



## Was Justice Blind? - Middle School

<b>Author:</b> Bonnie Laughlin-Schultz <b>Time Frame:</b> 2-3 days	<b>Grade Level/Content or Theme:</b> Middle Level Civics (or integrated into US history) Theme: The Judicial Branch and/or Criminal Justice System and Race.
<b><u>IL Social Studies Standards</u></b> <u>SS.IS.2.6-8:</u> Ask essential and focusing questions that will lead to independent research. <u>SS.IS.5.6-8.MdC:</u> Identify evidence from multiple sources to support claims, noting its limitations. <u>SS.IS.5.6-8.MC:</u> Develop claims and counterclaims while pointing out the strengths and limitations of both. <u>SS.IS.6.6-8.MdC:</u> Construct explanations using reasoning, correct sequence, examples and details, while acknowledging their strengths and weaknesses. <u>SS.CV.2.6-8.MdC:</u> Explain the origins, functions, and structure of government with reference to the U.S. Constitution, Illinois Constitution and other systems of government. <u>SS.CV.4.6-8.MC:</u> Critique deliberative processes used by a wide variety of groups in various settings.	
<b>Essential Question(s):</b> Was justice blind in the case of <i>Flowers v. Mississippi</i> ?	
<b>Supporting Question(s):</b> What are the facts of <i>Flowers v. Mississippi</i> ? What factors went into the jury selection at the trials? What was the outcome at the Supreme Court? What is the role of race in our criminal justice system and how can we make justice blind?	
<b>Recommended Procedures:</b> Was justice blind in the case of Curtis Flowers? (look at jury trial and the law) After background on trial by jury and the trial process, students will use documents from Streetlaw and In the Dark to prepare and hold a philosophical chairs discussion about whether justice was blind in the recent Supreme Court case of Curtis Flowers, a man tried six times for murder in Mississippi. (1) To introduce students to the topic, the teacher will show one or both clips from CBS news about the Flowers case and have students complete an S-I-T organizer. (2) The teacher will review the facts of the Judicial System and pertinent vocabulary as necessary for their particular group of students. (3) Students will first prepare for the Philosophical Chairs discussion by filling out (individually, in small groups, or as a class, depending on idea of teacher) the Looks Like, Sounds Like chart in the Philosophical Chairs Discussion Handouts in the google drive. The teacher may want to review the <u>class contract</u> for civil discussion of controversial issues. (4) Students will then read 3 texts: the case summary from Streetlaw and the APM article about jury selection, and (technology permitting) the APM quiz piece about creation of an all-white jury. As they read, they will annotate the text per the instructions on the guidesheet and will fill out the choosing sides chart. After they read, they will circle their position on the guidesheet.	



- (5) Students will then move to the area of the classroom that aligns with their beliefs and discuss reasons with their peers. They will add notes from this discussion to their choosing sides chart.
- (6) Class will then move into a whole-class discussion, following the guidesheet instructions.
- (7) Students will then reflect upon their end position and complete the After the Discussion Reflection.
- (8) The teacher may close class with selections from Bryan Stevenson's "We Need to Talk about an Injustice" TED Talk or excerpt, asking students to make connections to this case and to moving forward in our country.

**Resources Required w/Citations:**

CBS News Hour on case: <https://www.youtube.com/watch?v=xs0v5y087Hw>

CBS Sunday Morning Clipping on the Outcome of *Flowers v. Mississippi*,  
<https://www.youtube.com/watch?v=TyRNqLJDHmU>

S-I-T Strategy, Facing History and Ourselves, <https://www.facinghistory.org/resource-library/teaching-strategies/s-i-t-surprising-interesting-troubling>

Streetlaw Summary, Decision, and Arguments Handout (in google drive,  
<https://drive.google.com/open?id=1ffUiyteslmqqu93oFwpOS4umyPkAQo5d>)

Will Craft, "How did Curtis Flowers end up with a nearly all-white jury?," APM Reports, June 5, 2018,  
<https://features.apmreports.org/in-the-dark/curtis-flowers-trial-six-jury-selection/>

Will Craft, "Why a nearly all-white jury might be legal," APM Reports, June 5, 2018,  
<https://www.apmreports.org/story/2018/06/05/why-a-nearly-all-white-jury-might-be-legal>

Philosophical Chairs Handout (in google drive,  
<https://drive.google.com/open?id=1ffUiyteslmqqu93oFwpOS4umyPkAQo5d>)

Bryan Stevenson's "We Need to Talk about an Injustice" TED Talk or excerpt

The teacher may further build out this lesson plan by using some ICivics materials to go over the concept of trial by jury including the I-Civics game "We the Jury" or the Webquest "Behind the Bench." Students could also listen to the In the Dark episode on Curtis Flowers' trials. For a complete overview of the In the Dark series and resources, see the In the Dark Guide for teachers in the google drive folder or <https://www.apmreports.org/in-the-dark>. This lesson could be expanded upon using materials from Teaching Tolerance's Racial Disparity in the Criminal Justice System lesson and Facing History and Ourselves' unit on Facing Ferguson, particularly lesson two (The Impact of Identity) and three (Confirmation and Other Biases). The teacher could also explore Pew Research on views about the criminal justice system and the differences between white and black Americans.

**Possible Service Learning Informed Action:**

The informed action in this unit centers on logical outcomes from the essential question and should show students reflecting upon how justice can be made blind. This might come in the form of specific follow up about the Flowers' case, or students could think more broadly. Students might advocate for judicial fairness in their local community and to their legislators. Alternately, they could think about the issue of blind justice within their own school, thinking about to what extent disciplinary policies are blind and propose changes.

**Differentiation:**

If the language demands of the Streetlaw handouts prove too much, the teacher may substitute shortened handouts from [Oyez](#). The teacher may also use [Rewordify.com](#) to assist in differentiating the Streetlaw and APM readings. Additionally, the teacher may choose to play part or all of the In the Dark podcast about Flowers' trial instead of assigning readings.

**Formative Assessment of Supporting Questions:**

Throughout this lesson, the teacher can both monitor students' discussion and observe student comprehension/work as students complete the S-I-T and philosophical discussion guidesheets.

**Other Considerations:**

Because *Flowers v. Mississippi* centers on issues of race and justice in US history, class discussion may feel especially fraught. Teachers should review expectations of civil discourse, listening, dialogue versus debate, etc., in the attached worksheet and through teacher review of other materials on civil discourse and dialogue in the classroom (<https://www.tolerance.org/magazine/publications/civil-discourse-in-the-classroom>; [https://drive.google.com/file/d/1rqsH\\_VyK\\_WM76naz-MTIVLVGYBhlvsx\\_/view](https://drive.google.com/file/d/1rqsH_VyK_WM76naz-MTIVLVGYBhlvsx_/view); <https://www.usip.org/sites/default/files/2017-01/Dialogue%2Bvs%2BDebate%2B-%2BUSIP%2BGlobal%2BCampus.pdf>; <https://www.facinghistory.org/back-to-school/teaching-toolkit/classroom-contracts/>)

**Background on the Flowers Case and Trial by Jury**

Curtis Flowers was first arrested in 1996 for the murder of four employees at the Tardy Furniture Store in Winona, Mississippi, a small town with (like much of the South and the greater United States) a long history of racist practices toward African Americans within both the community and its courtrooms. Flowers has been in jail since 1996 and has been tried six times, with the first five trials either having the verdict overturned on appeal because of prosecutorial misconduct or mistrial outcomes. In two of the episodes of misconduct, prosecutor Doug Evans was found to have tried to strike as many African American jurors as possible, and it is a similar illegal violation in the 2010 sixth trial that is at the heart of this case. Flowers appealed his 2010 conviction on several grounds, including that Mississippi had violated his Sixth and Fourteenth Amendment rights during the jury selection process by unfairly and illegally striking African American jurors. The Mississippi Supreme Court rejected this claim twice (the second time when the Supreme Court returned the question to them after another recent court case). The Supreme Court took his case after the most recent appeal, and will whether the Mississippi Supreme Court erred in how it applied *Batson v. Kentucky*, which declared a need for rigorous inspection of peremptory strikes that seemed on the basis of race. The Court ruled in favor of Curtis Flowers in a 7-2 decision, holding the Mississippi should have found a *Batson* violation in this sixth trial. As of 4/22/2020, DA Doug Evans had recused himself and Mississippi had moved forward with the re-trial, naming a new prosecutor—and for the first time since his initial trial, Curtis Flowers was out on bail (though in hiding because of death threats). For future updates, a helpful reference site is <https://www.apmreports.org/in-the-dark/season-two/curtis-flowers-updates>.

The issue of fairness and racial construction of juries has been considered by the Court at numerous times over the years, with the Court holding that striking jurors solely on the base of race is discriminatory. In *Strauder v. West Virginia*, the Court ruled that a jury pool (not jurors) had to be drawn from a diverse cross-section of the community. In *Swain v. Georgia*—decided 85 years after *Strauder*—



the Court moved closer to declaring peremptory strikes on the basis of race in violation of the Fourteenth Amendment. The main precedents on which the Court leaned in *Flowers v. Mississippi* were *Batson v. Kentucky* (1986) and *Foster v. Chatman* (2016). In *Batson v. Kentucky*, the Court had ruled in favor of a petitioner who alleged racial bias in the peremptory strike of four jurors in his case. These race-based strikes were found to have violated the petitioner’s Sixth and Fourteenth Amendment rights to a fair jury trial and to his Fourteenth Amendment right to equal protection under the law. The majority in *Batson* noted that the Equal Protection Clause “guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race.”<sup>1</sup> Lawyers are not allowed to exclude potential jurors solely on the basis of race. As a remedy to prevent this, *Batson* “evolved into a tool employed to combat discrimination” and to a three-pronged test: (1) a defendant must make a prima facie case of purposeful discrimination; (2) the prosecutor then must provide race-neutral reasons for review; and (3) the defense must show that these reasons are not in fact race-neutral.<sup>2</sup> In the recent *Foster v. Chatman* (2016), the Court overturned the conviction of Timothy Foster, an African American man first charged in 1986 with the murder of an elderly white woman. Foster had been convicted by an all-white jury after four qualified African American jurors had been struck, and after a series of appeals and post-judgment discovery efforts, Foster submitted a *Batson* challenge based on the notes of the case prosecutor (which he discovered after using the Georgia Open Records Act).<sup>3</sup> Although lower courts denied his petition, the Supreme Court granted certiorari. The main hinge in this case were the prosecutor’s case files—recovered under that Georgia Open Records Act—as the prosecutor had done such things as note (B) by African American jurors. Such notations, the petitioner’s brief in this case asserted, “were a telltale sign that constitutionally forbidden racial bias was afoot.”<sup>4</sup> The Court found in Foster’s favor. Writing for the majority, Chief Justice Roberts found that there was the kind of purposeful discrimination that *Batson* prohibited.<sup>5</sup>

<sup>1</sup> *Batson v. Kentucky*, 1986, majority opinion, <https://supreme.justia.com/cases/federal/us/476/79/#tab-opinion-1956654>.

<sup>2</sup> Thomas Galan, “*United States v. Ramirez Sobercines*: Is sympathy towards minorities a race-neutral reason under *Batson v. Kentucky*?” *Touro Law Review*, 17 (March 2016), 680, 684.

<sup>3</sup> *Foster v. Chatman* (2016), <https://www.oyez.org/cases/2015/14-8349>.

<sup>4</sup> Petitioner’s Brief on Writ of Cert to Mississippi Supreme Court (2017), 20.

<sup>5</sup> *Foster v. Chatman* (2016), [https://www.supremecourt.gov/opinions/15pdf/14-8349\\_6k47.pdf](https://www.supremecourt.gov/opinions/15pdf/14-8349_6k47.pdf).