LAW-RELATED EDUCATION

Featuring Educational Tools for Civics, Government, History, and Law Classrooms

EXTRA! EXTRA! --READ ALL ABOUT IT-- FAMOUS TRIALS!

American Bar Association Division for Public Education
What's Inside?

If you’ve ever pondered the question “Why ‘Trials of the Century’?” Update’s Famous Trials Edition is for you. There have been so many headline-grabbing, media-saturated trials in the last 100 years that to name one and only one would be at best argumentative. And while it may seem that the many “Trial of the Century” players have had a lot in common—the famous, the rich, sometimes the outrageous—think again. As this issue shows, such trials have also involved the unknown, the poor, and the patently stodgy.

Have the offenses and issues involved always had some mix of sex, slaughter, and suspense? No, they’ve also been about things as everyday as going to school. Did the media create these “legal circuses” and then foist them off on a gullible public? This seems unlikely among a citizenry whom the polls often show to have an alarming disinterest in affairs national, political, and judicial.

So why the exception for these legal super-events? Debra Baker leads off this issue with some of the answers in a capsulation of several prominent candidates for Trial of the Century. Pulitzer Prize winner Edward J. Larson follows with his brilliant perspectives on the one trial to which many would award the prize—the Scopes “Monkey Trial”—and its redoubtable lawyers William Jennings Bryan vs. Clarence Darrow. Then Paul Finkelman puts President Clinton’s impeachment trial in perspective with that of Andrew Johnson, seasoning the discussion with references to President Nixon and the Watergate hearings that resulted in his resignation.

Margaret Wilson and Diane Gatewood walk with us from the Amistad through Brown v. Board of Education to watch Thurgood Marshall and other lawyers wield their courtroom offensives against racial discrimination, while Mindy Trossman revisits sensational trials through the TV lens to see the nature of the medium’s presence in the administration of justice. Other important features include viewpoints on whether and how TV should be allowed in the courtroom, as well as two lawyers’ personal recounts of trials that affected their outlooks and careers: Tom Sullivan on the “Greylord” operation in Chicago and Erwin Chemerinsky on the Nuremberg trials, which may be the only candidate for “International Trial of the Century.”

The Update editors wish to thank all our contributors for the important contributions they have made to this edition, with a very special thanks to David Naylor and Scott DeWitt, who furnished many wonderful instructional materials to help teachers bring famous trials into their classroom lessons.

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ABA's Famous Trials Exhibit Opens

Throughout American history, trials have riveted public and media attention on the sensational and profound issues and events of our times. Each case involved colorful personalities caught in a web of intrigue, accusations and arguments, politics, social change, and the search for justice.

Now a new museum exhibit—Famous Trials in American History: Cases That Shaped and Shocked the Nation—will capture the essence of these courtroom dramas. Open to the general public, Famous Trials will explore both legal landmarks and sensational trials, providing visitors with insights on individual cases, critical issues, and the rule of law. The exhibit opens September 1999 at the ABA Museum of Law in Chicago, the only museum devoted to legal events, issues, personalities, and institutions in America and around the world.

Through artifacts, photos, illustrations, videos, news reports, and text, visitors will be transported to communities and courtrooms across America to experience the drama and impact of famous cases dating from pre-revolutionary times to the present. The exhibit will include the following themes and programming:

Sensational Trials From the Lizzie Borden case of 1893 to the recent Oklahoma City bombing trials, these courtroom dramas generated widespread public fascination and extensive media coverage. Other featured cases: the Scopes “Monkey Trial,” the Lindbergh baby kidnapping and murder, the O.J. Simpson trials.

Landmarks in the Law These defining moments in American law and life include the trial of colonial printer John Peter Zenger, Marbury v. Madison (doctrine of judicial review), the Amistad revolt, Brown v. Board of Education, and President Richard M. Nixon’s claim of special exemption from the legal process.

Media Coverage Complete with a special video on the topic, the exhibit traces the evolution of media coverage of famous trials across several centuries, from early newspapers, pamphlets, and political cartoons through radio, television, and the Internet.

Trial Art Courtroom-artist sketches and other artistic depictions of famous trials offer special perspectives on these major historical events.

Educational Materials, Special Events, Web Site, and Traveling Exhibit Special materials— including this issue of Update—will help educators integrate Famous Trials topics into their instructional programs. Throughout the yearlong exhibit, special events and public programs will be held to provide further insights into the cases. Also, a traveling exhibit and Web site will bring Famous Trials into cities and homes across the country.

Please plan to visit the Famous Trials exhibit. I’m sure you’ll find it to be both informative and enjoyable.

Norman Gross
Director, ABA Museum of Law
Chicago

ABA Museum of Law

The first of its kind in the United States, the ABA Museum of Law has since 1996 offered exhibits and programming designed to educate visitors about the rule of law in America and the world. Housed in the American Bar Center in Chicago, the 4,000-square-foot facility includes a store and theater area. The museum is a not-for-profit Illinois corporation governed by a distinguished nine-member Board of Directors. For further information about the museum or the Famous Trials exhibit, contact Norman Gross at 750 North Lake Shore Drive, Chicago, IL 60611; voice: (312) 988-5730; e-mail: grossn@staff.abanet.org
Disorder in the Court: America’s High-Profile Trials

Dramatic and societal elements of high-profile cases

Debra Baker


As far back as the 1730s when Andrew Hamilton’s successful defense of printer John Peter Zenger won the first major victory for freedom of the press in the colonies, the American courtroom has been a stage for dramatic performances. From colonial times to the early 1900s, Americans routinely sat in the back of courtrooms watching the day-to-day developments of the latest criminal and civil cases. They headed to the courthouse for the same reason people head to movie theaters today—for entertainment.

Trials and the American Psyche

While the issues and accusations of high-profile trials vary, what magnetizes the public to these real-life dramas is often the tabloidlike elements of the facts—be they wealth, power, celebrity, sex, social conflict, or any combination. But the cases resonate in the American psyche for reasons that go beyond mere drama and scintillating facts: They distill conflicts stemming from race, religion, revenge, and jealousy that are rampant throughout society.

Crowds may not flock to the courthouse as routinely as they once did, but that doesn’t mean that the American public’s interest in court trials has waned. Television shows like Judge Judy and The People’s Court, not to mention cable networks like Court TV and the live coverage other networks gave to the O.J. Simpson trial, prove that the American public’s fascination with the justice system continues. So popular are high-profile court trials that the term “Trial of the Century” no longer refers to a single event. Instead, the title has evolved into a classification that describes high-profile cases that have attracted immense public opinion and interest. In fact, in the 20th century, hardly a decade has passed without at least one case being dubbed the Trial of the Century.

First “Trial of the Century”

In 1907, Harry K. Thaw, the son of a wealthy Pennsylvania industrialist, shot and killed a prominent architect in front of dozens of witnesses on the rooftop terrace of Madison Square Garden. At the time, newspaper and radio reporters called the case the “Trial of the Century.” Of course, no one bothered to mention that the century was only six years old. Eventually, the Thaw case would not prove to hold the timeless quality of the later “Trials of the Century.” By 1925, the Thaw case lost hold of the title, when William Jennings Bryan thundered against public school teacher John T. Scopes for teaching Darwinism to his high school science class. The so-called Scopes “Monkey Trial,” now memorialized in the popular book and movie Inherit the Wind, dealt head-on with the conflict between religion and science.

One aspect of the Thaw case that attracted such public attention was the notoriety of the defendant, victim, and even witnesses in the case. As the century continued, notoriety would continue to play a role in triggering public attention toward trials. In 1935, the murder trial of Bruno Richard Hauptmann attracted world attention because the two-year-old child he was accused of killing was the son of American hero Charles Lindbergh. Similarly, the 1991 rape trial of Debra Baker, a lawyer, is a reporter for the ABA Journal in Chicago.

Debra Baker, a lawyer, is a reporter for the ABA Journal in Chicago.
William Kennedy Smith centered around his membership in one of the country’s prominent political families. When Charles Manson ordered three of his female followers to murder in 1969, it was the celebrity of one of the victims, actress Sharon Tate, as much as the brutal nature of the attacks that added to the infamy of the crimes and subsequent trials.

**Racism, Scandal, and Wealth**

Sometimes it is the social issues that high-profile trials force society to confront that make the cases so gripping. In the 1930s, the African-American “Scottsboro Boys” became a symbol of prejudice and racial hatred in the South when they were unjustly accused of raping two white girls. Remnants of the Scottsboro trials continue today in cases that question, whether rightly or wrongly, the role of law enforcement in manufacturing or lying about evidence in a case. Trials like those involving the Rodney King beating and the Simpson murders illustrate continuing suspicion toward law enforcement when race is at issue in a case.

Misconduct by a U.S. President involving consensual sex in the Oval Office was at issue in President Clinton’s impeachment trial in 1999, but it...
is the impact of politics and the high-profile status of the defendant that will ensure its place in history. To come will be the conclusion of the cases against Microsoft Corporation and its founder Bill Gates—the wealthiest private individual in the world. While the Microsoft trial focuses on whether the corporation violated the Sherman Antitrust Act, it in part offers a glimpse of how Americans view success with cynicism.

The common thread of all of these trials of the century is that they go beyond the facts of the cases in search of answers to conflicts of the day. The cases illuminate everything from the collision of scientific and spiritual beliefs, racial bigotry, and the Achilles’ heels of heroes and celebrities to the quest for fame and fortune. In its own way, each exposes the disorder of society: its dark side.

What’s Next?
What will the 21st century bring? Will the dramatic and societal elements that have provided the structure for some of the great 20th-century courtroom performances continue? No doubt, the answer is yes. The future courtroom shows will likely be characterized by a similar dramatic structure, with leading roles largely played by those with celebrity, wealth, social status, and the circumstances involving issues at the heart of American life.

The Costs of the Century?
Mega-newsworthy trials are not cheap, and they may break the bank if the venue is a small town with a limited base of taxpayers. It is the people who pay for the prosecution and, in cases in which defendants cannot afford attorneys, the people may have to foot the bill on that side, too. Such has been the case in Laramie, Wyoming, and Jasper, Texas, where big-news trials were held in their small-town courtrooms—and these communities are now faced with either raising taxes or cutting back on public services.

In Laramie, where defendant Russell Henderson admitted a role in the beating death of a gay college student, county agencies are facing a 10-percent budget cut. And social service agencies could lose another $100,000 unless the county can come up with a way to pay the expenses involved in prosecuting Henderson’s co-defendant, Aaron McKinney.

In Jasper, county judge Joe Folk (who is also the county’s chief executive) said it will take local taxpayers three years to pay the cost of having prosecuted two of five white defendants in the dragging death of an African-American man. “This can bankrupt small counties. Some county judges have said they won’t prosecute some capital murder cases [where the penalty may be death] and will go for just murder [maximum penalty of life in prison] because of the cost of the trial,” Folk said.

Jasper County residents have already been hit with a 12-percent property-tax increase to pay for these prosecutions, which cost $204,000, and the three other defendants have yet to go to court.

“A big case in a small community can be [financially] prohibitive,” according to Larry Pozner, president of the National Association of Defense Lawyers. “But you have to make the communities responsible for prosecution. If you just gave them access to the state budget, everyone would want to do show trials.”

Los Angeles was able to pay the bill for one of the trials of this century—the monthslong criminal trial of O.J. Simpson—but even midsize cities such as Boulder, Colorado, may find themselves in economic straits even before a trial takes place. Prior to 1999, that city spent $1.2 million just investigating the slaying of JonBenet Ramsey, with the district attorney paying out an additional $400,000—without not one arrest made.

Adapted from The Detroit News and Free Press, April 11, 1999, AP, by Steven K. Paulson.
Some American “Trials of the 20th Century”

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<th>Cases</th>
<th>Issues and Outcomes</th>
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<tr>
<td>Standard Oil Antitrust Case, Early 1900s</td>
<td>Industrial leader John D. Rockefeller’s winner-take-all business tactics landed him in court on allegations that the Standard Oil Company was in violation of the Sherman Antitrust Act of 1890. The federal government charged him and his partners with conspiring to limit trade and commerce in oil markets through price fixing and other restraints on trade. The U.S. Supreme Court eventually upheld a lower court’s order to dissolve the oil trust. Federal antitrust doctrines have been repeatedly refined since then, yet the same legal concepts are involved in the case against Microsoft Corporation and its chair, Bill Gates. At the heart of such high-profile trials is the celebrity of the simultaneously admired and despised business giants involved and the public’s fascination with seeing whether they emerge as robber barons or captains of industry.</td>
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<td>Harry K. Thaw Trial, 1907</td>
<td>The wayward son of a Pennsylvania industrialist was convicted in the shooting death of a prominent architect before dozens of diners on the rooftop terrace of Madison Square Garden in New York. The first trial of the century and one of the most publicized events of the time, this case had everything a made-for-the-tabloids affair could hope for: sex, money, jealousy, gambling, abuse, and even a chorus girl and a red velvet swing.</td>
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<td>Scopes &quot;Monkey Trial,&quot; 1925</td>
<td>Pitting three-time presidential candidate William Jennings Bryan against defense attorney Clarence Darrow, this case focused on Charles Darwin’s theory of evolution as a challenge to the biblical interpretation of creation. John Thomas Scopes, a Tennessee teacher, was found guilty of violating a state law making it illegal to teach the theory of evolution in public schools. The trial set the stage for using courts to reconcile disputes between science and law.</td>
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<td>Scottsboro Trials, 1931-37</td>
<td>These were trials of the “Scottsboro Boys,” nine black youths alleged to have raped two white girls in Alabama. The charges against five of the accused were dropped, and the remaining four were found guilty and sentenced. One was released in 1943, two more in 1944, and one escaped in 1948. These trials serve as a chilling reminder of racial prejudice and sparked a revival of the civil rights movement.</td>
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<td>Bruno Hauptmann Trial, 1935</td>
<td>The kidnap-murder of the child of Charles Lindbergh, the American hero who was the first person to fly solo across the Atlantic Ocean, set off an unprecedented media event, with the largest telephone system to date set up to connect reporters to their newspaper offices. Crowds lined the sidewalks waiting for seats to witness the trial. On weekends, the courtroom was opened to tourists, and outside the courtroom, vendors hawked autographed photos and souvenirs of the trial. The massive growth of news coverage since this trial has sparked growing concern about the nation’s ability to balance its commitment to the concepts of fair trial and free press.</td>
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<td>Sam Sheppard Case, 1954</td>
<td>A prominent Cleveland osteopath who insisted that his wife was murdered by an intruder was nonetheless convicted as much by the sensational press coverage as by the members of his unsequestered jury. The trial was so media saturated that this description was made by the Supreme Court, which overturned Sheppard’s conviction 30 years later: [M]urder and mystery, sex, and suspense were com-</td>
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Karen Ann Quinlan Case, 1975

Doctors told the family of Karen Ann Quinlan, a young woman who became comatose at a party in 1975, that she could be kept alive indefinitely by life-support technology previously unavailable. When the family fought to have her taken off life support, they triggered the right-to-die movement by bringing an ethical dilemma to the New Jersey Supreme Court and winning a landmark case. Quinlan was taken off life support, and she died of pneumonia nine years later. The case illuminates the continued demands on the courts to resolve philosophical and ethical questions that often go beyond the law’s scope. The debate continues as the courts are challenged to resolve moral conflicts arising from the collision of scientific thought and spiritual beliefs associated with issues such as birth control, abortion, surrogate parenthood, and artificial reproductive technology.

Rodney King Beating Trial, 1993

A group of white Los Angeles police officers were acquitted of state-brought criminal charges for kicking and severely beating African-American Rodney King, whom they had detained after a police chase. The beating was videotaped and shown on national TV. Because the assault carried with it haunting reminders of the vigilantism associated with Scottsboro, the watchful eye of the public monitored the justice system. Riots that erupted after the acquittal evidenced the perceptions of African Americans and many others that the system can fail to protect all people equally. A federal trial followed in which the officers were successfully prosecuted for having violated King’s civil rights.

O.J. Simpson Criminal Trial, 1995

Accused of brutally slaying his ex-wife and a waiter who happened upon the murder scene, a football legend was tried and acquitted of the crime. More than 100 news agencies, 20 TV companies, and 1,000 correspondents covered the trial, which was held, appropriately enough, in Los Angeles, the nation’s entertainment capital. The case’s sensationalism is said to have been triggered by the fall of a sports legend, not by the slayings. In civil proceedings that followed, Simpson was found liable for the wrongful deaths of both victims.

Clinton Impeachment Trial, 1999

After having at first denied and later admitting to improper sexual relations with a White House intern, William Jefferson Clinton, in 1998, became the second president of the United States to be impeached. The media circus surrounding the accusations and trial lasted over a year. Finally, however, the Senate acquitted him, with many of its members concurring with the overwhelming public viewpoint that, even if proven, the allegations against their extremely popular leader did not rise to the level of impeachment. Legal issues surrounding the trial included the legal definition of perjury specific to the case, presidential claims of special exemption, the constitutionality of the Independent Counsel Act and the conduct of the independent counsel in the case, and the implications of the sexual harassment law with respect to the president as employer and commander in chief.
The one “trial” that most shaped my concept of justice, my outlook on our laws and legal system, and my professional goals—my “Trial of the Century”—was the Nuremberg trials. These were actually a series of 13 trials, and they were not American, but rather international.

The Nuremberg trials began in November 1945, soon after the Allies had won the European campaign in World War II; they lasted until 1949. The trials took place in Nuremberg, Germany, where the Nazi party had staged huge rallies. Four prosecuting nations—France, Great Britain, the Soviet Union, and the United States—organized the trials, at which German Nazi leaders and others faced criminal charges that they had committed crimes against peace, war crimes, and crimes against humanity, including the systematic murder of about six million Jews and five million other Europeans.

At Nuremberg, the ultimate question was whether individuals could be tried for the crimes involved if the acts committed were lawful in their own nations. Should nations victorious in war be able to punish losers, especially for human rights violations? Should the accused be able to defend themselves by claiming that they were just following orders? Is there a higher, legally enforceable morality that transcends national boundaries? All these issues made Nuremberg important then and keeps it important today in view of the ethnic cleansing and other atrocities that governments continue to direct soldiers and citizens to carry out.

The first Nuremberg trial ran from November 1945 to October 1946. Its eight judges included two each from the four organizing nations. U.S. Supreme Court Justice Robert Jackson, who served as chief prosecutor, delivered eloquent opening and closing arguments. In his opening statement, he declared, “The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”

Hitler, the German leader, and two of his chief aides, Joseph Goebbels and Heinrich Himmler, committed suicide or had themselves been killed before the trials. Twenty-two individuals were prosecuted, including chief Nazi party advisors, diplomats, and military leaders who implemented the Nazis’ war crimes, such as Hermann Goering, Hitler’s reich marshal and commander of the German air force during the war, as well as the heads of concentration camps such as Auschwitz and commanders of the SS police. Nineteen defendants were convicted; 12 were sentenced to death and five others received prison sentences of 10 years to life. The later trials involved 185 defendants including Nazi party officials and judges, business executives, and doctors. Some received death sentences, and over half got prison terms. Some were found not guilty.

The Nuremberg trials had far-reaching effects in that they rejected the idea that individuals bore no moral responsibility for acts their governments directed them to do. The trials established the fundamental ethic that there are moral principles that transcend national boundaries—that everyone is expected to follow basic principles of humanity.

The drama and uniqueness of the Nuremberg trials, the brilliant oratory and wrenching descriptions, are important for students to learn about. Even more important are the questions these trials raise about the meaning of law and about morality in a world where so much seems relative. Were the World War II victors justified in trying those who lost? Although some say no, it was imperative for the Nazis to be held accountable for their atrocities. Is it appropriate to enforce a moral order that transcends national boundaries? Some say no, nations are sovereign within their own borders. Yet the Nuremberg trials left permanently on the international landscape the notions that soldiers and citizens have a moral obligation that transcends their national duty, and that they are obliged to disobey inhumane government orders and laws.
While there have been many trials of the century, with recent ones such as those involving O.J. Simpson, Rodney King, and President Clinton bringing instant recognition, it could be argued that the trial that most touched upon the hearts and minds of the American public since 1901 involved primates, not people. Picture mobs dragging a person charged with monkey business to the slammer, with monkey business in this instance being newspaper reporters’ characterizations of a teacher’s slant on the creation of humanity. Thanks to a popular play and movie about it, that is how one American trial of this century is remembered!

According to this great American legal legend, prevailing beliefs in 1925 were that there had been a Garden of Eden and there was such a thing as fire and brimstone. Then came John Scopes, a science teacher who, daring to challenge Adam and Eve, introduced his high school class to *Origin of Species*, in which author and scientist Charles Darwin explained that humans could have evolved from apes. The press had a field day covering the collision of scientific and spiritual beliefs that followed in what they dubbed as the “Monkey Trial,” which featured a dramatic face-off between the famed orator and three-time Democratic presidential candidate William Jennings Bryan and the brilliant and sometimes notorious defense lawyer Clarence Darrow.

For reasons not at all clearly logical, Scopes has since become a folk hero—a barrier buster, as it were. But consider the events underlying the legal legend. In early 1925, the Tennessee state legislature passed a law making it a misdemeanor, punishable by a maximum fine of $500, for a public school teacher to “teach any theory that denies the story of Divine Creation of man as taught in the Bible, and to teach instead that man had descended from a lower order of animal.”

John Scopes, a teacher in Dayton, Tennessee, was alerted by a press release from the New York-based American Civil Liberties Union that the group would assist any teacher willing to dare to challenge the Scripture. Published in its entirety in the *Chattanooga Times*, the gauntlet opined that “Our lawyers think a friendly test case can be arranged without costing a teacher his or her job.” Scopes went for it; and, although he was technically arrested, he was neither jailed nor threatened with imprisonment, and he spent much of the time until his trial traveling and talking with reporters.

**Dayton’s Trial**

Dayton is a small town in the Tennessee valley located midway between Knoxville and Chattanooga. The town’s population by 1925 had fallen from a peak of about 3,000 during the 1890s to fewer than 1,800. One of these citizens was a former New Yorker named George Rappleyea who had a doctorate in chemical engineering—he managed the local iron ore mines for their northern owners.

Rappleyea, an evolutionist since college, read the *Times* article and saw his chance to stir up some publicity for the town. He rounded up a number of like-minded townspeople and contacted the ACLU—and the plot was hatched. Scopes, the local high school’s general science instructor and part-time football coach (and, more importantly, a stand-in biology teacher), was approached by the conspirators.

Scopes was perfect: single, 24, easygoing, without any intention of staying in Dayton; and, unlike the regular biology teacher who happened to be the school principal, Scopes had little to lose from a summertime caper.

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**Edward J. Larson is the Richard B. Russell Professor of History and Law at the University of Georgia in Athens. He is a member of the American Bar Association and the Washington State Bar Association. His book on the Scopes trial, *Summer for the Gods*, received the 1998 Pulitzer Prize for History.**
He also looked the part of an earnest young teacher, complete with horn-rimmed glasses and a boyish face—a bit like the then-popular movie comedian Harold Lloyd, if anyone still remembers him.

Naturally shy, cooperative, and well-liked, Scopes would not alienate parents or taxpayers with soap-box speeches on evolution or give the appearance of a radical or ungrateful public employee. He taught physics, math, and football (only once subbing for biology). As a student at the University of Kentucky, he had openly admired the college president’s stand against the state’s anti-evolution legislation. Further, Scopes’s father, an immigrant railroad mechanic and labor organizer, was an avowed socialist and agnostic who could rail long and loud against the political and religious system of the United States. John Scopes preferred to talk sports, and he occasionally attended a local Methodist church in an effort to “pick up dates,” as he once put it. Central casting could not have asked for more, or so it seemed.

Famous Attorneys
The two titans who turned out playing leading roles in the circus—William Jennings Bryan (for the state) and Clarence Darrow (for the defense)—were celebrities in their own right. Besides being known for his presidential candidacies and his great oratorical skills, Bryan avidly championed free silver as an economic answer to political and religious system of the United States. and biblical Christianity as the spiritual answer to humanity’s moral problems. Clarence Darrow, a lawyer like Bryan, first gained public attention in the 1890s as a public speaker and courtroom advocate in Chicago. He secured the Democratic nomination of a congressional district in 1896 and lost by some 100 votes because he spent most of his time campaigning for the party ticket—headed by none other than presidential hopeful William Jennings Bryan. Darrow thereafter turned his back on Washington and focused his energy on the defense of the labor union leaders (usually those accused of criminal wrongdoing during bitter strikes). After a rift occurred some years later over his controversial defense of two prominent but guilty Los Angeles union officials in a sensational murder case, he stopped practicing labor law and turned to defending an odd mix of political radicals and wealthy murderers.

These cases kept his name in the headlines. One year before Scopes, Darrow took on the Loeb-Leopold case, in which he used arguments of psychological determinism (“reading Nietzsche made us do it”) to save two wealthy and intelligent Chicago teenagers from execution for their cold-blooded murder of an unpopular schoolmate—an episode somewhat comparable with the recent schoolhouse murders in Littleton, Colorado. The defendants in this case apparently had wanted to see if they could get away with killing someone. Darrow’s defense strategy naturally infuriated many Americans who still clung to notions of free will and individual responsibility.

Darrow was not content with simply questioning popular notions of responsibility; he delighted in challenging traditional concepts of morality and religion. He did this not only in the courtroom, but on the lecture circuit, in public debates, and in books and articles. He rallied to the fight over evolution even before the stage was set in Tennessee. In response to fundamentalist remarks about the origin of species made by William Jennings Bryan in 1923, for example, Darrow grabbed front-page headlines in Chicago by asking the rhetorical “Did Noah build the ark?” and, if so, “how did Noah gather [animals] from all the continents?” The public loved it and so did Darrow. When the Scopes trial arose two years later, Darrow volunteered his services for the defense—the only time he had ever offered free legal aid.

All in all, the sides were oddly matched, which added to public interest in the case. Darrow, a political ally but religious foe of Bryan, may not have offered to defend Scopes if Bryan had not joined the prosecution. The ACLU, which initiated the case, did not want Darrow’s help because the group thought he would transform the trial into a narrow call for the right of free speech to a broad assault of religion. And so he did, making a small-town trial one of the greatest oratorical soapboxes of the century. Yet the ACLU could not keep Darrow out so long as Scopes wanted him in.

Media Sensations
The prospect that renowned orators would actually be litigating the profound issues of science versus religion and academic freedom versus political control turned the trial into a media sensation that became a legend. News of the trial dominated the headlines during the weeks leading up to it and pushed nearly everything else off American front pages throughout the eight-day argument. Two hundred reporters covered the story. Thousands of miles of telegraph lines were hung to transmit every word spoken in court, and live radio broadcasts carried the oratory to the listening public. Newsreels brought the unfolding events to movie theaters. Dayton’s civic leaders
could only marvel at the success of the publicity they had generated.

The jurors, nevertheless, missed most of the fun—with the oratory being largely addressed to the nation and having little to do with the facts of the case as the attorneys debated religion and science and high points of constitutional law. Tennessee’s chief prosecutor tried to keep the facts in focus: Scopes, had he wanted to do so, might have taken his stand on street corners and screamed himself silly about evolution. He simply could not do so in a public school contrary to state law. “No,” the defense countered, “Scopes must be free to teach science.”

John Scopes was found guilty, and the law upheld by the Tennessee Supreme Court. But he prevailed in a broader sense. The trial awakened many Americans to the need for free speech and academic freedom and aroused public opposition to anti-evolution laws. Perhaps it even educated some people about science.

The issues raised by the Scopes trial and legend endure precisely because they stand between individual liberty and majority rule—between one person’s beliefs and those held by a populace. In a later fictionalized reenactment, Inherit the Wind, the actor playing Darrow remarked that Scopes, while convicted by the jury, actually took center stage and returned unscathed: “Millions of people will say you won. They’ll read in their papers tonight that you smashed a bad law. You made it a joke!”

For some it did become a joke. Two years after the Scopes trial, a Rhode Island legislator introduced anti-evolution legislation in his state similar to the law upheld in Tennessee. His colleagues referred the proposal to the Committee on Fish and Game, where it died without a hearing or vote. When he heard about it, Darrow had a good laugh.

William Jennings Bryan (1860–1925)

Nicknamed “The Commoner” for his support of the “common people” against the rich and powerful, famed American orator and statesman William Jennings Bryan ran unsuccessfully for president three times. A religious fundamentalist, he bested Clarence Darrow and Darwinism in the Scopes “Monkey Trial” and championed many liberal causes including the establishment of the income tax, women’s voting rights, government regulation of business practices, and the direct election of senators. Bryan’s “Cross of Gold” speech, in which he thundered against the gold standard and for the free coinage of silver, is probably the most famous speech ever given before an American political convention.

Clarence Seward Darrow (1857–1938)

The most famous American lawyer of his time, Clarence Seward Darrow was internationally renowned for his shrewdness and brilliance as a criminal defense attorney, notably for labor unions as in the case involving Eugene V. Debs, which arose out of the Pullman strike of 1894. Strongly opposed to the death sentence, Darrow used psychiatric evidence to gain life imprisonment, plus 99 years, in the sensational murder trial of Nathan F. Leopold, Jr., and Richard A. Loeb, who had kidnapped and murdered a 14-year-old boy to see “if they could get away with it.” Although he lost the Scopes decision, Darrow’s defense highlighted the importance of academic freedom and aroused greater opposition to fundamentalism in America.
We are on the march to justice and equality in the United States. It is an unfinished journey that began in 1776. On the way, there have been some twists and turns, one horrendous detour, and many side trips.

Three revolutions mark our path—two bloody and one relatively peaceful: The American Revolution freed us from the British; the War of the Rebellion, which was that horrendous detour, freed us from tyranny of the body; and the peaceful civil rights revolution of the 20th century (which in some ways is still in progress) is freeing our souls. Because it is impossible to capture the full essence and the lasting impact of these three revolutions in a single article, a bibliography invites you to come aboard and savor the journey.

This article looks at four significant law cases that span the rise of a body of jurisprudence in the United States known as civil rights law. These four significant cases viewed together have had profound impact on the rights and liberties of all Americans in general, and on those of African descent in particular. They are United States v. The Schooner Amistad (1841), Dred Scott v. Sanford (1857), Plessy v. Ferguson (1896), and Brown v. Board of Education of Topeka, Kansas (1954). Analyzed here in the context of the times, these cases reveal the tremendous sacrifices and the pain endured in the continuing quest to attain justice, equality, and freedom for all Americans.

Rebellions in the Quest for Freedom

The notions of human freedom, proclaimed in 1776 by the Declaration of Independence, had been fought for and won during the American Revolution, but human bondage continued for the Africans who were not considered equals.

Seventeen years later, the Fugitive Slave Act of 1793 allowed escaped slaves to be arrested and returned to their owners without a jury trial. Enacted by Congress on the eve of the 19th century, this act ushered in distress and uncertainty. Thus, the 19th century could be characterized as the freedom century in which the struggle for emancipation of Africans from slavery was led by those who opposed slavery, the abolitionists.

On the heels of this act, slave insurrections and resistance grew. In 1800, Gabriel Prosser led the first recorded slave rebellion with over 1,000 slaves in Henrico County, Virginia. The depth and organization of the insurrection frightened many slaveholders. Although plans for the uprising were discovered and Prosser executed, resistance by Africans continued.

In another part of the slaveholding Western Hemisphere, a fearless commander named Toussaint L’Overture emerged in Haiti. His organization and military tactics against the French drained their treasury. The cost of war led Napoleon to negotiate a land deal with President Thomas Jefferson for the Louisiana Territory. The subsequent Louisiana Purchase was the direct result of the Haitian Revolution. In 1804, Haiti became the first nation in the Western Hemisphere free of slavery. This development caused consternation among the Southern slaveocracy.

With the freedom of the Africans in Haiti, abolitionists increased their petitions for emancipation of the slaves in state legislatures and in Congress. Allegedly, 1804 was also the year that the Underground Railroad was started. Runaway slaves were a problem for
the plantation system from the beginning as evidenced by the provisions in the United States Constitution mandating their return, Article 4, Section 2, paragraph 2.

The Louisiana Territory and its settlement became the next battlefield in the struggle for the freedom of all people. One of the first fierce debates of Western expansion began with the Missouri Territory. The issue was the admission of Missouri as a slave state. The debates pitted those who sought an expansion of the slave economy into new territories against the abolitionists. The Missouri Compromise led to the admission of Missouri as a slave state and Maine as a free state in 1821. With this Compromise, the struggle for freedom among abolitionists and slaves gained new energy. In the shadow of the Compromise, another significant slave rebellion arose in 1822 led by Denmark Vesey in South Carolina. As a consequence, repression increased through broader enforcement of the Black Codes—laws designed to control all aspects of slave life and to protect the white citizenry.

Political strife continued into the 1830s. The fury of a further slave insurrection in Virginia in 1831 led by Nat Turner terrorized whites. Turner’s rebellion resulted in the killing of approximately 65 whites. Northern philanthropists established the American Anti-Slavery Society in 1833, which expanded in New York, Massachusetts, Connecticut, Vermont, Ohio, Rhode Island, Pennsylvania, Maine, New Hampshire, and New Jersey.

Also an alliance of fugitive slaves and Native Americans provoked, in part, the Second Seminole War in 1835. In this war, the federal government was supporting the slave owners. The sanctuary that fugitive slaves were given, under sovereign territory of Indian tribes, incensed plantation owners. The support of slavery began to take a heavy toll on civil liberties—the rights to free speech and free assembly. The murder in 1837 of Elijah P. Lovejoy, a Presbyterian minister and journalist who attacked the moral evils of slavery, was an affront to the constitutional guarantees of freedom of speech and the press. The events of the 1830s were the immediate precursor of the Amistad case, The United States v. The Schooner Amistad, 40 U.S. 516 (1841).

The Amistad Revolt
The Amistad case became the cause célèbre of the Abolitionist Movement. The case created a firestorm between anti- and pro-slavery forces. The schooner Amistad, in sail from Havana to Principe in Spanish Territory, was seized by 53 Africans on board and forced to sail for West Africa. The rebellion by the Africans on the ship was a fight for liberty. A Mendi African, Cinque, was the leader of the insurrection. As the Africans did not have sailing experience, the remaining crew of the Amistad steered the schooner at night toward the North American coast. During a stop for provisions of water and food, the schooner was seized by an American naval vessel and taken to Connecticut.

On a legal basis, this admiralty case focused on whether free Africans, captured in their homeland and imported into Spanish Territory, who later revolted on board a Spanish ship, could remain free after seizure of both the Africans and the vessel by a U.S. brig. Issues of international law and treaties were controlling factors. The circuit and federal district courts held that the Africans were captured, to be put in slavery, in violation of treaties, and that they should be delivered to the president for return to Africa. The salvage recovery of the schooner was granted to the Spanish owners. The United States Supreme Court, with Chief Justice Roger B. Taney presiding, reversed that portion of the case pertaining to the Africans and declared them free. The struggle over slavery continued unabated after the Amistad decision in 1841.

Beneath the surface of this growing tension between pro-slavery and anti-slavery forces were economic differences. The growing manufacturing sector of the North with its small farms and free labor clashed with the large farms using slave labor in the South. The Northern industrialists wanted to forbid slavery in the West; the Southern slave owners wanted to expand slavery.

The next major controversy over territory began in 1850 with increased westward expansion caused by the discovery of gold in California. A compromise resulted in California being admitted as a free state, the passage of the Fugitive Slave Act of 1850 providing for rigorous enforcement against runaway slaves and the prohibition of the slave markets in Washington, D.C. It should be no surprise that a case would arise involving free and slave territory and the freedom of a slave.

Slaves Have No Citizenship Rights
In 1857, the U.S. Supreme Court decided the Dred Scott case, Dred Scott v. John Sanford, 19 How. 393 (1857). The plaintiff, Dred Scott, was a Missouri slave who was taken by his master to live in free Illinois and subsequently to a fort in the northern portion of the Louisiana Territory where slavery was excluded by the Missouri Compromise. Upon his return to Missouri, Scott sued for his freedom on the grounds that residence on free soil had liberated him. The majority of the Court decided that Scott was not a citizen and therefore had no rights and could not sue in the courts. Chief Justice Taney, who also presided in the Amistad case, stated that the Missouri Compromise was unconstitutional and that a master could take his slave anywhere in the territories and retain title to him.

Why did the U.S. Supreme Court, under the same chief justice, free the Africans in the Amistad case, but 16...
years later, refuse to grant freedom to Dred Scott? Could it be because Scott was born a slave and the Africans on the Amistad had never been in bondage? Or, had the opposing sides on the issue of slavery hardened so much by 1857 that the Court was influenced by the climate of the times?

Dred Scott struck the blow that made the Civil War inevitable. Freedom soldiers, such as John Brown, felt that there was no alternative to ending slavery except through force. The Civil War essentially began with the abortive Harpers Ferry rebellion in 1859 led by Brown and 50 men—white and black abolitionists. The Civil War effectively ended the political issue of slavery in the United States. The surrender of the Confederate army meant victory for the Union but only tentative freedom for the former slaves. The Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution put in place the protections of the recently freed people were lost.

To further compound the former slaves’ problems, the U.S. Supreme Court in 1883 declared the Civil Rights Act of 1875 unconstitutional, and 13 years later, the same court in Plessy v. Ferguson, 163 U.S. 537 (1896), decided that segregation based on race was legal if facilities were substantially equal. The facts in Plessy involved riding on a train in separate coaches segregated by race; its invidious impact was to validate all forms of discrimination based on race in this nation from 1896 to 1954.

Separate But Equal Legalized

Following the Civil War, a presidential election, two decisions of the U.S. Supreme Court, and a climate of repression doomed a whole people, recently freed, to 80 more years of stark rejection and mistreatment.

One year after Congress enacted the nation’s first civil rights law in 1875, the Hayes/Tilden compromise of the 1876 presidential election betrayed the promise of equality and justice for all. This election, on one of the few occasions in the history of the country, was thrown to the House of Representatives because Tilden had won the popular vote, but the votes in the electoral college were disputed in three southern states. In a compromise that elevated Rutherford B. Hayes to the presidency of the United States, it was agreed that Union troops would be withdrawn from the South and thus the protections of the recently freed people were lost.

The goal was the gradual eroding of segregation through a protracted struggle. That struggle would incorporate local communities’ initiation of litigation, community political education, and participation with the guidance and assistance of the NAACP. Houston’s strategy and philosophy were to commit to the elimination of racial segregation through a protracted struggle. That struggle would incorporate local communities’ initiation of litigation, community political education, and participation with the guidance and assistance of the NAACP. Houston’s vision and Howard University Law School as a living laboratory, the strategy was implemented by the NAACP. Suits were filed against law schools to admit African Americans and against school systems to equalize teachers’ pay and school
facilities. Litigation was pursued to end discrimination in journalism schools and in other educational facilities until finally Brown v. Board of Education of Topeka, Kansas, 347 U.S. 483 (1954), and the challenge to the separate but equal doctrine itself. From these cases, won by Houston and later his protégés, Constance Baker Motley and Thurgood Marshall, arose the origins of what is known now as civil rights law.

On May 17, 1954, the U.S. Supreme Court in Brown v. Board of Education reversed the decision in Plessy v. Ferguson and held unanimously that separate is inherently unequal in public education. Thus ended the legal caste system in the United States, which for 58 years had gripped the nation in a pattern and practice completely at odds with our birthright of justice, freedom, and equality under the rule of law.

The march toward “life, liberty, and the pursuit of happiness” has been a torturous endeavor as the United States has struggled to create a more perfect union based on the fundamental premise that “all men are created equal.” May this brief vignette of American history and the role of the courts lead to a greater understanding of the human spirit and the quest to attain freedom and justice for all our people.

Resources


John Marshall (1755–1835)

Fourth U.S. Supreme Court Chief Justice, Marshall was known as the “Great Chief Justice” because of his tremendous influence on the American judicial system. Marshall served for 34 years—a record that still stands today. When he took this office, the Supreme Court commanded little respect, but Marshall raised that institution to a level equal to that of the executive and legislative branches. He used its authority to clearly define the powers of the federal and state governments, and some of these principles laid the foundation for later Supreme Court decisions involving criminal justice and civil rights. In 1803, Marshall wrote the landmark opinion in Marbury v. Madison, in which the Court for the first time struck down an act of Congress as unconstitutional. Marshall believed that the young nation needed a strong central government and that its Constitution must be accepted as the supreme law of the land.


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"History repeats itself, the first time as tragedy, the second time as farce."

Attributed to Karl Marx, this observation aptly describes the contrast between the two American presidential impeachment trials: that of Andrew Johnson in 1868 and that of William Jefferson Clinton in 1999.

At issue in 1868 was the direction of Reconstruction, the future of African Americans, and the nature of civil rights and liberties for all Americans. Some scholars have argued the great tragedy was not the trial itself but the failure of the Senate to remove Johnson, as Michael Les Benedict argues masterfully in his book *The Impeachment of Andrew Johnson*. Others maintain that Johnson committed no impeachable offenses and was the target of a vicious partisan attack. Whatever the positions taken on the merits of the Johnson impeachment, all scholars agree that its circumstances as a direct result of Lincoln’s assassination were truly tragic.

The Clinton impeachment was closer to farce, involving the president’s desire to avoid being exposed in an extramarital, consensual sexual affair. Not only were no great issues at stake, but this impeachment was also divorced from political reality and constitutional history.

From the beginning, Andrew Johnson’s conviction seemed likely. The House overwhelmingly impeached him, and Senate conviction seemed probable. Republicans could barely muster the votes to pass Clinton’s articles of impeachment, with the second adopted with the votes of only a handful of lame-duck party members. From the beginning, the Republicans had virtually no chance of persuading enough Senate Democrats; in fact, they could not even convince all their own party members to remove a Democrat president they despised.

**An Impeachable Offense**

The Constitution’s framers included impeachment as a method of removing officeholders who corrupted the government, endangered the constitutional order, or failed to uphold the Constitution in some deeply fundamental way. Impeachment was not designed to deal merely with criminal activity, nor is a crime necessary for actions to be impeachable. The House judiciary committee, for example, voted down alleged income tax improprieties as possible impeachable offenses during the Nixon Watergate hearings in the 1970s, even though such findings would have been criminal. On the other hand, a president who failed to mobilize the army to defend the nation’s borders would not have committed a crime but surely would be subject to impeachment.

The two transgressions spelled out in the Constitution—treason and bribery—illustrate the nature of an impeachable offense. Both “sell out” the nation: They are not ordinary crimes but go directly to the functions of the government itself and to the nation’s fundamental security. It seems clear that Clinton’s actions, however offensive, did not come close to threatening the constitutional order and pale in comparison to those of Johnson and Nixon.

**Johnson’s Impeachment**

Although elected as a Republican, Andrew Johnson was at war with his party on the key Reconstruction issues: ridding the South of slavery’s vestiges and protecting the liberty, freedom, and fundamental rights of former slaves. Johnson seemed more sympathetic with the defeated Confederacy’s slave masters than with the 150,000 or so surviving African-American Union Army and Navy veterans and their families. A virulent racist, he was out of step with most of his party and probably most Northern whites.

The majority in Congress favored a Reconstruction program that would accomplish, at minimum, four things: African-American suffrage; substantial equality for former slaves; physical and political protection for former slaves, Southern unionists, and Northerners who had moved to the South in the wake of the war; and a remaking of the South that would exclude former Confederate military leaders and officials from public office. The motiva-
tions for these goals were mixed. By the end of the war, most Republicans believed in African-American suffrage as a matter of justice, as well as good politics, since they understood the freedmen would likely support their party. Similarly, it was hard to deny at least fundamental equality to African Americans, especially to veterans. The necessity of protecting free African Americans and white unionists was obvious to even the most conservative Northerners; so too was the desire to prevent Confederates from controlling Southern politics. Finally, many congressional Republicans, perhaps a majority, favored changes in property relations in the South to facilitate land ownership by former slaves.

Johnson emphatically opposed all these plans. Although he had opposed secession, he was also a former slave owner who had never rejected slavery itself. He was intent on preventing African Americans from taking part in governing the nation and vetoed 21 congressional bills during his nearly four years in office, compared with 36 direct vetoes by all previous presidents combined. More significantly, Congress overrode 15 of his vetoes, more than those of all prior presidents combined. At his trial, Johnson claimed the “General of the army” and at the same time prevented the removal of the “General of the army” without the approval of the Senate. The “General of the army” at this time was Ulysses S. Grant. While not a Radical, Grant was clearly aligned with those Republicans dedicated to African-American rights and a new political order in the South.

With Congress in recess, in July 1867, Johnson suspended Stanton until Congress could vote on his proposed removal of the secretary of war. This was within the letter of the Tenure of Office Act, which allowed for a recess suspension. In fact, Johnson’s action could be interpreted as an indication of his willingness to work with rather than against Congress. However, on February 21, 1868, Johnson unilaterally fired Stanton after the Senate refused to approve his removal, violating the act, and the House of Representatives immediately moved to impeach.

Johnson also obstructed the enforcement of laws he opposed, undermining congressional attempts to protect the lives and liberties of former slaves, Union military veterans, and white unionists living in the South. In the face of terrorism by former Confederates, he shuffled military commanders, put pressure on U.S. military and civilian officials to placate former Confederate leaders, and denounced congressional actions to use the Army to preserve public order and African-American freedom. Johnson ignored statutes that prohibited former Confederate military and civilian leaders from holding public office and installed ex-rebels in high positions of power. He frustrated the intent of the Freedman’s Bureau by refusing to allow officials to claim land and redistribute it to former slaves. He issued wholesale pardons of former Confederate leaders in direct opposition to congressional policy and existing statutes.

Congress wanted the Army to enforce its Reconstruction acts, while Johnson, as commander in chief, did his best to prevent the Army from doing so. Similarly, he used presidential patronage to obstruct enforcement of existing laws, reverse congressional actions in the former Confederate states, and pressure Northern politicians to oppose the Fourteenth Amendment, which was designed, in part, to give full citizenship rights to all African Americans.

As early as 1866, some Republicans in Congress called for Johnson’s impeachment, but these calls were ignored. However, as relations between Congress and the president deteriorated, it moved against him. Over Johnson’s veto, on March 2, 1867, Congress passed the Tenure of Office Act prohibiting the president from removing officeholders appointed during his term without Senate approval. The law was in part designed to prevent Johnson from replacing loyal Republican appointees with Democrats, conservatives, and former Confederate officeholders.

The issue here was not merely political patronage, but rather the implementation of Reconstruction policy. In some states, Johnson removed from office any federal official, including local postmasters, who supported the Fourteenth Amendment. The other goal was to ensure that Secretary of War Edwin Stanton remained in office and thus in control of the Army. On March 2, 1867, Congress also passed the Command of the Army Appropriation Act, which required that all orders of the president or the secretary of war had to be “issued through the General of the army,” and at the same time prevented the removal of the “General of the army” without the approval of the Senate. The “General of the army” at this time was Ulysses S. Grant. While not a Radical, Grant was clearly aligned with those Republicans dedicated to African-American rights and a new political order in the South.

At his trial, Johnson claimed the Tenure of Office Act was unconstitutional and that he had violated it merely to test it in court. This, however, does not explain why he followed the law in the summer of 1867 when he suspended Stanton and in February 1868 when he asked the Senate to approve Stanton’s removal.

**Impeachment Resource**

tory in the Civil War by doing everything he could to obstruct Congress’s Reconstruction policies. Johnson’s policies endangered the very lives of white Southern unionists, Northerners living in the South, and millions of ex-slaves. Most of all, his actions threatened African-American Union veterans, who were being attacked by white mobs and terrorists groups such as the Ku Klux Klan, which had been organized by a former Confederate general. Instead of protecting these national “heroes,” Johnson was trying to put back in power the very white leaders who had started the war.

These were, of course, political arguments. Congress could have, and probably should have, framed articles of impeachment that detailed Johnson’s malfeasance in office, his obstruction of congressional policy, and his high-handed unilateral actions that may very well have gone beyond the legitimate scope of presidential power. Had the House impeached Johnson for these reasons, at least the trial would have been about the issues that truly mattered. Instead, the trial was about the legality of the Tenure of Office Act and the right of the president to blatantly flaunt valid statutes passed by Congress.

The meaning of Johnson’s acquittal is unclear. Some senators may have voted against conviction because they did not believe he had violated the law; Stanton’s status under the act was in question because Lincoln, not Johnson, had appointed him. Some senators believed that the Tenure of Office Act was unconstitutional and thus voted for acquittal. Also, by the time of trial, Johnson had less than a year to serve and so may not have been viewed as posing much of a threat. But the most important reason for the acquittal was political. The seven Republicans who voted to acquit Johnson agreed with William M. Evarts, the conservative Republican lawyer hired to defend him, that, however bad Johnson was, his successor would be worse. The Republicans who wanted to keep Johnson in office in part took that position because they despised the radical, overbearing, and sometimes crude Senate president pro tempore Benjamin F. Wade, who would succeed Johnson. Thus, politics, which undermined Johnson’s presidency, also saved it.

Nixon’s Impeachment Hearings
Helping to illuminate especially the Clinton impeachment is the investigation of Richard M. Nixon, which probably would have led to conviction had he not resigned. In 1974, the House Judiciary Committee voted three articles of impeachment against Nixon stemming from his attempt to cover up his party’s, and perhaps his own, involvement in a break-in at the Democratic National Headquarters in the Watergate Hotel in Washington, D.C. It is important to recall three aspects of the Nixon affair.

Less than a week after the Watergate break-in, Nixon tried to get the FBI and the CIA to help cover up the event by pressuring the D.C. police to stop the investigation. Later, Nixon urged subordinates to perjure themselves about the criminal activities that surrounded the break-in, as well as the crime of the break-in itself. Thus it was that the committee voted to impeach Nixon for obstruction of justice. Nixon was also charged with abuse of power associated with White House-sponsored break-ins in private residences and businesses; illegal electronic surveillance of private citizens; the attempted corruption of the Internal Revenue Service to harass Nixon’s political enemies; and the misuse of the FBI, the CIA, and the Secret Service to undermine democratic processes. These were surely high crimes against the very essence of a democracy.

Nixon left office prior to the vote for impeachment, driven away not because of his lying about Watergate but, rather, because of the substance of his offenses: He had threatened democratic government in the 1972 elections as well as fundamental liberties by spying on citizens and corrupting government agencies to harass individual Americans, undermining government and liberty for all.

Clinton’s Impeachment
The Clinton impeachment pales by comparison to its precedents. Normally “justice by poll” is undesirable, but impeachment is not finally about justice; it is a political process designed to remove officeholders who have threatened the nature of government and, in the process, lost the nation’s confidence. It is important to note that poll after poll suggested that Americans did not view Clinton’s offenses as impeachable. Thus, he had not lost the nation’s confidence. He misled the American people by lying about private misdeeds, not corruption in office; thus, the vast majority of those polled rejected impeachment and removal as the appropriate remedy. Impeachment, in the end, must be about tragedy and danger that threaten our system of government and our liberty.

Our celebrities are aristocrats in the way we relate to them. It’s difficult to conceive of the rich and famous as being victims, and the fascination with that is the perception of whether it was their celebrity or wealth that somehow brought them this pain. The threat is that the public attention politicizes the process and the outcome becomes larger than the case itself.

—Samuel A. Guiberson, Houston lawyer and member of the legal team that defended Timothy McVeigh in the Oklahoma City federal-office bombing case, 1997
As the 20th century comes to a close, we can look back on dozens of them. Trials of the Century, that is. From the Scopes “Monkey Trial” to the Lindbergh baby kidnapping, to the spy trials of Julius and Ethel Rosenberg, to the murder trials of Sam Sheppard, Charles Manson, and O.J. Simpson. And of course the impeachment of a president.

What makes a case “the trial of the century,” as each of these was called? The crime, the accused, the lawyers, the legal issues and, certainly, the media.

Millions Watch Trials

Through the years, as a variety of crimes gripped the public’s attention, broadcast coverage of trials evolved. We’ve come a long way from the days when wires snaked across courtroom floors, flashbulbs popped relentlessly, and reporters sat so close to defendants and their attorneys that they could not talk without being overheard. Nowadays, we can watch every minute of a live trial on Courtroom Television Network (Court TV), broadcast to millions of viewers nationwide in the most unobtrusive way—one small camera operating by remote control, no special lighting or sound equipment, no editing or commentary by reporters.

Why are people so drawn to these cases? What motivates public interest and broadcast coverage of criminal trials? When the U.S. Supreme Court described the trial of 30-year-old Cleveland osteopath Sam Sheppard, accused of murdering his wife in 1954, it provided some answers: “[M]urder and mystery, society, sex, and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree unparalleled in recent annals. Throughout the pre-indictment investigation, the subsequent legal skirmishes and the ... trial, circulation conscious editors catered to the insatiable interest of the American public. In this atmosphere ... [a man] stood trial for his life.”

If public opinion had prevailed originally, though, we may never have had live broadcast coverage of criminal trials. In 1924, during a hearing to determine whether teenagers Nathan Leopold and Richard Loeb should be sentenced to death for kidnapping and murdering the 14-year-old son of a wealthy businessman, the Chicago Tribune explored the possibility of broadcasting the court proceedings over its radio station, WGN. Seeking the public’s opinion on the question, the Tribune learned that the majority was against the idea.

“It will teach other fellows how to extort money from the rich. The case has already put the idea into the minds of many youths,” a Chicago resident said. A Michigan City, Indiana, woman pleaded, “Give us, not this ugly case, but WGN with its good music, and its announcer’s voice.” The radio station decided not to broadcast the hearing. Back then, the idea of broadcasting court proceedings was conceived as a “whimsy,” according to the Tribune.

Just a few years later, however, cameras were allowed into the courtroom during the trial of Bruno Hauptmann, who in 1935 was accused of the kidnap-murder of aviation hero Charles Lindbergh’s baby. After 700 reporters and 130 cameramen descended on the tiny town of Flemington, New Jersey (pop. 2,500) for
Part of the reason cases become trials of the century is that they distill and condense conflicts that are in the world. The resolution of the trial is not the resolution of the conflict, but it is one of the ways we work these things out.

—James Goodman, professor of history, Rutgers University, Camden, N.J., and author, Stories of Scottsboro

the trial, their actions actually triggered the movement against cameras in the courtroom. Encouraged by the American Bar Association and fearing that criminal proceedings would turn into carnival-like atmospheres, most courtrooms banned cameras shortly after the Hauptmann case. It stayed that way for nearly half a century.

While the ban did not stop broadcasters from reporting on criminal trials, it made their jobs much tougher. In fact, broadcasters argued that the print media were being treated more favorably. Print reporters could bring their tools—notepads and pencils—into court. Why couldn’t broadcasters bring in cameras and microphones?

Broadcast Media’s Cause

In the years that followed, the broadcast media lobbied hard for cameras in the courtroom, and rapid changes in technology helped their cause. As television moved from an entertainment instrument in the 1950s to a reliable and timely news and information source in the late 1960s and 1970s, broadcasters were able to demonstrate to judges that they could act responsibly if permitted to film in court. The increasing pervasiveness of television in our society also helped change judicial attitudes. By the mid-1970s, the courts had begun to experiment with cameras in the courts; by 1980, many states had lifted the ban. Today, 47 states permit broadcast coverage of at least some judicial proceedings. However, federal courts, including the U.S. Supreme Court, still prohibit any kind of broadcast coverage.

Allowing broadcast coverage of the proceedings has altered the way some broadcasters report on cases. Several critics have taken the broadcast media to task for often limiting coverage to a sound bite on the evening news. On the other hand, viewers no longer have to rely solely on reporters’ observations or the interpretations of lawyers interviewed outside on the courthouse steps. Broadcasters have given viewers a glimpse inside the courtroom, instead of just showing footage of people in handcuffs being led to the courthouse.

Of course, broadcast coverage is not, and has never been, limited to what goes on inside the courtroom. Many criminal trials have been dominated by other images—Abbie Hoffman, Jerry Rubin, and other protesters being rounded up at the 1968 Democratic convention in Chicago; President Ronald Reagan slumping into a limousine after being shot by John Hinckley, Jr.; the aerial view of O.J. Simpson’s white Bronco moving down the Los Angeles freeway; President Clinton wagging his finger in denying that he had any relationship with a White House intern.

Indeed, some images may not add to the public’s understanding of the judicial process and can even cause confusion. Didn’t we watch Washington, D.C., Mayor Marion Barry smoke crack cocaine, former automaker John DeLorean sell drugs to undercover agents, and Los Angeles police officers beat unarmed motorist Rodney King? Why, then, were none of them found guilty of the felony charges? The legal process is more complicated than those pictures suggest, and broad-casting the images without any explanation or analysis can do more harm than good, critics argue.

For all the criticism of broadcast coverage, its potential to illuminate the proceedings is unmistakable. Court TV, the 24-hour cable network devoted exclusively to real courtroom trials, has taken off faster than anyone, including its owners, expected. Whoever thought viewers would watch gavel-to-gavel coverage of trials? But now in its eighth year, Court TV’s straightforward approach and its knowledgeable commentators have shown a commitment to responsible journalism. When it broadcast the rape trial of William Kennedy Smith in 1991 and shared its feed with the other networks, Court TV voluntarily shielded the identity of Smith’s accuser and used a 10-second delay to delete her name.

Is Coverage Excessive?

Today, cameras in the courtrooms are considered a logical extension of the constitutional principle of a public trial. That principle contemplates not just the protection of the accused but the enlightenment and education of the public. Yet coverage of trials sometimes has gotten excessive. Using attorneys as consultants to analyze court proceedings for national news programs has grown into a cottage industry. Experts on morning talk shows agonized over President Clinton’s sexual indiscretions and the gestures of O.J. Simpson.

To be sure, there have been low points in broadcast coverage of trials. Less than one week before a grand jury handed down its indictment of Bernard Goetz for the attempted murder of four teenagers in a New York City subway in 1984, ABC-TV’s “20/20” correspondent Geraldo Rivera portrayed Goetz in a dramatized recreation of the incident. Media critic Tom Collins wrote in Newsday, “[T]he coverage has gone beyond circus and crossed into carnival.”
And a tabloid program paid $40,000 to a prosecution witness in the William Kennedy Smith case so that she would tell her story exclusively on the air. That transaction became a trial issue when Smith’s attorney used it to discredit her testimony in court.

What has the broadcast media taught society about crime and the administration of justice? Critics are afraid that television ignores substance and complexity and goes for the sensational. Actually, the opposite may be true. Fears that the public will learn the wrong lessons about the way the judicial process works may be fears only of lawyers and judges. Television dramas since the days of Perry Mason have given us an unrealistic view of the American judicial system. Certainly, in real life there are bombastic attorneys, occasional last-minute witnesses, and a rare tearful confession on the witness stand. But not every 60 minutes.

In reality, the process is deliberate and messy. Broadcast coverage of criminal trials, while distasteful to some, has helped demystify the judicial system. The Chicago Tribune, commenting about the O.J. Simpson case, observed that people ordinarily unaccustomed to courtroom procedures got a chance to watch it at work close up, warts and all. The public has found that it is not always an interesting, easy-to-understand, or comfortable process. Yet people learn from it.

As broadcast coverage of criminal trials expands, we look to the future. Does the public understand the legal system? Does the public understand the legal process? Does the public understand the law? How will broadcast coverage of trials impact legal ethics? How will it impact media ethics? Has broadcast coverage of trials really been so sensational, or has it raised public awareness of the legal system? Stay tuned. ♦

Recommended Reading


Fair Trial v. Free Press: ABA Standards

There is a fine if somewhat blurred line that separates the right to a fair trial and the freedom of the press to cover criminal trials. Unmitigated media coverage could well influence juries, as was demonstrated so well when the Supreme Court reversed Sam Sheppard’s murder conviction on the grounds that he didn’t receive a fair trial because of prejudicial publicity. But at the opposite end of the spectrum are the English “star chamber” trials that were held in complete secrecy and decisions could not be challenged in any forum at all. Lady Justice holds a scale, and this issue, indeed, needs a balancing act.

The ABA has standards to guide criminal courts and attorneys when dealing with the media. For example, lawyers must not tell the press anything that would have a substantial likelihood of prejudicing the outcome of a criminal proceeding. This means that attorneys must not make out-of-court statements on defendants’ prior criminal records, reputations, test results (lie detector, for example), or confessions; the lawyer’s opinion as to the guilt of defendants; the nature of the physical evidence expected to be presented (or any inadmissible evidence); anything about prospective witnesses; or the possibility of a guilty plea.

On the other side of the coin, lawyers in criminal cases may reveal the general charges against, and defense strategy for, the accused and the name, age, residence, and family status of the accused; make a request for information in obtaining evidence; and reveal the facts of the arrest and any information in the public record.

Juvenile court proceedings are different. In contrast to adult criminal proceedings, juvenile court proceedings do not involve criminal convictions and are regarded as civil proceedings. It’s been a central characteristic of the juvenile court system to have closed proceedings in confidentiality to protect the identification of the child and to further society’s interest in rehabilitation of youthful offenders and their integration as law-abiding citizens. Media publicity would have a harmful effect on those purposes of the juvenile justice system. (The ABA supports a juvenile’s right to have open proceedings, but the juvenile may waive that right.) State courts make their own rules, with some maintaining closed courts, others having open forums, and some having a blend of the two (in Illinois, for example, only the media—not the public—may attend juvenile court, and the judge may prohibit publication of a minor’s name). Whatever standard is applicable, ABA recognizes freedom outside of the courtroom. If, for example, a reporter is interviewing eyewitnesses to an event, and the witnesses identify the people involved, the state may not prohibit the reporter from naming names.

Copies of ABA Standards for Criminal Justice; Fair Trial and Free Press, 3d ed. ($17.95 plus shipping & handling; PC #5090052); The Reporter’s Key: Rights of Fair Trial and Free Press ($10 plus s/h; PC #4480000); and Annotated Juvenile Justice Standards ($59.95 plus s/h; PC #5090065) are available through American Bar Association, P.O. Box 10892, Chicago, IL 60610-0892; voice 312/988-5522; fax 312/988-5568.
The Rise and Influence of Court TV

There was 24-hour news, 24-hour sports, and 24-hour weather. But would anybody tune in to watch continuous coverage of real courtroom drama?

Lawyer and journalist Stephen Brill thought so. And despite dire predictions that the new cable network he launched in 1991 would prove to be dull and consequently short-lived, it shows no signs of slowing down.

“There isn’t a single lawyer I tried this out on who didn’t think it was a terrible idea,” Brill told the Washington Post a few years ago. “Lawyers know that what they do all day is mostly boring. But there are probably two million trials in the U.S., and if you do 100 a year, you can pick the ones that are interesting and important.”

Courtroom Television Network (Court TV) first went on the air July 1, 1991, the brainchild of Brill, who has called it “a combination of C-SPAN and soap operas.” The first trial broadcast was not especially memorable. It was the case of Florida v. Robert Scott Hill, in which Hill was found innocent of murdering his stepmother-in-law more than 20 years earlier.

Since then, viewers have followed the fates of hundreds of litigants and defendants, including pop singer Michael Jackson, British nanny Louise Woodward, suicide assistant Dr. Jack Kevorkian, and President Bill Clinton. But it’s not just the high-profile trials that Court TV broadcasts. Network executives say they choose cases that are newsworthy and have educational value.

For example, viewers have watched the outcome of a negligence case against a Vermont ski resort, a New York professor who fought to get his job back after being stripped of his position for making a speech that was deemed bigoted, and the Delaware Supreme Court deciding the result of a corporate takeover.

Court TV executives are mindful that their cameras occasionally pick up intensely personal information during the trials—such as the addresses of witnesses, the names of jurors, and private conversations between lawyers and their clients. To avoid broadcasting those facts, the network uses a 10-second delay for all trials. During the rape case of William Kennedy Smith, the cable network shielded the alleged victim’s face to protect her identity. And when psychiatrists described gruesome details about serial killer Jeffrey Dahmer, Court TV voluntarily deleted some of it.

Despite its efforts to educate viewers about the justice system, Court TV has its critics. After broadcasting gavel-to-gavel coverage of O.J. Simpson’s murder case, the cable network was blamed for the unusually long duration of the trial. Many legal experts and viewers claimed the cameras adversely affected the behavior of the lawyers, the judge, and the witnesses. Shortly after Simpson’s trial, cameras were banned from the Texas trial of murdered Tejano singer Selena and the South Carolina trial of Susan Smith, who was accused of killing her two young children when she drove her car into a lake.

While Court TV does not have as broad an audience as other cable networks, its audience’s devotion runs deep. Ordinary people have become hooked. The 1993 trials of Lyle and Erik Menendez, accused of killing their parents in southern California, and the rioters who assaulted truck driver Reginald Denny brought Court TV half a million new subscribers in the Los Angeles area alone. Besides the network’s trial coverage, its programming includes a variety of prime-time shows about law and justice, analysis, and wrap-ups.

“I would have never believed it,” Greta Van Susteren, an attorney and one of the original commentators on Court TV told the Washington Post a few years after Court TV went on the air. “But the ratings have proved me wrong. People want to see this.”
Lights, Camera, Courtroom?
Should Trials Be Televised?

Jane E. Kirtley: Yes!

Jane E. Kirtley, a journalist and lawyer, is the executive director of the Reporters Committee for Freedom of the Press in Arlington, Va., and a member of the ABA Litigation Section, Forum on Communications Law, and National Conference of Lawyers and Representatives of the News Media.

Electronic coverage should be allowed in any trial that is open to the public. There is no logical reason to exclude television cameras from courtrooms. The Supreme Court has long recognized that the news media, and the public, have a First Amendment right to attend criminal trials.

Other courts have extended this principle to include civil proceedings as well. A camera in a courtroom is nothing more or less than the logical extension of these rights.

Historically, trials in the United States, unlike those in many other countries, took place in public. The Founding Fathers were well aware that the infamous Court of Star Chamber in England, which tried criminal cases in secret, was used to hide a multitude of abuses. They believed that the best way to keep the system honest was to keep it open to public oversight and review. For many years, that worked pretty well. Citizens gathered at the county seat on “court days” to watch circuit-riding judges administer jus-
Trials were both edifying and entertaining. No one suggested that it was inappropriate if the public found them exciting to watch.

Nowadays, it isn’t practical for most people to take time off from work or school to see for themselves whether justice is being done in their courtrooms. But most people can take some time to watch a news broadcast at some point during the day. Allowing cameras in courts simply permits more members of the public to exercise their right to see and hear for themselves what transpires inside the often confusing legal system.

After the O.J. Simpson murder trial, one of the most sensational trials of the decade, many people, both in and out of the legal profession, argued that airing the trial on television was simply catering to the worst impulses of a sensation-seeking public. They contended that it was downright unseemly for the electronic media to provide this kind of material to the unwashed masses. They suggested that the public just couldn’t handle that much reality.

Other arguments against the use of cameras are repeated so often that they gain credibility, even when the facts don’t bear them out. Cameras frighten witnesses and jurors, we are told. Cameras cause lawyers to act like maniacs and make trials last forever, it is said. Cameras distort the proceedings and sensationalize trials, critics assert.

But dozens of surveys conducted during and after the experimental use of cameras in both state and federal courts show that cameras intimidate neither witnesses nor jurors, the majority of whom remain respectful of the system and mindful of their obligations. Cameras don’t cause lawyers to show off in court. It is up to the judge to keep the attorneys in line inside the courtroom. Most judges who have experienced cameras in their courtrooms find that after the first few minutes, no one even notices them.

Most flamboyant behavior and “sensational” coverage takes place outside the courtroom, where judges have limited control over attorneys’ conduct and virtually no say over editorial decisions. It may be perfectly understandable that a judge would try to keep out cameras in order to limit the available video footage that can be chopped up into small snippets in ways that might distort the public’s perception of a trial. That doesn’t make it constitutional to do so.

What cameras do produce is a verbatim record of court proceedings that can help neutralize any inaccurate and sensational reports that may be produced based on interviews conducted outside the courthouse. They can help the public understand verdicts that might make no sense to those who didn’t have the

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**Sheppard v. the American Press?**

Trial by the media has already had its day in court and been found wanting.

In 1954, when television was in its adolescence at best, Dr. Sam Sheppard was convicted by the newspaper press, and subsequently by a jury, of murdering his wife. Sheppard’s contention that the actual killer had been an intruder (known as the “one-armed man” in the spin-off television series and movie *The Fugitive*) was rejected by newspaper editors, who at the time controlled what was fed to the nation.

Interestingly enough, Sheppard’s trial was essentially conducted by poll. Today, TV polls permeate election day coverage, with commentators predicting the results of congressional and presidential races long before the results are in. By calling an election based on early exit polls, television has been accused of skewering election results by discouraging persons from voting because they feel the campaigns are decided and their votes won’t make a difference. Could television do the same with trial results?

There would be plenty of room for abuse. In the *Sheppard* case, Supreme Court Justice Tom Clark noted that the “massive, pervasive and prejudicial publicity attending petitioner’s prosecution prevented him from receiving a fair trial consistent with the Due Process Clause of the 14th Amendment.”

Continuing, Clark said, “Despite his awareness of the excessive pretrial publicity, the trial judge failed to take effective measures against the massive publicity which continued throughout the trial or to take adequate steps to control the conduct of the trial.”

Speaking for eight of the justices—all but Hugo Black—Clark noted that, weeks before the trial, newspapers published the names and addresses of those called for jury duty. “As a consequence, anonymous letters and telephone calls, as well as calls from friends, were received by prospective jurors.” (This amounted to a type of reverse poll, with the jurors contacted by outsiders with their personal opinions.)

One end of the press table was less than three feet from the jury box. The presence of reporters inside the bar “precluded privacy” between Sheppard and his attorneys, according to Clark.

The Supreme Court returned the decision to the lower court for a new trial. A different judge banned not only photographers but also sketch artists. The press table was moved to a more remote location, there was no room for radio equipment, and no one was allowed to enter or leave while court was in session. In addition, the judge imposed a gag rule that prevented lawyers or witnesses from talking to the press, and the jury was sequestered for the duration of the trial.

This time the verdict was not guilty.
opportunity to watch the trial for themselves. Cameras in the courtroom mean that our courts are truly open to the public, as they were intended to be.

**Judge Thomas W. Brothers: Yes!**
Judge Thomas W. Brothers has served as judge of the 6th Circuit Court, 20th Judicial District, in Nashville, Tenn., since 1989, and as presiding judge for two terms. He is chair of the Tennessee Judicial Conference’s Technology for the Courts Committee and serves on the Tennessee Supreme Court Advisory Commission on Technology. Judge Brothers is a member of the ABA Section of Litigation and the Judicial Division, where he is a member of the Technology Committee.

Most of the debate over whether to allow cameras in the courtroom centers on the perceived impact that the broadcast has on the proceedings. Opponents claim that the lawyers and witnesses (and sometimes the judge) “play” to the cameras resulting in a degradation of the judicial process. Seldom does anyone deny that citizens have a right to access the live “feed” and record or broadcast it. In this way, there is no circus-like atmosphere injected into the courtroom. Such a camera setup could be easily mounted to the courtroom centers on the perceived impact that the broadcast has on the proceedings. Opponents claim that the lawyers and witnesses (and sometimes the judge) “play” to the cameras resulting in a degradation of the judicial process. Seldom does anyone deny that citizens have a right to access the live “feed” and record or broadcast it. In this way, there is no circus-like atmosphere injected into the courtroom. Such a camera setup could be easily mounted to the back of the courtroom, positioned in such a way as to screen off the jury from view. This precludes the attorneys from posturing and inhibits the desire of the witness(s) to be “on camera.” At the same time, it permits the TV public to have the same input they would have if they were in the back row of the audience. The TV viewers are thus not being given special treatment nor exhilarated by a circus side show.

**Judge Harlan K. Veal, Ret.: That Depends!**
Judge Harlan K. Veal served between 1984–96 as presiding, assistant presiding, law & motion/probate, family law, general civil & criminal trial, and presiding appellate department judge for the Superior Court of San Mateo County, Calif. He has been a member of the ABA Division of State Trial Judges and participates in the ABA’s National Judicial Dialogue. Judge Veal serves on both the ABA Committee of Senior and Retired Judges and the Judicial Services Committee of the National Conference of State Trial Judges.

The judge must be allowed discretion, or TV should be completely barred. It should not be mandated for all trials. Out of three requests, I allowed TV in my courtroom twice and refused to allow it once.

One of the two cases in which I allowed TV was a criminal post-parole placement hearing involving a convict who had raped a young girl, then cut off her arms, and abandoned her in a ditch. The other was a civil/probate case in which the decedent left anywhere from five to seven ex-wives, never having divorced any of them.

The one in which I refused to allow TV was an extended, complex, and incredibly bitter child-custody, post-divorce hearing involving very prominent high-society parents. I concluded that the privacy of the children far outweighed the right of the public to know. Much to my amazement, the TV stations did not take me up on a writ, so my decision ended the matter.

The key to allowing TV in the courtroom is strict control by the judge. The TV public’s “right to know” is no broader than if they were seated in the courtroom. Numerous cameras, close-ups, telephoto lenses, highly sensitive directional mikes, or separate TV microphones on the witness stand, counsel table, or judge’s bench should not be allowed.

My policy, if allowing TV in the courtroom, has been to permit a single camera with attached microphone and a standard wide-angle lens at the back of the courtroom, positioned in such a way as to screen off the jury from view. This precludes the attorneys from posturing and inhibits the desire of the witness(s) to be “on camera.” At the same time, it permits the TV public to have the same input they would have if they were in the back row of the audience. The TV viewers are thus not being given special treatment nor exhilarated by a circus side show.
Adams, John (1735–1826)
The second president of the United States and its first vice president, John Adams, known as the “Colossus of Debate” in his support of the Declaration of Independence, was a leading attorney of the Massachusetts colony. In almost single-handedly writing the Massachusetts Constitution of 1780 and its detailed bill of rights, Adams furnished many of the young nation’s states with a model for their own constitutions, from which important features and ideas were later taken to frame the U.S. Constitution. Adams opposed the British Parliament’s Stamp Act, which imposed a fee on legal papers in the colonies, and developed the argument that the tax was illegal because the people had not consented to it, which amounted to saying that Parliament could not tax the colonies at all.

Brandeis, Louis (1856–1941)
An associate justice of the Supreme Court from 1916 to 1939, Louis Brandeis, the “People’s Attorney,” became known as a young lawyer for his frequent work to reform big businesses and powerful financial institutions, working to bring about changes such as shorter hours for working women and children and a higher minimum wage. On the Court, he joined Oliver Wendell Holmes, Jr. to write many powerful opinions, many of them dissents, that supported the right to privacy, free speech, and social legislation.

Foltz, Clara Shortridge (1849–1934)
The first female lawyer in California, Clara Shortridge Foltz was the first to propose that the state should provide and pay for a public defender in criminal cases. Credited for creating the public defender model, she drafted the Foltz Defender Bill, introduced in 33 state legislatures, that would authorize the creation and appointment of public defenders. Foltz also fought for the rights of women and the poor.

Ginsburg, Ruth Bader (1933–)
The second woman to serve on the Supreme Court, Ruth Bader Ginsberg is a distinguished legal scholar and one of the best lawyers ever to argue before the Supreme Court. Starting in 1972 as director of the ACLU’s newly founded Women’s Rights Project, whose goal was to challenge all laws and practices that discriminated on the basis of sex, during the mid-1970s she argued or assisted in over two dozen Supreme Court cases that fundamentally changed U.S. sex-discrimination law.

Hamilton, Andrew (1815–75)
A famed Philadelphia lawyer, Andrew Hamilton helped gain the first major victory for freedom of the press in the American colonies in 1735 when he came to New York to defend printer John Peter Zenger against criminal libel charges for having printed the New York Weekly Journal two years earlier, which contained articles critical of the Government Party. Zenger had refused to divulge the names of the authors so he was arrested, and all his lawyers were disbarred. Hamilton argued that Zenger should go free because he had printed the truth, and that truth is not libelous.

Hand, Learned (1872–1961)
A federal judge of profound legal understanding, Learned Hand was appointed a federal judge in 1909 and he held that position until his death 52 years later. While preserving respect for legal institutions, he molded the law to fit changing times. His carefully constructed and insightful judgments had so much influence on the Supreme Court that he was referred to as its “10th Justice.”
Holmes, Oliver Wendell, Jr. (1841–1935)
Known on the Supreme Court as “The Great Dissenter” because of the sheer number of his dissents, Oliver Wendell Holmes, Jr. was very influential in directing American concepts of law and strongly influenced judges to follow the doctrine of judicial restraint at a time when the Court seemed to be writing its economic theories into the Constitution. He strongly protested against the Court’s practice of declaring many state laws unconstitutional because they did not conform to the justices’ concept of due process of law, believing that the Court had no right to interfere with legislative policy unless it violated the Constitution. Holmes insisted that the Fourteenth Amendment had not been intended to deny the states a right to experiment with social legislation. Many of the ideas in his dissents were later accepted by the Court, with his major contribution being the idea that law shouldn’t be comprised of worn-out slogans and formulas, that the life of the law “has been experience,” and that law should develop along with the society it serves.

Houston, Charles Hamilton (1895–1950)
Dean of Howard University’s School of Law, Charles Hamilton Houston and his law school formed an alliance with the NAACP with the vision of advancing African Americans and challenging legal racism by committing to a protracted struggle that incorporated local communities’ initiation of litigation, community political education, and participation with NAACP guidance and assistance. Out of the resulting cases, including Brown v. the Board of Education of Topeka, Kansas, which overturned public school segregation, arose the origins of what is now known as civil rights law.

Jefferson, Thomas (1743–1826)
Third president of the United States, founder of the Democratic Party, and primary author of the Declaration of Independence, Thomas Jefferson was also a renowned professor of law and founder of the University of Virginia who is said to have never abandoned the law but rather brought it to the cause of American democracy. Among his eloquent writings are the 1774 A Summary View of the Rights of British America, which legalistically and brilliantly argued that Americans possessed the natural right to govern themselves, as well as the Statute of Virginia for Establishing Religious Freedom. As a member of Congress, Jefferson piloted through the ordinances that formed the basis for all later American land policies. As secretary of state under President Washington, he developed his “strict construction” theory, holding that the government should assume only powers that the Constitution expressly gives it.

Lincoln, Abraham (1809–65)
President during the Civil War from 1861–65, Abraham Lincoln is considered by many to be the greatest person in U.S. history. “The Railsplitter,” he rose from humble surroundings to become a shrewd, tough, and aggressive Illinois attorney. When leading the nation during its greatest crisis, this brilliant speaker spurred the disillusioned with eloquent writings and speeches, such as the Gettysburg Address, preserving the union and changing the course of world history. In 1863, his Emancipation Proclamation paved the way for the Thirteenth Amendment, ending slavery in all parts of the United States. Lincoln took an important role in the economic development of the nation, providing leadership to set in place federal controls to assure sound banking and credit and national banking legislation to provide paper money; tariffs on European manufactured goods to help limit competition and encourage American industry; income tax and homestead laws; as well as land grants for state universities and the first transcontinental railroad.

Marshall, Thurgood (1908–93)
The first African-American Supreme Court justice (1967–91), Thurgood Marshall became famous as the director and chief counsel for the NAACP Legal Defense and Educational Fund, in which capacity he worked to develop the legal argument that he later presented in the 1954 Supreme Court decision overturning the separate-but-equal doctrine and ending public school segregation as unconstitutional. On the Court, Marshall opposed capital punishment and supported free speech, school desegregation, the rights of welfare recipients, and affirmative action.

Webster, Daniel (1782–1852)
The best-known orator and one of the ablest lawyers and statesmen of his time, Daniel Webster argued eloquently as a U.S. senator against the theory developed by John C. Calhoun and others that a state could “nullify” federal laws and refuse to obey them. He also helped save the union with a famous speech favoring the Compromise of 1850, which largely prevented Southerners from seceding over the question of whether slavery would be allowed to spread into the Western territories.
The Trial of My Life

Behind the Scenes at Operation Greylord

Thomas P. Sullivan

My practice began in 1954, and I have continued with the same firm for the past 45 years, except for four years when I served as United States Attorney for the Northern District of Illinois (1977–81). My practice has consisted almost exclusively of handling civil and criminal trials and appeals. In addition, I have taught at law schools and in legal education programs for lawyers and have given talks and written articles about various aspects of litigation.

During my term as United States Attorney, I was called upon to investigate a number of judges, lawyers, police, and court personnel in the Cook County, Illinois Circuit Court, which serves Chicago and vicinity. What we found during the course of that investigation had a profound impact upon the judiciary and members of the legal profession and upon me personally. While I am not free to divulge all of the facts uncovered and the means used, I am able to recount the highlights of “Operation Greylord.”

Corruption in Chicago

Greylord was the FBI code name for the investigation that began during my time as U.S. Attorney and became public with the return of indictments and the trials during the terms of my successors, Dan K. Webb and Anton R. Valukas.

Like many lawyers practicing in Chicago, I had heard stories about corruption in the courts, “miracle worker” lawyers, and judges who allegedly were on the take. After becoming U.S. Attorney, I learned that the FBI had heard many of these stories as well and had tried to investigate them, but without success. The judges, lawyers, and defendants who were involved in this corruption had no reason to tell anyone about it, and the investigations always came to a dead end. So I was intrigued when shortly after becoming U.S. Attorney, I received a proposal from an FBI agent for a project that would have agent-lawyers working undercover as lawyers in the court system, gathering first-hand evidence of what the FBI and others believed to be corruption in the court system. This proposal eventually led to Operation Greylord.

Even with undercover lawyers, we were faced with a difficult decision as to how to go about investigating the allegations—whether to have the undercover lawyers represent defendants in real cases, or to prepare fake cases in which the victims, witnesses, and defendants also were undercover. Knotty questions arose as to the methods a prosecutor may ethically use in investigating alleged judicial corruption. The problem was difficult because using phony cases meant that we were deliberately misleading the judges and some of the lawyers involved, and it also involved FBI agents acting in the roles of lawbreakers, getting arrested and jailed, with the attendant risk of mistreatment at the hands of police or other prisoners. We worked closely with the Attorney General of the United States and his staff and FBI officials to resolve the ethical issues. We decided to use fake cases, in order to stay within professional ethical guidelines, and to avoid the risk of our participating in having guilty persons in real cases found not guilty of criminal charges as a result of our having fixed cases. To reduce the threat of physical harm, we also conferred with the Cook County State’s Attorney, the Superintendent of the Chicago Police Department, and the Chief Judge of the Criminal Court of Cook County. As it turned out, no one was injured. When the investigation became public, there was considerable debate about the propriety of using staged cases, but both the trial and appellate courts approved the undercover methods we used.

Four Years Undercover

The undercover phase of the investigation lasted for about four years, and miraculously it remained a well-kept secret. During that time, the FBI created fake cases ranging from driving under the influence to shoplifting, robbery, and unlawful use of weapons. Shortly after the investigation started, a young assistant states attorney, Terrence Hake, who was aware of the corruption in the courts, volunteered to assist us. Terry’s joining the project assisted us tremendously, as he was extremely dedicated and remarkably effective in penetrating the inner circles of corruption. With Terry’s help, and the excellent work of many dedicated assistant U.S. attorneys and FBI agents, we were able to amass evidence of extensive bribery and case fixing involving judges, court clerks, police, defense lawyers, and prosecutors.

Thomas P. Sullivan is a lawyer with Jenner & Block in Chicago.
As a result of Operation Greylord, 87 convictions were obtained, including 13 judges, 50 lawyers, four clerks, and 13 police officers and deputy sheriffs. Almost all of those convicted were sent to prison, and the judges and lawyers were disbarred from the practice of law.

No One Above Law
The Greylord scandal received nationwide publicity, and those of us who participated hoped that it would serve as a warning to those who come after to avoid corrupt conduct, which strikes at the very heart of our judicial system.

Many fine young assistant U.S. attorneys were involved, as were FBI agents and members of the Chicago Police Department. Some of the leading participants were William Megary, David Grossman, and David Ries of the FBI, and Daniel Reidy, Charles Sklarsky, Scott Lassar, and Candace Fabri of the United States Attorneys Office.

The conviction of so many persons involved in the judicial process—especially judges who swear to administer the law honestly and fairly and who hold a special position of trust and honor—caused some persons to lose faith in the courts and our system of justice. Others, myself included, found it reassuring that judges, lawyers, and police are not above and beyond the law’s reach, and that there are those who will take personal and professional risks in order to clean the halls of justice.

Greylord Resource

A Look at Two More Trials

“The Morning Star of Liberty”
Revolutionary patriot Gouverneur Morris thus described the trial of New York Weekly Journal printer John Peter Zenger, whose newspaper became the royal bane of Governor William Cosby in the 1730s. Many people are aware that this “seditious libel” case laid the foundation for freedom of the press. Few know that it also helped lay the groundwork for other major constitutional guarantees, including freedom from excessive bail, habeas corpus, grand jury indictment, right to counsel, and trial by jury.

The case further provided an early example of jury nullification. Under colonial law, a finding of seditious libel required proof only of publication, not of truth or falsity. Fueled by Philadelphia defense attorney Andrew Hamilton’s stirring rhetoric—and by popular distaste for Cosby—the jury disregarded the judges’ clear instructions and found Zenger not guilty. He was freed, and the most significant trial of the colonial era—and perhaps in American history—was concluded.

A Brief Narrative of the Case and Tryal of John Peter Zenger, published by the New York Weekly Journal shortly after the trial, became one of the most popular pre-revolutionary publications. Its primary author, James Alexander, is less well-known. He and fellow attorney William Smith not only provided legal counsel for Zenger, they also prepared articles for the Weekly Journal and otherwise actively opposed Governor Cosby in every manner possible. After being removed from representing Zenger at the trial, Alexander led the effort to secure Hamilton’s services (hence the refrain, “when in trouble, hire a Philadelphia lawyer”).

Déjà Vu in Fall River, Mass.?
The facts of the case are these: A man and a woman are brutally murdered—struck numerous times by a sharp instrument. The attack occurs in a populated area, yet there are no witnesses to the crime. The murder weapon is never found. A family member is accused of the murders. The prosecution’s case is based solely upon circumstantial evidence. The crimes occur in the last decade of the century. The accused offers a reward for finding the perpetrators. The case receives unprecedented media coverage. The jurors deliberate but a short time, returning with a not guilty verdict. Following the trial, the community ostracizes the defendant.

What case does these facts describe? The answer is the Lizzie Borden case in 1893. Despite what may have been assumed or oft-repeated in the little ditty about the case, Borden was found not guilty of taking an ax and giving her mother 40 whacks and her father 41 (actually 19 and 10, respectively).

No one subsequently sued Borden for civil damages, and she lived a comfortable but relatively secluded life until her death in 1927. However, the newspapers did not leave her alone. For example, Fall River Daily Globe articles appeared on each anniversary of the murders, and an 1897 shoplifting charge against Borden continued to stir speculation about the unsolved crimes and her culpability. The Fall River Historical Society (451 Rock Street, Fall River, MA 02720 http://www.lizzieborden.org/FRHistoricalTitle.html) is an excellent source of books, artifacts, and memorabilia related to the case.
Using Trials to Enrich Social Studies Curriculum

Helping students link trials with their daily coursework

David T. Naylor and Scott W. DeWitt


Teaching about trials provides many opportunities to enrich social studies classes. The most obvious links are with units in civics and American government courses, which typically address such topics as federalism, the Supreme Court, the federal and state court systems, civil liberties, civil rights, and the like. Historical and contemporary trials along with subsequent appellate decisions related to them provide specific instances that illuminate fundamental legal concepts, values, and constitutional principles. The particular controversies addressed in specific trials enable teachers to engage their students in a variety of relevant, high-interest, active learning experiences.

History courses offer additional possibilities for using trials to enrich the social studies curriculum. Lee Arbetman and Richard Roe (1985) designed Great Trials in American History to help junior and senior high school American history teachers incorporate a more explicit focus on historical trials. Including several tables correlating major trial themes to the contents of commonly used textbooks of the time, they demonstrated that many opportunities existed for teaching about trials in American history courses.

A similar case can be made for world history courses. When teaching ancient history, for example, the trial of Socrates is a staple. As I.F. Stone (1988) writes in The Trial of Socrates, “No other trial, except that of Jesus, has left so vivid an impression on the imagination of Western man as that of Socrates” (3). See page 35 for a listing of famous trials from the medieval, early modern, and modern eras; like those from American history, these trials raise important legal and philosophical issues and offer penetrating insights into these periods.

Increasing Many Skills

Above all else, incorporating the study of historical and contemporary trials furthers civic competence, the overarching goal of social studies programs. It fosters a commitment to the rule of law and promotes understanding of the legal process and the rights we enjoy under the Constitution of the United States. A study of trials also reveals the evolution of law, legal principles, and legal systems. It illuminates efforts made over time and space to modify legal procedures to create more just legal systems and make trials more fair. Students thus come to recognize that the search for liberty, justice, and equality are historically persistent themes within their own country and those of other peoples and nations as well. Like history itself, a study of trials enables students to become more aware of how we got to where we are today and of law-related issues yet to be resolved.

The study of trials can also foster historical research, decision making, and the development of higher level thinking skills. By examining trials, students come to appreciate the role of the individual in history and acquire a deeper sense of the times—prevailing values, prejudices, priorities, and other factors that shape behavior and impact objectivity. By analyzing trials—the circumstances leading to them as well as the issues raised in them—students are led to consider multiple perspectives and how differing interests, beliefs, hopes, and fears influence people’s behaviors.

Arbetman and Roe emphasize the importance of paying “careful attention to the issue of balance,” advising that the legal system should be depicted “as neither infallible nor nightmarish.” They stress that cases should be taught “in enough depth that students can identify the precise interests and values in conflict,” with arguments on each side articulated and assessed. Relevant historical circumstances should be considered, and case outcomes compared to present justice notions so that students can better appreciate the multidimensional, pluralistic nature of American society as well as the need for the rule of law (vii).

When comparing procedures and decisions “to present notions of justice,” teachers should heed the recommendation in the National Standards...
for History (National Center for History in the Schools, 1996) to help students avoid “present-mindedness,” that is, “judging the past solely in terms of the norms and values of today” (49).

Teaching Approaches

Case Studies Law-related educators have long encouraged teaching about legal cases, and they have provided a variety of approaches (especially the case method) and resources for doing so. Much of the writings of Isidore Starr, the acknowledged “father” of law-related education, and those of other law-related leaders emphasize the importance of teaching with legal cases and describe ways to do this effectively. Past issues of Update on Law-Related Education contain many helpful articles along these lines, often with specific suggestions for classroom activities. Typically, however, the focus of law-related educators on cases is less at the trial level and more on the appellate level. By contrast, suggestions appearing in this article place primary emphasis on trials.

Abridged Versions Re-creating abridged versions of historical trials is a popular way of actively involving students in the study of significant trials. This approach capitalizes on the widespread teacher and student involvement in mock trials, which typically involve hypothetical rather than actual trials. A number of excellent materials exist for conducting mock trials, one of the best being Street Law Mock Trial Manual (1984). By adapting the mock trial format, creative teachers can have students re-create historical trials in their own classrooms. At the trial’s conclusion, students can be asked to render a verdict (individually or as part of a group) and give a rationale for the decision. These decisions can be shared and compared with the actual decision at the trial.

WWW and Readers Theater The World Wide Web enables teachers and students alike to access resources that can bring new insights about trials. There is a tremendous amount of primary source information about trials on the Web. While relatively little of this information is formatted specifically for classroom use, teachers with access to the Web can increase the diversity of resources available to students without a great expenditure of time. For example, from the home page of the popular search engine Yahoo (www.yahoo.com), you can select “Government,” then “Law,” then “Cases.” This site lists links to information on dozens of trials. Teachers can use information from excellent Web sites such as that of Professor Douglas O. Linder (see page 34) to bring detail and texture to the stories being told. Along with background information, selections from trial transcripts reproduced there provide dynamic material for a trial simulation or role-play, presenting a more complex, in-depth portrayal.

Excerpts from trial transcripts, available from the World Wide Web or books, can be effectively used to create “Readers Theater” scripts for classroom use (Young and Vardell, 1993). Though used more typically at the elementary level, readers theater scripts may be successfully used in grades 7–12 as well. Essentially, a script is prepared and students assume the roles of narrators and characters. As students read the script, other students listen as if they were hearing this on the radio. When the script is well written and students are prepared and read with dramatic emphasis, the results can be powerful and motivating for all involved. See, for example, the Naylor script (1974, 85–86); based on an excerpt from the Chicago 8 trial, it captures the climate of the court and the personalities of Judge Julius Hoffman and defense attorney William Kunstler.

Videos Another opportunity for increasing student interest in and understanding of famous trials involves the use of a number of full-length feature films in video that deal with important trials. (See listing on page 34.) These films are primarily made for entertainment purposes; hence, they are not entirely true to history nor do they always faithfully depict trial procedures. These apparent limitations, however, can be used as opportunities for learning. The films center on the people, issues, and events of individual trials. Teachers may choose to use other materials to set the stage for the courtroom scenes depicted in the movies and then show selected courtroom and non-courtroom-related scenes to emphasize key points and issues. In addition, teachers can engage students in fruitful discussion with the use of selected excerpts to help them analyze historical and legal procedure deviations.

Inherit the Wind, which focuses on the Scopes trial, provides a powerful framework for discussion of the changes occurring in the United States in the 1920s. Combined with primary Internet sources, the film also brings students face to face with how film makers decide to present information. The differences between the movie (or the play) and the actual trial are significant. Using creationist critiques of the film (e.g., www.firstthings.com/ftissues/ft9702/iannone.html), along with materials from other Web sites, teachers can promote greater appreciation of the trial’s complexities and consequences. This type of investigation can also be used to prompt discussion of media literacy and the need for critical viewing of historical fiction.

Literature Though used more in the elementary and middle grades than at high school, literature has increasingly become a popular vehicle for social studies instruction. Many works deal with legal themes, issues, and cases. Biographies, autobiographies, and historical accounts of trials provide useful background information.

Peter Irons (1988) encourages learning something about the personalities of the people involved in trials—the “faces behind the ‘masks of the law’” (11)—so as to bring greater interest, insights, and an increased sense of reality to students in their


Moreover, students explore issues in a press conference format with “press agents” assisting in responding to questions.

**Books**


Hamilton, Virginia. *Anthony Burns: The Defeat and Triumph of a Fugitive Slave.* New York: Random House, 1988. This engrossing, award-winning book centers on the trial of Anthony Burns, a Virginia slave who escaped to Boston in 1854. After tracking Burns down, his master tried to use the Fugitive Slave Act of 1850 to secure his return to Virginia. This trial became a *cause célèbre* that helped unify the anti-slavery movement.


Young, T. A. and S. Vardell. “Weaving Readers Theater and Nonfiction into the Curriculum.” *The Reading Teacher* 46.5 (1993): 396–406. Ways to create powerful, motivating classroom “radio” scripts to explore discussion topics, with students preparing and assuming the roles of narrator, character, and “listener.”

**Films on Video**

*Amistad* *Gideon’s Trumpet* *The Crucible* *Inherit the Wind*

**Web Site**

www.umkc.edu/famoustrials

Douglas O. Linder, a professor at the University of Missouri at Kansas City Law School, maintains this excellent site, which contains detailed information on 12 trials, with links to many more. For example, the site on the My Lai Courts Martial includes sections on chronology, maps, biographies, Calley court martial excerpts, Medina court martial excerpts, opinion polls, the law of war, peers report, the heroes of My Lai, My Lai chain of command, images and links and bibliography.
Teaching Strategy

Teaching About Trials

David T. Naylor and Scott W. DeWitt

Background
The ideas shared in the article provide a range of classroom activities that can add interest, variety, and depth to middle and high school social studies classrooms. They suggest ways for teachers to move teaching about trials—and law-related education—from the periphery to a more central place in the curriculum. And, they identify a range of strategies for actively involving students in meaningful instruction.

To help students begin their study of famous trials, this strategy asks them to choose and research a significant historical or contemporary trial, seeking to explain its significance to the past and the present.

Objectives
As a result of this lesson, students will
• Analyze a historical or contemporary trial
• Identify the facts, arguments, and outcomes of the trial
• Explain the historical impact and significance of the trial

Target Group: Secondary students
Time Needed: 3 classes
Materials Needed: Student Handout

Procedures
1. Have pairs or small groups of students choose a historical or contemporary trial they are interested in researching. They can choose a trial from the list on this page, from those discussed elsewhere in this Update, or from some other source.
2. Give each group several copies of the Student Handout.
3. Groups should spend some time researching their chosen trial. Discuss possible sources of information, including reference books, the Internet, and history or social studies teachers. Photocopy and distribute the resources on pages 46–47.
4. Group members each complete the handout, then groups compile their answers onto a group handout.
5. Have groups take turns reporting on their trial, using the completed handout as a guide but offering any other information they deem important. The focus of the final discussion should be on what important legal and philosophical issues the trials raise, what insights the trials offer into the history of the times, and what implications the trials have for the present.

Famous Trials
• Socrates in ancient Greece (399 B.C.)
• Galileo Galilei in Italy (1633)
• West Point cadet Johnson Whittaker (1880)
• Captain Alfred Dreyfus in France (1894)
• Nicola Sacco and Bartolomeo Vanzetti (1921)
• Nathan Leopold and Richard Loeb (1924)
• General Billy Mitchell (1925)
• John T. Scopes (1925)
• Scottsboro Nine (1933)
• Bruno Hauptmann (1935)
• Nikolai Bukharin in the Soviet Union (1938)
• Nuremberg in Germany (1945–46)
• Julius and Ethel Rosenberg (1951)
• Sam Sheppard (1954)
• Adolf Eichmann in Israel (1961)
• Chicago Eight (1968)
• Lieutenant William L. Calley (1970)
• Gang of Four in China (1980)
• O.J. Simpson (1994)
I. Facts and Issues
What are the facts in the case? Who is involved? What do the participants want to happen? What is the most important issue? (Begin here and continue on a separate sheet of paper.)

II. Arguments
What arguments are made by each side? What interests and values are in conflict? What points of view are represented?

III. History
What events and circumstances of the time are relevant to the case? How do they affect the case?

IV. Outcome
What is the outcome of the trial? What happens to the participants?

V. Significance
Why is the trial important in its own time? Why is it important now?

VI. Analysis
Do you agree with the outcome of the trial? Why or why not? How would you judge the case? Why?
Teaching Strategy

The Scopes Trial: A Mini-unit

Scott W. DeWitt


Objectives
As a result of this lesson, students will
• Identify the Scopes trial’s key facts, arguments, and outcomes
• Analyze significant individuals’ impact on the trial’s events and results
• Compare/evaluate the historical accuracy of their textbook, the movie Inherit the Wind, and Web sites

Target Group: Secondary students
Curriculum Link: Broader unit on the 1920s
Time Needed: Up to five days, depending on movie excerpts used/student familiarity with and access to Internet; under “Procedures,” this sequence is recommended: Day 1, steps 1–3; Day 2, step 4; Day 3, steps 5–8; Day 4, step 9; Day 5, steps 10–11.

Materials Needed: TV/VCR, Inherit the Wind video, computers with Internet access, U.S. history textbook, Student Handout

Procedures
1. As context, have students read their textbook’s description of the 1920s and the Scopes trial.
2. Generally introduce the issues, emphasizing the trial’s national impact and the roles individuals had in creating it.
3. Play the video through the businesspersons’ discussion of the trial’s impact on the town’s reputation and economics (about 10 minutes). Have students complete Activity A-1 on the handout using only their textbook and the movie as resources. Discuss the resulting descriptions with questions such as these: Who are the trial’s main participants? What is the media’s role in the trial? What differences, if any, exist between textbook and movie? Why do you suppose the screenwriters changed the names?
4. If equipment is available, and as feasible, have students work individually/pairs/small groups to gather information to complete Activity A-1, as well as A-2 and A-3. (The first site is the most thorough; the fourth is a creationist response to the movie.)
5. Discuss all information gathered with questions such as these: What “facts” are asserted in the resources about the people and the case? Where do the resources disagree?
6. Have students distinguish between the resources: (a) Are they primary or secondary? (b) When were they written? (c) Who authored each? (e) How might they be biased? Why?
7. Play the first movie courtroom scene: jury selection (about 10 minutes). In light of the resources and from the perspective of the participants, have students consider whether Scopes violated the law and why Darrow keeps returning to the issue of whether the student was harmed.
8. Play the second courtroom scene: the student’s testimony (about 10 minutes). Stop before Rachel Brown (a fictitious character) is called. In light of the resources and from the perspective of the participants, have students consider whether Scopes violated the law and why Darrow keeps returning to the issue of whether the student was harmed.
9. Play the interrogation scene of William Jennings Bryan (about 20 minutes). In light of the resources and from the perspective of the participants, ask students these questions: (a) Why does Bryan agree to testify? (b) What concessions is Darrow trying to get from Bryan? (c) Why is this scene considered central to the trial? (d) What result could this testimony have on America and the relationship between government and religion?
10. The last courtroom scene in Inherit the Wind is the most fictionalized. (Bryan appended his closing remarks to the trial record, and he was eloquent in his praise for all involved in the case. He died in his sleep five days later.) Play this scene through Bryan’s death (less than 10 minutes). In light of the resources and from the perspective of the participants, have students explore what in other resources contradicts the movie account and why the screenwriters might have created this ending.
11. Conclude the lesson by having students complete Activity B and then share their responses in class discussion.
The Trial of John T. Scopes (1925)

Activity A
Note: For Internet research, see these Web sites:
• http://www.law.umkc.edu/faculty/projects/ftrials/scopes/scopes.htm (From this Web site, students/teachers can print portions of trial transcript/movie script; be sure to credit author.)
• http://xroads.virginia.edu/~UG97/inherit/1925home.html
• http://rheacounty.com/scopes.html
• http://emporium.turnpike.net/C/es/wind.htm

1. Following the answer format below and using only the types of information resources your teacher indicates, identify the following main individuals from the Scopes case (movie names in parentheses). Include their backgrounds and the way they became involved.
   a. Defendant John T. Scopes (Bertram Cates)
   b. Lead prosecuting attorney William Jennings Bryan (Matthew Harrison Brady)
   c. Lead defense attorney Clarence Darrow (Henry Drummond)

2. Using the format, identify Bryan’s and Darrow’s major arguments during the trial.

3. Using the format, indicate whether/how Scopes was punished for breaking the law.

Answer Format

Name/Argument/Punishment:

Textbook information:

Movie information:

Web Site information:

Activity B
Answer these questions on a separate sheet of paper.

1. John Scopes told the court that he was “violating an unjust statute.” What choices do you have in challenging laws that you feel are unjust? In your opinion, could Scopes have approached this issue in a different, perhaps more productive, way? How?

2. The screenwriters portrayed the trial as a debate over the right to think. What do you think the major issue in the trial was?

3. What else do you need to know about the trial to assess its results? Where could you look to find this information?

4. If Bryan and Darrow had not participated in the trial, would it have been less important? Why? How do celebrities/the media influence people’s perceptions of the importance of events?

5. What does this trial tell us about an individual’s ability to influence history?

6. From looking at these resources, what lessons can be learned about historical interpretation?
Student Forum

Judicial Independence—What Are the Issues?


A Note to Teachers: Forums provide your students with an opportunity to learn through role-playing instead of reading a textbook or listening to a lecture. During this forum, students will debate the issue of the independence of the American judiciary, keeping in mind the relationship among the three branches of government, their interdependence, and the meaning of “separation of powers.” Your purpose is to provide copies of materials to the students and to act more or less as a consultant. You may find the Internet useful in securing the necessary information by searching the topic “Judicial Independence,” for example. A basic outline of both sides of the argument (with hypothetical characters) is provided below. Also see page 47 for Web sites specific to this research topic.

To the Student
This forum gives you an opportunity to take responsibility for your own learning. The activity will help you explore other people’s views and develop your own. You will learn the pros and cons related to an issue that goes squarely to the heart of the constitutional premise that there are three separate but equal branches of government—and that the powers not explicitly delegated thereto are reserved to the states and to the people. This forum will focus on the independence of the judiciary. How independent is a “non-political” body that is, at the federal level, appointed by the president, subject to the whim of governors, mayors, boards, and/or the electorate.

How to Conduct the Forum
1. The class splits into two groups, one in favor of more judicial independence and one in favor of more public (that is to say, voter) control over the court system.
2. The groups each select three students to serve on the panel and present their opinions on the subject.
3. All students complete a student forum ballot and submit it to the panel.
4. Students identify community members to invite to participate in the debate as speakers or as interviewees. Judges, magistrates, politicians, lawyers, court reporters, newspaper reporters handling legal issues, and constitutional scholars would be good candidates for input.
5. Panel members select a moderator and a clerk and decide whether to role-play the sample roles or create their own roles.
6. The clerk, together with the panel, schedules the presentations of the characters and guest speakers. He or she might also keep minutes of the meeting.
7. The moderator opens the forum with a statement explaining the topic of discussion. The moderator is responsible for ensuring that the speakers have equal time to present their positions (five minutes each) and maintaining order if necessary.
8. The panel then makes its presentation. Each character gives his or her statement and may answer questions from any other students if time permits. Panelists should answer consistently with the roles they are playing.
9. All students should once again complete a forum ballot. Panel members should then review and summarize ballot results and report the prevailing opinion to the class (making note of whether or not the majority opinion has changed since the initial ballot was taken).

Introduction
Roles The following roles are for individuals who have agreed to air their views and positions in a panel discussion. They represent the interests of various sides of a multi-faceted
issue involving the relative independence of judges in the arena of American jurisprudence. Panelists should be consistent in their roles when answering questions from the class, and the audience ought not be shy in asking questions related to the opinions stated by any member of the panel.

Moderator We are here today to discuss the need for an truly independent judicial system vis-à-vis the desirability of having a court system that is accountable to the public. In order to keep the debate within reasonable bounds—given the complexity of the broader issue of the desirability of whether or not there should be an independent counsel to investigate alleged legal infractions by administration officials—the discussion will be limited to a general overview of the judicial branch. Each panel member will have five minutes to present his or her opinion and answer questions. Additional time may be allotted for questions after the presentations are completed. The panelists will alternate between pro and con viewpoints when making their presentations.

Panel

Role 1: Don Holman Good afternoon. I’m Don Holman, professor of history, and I am here to give you a little background on America’s experiences with judicial independence. As I’m sure you know, the Founding Fathers attempted to ensure that federal judges are insulated from influence by the president, Congress, and the public. The first landmark challenge to this tenet occurred with the 1805 impeachment trial of Supreme Court Justice Samuel Chase, an outspoken Federalist under attack by the Jeffersonians for allegations of “misconduct,” in this case, failure to toe the populist political line. The Jefferson camp’s central argument was that impeachment is a mechanism that may be used to attune judicial behavior to prevailing political views—a contention rejected by the Supreme Court in a ruling that maintained its independence from congressional intrusions.

The Court did not fare quite so well in the second round of what could have been a judicial-congressional blood bath. In 1869, still reeling from its 1857 Dred Scott decision—voiding the Missouri Compromise that would have prohibited slavery in the territories (thereby hastening the eruption of the Civil War)—the Court found itself on the verge of again alienating the Radical Republican Congress by striking down the Reconstruction Acts. Oddly enough, these statutes permitted persons convicted of illegal behavior under these blatantly biased laws to appeal their cases on a fast-track basis to the Supreme Court. After a Mississippi newspaper editor exercised his rights and found himself before the Court, Congress—fearing that the case would be used as a vehicle to invalidate the Reconstruction Acts—repealed the law providing the Court with jurisdiction in these cases. The Court upheld the constitutionality of the repeal legislation and dismissed the editor’s case for lack of jurisdiction. The justices thus ducked the underlying issue of “carpetbag rule” and essentially lived to fight another day.

Round three of the historically significant challenges to judicial autonomy came from the executive branch during the Great Depression. In 1937, after no less than 13 pieces of economic stimulus laws (parts of the New Deal) had been invalidated by a majority of the nine-member Supreme Court, a frustrated Franklin D. Roosevelt sent to Congress a proposal to permit him to appoint additional justices who would be more prone to support his legislative agenda. In response, then-Chief Justice Charles Evans Hughes provided the Senate with statistics showing that the Court was completely current with its workload, that it had recently shown support for two pieces of economic regulatory legislation, and that one sitting anti-New Deal justice had announced his retirement. While the public was generally supportive of FDR, it hesitated to back his attempt to dilute the autonomy of a constitutionally created institution through a politically motivated scheme to pack the Court with his own followers. The plan died in Congress.

Role 2: George Abernathy Hi, I’m Representative George Abernathy and I believe that there ought to be more control over the courts than there is today, particularly in light of the political activism demonstrated on the part of some federal judges. By “activism,” I mean the unfortunate habit of some members of the judiciary to go beyond the wording of the law and nullify congressional, presidential, and state actions.

Judges have taken over control of school districts that they deemed to be racially segregated and have ordered the reinstatement of minority plaintiffs who were considered to be “wrongfully” terminated because they were fired for not doing what their superiors expected them to do. Judges have also, by their own rulings, ordered colleges to accept minority students with lower than acceptable grades.

More popular control is needed over the courts. President Nixon vowed to appoint strict constitutional constructionists to counter the activist leanings of Chief Justice Earl Warren’s Supreme Court, but with little effect. Jimmy Carter, having no opportunity to appoint a member of the high court, nevertheless refashioned the lower federal judiciary to some degree through nominations of minorities and women for federal judgeships.

During the Reagan and Bush administrations, the White House appointed over half the federal judiciary and made six nominations for membership on the Supreme Court—all with the intention of making the courts more conservative. Reagan’s unsuc-
cessful attempt to obtain confirmation of Robert Bork for the high court in 1987 crystallized the dispute between activists and conservatives, and the Democratic Congress defeated Bork’s nomination and led to the appointment of more politically neutral justices. President Clinton, who has tried to reinstate the Carter strategy, suffered a similar, if lesser, loss of face in the judicial arena when Republicans mounted an impeachment case (for suppression of evidence in a drug case) against one of his federal district court appointees—who was forced to resign under fire during Clinton’s 1996 reelection campaign. And many of Clinton’s appointees to the bench since that time have been gathering cobwebs in Senate committee rooms as the Republicans sit on nominations of federal judges considered to be more liberal than the prevailing political disposition of Congress—which might be labeled “deactivation.”

Role 3: Arlena Brown Hello, everyone. I’m Arlena Brown, a legal liaison from the governor’s office. What we ought to be stressing here is accountability. Government officials, whether independent or not, should be held accountable for their actions—at the very least, for those actions that affect their credibility. Does independence mean that judges can take bribes with impunity? Or do favors for political patrons? Or get a free lunch at a restaurant whose owner thinks the gift might be remembered during an appeal at some future zoning board appeal?

Of course not. Judicial independence refers to the insulation of the courts from outside influences. Noted jurist and long-past justice Hugo Black once observed that the courts ought to “stand as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are victims of prejudice and public excitement.”

Not a bad concept if you believe justice is blind, has the wisdom of Solomon, is independently wealthy, and has no other needs. There have been too many instances of corruption and abuses of power, not to mention ineptitude, on the part of judges for anyone to believe that the judicial branch of government is immune from the usual human frailties and thus to public accountability and subject to recall. So too it is true that accountability serves to reflect the values and interests of a community and, lurking about the sub-federal judiciary are state and local courts whose rules do not make national headlines but who make bread-and-butter decisions that have a decided impact on who gets to keep their driver’s license and who wins a divorce case.

On the state/local level, a key factor in determining judicial independence is how judges obtain and hold their positions—the method of initial selection, term of office, and the degree of difficulty needed in order to serve additional terms. The longer the term and the less political the selection process, the greater the independence. Five methods are currently used in the selection of state court judges: appointment by the governor, election by the legislature, partisan (chosen by political affiliation) election, non-partisan election, and merit selection (usually from a list submitted to the governor by the local bar association). The most recent trend has been a shift from partisan election to merit selection, but the term for judges on the states’ highest courts is still 10 years or less in 42 states, which would tend to make judges at least minimally accountable to the public. More often than not, however, judges run unopposed in retention elections, so accountability is eroded where sitting judges are concerned.

Still, the public may have its day in court when elections come around and popular issues are brought up to the detriment of judges seeking to hold onto their offices. In 1986, for example, the chief justice of the California Supreme Court and two of her associates were defeated for re-election following their reversal of death penalty convictions. Sitting state supreme court justices were denied re-election in Mississippi (1992) and Tennessee (1996) also due to their opposition to the death penalty. The law said death, and the people spoke.

Role 4: Linda Burling Good afternoon. My name is Linda Burling and I, as an attorney who has argued before numerous state courts, believe that there ought to be greater independence on the part of non-federal judges. Only three states at present follow the federal practice of guaranteeing tenure for life, assuming good behavior. This leaves 47 states with a multiplicity of jurisdictions that are subject to re-election or reappointment—so they are at the mercy of the prevailing political wind. Judicial independence means the freedom to apply the law.

Independence is in the eye of the beholder, and influence-peddling is not unheard of—as exemplified in the $11 billion controversy between two oil companies that may or may not have caused one (Texaco) to make campaign contributions of $72,000 to members of a state supreme court, and the other (Pennzoil) to respond with donations of $315,000 (for the record, Pennzoil prevailed). Elections may also tempt candidates for the bench to make improper commitments about their future behavior in order to curry favor with the voters. They may promise, for example, to be “tough on criminals,” thereby violating canons of judicial ethics and compromising their ability to decide individual cases on their merits. As noted by the previous speaker, judges may be punished by voters for unpopular decisions, even if those decisions were based on their interpretation of the law.

Judicial independence has been further compromised by the usurpation of state authority in the area of mandatory minimum sentencing guidelines for
drug offenders (a few states have opted to buck those directives and go their own way within their jurisdictional arenas): Being caught carrying two-to-four ounces of heroin, cocaine, or other controlled substances may get you 15 years; another ounce or two and it’s life in prison. And it’s not three-strikes-and-you’re-out for harsh treatment: In Massachusetts, 84 percent of inmates serving mandatory drug sentences are first-time offenders.

To those who would further shake the independence of state courts, I say they should bring their criticism out in the open and participate in attempts to reform the system without using the trial-by-public-poll technique of who-wins, who-loses. Some state courts have already sought to counter the loss of public confidence by pioneering programs to promote greater understanding of the role of courts and the responsibility of judges.

Kansas’s appellate courts, for one, have opened an Internet page, conducted sessions in schools, and permitted TV cameras during arguments. Other states have instituted their own outreach programs under the assumption that a greater understanding of the operation of state courts will lead to a renewed appreciation of those courts and to greater support for judicial independence.

Role 5: Carolina Paraño Hello, my name is Carolina Paraño and I am a member of what has been dubbed a political/economic/sociological “think tank.” Bear with me if I wander too far from the subject at hand, but judicial independence is a concept whose meaning is commonly assumed in everyday conversation. Judges are obviously subject to reversal by higher courts, which at the lowest level of independence makes them dependent upon appellate review. Judges cannot, therefore, be independent even within their own branch of government—except at the highest level. Speaking of the highest level, the membership of the Supreme Court could well change after the next election, with Chief Justice Rehnquist and Justices Sandra Day O’Connor and John Paul Stevens flirting with retirement. The Court’s “working majority” now consists of Rehnquist and O’Connor, along with Antonin Scalia, Anthony Kennedy, and Clarence Thomas. The minority includes Stevens, David Souter, Ruth Bader Ginsburg, and Stephen Breyer.

It is more interesting to note from an independence/politicization point of view that whenever federal judges have interpreted the Constitution in a manner that both public opinion and the elected members of other branches of government have strongly opposed, judicial decisions have eventually followed and joined the mainstream. Note too that state judges have many opportunities to be free from encroachment upon their territory by federal judges, who are empowered to enforce rulings against state judges only when a decision is required by the supremacy clause of the Constitution. While those points are well taken, there are actually only three elements that need to be considered when assessing judicial independence:

• Judges should have no relationship whatsoever with the litigants—no kinship, friendship, or bribes in any fashion.
• No judge or judges should have undue influence over the decisions of fellow judges.
• Courts, as governmental institutions, should be free of the influence or control of other governmental institutions—which means they should not be subjected to arm twisting for partisan or ideological interests.

Role 6: Mark Świecichoski Hi, call me Mark. I am with the Department of State, which is to say I am a specialist in foreign affairs. I have no arguments for or against an independent judiciary in the United States, but I would like to give you a background sketch of the judicial systems that have evolved in other nations—a global perspective, as it were. We Americans have a federal system of government (separation of national and state or regional/local authorities), as do Canada and Germany. A unitary system, one in which all power is vested in a central government to which judges are attached, is exemplified by the governments in effect in England and France.

The French modus operandi, in particular, is one in which a unitary professionalized judiciary creates the possibility of bureaucratic control for superior court judges over subordinates to a degree not possible in the United States. French judges are recruited after finishing college and attending law school, then passing an exam that opens the way to a lifelong career as a judge. Japan has a similar procedure for selecting judges, although it is much stricter in the sense that lower court judges are often merely agents of the chief justice and have little if any individual autonomy in deciding cases.

Whatever the form, judiciaries sometimes bow to political “realities” even in the most liberal systems. Our courts, for example, condoned the internment of people of Japanese ancestry during World War II, and the United Kingdom has dealt harshly with alleged terrorists in Northern Ireland.

The examples of non-liberal regimes that are easiest to understand are the extremes: Germany under Hitler, the Soviet Union under Stalin, Mao’s China, the Islamic rule as set out by the Ayatollah Khomeini, Uganda under Idi Amin, Nicaragua under Somoza, to name a few. Whether authoritarian power is exercised through personal or military despotism, political ideology, or religious dogma makes little difference. In all cases, authoritarianism usually trumps judicial independence, and the rule of law is the major victim.
Forum Ballot

Should the U.S. judicial system be more independent or more accountable to the public than it is now?

Circle the choice that best answers how you feel about the relative independence of the American judicial system as opposed to its being more accountable to the public.

1. Judicial independence is in the eye of the beholder.
2. There is a definite and irreconcilable difference between judicial independence and accountability.
3. “Separation of powers” means that the three branches of government have no control over one another.
4. The president should be able to override the decisions of the Supreme Court.
5. Federal judges are appointed by the president, so state judgeships should be appointed by governors.
6. The chief executive should be entirely free to appoint anyone to be a judge without regard to congressional influence.
7. Judges ought to be selected solely on their professional abilities, without regard to their political philosophy.
8. Federal judges should not be appointed for life, since they have no accountability once they gain the bench.
9. State and local judges who are subject to periodic election ought to be open to challenge at least as often as U.S. senators (every six years).
10. Congress/legislatures should have less say in what amounts judges have available for office expenses—as in whether they need a new courthouse or furnishings.
11. Given the rarity of impeachment proceedings, the people ought to have the right to recall judges through special elections.
12. Federal judges should in all cases have appellate jurisdiction over state judges.
13. Supreme Court justices ought to be elected in the same manner and for the same term of office as the president.
14. State/local judges should not be allowed to accept campaign contributions from litigants who have cases pending before their courts.
15. The federal government acted wisely in setting mandatory minimum sentencing guidelines in drug cases.

Write a short answer. Should judges be elected or appointed? What are the implications for judicial independence?

_______________________________________________________________________________________________
_______________________________________________________________________________________________
_______________________________________________________________________________________________
_______________________________________________________________________________________________
_______________________________________________________________________________________________

strongly agree 1 2 3 4 5
strongly disagree

123 4 5
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123 4 5
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Background
As the 20th century comes to a close, everyone has a candidate for the Most Famous Trial of the 20th Century. (Actually, the phrase “Trial of the Century” has been used in connection with one trial or another since almost the beginning of the 20th century!) But remember, famous doesn’t necessarily mean “important”; it most often means “very well-known; much talked or written about.” Using that definition, many trials qualify as famous, but what about as the Most Famous?

Objectives
As a result of this lesson, students will
• Investigate famous trials of the 20th century
• Write a newspaper report about one of those trials
• Conduct an election in which they vote for and explain their choice of the Most Famous Trial of the 20th Century

Target Group: Secondary
Time Needed: 3 classes
Materials Needed: Student Handout

Procedures
You may wish to use the first activity in conjunction with the Teaching Strategy on page 35. If students chose a 20th-century trial to investigate in that Teaching Strategy, they can use the information in the first activity.

Newspaper Report
1. Discuss with the class famous trials of the 20th century, using the poster, the list on this page, and the list on pages 8–9 to compile your own list on the board. Do students have other trials they want to add? Talk about what it means to be “famous.” Agree on a definition for the word.
2. Ask students to choose one of the trials on the list. You may wish to assign the trials to ensure that all are covered.
3. Tell students they are to pretend that they are newspaper reporters. They are to write the opening paragraphs of a newspaper report as it might have been written at the time of their particular trial.
4. Discuss the structure of a newspaper report: The opening paragraphs answer the questions who, what, where, when, and why or how, and the most important information comes first.
5. Distribute copies of the Student Handout. Point out the outline on the top half that students can use to pinpoint the most important information about their trial. After students write their opening paragraphs, collect their writings in a class newspaper titled Famous Trials of the 20th Century.

Trial Election
1. As students are concluding their study of this Update, conduct an election for the Most Famous Trial of the 20th Century. Using the list compiled in the first activity, narrow the choices to five or six by a show of hands. Those trials will compete for the title.
2. Divide students into five or six groups, one for each trial on the final list. The groups are to campaign for their trial. First, they decide why the trial qualifies as the most famous of the century. Then they make and post signs promoting their trial.
3. Distribute copies of the Student Handout (if necessary) and have students use the ballot on the bottom half to vote for the trial of their choice. Point out, however, that this ballot requires them to give reasons for their choice.
4. Collect the ballots and have students count and post the results. Use the ballots to make a bulletin board display, grouping the ballots by trial, so students can read the reasons others gave for their choices.

More Famous Trials of the 20th Century
Sacco & Vanzetti
Leopold & Loeb
Julius & Ethel Rosenberg
Adolf Eichmann
Chicago Eight
Charles Manson
Lt. William L. Calley
Lyle & Eric Menendez

For other possible candidates for the most famous 20th-century trial, see the list on pages 8–9.
For the first activity, use the outline below to gather the basic information you will need to write a newspaper report about the trial you chose. Write the opening paragraphs of your report on a separate sheet of paper.

**Information for Newspaper Report**

**Who:**

________________________________________________________________________
________________________________________________________________________

**What:**

________________________________________________________________________
________________________________________________________________________

**Where:**

________________________________________________________________________

**When:**

________________________________________________________________________
________________________________________________________________________

**Why or How:**

________________________________________________________________________
________________________________________________________________________

For the second activity, fill in the ballot below. Write the name of the trial you think is the most famous of the 20th century. Then write at least three reasons why you chose this trial. Tear off or cut along the dotted line and hand in your ballot.

**Ballot for Election**

My vote for “The Most Famous Trial of the 20th Century” goes to

________________________________________________________________________

I think this trial is the most famous because

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Multimedia Resources on Famous Trials

Paula A. Nessel

For more resources, also see page 34.

Audiotapes

The Chicago Conspiracy Trial by Peter Goodchild
Adapted from the original trial transcripts
*Winner—New York Festivals Award!
Reality is stranger than fiction when seven 60’s radicals refuse to behave in Judge Julius Hoffman’s courtroom. Starring a cast of top Chicago actors and featuring reminiscences from people involved in the actual events of 1968–69. A BBC co-production. 127 min. #RDP16 $18.95

The Great Tennessee Monkey Trial by Peter Goodchild
Adapted from the original trial transcripts
The Scopes trial, over the right to teach evolution in public schools, revealed the importance of intellectual freedom. In a Tennessee courtroom in 1925, the trial sets the stage for the ongoing national debate over the separation of church and state. A BBC co-production. 126 min. #RDP11 $18.95

In the Name of Security by Peter Goodchild
Adapted from the original transcripts
These three famous spy cases rocked America between 1948 and 1954: the trial of Alger Hiss, the trial of Julius and Ethel Rosenberg, and the case of J. Robert Oppenheimer. Each program combines dramatic re-enactments that are based on transcripts, archival material, and new evidence, as well as the latest assessments by American historians, scientists, and relatives and friends of the accused. 182 min. #RDP27 $24.95

To order these audiotapes, contact
L.A. Theatre Works
681 Venice Boulevard
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800-708-8863
Fax: 310-827-4949
E-mail: latworks@aol.com

Books

An informative analysis of five of the most famous criminal trials of the century, including Leopold-Loeb, the Lindberg kidnapping, Scottsboro, Alger Hiss, and O. J. Simpson. The authors review the circumstances and evidence in each case, by examining the historical setting, the defendants, the lawyers and judges involved, and the trials, and how the cases came to be viewed in their own time and in American history. The authors also provide an annotated bibliography for each case as well as a discussion of criminal justice system issues, such as the death penalty, the use of expert witnesses, and the jury, raised by these cases. 230 pp. 10 photos. Cloth $24.95. ISBN 1-55553-360-4


An informative and entertaining look at 200 of the most historically significant, legally important, and notorious courtroom trials over the past 300 years. Each trial profile sets the scene, identifies the principals, reports the verdict, and analyzes the significance and impact to the nation. (from barnesandnoble.com) 872 pp. 175 photos. Paperback $14.36 ISBN 0-810-39134-1

Between an opening statement and a verdict, accounts of cases include the Scottsboro Boys, Alger Hiss, Julius and Ethel Rosenberg, the Chicago Black Sox, the Haymarket Jubilee, and the Lindbergh kidnapping. (from barnesandnoble.com) 235 pp. 50 photos and illustrations. Hardcover $19.54 ISBN 0-275-95055-3

Paula A. Nessel is a program manager for School Programs of the ABA Division for Public Education in Chicago.

Booklet
Teaching Resource Bulletin #6: Judicial Independence: Essays, Bibliography, and Discussion Guide. Features three articles, extended bibliography, suggested readings, and discussion guide for use at all levels. The articles discuss the history of judicial independence and the salience of the issue in contemporary government; the nature of the modern judiciary focusing especially on state courts, problems with the current structure, and ways to promote judicial independence; and judicial independence in the United States compared with other government systems, both democratic and authoritarian. Call 800-285–8221; ask for PC #336-000206 $7.50 + s & h

Curriculum
Great Trials in American History Presents 15 crucial trials in their historical, social, and legal context, from Scopes to Bakke, written in an interesting short-story format. Teacher’s Guide available. Grades 8–12. (1985) Available from West Publishing Company, School Division, 610 Opperman Drive, P.O. Box 64833, St. Paul, MN 55164-1803; 800-328-2209 or 612-687-6849 in Minn.; Fax: 612-687-6857

Videos
In Search of History: The Monkey Trial In the summer of 1925, history was made in the small town of Dayton, Tennessee. The issue at hand was the “Butler Law,” which forbid the teaching of evolution in public schools. The fledgling American Civil Liberties Union wanted to challenge the law’s constitutionality and chose to test it with the trial of John Scopes, a young high-school math and gym teacher who briefly taught Darwinism as a substitute biology teacher. Join In Search of History for a look at the case that started the historic battle between Darwinism and creationism that continues today in a nation built around the separation of church and state. 50 min. AAE-40219 $19.95

Just Images: Television News Coverage of High-Profile Criminal Trials A great new teaching tool for programs teaching the adult public, as well as college and secondary school courses on law or media. This video and program guide focuses on TV news images of actual criminal trials, with brief discussion of the cases of Sam Sheppard, the Menendez brothers, the Chicago Seven, and others. Package includes a 16-page program brochure and a 15-minute video. PC #235-0039 $6.00 To order, call 800-285-2221 or fax 312-988-5568.

Web Sites
http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm
Famous Trials of the 20th Century
University of Missouri Kansas City
School of Law—Prof. Douglas Linder
Leopold and Loeb Trial (1924)
Scopes “Monkey” Trial (1925)
Rosenbergs Trial (1951)
Amistad Trials (1839–40)
Bill Haywood Trial (1907)
Salem Witchcraft Trials (1692)
Scottsboro Trials (1931–37)
Dakota Conflict Trials (1862)
Mississippi Burning Trial (1967)
Chicago Seven Conspiracy Trial (1969–70)
Johnson Impeachment Trial (1868)
The Greatest Trials of All Time: The Scopes Monkey Trial
“The Making of a Trial”
“A Battle of Wills”
“Science v. Religion”
Bibliography
Includes articles and talking points for debates about judicial independence.
Includes statements on issues related to judicial independence, such as judicial selection, judicial conduct and ethics, and juries, that are addressed to a general audience. Publications of the AJS are also available.
Citizens for Independent Courts. http://www.faircourts.org/ News stories about judicial independence around the United States, facts about the courts, and links to other organizations involved in protecting judicial independence.
Includes the papers given at the 1998 conference, in text format as well as video archives of the speakers reading their papers. Topics include history and definitions of judicial independence.
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