

**Race and the Law Seminar
(Limited Enrollment)
Vermont Law School
Fall 2017 VLS, Oakes 207
Monday, 3:35-5:15pm**

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Office Hours: by appointment

I. Course Overview

This course will consider how the law deals with and has shaped race issues as well as how societal race relations have in turn shaped the law. In particular, we will inquire into the nature of race and racism and its role in constructing racial hierarchies. We will also examine how the law has treated particular racial minority groups in the past and how the law has changed to address current race problems.

II. Course Readings

- 1) Juan Perea et al., Race and Races: Cases and Resources for a Diverse America, 3rd ed. (2015).
- 2) There will also be additional reading materials that will be supplied by the instructor.

This course has a very heavy reading load, which ranges from 40-70 pages per week. Please review the section regarding Course Requirements carefully.

III. Course Requirements

Grading for this seminar is as follows:

- 25% Class participation, paper presentation
- 25% Weekly written assignments
- 50% Final paper (20-25 pages, including footnotes)

Because the seminar depends on class discussion and student participation for its success, it is crucial that students be prepared for class. Thus, I strongly advise students not to take this class if they do not expect to be able to keep up with the reading and to be prepared for class. Instead, I would be happy to suggest readings for those students who are interested in the subject matter but are not willing to make the commitment that is required for an intensive seminar course. However, for those willing to make the commitment, this course will provide a rewarding

learning experience and a much better understanding and insight into the relationship between race and the law.

Class Participation. Because this class is a small seminar and will depend on the active participation of everybody for it to be successful, it is crucial for every student to be prepared for each class and to participate actively in class discussions. The purpose of including class participation in the final grade is to reward those who participate and move class discussions forward. However, students are responsible for each week's reading regardless of whether they expect to be called upon or not. Repeated lack of preparation for class and failure to participate may result in a lowering of the grade.

Weekly Written Assignments. Weekly written assignments are generally designed to allow you to comment and reflect on the weekly reading. They are intended to prime and prepare students for class by forcing reflection and thoughtful consideration of some of the issues that the reading raises. As a result, there will generally be much latitude, and in fact largely your choice, as to which issue raised by the reading to comment on, unless otherwise instructed.

Assignment Grades and Deadlines. The grades that will be assigned for weekly assignments are check plus, check, and check minus. They translate to A, B, and C, respectively. Assignments may be submitted according to the following guidelines:

- My office mailbox located on the second floor of Debevoise Hall by **12 pm (noon) on the Friday** before your next class.
- Alternatively, you may submit your assignment by e-mail by **12 pm on the Friday** due date. *However, if you choose this method of submission, you are solely responsible for ensuring that the instructor receives your assignment by the deadline.*

Assignments may be submitted **late by 9 pm Monday with a penalty of a lowered grade**. No assignments will be accepted after this deadline, and there can be no extensions. Because assignment submissions will be used by the instructor to design class discussion, no excuses (computer problems or other problems notwithstanding) for failure to comply with these deadlines are acceptable. (One suggestion for checking that the professor receives your email is to include your own VLS email address in the email recipient line B. If your own VLS address received your assignment, then the instructor should also have received your assignment at her VLS address).

Final Paper. The final paper will count for 50% of the course grade and should be between 20-25 pages in length, including footnotes. It is intended to be a substantial paper setting out your original ideas and is to be of law journal note quality. While I will generally allow much latitude with respect to the paper's form and topic, it must be analytical (legal/policy) in nature and must be pre-approved by me. **A one-page outline of the paper is due in class on Monday, September 25, 2017** however, as noted below, the due date for outlines and draft papers for students completing their AWR in this course is earlier. **Papers are due by 4 pm on the last day of classes, Friday, December 8, 2017, in my Debevoise mailbox. No e-mail submissions will be accepted.** (If you

have more than one paper due on that same date, please plan on completing this paper at an earlier date, as I cannot provide any extensions).

In-Class Paper Presentations. Each student will be asked to lead a portion of a class discussion on the topic of his or her final paper. Ideally this can be an opportunity to present the preliminary or even final research work that has been done on the paper and to receive feedback and ideas on the issue from classmates. However, it is also designed to allow students to raise topics and issues for class discussion that we are unable to cover because of time constraints. If appropriate, the presentation may even be included in one of the other class sessions.

You are required to attend class. Failure to attend class regularly will result in a grade of F-Wd.

I encourage all of you to let me know about any ideas or suggestions for improving the class.

Please do not forget that you are responsible for observing all of the Vermont Law School Honor Code Rules. Citations in papers should follow standard Harvard Blue Book rules (latest edition).

IV. Advanced Legal Writing Requirement (AWR)

The Advanced Legal Writing Requirement may be satisfied by writing a paper in this class. However, since the grade in this class is not based on a lengthy final paper, but rather a series of shorter papers, the AWR may be satisfied by expanding on the final paper. I expect AWR papers to be at least 30 pages in length. Students should inform the instructor and plan on drafting your AWR contract by **Monday, September 18, 2017.**

If you choose to apply for one academic credit for an IRP, the grade for the IRP will be the paper grade (which may not necessarily be the same as the final grade).

V. Rules for Giving and Getting Feedback in Class

There are some important (and obvious) ground rules for giving and receiving feedback on views and statements made for this class. All of you, I am sure, on your own accord act in a civil and sensitive manner in your daily dealings and discussions with others. I would simply like to remind everyone explicitly of the imperative need for a class atmosphere in which nobody feels excluded and everyone has a sense that they can participate in the class discussion. Thus, it is highly important for everyone to disassociate positions or views that you disagree with from the people who put them forward. While it is appropriate to criticize positions, views or comments, it goes without saying that intimidation, ridiculing, name-calling or other personal attacks are unacceptable in this class. Nevertheless, I expect each of you to fulfill your obligations as future lawyers and policy-makers to be conscientious and faithful (but not necessarily slavish and unthinking) advocates while serving the interest of your clients and

constituents. Finally, I expect all of you to give each of your classmates the respect they deserve and to be courteous to your fellow classmates in class discussions.

I encourage all of you to remind yourself to listen to each other carefully, to be sensitive about each other's backgrounds and views, and then speak to persuade each other with arguments. Conversely, everyone ought to be prepared to listen carefully to each other, then respond to or accept reasoned disagreement with other viewpoints or statements. Remember that everyone is entitled to- and in fact is required to – make their contributions to class, since that is part of the class participation grade.

As a side-note, this civility policy is not intended to stifle student speech in class, but is, in First Amendment parlance, what I believe to be a reasonable time, place and manner restriction. I also remind you all that there is almost always a thoughtful, deliberate, and sensitive alternative to an offensive way of expressing disagreement, and I would urge all of you to choose the thoughtful and sensitive alternative. That is particularly true with respect to email messages.

Finally, I would encourage and urge anyone to speak with me directly if any issues arise with regard to this classroom discussion policy.

READING ASSIGNMENTS

08/28

Course Introduction/Overview: pp. 1-4, 19-47, and 63-85

- Case: *Perkins v. Lake County Department of Utilities*, 860 F.Supp. 1262 (N.D. Ohio 1994) pp. 6-19
We will focus on *Perkins v. Lake County*. **Please be prepared to answer the following question. (See below) We will also focus on the classroom exercise on pages 31-34**

1. This case raises many questions about the racial labels that are assigned in this society, and how they ought to be assigned in an anti-racist context. Can you make a decision about race without examining racism?

09/04

Labor Day Holiday—No Class

9/11

Movie: The Essential Blue-Eyed

09/18

Chapter 1: Defining Racism and Race, pp. 45-59, 77-89

- **Assignment Due (9/15/17) Current Events: March in Charlottesville, VA reflection paper (see below)**

Current Events: The University of Virginia which is located in Charlottesville, VA, was in the process of removing the statute of Robert E. Lee and renaming the parks dedicated to confederacy. In protest of removal of the statue, the KKK, White Supremacist, Alt Right and Neo-Nazis organized a march in Charlottesville, VA. In opposition to these white nationalists and anti-semitic marchers, the citizens of Charlottesville organized a counter-demonstration. One member of the Alt Right group, James Alex Fields, Jr. drove his car into a crowd of counter-demonstrators, killing one person and injuring 19 people. Fifteen others were injured at the rally, while a Virginia State Trooper and a trooper-pilot also died when a helicopter that they were in crashed nearby. Read handouts “White Nationalists March on University of Virginia” and “Charlottesville Faces Its Own Past after Rally Turns Deadly”.

Please research and read the articles about this incident in Charlottesville, VA, then write a 2-3 page reflection paper answering the questions below:

1. Should the KKK, White Supremacists, Alt Right and Neo-Nazis groups been allowed to march in Charlottesville, VA?
2. The march erupted into violence and one person was killed and 15-20 people injured. Should the march be characterized as a “domestic terrorist” event?

3. What is the definition of “domestic terrorist”?
4. The DOJ, FBI opens a civil rights investigation into the deadly car attack. Should they open a domestic terrorist investigation as well? Explain your answer.
5. Should President Trump denounce these groups by name? Explain your answer.
6. Should the President denounce both the white nationalists and counter-protesters as reprehensible?
7. What should the country do to prevent this type of violence in the future?
8. What was your initial reaction to this march? What was your reaction to the car attack?

9/25

*****Paper Topics Due in Class with a 1 paragraph description*****

Guest Lecturer- Dean Beth McCormick

"Ten Tips for Writing a Scholarly Article"

Please have one sentence thesis statement hard copy ready for class.

10/2

The Meaning of Whiteness

- Read pp. 461-496 (Cases: *In re Ah Yup*, 5 Sawy. 155, p. 462, *Ex Parte Shahid*, 205 F. 812, p. 465; *Takao Ozawa v. United States*, p. 471; *United States v. Bhagat Singh Thind*, pp. 473-478)
- Read pp. 497-534 White Privilege and White Transparency
- A White Privilege & Male Privilege, Peggy McIntosh (1988) (Handout) read pp. 368-373 (Case: *Lopez v. Union Tank Car Co.*, p. 369; *Machado v. Goodman Mfg. Co.* p. 371)

Current Events: Brock Turner

- **Assignment Due 9/29/17** :Please write a 2-3 page reflection paper on the following (see below)

1. What does white privilege mean to you?
2. What are your thoughts on the Brock Turner case?
3. Do you think race or privilege had any bearing on the case?
4. Do you think the judge should have stepped down?

<http://www.popsugar.com/news/Brock-Turner-Sentencing-Video-41615072>

<http://www.nytimes.com/2016/06/13/us/brock-turner-stanford-rape.html?login=email&mabReward=A3&action=click&pgtype=Homepage®ion=CCColumn&module=Recommendation&src=rechp&WT.nav=RecEngine&mtref=www.nytimes.com>

<http://www.nytimes.com/2016/06/09/us/brock-turner-blamed-drinking-and-promiscuity-in-sexual-assault-at-stanford.html>

<http://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html>

<http://www.nydailynews.com/news/national/king-brock-turner-cory-batey-show-race-affects-sentencing-article-1.2664945>

https://broadly.vice.com/en_us/article/brock-turner-rape-case-sentencing-racial-bias

<http://www.nydailynews.com/opinion/privilege-pain-unjust-stanford-sex-assault-sentence-article-1.2667883>

<http://www.nydailynews.com/news/crime/stanford-rapist-mother-begged-judge-no-time-behind-bars-article-1.2669420>

<http://www.cnn.com/2016/06/09/politics/joe-biden-brock-turner-rape/index.html>

<http://www.cnn.com/2016/06/10/us/stanford-rape-case-court-documents/index.html>

<http://heavy.com/news/2016/06/brock-turner-father-dad-dan-turner-full-letter-statement-stanford-rapist/>

10/7-10/10/17

Fall Recess: 10/9 No Class!

10/16

Guest Lecturer: *Professor Mark Latham* Miscegenation

Apples, Bananas, Oreos & “Other:” Thoughts on Being Multiracial In the United States
Readings: Casebook Bottom Pp. 814-bottom of 829, top of 843-846 & notes 1, 3 and 4 that follow, 856-middle of 875 & Robert E. Lee, NC Prohibits Any Marriage Between Races, available at

<http://www.tn.gov/tsla/exhibits/blackhistory/pdfs/Miscegenation%20laws.pdf> (last page) and Charles Davenport, The Effects of Race Intermingling, available at http://hsmt.history.ox.ac.uk/courses_reading/undergraduate/authority_of_nature/week_5/davenport.pdf

- **Assignment Due 10/13/17: 2-3 page reflection paper on your reading.**

10/23

Movie: *Eyes On the Prize: America’s Civil Rights Movement*

Read handout: The Constitutionality of Voting Rights Act of 1965

- **Assignment due 10/20/17 Please write a two – three page reflection paper on the handout.**

10/30

*****Final Paper Topic Outline Due in Class*****

African Americans

Read Handout on Voter Rights Act (Case: *Shelby County v. Eric Holder*)

Read pp. 672-689. The Ideal of Integration

Chapter 2: African American

- Read pp. 91-104
- Read pp. 110-121 (Cases: *State v. John Mann*, 13 N.C. 263, p. 116; *Kennedy v. Mason*, p. 119)
- Read pp. 131-133
- Read pp. 142-166 (Case: *Plessy v. Ferguson*, 163 U.S. 537, p. 143)
- **Be prepared to discuss why you agree or disagree with the Supreme Court's decision to strike down Section 4(b) and Section 5 of the Voter Rights Act.**
- No reflection paper.

11/01 **Monday Class Schedule Followed.**

Equality and Affirmative Action

- Read Hand out of Cases: *University of California Regents v. Bakke*, *Grutter v Bollinger*, *Fisher v. University of Texas at Austin* and
- Equal Opportunity in Higher Education and the Black Public College: The Era of Separate but Equal.
- **Assignment Due 10/27/17: Please write a 2-3 page reflection paper answering two of the five questions proposed by Professor Gil Kujovich.**
 1. In 1954, the Supreme Court concluded, in *Brown v. Board of Education* in 1954, that racially separate education at all levels, violated the Fourteenth Amendment's Equal Protection Clause.
 2. What remedy do you believe should have and could have been provided the effects of separate but equal higher education? Does your answer vary depending on whether the remedy is being required by the federal courts or congress?
 3. To what extent are the remedies you suggested in your answer to question 1 constitutionally permissible under Justice's Powell's view of the constitutional constraints on the use of race-based classifications for remedial purposes? What remedies would be available under this view and what would a group of plaintiffs have to show to obtain such a remedy?

4. In what ways do the diversity and remedial justifications differ? Are they related to each other in any way? Which is easier to establish and thereby to use to defend race-based admissions programs in higher education?
5. What does Justice O'Connor's majority opinion in Grutter imply as to the connection between the diversity and remedial justifications for race-based affirmative action admissions in higher education? Are you convinced that the programs in Grutter and Gratz are sufficiently different as to justify the different results? If not, should both programs have been upheld or should both have been invalidated? Why?
6. Does the Fisher case change the law pertaining to affirmative action? If so, in what way? If not, why did the court agree to hear the case?

11/06

Native Americans

Chapter 3 American Indians/Native Americans

- Read pp. 193-223 (Cases: *Cherokee Nation v. State of Georgia* (Handout); *Worcester v. Georgia*, p. 214; *Ex Parte Crow Dog*, 109 U.S. 556, p. 219)
- Read pp. 225-230 (Case: *Lone Wolf v. Hitchcock*, 187 U.S. 553, pg. 226)
- Cases: *Morton v. Mancari*, p. 232; *LAC du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc.*, pp. 234, & 246-255
- *Rice v. Cayetano* (120 S.Ct. 1044, pp. 248-254)
 - **Assignment Due 11/3/17 2-3 page reflection paper on your reading**

11/13

Latinos/as

- Read pp. 781-791; (Cases: *Arizonans for Official English v. Arizona*, p. 792; *Ruiz v. Hull*, pp. 792-800)
- Read pp. 557-564; (Case: *Garcia v. Spun Steak Company*, pp. 557-554)
- Read p. 375 (small squib; see Kevin R. Johnson, Sept. 11 & Mexican Immigrants)

Chapter 4 Latinos/as

- Read pp. 279-295
- Read pp. 341-345
- Read pp. 384-396
- **Assignment due 11/10/17: 2-3 page reflection paper on your reading.**

11/20

Asian Americans

- Read pp. 446-458; (Read both Cases: *Korematsu v. United States*, 323 U.S. 214, p. 427-438)

Chapter 5 Asian Americans

- Read pp. 381-391; (Case: *People v. Hall*, p. 383-387)
- Read pp. 394-397
- Read pp. 401-421; (Case: *Fong Yue Ting v. United States et al.*, pp. 402-407; *Terrace v. Thompson*, pp. 412-416)
- Read pp. 443-449
- Read pp. 450-460; U.S. Commission on Civil Rights (Handout)
 - **Assignment Due 11/17/17: 2-3 page reflection paper on your reading**

11/27

In-Class Paper Presentations

12/4

In-Class Paper Presentations

12/08/17 (Friday)

FALL SEMESTER ENDS.

Final Papers due at 4:00 pm, 2nd Floor Debevoise Hall

NO E-MAIL SUBMISSIONS ACCEPTED!