

Law and Society in US History

21H.224 Spring 2003

Third Writing Assignment

Choose **one** of the following three assignments. Your paper is due in Class 23. You may submit the paper in class one day before the due date or by email attachment. If you send the paper by attachment, you must keep a backup paper copy and be ready to submit that if there are any computer difficulties. Extensions will be granted only for good reasons explained well in advance; computer malfunctions are never an acceptable excuse for a late submission. Adherence to standards of academic honesty is required; please exercise special care with sources found on the worldwide web. You may use any citation system that you wish (MLA parenthetical reference style, *Chicago Manual of Style*, legal citation), as long as your references are clear and complete.

1. Rewriting *Brown*. In a recent book entitled *What Brown v. Board of Education Should Have Said* (2001), leading law professors shared their versions of the *Brown* decision. Now it's your chance. If you were a Justice in 1954, what would your decision say? You should address the issues presented by the Fourteenth Amendment and *Plessy v. Ferguson* (1896). Among the questions to consider: will you overturn *Plessy* or merely state that it does not apply in this case? Was *Plessy* wrongly decided in 1896 or have changing times made it no longer applicable? What difference does the history of the Fourteenth Amendment (and the intentions of its framers) make for your decision? What will you say about enforcement of the decision? Note: if you choose this paper, you should read the full text of *Brown* (available on the class website or at 347 U.S. 483 (1954) and you may use any additional authorities (especially Kelly and Horwitz) that you wish. You may also need to go back to the readings about *Plessy* to write your decision.

2. Amicus Brief. On May 7, the Ninth Circuit United States Court of Appeals will hear oral argument in the case of *Oregon v. Ashcroft*, which considers a challenge to Oregon's Death with Dignity Act. Write a brief as *amicus curiae* (a friend of the Court) in which you advise the Court on the law's constitutionality. You may wish to draw on broad historical trends as well as specific constitutional claims in your argument. Note: if you choose this paper, check out the class website, which has links to materials surrounding *Oregon v. Ashcroft*.

3. Design Your Own Topic. As before, if you would like to write a paper that involves more in-depth historical research into one of the cases that we have studied in the last two or three weeks, you can do that as well, as long as you consult with me in advance. Examples could include the free-speech rights of Nazis or Klansmen, the experience of Jehovah's Witnesses or other religious minorities in the courts, tensions between the rights of the accused and victims' rights, or broad issues raised by the work of the Warren Court.