justifications — is there still a reason for Law Day in the comparison and contrast of democracy to other forms of government around the world?
A Good Citizen Understands … This is My World and My Responsibility … A Civic Mission Book List

• Grade Levels: K-3
• Academic Standards: Various Academic Standards for Civics and Government are covered in this lesson depending upon the text selected and the discussion that accompanies the book. Standards are listed in the three sample lessons provided.
• Procedure: Select one of the three sample lessons provided and present it to a class. Read the selected book aloud to the students, and complete the activity provided for the book.

PHILADELPHIA READS is a nonprofit literacy organization whose mission is to support Philadelphia in becoming a “City of Readers.” PHILADELPHIA READS joins the Pennsylvania Bar Association and PennCORD in the effort to reinvigorate civic education for all K-12 students in Pennsylvania. Through this partnership, PHILADELPHIA READS is building a list of books to be used to promote the civic mission of schools. The books on the list are age-appropriate for students from preschool to grade three. They provide lawyers, judges, and educators with the opportunity to work with children in civically-related activities designed to enhance their reading, writing and communication skills. The books are arranged into three categories: books that build knowledge of, skills in, and positive disposition towards becoming a “good citizen.” The following describes the type of book found in each category:

Knowledge of: Books about historical events and/or figures; books that describe how government works; books that refer to current events; and books that include information about rights and responsibilities.

Skills in: Books that describe things that young students can do including: community service; environmental awareness; model/lead; communicate effectively; and demonstrate an understanding of their rights.

Disposition towards: Books that have to do with problem solving and speaking up; books that demonstrate different points of view; books that have to do with abiding by rules/laws; and books in which the characters model what it is like to be helpful, ethical, accepting and patient.

Along with the list of books, there are three sample lessons with suggested activities. They are designed as read-alouds or as enrichment work that can be easily integrated across the curriculum. A sample list of books includes:

**KNOWLEDGE OF BOOKS**
• “Click Clack Moo … Cows That Type” by Doreen Cronin — This book highlights the concept of rights and responsibilities. (ISBN: 0-78820-764-4)

**SKILLS IN BOOKS**
• “Miss Rumphius” by Barbara Cooney — This is an excellent book from which to generate a list of “Things I Can Do To Make My ___________ (Classroom, School, Playground, Home, Neighborhood, etc.) A Better Place.” (ISBN: 0-67047-958-6)

**DISPOSITION TOWARDS BOOKS**
• “Ernest and Elston” by Laura T. Barnes — This is an animal story with an easily absorbed lesson about being true to yourself. (ISBN: 0-9674681-6-7)
• “I Was So Mad” by Mercer Mayer — This delightful piece of literature generates the practice of “stop and think.” (ISBN: 0-307-11039-4)
• “Lilly’s Purple Plastic Purse” by Kevin Henkes — Lilly learns that it is important to follow the rules in school and to use her problem solving skills. (ISBN: 0688128971)
• “Noisy Nora” by Rosemary Wells — A good citizen is, according to the PennCORD student interns, patient. Noisy Nora learns that patience is a virtue. (ISBN: 0-14-056728-3)
Title of Book: “You Forgot Your Skirt Amelia Bloomer”
Author: Shana Corey
Illustrator: Chesley McLaren
Level of Story: Primary
Category: ❑ Knowledge of  ❑ Skills in  ❑ Disposition towards
(Click the category/categories that apply)

Story Summary: Amelia Bloomer thought that many of the rules and laws that controlled women were silly. She disliked that women could not vote or work, so she fought to change those things. Even more, Amelia could not understand why women were expected to dress in such uncomfortable clothing. Women wore such big dresses! When Amelia saw a friend’s cousin wearing something very different, she was hooked. She immediately made herself several pieces of “bloomers” to wear. It did not take long for this new trend in women’s clothing to catch on.

Suggested Discussion Questions and/or Activities:
1. Think of a time you found a rule to be unfair. What did you think was unfair about the rule? Could you have done something to change what you thought was unfair about the rule? (Academic Standard 5.2.E: Describe ways citizens can influence the decisions and actions of government)
2. Why do you think that people expected women to dress the way they did in heavy, long dresses with corsets?
3. In the story, the fact that women were not allowed to work was the law of the day. On the other hand, expecting women to wear dresses that were so heavy and uncomfortable was a rule. Brainstorm any laws you know of. Now brainstorm a second list of rules. What do you think the difference is between rules and laws? Think of how rules and laws are set and the consequences for breaking different rules and laws. (Academic Standard 5.2.F: Explain the benefit of following rules and laws and the consequences of violating them. Academic Standard 5.3.C: Identify reasons for rules and laws in the school and community.)
MRS. MCBLOOM, CLEAN UP YOUR CLASSROOM!
Developing Skills in Civic Responsibility

Title of Book: “Mrs. McBloom, Clean Up Your Classroom!”
Author: Kelly DiPucchio
Illustrator: Guy Francis
Level of Story: Primary

Category: ❑ Knowledge of ❑ Skills in ❑ Disposition towards
(Check the category/categories that apply)

Story Summary: Mrs. McBloom had the messiest classroom in all of Up Yonders. When it was finally time for her to retire and clean her room for the next teacher, she did not know where to begin. She asked her class to come up with ideas for cleaning up in a “jiffy.” One student came up with an idea to have each citizen of Up Yonders come to school and pick one item from Mrs. McBloom’s classroom.

Suggested Discussion Questions and/or Activities:

1. The citizens in the story all chipped in to help Mrs. McBloom brainstorm possible solutions to her problem. Brainstorm a list of ways you could chip in to help someone around your school or community. (Academic Standard 5.2.G: Identify ways to participate in government and civic life.)

2. Mrs. McBloom was not able to solve her problem without the help of others. Think of a time when you needed others’ help — either their ideas or help — to complete a task. Explain that time and how others helped you. (Academic Standard 5.2.C: Students will begin to learn that there are different ways to solve problems.)

3. As a group, identify a problem you are having in your classroom, school or community. Brainstorm a list of possible ways it could be solved. Next, classify the solutions as either needing a group (more than one person) or able to be solved by one person. Which solutions seem to be the easier to carry out? What makes the solution easier to do? (Academic Standard 5.2.C: Students will begin to learn that there are different ways to solve a problem.)

4. Brainstorm a list of characteristics that make a good citizen. (Academic Standard 5.2.A: Students will begin to identify the rights and responsibilities of citizenship.)
THE THREE QUESTIONS
Developing Skills in Civic Responsibility

Title of Book: “The Three Questions” (Based on a story by Leo Tolstoy)
Author: Jon J. Muth
ISBN: 0-439-19996-4
Level of Story: Primary
Category: ☐ Knowledge of ☐ Skills in ☐ Disposition towards
(Check the category/categories that apply)

Story Summary: Nicolai is a young boy who thinks about how he can be a good person. He asks the help of his best friends — a crow, a monkey, and his dog. He asks them three big questions: When is the best time to do things? Who is the most important one? What is the right thing to do? Searching for the answers to his questions, Nicolai goes to the wise old turtle. Through first-hand experiences, Nicolai discovers the answers to his questions.

Suggested Discussion Questions and/or Activities:
1. Brainstorm with the children the characteristics of a good person / a good citizen. (Academic Standard 5.2.A: Students will begin to identify the rights and responsibilities of citizenship.)

2. Think about how you solved a problem with the help of others. Be prepared to share. (Academic Standard 5.2.C: Students will begin to learn that there are different ways to solve a problem.)

3. Think of a time when you helped someone. How did that make you feel? (Academic Standard 5.2.A: Students will identify examples of personal rights and responsibilities; and Academic Standard 5.2.C: Students will explain ways that they can help resolve conflicts in their school and community.)

4. Think of a time when someone helped you. How did that make you feel? (Academic Standard 5.2.A: Students will identify examples of how others demonstrate their civic responsibility; and Academic Standard 5.2.C: Students will explain ways that others in their school and community can help resolve conflicts.)
Lesson Plans (continued)

Fairy Tale Mock Trials

- **Grade Levels:** K-12
- **Academic Standards:** Civics and Government 5.3B, 5.3C and 5.3G

This lesson was inspired by the annual Law Day Fairy Tale Mock Trials developed and conducted by the Monroe County Bar Association through its wonderful volunteers on the Law Day Fairy Tale Trials Committee. The committee scripts and performs a new trial each year. For information on the trials, please contact:

Susan L. Kenny, Executive Director
Monroe County Bar Association, 913 Main Street, Stroudsburg, PA 18360
Ph: (570) 424-7288 • Fax: (570) 424-8214

Here is a partial list of the Fairy Tale Mock Trials the Monroe County Bar has done, with topics provided:

- **In Re: Snow White** (A foster care case)
- **Vader v. Boba Fett** (Contract dispute)
- **Commonwealth v. Goldilocks** (Prosecution for burglary)
- **Commonwealth v. B.B. Wolf** (Murder of the two pigs)
- **Commonwealth v. Certain Known Unnamed Pokemon Gang** (A case about older kids cheating little kids out of Pokemon cards)
- **Eminem v. Recording Academy** (A take off on the Florida Butterfly ballot)
- **Bumble v. Olivanders** (A product liability case based on the Harry Potter novels)

**Materials:** You will need a copy of the fairy tale you wish to use and adapt it into a mock trial or some sort of summary of the story. Some instructors have simply created a summary based on what the students in the class have provided. Below is an example of how one lawyer visiting a third-grade class created a mock trial with the students from the Goldilocks story. The class completed the trial in a 45-minute period.

The attorney asked the students if they knew the story of Goldilocks and the Three Bears. They did! Among the highlights of the story, as recounted by the class, was that a hungry and tired Goldilocks entered the Bears’ home and, after realizing no one was home, sampled porridge, broke a chair and fell asleep in a bed only to wake-up with three bears (Mama, Papa and Baby Bear) staring at her. The police were called, and she was arrested for trespass and held for trial.

The lawyer and the class discussed what happens at a criminal trial and how certain elements of the crime must be proven beyond a reasonable doubt for a guilty conviction to hold. In this case, the class decided the crime of trespass involved “going into someone’s home without permission.”

The class was asked how the commonwealth would prove its case, and the class realized it needed witnesses. Two witnesses that the class thought would help the prosecution were the neighbor from across the street who watched Goldilocks check out the house after the Bears had left for their walk and the police officer who arrested Goldilocks and also took statements from the Bears. The teacher handled the orches-
Traction of the trial by assigning students those roles as prosecution witnesses, as well as assigning the role of the defendant, attorneys for both sides, bailiff, judge, stenographer, court reporter and jurors. The attorney had prepared cards noting each role and handed them out to various students until every student had a role to play. Although the students were told that Goldilocks did not have to testify as the defendant, thanks to her Fifth Amendment rights, Goldilocks wanted to tell her side of the story and was joined by a classmate from Goldilocks’ school who became the second defense witness.

Opening statements were very short: “We’ll prove Goldilocks trespassed.” “We’ll show that Goldilocks did not trespass!” The Commonwealth began its case, and things looked pretty grim for Goldilocks as the witnesses responded to non-leading questions from the prosecution lawyers. They painted a picture of the unlawful entry into the home of the Bears. Defense cross-examination could not shake either witness. However, when the defense began its case, the student witness explained how he had been sitting between Baby Bear and Goldilocks the other day in class when Baby Bear had passed a note over to Goldilocks inviting her to come to the Bears’ house to see Baby Bear’s bee hive science project. Objections about hearsay evidence were considered (on a third-grade level), and cross-examination produced no change in the student’s story.

When Goldilocks took the stand, she said she was sorry she had fallen asleep, that she was sorry she had broken the chair, and that she was sorry she had eaten some of the porridge. But as careless as she was that day, she said that she was not a trespasser because she had been invited to the Bears’ house by Baby Bear. Goldilocks produced Baby Bear’s note and, after arguments about its admissibility, read it to the jury as allowed by the judge. The note even said, “Come in and wait for me if no one is home. We often go for walks in our woods!” The cross-examination did not faze Goldilocks one bit. The defense rested, each side gave closing statements, and the judge sent the jury off to deliberate with instructions that they had to find all of the elements of the crime to convict.

The jury found Goldilocks not guilty of trespassing, but the judge did lecture her on being a better visitor in the future!
Helping Students Find Their Voice: Penncord’s 26 Student Advocacy Kit

- **Grade Levels:** Middle School
- **Academic Standards for Civics and Government:** 5.1, 5.2; 5.3; 9 D, G, J, L; 12 A, B, C, D, E, F, G, J, L
- **Time Required:** 45 minutes
- **Background:** This lesson can be taught by older students or by the visiting lawyer or judge to teach middle school students about active citizenship by giving them practice at problem solving using the framework in the 26 booklet that was created by young people for young people as a product of the Pennsylvania Coalition for Representative Democracy (PennCORD); free copies can be downloaded from www.penncord.org, and copies may be purchased for a nominal cost ($1 at the time of this printing) from the National Constitution Center.

**OBJECTIVES:**
As a result, students will be able to:
1. Identify and problem solve issues of community concern;
2. Examine the rights and responsibilities of citizens and explore the role of the citizen in various communities; and
3. Analyze a problem using the 26 Community Problem Solving Framework or other framework.

**MATERIALS:**
1. One page 26 summary
2. Problem solving framework cards
3. Copies of 26 (optional)

**PROCEDURE:**
1. Walk into the class and ask the students if they know what it means to be an active citizen. Listen to answers and then explain to the students that active citizens solve problems in their communities.
2. Inform the class that you have brought some hypothetical problems for them to consider solving. Hand out problem solving framework cards to every student or to small groups of four to six students. You can randomly create groups by having four to six copies of each card you hand out and then asking all of the students with the same scenario card to form a group and work together.
3. Ask the students how they solve problems in their own lives. See if students can articulate a process for problem solving. Explain that it is always better to have a process for problem solving. Either hand out copies of the 26 booklet at this time or hand out copies of the pages used for community problem solving. Ask students to follow the procedures outlined to solve their problem and then report on their solutions. The steps are outlined below for your information:

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1. The Pennsylvania Coalition for Representative Democracy (PennCORD), led by Third Circuit Court of Appeals Judge and Pennsylvania First Lady Marjorie O. Rendell with founding partners Pennsylvania Bar Association, Pennsylvania Department of Education and the National Constitution Center, is a unique union of educational, advocacy, and governmental organizations that are committed to improving civic learning for students in grades K-12. The PennCORD mission is to encourage a local civic learning policy to implement state standards in every school district by involving community advocacy for better civic education and by providing educators across Pennsylvania with resources and training. PennCORD’s goal is for every Pennsylvania school to prepare its students to understand and participate in their communities, society and government.
Community Problem Solving Framework (from pages 15-17 of 26)

Step 1
Research issues in your community on which you may be interested in working. Your community could be your classroom, school, family, or neighborhood. An example might be that there are not enough after-school activities offered to high school students. Write some of the local issues you are interested in below. The cards set out the problems to be solved so this step can be skipped for the class exercise, but it is the key step when students look to solve real concerns of their own.

Step 2
Identify the issue on which you would like to focus and begin to plan for action. Rewrite the issue on which you chose to focus. The cards set out the problem each student will focus on, so this step is skipped, too.

Step 3
Identify possible stakeholders such as:
Other students; other student organizations; teachers; school administrators; other school staff (aides, secretaries, etc.); school board members; parents; community residents; and local politicians.

Step 4
Brainstorm possible solutions to the problem. Also think about the obstacles associated with each possible solution. Write them below.

Possible Solution: Obstacles:
__________________________________________         ____________________________________________
__________________________________________         ____________________________________________
__________________________________________         ____________________________________________

Step 5
Choose the solution that best solves the problem and has the fewest obstacles. Consider criteria such as cost, ease of implementation, most widespread appeal, etc. Write your best solution below.
_______________________________________________________________________________________
_______________________________________________________________________________________
_______________________________________________________________________________________

Step 6
Create an action plan that incorporates the use of various tools and strategies found in the tool kit. (Decide WHO, WILL DO WHAT, BY WHEN.)

Step 7
After you have implemented your plan, take time to reflect. What about the plan worked? What about the plan did not work? In what way(s) might you do things differently if you tried again? Did you achieve the goal(s) you set for yourself?

ASSESSMENT:
A nice way to assess this lesson, after the students report on their solutions to the problems on the cards, is to ask the students to do steps 1 through 5 for their own school.
Lesson Plans (continued)

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students at Central High School have noticed that only the most popular students are voted onto the student government.</td>
<td>Use the problem-solving framework on pages 15-17 of 26 to brainstorm solutions and create an action plan to ensure that student government candidates are measured by criteria other than popularity. Be prepared to share your plan with the group in a 4-5 minute presentation.</td>
</tr>
</tbody>
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<tr>
<th>Scenario</th>
<th>Directions</th>
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</thead>
<tbody>
<tr>
<td>Your school’s student government is having trouble getting people to attend meetings and to participate.</td>
<td>Use the problem-solving framework on pages 15-17 of 26 to brainstorm solutions and create an action plan to interest more students in school governance. Be prepared to share your plan with the group in a 4-5 minute presentation.</td>
</tr>
</tbody>
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<tr>
<th>Scenario</th>
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</thead>
<tbody>
<tr>
<td>Your school has a rule that students are not allowed to carry cell phones with them during the school day. A lot of students and parents want this rule changed.</td>
<td>Use the problem-solving framework on pages 15-17 of 26 to brainstorm solutions and create an action plan to change the rule. Be prepared to share your plan with the group in a 4-5 minute presentation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your school has had a student newspaper for a long time and students depend on it to find out what is going on in the school. Due to budget cuts, the school is no longer able to pay for publication of the paper.</td>
<td>Use the problem-solving framework on pages 15-17 of 26 to brainstorm solutions and create an action plan to save the school paper. Be prepared to share your plan with the group in a 4-5 minute presentation.</td>
</tr>
</tbody>
</table>
**Lesson Plans (continued)**


- **Grade Levels:** High School
- **Academic Standards:** 5.2 Rights and Responsibilities of Citizenship; 5.3 How Government Works.
- **Time Required:** 45 minutes
- **Materials:** Texas v. Johnson case summary and Texas v. Johnson argument points.

**OBJECTIVES:**
As a result, student will be able to:
1. Articulate whether the free speech protections of the First Amendment permit the burning of the United States flag as a form of protest.

**PROCEDURE:**
1. Provide the class with a copy of the Case Summary and the Argument Points handouts.
2. Inform the class that the First Amendment of the United States Constitution gives citizens the right to speak freely. Explain that today they are going to examine a situation that looks at whether burning a flag is a form of protected speech.
3. Ask the students to provide examples of speech that is protected by the First Amendment. Challenge the class to come up with examples of speech they believe are not protected by the First Amendment.
4. Explain the case summary to the class in your own words, or ask them to read it to themselves and then go over it as a group.
5. Break the students into groups and ask them to complete the Argument Points handout. Discuss the answers with the class.
6. If time permits, help the students to prepare for an appellate argument mock trial of the Texas v. Johnson case by dividing the students into three groups: one group representing Texas, one group representing Johnson, and a third group that serves as the Supreme Court.

**Assessment:** Revisit the class’s earlier discussion regarding examples of speech that is protected or prohibited. Have any of their opinions changed in light of what they have learned from the Texas v. Johnson case?
Case Summary

Facts  Gregory Lee Johnson burned an American flag outside of the convention center where the Republican National Convention was being held in Houston, Texas. Johnson burned the flag to protest the policies of President Ronald Reagan. He was arrested and charged with violating a Texas statute that prevented the desecration of a venerated object, including the American flag, if such action were likely to incite anger in others. A Texas court tried and convicted Johnson. He appealed, arguing that his actions were "symbolic speech" protected by the First Amendment. The Supreme Court agreed to hear his case.

Issue  Whether flag burning constitutes "symbolic speech" protected by the First Amendment.

Ruling  Yes.

Reasoning  The majority of the court, according to Justice William Brennan, agreed with Johnson and held that flag burning constitutes a form of "symbolic speech" that is protected by the First Amendment. The majority noted that freedom of speech protects actions that society may find very offensive, but society's outrage alone is not justification for suppressing free speech.

In particular, the majority noted that the Texas law discriminated upon viewpoint, i.e., although the law punished actions, such as flag burning, that might arouse anger in others, it specifically exempted from prosecution actions that were respectful of venerated objects, e.g., burning and burying a worn-out flag. The majority said that the government could not discriminate in this manner based solely upon viewpoint.

Dissent  Writing for the dissent, Justice Stevens argued that the flag's unique status as a symbol of national unity outweighed "symbolic speech" concerns, and, thus, the government could lawfully prohibit flag burning.

ARGUMENT POINTS

Read each of the following arguments and decide if the argument is helpful to the state of Texas (T), Johnson (J), or both (B).

_____ The Supreme Court has recognized that the First Amendment protects certain forms of symbolic speech.

_____ The flag is a symbol of national unity and it represents the ideals of the nation, such as freedom of speech and religion and equality before the law. It also honors those who have lost their lives defending our country.

_____ The Texas law prohibits the expression of one's viewpoint, and such a prohibition is not allowed under the First Amendment.

_____ It is necessary to draw a line when it comes to freedom of speech so that otherwise illegal conduct cannot be couched as "free speech."

_____ As long as there is no danger of injury to persons or property, an individual should be able to burn a flag that he or she owns, especially if it is being burned as a form of protest.

_____ Being able to burn the flag is actually a way to honor the values that the flag represents, such as freedom of speech.

_____ The Texas law does not prohibit all instances of flag burning. For example, burning worn-out flags is permitted, as is burning the flag when this action would not likely offend others.

_____ Texas realizes that burning may provoke an emotional response. Therefore, the law against flag burning is designed to help keep the peace.

_____ First Amendment rights must not be based on the offense an individual may take to a particular action. Allowing a law to prohibit burning a flag because it may offend others can cause a chilling effect on speech and an eventual prohibition on all speech that one may find offensive.
Lesson Plans (continued)

But I was Only Speeding . . . Looking at the case of Scott v. Harris, 550 U.S. ___ (2007)

- **Grade Levels:** High School-College
- **Academic Standards for Civics and Government:** 5.2 Rights and Responsibilities of Citizenship; 5.3 How Government Works
- **Time Required:** 45 minutes (It will take twice that time if the mock appellate argument is held.)
- **Materials:** Scott v. Harris Case Summary, Scott v. Harris Argument Points; Scott v. Harris Argument Answers; Scott v. Harris Case Result.

**OBJECTIVES:**
As a result, student will be able to:
1. Identify the circumstances under which police action to apprehend a suspect fleeing in a vehicle might constitute an unreasonable seizure;
2. Examine the rights and responsibilities of citizens and police under the Fourth Amendment of the U.S. Constitution’s prohibition against unreasonable seizures; and
3. Look how decisions of young people (in this instance, Harris’ speeding away from the police) impact, and are impacted by, the law and the courts.

This is a great lesson to invite a police officer to discuss with the class local procedures governing high-speed chases. Most police departments have specific policies about situations such as those addressed by this case.

**PROCEDURE:**
1. Provide the class with a copy of the Case Summary and the Argument Points handouts.
2. Inform the class that the Fourth Amendment of the United States Constitution protects citizens from unreasonable seizures of private property and persons. Explain that they are going to examine a situation that looks at whether police action during a high-speed car chase rises to the level of an unreasonable seizure.
3. Ask the students to provide examples of circumstances under which they believe it may be reasonable and unreasonable for police to take action to intentionally run into a car that is speeding away from them in order to make it stop.
4. Explain the case summary to the class in your own words or ask them to read it to themselves and then go over it as a group. Ask how many of the students have ever been in a car exceeding the speed limit? Remind the students that Harris’ actions in fleeing the police caused great harm to him and could have caused great harm to others. How bad would it have been to get a traffic ticket?
5. Break the students into groups and ask them to complete the Argument Points handout. Discuss the answers with the class. Hand out the Argument Points answer sheet to the class.
6. If time allows, have the students prepare for and present an appellate argument mock trial of the Scott v. Harris case by dividing the students into three groups: one group representing Scott, one group representing Harris, and a third group that serves as the Supreme Court. Have the Scott team present its arguments, have the Harris group follow and then conclude with the Supreme Court asking questions of both sides before rendering its decision.
7. Distribute the Case Result handout, and ask the students whether they agree or disagree with the decision of the United States Supreme Court.

1 This case summary is reprinted from the Scott v. Harris case summary that is published on the Educational Outreach section of the U.S. Courts Web site: http://www.uscourts.gov/outreach/topics/scottharris/facts.html. These materials were developed by the Administrative Office of the Courts. For further information or additional materials, The Pennsylvania Bar Research and Writing Committee reviewed these materials for use in the law day booklet. Special thanks go to Conley Santangelo of Freedoms Foundation and U.S. Supreme Court Law Day Materials for helping these materials with students involved in Freedom Foundation programs.
Lesson Plans (continued)

ASSESSMENT: Revisit the class’s earlier discussion regarding when it may be reasonable or unreasonable for the police to stop a car that is speeding away from them by intentionally running into it. Have any of their opinions changed in light of what they have learned from the *Scott v. Harris* case? This lesson also lends itself to a reflective-response paper based on each student’s reaction to the case result.

Case Summary

**Facts** One night in March 2001, a Georgia police officer clocked 19-year-old Victor Harris driving 73 m.p.h. in a 55 m.p.h. zone. When the officer signaled for Harris to pull over, Harris sped up instead. The officer gave chase and radioed for assistance. In the midst of the chase the officers nearly cornered Harris in a parking lot, but he got away after getting into a minor scrape with Deputy Timothy Scott’s police car before speeding off again. Scott took over as the lead pursuit vehicle, following Harris down a mostly two-lane highway at more than 85 m.p.h. In order to bring the high-speed chase to an end, Scott sped up and hit the bumper of Harris’ car, which caused that vehicle to leave the road and crash. Harris sustained injuries rendering him a quadriplegic. Harris sued Scott under 42 U.S.C. §1983, which grants a cause of action for deprivation of civil rights.

The parties agreed that a seizure occurred when Scott rammed Harris’ bumper. But Harris alleged that Scott used excessive force to end the chase, and therefore the seizure was unreasonable and unconstitutional. Scott contended that given the circumstances his actions were reasonable. The U.S. District Court rejected Harris’ arguments, the U.S. Court of Appeals for the Eleventh Circuit agreed with Harris and overturned the District Court decision. Scott then appealed to the U.S. Supreme Court, which agreed to hear the case.

**Issue** Did Deputy Scott’s actions constitute an unreasonable seizure, thus violating Harris’ Fourth Amendment right?

ARGUMENT POINTS

Read each of the following arguments and decide if the argument is helpful to Scott (S), Harris (H), or both sides (B).

- The Fourth Amendment of the United States Constitution protects against unreasonable seizures.
- Harris evaded the police and led them on a chase through a parking lot and down a two-lane highway with speeds of up to 85 m.p.h., thereby creating a danger to himself and others.
- Harris’ underlying offense was speeding, not a violent crime.
- Ramming into the back of a car to force it off the road had a high probability of causing serious injury or death to the driver.
- The police could have employed other methods to catch him, such as taking down his license plate number or setting a trap to puncture his tires.
- Harris disobeyed the commands to stop the car. The police had a duty to enforce the law.
- Harris had the option of pulling over at any time to end the danger he posed. He chose not to do so.
- There is no guarantee that Harris would have slowed down if the police had not chased his car. The police initially attempted to pull him over because he was speeding.
- There were no pedestrians or traffic in Harris’ path.
- Criminals would have an incentive to speed away from police and drive recklessly if police were required to allow speeding suspects flee.
- In *Pennsylvania v. Conner*, an earlier Supreme Court decision, the Supreme Court looked at a case of deadly force in which a police officer shot an unimposing, unarmed burglary suspect in the back of the head as the suspect fled. The Conner court held that the officer’s use of deadly force was not reasonable because (1) the suspect did not pose an immediate danger to others, (2) the deadly force was not necessary to prevent the suspect’s escape, and (3) the officer gave no warning.
Lesson Plans (continued)

ANSWERS

Read each of the following arguments and decide if the argument is helpful to Scott (S), Harris (H), or both sides (B).

_____ The Fourth Amendment of the United States Constitution protects against unreasonable seizures. This argument can help either side since what is reasonable is a matter of debate.

_____ Harris evaded the police and led them on a chase through a parking lot and down a two-lane highway with speeds of up to 85 m.p.h., thereby creating a danger to himself and others. This argument helps Deputy Scott's side. It is the reason he chased Harris down.

_____ Harris' underlying offense was speeding, not a violent crime. This argument helps Harris. Should you be crippled for life for speeding?

_____ Ramming into the back of a car to force it off the road had a high probability of causing serious injury or death to the driver. This argument helps Harris but the Scott side can balance the injury or death of the offending driver with the prevention of possible harm to others.

_____ The police could have employed other methods to catch him, such as taking down his license plate number or setting a trap to puncture his tires. This argument helps Deputy Scott's side.

_____ Harris disobeyed the commands to stop the car. The police had a duty to enforce the law. This argument helps Deputy Scott's side.

_____ Harris had the option of pulling over at any time to end the danger he posed. He chose not to do so. This argument helps Deputy Scott's side.

_____ There is no guarantee that Harris would have slowed down if the police had not chased his car. This argument helps Deputy Scott's side since Harris's speeding was the underlying activity that set off the chain of events that led to his harm. However, Harris can argue that the initial speeding was at a much slower speed than the chase speed and, if the deputy had stopped chasing him, he probably would have slowed down.

_____ There were no pedestrians or traffic in Harris' path. This argument helps Harris, but the Scott side can note that the very absence of others made that moment the perfect one to perform the ramming maneuver since there was a chance that pedestrians and other traffic might become involved in the chase continued.

_____ Criminals would have an incentive to speed away from police and drive recklessly if police were required to allow speeding suspects flee. This argument helps Deputy Scott though Harris might argue that tracking down speeding offenders later through license plates and other means would deter such behavior.

_____ In Tennessee v. Garner, an earlier Supreme Court decision, the Supreme Court looked at a case of deadly force in which a police officer shot an unimposing, unarmed burglary suspect in the back of the head as the suspect fled. The Garner court held that the officer's use of deadly force was not reasonable because (1) the suspect did not pose an immediate danger to others, (2) the deadly force was not necessary to prevent the suspect's escape, and (3) the officer gave no warning. This argument helps Harris but only to the extent that Harris can show that the facts of his case are similar to the facts here. The Scott side can argue that a speeding car is far different than a fleeing burglar, that Harris was a threat to others, and that Harris was sufficiently warned.

Case Summary

Facts

One night in March 2001, a Georgia police officer clocked 19-year-old Victor Harris driving 73 m.p.h. in a 55 m.p.h. zone. When the officer signaled for Harris to pull over, Harris sped up instead. The officer gave chase and radioed for assistance. In the midst of the chase the officers nearly cornered Harris in a parking lot, but he got away after getting into a minor scrape with Deputy Timothy Scott’s police car before speeding off again. Scott took over as the lead pursuit vehicle, following Harris down a mostly two-lane highway at more than 85 m.p.h. In order to bring the high-speed chase to an end, Scott sped up and hit the bumper of Harris’ car, which caused that vehicle to leave the road and crash. Harris sustained injuries rendering him a quadriplegic. Harris sued Scott under 42 U.S.C. §1983, which grants a cause of action for deprivations of civil rights.

The parties agreed that a seizure occurred when Scott rambled Harris’ bumper. But Harris alleged that Scott used excessive force to end the chase, and therefore the seizure was unreasonable and unconstitutional. Scott contended that given the circumstances his actions were reasonable. The U.S. District Court rejected Harris’ arguments, the U.S. Court of Appeals for the Eleventh Circuit agreed with Harris and overturned the District Court decision. Scott then appealed to the U.S. Supreme Court, which agreed to hear the case.
Case Summary (continued)

Issue Did Deputy Scott’s actions constitute an unreasonable seizure, thus violating Harris’ Fourth Amendment right?

Ruling No.

Reasoning The court held that because Harris started the high-speed car chase, creating a dangerous situation that threatened the lives of innocent bystanders, it was reasonable for Scott to try to stop it even when it put Harris in danger of serious injury. To reach that conclusion, the court first had to decide the factual issue of whether Harris’ behavior endangered human life.

Harris argued that his driving was controlled and non-threatening and that his path was clear of other traffic and pedestrians. His arguments were successful in the Court of Appeals, but after viewing the police videotape of the chase, all but one of the Supreme Court Justices disagreed with the appellate court. The Supreme Court concluded that Harris’ driving did pose an immediate threat to the lives of others.

On the question of whether the force used was “reasonable,” Harris argued that to be reasonable Scott’s attempt to stop the chase using force must meet standards set forth in Tennessee v. Garner, 471 U.S. 1. There, a police officer shot an unimposing, unarmed burglary suspect in the back of the head as the suspect fled. The Garner court held that the officer’s use of deadly force was not reasonable because (1) the suspect did not pose an immediate danger to others, (2) the deadly force was not necessary to prevent the suspect’s escape, and (3) the officer gave no warning.

The Scott majority rejected Harris’ Garner arguments. They held (1) that Garner did not establish any across-the-board test for determining the reasonableness of Fourth Amendment seizures, and (2) that it was distinguishable on the facts. In both Garner and the case before it, the court applied the standard Fourth Amendment “reasonableness” test to the circumstances of that case. Was it objectively reasonable for Scott to do what he did?

Looking to the circumstances of the car chase, the court held that it was reasonable for Scott to take the actions he did. Moreover, the majority noted, if the court were to rule otherwise — in effect requiring police to let speeding suspects get away — it would give criminals an incentive to drive recklessly just so the police would have to break off pursuit.

Concurrences
Justice Ginsberg — Justice Ruth Bader Ginsberg concurred with the majority, but was concerned that the majority established a bright-line rule that the police could force a car off of the road in order to end a high-speed chase without fear of violating the Fourth Amendment. Justice Ginsberg felt that different circumstances may have had an impact on the outcome of the case, e.g., Deputy Scott’s actions might not have been permissible if bystanders were present.

Justice Breyer — Justice Stephen Breyer agreed with Justice Ginsberg’s concurrence, and urged readers of the opinion to see the video of the chase because the outcome of this case is very fact-dependent. Justice Breyer noted that the court perhaps did not have to decide the issue on constitutional grounds, but may have been able to decide it based upon a judicial concept that affords limited immunity from suit to police officers for suits based on their official conduct.

Dissent
Justice Stevens — Justice John Paul Stevens dissented, arguing that there was no difference between the facts of this case and the facts of Garner. Specifically, he said that since the underlying crime (speeding) was nonviolent, and there was no evidence that Harris would be of harm to others, Deputy Scott committed an “unreasonable seizure” when he rammed Harris’ car.

Justice Stevens also noted that the police knew Harris’ license plate number, so they could have tracked him down later without the need for the chase. Furthermore, Justice Stevens argued that, had the police not given chase in the first place, Harris might not have continued with his speeding.


Lesson Plans (continued)

Affirmative Action Today

- **Grade Levels**: 11-College
- **Academic Standards for Civics and Government**: Photocopies of the case summaries, chart, relevant laws, Taxman facts, and letters to the editor.
- **Time Required**: One full week (four to five hours). It is possible to shorten the lesson by using less cases and/or letters to the editor.

**PROCEDURES:**

1. The instructor should introduce him or herself and provide some background on affirmative action, such as what it is and where it may be found (education, employment, public contracting). You may wish to put the following chart on the board:

   ![Chart](chart.png)

   This lesson will focus on affirmative action issues in education and employment.

2. Explain that affirmative action is an issue that is best understood by exploring specific disputes with specific facts and people.

3. Distribute to everyone one of the six case summaries to each student and the two-sided chart (one side is for the affirmative action in education cases and the other is for the affirmative action in employment cases). Explain that each student will become an expert in a particular case. Instruct the students to first read the case they have been given. Students should then locate their case on the chart and fill in all of the information called for on the chart. This should take students between 10 and 15 minutes to complete. You may wish to briefly explain the difference between the trial court, appellate court, etc. before the students begin reading the cases.

   *** An alternate approach to this exercise allows for the instructor to break the students into six groups and to have each group read and become an expert in one of the six cases, fill in the chart, etc.

4. After all of the students or groups have read the case they have been assigned and have completed the chart for their case, ask for student volunteers or a representative of each group to briefly explain the case they were assigned and give the answers they put on their chart. Encourage all of the students to fill in their charts and to voice their opinions about the cases that are being discussed. The class should be engaged in lively class discussion about the cases. This should take about 15 minutes, but may take more time depending on how involved the students become in the discussions.

5. When the students have finished discussing the results of the cases they were given, present the facts of the Taxman case to them. It will be helpful to give each student a copy of the Taxman worksheet. This will take five to 10 minutes.
6. Break the students into at least five groups. Each group will act as justices who will pretend they are deciding the Taxman case. Instruct the students to use the cases they have just learned about as precedent to decide the Taxman case. Allow 15 minutes for this part of the exercise.

7. Each group will present its decision in the Taxman case. This should be followed with a class discussion about whether it was hard to reach the decisions and whether much of their personal feelings about affirmative action dictated the result. You may want to ask about which cases they relied on as precedent. Allow 15 minutes for this part of the exercise.

8. For the next part of the activity, the students will try to get into someone else’s shoes in their affirmative action perspective. There are six letters to the editor that accompany this activity. Distribute one of them to each of the students or group of students and ask them to argue the Taxman case from the perspective of the writer of the letter to the editor. Remind students that the position they are being assigned to argue may differ from their own personal opinion. When presenting their opinion, students will actually speak as the person writing the letter. Discuss whether it was difficult to see or defend or attack the issue from another’s perspective. Allow at least 15 minutes for this part of the activity. You should have one student or group of students speak regarding each of the six letters.

9. If time permits, use the rest of the class time for students to talk about their own feelings and experiences with affirmative action.

This lesson was originally designed during the 1997-98 academic year by Cara Levy.
**Factual History**

Allan Bakke was a 33-year-old white engineer. He applied to the University of California at Davis Medical School two times and was denied admission each time. Under the medical school’s admissions policy, non-minority applicants with grade point averages below 2.5 on a 4.0 scale were summarily rejected, and about one of every six applicants was invited for an admissions interview. After the interview, the candidate was rated on a scale from one to 100 by his interviewers. The admissions process was different for “economically or educationally disadvantaged” and minority applicants. The medical school reserved 16 of the 100 places in the entering classes for minority applicants. Minority applicants’ applications were forwarded to a special admissions committee, the 2.5 GPA rule was not applied, and the minority student received special consideration.

**Case History**

Bakke sued the medical school in California state court under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race by educational institutions that receive money from the federal government. Bakke alleged that he was not admitted to the medical school because of the special admissions procedures that admitted minority applicants with grades and test scores lower than his. Bakke won his case, and the medical school appealed to the Supreme Court of California. The Supreme Court of California ruled in favor of Bakke and held that the medical school’s admissions program violated the Equal Protection Clause because no applicant may be rejected because of his race in favor of another, less qualified individual. The Supreme Court of California reasoned that although the medical school’s goals of integrating the medical profession and increasing the numbers of physicians willing to serve minority groups were compelling state interests, the program was not narrowly tailored to achieve those goals. The Medical School appealed to the Supreme Court of the United States.

**U.S. Supreme Court Decision**

The Supreme Court issued a split decision, but the effect of its decision was that the medical school’s admissions program was invalidated. Justice Powell delivered the opinion of the court that invalidated the program. Justice Powell rejected the following arguments made by the medical school in support of its admissions policy: to reduce the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession; to eliminate societal discrimination; and to increase the number of physicians practicing in underserved communities. However, Justice Powell did accept the medical school’s final argument that a diverse student body is a constitutionally permissible goal for a university, even though the means of achieving this goal (a quota system) were impermissible in this case. He wrote that in his view, an admissions policy in which “race or ethnic background may be deemed a ‘plus’ in a particular applicant’s file” would be permissible.


**Factual History**

The University of Michigan’s undergraduate admissions policy was based on a number of factors, including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. During the time in question, the university considered African Americans, Hispanics, and Native Americans to be “underrepresented minorities” and it is undisputed that “virtually every qualified applicant” from those groups was admitted. The admissions guidelines also called for a point system where applicants needed to score at least 100 points to be admitted. The admissions plan called for each student of an underrepresented minority group to automatically receive 20 out of the needed 100 points.

Jennifer Gratz and Patrick Hamacher are white. Gratz was notified in January that the final decision regarding her application to the university would not be made until April because, although she was “well qualified,” she was “less competitive than the students who had been admitted on first review.” Similarly, a decision regarding Hamacher’s admission was delayed because, although his “academic credentials were in the qualified range, they were not at the level needed for first review admission.” Gratz and Hamacher filed a lawsuit alleging that the university’s use of racial preferences in undergraduate admissions violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race by educational institutions that receive money from the federal government.
Case History

The United States District Court for the Eastern District of Michigan found in favor of the university and reasoned that the admissions policy was narrowly tailored to meet the university's interest in diversity because (1) the university's award of 20 points to underrepresented students was not the same as a quota because underrepresented students' applications were still reviewed even though those points were awarded; and (2) the university's admissions policy was not an attempt to achieve racial balancing because it did not seek to achieve a certain proportion of minority students or one that represents the community. Gratz and Bollinger appealed, but the appeal was not heard by the Court of Appeals for the Sixth Circuit because this case was consolidated with a similar case (Grutter v. Bollinger) whose appeal was ready to be heard by the U.S. Supreme Court.

U.S. Supreme Court Decision

In a five to four decision, the Supreme Court found that the university's interest in diversity can constitute a compelling state interest. However, it also found that the lower court erroneously concluded that the university's use of race in its admissions policy was narrowly tailored to meet this interest. The Supreme Court explained that race may be considered as a “plus” factor in admissions decisions, but that it may not be used as a single factor that automatically ensures admission. (Facts contained in the record showed that the addition of 20 points brought virtually every minimally qualified underrepresented minority applicant's application up to the minimum number of points needed for admission.)

Justices Souter and Ginsburg dissented and found that the University's system was not unconstitutional because it was not a quota system and it gave all applicants equal ground to compete on because it allowed all applicants to receive an automatic 20 points for factors such as athletic ability, 10 points for being a resident of Michigan, extra consideration for excellent grades, and so on. In addition, the dissenting justices contended that such affirmative action programs are necessary to remedy racial inequality and that without such programs in place, schools will simply turn to “winks, nods, and disguises” to achieve a racially balanced and diverse class.


Factual History

Barbara Grutter is a white woman who applied for admission to the University of Michigan Law School. The law school is one of the nation's top law schools and it receives more than 3,300 applications each year for a class of approximately 350 students. Grutter was put on a waiting list and was later denied admission. Grutter then filed suit against the law school. Some of her allegations included: (1) discrimination on the basis of race in violation of the Equal Protection Clause of the Fourteenth Amendment, (2) rejection of her application because the law school used race as a “predominant” factor, giving applicants who belong to certain minority groups “a significantly greater chance of admission than students with similar credentials but disfavored racial groups,” and (3) the law school “had no compelling interest to justify their use of race in the admissions process.”

The law school's admissions policy was designed to achieve student body diversity in compliance with the law. To do this, the policy focused on applicants' academic ability, as well as an assessment of their talents, experiences and potential. All of the information in an applicant's file, such as their personal statement, letters of recommendation, an essay describing how the applicant will contribute to law school life and diversity, and the applicant's undergraduate GPA and LSAT score, was evaluated. The admissions policy also required officials to look beyond grades and scores to things such as recommenders' enthusiasm for the applicant, the quality of the undergraduate institution, the applicant's essay, and the areas and difficulty of undergraduate course selection. In addition, the policy did not define diversity only in terms of race and ethnicity, but it did reaffirm the law school's commitment to diversity with special reference to the inclusion of African American, Hispanic, and Native American students, who otherwise might not be represented in the student body in meaningful numbers.

Case History

Grutter asked the trial court for compensatory and punitive damages, an order requiring the law school to offer her admission, and an injunction prohibiting the law school from continuing to discriminate on the basis of race. The trial court agreed with Grutter and ordered her admitted. On appeal, the Court of Appeals reversed the district court and held that legal precedent established diversity as a compelling state interest and that the law school's use of race was narrowly tailored because race was merely considered as a “potential plus” factor and because the law school's program was “virtually identical” to the admissions program at Harvard, which was described approvingly by the U.S. Supreme Court in a previous case (Regents of the University of California v. Bakke) (1978).
Lesson Plans (continued)

U.S. Supreme Court Decision

The Supreme Court held that the law school’s admissions policy does not violate the Equal Protection Clause because it is narrowly tailored to meet a compelling state interest in that it considers race only as a “plus factor,” which is permissible under the law. The Supreme Court did caution, however, that race-conscious admissions policies must be limited in time and that racial preferences should be terminated as soon as practicable. Justices Rehnquist, Scalia, Kennedy, and Thomas dissented and found that the law school’s admissions policy is not related to its asserted goal of achieving a diverse student body, but rather is merely a naked effort to achieve racial balancing. In reaching this conclusion, the dissent relied on the fact that the law school never offered any race-specific arguments explaining why significantly more individuals from underrepresented minority groups are needed to further student body diversity.


Factual History

In an effort to ensure that no one public school has an overwhelming black or white population, Jefferson County has an enrollment plan that places students in different schools according to racial demographics. In order to meet this goal, the plan requires that each school maintain a black population of no greater than 50 percent, but no less than 15 percent. Under the current plan, students apply to attend the school of their choice. Applications rate students on factors including residence, student choice, capacity, school and program popularity, pure chance and race. Most students receive either their first or second choice. Under the current plan, students apply to attend the school of their choice. Applications rate students on factors including residence, student choice, capacity, school and program popularity, pure chance and race. Some students, however, are being bused across the county in order to reach their assigned school, sometimes spending up to three hours per day on a school bus. Some parents of these students assert that this poses logistical issues and detaches children and their parents from the communities they call home. Jefferson County parents who became fed up with busing and the complexities of enrollment brought a civil suit against the county in the U.S. District Court for the Western District of Kentucky. They claim their children’s constitutional rights have been violated based on the Equal Protection Clause of the Fourteenth Amendment, the purpose is to ensure that all Americans enjoy equal protections under all laws.

Procedural History

The district court upheld the plan and found that it is “narrowly tailored” to achieve the district’s compelling interest in a diverse student body because race was only a factor in the decision. The district court based its opinion on the idea that the Jefferson County plan does not amount to a quota system, which is prohibited. Opponents to the plan argue that an opinion pertinent to higher education cannot apply to public schools at the kindergarten through 12th grade level. The 6th Circuit Court of Appeals affirmed.

U.S. Supreme Court Decision

In a 5-4 decision, the Supreme Court reversed the 6th Circuit and found that the school districts had “not carried their heavy burden of showing that the interest they seek to achieve justifies the extreme means they have chosen.” Chief Justice John Roberts, writing for the majority, stated that “accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society.” Justices Samuel Alito, Antonin Scalia and Clarence Thomas joined the plurality opinion. While Justice Anthony Kennedy joined the final decision, he disagreed with Roberts’ assertion that race should not have been taken into account in the cases at issue. Instead, Justice Kennedy said, “This nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all its children.”

Johnson v. Transportation Agency, Santa Clara County, CA (1987)

Factual History

In 1978, the Transportation Agency adopted an affirmative action plan to create equal representation of minorities, women, and disabled persons in the agency’s supervisory positions. Under the plan, the agency could consider the sex of a qualified applicant as one factor when making promotions to fill positions in which women traditionally have been underrepresented. The agency’s plan was intended to achieve the long-term goal of a workforce that reflected the proportion of minorities and women in the area labor force. The agency did not set aside a specific number of positions for minorities or women.

The agency needed to hire a dispatcher. Applicants were required to have a minimum of four years of road maintenance service to be considered for the job. Twelve employees from the agency applied for the position, including Paul Johnson and Diane Joyce. Joyce had been with the agency for nine years and had served as the first female road maintenance worker. Johnson and Joyce were both considered qualified for the job. Each had an interview. Johnson’s interview score was 75 and Joyce’s was 73, but the agency’s affirmative action officer recommended Joyce for the promotion. Johnson filed a lawsuit alleging employment discrimination in violation of Title VII.
Lesson Plans (continued)

Procedural History
The trial court held that Johnson was more qualified than Joyce and that Joyce’s sex was the determining factor in her promotion. It determined that the agency’s plan was invalid because it was not temporary. The Ninth Circuit Court of Appeals reversed that decision because the plan was an objective and not a quota.

U.S. Supreme Court Decision
The Supreme Court agreed with the Ninth Circuit’s ruling and upheld the agency’s plan for several reasons. First, it found that the plan was designed to remedy past discrimination, and thus it reflected the purpose of Title VII, which is to eliminate the vestiges of employment discrimination. Second, the Supreme Court found that the plan did not unnecessarily trammel the rights on non-minority employees. Specifically the Supreme Court found that under the plan, there were no quotas or positions “set aside” for women and minorities; sex was only one “plus” factor of many the agency considered when it selected Joyce for the promotion; Johnson had no absolute entitlement to the position; and no unqualified applicants could be promoted through the affirmative action plan. Finally, the Supreme Court also found that the plan was temporary and was not dictated by rigid numerical standards.

Justice White dissented because he believed that affirmative action plans are justifiable only to remedy the intentional and systematic exclusion of minorities by the employer. Justices Scalia, White, and Rehnquist also dissented, arguing that the Supreme Court was replacing the goal of a discrimination-free society with the goal of proportionate representation by race and sex in the workplace.


Factual History
In 1982, the Jackson Board of Education added a provision to the teachers’ union contract that protected employees who were members of certain minority groups against layoffs. The provision stated that in the event of a layoff, teachers with the most seniority in the school district would be retained, except that at no time would there be a greater percentage of minority personnel laid off than the percentage of minority personnel employed at the time of the layoff. Wendy Wygant was a non-minority teacher who was laid off by the school district. Minority teachers with less seniority than Wygant were retained. Wygant brought this lawsuit under the Equal Protection Clause of the Fourteenth Amendment and Title VII, arguing that she was discriminated against based on race.

Case History
The trial court upheld the board’s layoff provision and found that racial preferences were permissible as an attempt to remedy societal discrimination by providing “role models” for minority school children. The Court of Appeals for the Sixth Circuit affirmed that decision based upon the “role model” reasoning.

U.S. Supreme Court Decision
The Supreme Court disagreed with both lower courts and found the layoff provision to be unconstitutional for several reasons. First, it found that societal discrimination alone was not sufficient to justify affirmative action and that only a finding of prior discrimination would suffice. Second, the Supreme Court rejected the “role model” theory as a basis for racial preferences in layoffs. The Supreme Court also distinguished between racial preferences in hiring and layoffs. Justice Powell delivered the majority decision and stated that if the board wished to increase the numbers of minority teachers in the school district, it should have done so with hiring goals, not firing goals. He also noted that denial of a future employment opportunity is not as intrusive as loss of an existing job.

Justice O’Connor concurred and stated that a state’s interest in promoting racial diversity has been found to be sufficiently compelling in the context of higher education to support the use of racial considerations in furthering that interest. See Regents of the University of California v. Bakke. Justices Marshall, Brennan, Blackmun, and Stevens joined Justice O’Connor on that point about diversity.

Justices Marshall, Blackmun, and Brennan dissented from the majority opinion, stating there was no violation of the Fourteenth Amendment where the union and the board collectively bargained for the provision. Justice Stevens dissented too, arguing that a school board may reasonably conclude that there are educational benefits to be had from an integrated faculty, and therefore, that the affirmative action plan served a valid public purpose.
SCENARIO ONE

Taxman v. Board of Education of the Township of Piscataway, 91 F.3d 1547 (3d Cir. 1996)

In May, 1989, the Board of Education of the Township of Piscataway, NJ, accepted a recommendation from the Superintendent of Schools that the Business Department at the Piscataway High School be reduced by one teacher. Sharon Taxman and Debra Williams were both teachers in the Business Department of the high school, each with identical seniority, equal abilities, and similar qualifications. The one difference between the teachers, however, was that Williams was the only minority teacher among the faculty of the Business Department.

In New Jersey, teacher layoffs are governed by state laws regarding teacher seniority. Thus, local school boards generally are not permitted discretion in choosing between equally qualified teachers for layoffs. Only in the rare event that two teachers have equal seniority will the board break the tie. In the past, the board had drawn straws to determine which of the equally qualified teachers to retain. However, in none of the past cases had the employees involved been members of different races.

In this case, where the two teachers were of different races, the board broke the tie between Taxman and Williams by invoking the school district’s affirmative action plan. The board stated that it invoked its plan for the sake of diversity. Williams was the only African-American teacher in the Business Department and the Business Department had many African American students. At no time, however, did the board indicate that it was implementing the plan for the purposes of remedying past discrimination in the school district or equalizing an under-representation of African Americans in the school district workforce.

Following her termination, Taxman filed a claim against the board, alleging discrimination based on race in violation of Title VII.

What do you think?

HOW THE COURT DECIDED

Taxman v. Board of Education of the Township of Piscataway, 91 F.3d 1547 (3d Cir. 1996)

The United States District Court for the District of New Jersey found that the district’s policy discriminated on the basis of race in violation of Title VII. The district appealed to the United States Court of Appeals for the Third Circuit.

The Third Circuit affirmed the judgment of the trial court. The Third Circuit’s decision stated that “Title VII was enacted to further two primary goals: to end discrimination on the basis of race, color, religion, sex or national origin, thereby guaranteeing equal opportunity in the workplace, and to remedy the segregation and underrepresentation of minorities that discrimination has caused in our nation’s workforce.” Relying on the purpose of Title VII, the court reasoned that unless an affirmative action plan has a remedial purpose, it cannot be said to mirror the purposes of the statute. In this instance, the court found that the district’s affirmative action plan was not created for a remedial purpose. In addition, the court was not persuaded by the district’s argument that the affirmative action plan was necessary “for education’s sake.”
Affirmative action needs redirection

There is no doubt in my mind whether affirmative action, while exercised in “good intentions,” continues to divide people. It may be time for college leaders to consider basing affirmative-action programs on socio-economic disadvantage rather than ethnicity. This strategy would help reach those disadvantaged minorities who desperately need the education our colleges provide without the effect of racial head-counting. And it would set a colorblind standard of civilized behavior, which inspired the civil rights movement in the first place.

And whatever happened to good old competition? Under legislation signed by then-Gov. Bush, the Texas secondary-education system implemented the “affirmative access” plan. For the top 10 percent of each graduating high school class, those students were guaranteed admission to a state institution of their choosing. Unfair to the other 90 percent who didn’t make the cut? No - their admissions criteria were just evaluated further. When you want something bad enough, don’t you usually work harder to attain your goal?

Also, I’d argue that some athletes occupy a place in our academic system that could have been taken by someone with a higher academic standing. But God forbid those athletics departments and admissions personnel giving a pass to a star athlete, who could bring money to the athletics program, amid escalating tuition nationwide.

Finally, when is someone going to stand up and say, “Hey, everything’s equal — we don’t need affirmative action anymore!” Isn’t that the goal? When is affirmative action no longer needed? I think former President Reagan said it best: “The first rule of the bureaucracy is to protect the bureaucracy.”
She has right background, wrong color

Despite the barrels of ink spilled over the Supreme Court’s declaration that unwritten rules of discrimination are constitutional, the human face behind the University of Michigan Law School case has been all but lost. Her story illustrates the moral rot at the heart of “affirmative action.”

Elite academic institutions claim that “diversity” constitutes a student body made up of people of differing backgrounds who can benefit from each other’s life experiences and therefore bring a kind of cultural balance to the student body. The sad reality is that it’s all about race. Period.

Barbara Grutter, the lead plaintiff in the law school case, is a textbook example of the sort of student elite institutions claim their flawed admissions processes help to identify and encourage. One of nine children, she lacked the money to go straight to college and law school immediately out of high school. Instead, she worked in an inner-city clinic to save money for community college. She later transferred to Michigan State University and worked her way through, earning a 3.8 grade point average. Then came marriage and raising a family.

Eventually, she started a small business specializing in helping health care companies with their data systems. She saw the intersection of health care technology and the law as an area where she could make a “distinct contribution.” She applied to U of M because it has a strong health law program.

In short, Grutter, 43 years old when she sought admission to law school, should have been an ideal non-traditional student — older, clearly dedicated to an area in which the law school specializes, and with a strong academic record (so strong, in fact, that 100 percent of African Americans who apply with such credentials are accepted). Her modest background would be another “plus factor,” to quote the clumsy argot of admissions types.

There was just one problem, however. Barbara Grutter is white. The university now claims it rejected her, unaware of her modest background. Other applicants with lesser academic records were admitted, based on skin color and ethnicity. It seems Mrs. Grutter mistakenly failed to plead for special favors.

There is nothing even remotely honorable about the way the university handled the Grutter case. The high court ruling notwithstanding, U of M still can make amends by offering Grutter admission with a scholarship. After all, it’s not every day that a student with the right academic background wants so badly to attend an institution that she’s willing to wait years and fight all the way to the Supreme Court.

One senses, however, that Michigan, which unsuccessfully sought high court approval for an undergraduate admissions policy that more blatantly seeks race-based quotas, is incapable of doing the right thing in this case.
Landmarking Tomfoolery

The most striking feature of the [Grutter] decision is the absence of legal argument. The ruling rests on sociological babble about “critical mass diversity.” The substitution of sociology for law is the legacy of the 1954 Brown desegregation decision. Devoid of any legal argument, the Brown decision rested on sociological testimony about whether black children preferred white to black dolls and on Swedish socialist Gunnar Myrdal’s assertion that white Americans are “aversive racists.” This meant, Myrdal asserted, that democracy would perpetuate segregation so long as whites comprised a political majority. To end segregation, the Supreme Court would have to usurp the legislative function.

Even today Americans do not realize that the Brown decision strikes at the heart of democracy by substituting judicial coercion for persuasion and good will. The ruling made coercion the essence of civil rights. To protect themselves from lawsuits, private companies and public universities established racial quotas for “preferred minorities.” Today Americans find themselves in the peculiar situation that racial quotas have been ruled unconstitutional by the Supreme Court ([Bakke] 1978, [Gratz] 2003), but businesses and universities can nevertheless be sued if they don’t have them. The U.S. Justice Department considers all employers without proportional representation of racial minorities (or a quota system to achieve it) to be ipso facto guilty of racial discrimination. To settle civil rights lawsuits, companies are required to pay monetary damages and to institute a quota system to remedy the alleged discrimination.

The O’Connor decision institutionalizes a lie. It says quotas are permissible as long as they are disguised and can be denied to exist. The way to achieve this disguise is by excelling point systems that reward skin color ([Gratz]), and instead choose preferred minorities individually. The quota sneaks in under the cover of “critical mass diversity.” As “critical mass” happens to be the same as proportional representation, the scheme operates as a racial quota for blacks. Racial profiling, which is not permitted in crime prevention or airport security, is just dandy at institutions of higher learning.

Justice O’Connor speculates that after another quarter-century “affirmative action” will no longer be necessary and somehow will disappear, a speculation that demonstrates a mind vacant of any legal understanding of the doctrine of adverse possession ([squatters’ rights]). We have had racial quotas for 35 years. In 25 more years, racial quotas, acknowledged or not, will be a 60-year tradition. Racial privilege will be so ingrained that only a civil rights revolution would be able to re-establish equality before the law.

The evaded question is: Why does a ruling that is not based in legal or constitutional analysis mean anything—especially when the entire legal ability of the sitting court resides in the four dissenters? We would have obtained just as good a ruling if we had asked a drug addict. Any fool could have delivered the O’Connor decision. That is what makes it a landmark.
The Fight Isn’t Over

Many supporters of affirmative action view the U.S. Supreme Court’s decision yesterday as a victory. I don’t see it that way. The court ruled that because diverse student bodies are a compelling national interest, colleges and universities can use race as one factor in admissions. But it said schools cannot use point systems or similar calculations for that purpose.

Some legal experts view the court’s decision as merely affirming the 1978 Bakke decision, which has provided the defining case law for using race in college admissions. The Bakke decision, with the majority opinion written by the late Justice Lewis Powell, said race could be a factor in admissions as long as there were no quotas or stated numerical goals. A decision totally against affirmative action could have had a negative impact on employment policies in both the public and private sectors and, in general, on race relations in America. Although the court decision yesterday was in favor of using race in admitting college students to achieve campus diversity, it did not resolve the wider issue of affirmative action. It will be challenged again.

Race is still a factor in everything that this country is about. African Americans and other non-whites continue to be hurt by racism. But the court seems to be saying that you can address race only if you don’t say how you’re addressing it. You can’t put a number on it. That doesn’t seem honest to me.

Affirmative action will continue to be challenged. For that reason it is interesting to note that Justice Sandra Day O’Connor, the moderate conservative on the court, again provided the swing vote in the 5-4 decision in the law school admission case. It has been hinted that O’Connor will retire before President Bush’s current term ends to give him an opportunity to appoint a more conservative Republican to replace her.

More troubling to me than O’Connor’s likely departure has been the role of Justice Clarence Thomas, the lone African American on the court. Thomas is not only opposed to affirmative action, he has established himself as an anti-black force on the court. The irony is that Thomas was himself a beneficiary of affirmative action when he was admitted as an undergraduate at Holy Cross and later a law student at Yale. Now, as a Supreme Court justice, he wants to use his position to block other blacks’ progress.

If Thomas, who had the nerve to quote Frederick Douglass about “negroes” standing on their own legs, feels people who receive affirmative action ought to make it on their own then he should resign from the court, give up his degrees, and try making it on his own merit.
Race is still part of equation for equal education

A half century after federal troops forced white schools in Little Rock to accept black children, setting off a wave of forced integration across the South, a plan to make different races attend school together can still spark a fight.

The fight is no longer violent, of course, a measure of how far we have come, but its persistence shows how vast the gulf between the races remains.

The latest battlegrounds are in Louisville and Seattle, where school districts have used race as a factor in shaping the student populations in primary and secondary schools. Both plans have drawn fire from groups that have sued on behalf of white students who saw themselves as disadvantaged because of their race.

On the other side are school leaders, who say these “voluntary integration” plans carried out absent court orders are essential to bringing diversity to their school systems. Supported by a broad swath of educators nationally, they have mounted indisputable evidence that the surest way for a school to fail is for it to be filled with low-income black or Hispanic students.

Two weeks ago, the Supreme Court agreed to hear the Louisville and Seattle cases. Its ruling, expected about a year from now, is likely to have impact far beyond the two cities because hundreds of school districts use some form of voluntary integration.

Since the court’s last affirmative action case permitting limited preferences at the University of Michigan Law School, the author of that 5-4 decision, Sandra Day O’Connor, has left the court, replaced by Justice Samuel Alito, who appears far more leery of affirmative action.

The Louisville case illustrates the dilemma that educators and the justices face. School officials in Jefferson County, which includes the greater Louisville area, created a complex integration plan that starts in the elementary grades, when students are assigned to one of a “cluster” of schools serving their neighborhood. The clusters are chosen to maintain racial balance. The goal is to have at least 15 percent minority students in every school but no more than 50 percent.

As in other cities, the plan is designed to avoid all-minority schools that deliver inferior education because of lower funding or less-qualified teachers. But avoiding all-minority schools means some students don’t always get their first choice.

In 2002, Louisville parent Crystal Meredith requested that her son, Joshua McDonald, who is white, enter kindergarten at Bloom Elementary, which is outside of his “cluster” of five elementary schools. For reasons of racial balancing, her request was denied. (Joshua spent two years at Young Elementary, which is 47 percent black, then transferred to Bloom, which is 33 percent black, when a spot opened. This fall, Joshua enters fourth grade at Bloom.) Meredith joined a 2003 legal challenge to the Louisville integration plan.
To avoid violating the equal protection clause of the Fourth Amendment, Louisville and other districts must show they have a “compelling interest” to use race as a factor in school assignment. Their arguments include:

- **Improved education.** Inner-city minority students who attend suburban schools fare better academically than those who stay in neighborhood schools. In some grades and subjects, their proficiency rates are double. Meanwhile, children in high-poverty, high minority schools stand a one-in-three chance of drawing teachers who neither majored nor minored in subjects they teach.

- **Community approval.** When asked by University of Kentucky researchers whether students benefit from attending racially integrated schools, 82 percent of school parents agreed they did.

- **Diversity.** In surveys, Louisville students signal a high comfort level for working with people of other races and incomes. School officials say Louisville business leaders tell them that integrated schools produce better employees.

A judge approved most of the Louisville plan. Similar legal approval was granted to Seattle’s system, where race was used as a tie-breaker in high school assignments. As conservative federal Judge Alex Kozinski wrote in upholding the Seattle plan, local officials should be afforded leeway in “stirring of the melting pot” in an effort to better their communities.

In an ideal world, all schools would provide equivalent educations, and racial balancing would be unnecessary. But that day has not yet arrived. Three years ago, when casting the deciding vote in the Michigan case, O’Connor said another 25 years might be needed to level America’s racial playing fields. Until that happens, society has a compelling interest in producing equal education opportunities and turning out graduates who are comfortable with the diversity that represents one of America’s greatest strengths.
Letter to the Editor #6

Temple News — Opinion
February 6, 2003
By Nicole D’Andrea

Affirmative action aids acceptance

It’s time to pop the bubbles of two individuals who oppose affirmative action at the University of Michigan. Jennifer Gratz and Barbara Grutter were denied acceptance and are using the claim of reverse discrimination to dispute the policy there.

Their case is hanging over the Supreme Court with a decision due by spring. If the court rules in their favor, all state universities will be affected, and Temple University’s method of acceptance stands to change as well.

On Jan. 14, President Bush said: “I strongly support diversity of all kinds, including racial diversity, in higher education, but the method used by the University of Michigan to achieve this important goal is fundamentally flawed.” Bush went on to say that Michigan implements a form of quota system — which in fact it does not. It is time for Bush to wake up and stop ignoring the racial problem at hand.

If he believes that diversity is important in the system of higher education, he should support affirmative action, because, in reality, minorities do not have an equal chance to attend the same schools as the white majority.

Even with affirmative action, the ratio of minorities to non-minorities at the University of Michigan is surprisingly low. In 2001, 74 percent of the enrolled undergraduate students were white, while only 26 percent were racial minorities, proving that affirmative action is a necessary program there. But not everyone agrees.

During the Dec. 13 trial, Gratz claims that she was rejected because she had “the wrong skin color.”

I grew up in a Dawson’s Creek-like town, where every person shared the same race, religion and views. I was denied acceptance to many schools, and I felt that my skin color, or lack thereof, had an influence. But while attending Temple, nationally known for its rich diversity, my opinion has changed.

If affirmative action is banned, students like Gratz and Gutter will never know the advantage of sitting in a classroom among faces of every color that bring different aspects into the classroom. Such diversity is made possible through affirmative action, and, in the future, diversity is the key to ending the need for affirmative action. Many feel that affirmative action is a thing of the past and should be abolished to create equal opportunity.

Some even argue that the Fourteenth Amendment, which grants “equal protection of laws,” supports the ban of affirmative action (ironically, it was this law that birthed one of the most pivotal movements in the U.S. history — the Civil Rights Movement). But if affirmative action was truly an idea of yesterday, would there be so much debate surrounding it today?

Gratz and Gutter oppose affirmative action, but it is my belief that they can only benefit from it. At institutions like Temple that embody a diverse community, students leave with a better understanding of various races. In schools like these, students will learn, as I have, that racism is deeply rooted, and that it is up to every individual to take a stand and change that.
Civic Learning Support Organizations

Civic learning support organizations are great resources for schools, judges and lawyers interested in introducing civics and government into the classroom. Please feel free to contact any of the organizations listed below.

For more organizations, visit the PBA’s civic learning Web site at www.pabar.org/public/education/educationprograms.asp.

Pennsylvania Bar Association
100 South Street, P.O. Box 186, Harrisburg, Pa. 17108-0186
Phone: 1-800-932-0311 — Fax: (717) 238-2342
E-mail: lawday@pabar.org — Web site: www.pabar.org/public/education/educationprograms.asp
The Pennsylvania Bar Association’s civic learning programs are designed to help Pennsylvania schools lay a foundation for teaching civics and government in the classroom. The PBA is a lead partner in PennCORD (Pennsylvania Coalition for Representative Democracy) along with the First Lady of Pennsylvania, Third Circuit Court of Appeals Judge Marjorie O. Rendell, the National Constitution Center and the Pennsylvania Department of Education. The PBA’s cornerstone civic learning projects include, Celebrate the Constitution, Project PEACE, Law Day, Mock Trial and Stepping Out. To learn more about these programs, visit the PBA’s College Civic Learning area on the PBA Web site. Lesson plans from past Law Day and Celebrate the Constitution guides also are available on the Web site.

LEAP-Kids (Law, Education & Peace for Children)
David Trevaskis, Director
P.O. Box 428, 6 Royal Avenue, Glenside, Pa. 19038-0428
Phone: (215) 885-1610 — Fax: (215) 885-1036
E-mail: david@leap-kids.com — Web site: www.leap-kids.com
LEAP-Kids is the successor organization to the statewide law-related and civic education program formerly housed at Temple-LEAP. LEAP-Kids develops innovative educational programs aimed at empowering young people through civic learning study. Civic learning is a unique blend of substance and strategy. Students receive substantive information about laws, the legal system and their rights and responsibilities through strategies that promote cooperative learning, critical thinking and positive interaction between young people and adults. LEAP-Kids conducts a wide variety of teacher trainings and also produces general and Pennsylvania-specific curricula related to civics and government.

Youth for Justice Initiative
Features Five National Partners: Street Law Inc.; Center for Civic Education; Constitutional Rights Foundation; Phi Alpha Delta; American Bar Association
Web site: www.youthforjustice.org
The Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the U.S. Department of Justice sponsored a research and development program that established the potential of law-related education in reducing delinquent behavior. In 1983, the OJJDP established the National Training and Dissemination Program (NTDP) to institutionally integrate civic learning delinquency prevention programs in public and private schools, kindergartens through grade 12, throughout the nation. In 1994, NTDP became Youth for Justice, a national civic learning program coordinated by five national partners working in cooperation with a network of affiliated state programs (visit the Youth for Justice Web site to learn more about the partners and the state programs). Over one million students participate in Youth for Justice programs annually. With support from OJJDP, Youth for Justice’s five national partners and state programs offer an array of civic learning programs and activities for young people in their schools and communities, working closely with legal, education, government and community groups to initiate and strengthen civic learning programs.

PennCORD
Contact: Joanna Richman c/o National Constitution Center
525 Arch Street, Independence Mall
Philadelphia, Pa. 19106
Phone: (215) 409-6684 — E-mail: JRichman@constitutioncenter.org — Web site: www.PennCORD.org
The Pennsylvania Coalition for Representative Democracy (PennCORD) is a unique union of educational, advocacy and governmental organizations that are committed to improving civic learning for students in grades K-12. The coalition’s mission is to encourage the creation of local civic learning policy to implement state standards in every school district by: 1) motivating community advocacy for better civic education; and 2) supporting educators across Pennsylvania with civic learning resources and training. The coalition is led by the Office of the Governor, First Lady Marjorie O. Rendell, the Pennsylvania Bar Association, the National Constitution Center and the Pennsylvania Department of Education.
Pennsylvania’s Law Day 2008 celebration is funded by the Pennsylvania Bar Foundation.

Front cover artwork: First Place Winner, Pennsylvania Bar Association’s “Growing Strong Citizens” Poster Contest

Connor Ward, Fifth Grade
SS Peter and Paul School, Beaver, PA