

POL 459 Capstone
Law & Social Change
Fall 2004
Course Syllabus

Instructor: Professor Lynda Dodd
Office: 125 Harrison Hall
Office Hours: Tues. & Thurs.
10 am – 12 pm,
and by appointment

Class Location: 209 HRN
Time: Wed. 6:00-8:50 pm

Email:
doddlg@muohio.edu

I. Description and Objectives

The purpose of the Law and Social Change Capstone is to study the roles of law, politics, and society in strategies for social and political change. There is a rich empirical literature examining the promise and perils of litigation strategies to achieve policy reforms or broader social change. The main task of this seminar will be to review this literature, in order to examine how political scientists, lawyers, reform activists and historians have assessed the impact of litigation on social and political transformation. As we review this literature, we will consider the following themes and questions:

1. What are the limits of litigation, when compared to other forms of political debate or social protests?
2. What are the prerequisites for a successful litigation reform effort?
3. What kinds of opportunities do litigation strategies produce, in contrast to other political strategies?
4. What is the proper role of courts? Should judges seek to issue narrow rulings, or should they engage in broader policy making? What are the benefits and drawbacks of court-led policy reforms?

5. What is the proper role of lawyers? Should they focus solely on their clients' interests only, or should they also consider broader reform goals? Should they limit their participation to formal litigation, or should engage in efforts to organize communities to defend their interests outside of the courts, through protests or other forms of political engagement?

II. Course Texts and Grading

A. Course Materials –

The following are available for purchase at the Miami University Bookstore:

- James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2002).
- Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, 1991).
- Malcolm Feeley and Edward Rubin, *Judicial Policy Making and the Modern State* (Cambridge University Press 1999).
- Mitchell L. Stevens, *Kingdom of Children: Culture and Controversy in the Homeschooling Movement* (Princeton, 2001).
- William S. McFeeley, *Proximity to Death* (W.W. Norton, 2001).
- William N. Eskridge, Jr., *Equality Practice: Civil Unions and the Future of Gay Rights* (Routledge, 2002).
- Robert Kagan, *Adversarial Legalism: The American Way of Law* (Harvard 2003).

B. Grading

- 1. Discussion Memos – 35 %**
- 2. Project Proposal and Literature Review – 35 %**
- 3. Take-Home Final – 30 %**

1. Weekly Discussion Memos – In order to ensure student participation, the course will consist of seminar-style discussions of the reading. The class will be divided into groups of 10. For each class session, one group (1/2 of the class) will be responsible for leading the discussion. The group responsible for that day's discussion must turn in to me via email a three to five page "discussion memo," a critical review of the reading along with some potential topics for discussion, BY 9AM in the morning before our Wednesday seminar. The primary purpose of the memos is to encourage you to think about the controversies each set of readings raises along with some potential points of interest to take the class through. For your first memo, I will provide extensive feedback in order to ensure that you understand my expectations. Each following memo will be assigned a letter grade. If you turn the memo in after 9AM, your grade will be penalized by one letter grade every two hour increment that it is late. If you fail to turn a memo before Wednesday's seminar, you will receive an F for that week's assignment. If you do not believe you will be able to keep up with the reading schedule, you should consider withdrawing from the capstone.

2. Project Proposal and Literature Review – For the research project, you will need to begin thinking immediately about which reform issues interest you, and to pick one for this assignment. The purpose of this assignment is to develop a research proposal to investigate the role and success of litigation strategies in efforts to achieve your chosen reform. Your proposal must include the following components:

A. Research Question: In this section, you will describe your reform issue. For most chosen topics, you will find that some efforts to incorporate a litigation strategy have already occurred. If so, you may want to tailor your project so that you can evaluate their success. You may also wish to focus instead on specific problems associated with an attempted litigation strategy. In general, when developing your research question, you will need to think carefully about your specific research goals. By narrowing the focus of your project, it will be far more manageable, and you will be able to specify the kinds of evidence needed for your investigation.

B. Research Design: All of these projects will require some empirical work. For example, to investigate the extent to which litigation groups coordinate their strategies with grassroots activists, you could send survey questionnaires to groups currently active in your chosen area of reform, or you may decide more in-depth interviews are appropriate. If you plan to examine evidence to assess the impact of court interventions, interviewing or questionnaires may again be appropriate, or you might choose instead to review relevant public opinion polls. We will spend considerable time in class discussing appropriate research tools, and there will be a set of reference books on reserve in King Library to help you develop a specific and credible research agenda.

C. Literature Review: The bulk of your project proposal will consist of a review of existing research related to your reform issue. Because of the constraints of the course, you will not be expected to complete a comprehensive

review of the literature, but you will be asked to determine which are the 3-5 most influential books, as well as between 10 and 15 articles that address your topic. Some students will need to select from a very large literature; others may choose relatively unexplored topics and will need to search far and wide for relevant sources. We will discuss these challenges, and how to address them, throughout the semester. You will need to read the chosen books and articles and write up a narrative overview of the existing literature on your topic. You will also need to explain how your proposal will differ from these works, by explaining how you will build upon existing findings, or anticipate how and why you may depart from them. In order to complete this project, you will need to become familiar with research tools such as the Social Science Citation Index, J-Stor, the Index of Legal Periodicals, and Lexis-Nexis. I will arrange for a research session at King Library during the start of the semester.

D. Law & Social Change Initiative Research Awards: If you produce an excellent proposal, you will be given the opportunity to sign up for a 3-4 hour independent study in the spring semester of 2005, during which you will be awarded a research stipend to support the completion of your research paper. Honors students may wish to use their proposal as the foundation of an honors thesis. Note: If the project involves interview, surveys, or other interactions with human subjects, you will need to arrange for the Committee on the Use of Human Subjects (CUHSR) to review the proposal before commencing with the research. Contact the Office of Advancement of Research and Training (OARS) at 529-3734 for further information.

E. Law & Social Change Initiative Summer Internship Competition: You may also wish to submit your proposal as part of your application for the 2005 LSC Summer Internship Competition. In January of 2005, the Initiative will be reviewing applications for 15 summer internship placements in legal and social change organizations that we will recruit to participate, based on the interests of the selected LSC interns. Although the competition will be open to students from across the University, applicants with a demonstrated interest in a specific project will be more competitive, and the Capstone Research Proposal is one means by which to convey that interest and commitment.

3. Take-Home Final – The final will consist of 2 or 3 essay questions addressing the main themes of the Capstone. The purpose of the final is to provide an opportunity for students to integrate the different topics and readings in order to develop some broad conclusions about the questions that have organized our discussions throughout the semester.

III. Schedule of Readings and Assignments

Aug. 25 **Introduction: The Politics of Rights**

- Michael McCann and Helena Silverstein, "Rethinking Law's Allurements: A Relational Analysis of Social Movement Lawyers in the United States," in *Cause Lawyering: Political Commitments and Professional Responsibilities*, Austin Sarat and Stuart Scheingold, eds. (Oxford University Press, 1998)

Recommended

- Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Soc. Rev.* 95 (1974)

- Joel Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (Academic Press, 1978)

- Frances Kahn Zemans, "Legal Mobilization: The Neglected Role of Law in the Political System" 77 *Am. Pol. Sci. Rev.* 690 (1983).

- Mark Tushnet, "An Essay on Rights," 62 *Texas L. Rev.* 1363 (1984)

- Kristin Bumiller, *The Civil Rights Society: The Social Construction of Victims* (Johns Hopkins University Press, 1988)

- Kimberle Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," 101 *Harv. L. Rev.* 1331 (1988)

- Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (Basic, 1991)

- Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, 1998)

- Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (University of Michigan, 2d. ed. 2004)

Sep. 1, 8

Brown & the Civil Rights Movement

- James Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2001) Chs 1-5

- Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, 1991) Chs. 1-5, 12

- Michael McCann, "Reform Litigation on Trial," (in Review Section Symposium: The Supreme Court and Social Change) 17 *Law & Social Inquiry* 715 (1992)

- Malcolm Feeley, "Hollow Hopes, Flypaper, and Metaphors," (in Review Section Symposium: The Supreme Court and Social Change) 17 *Law & Social Inquiry* 745 (1992)

- Gerald N. Rosenberg, "Hollow Hopes and Other Aspirations: A Reply to Feeley and McCann," (in Review Section Symposium: The Supreme Court and Social Change) 17 *Law & Social Inquiry* 761 (1992)

Recommended

- Doug McAdam, *Political Process and the Development of Black Insurgency, 1930-1980* (University of Chicago Press, 1982)

- Aldon Morris, *Origins of the Civil Rights Movement: Black Communities Organizing for Change*, (Free Press, 1984)

- Michael J. Klarman, "How Brown Changed Race Relations: The Backlash Thesis," 81 *Journal of American History* 81 (1994)

- Michael J. Klarman, "Brown, Racial Change, and the Civil Rights Movement," 80 *Va. L. Rev.* 7 (1994)

- David J. Garrow, "Hopelessly Hollow History: Revisionist Devaluing of *Brown v. Board of Education*," 80 *Va. L. Rev.* 151 (1994)

- Gerald N. Rosenberg, "Brown Is Dead! Long Live Brown!: The Endless Attempt to Canonize a Case," 80 *Va. L. Rev.* 161 (1994)

- Mark Tushnet, "The Significance of *Brown v. Board of Education*," 80 *Va. L. Rev.* 173 (1994)

- Michael J. Klarman, “Reply: Brown v. Board of Education: Facts and Political Correctness,” 80 Va. L. Rev. 185 (1994)
- David Schultz, ed., *Leveraging the Law: Using the Courts to Achieve Social Change* (Peter Lang, 1998)
- Bradley C. Canon and Charles A. Johnson, *Judicial Policies: Implementation and Impact* (Congressional Quarterly, 2d. ed. 1998)
- Jack M. Balkin, ed., *What Brown v. Board of Education Should Have Said* (New York University Press, 2002)
- Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford University Press, 2004)
- David J. Garrow, “‘Happy’ Birthday, *Brown v. Board of Education*? Brown’s Fiftieth Anniversary and the New Critics of Supreme Court Muscularity,” 90 Va. L. Rev. 693 (2004)

Sep. 8 **Court-Ordered Desegregation**

- James M. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (Oxford University Press, 2001) Chs. 6-10
- Greg Winter, “Schools Resegregate, Study Finds,” New York Times (Jan. 21, 2003)
- The Civil Rights Project, Harvard University
http://www.civilrightsproject.harvard.edu/research/deseg/reseg_schools02.php

Recommended

- Derrick A. Bell, Jr., “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,” 85 Yale L. J. 470 (1976)
- Phillip J. Cooper, *Hard Judicial Choices* (Oxford University Press, 1988)
- James S. Liebman, “Desegregating Politics: ‘All-Out’ School Desegregation Explained,” 90 Colum. L. Rev. 1463 (1990)

- David J. Armor, *Forced Justice: School Desegregation and the Law* (Oxford University Press, 1995)
- Stephen L. Wasby, *Race Relations Litigation in an Age of Complexity* (University Press of Virginia, 1995)
- Wendy Parker, "The Future of School Desegregation," 94 Nw. U. L. Rev. 1157 (2000)
- Douglas S. Reed, *On Equal Terms: The Politics of Educational Opportunity* (Princeton University Press, 2001)
- David Engstrom, "Civil Rights Paradox: Lawyers and Educational Equity," 10 J. L. & Pol'y 387 (2002)

Sep. 15 Litigation and the Women's Movement

- Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (University of Chicago Press, 1991) Chs. 6-9
- Scott E. Lemeux, "Abortion Rights Claiming and Countermobilization: Assessing the Potentially Counterproductive Effects of Roe v. Wade," paper presented at the Annual Meeting of the American Political Science Association, Boston, 2002
- Deborah L. Rhode, "The 'No-Problem' Problem: Feminist Challenges and Cultural Change," 100 Yale L.J. 1371 (1991)

Recommended

- Catharine A. MacKinnon, *The Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press, 1979)
- Jane Mansbridge, *Why We Lost the ERA*, (University of Chicago Press, 1986)
- Elizabeth Schneider, "The Dialectic of Rights and Politics: Perspectives from the Women's Rights Movement," 61 New York Univ. Law Rev. 589 (1986)

- Deborah Rhode, *Gender and Justice: Sex Discrimination and the Law* (Harvard University Press, 1991)
- Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (University of Chicago Press, 1994)
- Judith Baer, *Our Lives Before the Law: Constructing a Feminist Jurisprudence* (Princeton University Press, 1999)
- Deborah Rhode, *Speaking of Sex: The Denial of Sex Inequality* (Harvard University Press, 1999)
- Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press, 2000)
- See Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* 25-30 (2000)
- N. E. H. Hull and Peter Charles Hoffer, *Roe v. Wade: The Abortion Rights Controversy in American History* (The University Press of Kansas, 2001)
- Amy Leigh Campbell, "Raising the Bar: Ruth Bader Ginsburg and the ACLU Women's Rights Project," 11 *Tex. J. Women & L.* 157, 158 (2002)
- Catharine A. MacKinnon and Reva B. Siegel, eds., *Directions in Sexual Harassment Law* (Yale University Press, 2003)

Sep. 22 The Poor in Court: A Cautionary Tale?

- Alan W. Houseman, "Political Lessons: Legal Services for the Poor," 83 *Geo. L.J.* 1669 (1995)
- Matthew Diller, "Law and Equality: Poverty Lawyering in the Golden Age," 93 *Mich. L. Rev.* 1401 (1995)

Recommended

- The Welfare Law Center (formerly the Center on Social Welfare Policy and Law) <http://www.welfarelaw.org/>
- Donald L. Horowitz, *The Courts and Social Policy* (Brookings, 1977)

- Susan E. Lawrence, *The Poor in Court: The Legal Services Program and Supreme Court Decision-Making* (Princeton University Press, 1990)
- Martha Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (Yale University Press, 1993)
- Marc Feldman, "Political Lessons: Legal Services for the Poor," 83 Geo. L.J. 1529 (1995)
- Gary Bellow & Jeanne Charn, "Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice," 83 Geo. L.J. 1633 (1995)
- Elizabeth Bussiere, *(Dis)Entitling the Poor: The Warren Court, Welfare Rights, and the American Political Tradition* (Pennsylvania State University Press, 1997)
- Frances Fox Piven and Richard Cloward, *Poor People's Movements: Why They Succeed: How They Fail* (Vintage, 1998)

Sep. 29 Reforming Federal Prisons

- Malcolm Feeley and Edward Rubin, *Judicial Policy Making and the Modern State* (Cambridge University Press 1999)

Recommended

- Abram Chayes, "The Role of the Judge in Public Law Litigation," 89 Harv. L. Rev. 1281 (1976)
- Lon L. Fuller, "The Forms and Limits of Adjudication," 92 Harv. L. Rev. 353 (1978)
- Owen Fiss, *The Civil Rights Injunction* (1978)
- Owen M. Fiss, "Foreword: The Forms of Justice," 93 Harv. L. Rev. 1 (1979)
- Colin S. Diver, "The Judge as Political Powerbroker: Superintending Structural Change in Public Institutions," 65 Va. L. Rev. 43 (1979)

- Judith Resnik, “Managerial Judges,” 96 Harv. L. Rev. 374 (1982)
- Abram Chayes, “The Supreme Court, 1981 Term - Foreword: Public Law Litigation and the Burger Court,” 96 Harv. L. Rev. 4 (1982)
- William A. Fletcher, “The Discretionary Constitution: Institutional Remedies and Judicial Legitimacy,” 91 Yale L. J. 635 (1982)
- Donald L. Horowitz, Decreeing Organizational Change: Judicial Supervision of Public Institutions, 1983 Duke L.J. 1265
- Susan P. Sturm, “Resolving the Remedial Dilemma: Strategies of Judicial Intervention in Prisons,” 138 U. Pa. L. Rev. 805 (1990)
- Susan P. Sturm, “A Normative Theory of Public Law Remedies,” 79 Geo. L.J. 1355 (1991)
- Margo Schlanger, “Beyond the Hero Judge: Institutional Reform Litigation As Litigation,” 97 Mich. L. Rev. 1994
- Margo Schlanger, “Inmate Litigation,” 116 Harv. L. Rev. 1555 (2003)

Oct. 6 Child Welfare Litigation

- Wendy Davis, “Marcia’s Law,” City Limits Monthly (December 1999)
<http://www.citylimits.org/content/articles/articleView.cfm?articlenumber=471>
- Children’s Rights Inc., <http://www.childrensrights.org/>;
http://childrensrights.org/PDF/winning_for_children.pdf
- Marcia Robinson Lowry, “Why Settle When You Can Win: Institutional Reform and *Marisol v. Giuliani*,” 26 Fordham Urb. L.J. 1335 (1999)
- Sarah Hultman Dunn, “The *Marisol A. v. Giuliani* Settlement: ‘Innovative Resolution’ or ‘All-Out Disaster’?” 35 Colum. J. L. & Soc. Problems 275 (2002)
- *Marisol v. Pataki* updates http://childrensrights.org/Legal/Marisol_Pataki.htm

Recommended

- Ellen Borgersen and Stephen Shapiro, “*G.L. v. Stangler: A Case Study in Court-Ordered Child Welfare Reform*,” J. Disp. Resol. 189 (1997)
- Center for the Study of Social Policy, *New Roles for Old Adversaries: The Challenge of Using Litigation for System Reform* http://www.cssp.org/uploadFiles/New_Roles_for_Old_Adversaries.pdf
- Susan Gluck Mezey, *Pitiful Plaintiffs: Child Welfare Litigation in the Federal Courts* (University of Pittsburgh Press, 1999)
- Nina Bernstein, *The Lost Children of Wilder: The Epic Struggle to Change Foster Care* (Vintage, 2002)
- Ross Sandler & David Schoenbrod, *Democracy by Decree: What Happens When Courts Run Government* (Yale University Press, 2003)
- Charles F. Sabel & William H. Simon, “Destabilization Rights: How Public Law Litigation Succeeds,” 117 Harv. L. Rev. 1015 (2004)
- David Zaring, “National Rulemaking Through Trial Courts: The Big Case and Institutional Reform,” 51 UCLA L. Rev. 1015 (2004)

Oct. 13 Conservative Litigation Campaigns: Challenging Affirmative Action

- Tom Keck, “Race and Rights in the 21st Century: The Conservative Campaign Against Affirmative Action and the Politics of Constitutional Rights,” unpublished manuscript (March 24, 2004)
- The Center for Individual Rights, <http://www.cir-usa.org/>; <http://www.cir-usa.org/history.html>
- The Center for Equal Opportunity, www.ceousa.org
- Institute for Justice, <http://www.ij.org/index.shtml>

Recommended

- Lee Epstein, *Conservatives in Court* (Univ. of Tennessee Press, 1985)
- John P. Heinz, Anthony Paik, and Ann Southworth, "Lawyers for Conservative Causes: Clients, Ideology, and Social Distance," 37 *Law & Soc'y Rev.* 5 (2003)
- Tom Keck, "From *Bakke* to *Grutter*: The Rise of Rights-Based Conservatism," in *The Supreme Court and American Political Development: The Interplay of the Internal and External in Supreme Court Decision-making*, Ronald Kahn and Ken I. Kersch, eds. (The University Press of Kansas, forthcoming 2004)

Oct. 20 Conservative Legal Mobilization: The Case of the HSLDA

- Mitchell L. Stevens, *Kingdom of Children: Culture and Controversy in the Homeschooling Movement* (Princeton, 2001)
- Home School Legal Defense Association, www.hsllda.org

Recommended

- Mark J. Rozell; Clyde Wilcox, "Second Coming: The Strategies of the New Christian Right," 111 *Pol. Sci. Qtrly* 271 (1996)
- Does the HSLDA provide legal insurance?
<http://www.homeschoolingislegal.info/provide.htm>
- Seth F. Kreimer, Technologies of Protest: Insurgent Social Movements and the First Amendment in the Era of the Internet," 150 *U. Pa. L. Rev.* 119 (2001)
- Dennis R. Hoover and Kevin R. den Dulk, "Christian Conservatives Go to Court: Religion and Legal Mobilization in the United States and Canada," 25 *Int. Pol. Sci. Rev.* 9 (2004)

Oct. 27 The Tobacco Litigation Campaign

- Lynn Mather, "Theorizing about Trial Courts: Lawyers, Policymaking, and Tobacco Litigation," *Law & Soc. Inquiry* 897 (1998)

- Peter H. Schuck, "Benched: The Pros and Cons of Having Judges Make the Law," *Washington Monthly* (December, 2000)
<http://www.washingtonmonthly.com/features/2000/0012.schuck.html>

Recommended

- Deborah Hensler, et al. *Class Action Dilemmas: Pursuing Public Goals For Private Gain* (Rand, 2000) Executive Summary:
<http://www.rand.org/publications/MR/MR969.1/MR969.1.pdf>

- Ed Dawson, "Legigation," 79 *Tex. L. Rev.* 1727 (2001)

- W. Kip Viscusi, ed., *Regulation through Litigation* (Brookings 2002)

- Martha Derthick, *Up in Smoke: From Legislation to Litigation in Tobacco Politics* (CQ Press, 2002)

- Walter Olsen, *The Rule of Lawyers: How the New Litigation Elite Threatens America's Rule of Law* (St. Martin's, 2004)

Nov. 3 The Death Penalty Moratorium Movement

- William S. McFeeley, *Proximity to Death* (W.W. Norton, 2001)

- Jeffrey L. Kirchmeier, "Another Place Beyond Here: The Death Penalty Moratorium Movement in the United States," 73 *U. Colo. L. Rev.* 1 (2002)

Recommended

- Stephen B. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer," 103 *Yale L.J.* 1835 (1994)

- David Baldus, et al., "Reflections on the 'Inevitability' of Racial Discrimination in Capital Sentencing and the 'Impossibility' of its Prevention, Detection, and Correction," 51 *Wash. & Lee L. Rev.* 357 (1994)

- Austin Sarat, "Between (the Presence of) Violence and the Possibility of) Justice: Lawyering against Capital Punishment," in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press, 1998).

- Ronald J. Tabak, "How Empirical Studies Can Affect Positively the Politics of the Death Penalty," 83 *Cornell L. Rev.* 6 (1998)

- Ronald J. Tabak, "Finality Without Fairness: Why We are Moving Towards Moratoria on Executions, and the Potential Abolition of Capital Punishment" 3 *Conn. L. Rev.* 733 (2001).

- The Constitution Project, *Mandatory Justice: Eighteen Reforms to the Death Penalty* (2000)

<http://www.constitutionproject.org/dpi/MandatoryJustice.pdf>

- Report of the Illinois Commission on Capital Punishment, April 2002 <http://www.idoc.state.il.us/ccp/ccp/reports/index.html>

Nov. 10 Law and Politics in the Campaign for Gay Rights

- William N. Eskridge, Jr., *Equality Practice: Civil Unions and the Future of Gay Rights* (Routledge, 2002)

- William N. Eskridge, Jr., "Lawrence's Jurisprudence of Tolerance: Judicial Review to Lower the Stakes of Identity Politics," 88 *Minn. L. Rev.* 1021 (2004)

Recommended

- Human Rights Campaign, www.hrc.org

- Lisa Keen and Suzanne B. Goldberg, *Strangers to the Law: Gay People on Trial* (The University of Michigan Press, 1998)

- Patricia Cain, *Rainbow Rights: The Role of Lawyers and Courts in the Creation of the Lesbian and Gay Civil Rights Movement* (Westview, 2000)

- William N. Eskridge, Jr., "Challenging Identity-Based Social Movements and Public Law, 150 *U. Pa. L. Rev.* 419 (2001)

- William N. Eskridge, Jr, "Some Effects of Identity- Based Social Movements on Constitutional Law in the Twentieth Century," 100 Mich. L. Rev. 2062 (2002)

- Joyce Murdoch and Deb Price, *Courting Justice: Gay Men and Lesbians v. the Supreme Court* (Basic Books, 2002)

- Martin Dupois, *Same-Sex Marriage, Legal Mobilization, and the Politics of Rights* (Peter Lang, 2002)

- Dan Pinello, *Gay Rights and American Law* (Cambridge, 2003)

- Lynn D. Wardle, et al., eds., *Marriage and Same-Sex Unions: a Debate* (Praeger, 2003)

Nov. 17 **Anti-Litigation Politics: Why Attack Citizen Plaintiffs?**

- "The Tort Law Debate in New York," 71 N. Y. Bar J. (April 1999)

- Robert Kagan, *Adversarial Legalism: The American Way of Law* (Harvard University Press, 2001) Chs. 1-3, 6-7, & conclusion

- Herbert Kritzer, "American Adversarialism," 38 Law & Soc. Rev. 349 (2004), pp. 349-359, 368-377

Recommended

A. The Anti-Litigation Perspective

- Walter Olsen, *The Litigation Explosion: What Happened When America Unleashed the Lawsuit* (Penguin, 1991)

- Walter Olsen's weblog www.overlawyered.com

- Manhattan Institute web magazine www.pointoflaw.com

- American Tort Reform Association, www.atra.com

B. Defending Citizen Plaintiffs

- Center for Justice & Democracy, www.centerjd.org

- Public Citizen, www.citizen.org/congress/civjus

- Marc Galanter, "Real World Torts: An Antidote to Anecdote," 55 Maryland L. Rev. 1093 (1996)

- Thomas H. Koenig and Michael L. Rustad, *In Defense of Tort Law* (NYU Press, 2002)

- Carl Bogus, *Why Lawsuits are Good for America: Disciplined Democracy, Big Business, and the Common Law* (NYU Press, 2003)

C. Political Science Perspectives

- Thomas F. Burke, *Lawyers, Lawsuits, and Legal Rights* (Univ. of California Press, 2002)

- Charles R. Epp, "The Judge over Your Shoulder: Is Adversarial Legalism Especially American?" 28 Law & Soc. Inquiry 743 (2003)

- William Haltom and Michael McCann, *Distorting the Law: Politics, Media and the Litigation Crisis* (University of Chicago Press, 2004)

Dec. 1 The Ethical Responsibilities of Lawyer-Activists

- Ann Southworth, "Lawyers and the 'Myth of Rights' in Civil Rights and Poverty Practice," 8 B.U. Pub. Int. L.J. 469 (1999)

- Deborah Rhode, "Access to Justice: Connecting Principles to Practice," 17 Geo. J. Legal Ethics 369 (2004)

Recommended

- Susan M. Olson, *Clients and Lawyers: Securing the Rights of Disabled Persons* (Greenwood Press, 1984)

- Lucie E. White, "Mobilization on the Margins of a Lawsuit: Making Space for Clients to Speak," 16 N.Y.U. Rev. L. & Soc. Change 535 (1987-88)

- David Luban, *Lawyers and Justice: an Ethical Study* (Princeton University Press, 1988)
- G. Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (Westview Press, 1992)
- Anthony V. Alfieri, "Practicing Community: A Review of Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*," 107 Harv. L. Rev. 1747 (1994)
- William H. Simon, "The Dark Secret of Progressive Lawyering," 48 U. Miami L. Rev. 1099 (1994)
- William B. Rubenstein, "Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns," 106 Yale L.J. 1623 (1997)
- William H. Simon, *The Practice of Justice: A Theory of Lawyers' Ethics* (Harvard University Press, 1998)
- Daniel S. Shah, "Lawyering for Empowerment: Community Development and Social Change," 6 Clinical L. Rev. 217 (1999)
- Ascanio Piomelli, "Appreciating Collaborative Lawyering," 6 Clinical L. Rev. 427 (2000)
- Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press, 2000)
- Michael Diamond, "Community Lawyering: Revisiting the Old Neighborhood," 32 Colum. Human Rights L. Rev. 67 (2000)
- Loretta Price and Melinda Price, "Seeds of Change: A Bibliographic Introduction to Law and Organizing," 26 N.Y.U. Rev. L. & Soc. Change 615 (2000/2001)
- Scott L. Cummings and Ingrid V. Eagly, "A Critical Reflection on Law and Organizing," 48 UCLA L. Rev. 443 (2001)
- Deborah L. Rhode, "Access to Justice," 69 Fordham L. Rev. 1785 (2001)
- David Luban, "Taking Out The Adversary: The Assault on Progressive Public-Interest Lawyers," 91 Calif. L. Rev. 209 (2003)

