

**Politics, Law and Society**  
**Political Science / Legal Studies 217 (3 credits)**  
Professor Kathryn Hendley ([khendley@wisc.edu](mailto:khendley@wisc.edu))  
Offices: 410 North Hall

**Fall 2019**  
**TR 11 – 12:15 Van Hise 104**

9101 Law Building (263-5135)

office hours: Thursdays 12:30-2pm & TR: 7:10-8:10am

course website: <https://canvas.wisc.edu/courses/165202>

classlist: [polisci217-1-f19@lists.wisc.edu](mailto:polisci217-1-f19@lists.wisc.edu)

## **POLITICS, LAW AND SOCIETY**

**Course Description:** This course is designed to provide you with an introduction to the American legal system. We begin by exploring the sources of law, examining how legal norms emerge from each of our branches of government and what happens when these norms clash. We then turn to the key institutional components of our legal system, focusing on the structure of the US court system and the players within it. We will compare the federal and state courts, looking at the differences in how judges are selected and how cases proceed through the system. We will pay particular attention to the inherent conflict between the desire for independence and accountability within our judiciary and will assess how well we have done in balancing these goals. We will also look at the alternatives to courts and investigate why they emerged and how they are currently being used. We will put all of this knowledge to use by studying the disputing process in the civil (non-criminal) context. We will start by developing a framework for how disputes evolve and what tends to encourage and/or discourage people from pursuing grievances. After Thanksgiving, we will explore two case studies of civil disputes. The first is one of the most well-known “test” cases, namely the case that culminated with the landmark Supreme Court decision in *Brown v. Board of Education* that ended segregation based on race in US public schools (at least on paper). The second is the class action dispute memorialized in the bestseller, *A Civil Action*.

**Course Requirements:** Students are expected to attend class regularly and to take part in class discussion and group exercises. There will be mid-term and final examinations, as well as a quiz on *A Civil Action*. There will be two writing assignments. For the first, students will be required to write an essay (7-8 pages) analyzing a dispute with which they are familiar. More information is available on the course website. Papers are due in class on **Nov. 26th**. For the second, students will be required to write a short essay (3-4 pages) reflecting on the readings for one class meeting. A schedule for this assignment will be posted on the course website. Discussion questions for every class are posted on the website. Two cautionary notes: (1) these essays must be turned in during the class period for which the readings being discussed are assigned, and (2) students will be expected to participate actively in the class discussion on the day the essay is due (the portion of the final grade based on class participation will be determined largely on the basis of participation on this day).

**Grades:** Final grades will be calculated on the following basis: final exam (30%), mid-term exam (25%), Quiz (5%), Paper on Disputing (20%), Participation Paper (10%), class participation (10%).

**Readings:** The 2 books listed below are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is posted on the course website. If desired, students can get a hard copy of this reader by going to the Law School Copy Shop, located on the ground floor of the law school, or ordering a copy on the Copy Shop’s website ([https://law.wisc.edu/copyshop/course\\_packet\\_request.html](https://law.wisc.edu/copyshop/course_packet_request.html)). The cost is \$33.

Lawrence Baum, *American Courts*, 7th ed. (New York: Houghton Mifflin Company, 2013)

Jonathon Harr, *A Civil Action* (New York: Vintage, 1996)

**Course Credit-Hour Expectation:** This is a 3-credit course. It meets for two 75-minute sessions each week over the fall semester and carries the expectation that students will work on course learning activities (reading, writing, assignments, studying, etc.) for about 3 hours out of the classroom for every class period.

**Learning Outcomes:**

1. Increase knowledge about the components of the U.S. legal system.
2. Understand how disputes evolve in the context of the U.S. legal system.
3. Improve ability to synthesize social science readings and formulate arguments in written and oral form.
4. Improve oral advocacy skills through active classroom discussion.

**Academic Integrity Statement:** By enrolling in this course, each student assumes the responsibilities of an active participant in UW Madison's community of scholars in which all academic work and behavior are held to the highest standards. Cheating, fabrication, plagiarism, unauthorized collaboration, and helping others commit these acts are examples of academic misconduct, which can result in disciplinary action. This includes, but is not limited to, failure on the assignment/course, disciplinary probation, or suspension. Substantial or repeated cases of misconduct will be forwarded to the Office of Student Conduct & Community Standards for additional review. For more information, refer to <https://conduct.students.wisc.edu/academic-integrity/>

**Accommodations for Students with Disabilities:** The University of Wisconsin-Madison supports the right of all enrolled students to a full and equal educational opportunity. The Americans with Disabilities Act (ADA), Wisconsin State Statute (36.12), and UW-Madison policy (Faculty Document 1071) require that students with disabilities be reasonably accommodated in instruction and campus life. Reasonable accommodations for students with disabilities is a shared faculty and student responsibility. Students are expected to inform faculty of their need for instructional accommodations by the end of the third week of the semester or as soon as possible after a disability has been incurred or recognized. Faculty will work either directly with the student or in coordination with the McBurney Center to identify and provide reasonable instructional accommodations. Disability information, including instructional accommodations as part of a student's educational record, is confidential and protected under FERPA. <https://mcburney.wisc.edu/facstaffother/faculty/syllabus.php>

**Diversity & Inclusion:** Diversity is a source of strength, creativity, and innovation for UW-Madison. We value the contributions of each person and respect the profound ways their identity, culture, background, experience, status, abilities, and opinion enrich the university community. We commit ourselves to the pursuit of excellence in teaching, research, outreach, and diversity as inextricably linked goals.

The University of Wisconsin-Madison fulfills its public mission by creating a welcoming and inclusive community for people from every background – people who as students, faculty and staff serve Wisconsin and the world. <https://diversity.wisc.edu/>

Please notify the instructor within the first two weeks of class of any specific days that you will need to miss a class due to religious observances.

## READING ASSIGNMENTS:

### Part I: Sources of Law

#### Thursday, September 5: Introduction

Baum, *American Courts*, 2-4

Cohen, "If Kant Were a New York Cyclist," *New York Times*, August 5, 2012

Bidgood, "Efforts to Mark Turf When Snowstorms Hit Endure Despite Crisis," *New York Times*, February 15, 2014

Greenfield, "Following Amtrak's Rules, Right Out of the Quiet Car," *New York Times*, May 8, 2009

#### Tuesday, September 10: Legal Culture & the Role of Informal Norms

Friedman, "Legal Culture and Social Development," *Law & Society Review*, vol. 4, pp.34-5

Rosen, "In Lieu of Manners," *New York Times Magazine*, February 4, 2001

Mather, "Courts in American Popular Culture," in *The Judicial Branch*, pp. 233-51

Kagan & Skolnick, "Banning Smoking: Compliance Without Enforcement," in *Smoking Policy: Law, Politics and Culture*, pp. 69-87

Berger, "Modesty in Ultra-Orthodox Brooklyn Is Enforced by Secret Squads," *New York Times*, January 30, 2013

"No Kegs, No Liquor: Colleges Crack Down – Stricter Rules Take Aim at Drinking and Assaults," *New York Times*, 30 October 30, 2016

Eligon, "Stopped, Ticketed, Fined: The Pitfalls of Driving While Black in Ferguson," *New York Times*, August 6, 2019

#### Thursday, September 12: Judicial Opinions

Baum, *American Courts*, pp. 10-16

Wald, "The Rhetoric of Results and the Results of Rhetoric: Judicial Writings," *University of Chicago Law Review*, 62:4, pp.1371-4, 1377-8, 1380-2, 1386, 1389-91, 1394-5, 1398-1401, 1408, 1412-3, 1995

*Li v. Yellow Cab Co. of California*, 13 Cal.3d 804 (1975)

*Riggs v. Palmer*, 22 NE 188 (1889)

Liptak, "Precedent, Meet Clarence Thomas. You May Not Get Along," *New York Times*, March 4, 2019

#### Optional but Interesting:

Greenhouse, "The Kind of Judge We Need," *New York Times*, January 17, 2019 [an appreciation of Judge Wald – available on course website]

#### Tuesday, September 17: Judicial Review

Article III, US Constitution,

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

Grossman & Wells, *Constitutional Law and Judicial Policy Making*, pp. 97-115 (including *Marbury v. Madison*)

Justice, "The Two Faces of Judicial Activism," *Judges on Judging*, pp. 225-34

Chernow, "Chopping Off the Weakest Branch," *New York Times*, May 6, 2005

*Kivirist, et al. v. Wisconsin Department of Agriculture*, May 31, 2017

Kivirst, "Wisconsin Hungry for a Cookie Bill that Loves Entrepreneurs," *Cap Times*, February 13, 2018

*Optional but Interesting:*

“Kittens Kick the Giggly Blue Robot All Summer,” podcast from Radiolab Presents: More Perfect: explores the role of the US Supreme Court, starting with *Marbury v. Madison*. Available at: <http://www.wnyc.org/story/giggly-blue-robot> [you could listen to this instead of reading the actual opinion in *Marbury* – link to podcast on website]

#### **Thursday, September 19: Judicial Reasoning**

Burnham, *Introduction to the Law and Legal System of the United States*, pp. 53-63

NLRB v. Canning, 134 S Ct 2550 (2014)

Review excerpts from article by Wald (in Sept. 12 readings)

#### **Tuesday, September 24: Legislatures**

Jacob, *Law and Politics in the United States*, pp. 241-54

Greenhouse, “Justices Limit Discrimination Suits Over Pay,” *New York Times*, May 29, 2007

Stolberg, “Obama Signs Equal-Pay Legislation,” *New York Times*, January 30, 2009

Lilly Ledbetter Fair Pay Act of 2009

Liptak, “Kagan Reminds Senators: Legislation is Your Job,” *New York Times*, July 1, 2010

Thebault, “The Voters Approved It. Should Lawmakers Erase the Result? In DC, a Debate about Democracy,” *Washington Post*, July 31, 2018

Nirappil, “Battle Over Reviving Initiative 77 Tipping Measure in DC Heads to Appeals Court,” *Washington Post*, December 18, 2018

#### **Thursday, September 26: Administrative Agencies**

\*\* Before class, please listen to 2 episodes of The Uncertain Hour [podcast]

- “The Peanut Butter Wars,” November 10, 2017

<https://www.marketplace.org/shows/the-uncertain-hour/s02-2-peanut-butter-wars/>

- “The Peanut Butter Verdict,” November 22, 2017

<https://www.marketplace.org/shows/the-uncertain-hour/s02-3-peanut-butter-verdict/>

Burnham, *Introduction to the Law and Legal System of the United States*, pp. 196-206

*Chevron, USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 1984

Clauss, “Why Ambiguity is an Inherent Aspect of Modern Legislation,” 2014

Bagley, “‘Most of Government is Unconstitutional,’” *New York Times*, June 21, 2019

Barnes & Marimow, “Supreme Court Puts Census Citizenship Question on Hold,” *Washington Post*, June 27, 2019

Bhattarai, “Parents Dread Life ‘Without a Rock ‘n Play: Fisher-Price Recall Triggers Shock and Frustration,” *Washington Post*, April 16, 2019

Siegel, “Bullies Were Shutting Down America’s Lemonade Stands,” *Washington Post*, June 12, 2018 [<https://www.countrytimelegalade.com/>]

“When Mercy Collides With the Law,” *New York Times*, January 10, 2018

#### **Tuesday, October 1: Rule of Law**

Fuller, *The Morality of Law*, pp. 33-41

Martin & Shear, “With ‘Virginia Way,’ State Thought It Didn’t Need Rules,” *New York Times*, January 23, 2014

Belkin, “Whose Failing Grade Is It?” *New York Times*, May 20, 2011

Singer, “Judge Orders Former Bristol-Myer Executive to Write Book,” *New York Times*, June 9, 2009

Schwartz, “A Legal Battle: Online Attitudes vs. Rules of the Bar,” *New York Times*, Sept. 13, 2009

Mirman, letter complaining about parking ticket, July 2015

## Part II: Key Components of the U.S. Legal System

### Thursday, October 3: An Overview of U.S. Courts

Baum, *American Courts*, pp. 5-10, 20-49

*Federalist Papers*, No. 78

“What is Judicial Independence?” 80 *Judicature* 73-83

Liptak, “The Case of the Plummeting Supreme Court Docket,” *New York Times*, Sept. 29, 2009

Sexton, “Without Law Degrees,” *ProPublica*, June 26, 2017

Compare the structures of the Wisconsin and New York court systems:

<http://www.wicourts.gov/courts/overview/moves.htm>

<http://www.courts.state.ny.us/courts/structure.shtml>

Williams, “This Judge Has a Mission: Keep Defendants Alive,” *New York Times*, Jan. 3, 2018

Grant, “Inside NY Courts Where Sex Workers Are ‘Painted as Victims and Treated as Criminals,’” *The Appeal*, September 21, 2018

*Optional, but interesting:*

*Heroin(e)*, documentary streaming on Netflix [deals with drug courts]

### Tuesday, October 8: Judges

Baum, *American Courts*, pp. 124-46

Resnik, “Managerial Judges,” summary in *The Nature and Functions of Law*, pp. 163-4

Banks, *The Judicial Process*, pp. 121-4

Block, *Disrobed: An Inside Look at the Life and Work of a Federal Trial Judge*, pp. 117-22, 137-45, 163-67, 188-94

Liptak, “Chief Justice Defends Judicial Independence After Trump Attacks ‘Obama Judge,’” *New York Times*, November 21, 2018

Greenhouse, “The Kind of Judge We Need,” *New York Times*, January 17, 2019

Mihalopoulos, “Why Cook County Judge Quite After Just 142 Days,” *Chicago Sun Times*, May 5, 2017

Feldman, “When Arrogance Takes the Bench,” *New York Times*, June 11, 2009

### Thursday, October 10: Selecting Judges for Federal Courts

Baum, *American Courts*, pp. 94-102

Banks, *The Judicial Process*, pp. 116-8

Estrada & Wittes, “There No Longer Are Any Rules in the Supreme Court Nomination Process,” *Washington Post*, February 19, 2016

Zhou, “Senate Republicans Have Officially Gone ‘Nuclear’ in Order to Confirm More Trump Judges,” *Vox*, April 3, 2019

McCarthy, “Trump’s Legacy: Conservative Judges Who Will Dominate US Law for Decades,” *The Guardian*, March 10, 2019

Purdum, “Presidents Picking Judges Can Have Backfires,” *New York Times*, 5 July 2005, p. A1

Liptak, “Avoid, Sidestep, Retreat: Justices’ Advice on Confirmation Tactics,” *New York Times*, March 20, 2017

Maclaren, “The Supreme Court’s Baffling Tech Illiteracy is Becoming a Problem,” *Salon*, June 28, 2014

*Optional but Interesting:*

Embedded [podcast], Judges 1: ‘A Downward Death Spiral’ [deals with nomination of federal judges], July 25, 2019

<https://www.npr.org/2019/07/25/745488893/judges-1-a-downward-death-spiral> [link on website]

## **Tuesday, October 15: Selecting Judges for State Courts**

Baum, *American Courts*, pp. 101-118

Eckholm, "Outraged by Kansas Justices' Rulings, Republicans Seek to Reshape Court," *New York Times*, April 1, 2016

Bannon, "Choosing State Judges: A Plan for Reform," Brennan Center for Justice, 2018

Liptak, "Supreme Court Upholds Limit on Judicial Fund-Raising," *New York Times*, April 29, 2015

Check out website with information about judicial selection rules for all 50 states:

<http://judicialselectionmap.brennancenter.org/?court=Supreme>

Corriher, "Voters Overwhelmingly Support Judicial Election Reforms," June 21, 2013

Levinson, "Why Voters Shouldn't Be Electing Judges," *LA Times*, May 8, 2014

### *Optional but Interesting:*

Embedded [podcast], Judges 2: 'Worse Than Willie Horton' [deals with nomination of state court judges], August 1, 2019

<https://www.npr.org/2019/08/01/747427656/judges-2-worse-than-willie-horton>

## **Thursday, October 17: Judicial Accountability**

Baum, *American Courts*, pp. 142-45

*Moore v. Judicial Inquiry Commission*, 891 So.2d 848 (2004)

Steinhauer, "Senate, for Just the 8<sup>th</sup> Time, Votes to Oust a Federal Judge," *New York Times*, December 8, 2010

Liptak, "Supreme Court Ruling Counters PA Judge on Recusal," *New York Times*, June 9, 2016

Aspin, "The 2010 Judicial Retention Elections in Perspective: Continuity and Change from 1964 to 2010," *Judicature*, vol. 94, pp. 218-32, 2011

Bella, "A Judge Cited a Teen's 'Good Family' in Declining to Charge Him as an Adult for Rape. Now, He's Resigned," *Washington Post*, July 18, 2019

McKinley, "In a Rare Step, Commission Recommends Removal of Queens Judge," *New York Times*, April 11, 2018

Del Real, "2 Views of the Judge Persky Recall," *New York Times*, June 13, 2018

Wisconsin procedure for disciplining judges:

<http://www.wicourts.gov/courts/committees/judicialcommission/index.htm>

## **Tuesday, October 22: Lawyers – Part 1**

Baum, *American Courts*, pp. 54-85

"Why I Love Being a Lawyer," *ABA Journal*, February 2011

Strigberger, "7 Reasons Why the Legal Profession Often Gets No Sympathy," *ABA Journal*, July 25, 2019

ABA Lawyer Demographics, 2015

Olson, "When Finding the Right Lawyer Seems Daunting, Crowdsolve One," *New York Times*, December 28, 2016

Wisconsin "Diploma Privilege": WI Supreme Court Rule 40.03:

<http://www.wicourts.gov/sc/scrule/DisplayDocument.html?content=html&seqNo=1073>

UW version of "Diploma Privilege": Rule 3.04 of the UW Law School Rules:

<http://www.law.wisc.edu/current/rules/chap3.htm#3.04>

Rao, "Kim Kardashian West Plans to Become a Lawyer in the Same Unusual Way as Abraham Lincoln," *Washington Post*, April 10, 2019

Weiss, "Would Millennial Lawyers Trade Pay for Better Work-Life Balance? A Significant Percentage Say Yes," *ABA Journal*, April 4, 2019

Juetten, "The Limited License Legal Technician Is the Way of the Future of Law," *ABA Journal*, December 8, 2017

#### **Thursday, October 24: Lawyers – Part 2**

*In re Goodell*, 39 Wis. 232, 1875

*In re Goodell*, 48 Wis. 693, 1879

Motley, “Some Recollections of My Career,” in Smith, ed., *Rebels in Law*, pp. 41-45

*Blank v. Sullivan & Cromwell*, 418 F. Supp. 1 (SDNY, 1975)

Sotomayor, *My Beloved World*, pp. 180-82, 188-91

Paul, “‘We Didn’t Let Girls Do it in the Old Days,’ a Judge Said. ‘Inappropriate,’ a Higher Court Ruled,” *Washington Post*, July 29, 2018

Williams et al., *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias*, ABA Commission on Women in the Profession, 2019, pp. 9-39 [full report on website]

Weiss, “Female Lawyers Describe ‘Fraternity Culture’ at Jones Day in \$200M Sex-Bias Lawsuit,” *ABA Journal*, April 4, 2019

#### **Tuesday, October 29: Building a Test Case – the Story of *Gill v. Whitford***

**Guest Speaker: Bill Whitford**, Emeritus Professor, UW Law School

Whitford, Outline of remarks

Savage & Barabak, “Supreme Court’s Approval of Partisan Gerrymandering Raises 2020 Election Stakes,” *Los Angeles Times*, June 27, 2019

Lessig, “Why John Roberts May Be Right About Gerrymandering,” *Washington Post*, July 10, 2019

Wang, “If the Supreme Court Won’t Prevent Gerrymandering, Who Will?” *New York Times*, July 13, 2019

Keena, et al. “Here’s How to Fix Partisan Gerrymandering, Now that the Supreme Court Kicked it Back to the States,” *Washington Post*, July 2, 2019

*Optional but Interesting:*

Fresh Air [podcast], “Rulings on Gerrymandering and the Census Could Defile the Political Future,” July 9, 2019

[https://www.npr.org/2019/07/09/739854998/rulings-on-gerrymandering-and-the-census-could-define-the-political-future](https://www.npr.org/2019/07/09/739854998/rulings-on-gerrymandering-and-the-census-could-defile-the-political-future)

#### **Thursday, October 31: Alternative Dispute Resolution**

Baum, *American Courts*, pp. 217-21

*In Re Trans World Airlines*, 46 Lab. Arb. Rep. 611 (1965)

Cooper, “Caught in the Middle of #MeToo: Unions that Represent Accusers and Accused,” *New York Times*, May 17, 2019

Chart – Benefits of Different ADR Processes

Cordray, “Let Consumers Sue Companies,” *New York Times*, August 22, 2017

Silver-Greenberg, “Consumer Bureau Loses Fight to Allow More Class-Action Suits,” *New York Times*, October 24, 2017

Flitter, “JPMorgan Chase Seeks to Prohibit Card Customers from Suing,” *New York Times*, June 4, 2019

Tiku, “Google Ends Forced Arbitration After Employee Protest,” *Wired*, February 21, 2019

Zevtoonian, “Compliance More Likely if Cases Are Mediated,” *Dispute Resolution Counsel*, March 8, 2011

Nocera, “From 9/11 to BP to GM,” *New York Times*, July 1, 2014

*Optional but Interesting:*

Fresh Air [podcast], “Have We Lost a Constitutional Right in the Fine Print?” Nov. 12, 2015

<https://www.npr.org/2015/11/12/455749456/have-we-lost-a-constitutional-right-in-the-fine-print>



## Tuesday, November 5: Midterm Exam

### Part III: Understanding the Disputing Process

#### Thursday, November 7: The Structure of Disputes

Baum, *American Courts*, pp. 72-79, 210-17, 222-30

Felstiner et al, "The Emergence and Transformation of Disputes," *Law & Society Review*, 15:3-4 (1980-81), pp. 631-49

Galanter, "Why the Haves Come Out Ahead," *Law & Society Review*, 9:1 (1974), summary from *Law & Society: Readings on the Social Study of Law*, pp. 687-88

Rabin, "In a Children's Theater Program, Drama Over a Peanut Allergy," *New York Times*, January 16, 2019

Pager, "She Helped Deliver Hundreds of Babies. Then She Was Arrested," *New York Times*, March 5, 2019

Selsky, "Young People Suing US Government over Climate Change Get Their Day in Court," *PBS Newshour*, June 4, 2019

Pennington, "Parents Behaving Badly: A Youth Sports Crisis Caught on Video," *New York Times*, July 18, 2018

Einhorn & Abrams, "The Tipping Equation," *New York Times*, March 12, 2018

#### Tuesday, November 12: The Alleged "Litigation Explosion"

Baum, *American Courts*, pp. 224-35

Galanter, "A World Without Trials?" *Journal of Dispute Resolution*, vol. 2006, pp. 7-27

Garry, *A Nation of Adversaries*, pp. 15-23, 66-76

Goldstein & Silver-Greenberg, "How a Web of Slip-and-Fall Cases Puts a New Spin on an Old-Fashioned Scheme," *New York Times*, May 11, 2018

Weiser, "Judge in 9/11 Suits Feels No Regret that None Ever Went to Trial," *New York Times*, September 9, 2016

Martin, "Automated Debt-Collection Lawsuits Engulf Courts," *New York Times*, July 13, 2010

Schwartz, "Learning from Litigation," *New York Times*, May 17, 2013

#### Thursday, November 14: A View of Judging from the Front Lines

**Guest Speaker:** The Honorable Sidney Brooks

Background information on Judge Brooks

#### Tuesday, November 19: Formal Constraints on Disputing

Burnham, *Introduction to the Law and Legal System of the United States*, pp. 320-24

Political questions: *Mora v. McNamara*, 389 U.S. 934 (1967)

Justiciable controversies: *Rucho v. Common Cause*, 588 U.S. \_\_\_ (2019)

Judicial distaste for issue: *Miller v. Miller*, 78 Iowa 177 (1889)

Zelon, "From Mom to Not in 7 Minutes: Inside Family Court," *City Limits*, June 1, 2012

Exhaustion of remedies: *McGee v. United States*, 402 U.S. 479 (1971)

Class actions: <http://www.classactionlitigation.com/faq.html>

Martin, "The Impact and Echoes of the Wal-Mart Discrimination Case" *ProPublica*, September 27, 2013

Bronstad, "Access to Plaintiff-Friendly Jurisdictions Constrained in 'Game-Changing' SCOTUS Ruling," *law.com*, June 21, 2017



## Part IV: Constructing Disputes

### Case Study 1: Putting Together a “Test” Case – *Brown v. Board of Education*

#### **Thursday, November 21: The Starting Point & the Struggle to Get to the Supreme Ct & the Decision-Making Process and the Decision**

Film: “Simple Justice”

*Plessy v. Ferguson* (1896)

“The Development of Segregation in the Public Schools,” from *Constitutional Law and Judicial Policy Making*, pp. 297-99

Kluger, *Simple Justice*, pp. 3-26, 315-21, 330-35

Williams, *Thurgood Marshall: American Revolutionary*, pp. 209-27

Kluger, *Simple Justice*, pp. 657-99

*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) [Brown I]

*Optional but Interesting:*

“The Imperfect Plaintiffs,” podcast from Radiolab Presents: More Perfect: provides background information about *Lawrence v. Texas*, a 2003 Supreme Court case in which the Texas law outlawing sodomy was struck down. Like *Brown*, it was a test case and this podcast highlights some of the difficulties in finding “ideal” plaintiffs.

<http://www.wnyc.org/story/imperfect-plaintiff>

“The Road to Brown,” documentary that emphasizes the role of Charles Hamilton. This link will require you to log in with your netid & password.

<https://wisc.kanopystreaming.com/video/road-brown>

“Mr. Civil Rights: Thurgood Marshall and the NAACP”

<https://wisc.kanopystreaming.com/video/mr-civil-rights-thurgood-marshall-and-naacp>

#### **Tuesday, November 26: The Aftermath of the Decision**

*Brown v. Board of Education of Topeka*, 349 U.S. 294 (1955) [Brown II]

“The Response to *Brown*,” from *Constitutional Law and Judicial Policy Making*, pp. 304-6

Rosenberg, *The Hollow Hope*, excerpt reprinted in *Law & Society: Readings on the Social Study of Law*, pp. 574-91

Parker, “*Brown*’s 60th Anniversary: A Story of Judicial Isolation,” 2016, pp. 97-107

Demby, “Two Justices Debate the Doctrine of Colorblindness,” *NPR*, April 23, 2014

Goldstein, “San Francisco Had an Ambitious Plan to Tackle School Segregation. It Made It Worse,” *New York Times*, April 25, 2019

*Optional but Interesting:*

“Separate and Unequal,” documentary about racial divisions in U.S. schools.

<https://wisc.kanopystreaming.com/video/frontline-separate-and-unequal>

### Disputing Papers Are Due in Class on November 26, 2019

**Thursday, November 28: THANKSGIVING – NO CLASS**

**Case Study 2: An “Ordinary” Civil Case**

**Tuesday, December 3: How the Case Arose**

Harr, *A Civil Action*, pp. 1-146

**THERE WILL BE AN IN-CLASS QUIZ ON *A CIVIL ACTION* IN CLASS ON DEC 3<sup>RD</sup>.  
THE QUIZ WILL COVER THE ENTIRE BOOK.**

**Thursday, December 5: The Build-Up to the Trial & the Trial**

Harr, *A Civil Action*, pp. 149-376

Complaint filed by Schlichtman

Answer filed by W.R. Grace

Kennedy, “Woburn Toxic Waste Trial: Judge Has Reputation for Fairness,” *Woburn Daily Times Chronicle*, 7 March 1986

Motion from W.R. Grace regarding Schlichtman’s conduct

Voir Dire Questions

Special Interrogatories to the Jury

**Tuesday, December 10: The Aftermath of the Trial**

Harr, *A Civil Action*, pp. 379-492

Kix, “In the Shadow of Woburn,” *Boston Magazine*, October 2009

Johnson, “In Old Mining Town, New Charges Over Asbestos,” *New York Times*, 22 April 2006

**Friday, December 13: FINAL EXAM from 5:05pm to 7:05pm [room TBA]**