Law Day is May 1.

The 2023 Law Day theme — ***Cornerstones of Democracy: Civics, Civility and Collaboration*** — not only calls to mind the work the founders did in forming our Constitution but what it will take now for "We the People" to collectively begin rebuilding trust in our institutions, treating each other with respect, and collaborating on mutually beneficial solutions to the challenges that face our nation.

In preparing this year's Law Day series, we conducted a student survey to assess what current event civics topics are most important. With an 11% margin over all other interest categories, student respondents indicated that social justice and equal rights are of foremost concern.

We narrowed the topic further and over the next five days, we will focus on educational case law that affects our nation's children.

From *Brown v. Board* (1954) to more modern cases like *Fry v. Napoleon Community Schools* (2017) and even one yet to be decided by the Court, *Fair Admissions v. President & Fellows of Harvard College* concerning affirmative action, we'll explore the civic principles, rights and protections at work in the consistent, and yet ever-changing, United States Constitution.

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Equal Opportunity Rights for English Language Learners

The equal protection clause of the 14th Amendment to the U.S. Constitution, ratified in 1868, states "No State shall … deny to any person within its jurisdiction the equal protection of the laws." Title VI, Section 601 of the Civil Rights Act of 1964 which states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" sought to enforce this equality. The following case was argued and decided on these principles.

Lau v. Nichols (1974)

In 1971, the San Francisco school system integrated 2,856 students of Chinese descent who were not fluent in English. About 1,000 of these students were provided supplemental English instruction. The remaining students were taught exclusively in English, some were placed in special education classes and many were forced to repeat the same grade for several years.

With the help of attorney Edward H. Steinman, the parents of Kinney Kinmon Lau joined other parents of students who did not receive supplemental English courses to file a class action suit against Alan Nichols, president of the school board, and other school officials. The students claimed they were not being given adequate instruction, effectively denying them a meaningful opportunity to participate in the public educational program, in violation of the equal protection clause of the Fourteenth Amendment and the Civil Rights Act of 1964.

The District Court for the Northern District of California and the Court of Appeals for the Ninth Circuit decisions ruled that the school was not violating the students' rights and that the district "was not required to make up for the different starting points of students." The students appealed the Court of Appeal's decision to the Supreme Court.

The Supreme Court issued its decision on January 21, 1974, with the Court unanimously ruling in favor of Lau and the other students. The ruling was based on the violation of the California Education Code and Title VI, Section 601 of the Civil Rights Act of 1964.

Because the school system received federal funding, the Civil Rights Act required it to provide equal opportunities for all students. The Court claimed that even though the school districts provided equal treatment for all students (the same facilities, textbooks, teachers, and curriculum), it still deprived those who do not understand English of a "meaningful" education.

In 2015, more than 40 years after the *Lau* decision, the U.S. Departments of Education and Justice articulated 10 specific items for schools to focus on to ensure equal opportunity for English learners. To learn more, go to ***https://tinyurl.com/MeaningfulEqualEducation***

Newspaper Activity: In print or online, look for examples of people fighting for equal opportunity for others. What group of people are they working for? How and why are they doing it?

Next installment: **Student Immigrants' Rights**

This is one of six features created to educate and celebrate Law Day, May 1, 2023. Sponsored by the New York Bar Foundation and created by the New York Newspapers Foundation's News Media Literacy/Newspapers In Education Program.

2023 LAW DAY 65 YEARS RACIAL JUSTICE FOR ALL
CORNERSTONES of DEMOCRACY

Student Immigrants' Rights

As previously stated, the equal protection clause of the Fourteenth Amendment promises that all persons in the United States shall enjoy the "equal protection of the laws." The following case takes a closer look at how the Court has applied the equal protection clause.

Plyler v. Doe (1982)

In May 1975, the Texas legislature revised its education laws to withhold state funds from local school districts used for the education of undocumented immigrant children. By 1977, the Tyler Independent School District established a policy requiring students who were not considered to be "legally admitted to the United States" to pay $1,000 tuition or be expelled.

A class action was filed on behalf of several unnamed school-age children of Mexican origin against James Plyler, the superintendent of the Tyler Independent School District and others, arguing their rights of equal protection under the 14th Amendment had been violated. The school district and the state of Texas argued that the students, because of their undocumented immigration status, did not qualify as "persons within the jurisdiction" of the state and therefore had no right to attend public school.

Eventually, the case made its way to the U.S. Supreme Court. In a 5-4 vote, the Court reasoned that undocumented immigrants and their children were protected under the 14th Amendment and that states cannot constitutionally deny students a free public education on account of their immigration status.

In the majority opinion, Justice Brennan wrote about the immigrant children stating that they "can affect neither their parents' conduct nor their own status" and "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice." Additionally, he wrote that "the available evidence suggests that illegal aliens underutilize public services while contributing their labor to the local economy and tax money to the state fisc."

The dissenting justices agreed with the majority that it would be wrong to "tolerate creation of a segment of society made up of illiterate persons," and protected under the 14th Amendment because the children were "physically 'within the jurisdiction' of a state." However, as indicated by Chief Justice Burger in his dissent, illegal immigration is more of a national policy issue and not a Constitutional one and should therefore be handled by Congress and not the judiciary.

The challenges of undocumented immigrants continue to be a concern on local, state and national levels. Will the *Plyler v. Doe* precedent be challenged in the future? Only time will tell.

Newspaper Activity: Look through recent news reports, in print or online, for examples of current immigrants' rights issues. Select one and prepare a summary of the who, what, where, when and why to share with your class.

Next installment: **Rights for Students with Disabilities**

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2023 LAW DAY 65 YEARS
LIBERTY EQUALITY
CORNERSTONES of DEMOCRACY

Rights for Students with Disabilities

The Individuals with Disabilities Education Act (IDEA), passed in 1975, requires public schools provide equal access to education to children with disabilities. Similarly, the Rehabilitation Act of 1973, "prohibits discrimination on the basis of disability ... in programs receiving federal financial assistance." And, passed in 1990, the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government programs and services. The following case takes a peek into how these federal laws have been applied in daily life.

Fry v. Napoleon Community Schools (2017)

Ehlena Fry was born with cerebral palsy which impaired her motor skills and mobility. Doctors prescribed a service dog to assist with everyday tasks like opening doors, turning on lights, and assisting her when she transferred between her walker and a chair. Her service dog, Wonder, gave her more independence.

Her elementary school (a Napoleon Community School) did not allow Wonder to accompany Ehlena to school arguing her human aide provided all the necessary help she needed to satisfy her Individualized Education Plan (IEP) under the Individuals with Disabilities Education Act (IDEA). Ehlena's parents, represented by the Americans Civil Liberties Union (ACLU), sued the school for damages for the 2009-10, 2010-11 and 2011-12 school years. Her parents argued the school denied Ehlena equal access by prohibiting the use of Wonder which gave their daughter confidence in her abilities to move throughout her environment. They asserted that the right to have the dog at school was covered by the Americans with Disabilities Act (ADA).

The district court granted the Napoleon Community Schools' motion to dismiss the lawsuit for failing to exhaust administrative remedies under IDEA. The Frys weren't satisfied and appealed to the U.S. Court of Appeals for the Sixth Circuit. However, the appellate court affirmed the lower court's dismissal.

Wishing to prove a point, not so much for Ehlena but for all students who require service animals, the Frys applied to the Supreme Court of the United States.

In a unanimous 8-0 decision siding with the Frys, the Court held that, when a suit is not for a denial of a free and public education, exhaustion of IDEA remedies is not required. In the opinion for the majority, Justice Kagan explained how a court might identify whether the issue was one of a violation of IDEA or ADA. She stated, in part, "could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school — say, a public theater or library?" Simply put IDEA protects one's right to a free and public education and ADA protects one's right to equal access to public programs and services.

Newspaper Activity: Look through the news, in print or online, for examples of people fighting for the equal treatment of others. Do any examples involve issues under IDEA or ADA? Discuss findings as a class.

Next installment: **Fair Admissions Practices**

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Fair Admissions Practices

Under Title VI of the Civil Rights Acts, programs that receive federal funds must operate in a non-discriminatory manner. Harvard College, like most private institutions of higher education, accepts federal funds in the form of student aid. Harvard also uses race as one of many factors in its admissions process — a practice often referred to as affirmative action. The following case examines the balancing of Title VI and affirmative action as it relates to college admissions.

Students for Fair Admissions v. President and Fellows of Harvard College

The policy of affirmative action started with President Kennedy's 1961 Executive Order No.10925 to alleviate racial discrimination in hiring. The order required government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin." Soon similar policies evolved to include college admissions with the aim to increase minority and female representation to promote diversity and improve pay inequality.

Over the years affirmative action policies have been challenged in the courts several times. In the 1978 case of *Regents of the University of California v. Bakke*, the Supreme Court ruled against the use of a racial quota system but allowed the use of race as one factor among many to ensure a diverse student population.

Fast-forward nearly 20 years, in 1997 Barbara Grutter, a white resident, was denied admission to Michigan State Law School. She sued the school claiming the use of race as a deciding factor essentially functions as a racial quota. In *Grutter v Bollinger*, a majority of the court held for the first time that diversity in education can be a "compelling interest" to justify race-based classifications. Echoing the opinion in *Bakke*, the court ruled that race can be considered as one of several factors in admitting students. In the majority opinion written by Justice Sandra Day O'Connor, she stated, "race-conscious admissions policies must be limited in time," believing affirmative action policies would no longer be necessary to ensure diversity among students. More recently, the Court's ruling in *Fisher v. University of Texas* (2016) reaffirmed that diversity is a "compelling governmental interest."

The latest challenge to affirmative action in school admissions was brought by a group of Asian American applicants seeking to attend Harvard College. The group alleges that Harvard's race-conscious admissions policy favors white applicants and violates Title VI of the Civil Rights Act of 1964. Harvard contends their admissions policies follow the guidelines of "individualized inquiry" established in the Court's *Grutter v. Bollinger* decision. Arguments were heard by the Court on October 31, 2022, and its findings have yet to be announced.

Will the Court decide the time limit for current admissions practices is up and overturn affirmative action? If so, what new policies will ensure equal access for all students moving forward? While these questions are as yet unanswered, we trust the Court will do its best to apply the rule of law to the facts of the case in finalizing its decision.

Newspaper Activity: Look through the news, in print or online, for examples of current students' rights issues. Select one and prepare a summary of the who, what, where, when and why to share with your class.

Next installment: **Equal Rights — A Cornerstone of Democracy**

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Equal Rights — A Cornerstone of Democracy

From the time the Supreme Court decided that segregation of students in public education based solely on race violated the equal protection clause of the Fourteenth Amendment in the 1954 *Brown v. Board* ruling to now millions of students' educational access have been affected as a result.

One could argue that the outcome of the *Brown* case helped pave the way for the enactment of the Civil Rights Act of 1964, directly impacting policies and practices still in place today and highlighted in the cases reviewed in this series.

While we don't know what the impact of educational case law currently before the Court will have, we can find comfort in the fact that our form of government is dependent on a public forum of open ideas and debate. We have checks and balances to allow for new legislation to be enacted to address injustices. After all, when our founders formed the Constitution, they understood it to be merely a starting point in striving for "a more perfect Union" as envisioned in our Constitution's preamble.

It's up to us to continue to work toward that lofty goal. And to be truly a part of "We the People," each person must be actively engaged, understanding the rights and responsibilities of as participants in our democracy, valuing the humanity of each other despite our differences, and collaborating to address our challenges and creating opportunities for all people.

Newspaper Activities: Look for current examples in the news of inequality under the law. What, if anything, is being done to change the situation? Can you find examples of the cornerstones of democracy — civics, civility and collaboration in action?

Look for news reports of individuals or groups of people standing up for what they believe is fair. Select one. Do you agree or disagree with them and why?

If interested, this series has a corresponding teaching guide with graphic organizers, audio podcasts and a Spanish translation version online at https://nynpa.com/nie/lawday.html.

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