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:


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


  **Recommended**


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


*Brown & the Civil Rights Movement*


**Recommended**


- David Schultz, ed., Leverage the Law: Using the Courts to Achieve Social Change (Peter Lang, 1998)


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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


- The Civil Rights Project, Harvard University [http://www.civilrightsproject.harvard.edu/research/deseg/resseg_schools02.php](http://www.civilrightsproject.harvard.edu/research/deseg/resseg_schools02.php)

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**Recommended**


- Phillip J. Cooper, Hard Judicial Choices (Oxford University Press, 1988)


**Sep. 15**  
**Litigation and the Women’s Movement**


**Recommended**


- 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)


- 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?**


**Recommended**

- The Welfare Law Center (formerly the Center on Social Welfare Policy and Law) [http://www.welfarelaw.org/](http://www.welfarelaw.org/)


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**Sep. 29**

**Reforming Federal Prisons**


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**Recommended**


- Donald L. Horowitz, Decreeing Organizational Change: Judicial Supervision of Public Institutions, 1983 Duke L.J. 1265


**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


- *Marisol v. Pataki* updates http://childrensrights.org/Legal/Marisol_Pataki.htm
**Recommended**


**Oct. 13  Conservative Litigation Campaigns: Challenging Affirmative Action**


- The Center for Equal Opportunity, www.ceousa.org

**Recommended**

- Lee Epstein, *Conservatives in Court* (Univ. of Tennessee Press, 1985)


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


- Home School Legal Defense Association, [www.hslda.org](http://www.hslda.org)

**Recommended**


- Does the HSLDA provide legal insurance? [http://www.homeschoolingislegal.info/provide.htm](http://www.homeschoolingislegal.info/provide.htm)


**Oct. 27**  
**The Tobacco Litigation Campaign**


**Recommended**

- Deborah Hensler, et al. *Class Action Dilemmas: Pursuing Public Goals For Private Gain* (Rand, 2000) Executive Summary:


**Nov. 3**

**The Death Penalty Moratorium Movement**


**Recommended**


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


Recommended


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


- 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)


Nov. 17  

**Anti-Litigation Politics: Why Attack Citizen Plaintiffs?**


**Recommended**

A. The Anti-Litigation Perspective


- 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](http://www.citizen.org/congress/civjus)


C. Political Science Perspectives


**Dec. 1** The Ethical Responsibilities of Lawyer-Activists


**Recommended**


- Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press, 2000)


