

**CIVIL RIGHTS REMEDIES  
FALL 2006 SYLLABUS**

Wake Forest University School of Law  
Professor Wendy Parker  
Thursday 3:00 - 4:40 p.m.  
Room 1319

About the Course. Fifty years after *Brown v. Board of Education*, our judicial system continues to struggle with race discrimination, and the resulting remedies have had a profound effect on our schools, work places, neighborhoods, and voting practices. (By race I include all races and ethnic groups.) This course will attempt to provide students an opportunity to explore and critique the judiciary's attempts to redress race discrimination. To the extent students are interested, we can also cover discrimination based on age, disability, or gender. Given that the course is a remedies course, it will take as a given legal liability and will question what should be done by the judiciary in response to that legal liability. Students will be expected both to understand and question current judicial approaches to redressing race discrimination. The class will also explore whether any remedy — other than an order to stop discriminating — should issue and whether monetary or injunctive relief is more appropriate for race discrimination. In sum, the course will examine how the judiciary should respond to race discrimination and the efficacy and competency of federal courts in redressing race discrimination. By way of contrast, the course will briefly examine the efficacy and competency of the federal Executive and Legislative branches to redress race discrimination.

What topics we specifically cover will depend in part on your interests. At this point, I intend to cover judicial remedies for racial discrimination in the areas of voting, housing, education, and voluntary affirmative action. Other possible topics include racial profiling after September 11th; Hurricane Katrina; the impact of affirmative action on Asian Americans; reparations; or any other appropriate topic suggested by the class.

Required Course Materials. Reading assignments for the first nine classes will comprise of

compilations of materials assembled and edited by me. For the remaining five classes, reading assignments will consist of the draft papers being presented by class members. The readings for the first class are attached.

Office Hours. Please feel free to stop by my office, Room 3303, at your convenience. My official office hours are 9:00 - 10:00 a.m. Tuesday and Thursday. If you wish to schedule an appointment, let me know and we can easily arrange a mutually convenient time. My office telephone number is 758-7322, or you can email me at <<parkerwm@law.wfu.edu>>.

Class Attendance and Participation. Class attendance is mandatory, and I expect you to be prepared to contribute to every class discussion. I hope that the format of the seminar will allow our discussion to be vigorous and thoughtful. For that to work, you need to have not only read, but also thought about, the assigned materials. You also need to be prepared to talk about your thoughts. I will provide hand outs detailing the material we'll cover in class so you can focus on talking instead of taking notes. (To that end, I expect that students will not need to use their computers during class.)

I will take attendance. If you need an excused absence, please send me a note (either by giving me the note or emailing it to me) stating that you need an excused absence. You do **not** need to tell me why, but the reason should be for an illness, personal emergency, family emergency, job interview, or attendance at a school-sponsored event.

Evaluation. Your grade for the course will be determined by two factors, weighted as follows:

- 75% Research paper
- 25% Class participation (including the quality of your contributions in the course of your classmates' presentations)

Research Paper. Each student shall write a research paper around 25 pages in length (double spaced, including footnotes). Each student must turn in both a statement of his or her topic, a rough draft and a final draft of the paper, along with presenting the rough draft during class. A one-paragraph

description of the topic on which you have chosen to write is **due in class on Thursday, September 7th**. On the paper describing your topic, please also let me know your preferred presentation day. Presentations will be held on November 2, 9, 16, 21, 30. I will try my best to accommodate your requested presentation day.

**A draft of your research paper will be due at 10:00 a.m. on the Monday before your scheduled presentation.** You may submit the draft paper via email. I will distribute copies of your draft paper to the class that day so that the class will have adequate time to prepare for your presentation. After your presentation, the class will discuss the subject of your draft paper and presentation. **All final papers are due by 10:00 a.m. on Friday, December 1.** You may **not** submit the final paper via email absent extraordinary reasons. Earlier submissions are welcome. Absent truly extraordinary circumstances, late papers (both draft and final) will not be accepted.

If you plan to fulfill the **upper level writing requirement** with this paper, you must obtain and properly complete the necessary form from the Registrar's Office. Students using this course to fulfill the upper level writing requirement should expect their draft papers to be more heavily edited by me than students who are not using this course to fulfill the upper level writing requirement. Otherwise, all students will be treated similarly, with similar expectations and requirements.

Selecting Paper Topics. To assist in selecting topics, you should read the various possible paper topics I have listed on the last pages of this syllabus and should feel free to make an appointment or drop by my office to discuss potential topics. I highly recommend that all students stop by to discuss their paper topics, both before and after they make their choice.

### **Possible Paper Topics.**

- Has school desegregation had a positive or negative effect on student achievement? On interracial/interethnic relationships among students?
- Has school desegregation had a positive or negative effect on the degree of integration in public elementary and secondary schools?
- What are the priorities for desegregating public colleges and universities?
- Has the State of North Carolina (or any of the other states which has undergone higher education desegregation) adequately desegregated its public colleges and universities?
- What will be the effect of charter schools on desegregation efforts? What should the effect be?
- Will No Child Left Behind benefit or harm minority school children?
- Under what circumstances, if any, should all-minority public schools or classes be permitted?
- Should elections for judges be subject to the Voting Rights Act?
- What are the effects of majority-minority voting districts?
- To what extent can/should legislators use race in the drawing of legislative districts?
- What is the role of the U.S. Department of Justice in approving changes in voting practices?
- When should the Voting Rights Act end?
- What non-traditional remedies would better remedy minority-vote dilution claims than majority-minority, single member voting districts?
- Should state laws prohibiting felons from voting be repealed because of their adverse impact on minorities?
- Should diversity be an acceptable reason for any voluntary affirmative action plan at the primary and secondary school level?
- Why is remedying past discrimination an acceptable reason for voluntary affirmative action plans?
- Should Congress be allowed to establish a minority federal set-aside program through §

8(a) of the Small Business Act, 15 U.S.C. § 637(a) [or any of the many minority federal set-aside programs]?

- Should public colleges and universities be able to use race/ethnicity as a factor in awarding scholarships?
- Should class be substituted for race in voluntary affirmative action plans?
- What are the priorities for desegregating public housing?
- Should housing “testers” be afforded more than nominal damages?
- How should mortgage lending discrimination be remedied?
- How should private housing discrimination be remedied?
- Are administrative remedies afforded by the U.S. Department of Housing and Urban Development (or the U.S. Department of Education or the Equal Employment Opportunity Commission) effective?
- How should discrimination in public accommodations be remedied?
- The Civil Rights Act of 1991 substantially changed available remedies for employment discrimination. Have those changes been effective?
- Should police departments document the race and ethnicity of persons stopped for traffic violations?
- When should reparations be awarded? Or consider the case for reparations for Tulsa, Rosewood, or school closings when schools integrated?
- Should Congress, or any other government actor, apologize for slavery? Pass any legislation akin to that after World War II for those of Japanese descent?
- Should the Dream Act (which benefits students without legal residency status) be enacted?
- Should diversity be a compelling governmental interest in primary and secondary schools?
- School race-based scholarships be constitutional?
- Discuss an example of the Executive or Judicial branch successfully or unsuccessfully redressing race discrimination.

# CIVIL RIGHTS REMEDIES

FALL 2006

PROFESSOR WENDY PARKER

## UNIT 1: INTRODUCTION TO INTEGRATION

1. ROY L. BROOKS, GILBERT PAUL CARRASCO, & MICHAEL SELMI, CIVIL RIGHTS LITIGATION: CASES AND MATERIALS 13-26 (2002)
2. JUAN F. PEREA, ET AL., RACE AND RACES 459-60 (2000)
3. Elizabeth Martinez, *Beyond Black/White: The Racisms of Our Time* (1993)
4. Daniel de Vise, *Naval Academy's Questions About Race, Religion Stir Discord*, WASH. POST, July 11, 2006, at A10
5. John Railey, *A Colorblind Society Still Just an Ideal in Academia*, WINSTON-SALEM J., Aug. 13, 2006

### Questions to Ponder:

1. What is integration? Is it different from diversity?
2. What are the benefits of integration? What can go wrong with integration?
3. What type of groups (racial, ethnic, gender, sexual orientation, religion, disabled), if any, should pursue integration, and in what contexts?
4. Have you ever attended an integrated school or lived in an integrated school? What made it integrated? What was it like?
5. Should the Naval Academy ask questions about race and religion in its sponsorship program?
6. Should historically black colleges and universities seek African-American leaders? White leaders?

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## UNIT 2. *BROWN V. UNITED STATES OF AMERICA*

We will debate a hypothetical lawsuit, *Brown v. United States of America*. The suit is brought by the family of Oliver Brown against the United States of America. The suit will allege that, as a nation, the United States has failed to deliver the relief promised by the Supreme Court's decision in *Brown v. Board of Education of Topeka, Kansas* because:

- \* The resegregation of many of the nation's schools districts has created a situation of *de facto* segregation that, in terms of practical effects, is no different from the *de jure* segregation that prevailed before the *Brown* decision.
- \* Minority students must have access to majority white elementary and secondary schools to achieve their highest potential, and such access has not been adequately provided in the 50 years since the *Brown* decision.

A group of parents, Coalition for Quality Education, has intervened in the lawsuit. The group contends that it is insulting to presume that children of color must be in an integrated school to learn. The group admits that an achievement gap and resource gap exist, but believes that integration is irrelevant to closing the gaps. The group also contends that courts have proven ineffective in redressing racial discrimination and that this is a matter best left for other branches of government. Outside of litigation, the group seeks vouchers and charter schools as the remedy to educational inequities.

***Think about what your position would be in such a lawsuit.*** To prepare, here are your readings:

1. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)
2. Jack M. Balkin, editor, *WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S LANDMARK CIVIL RIGHTS DECISION* 8-25 (2001)
3. CHARLES T. CLOTFELTER, *AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION* 178-92 (2004)
4. KEVIN BROWN, *RACE, LAW AND EDUCATION IN THE POST-DESEGREGATION ERA* 11-14, 16-20 (2005)
5. Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 157-69 (1991)
6. KEVIN BROWN, *RACE, LAW AND EDUCATION IN THE POST-DESEGREGATION ERA* 280-96 (2005) **[optional reading]**

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## UNIT 3A: WAS *BROWN V. BOARD OF EDUCATION* CORRECTLY DECIDED?

1. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). [**optional reading - in last week's reading packet**]
2. DERRICK BELL, SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM 20-28 (2004).

Given the class's support of the "separate but equal" arguments in *Brown v. United States*, was *Brown v. Board of Education* wrongly decided? Would Professor Bell's draft opinion have been a better approach?

## UNIT 3B: PRINCE EDWARD'S COUNTY AND THE DEBATE OVER REPARATIONS

1. BOB SMITH, THEY CLOSED THEIR SCHOOLS: PRINCE EDWARD COUNTY, VIRGINIA, 1951-1964 at 236-41 (1965).
2. A. Barton Hinkle, *Editorial: Bill Would Provide Just Recompense in Educ.*, RICH. TIMES-DISPATCH (Jan. 20, 2004). [**optional reading**]
3. VA. CODE. ANN. sec. 23-38.53:21-24 (2004).
4. Charles J. Oglegree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279 (2003) (selections from).



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### UNIT 4: AFFIRMATIVE ACTION

1. Wendy Parker, *The Story of Grutter v. Bollinger: Affirmative Action Wins – At Least for Now* (draft).
2. TERRY EASTLAND, *ENDING AFFIRMATIVE ACTION: THE CASE FOR COLORBLIND JUSTICE* 195-204 (1997).
3. Alex M. Johnson, Jr., *Bid Whist, Tonk, and United States v. Fordice: Why Integrationalism Fails African-Americans Again*, 81 CAL. L. REV. 1401 (1993) (selections from).
4. Brief of the United States in *Meredith v. Jefferson County Board of Education* (filed Aug. 21, 2006) [**optional reading**]

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## UNIT 5: ECONOMIC INTEGRATION

5. Alan Finder, *As Test Scores Jump, Raleigh Credits Integration by Income*, N.Y. TIMES, Sept. 25, 2005.
6. UNC Center for Civil Rights, *The Socioeconomic Composition of the Public Schools: A Crucial Consideration in Student Assignment Policy* 1-4, 6-8 (Jan. 7, 2005).
7. James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 249-260 (1999)[**optional reading**].
8. Cheryl I. Harris & Devon W. Carbado, *Loot or Find: Fact or Frame?* in AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA (David Dante Troutt, ed.) (2006).

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## UNIT 6: IMMIGRATION

9. HIROSHI MOTOMURA, *AMERICANS IN WAITING* 1-14, 201-04 (2006).
10. Jennifer Gordon, *Let Them Vote*, in *A COMMUNITY OF EQUALS* (1999).
11. Information on REAL ID Act (legislation enacted in 2005).
12. Information on Dream Act (legislation introduced in 2003).

### *Questions to Ponder*

1. Using the terms of Professor Motomura, should immigration be considered a matter of contract, affiliation, or transition?
2. Should non- U.S. citizens be allowed to vote in school board elections? Any elections?
3. Should non- U.S. citizens be allowed to have a driver's license?
4. Should non- U.S. citizens be eligible for federal financial aid for higher education? For in-state tuition?

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## UNIT 7: VOTING RIGHTS

1. *Miller v. Johnson*, 515 U.S. 900 (1995) (selections from majority and dissenting opinions).
2. SAMUEL ISSACHAROFF, PAMELA S. KARLAN, & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 915-20, 938-41(2002).
3. SPENCER OVERTON, *STEALING DEMOCRACY* 65-86 (2006). **[optional reading]**
4. SPENCER OVERTON, *STEALING DEMOCRACY* 131-35 (2006).
5. Summary of Federal Election Act of 2006 (passed by House Sept. 20, 2006).
6. Spencer Overton, *Voter Identification*, – MICH. L. REV. —, (forthcoming 2006).
7. Martiga Lohn, *Islamic Convert Wins House Nomination*, WASH. POST, Sept. 14, 2006, at A32. **[optional reading]**
8. Adam Nossiter, *Race Is Top Issue in Bid to Represent Memphis*, N.Y. TIMES, Sept. 27, 2006. **[optional reading]**

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## **UNIT 8A: SAME SEX MARRIAGE**

1. SAME-SEX MARRIAGE: PRO AND CON: A READER 144-69 (Andrew Sullivan, ed. 2004).

## **UNIT 8B: INTERSECTIONALITY BETWEEN RACE AND GENDER**

1. Audre Lorde, *The Uses of Anger: Women Responding to Racism*, in RACE: AN ANTHOLOGY IN THE FIRST PERSON 98-109 (Bart Schneider, ed.) (1997).
2. Regina Austin, *Sapphire Bound!* in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 426-35 (David Kairys, ed. 1998).