

Race and the Law
Spring 2014
Professor Zanita E. Fenton

3 Credits
Tues., Thurs., 2:00-3:20
Room A216B

Course Materials and Assignments

All course material is available on TWEN:
<http://lawschool.westlaw.com/manage/homepage.aspx?courseid=170563> or at
<http://faculty.law.miami.edu/zfenton/RaceLaw.htm>. You are expected to be in class, having read all materials and prepared to participate in the discussions. It would be helpful for you to identify the arguments with which you agree and disagree in each of the cases and other readings and for you to be prepared to support your positions with good legal arguments.

The syllabus gives assignments according to topic coverage. I reserve the right to alter the assignments if necessary.

Class attendance and class participation are mandatory. You must be prepared for class as you will be questioned at random. Voluntary discussion is strongly encouraged.

Class Participation

In lieu of a panel system, you are *required* to sign up for *two* weeks in which you will “co-teach” the class. You will prepare the case with background understandings, general holding, and relevance for racial history and/or understanding of the law. You may not sign up more than once to teach with the same person(s). You *must* collaborate with your co-teacher(s). Be prepared to discuss the rationale for the holding, the racial implications, and any contrary positions.

I retain the option of lowering your grade by as much as a half grade (no more) for poor class attendance or participation. Non-participation will result in the automatic lowering of your grade. I also have the option of raising your grade by as much as a half grade (no more) for notably excellent participation.

Religious Holy Days

The University of Miami, although a secular institution, is determined to accommodate those students who wish to observe religious holy days. Classes missed due to observances of religious holy days will count as excused absences only if you provide written notice of your intended absence(s) to me no later than the end of the first three meetings of our class.

Use of Personal Technology in the Classroom

You are best served during class period if you focus on class discussions and lectures. Furthermore, the classroom environment must support learning for all students; technological devices may be distracting to individuals in the class and thus undermine that goal. Accordingly, in addition to other professional conduct and the corresponding courtesies, please refrain from text messaging; instant messaging; e-mail use; use of cell phones (disable them in class); or any other

communication devices. Also refrain from displaying wallpaper, screen savers, or other material on your laptop screen reasonably expected to offend or distract your classmates. It should also be understood that games (electronic or otherwise) are inappropriate for the classroom. I will sanction any student who interferes with the general learning environment in the class. Such sanctions may include, but are not limited to, the loss of the privilege to use a laptop in my class, individually or collectively.

Accommodations

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Iris Morera, Coordinator, Disability Services at the Office of Disability Services for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is imorera@law.miami.edu. You may also visit the Disability Services website at www.law.miami.edu/disabilityservices

Course Evaluation Options:

In addition to the required “teaching” of two weeks’ materials, you have three options for the remainder of your evaluation in the course. You may:

1). a three-day, open-book, take home examination consisting of essay questions.

Since it is open book, you must clearly cite all sources used. I must be able to find and access the source in order for it to count. The exam will be available for you to sign out from the Registrar any time the day after the end of reading period through the third-to-last day before the end of exam period. It must be returned to the Registrar no later than 5:00 on the third day after you pick it up and in no event later than the last day of exams. Your copy of the exam **MUST** be turned in.

2). Two essays (10-15 pgs each) connecting/comparing/contrasting one aspect of history relevant to race and one modern reality racially relevant.

The first essay must be completed prior to Spring Break (March 7); the second is due before the last day of class (April 23). Each essay must address a legal theme with implications for race relations. Light research and footnoting is expected.

3). One research paper, approximately 35 pages, with a central legal argument addressing a topic of import to race and race relations. This paper may be submitted in satisfaction of the writing requirement. *Your topic must be approved by me and your choice provided to the Registrar no later than the end of the “drop-add” period.*

Race and the Law Syllabus
Fenton - Spring 2014

Introduction: Stereotype, Biology, and Social Construction

Thursday, January 16:

K. Anthony Appiah, Stereotypes and Identity, 88 Cal L. Rev. 41 (2000).

Kristin Bumiller (1987), "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," Signs: Journal of Women in Culture and Society 12: 421-439.

Ozawa v. U.S., 260 U.S. 178 (1922)

U.S. v. Bhagat Singh Thind, 261 U.S. 204 (1923)

Korematsu v. U.S., 323 U.S. 214 (1944)

Concepts of Race: Biological Reality or Social Construction?

Week of January 21:

Cheryl I. Harris, "The Story of *Plessy v. Ferguson*: The Death and Resurrection of Racial Formalism," in Constitutional Law Stories 187 (2009).

Plessy v. Ferguson, 163 U.S. 537 (1896)

Neil Gotanda, "The Story of *Korematsu*: The Japanese-American Cases," in Constitutional Law Stories 231 (2009).

United States v. Ebers, 800 F.2d 1422 (6th Cir. 1986)

Histories of Race and Racism: The Constant of White Supremacy

Week of January 28:

Rennard Strickland, "The Tribal Struggle for Indian Sovereignty: The Story of the *Cherokee Cases*," in Race Law Stories 37 (2008).

Lonewolf v. Hitchcock, 187 U.S. 553 (1903)

Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)

Chae Chan Ping v. United States (the Chinese Exclusion Case), 130 U.S. 581 (1889)

Plessy v. Ferguson, 163 U.S. 537 (1896) (Harlan's dissent)

Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Week of February 4:

Chae Chan Ping v. United States (the Chinese Exclusion Case), 130 U.S. 581 (1889)

Plessy v. Ferguson, 163 U.S. 537 (1896) (Harlan's dissent)

Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Christopher L. Eisgruber, “The Story of Dred Scott: Originalism’s Forgotten Past,” in *Constitutional Law Stories* (2009)

Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)

Zanita E. Fenton, “State-Enabled Violence: The Story of *Town of Castle Rock v. Gonzalez*,” in *Women and the Law Stories* 379 (2011).

United States v. Cruikshank, 92 U.S. 542 (1876)

Week of February 11:

FAMILY

R.A. Lenhardt, “Forgotten Lessons on Race, Law, and Marriage: The Story of *Perez v. Sharp*,” in *Race Law Stories* 341 (2008)

Loving v. Virginia, 388 U.S. 1 (1967)

Peggy Cooper Davis, “*Moore v. East Cleveland*: Constructing the Suburban Family,” in *Family Law Stories* 77 (2008).

Zanita E. Fenton, *Bastards! And The Welfare Plantation*, 16 *Iowa J. Gender, Race & Just.* __ (forthcoming 2013).

Nguyen v. INS, 533 U.S. 53 (2001)

Week of February 18:

The Anti-Discrimination Laws

EMPLOYMENT DISCRIMINATION

Washington v. Davis, 426 U.S. 229 (1976)

Brooms v. Regal Tube Co., 881 F.2d 412 (7th Cir. 1989)

Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1980)

DeGraffenreid v. General Motors, 413 F. Supp. 142 (E.D. Mo. 1976), *Affirmed in Part, Reversed in Part by DeGraffenreid v. General Motors Assembly Division*, St. Louis, 558 F.2d 480, (8th Cir.(Mo.)1977)

Rogers v. American Airlines, 527 F. Supp 229 (S.D. N.Y. 1981)

Paulette Caldwell, “Intersectional Bias and the Courts: The Story of *Rogers v. American Airlines*,” in *Race Law Stories* 571 (2008).

Week of February 25:

HOUSING DISCRIMINATION

Wendell E. Pritchett, “*Shelley v Kraemer*: Racial Liberalism and the U.S. Supreme Court,” in, *Civil Rights Stories* 5 (2008).

Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977)

DISCRIMINATION IN EDUCATION

Ian Haney López & Michael A. Olivas, Jim Crow, Mexican Americans, and the Anti-Subordination Constitution: The Story of *Hernandez v. Texas*” in *Race Law Stories* 273 (2008)

Pre-*Brown* cases:

Westminster School Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947)

Sweatt v. Painter, 339 U.S. 629 (1950)

Week of March 4:

Post-*Brown* cases:

Plyer v. Doe, 457 U.S. 202 (1982)

Kadmas v. Dickinson Public Schools, 487 U.S. 450 (1988)

Missouri v. Jenkins, 115 S. Ct. 2038 (1995)

EDUCATION -- funding

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)

Milliken v. Bradley, (*Milliken I*) 418 U.S. 717 (1974)

Parents Involved in Community Schools v. Seattle School District, 551 U.S. 701 (2007)

Zanita E. Fenton, Sleight of Hand or the Old Bait & Switch: Article III & The Politics of Self-Policing by the Court in *Parents Involved*, 63 *Univ. Miami L. Rev.* 561 (2009).

March 10-14 Spring Break

Week of March 18:

EDUCATION -- multiculturalism & affirmative action

Lau v. Nichols, 414 U.S. 563 (1974)

Valeria G. v. Wilson, 12 F.Supp. 2d 1007 (N.D. Cal. 1998)

University of California v. Bakke, 438 U.S. 265 (1978)

Rachel Moran, “The Heirs of *Brown*: The Story of *Grutter v. Bollinger*,” in *Race Law Stories* 451 (2008).

EMPLOYMENT

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)

Adarand Constructors, Inc. v. Peña, 115 S.Ct. 2097 (1995)

Week of March 25:

CRITICISMS of AFFIRMATIVE ACTION

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986)
Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996), *aff'd in part, rev'd in part*, 236 F.3d 256 (5th Cir. 2000)

VOTING DISCRIMINATION

Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966)
Johnson v. DeGrandy, 512 U.S. 997 (1994)
Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991)

Week of April 1:

CRIMINAL JUSTICE

-- Preemptory's

Hernandez v. New York, 500 U.S. 352 (1991)

Kevin R. Johnson, *The Song Remains the Same: The Story of Wren v United States,*" in *Race Law Stories* 419 (2008).

Whren v. United States, 517 U.S. 806 (1996)
United States v. Armstrong, 517 U.S. 456 (1996)

Florida v. Bostick, 501 U.S. 429 (1991)
Chicago v. Morales, 687 N.E.2d 53 (Ill. 1997)
People ex rel. Gallo v. Acuna, 929 P.2d 596 (Cal. 1997)

Furman v. Georgia, 408 U.S. 238
McCleskey v. Kemp, 481 U.S. 279 (1987)
McFarland v. Scott, 512 U.S. 1256 (1994) (Blackmun's dissent)

Week of Tuesday, April 8:

Furman v. Georgia, 408 U.S. 238
McCleskey v. Kemp, 481 U.S. 279 (1987)
McFarland v. Scott, 512 U.S. 1256 (1994) (Blackmun's dissent)

SPEECH

Contreras v. Crown Zellerbach, Inc, 565 P.2d 1173 (Wash. 1977)
Collin v. Smith, 578 F.2d 1197 (7th Cir. 1978), *cert. denied*, 439 U.S. 916 (1978)
New York Times v. Sullivan, 376 U.S. 254 (1964)
R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)
Texas v. Johnson, 491 U.S. 397 (1989)
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

Week of Tuesday, April 15:

Garrett Epps, "The Story of Al Smith: The First Amendment Meets Grandfather Peyote," in *Constitutional Law Stories* 455 (2009)

Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)

Tuesday, April 22: Last Day of Class

Themes, Solutions, Conclusions

Matsuda, Mari J., Looking to the Bottom: Critical Legal Studies and Reparations Minority Critiques of the Critical Legal Studies Movement, 22 *Harv. C.R.-C.L. L. Rev.* 323 (1987).