

**Texts for “Discovering American Voices: Creative Writing strategies” and “Topics and Texts of Dine’ Life” June 9-11, 2009 at Denver, Colorado, Navajo Teacher Summer Institute, Presidential Academy in American History and Civics Education (Readings suggested by Justice Greg Hobbs, Colorado Supreme Court)**

**Declaration of Independence, July, 1776 (excerpt)**

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

**Constitution of the United States, September, 1787 (excerpt)**

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

**Federalist No. 51, James Madison, February, 1788 (excerpt)**

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.

**People v. Hall, California Supreme Court, 1854, denying right of non-whites to testify in courts of law (excerpt)**

The appellant, a free white citizen of this State, was convicted of murder upon the testimony of Chinese witnesses. The point involved in this case, is the admissibility of such evidence.

The 394th section of the (California) Act Concerning Civil Cases, provides that no Indian or Negro shall be allowed to testify as a witness in any action or proceeding in which a White person is a party.

The 14th section of the (California) Act of April 16th, 1850, regulating Criminal Proceedings, provides that “No Black, or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a white man.”

The true point at which we are anxious to arrive, is the legal signification of the words, “Black, Mulatto, Indian and White person,” and whether the Legislature adopted them as generic terms, or intended to limit their application to specific types of the human species.

Before considering this question, it is proper to remark the difference between the two sections of our Statute, already quoted, the latter being more broad and

comprehensive in its exclusion, by use of the word "Black," instead of Negro. . .

We are of the opinion that the words "White," "Negro," "Mulatto," "Indian," and "Black person," wherever they occur in our Constitution and laws, must be taken in their generic sense, and that, even admitting the Indian of this Continent is not of the Mongolian type, that the words "Black person," in the 14th section (of the California statute) must be taken as contradistinguished from White, and necessarily excludes all races other than the Caucasian.

We have carefully considered all the consequences resulting from a different rule of construction, and are satisfied that even in a doubtful case we would be impelled to this decision on grounds of public policy.

The same rule which would admit them to testify, would admit them to all the equal rights of citizenship, and we might soon see them at the polls, in the jury box, upon the bench, and in our legislative halls. This is not a speculation which exists in the excited and over-heated imagination of the patriot and statesman, but it is an actual and present danger.

The anomalous spectacle of a distinct people, living in our community, recognizing no laws of this State except through necessity, bringing with them their prejudices and national feuds, in which they indulge in open violation of law; whose mendacity is proverbial; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point, as their history has shown; differing in language, opinions, color, and physical conformation; between whom and ourselves nature has placed an impassable difference, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participating with us in administering the affairs of our Government.

These facts were before the Legislature that framed this Act, and have been known as matters of public history to every subsequent Legislature.

There can be no doubt as to the intention of the Legislature, and that if it had ever been anticipated that this class of people were not embraced in the prohibition, then such specific words would have been employed as would have put the matter beyond any possible controversy.

For these reasons, we are of opinion that the testimony was inadmissible.

**Dred Scott, U.S. Supreme Court Decision, 1857, denying right of slaves to be citizens (excerpt from opinion of Chief Justice Taney)**

We have the language of the Declaration of Independence and of the Articles of Confederation, in addition to the plain words of the Constitution itself; we have the legislation of the different States, before, about the time, and since, the

Constitution was adopted; we have the legislation of Congress, from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together, and leading to the same result. And if anything in relation to the construction of the Constitution can be regarded as settled, it is that which we now give to the word 'citizen' and the word 'people' . . . (P)laintiff at the trial (Dred Scott) . . . admits that he and his wife were born slaves, but endeavors to make out his title to freedom and citizenship by showing that they were taken by their owner to certain places, hereinafter mentioned, where slavery could not by law exist, and that they thereby became free, and upon their return to Missouri became citizens of that State.

Now, if the removal of which he speaks did not give them their freedom, then by his own admission he is still a slave; and whatever opinions may be entertained in favor of the citizenship of a free person of the African race, no one supposes that a slave is a citizen of the State or of the United States. If, therefore, the acts done by his owner did not make them free persons, he is still a slave, and certainly incapable of suing in the character of a citizen . . .

### **Abraham Lincoln's Address at Gettysburg, November, 1863**

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation or any nation so conceived and so dedicated can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead who struggled here have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us the living rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us -- that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion -- that we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth.

### **Barboncito's Address to General Sherman at Fort Sumner, May, 1868**

Bringing us here has made many of us die, also a great number of our animals. Our Grandfathers had no idea of living in any other place except our own land,

and I don't think it is right for us to do what we were taught not to do. When the Navajo were first made, First Woman pointed out four mountains and four rivers that was to be our land. Our grandfathers told us to never move east of the Rio Grande River nor west of the San Juan River. I think that because of this so many of us and our animals have died here. First Woman gave us our land and made it especially for us. She gave us the whitest corn and the best sheep and horses.

You can see our headmen here, as ordinary as they look, but I think that when the last of them is gone our world will come to an end. It's true we were brought here. It's also true that we have been taken care of well since we came here. As soon as we got here, we started working on irrigation ditches. I myself went to work with my men. We made all the fort buildings you see here. We always did as the soldiers told us to do. But this ground does not give crops. Every time we plant, nothing grows. All the stock we brought here has nearly died. We worked as hard as we could, but for nothing. That is why we haven't planted or tried to do anything this year. The plants never grow more than two feet high. I don't know why, only I think this land was never meant for us, even though we know how to plant and raise livestock. The General can see for himself that we have hardly any sheep or horses left, and we are so poor that we cannot buy any others.

There were many of us who were once rich and well off. Now they have nothing in their houses to sleep on except gunny sacks. It's true some of us have a little stock, but not near what we had years ago in our own country. For that reason my mouth is dry and my head hangs in sorrow to see those Navajos who were once so well off, but poor now. When we lived in our own way, we had plenty of stock. We had nothing to do but just look at our stock grow and when we wanted meat, all we had to do was kill it. These headmen were once rich. I myself feel sorry at the way I am here. I cannot sleep at night. I am ashamed to go to the fort store for my food. It is like I must depend on someone to hand it out to me. Since the time I was very small, I had my mother and father to take care of me. I had plenty. I always followed my father's advice to live in peace.

I want to tell the General that I was born in Canyon de Chelly. Now we have been living here (Bosque Redondo) for five years. The first year our corn crop was destroyed by worms. The second year it was the same. The third year it grew two feet high when a hail storm completely destroyed all of it. We have done everything we could to raise a crop of corn and pumpkins, but we were disappointed. I used to think at one time that the whole world was just like my own land, but I fooled myself. Outside my own country, we cannot raise a crop, but in it we can grow food almost anywhere. Our families and livestock get larger. Here they get smaller. We know this land does not like us. Neither does the water. I think it is true what my grandfathers said about crossing out of my own country. It seems that everything we do here causes death. Men working in the ditches get sick and die. Some die with the hoe still in their hands. Some go to the river to get water and suddenly disappear under it. Others have been struck and torn to bits by lightning! When a rattlesnake bites us here, it kills us. In our own country the rattlesnake would give us a warning so we could stay out of its

way. If it bit us, we easily found a medicine for it. Here there are no plants for medicine.

When one of our headmen dies, the crying women make tears roll down onto my moustache. Then I think about my own country. When we first came here, there were mesquite roots to burn for firewood. Now there isn't any for twenty-five miles around. During the winter, many die from cold and sickness and from working too hard carrying firewood such a long way on their backs. For that reason we cannot be happy here. Some years ago I could lift my head up and see flocks of cattle in every direction. Now I feel sorry I can't see any. I raise my head and see herds of stock on my right and left, but they are not mine. It makes me sorry when I think of the time I had plenty. I can barely stand it. All the different peoples around us are against us, the Mexicans and other Indian tribes. That is because we work hard, and if we had the tools we could be much better off than either the Mexicans or other Indians. The Comanches are against us. I know, for they came here and killed a good many of our men. In our own land, we knew nothing about the Comanches.

Last winter I heard that you were coming here. Now I am happy you are here, and I am waiting to hear why you came. I thank the General and I think of him like I think of my father and mother. As soon as I heard you were coming, I made three pairs of moccasins, and I wore out two pair waiting for you. As you see, I am strong and healthy. Before I am sick or older, I want to go see the place I was born. Now I am just like a woman. I am sorry like a woman in trouble. I want to go and see my own country. If we are taken back to our land, we will call you our father and mother. If you would only tie a goat there, we would all live off it. We all feel the same. I am speaking for all Navajos and for their children who aren't born yet. All you hear me say is the truth. I hope you will do all you can to help us. I am speaking to you, General Sherman, as if you were a holy spirit. This hope goes in at my feet and out of my mouth. I wish you would tell me when you are going to take us to our own country.

I hope to God you will not ask me to go anywhere except my own country. If we go back, we will follow whatever orders you give us. We do not want to go right or left, but straight back to our own land.

**United States Code, 8 U.S.C. § 1401, 1952, Native Born Indians Are Citizens (excerpt)**

The following shall be nationals and citizens of the United States at birth:

- (a) a person born in the United States, and subject to the jurisdiction thereof;
- (b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property; . . .

**Brown v. Board of Education, U.S. Supreme Court, 1954 (excerpt from opinion of Chief Justice Warren)**

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

**In 1864**

by Luci Tapahonso

While the younger daughter slept, she dreamt of mountains,  
the wide blue sky above, and friends laughing.

We talked as the day wore on. The stories and highway beneath  
became a steady hum. The center lines were a blurred guide.  
As we neared the turn to Fort Sumner, I remembered this story:

A few winters ago, he worked as an electrician on a crew  
installing power lines on the western plains of New Mexico.  
He stayed in his pickup camper, which was connected to a generator.  
The crew parked their trucks together and built a fire in the center.  
The nights were cold and there weren't any trees to break the wind.  
It snowed off and on, a quiet, still blanket. The land was like  
he had imagined it from the old stories - flat and dotted with shrubs.  
The arroyos and washes cut through the soft dirt.  
They were unsuspectingly deep.  
During the day, the work was hard and the men were exhausted.  
In the evenings, some went into the nearby town to eat and drink  
a few beers. He fixed a small meal for himself and tried to relax.  
Then at night, he heard cries and moans carried by the wind  
and blowing snow. He heard the voices wavering and rising

in the darkness. He would turn over and pray, humming songs he remembered from his childhood. The songs returned to him as easily as if he had heard them that very afternoon. He sang for himself, his family, and the people whose spirits lingered on the plains, in the arroyos, and in the old windswept plants. No one else heard the thin wailing. After the third night, he unhooked his camper, signed his time card, and started the drive north to home. He told the guys, "Sure, the money's good. But I miss my kids and it sure gets lonely out here for a family man." He couldn't stay there any longer. The place contained the pain and cries of his relatives, the confused and battered spirits of his own existence.

After we stopped for a Coke and chips, the storytelling resumed:

My aunt always started the story saying, "You are here because of what happened to your great-grandmother long ago."

They began rounding up the people in the fall. Some were lured into surrendering by offers of food, clothes, and livestock. So many of us were starving and suffering that year because the bilagaana kept attacking us. Kit Carson and his army had burned all the fields, and they killed our sheep right in front of us. We couldn't believe it. I covered my face and cried. All my life, we had sheep. They were like our family. It was then I knew our lives were in great danger. We were all so afraid of that man, Redshirt, and his army. Some people hid in the foothills of the Chuska Mountains and in Canyon de Chelly. Our family talked it over, and we decided to go to this place. What would our lives be like without sheep, crops, and land? At least, we thought we would be safe from gunfire and our family would not starve.

The journey began, and the soldiers were all around us. All of us walked, some carried babies. Little children and the elderly stayed in the middle of the group. We walked steadily each day, stopping only when the soldiers wanted to eat or rest. We talked among ourselves and cried quietly. We didn't know how far it was or even where we were going. All that was certain was that we were leaving Dinetah, our home. As the days went by, we grew more tired, and soon, the journey was difficult for all of us, even the military. And it was they who thought all of this up.

We had such a long distance to cover.  
Some old people fell behind, and they wouldn't let us go back to help them.  
It was the saddest thing to see - my heart hurts so to remember that.  
Two women were near the time of the births of their babies,  
and they had a hard time keeping up with the rest.  
Some army men pulled them behind a huge rock, and we screamed out loud  
when we heard the gunshots. The women didn't make a sound.  
but we cried out loud for them and their babies.  
I felt then that I would not live through everything.

When we crossed the Rio Grande, many people drowned.  
We didn't know how to swim - there was hardly any water deep enough  
to swim in at home. Some babies, children, and some of the older men  
and women were swept away by the river current.  
We must not ever forget their screams and the last we saw of them -  
hands, a leg, or strands of hair floating.

There were many who died on the way to Hwééldi. All the way  
we told each other, "We will be strong, as long as we are together."  
I think that was what kept us alive. We believed in ourselves  
and the old stories that the holy people had given us.  
"This is why," she would say to us. "This is why we are here.  
Because our grandparents prayed and grieved for us."

The car hums steadily, and my daughter is crying softly.  
Tears stream down her face. She cannot speak. Then I tell her that  
it was at Bosque Redondo the people learned to use flour and now  
fry bread is considered to be the "traditional" Navajo bread.  
It was there that we acquired a deep appreciation for strong coffee.  
The women began to make long, tiered calico skirts  
and fine velvet shirts for the men. They decorated their dark velvet  
blouses with silver dimes, nickels, and quarters.  
They had no use for money then.  
It is always something to see - silver flashing in the sun  
against dark velvet and black, black hair.

From *The Women Are Singing* by Luci Tapahonso,

**Abraham Lincoln and Equal Justice Under the Law**  
**By Justice Greg Hobbs, Colorado Supreme Court**  
**(For The Colorado Lawyer April 2009)**

The fundamental proposition of equal justice under law, expressed in the Declaration of Independence, did not find its way into the U.S. Constitution until the adoption of the Civil War amendments. Equal justice under the law achieved a fuller realization when the U.S. Supreme Court began in the 20<sup>th</sup> Century to

apply the Bill of Rights to the states. It took a Kentucky-born Illinois lawyer and a most terrible conflict for this to happen.

### **Putting the Declaration of Independence to Test in the Constitution**

Many “self-evident truths” have proven to be neither evident nor true to Americans, except perhaps as a guide to the correction of daily injustices practiced for millennia. When the Constitution was adopted, black people were slaves, women could not vote, Native Americans occupied land immigrants wanted, and wilderness was to be conquered. Testing the proposition of the Declaration of Independence—that “all men are created equal . . . endowed with unalienable rights . . . life, liberty and the pursuit of happiness”—required redefinition of property rights to exclude human beings from being enslaved.

Dred Scott was denied his freedom even though he had lived in a “free” state and territory, because he was not a citizen but the “property” of a white man. Relying on the Declaration of Independence, not the letter of the then-existing Constitution, Lincoln condemned that pre-Civil War 1856 U.S. Supreme Court decision as “blowing out the moral lights around us.”<sup>i</sup> In this year of the bicentennial of Lincoln’s birth, we the people continue the pursuit of forming the “more perfect union,” to which the Founding Fathers aspired in the preamble to the Constitution but could not wholly accomplish.

### **The Centennial State**

The Colorado Territory came to be when Kansas became a state at the onset of the Civil War in 1861.<sup>ii</sup> Because of the 1854 Kansas-Nebraska Act, which opened up the new western territories to slavery if approved by vote of the settlers, Kansas had become a battleground, testing whether the western expanse of Manifest Destiny would be slave or free.<sup>iii</sup> When Colorado was granted statehood in 1876, the “Centennial State” memorialized 100 years of the constitution’s existence. This occurred soon after the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments—respectively abolishing slavery, guaranteeing due process and equal protection, and providing the right of citizens to vote regardless of race, color, or previous condition of servitude.

Lincoln had criticized the Mexican–American War.<sup>iv</sup> Before the Treaty of Guadalupe Hidalgo of 1848 ended that war, Colorado—south of the Arkansas River and west of the Great Divide—belonged to the northern frontier of Mexico. In that frontier, kidnapping and servitude took Native American women and children into New Mexican households.<sup>v</sup> Tribes committed similar practices among themselves across the plains. In the expanding United States, Southerners and Northerners struggled for and against the expansion of slavery into the newly annexed territories.

### **A New Birth of Freedom**

When Lincoln ran for U.S. President in 1860, the Republican platform contained planks for the Homestead Act and the Railroad Act,<sup>vi</sup> both enacted by the Union Congress in 1862, not the abolition of slavery. However, with the vast

public domain open for settlement, Lincoln's platform in November 1863 at Gettysburg became "this nation, under God, shall have a new birth of freedom."<sup>vii</sup>

This new birth continues today in the daily labors of the three branches of government and, more significant, in the dialogue of community that is guaranteed by the First Amendment. In this generation, our professional careers have seen the restoration of rights to Native Americans and the desegregation of the public schools. No longer do articulate women like Emily Dickinson confine their eloquence to their father's house.

Colorado has had its moments of great shame. For example, the state's history includes the Sand Creek Massacre by the Colorado Militia of a peaceful encampment of Native Americans in 1864, riots against Chinese in downtown Denver in the 1880s, the Ludlow Massacre of striking coal miners in 1914, Ku Klux Klan marches in the 1920s, and *de jure* discrimination against African Americans in the Denver public schools as recent as the 1960s.<sup>viii</sup>

In contrast, the hospitality that Governor Ralph Carr showed to the Japanese people interned here during World War II;<sup>ix</sup> the Colorado federal district court orders in the late 1960s and early 1970s requiring desegregation of the public schools; and election of Latino, African American, and Japanese American men and women in our communities and to statewide leadership positions demonstrate a state that is working for equal justice under the law.

In this bicentennial year of the birth of Abraham Lincoln, we celebrate a multitude of voices spanning many antecedents. To them I dedicate this poem.

### **I Am First Amendment**

I am freedom of religion, freedom of speech, freedom of press, freedom to assemble, freedom to petition the government for redress of grievances.

I am Moses, Jesus, Gandhi, Martin Luther. I am Joan of Arc, the Salem witches, the Hollywood writers summoned to appear before Senator McCarthy.

I am Martin Luther King, Jr. praising the Lord and crying out for freedom in Selma, Alabama.

I am the man in Tiananmen Square  
staring down the gun barrel of a tank.

I am the Cathars burned at the stake, their mountain hideaways torn stone by stone by the French duke on orders from the Pope.

I am the Pope traveling to Communist Poland to be with his countrymen and women.

I am every man and woman who has said aloud, "This just isn't right!"

I am Jefferson yearning to have others see what is beyond the next mountain.

I am Lincoln full of strength for freeing others.

I am Roosevelt on the radio parting the drowning waters of fear.

You can't plug me in or dial me up or shut me down.

You can't play me, display me, wrap me up in bubble wrap.

Every device that's ever been invented, every item that's ever been sold, every play or song or painting that's ever been born is my face and tongue and hand making, talking, inspiring, loving.

I am costly.

I am a young man gone down on land or sea or in the air to give the gift of living days so that others may.

I am Emily Dickinson shut up in her room because it wasn't seemly for women to be articulate publicly.

I am cheap, locked up, despised.

I am the bum in your street, the immigrant, the one they don't want in the Boy Scout Troop.

I am on your front porch wrapped in a rubber band, on the screen in the corner of your playroom, on your living room shelf.

I am what your children say to you and you to them.

I am what you don't like that others say and write.

I am you—whenever you may or may not want me, too.

*Greg Hobbs<sup>x</sup>*

### Notes

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<sup>i</sup> Wills, *Lincoln at Gettysburg, The Words That Remade America* 119-20 (Simon & Schuster 1992); Dred Scott v. Sandford, 60 U.S. 393 (1856).

<sup>ii</sup> Smith, *The Birth of Colorado: A Civil War Perspective* 7 (University of Oklahoma Press 1989).

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- <sup>iii</sup> Schulten, *Barack Obama, Abraham Lincoln, and John Dewey*, 86 *Denver University Law Review* 1, 2 (2009)(available at <http://law.du.edu/documents/denver-university-law-review/schulten.pdf>).
- <sup>iv</sup> Morison, *The Oxford History of the American People* 560 (Oxford University Press 1965).
- <sup>v</sup> Denetdale, *Reclaiming Dine History, The Legacies of Navajo Chief Manuelito and Juanita* 73 (The University of Arizona Press 2007); Bailey, *Bosque Redondo, The Navajo Internment at Fort Sumner, New Mexico, 1863–68* 22 (Westernlore Publications 1998).
- <sup>vi</sup> Ambrose, *Nothing Like It in the World, The Men Who Built the Transcontinental Railroad 1863-1869* 40, 72 (Simon & Schuster 2000).
- <sup>vii</sup> Text of Gettysburg Address, reprinted in Morison, *supra* note 3 at 681.
- <sup>viii</sup> Abbott *et al.*, *Colorado, a History of the Centennial State, 3d Ed.* 153, 283-87, 322 (University Press of Colorado 1994); Arps, *Denver in Slices* 23 (Sage Books 1959).
- <sup>ix</sup> Abbott *et al.*, *supra* note 6 at 365-66.
- <sup>x</sup> Hobbs, "I Am First Amendment," *In Praise of Fair Colorado, The Practice of Poetry, History, and Judging* 367 (Bradford Publishing Co. 2004).