



Unit 1

Civil Rights Litigation: Purposes, Processes, and Promises

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Unit Questions

How do the fundamental values and principles of American constitutional government shape our legal system, including its rules and procedures? How do ordinary people use the legal system to realize the values and principles of American constitutional government?

Length of Unit

The length of this unit is dependent on your needs for instruction and the students' background knowledge. Depending on the extent to which students have already covered certain topics—for example, the distinction between state and federal courts—parts of the following materials can be omitted at the teacher's discretion. The whole unit is recommended if you want students to fully answer the unit questions above.

Lesson 1 provides important background knowledge if your students will be doing any further work with litigation.

Lesson 2 is necessary if you are going to do a mock trial with students, and will be referenced in the mock trial units.

Lesson 3 can be combined with Lesson 1 and shortened. In its full version, Lesson 3 folds in some independent research for students and gives them more background on specific civil rights laws.

Overview

The United States system of government and law exists and is structured to protect our rights to liberty, democratic self-governance, and equal protection of the law. Individuals can use the legal system to advocate for their civil rights and work to close any gaps that exist between American constitutional ideals and reality. Civil rights litigation is important in upholding the rights of all Americans, including the most vulnerable members of society. Thousands of civil rights cases over the last fifty years have transformed schools, prisons, mental health facilities, housing authorities, police departments, child welfare agencies and more. Ordinary citizens have used litigation to enforce federal statutes and constitutional provisions that require fair treatment by government and prohibit discrimination on the basis of race, color, sex, disability, religion, familial status and national origin. In the process, they have protected and enforced their own rights as well as the rights of countless others.

This unit introduces students to the concept of civil rights litigation. It asks students to consider how the litigation process reflects fundamental values and principles of American constitutional government. By the end of this unit, students should be prepared to talk about how the civil litigation process reflects these values and principles, and to describe civil rights litigation and its current scope.

Unit Objectives and Standards

By the end of this unit, students will be able to:

- Explain the purpose of litigation in American constitutional government, and differentiate between criminal and civil litigation.
 - [NSCG III.D.1](#), [NSCG III.D.2](#);
 - [MI-HSCE 3.4.1](#);
 - [CCSS.ELA-LITERACY.RI.9-10.1](#);
 - [C3 D2.Civ.1.9-12](#), [C3 D2.Civ.3.9-12](#)

- List and explain the steps in civil litigation, and discuss how the civil litigation process embodies values and principles of American constitutional government.
 - [NSCG III.D.1](#), [NSCG III.D.2](#), [NSCG V.B.I](#), [NSCG V.B.2](#);
 - [MI-HSCE 3.4.1](#); [MI-HSCE 5.3.7](#);
 - [CCSS.ELA-LITERACY.RI.9-10.1](#);
 - [C3 D2.Civ.8.9-12](#), [C3 D2.Civ.11.9-12](#)

- Analyze and formulate an argument about how the civil litigation process embodies the values and principles of American constitutional government.
 - [NSCG V.B.2](#)
 - [MI-HSCE 2.2.1](#), [MI-HSCE 6.1.5](#);
 - [CCSS.ELA-LITERACY.RI.9-10.9](#), [CCSS.ELA-LITERACY.W.9-10.1](#), [CCSS.ELA-LITERACY.SL.9-10.1](#);
 - [C3 D2.Civ.5.9-12](#), [C3 D2.Civ.6.9-12](#)

- Identify past and current civil rights cases and explain their significance in American history, noting how people use the legal system to close the gaps between constitutional ideals and reality.
 - [NSCG III.D.1](#), [NSCG III.D.2](#), [NSCG V.B.I](#), [NSCG V.B.2](#);
 - [MI-HSCE 2.2.2](#), [MI-HSCE 3.4.2](#); [MI-HSCE 5.3.8](#);
 - [CCSS.ELA-LITERACY.SL.9-10.4](#), [CCSS.ELA-LITERACY.SL.9-10.5](#), [CCSS.ELA-LITERACY.SL.9-10.6](#);
 - [C3 D2.Civ.3.9-12](#), [C3 D2.Civ.4.9-12](#)

Anticipated Student Understanding/Challenges to Understanding

This unit assumes that students have been introduced to the values and principles of American constitutional government and have already explored, to some extent, how those values and principles influence government structures and practices.

This unit also assumes that students have already learned about the judicial system and the way courts function as a branch of government. They should know that the courts help shape the law in the United States by announcing precedents that other courts then follow.

Because this unit teaches students about civil rights litigation, some historical background on civil rights struggles in the United States would be helpful. Students should be aware that the landmark civil rights legislation of the 1960s—the Civil Rights Act of 1964, the Voting Rights Act, the Fair Housing Act—was preceded by decades of civil rights advocacy and litigation,

Unit 1: Overview
Introduction to Civil Rights and Litigation

including unsuccessful claims like *Plessy v. Ferguson*. If students do not have sufficient background information, there are places within the unit that cue the teacher to provide a short lesson.

Materials Needed

What we provide:

- Unit handouts
- [Brown v. Board background information](#)
- [Brown v. Board complaint](#)
- [Brown v. Board redacted complaint](#) (to show students without revealing the name of the case)
- [Civil Rights Litigation Clearinghouse Search page](#)

What you provide:

- Classroom and student Internet access
- Some examples of civil and criminal litigation from the news
- Teacher-provided writing rubric and prompt for an argumentative essay

NOTE: If going on to Unit 2, ask students to save their materials from this unit.

Unit Assessment

Students write a formal, argumentative essay answering the question, “Does civil litigation procedure adequately reflect the values and principles of American constitutional government?”

References

- Ashbrook, Alexandra M. (2004). *StreetLaw’s Classroom Guide to Mock Trials and Moot Courts*. New York: McGraw Hill.
- Feinman, Jay M. (2010). *Law 101: Everything You Need to Know About American Law*. Oxford: Oxford University Press.
- Mueller, Christopher B. & Kirkpatrick, Laird C. (2011). *Evidence Under the Rules: Text, Cases, and Problems*, pp. 4-12.
- Schmidt, Christopher W. (2016). *The Civil Rights-Civil Liberties Divide*, Stanford Journal of Civil Rights and Civil Liberties 12:1.
- Tigar, Michael E. (2014). *Huck Finn, The River and Trying Your Case*. Kentucky Bar Association.

Lessons

Lesson 1: What is litigation? Why do we need it?

Students will learn introductory material about litigation and will evaluate the purposes of litigation.

Students will be able to:

- Define litigation.
- Distinguish between criminal and civil litigation, and between state and federal litigation.
- Explain several purposes of litigation in the United States.

Lesson 2: What are the steps of the litigation process? Are these court procedures fair?

Students will learn about litigation procedures and evaluate how those procedures comport with notion of fairness.

Students will be able to:

- Identify criteria for fair decision making.
- Describe civil court procedure.
- Make an argument about the degree to which court procedural rules reflect the rule of law, justice, due process, and equality.

Lesson 3: What is civil rights litigation? What purposes does it serve?

Students will use the Civil Rights Litigation Clearinghouse website to explore recent civil rights cases and learn about the concepts of civil rights and civil liberties.

Students will be able to:

- Define civil rights and civil liberties.
- Explain that there are a variety of constitutional clauses and statutes that exist to guarantee people's civil rights and liberties.
- Independently research and present court cases that have enforced civil rights laws, aimed at safeguarding constitutional rights.
- Describe how people use the legal system to enforce their civil rights and libert

Lesson 1
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Lesson Objectives

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- Explain several purposes of litigation in the United States.

Materials

- Handout 1: Introduction to Litigation
- Links to or copies of current civil and criminal litigation in the news. A simple Google news search of “lawsuits” or “litigation” should yield some useful results.
- [Brown v. Board complaint](#), projected or photocopied
- [Brown v. Board redacted complaint](#)
- [Brown v. Board background information](#)

Lesson Assessments

- Student examples and explanations of civil and criminal cases
- Post-reading check for understanding

Instructional Activities

Anticipatory Set

- Provide students with the basic definition of *litigation*: The process of resolving disputes through a public court system. They may know the term “sue” or “lawsuit,” rather than or in addition to “litigation.” What do these terms bring to mind? Is litigation a good or bad thing? Ask a few students to explain why. The purpose of this exercise is to lay out the opposing viewpoints: lawsuits can be positive, because they enforce the law and provide compensation to people who are illegally harmed, or negative, because they are costly, potentially unfair, and preempt other ways of resolving disputes.
- Show students a redacted version of the [Brown v. Board complaint](#) that does not include the heading with the primary parties’ names. Don’t tell them what the case is. Explain to them that this is an example of a *complaint* initiating a lawsuit/the litigation process. Ask them if they know what civil rights case this complaint initiated. Allow a few guesses

before revealing the answer and showing an unredacted version of the [Brown v. Board complaint](#).

- Provide students with a brief explanation of [Brown v. Board](#) and its significance. Litigation like *Brown v. Board* is an essential part of American constitutional democracy. If students are interested in the decades of litigation leading up to *Brown*, they can read more at: <http://www.naacp.org/pages/naacp-legal-history>. For information on the enforcement of *Brown* and its impact on schools today, they can read more at <http://www.naacpldf.org/case/brown-v-board-education>.

Direct Instruction

- Ask students to read **Handout 1: Introduction to Litigation** and respond to the question: How does this reading support, extend, or challenge your previous understanding of litigation and its purposes?
- Do a quick written or oral check for understanding: What is litigation? What is criminal litigation? What is civil litigation? What is the difference between a factual and a legal issue? Write terms and definitions on the board (for example, in the form of a chart, shown directly below).

Intro to Litigation

Litigation is a process for using courts to resolve disputes among individuals or groups; it is characterized by formal rules, structured processes, and neutral and independent decisionmakers.

Civil Litigation

- Examples: property or contract disputes, personal injury, civil rights cases
- Type of law: civil law
- Purpose: to deal with disputes between individuals and organizations & remedy harms
- Parties: plaintiff v. defendant
- Standard of proof: preponderance of evidence (more likely than not)
- Decision: defendant can be found liable or not liable
- Potential outcome (if defendant loses): compensation from defendant to plaintiff or order to change defendant's behavior

Criminal Litigation

- Examples: theft, robbery, murder
- Type of law: criminal law
- Purpose: to maintain stability of state & society by punishing/deterring offenders
- Parties: state (prosecutor) v. defendant
- Standard of proof: beyond reasonable doubt
- Decision: defendant is convicted if guilty, acquitted if not guilty
- Potential outcome (if defendant loses): fines, imprisonment, or even death

Factual Dispute- when the parties disagree about what has happened.

Legal Dispute- when the parties disagree about the law and what it requires given the facts.

Guided Practice

- Show students articles about several current court cases in newspapers or other media and ask them to identify the cases as criminal or civil. What is the alleged legal violation? Is the main issue a legal or a factual one? What are the possible remedies the prosecutor/plaintiff seeks? Some suggested websites include:
 - ABC News, <http://abcnews.go.com/topics/news/crime.htm>
 - Associated Press, <http://bigstory.ap.org/tags/crime>
 - Chicago Tribune, <http://www.chicagotribune.com/>
 - Detroit News, <http://www.detroitnews.com/>
 - Los Angeles Times, <http://www.latimes.com/>
 - MLive, <http://www.mlive.com/#/0>
 - NBC News, <http://www.nbcnews.com/news/crime-courts>
 - New York Daily News, <http://www.nydailynews.com/news/crime>
 - New York Times, <http://www.nytimes.com/topic/subject/crime-and-criminals>
 - Wall Street Journal, <http://www.wsj.com/news/types/ny-crime>
- Ask students to discuss the purposes of civil lawsuits. Give the following scenario:
- John Prisoner is an inmate in a jail in Anywhere, U.S. John has paid \$20 for an annual subscription to Sports Illustrated magazine. But the Anywhere Jail refuses to deliver any magazines to inmates; jail officials say that magazines have been used in the past and could be used again to smuggle contraband into the jail. Accordingly, for the past year, whenever a new issue of Sports Illustrated has arrived at the jail for John, officials have confiscated it and thrown it away. John thinks that contraband can't actually be smuggled into the jails using magazines, if those magazines are run through a metal detector and a dog sniff test. He wants to bring a lawsuit, arguing that he's entitled under the U.S. Constitution's First Amendment to receive the magazine.

U.S. Constitution, Amendment 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

- First, ask students to identify the factual and legal dispute(s), if any, in the above scenario. Check their understanding of these terms.
- Next, address the various purposes of civil litigation: If John Prisoner decides to sue, what would be the purpose of his lawsuit? What are the purposes of civil lawsuits in general? Ask students to fill out the chart below to help answer these questions.

THIS SCENARIO	GENERALLY
What John Prisoner wants:	What plaintiffs want more generally:
To get a refund of the \$20 subscription fee.	To get money damages.
To obtain a court order requiring jail officials to allow John to receive the magazine.	To obtain a court order that requires the defendant to stop doing the challenged conduct.
To make it clear to the defendant jail officials that they have to treat inmates fairly.	To send a message, demand fair treatment.
What society wants in this case:	What society wants in lawsuits more generally:
To resolve, factually, whether magazines present a risk of contraband.	To resolve factual disputes.
To resolve, legally, whether inmates have a First Amendment right to receive magazines.	To resolve legal disputes and articulate the meaning of constitutional provisions.
To make it clear to <i>all</i> jail officials that they have to treat inmates fairly.	To deter others from committing similar acts.

- Recall (from 1, above) that lawsuits also come with downsides: they are costly and time consuming, and may preempt other ways of resolving disputes.

Closure

- How did today's lesson support, extend, or challenge your previous understanding of litigation and its purposes? Ask students to discuss, write a journal entry, or complete an exit ticket.

Homework/Independent Practice

- Explain to students that they should find one example of a civil case and one example of a criminal case in the news and be prepared to share during the next class period. They should turn in a brief report on each case, summarizing whether it is civil or criminal; what the alleged legal violation is; whether the main issue is legal or factual or both; and what remedy the prosecutor or plaintiff seeks. In each case, they should explain the basis of their conclusion.

Handout 1 *Introduction to Litigation*

What is Litigation?

Individuals, companies, and institutions frequently come into conflict with one another. Many of these conflicts raise no legal issues. For example, two friends may argue about something one of them said about the other. Or a store might open very close to a similar store, and undermine the first store's business. Other times, people come into conflict that *does* involve the law, but they try to resolve the dispute without a lawsuit. But a lawsuit may arise if someone is harmed by the behavior of someone else—an individual or organization—and feels that the harmful behavior violates the Constitution or other laws. Bringing a lawsuit is one way the injured person can seek compensation for the injury, or a change in the harmful behavior. *Litigation*, then, is the legal system's mechanism for resolving disputes.

Types of Litigation: Civil vs. Criminal

There are two basic types of litigation—civil and criminal. *Civil litigation* is the legal system's process for resolving disputes among individuals or groups. It occurs when someone is alleged to violate *civil law*—a set of rules governing people's behavior. Civil litigation has two sides: the *plaintiff*, who feels that he/she has been wronged in some way, and the *defendant*, who the plaintiff alleges committed the wrong. The plaintiff initiates the lawsuit—or *sues*—by filing a complaint against the defendant. In civil litigation, the plaintiff asks the court to order the defendant to remedy a wrong, often in the form of monetary compensation to the plaintiff.

Criminal litigation is the legal system's process for resolving accusations made by the government that an individual (or, occasionally, a corporation) has committed a crime—a behavior that is harmful to society and is for that reason prohibited by the government under criminal law. Criminal litigation also has two sides: the *prosecutor*, a lawyer representing the government (or, as it is sometimes expressed, the people) who initiates litigation, and the *defendant*, who the prosecutor alleges committed the crime. In the modern United States, an individual can never file criminal charges against another person; only the prosecutor, on behalf of the government, can file criminal charges in court. In criminal litigation, the prosecutor asks the judge or jury to find the defendant guilty and punish him/her in some way, often by imprisonment.

Potential Outcomes

One of the most fundamental distinctions between civil and criminal litigation is in the notion of punishment. In criminal litigation, the potential penalty if the defendant is *found guilty*, or *convicted*, of a crime can include a fine, imprisonment, or even the death penalty, which remains the punishment for murder in some states. If the defendant wins, the judgment is called an *acquittal*, or a *not-guilty* verdict.

In contrast, a defendant in civil litigation is *never* incarcerated. Instead, a typical remedy if the defendant is *found liable* (the terms “convicted” or “guilty” are used only for criminal litigation) is a court order to the defendant to pay money damages or to start or stop doing something. A losing defendant in civil litigation often reimburses the plaintiff for losses caused by the

defendant's behavior. The idea of damages is usually not to punish the defendant, but to compensate the plaintiff.

Standards of Proof

The standard of proof is also very different in a criminal case versus a civil case. More evidence is needed to find the accused at fault in criminal cases than to find the defendant at fault in civil ones. To convict someone of a crime, the prosecution must show there is *proof beyond a reasonable doubt* that the person committed the crime. Judges and juries cannot convict someone they believe probably committed the crime or likely is guilty; rather, they must be almost certain. This makes it less likely that an innocent person will be wrongfully convicted and imprisoned. Civil cases, in contrast, usually use looser standards of proof such as “the preponderance of the evidence” standard, which asks if it was “more likely than not” that something occurred in a certain way. The difference in standards exists because civil liability is considered less blameworthy and because civil consequences are not designed to punish, but to repay the plaintiff for loss.

The Same Conduct Can Produce Civil and Criminal Liability

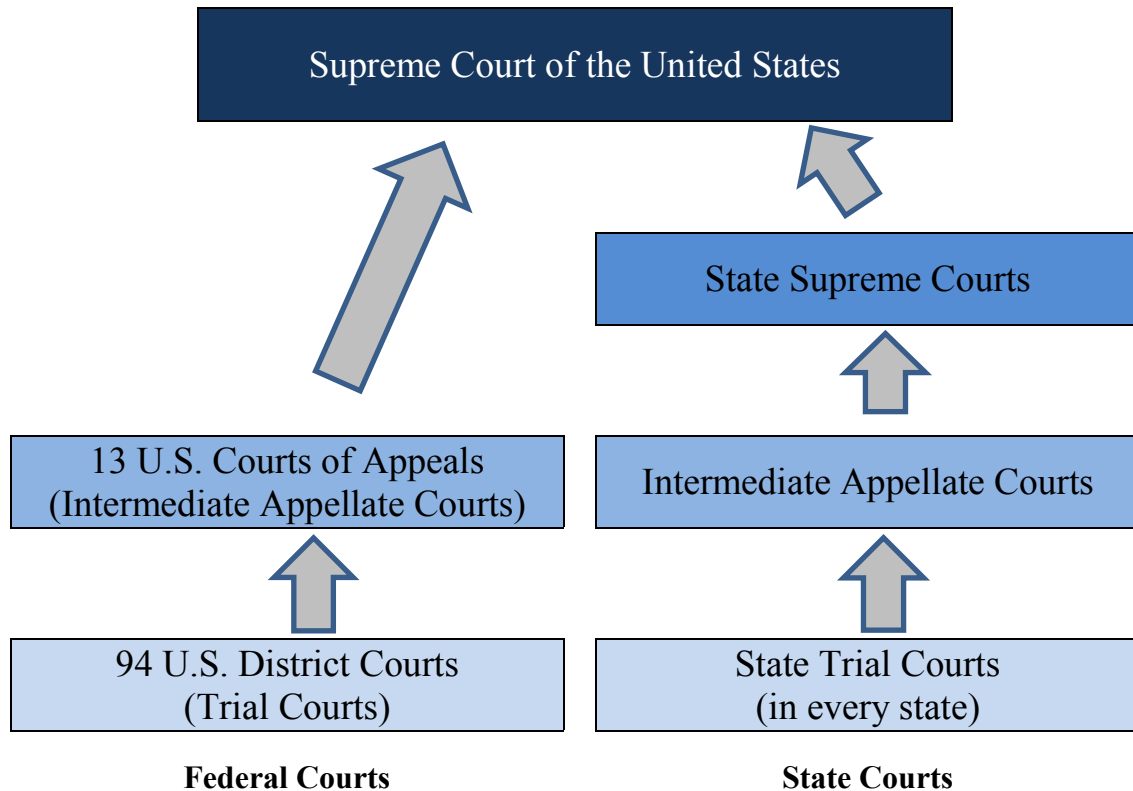
Murder, theft, and robbery are common examples of crimes that, if committed, can result in criminal litigation. Alternatively, divorce proceedings, property disputes, and personal injury claims are all examples of disputes that civil litigation can help resolve. Unlike these standard examples, some conduct is not so easily identifiable as either criminal or civil. In fact, although criminal and civil cases are treated very differently, the very same conduct can result in *both* criminal *and* civil liability. In other words, someone can violate the criminal law *and* the civil law at the same time! For instance, say you intentionally take your friend’s iPhone, without his or her permission, and refuse to give it back. In doing so, you would have committed a crime known as *theft*. As a consequence of committing theft, you might be *punished* by criminal penalties—including community service or even jail time. At the same time, you would have also committed a civil law violation known as *conversion*—an obscure way of saying that you took something that didn’t belong to you. As a consequence of committing conversion, you would be required to give the iPhone back to your friend or pay him the price of the phone. In the civil context, the goal is to *compensate* your friend for the *injury* that you caused him—in this case, the injury of losing his iPhone.

The Court System

Every state has its own court system. In addition, there is a federal court system, which is for the entire country. Lawsuits can be filed in either state or federal court. Typically, state courts hear criminal and civil cases regarding state law. Federal courts hear cases involving federal law. In certain circumstances, however, a federal court may preside over questions of state law, and vice versa. Each system has its own procedural rules, but the basic structure of the litigation process is the same.

Courts are hierarchical. Cases begin in state or federal *trial courts*. If one of the parties loses their case, they can usually appeal to an intermediate *appellate court*, the next highest level. In state court litigation, parties may be able to appeal next to the state supreme court. The U.S. Supreme Court is the nation’s highest court. It can only decide questions of federal law. For

questions about state law, the state supreme courts are the top layer. This diagram illustrates the relationship between these systems:



Types of Disputes: Factual vs. Legal

Litigation can concern *factual disputes*, *legal disputes*, or both. A factual dispute occurs when the parties disagree about what has happened. In *Brown v. Board*, if the school district had disagreed that the schools were segregated, that would have been a factual dispute. However, the issue in *Brown v. Board* was a legal dispute—a disagreement about the legal significance of the facts. Since the parties agreed that the schools were segregated, the court was called upon to determine whether such segregation violated the Fourteenth Amendment of the Constitution. The *Brown v. Board* case raised a legal, not a factual, dispute.

The Pros and Cons of Litigation

Litigation serves many purposes. It can force defendants who have violated the law to stop and compensate those they have harmed. In addition, the possibility of litigation and the penalties that may come from it encourage others to follow the law. Litigation can draw attention to a problem, and help people to organize politically to solve it. Finally, litigation is a way for the values underlying the law to be articulated, reinforced, and worked out in new situations.

At the same time, litigation is frequently criticized. The main criticisms are:

- Expense. Plaintiffs, if they win, typically pay between 30% and 40% of their recovered damages to their lawyers. Defendants typically pay lawyers by the hour—and there can

be many hours. Even defendants who eventually win suits against them have often spent a great deal of money to defend.

- Delay. Lawsuits can take a great deal of time.
- Unduly broad threat. The prospect of lawsuits may induce potential defendants to avoid particular kinds of beneficial activities. For example, some analysts think that doctors are less likely to be obstetricians, because lawsuits are particularly prevalent in that area of medical practice. (The evidence on this point is mixed.)
- Diversion. Lawsuits may divert the parties from other less expensive and perhaps more effective kinds of solutions to their disputes.

Lesson 2

What are the steps of the litigation process? Are these court procedures fair?

Lesson Objectives

Students will be able to:

- Identify criteria for fair decision-making.
- Describe civil court procedure.
- Make an argument about the degree to which court procedural rules reflect the rule of law, justice, due process, and equality.

Materials

- Handout 2: The Litigation Process
- Handout 3: Introduction to America's Core Democratic Values
- Handout 4: Court Procedure and Core Democratic Values and accompanying answer key

Lesson Assessments

- Handout 4
- Students write their initial thoughts about the question, “Does civil litigation procedure adequately reflect the values and principles of American constitutional government?”

Instructional Activities

Anticipatory Set

- Ask a few students to share cases they found for homework and discuss what makes each case a criminal case or a civil case. Guide students to remember that:
 - *Criminal litigation* happens when an individual (or corporation) harms society by breaking the law as laid out in the federal or state criminal code. The person who files the complaint in court is called the *prosecutor*. The person accused of wrongdoing is called the *defendant*. Potential penalties if the defendant is found guilty/convicted of a crime can include a fine, imprisonment, or capital punishment. If the defendant wins, the judgment is called an *acquittal*, or a *not-guilty* verdict.
 - *Civil litigation* involves disputes among individuals, groups of individuals, or institutions. Civil litigation has two sides. The plaintiff is the party who feels that he/she has been wronged in some way. The plaintiff initiates the lawsuit—or *sues*—the party he or she feels is responsible for that wrong. The *suit* begins with

the plaintiff filing a *complaint* in a trial court accusing an individual or institution of violating the law.

- Now ask students to consider the following scenario:
 - A student, John Doe, attended Any City High School. Principal Smith was concerned about marijuana use at the school, so she conducted a search of all the students' lockers. Principal Smith's search of John's locker turned up no marijuana or other drugs. But when she was looking for pot, Principal Smith came across a smartphone in the locker, labeled with the name Richard Roe. She confiscated the phone and investigated. It took her just one conversation with Richard, another Any City High School student, to learn that he had reported the phone stolen the day before. The next day, Principal Smith suspended John from school for two weeks. John and his parents were warned not to talk about the matter with Richard or his parents; in fact, Principal Smith said, if they did, the suspension would be converted to expulsion.
 - John and his parents contended that he did not steal the phone. They asked for the matter to be reviewed by the School Board, whose next scheduled meeting was two days later. The Doe family asked for a chance to explain John's side of the story, but the Board refused to allow them any opportunity to speak. Among the school board's members were Principal Smith's husband and Richard Roe's mother. The Board approved John's suspension based on Principal Smith's statement that she found the phone in John's locker, and Richard Roe's report to the Principal that his phone had been stolen.
- Solicit students' responses to this scenario. Explain to them that whether or not the principal was right to search lockers in the first place, the law is clear that students do not have privacy rights against searches of school property—including their school lockers. (Fourth Amendment protections outside of school are much stronger.) The issue is not whether the search was lawful, but whether the process used to punish him, by both Principal Smith and the School Board, was fair. What about the situation seems unfair; what seems fair about what happened, and what might be changed to make it a fairer process?
- As students are sharing their ideas, create a list of "criteria for fair process." Try to structure your questions so that you have a list that includes at least the following:

Principle	Satisfied here?
People accused of misconduct should receive notice of the accusation against them, and of the evidence on which that accusation is based.	Yes.
The accused should have an opportunity to adequately research the facts, evidence, and laws.	No. The Does were forbidden to talk to the Roes, and were also given only two days to prepare for the School Board meeting.

<u>Principle</u>	<u>Satisfied here?</u>
Parties must have an opportunity to present the relevant facts and arguments to the decision maker in the case.	No. The Does were not allowed to address the School Board, either to present facts (for example, an alternative explanation of where the cell phone came from) or arguments (for example, a plea for a more lenient punishment).
The decisionmaker should be neutral , without self-interest in the dispute, and not likely to play favorites.	No. Principal Smith may have been neutral, but the Board was not; two members had some kind of interest in the matter.
A decision should be based solely on the evidence presented .	Maybe: hard to say from the description.
Sufficient evidence must support the decision.	Maybe: there's good evidence that the phone was stolen, but none how it got into John's locker.

- When a dispute is in a court—rather than, like this one, in front of a school principal or school board—these protections still apply, and others are added. Additional procedural protections that are required for court proceedings include:
 - Rules governing what kind of evidence can be considered
 - A record of the proceeding to facilitate appeal
 - A chance to appeal to a different court to correct serious errors

Guided Practice

- Introduce students to the concept of court procedure—a body of rules that outline the process of civil litigation from beginning to end. Explain that court procedure is put in place to ensure that the litigation process is fair, whatever the lawsuit is about.
- Provide them with **Handout 2: The Litigation Process**. Depending on the needs of your students, you may want to break the reading up and discuss it in segments. For example, you could assign students to read Part I and discuss before moving on to read about what happens during a trial.
- After students have read, do a check for understanding either through whole group discussion or by giving students a brief reading quiz. For example, you might ask students to list in order the main steps in the litigation process and explain each step, or you could have students walk through each part and create a chart for the core concepts, as shown below.

The Litigation Process: Core Concepts (Summary of Handout 2)

Part I: Pretrial

- ***Complaint:*** *The plaintiff uses this to start the litigation process*
- ***Answer:*** *Defendant's response to complaint. Defendant specifically responds to each allegation and can deny, admit, or assert lack of knowledge with respect to facts*

- **Motions for judgment:** Both parties can argue that, given the state of the law and whatever uncontested evidence exists, it is clear one side should win
- **Discovery:** gathering evidence from other side (deposition- witness interviews, interrogatories- written questions give to opposing party)
- **Theory of case/developing a theme:** an outline of what the attorneys hope to prove, evidence to support the facts, strategy to get others to that conclusion; want a coherent story to tell in trial
- **Settlement:** an agreement that is acceptable to all that ends the dispute

Part II: Trial

- **Evidence:** To be usable at trial, evidence must be relevant, and cannot be hearsay, character evidence, or privileged information. Witnesses can give facts but not opinions
- Plaintiffs usually have **burden of proof:** Must convince judge or jury of their version of the facts. In civil cases, the standard is “preponderance of the evidence” – the plaintiff must show that their version of events is more likely than not
- **Jury Election:** In damage cases, usually either party can choose to have jury make factual decisions; otherwise judge hears case.
- **Jury Selection:** judge/attorneys asks jurors questions about their views and experiences in process called voir dire. Either party can exclude jurors by challenge for cause (excludes biased jurors) or peremptory challenge (excludes jurors without reason)
- **Opening Statements:** Both parties introduce facts of case as clearly as possible
- **Plaintiff’s case:** Plaintiff presents evidence through witness testimony or introducing documents or physical evidence
 - **Direct Examination:** plaintiff’s lawyers asks the witnesses questions – the goal is for the questions and evidence to tell a compelling story to convince judge/jury that defendant violated the law
 - **Cross Examination:** defendant’s lawyers ask questions and show weakness in witness testimony.
- **Defendant’s case:** direct examination and cross examination
- **Plaintiff’s rebuttal:** plaintiff can respond to issues presented in defendant’s case that weren’t in plaintiff’s
- **Closing argument:** attorneys from each side summarize their arguments
- **Deliberation and verdict:** judge or jury considers the evidence and deliver their decision, the verdict.

Part III: Post-trial

- In civil cases, the losing party generally has a right to **appeal**. (In criminal cases, only the criminal defendant can appeal).
- **Appellate courts** look at legal questions without deferring to the trial court’s views. But on questions of fact, appellate courts are highly deferential to the trial court’s decision; the appellate court cannot overturn the findings of a jury unless there was no reasonable basis, and cannot overturn the findings of a judge unless they were clearly erroneous.
- Party can further appeal the appellate decision.

- Tell students that court procedure is supposed to be guided by core democratic principles and values that will make the procedure fair for everyone. Four of the particularly important ones are *rule of law*, *justice*, the right to *due process*, and the right to *equality*. Provide students with **Handout 3: Introduction to America's Core Democratic Values** and review the meaning of these concepts with students. An additional lesson or lessons may be necessary, and several other helpful sources are listed under *Additional Links* in this handout.
- Explain to students that they will work in small groups to go back through court procedural rules and decide if and how they reflect democratic ideals and values. Students should work in class to complete **Handout 4: Court Procedure and Core Democratic Values**. Students may work in one group to complete the entire worksheet, or you could assign students to jigsaw groups that are assigned to one or two sections before joining with students assigned to the other sections.

Independent Practice/Homework

- Ask students to write an informal response to the question: *Do court procedural rules adequately reflect the values and principles of American constitutional government?* This can begin the pre-writing process for students to complete the cumulative argumentative writing assignment for this unit.

Handout 2 *The Litigation Process*

In both state and federal court, a body of rules, known as court procedure, outlines the process of civil litigation from beginning to end. In order to work within American constitutional government, court procedure must put into practice our constitutional values and principles and conform to our ideas of *fairness*.

Part I: Pretrial

This Part describes the major steps in the litigation process that occur before the trial starts. As you walk through each step, consider what court procedures ensure that the process is fair.

The Complaint

As described in *Handout 1*, the plaintiff begins a lawsuit by filing a complaint in a trial court. The complaint is a formal document accusing the defendant of violating the law. It provides the defendant with notice, and outlines the plaintiff's case against the defendant. Specifically, the complaint:

- identifies the plaintiff and defendant
- describes the facts that show the defendant harmed the plaintiff
- explains what law those facts violate
- requests a remedy—usually court order to the defendant to pay money damages or to start or stop doing something

The Answer

After the plaintiff formally files the complaint against the defendant, the defendant must respond to each allegation. Responses can deal with facts, law, or both. With respect to the facts, the defendant will typically respond by admitting some of the plaintiff's allegations, denying some of them, and stating that he or she lacks knowledge about some of them. The defendant might also argue that there are additional facts that change the situation. This is done in a document called an *answer*.

Discovery

If the case is not dismissed, then the parties begin a process called *discovery*. This is how attorneys on each side gather evidence from the other side. There are several types of discovery. Parties can obtain information through *depositions*, which are interviews of witnesses, conducted under oath. Parties also find out information through *interrogatories*, which are written questions submitted to the opposing party. The opposing party's written answers to these questions are also under oath. Attorneys for both parties can also demand that the opposing side share documents and other physical evidence relevant to the case.

Since the pre-trial process can be so long, attorneys often try to get witness statements as soon as possible, when events are clearer in people's minds. They can then use those statements to corroborate or dispute what may be said during the trial. Contrary to what is often shown in movies and television, there should be no surprises in a trial, and everyone should have ample time to evaluate information and evidence.

Developing a Theory of the Case

Attorneys take all the statements and evidence they have gathered from discovery and develop a *theory of the case*. A theory of the case is a clear outline of what they hope to prove in court, the facts that will make up their argument, the evidence to support the facts, and the strategy that will lead others to the conclusion they want. Good lawyers develop themes around which the case will be centered, such as equality, human dignity, greed, or vengeance. Lawyers also organize the theory of the case so that it tells a coherent story throughout the trial.

Alternative to Reaching Trial: Settlements

Movies and television usually focus on the trial part of the litigation process but, in fact, most cases never go to trial. The biggest reason is that judges and lawyers try to resolve disputes out of court through negotiation. During negotiation, the opposing parties try to reach a *settlement*—an agreement that is acceptable to all that ends the dispute. Most cases settle, at some point. If they can reach a settlement and avoid trial, both parties save a lot of time, money, and other resources.

Alternative to Reaching Trial: Motions

Even apart from settlement, there is a long process prior to trial, during which many cases are resolved. Remember that litigation can concern *factual disputes*, *legal disputes*, or both. Trials are where facts are developed and decided. But legal disputes are sometimes resolved without a trial. Judges very often decide cases based on the law through *motions*—requests to the court.

Both parties have several chances to file *motions for judgment* in their favor. These are written arguments that claim, based on the law and whatever uncontested evidence exists, that their side should win. A motion of this type can occur before discovery, after discovery, before trial, during trial, and even after trial. In fact, more disputes are resolved by this kind of motion than by a trial.

A *Motion to Dismiss*, for example, seeks to have the case thrown out. A defendant might file a Motion to Dismiss claiming that even if the plaintiff's allegations are true, those allegations do not add up to a legal violation. Many other grounds for filing a Motion to Dismiss exist. For example, if the plaintiff filed the complaint in the wrong court, or failed to properly serve the complaint on the defendant, the judge may dismiss the case. If the judge grants a Motion to Dismiss, the lawsuit is over; the plaintiff has lost.

Part II: Trial

This Part describes the major steps in the litigation process that occur during trial. Although quite infrequent, trials remain the dramatic central moment of civil litigation. Cases are developed and settled based on the parties' expectations about what will happen at trial. So understanding how trials work is critical to understanding all the other possibilities. As you walk through each step, consider what rules ensure that the process is fair.

What Happens at a Trial?

Trials are mostly about disputed facts. During trial, the decision-maker (a judge or jury) finally decides whose facts are true. In order to establish their version of the facts, the parties introduce evidence in court. Evidence can include witness or expert testimony, physical evidence, and documentary evidence. Nearly always, plaintiffs have the *burden of proof*. This means they have to convince the judge or jury of their version of the facts. Unlike in criminal cases, where the prosecutor must establish its version of events *beyond a reasonable doubt*, the plaintiff in a civil case has a lower burden, called the *preponderance of the evidence* standard. To meet the preponderance of evidence standard, civil plaintiffs must show that their version of events is *more likely than not*. The defendant tries to provide enough evidence, or a convincing enough explanation of the evidence, to prevent the plaintiff from meeting that burden of proof.

What Evidence can be Used During a Trial?

Not all of this evidence can be used at trial. The Rules of Evidence regulate what kinds of evidence can be used during the trial.

- First, all evidence and witness questions and answers must be *relevant*—that is, only evidence that is helpful in establishing a legal proposition involved in the case may be considered.
- *Hearsay*, or second-hand testimony, is often inadmissible (not allowed) in court. Witnesses usually must have directly seen, heard or experienced whatever it is they are testifying about. This is to improve the reliability of the testimony.
- *Character evidence*, defined broadly as any evidence showing a person’s general tendency to act in a certain way, is nearly always inadmissible. This is because character evidence is often unfairly prejudicial, wastes time, and confuses the jury.
- *Privileged information*, such as conversations between a husband and wife, between a client and a lawyer, or a patient and a doctor, is also excluded from trial. This is because we want to respect these types of private relationships, and not encourage distrust or betrayal.
- Other rules of evidence inform the ways lawyers can ask questions and the ways witnesses can answer them.
 - For example, lawyers in a trial cannot ask their own sides’ witnesses *leading questions*—questions phrased in a way that suggests the desired answer to the witness. This is to protect against unreliable, untruthful answers.
 - Further, the witness must answer reasonably specific questions, not provide *narration*. In other words, they must limit their answer to the information that the question calls for. This is to limit testimony so that it is both relevant and time efficient.
 - Except for technical experts, who can give opinions about matters relating to their field, witnesses cannot give opinions in their testimony. Testimony is limited to *facts, not opinions* for witnesses that are not testifying as experts. This is because the opinions of witnesses are typically irrelevant and can confuse the jury.

The Basic Trial Process

Only a very small proportion of civil cases go to trial. Although there is really no “typical” trial, the basic steps in the trial process are outlined below.

1. Jury Election. In criminal cases, and in civil cases, if the plaintiff is seeking damages, either the plaintiff or the defendant usually can choose to have the case presented or tried to a jury. This means the jury will decide factual disputes. Civil cases seeking other kinds of relief—for example, court orders requiring the defendants to do something or stop doing something—are presented to a judge without a jury.
2. Jury Selection. Typically on the first day of trial, a pool of potential jurors—citizens from the same county (for state court) or state (for federal court)—is gathered in the courtroom. During jury selection, the judge and attorneys ask those potential jurors questions about the particular case, including questions about ideological views and life experiences that may indicate some involvement in the dispute or other bias. The questioning is called *voir dire*. If a potential juror’s experience makes it difficult for him or her to be fair, the lawyers from either side can seek to exclude that person from the actual jury through a *challenge for cause*. For example, a juror can be excluded from the actual jury if he or she knows one of the parties or witnesses, already has an opinion about the facts of the case, or has himself or herself had an experience similar to the case’s subject. In addition, the parties can exclude a set number of the potential jurors without explaining the reason for exclusion. This is called a *peremptory* challenge. However, peremptory challenges may not be based on the race, ethnicity, or gender of the juror.

Once the jury is chosen, the trial can begin.

3. Opening Statements. At the beginning of trial, the attorneys representing each party introduce the case to the judge and jury as clearly and persuasively as possible. In theory the opening statement is not an argument. Instead, it summarizes the facts that each party sets out to prove. But the opening statement *is* an argument of sorts, since each lawyer tries to persuade the jury to begin to see the case in a certain way. The plaintiff’s lawyer delivers the first statement, followed by the defendant’s lawyer. Both speak in the future tense, using statements like “the evidence will show,” to provide the jury with a helpful overview of what’s to come.
4. The Plaintiff’s Case. The plaintiff has the first chance to present evidence through witness testimony. If there is non-witness evidence—documents or physical evidence—a witness typically presents and explains that evidence. The plaintiff’s lawyer has met with the witnesses in advance, and knows what they are going to say. The defendant’s lawyer has usually deposed the witnesses (interviewed the witnesses under oath) during discovery, and therefore also knows what they are going to say.
 - a. Direct Examination. To begin with, the plaintiff’s lawyer asks the plaintiff’s witnesses questions. Attorneys want to question witnesses and present evidence in such a way that tells a compelling story and convinces the judge and jury that the defendant violated the law.

- b. Cross-Examination. For each witness, the defendant's attorney has the opportunity to ask questions to show weaknesses in the witness's testimony. This happens after the plaintiff's attorney has completed the direct examination. All questions asked during cross-examination must relate to the questions asked in the direct examination.
- c. Redirect Examination. At the close of the cross-examination, the plaintiff gets an opportunity to conduct a redirect examination. Redirect examination is limited to subjects from the cross-examination.

After the plaintiff's attorney has finished presenting the plaintiff's case, the defendant has an opportunity to try to get the case dismissed. The defendant can file a *Motion for Judgment as a Matter of Law*, arguing that the plaintiff has not presented sufficient evidence to meet his or her burden of proof. The judge hears this motion out of the presence of the jury (if there is a jury). If the judge believes that, given the evidence presented, no reasonable jury could find for the plaintiff, the judge may grant the motion. This means that the defendant will win the case without completing the trial.

5. The Defendant's Case. Once the plaintiff has presented all of his or her witnesses and evidence, it's the defendant's turn. The process is the same:
 - a. Direct Examination
 - b. Cross-Examination
 - c. Redirect Examination
6. Plaintiff's Rebuttal. If (but only if) the defendant raises any issues that were not addressed in the plaintiff's initial presentation of evidence, the plaintiff's attorney gets an opportunity to address these issues with additional witnesses and other evidence, if there are any. This is called a rebuttal.

Plaintiff's rebuttal closes the evidence phase of the trial. At that point, either party may file another *Motion for Judgment as a Matter of Law*, arguing that no reasonable jury could find for his or her opponent. If the judge grants the motion, the trial ends.

7. Closing Arguments. After all the evidence has been presented, the attorneys for each party summarize their main arguments, highlight the most important evidence in their favor, and explain why the jury should not believe or not care about evidence against them. This is called closing arguments. Unlike opening statements, closing arguments are just that—arguments, although they may not go beyond the evidence presented. They are attempts to persuade the judge and jury. Closing arguments give both parties one last chance to address doubts, reinforce sympathies, and explain why the judge or jury should agree with their theory of the case.
8. Deliberation and Verdict. Finally, the judge or jury considers the evidence and delivers a verdict. For a jury trial, the judge first provides instructions to the jury giving them information about the legal standards they should apply to reach their decision. In federal

civil litigation, and in both federal and state criminal litigation, jury verdicts must be unanimous; if any member of the jury disagrees with the other members of the jury, the jury cannot render a verdict, and the case has to be retried. States often allow civil cases to be resolved by jury with one or two dissenting votes. Either way, the verdict ordinarily does not include any explanation. It simply states who wins, and what damages (if any) are awarded.

(Once a jury verdict is reached, the parties can, one last time, file a *Motion for Judgment as a Matter of Law*. Even if the judge disagrees with the jury verdict, usually the verdict stands. This is because judges are supposed to overturn a jury verdict only if “no reasonable jury” could have reached that verdict.)

Part III: Post-Trial

This Part describes the major steps in the litigation process that occur after the trial. As you walk through each step, consider what rules ensure that the process is fair.

What Happens After the Judgment?

In a civil case, after the trial court enters its judgment, the losing party generally has a right to *appeal* the decision—to apply to a higher court for reversal of the lower court’s decision. In the federal Courts of Appeals, a three-judge appellate panel is chosen at random from among that particular court’s judges. The party that lost in the trial court must choose particular aspects of the process to appeal, making specific claims of trial-court error.

If the appeal deals with the trial court’s decisions regarding questions of law, appellate review is undeferential—no weight at all is given to the trial court’s opinion. The legal term for this type of review is *de novo* review. (De novo is Latin for “from the beginning” or “anew.”)

If, however, the appeal deals with factual decisions, appellate review is highly deferential to the trial court’s decisions. Appellate courts will not reverse jury findings unless the findings had “no reasonable basis” in the testimony or other trial evidence. If the case was tried to a judge rather than a jury, appellate courts will not reverse trial judge findings-of-fact unless those findings are “clearly erroneous.” In that situation, appellate reversal of the trial judge findings is appropriate only if the appellate judges have a “definite and firm conviction that a mistake has been committed.” These high standards make it difficult for the party who lost in the trial court to win any appeal on decisions of fact.

Whichever party loses the appeal may have additional options for further review. For example, the losing party can petition the Supreme Court of the United States to hear the case. The Supreme Court can choose whether or not to hear the case. Nearly always, the Supreme Court chooses against hearing the case. At that point, the decision of the Court of Appeals becomes final.

In state’s court systems, cases can be appealed from the intermediate appellate court to the state’s supreme court. Depending on the state, this may be rare or routine. If the issues on appeal do not involve the federal Constitution or a federal statute, that is the end. When the issues on appeal *do* involve the federal Constitution or a federal statute, the losing party in the state

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supreme court may, seek even further review before the U.S. Supreme Court. However, U.S. Supreme Court review is extremely rare. The Court receives thousands of applications for review each year, and decides to hear well under a hundred of them

Handout 3

Introduction to America's Core Democratic Values

The United States is built on shared **core democratic values**. These values provide underpinnings of our democracy, unite us as citizens, and help protect individual rights. They are expressed in the Declaration of Independence, the U.S. Constitution, and many other significant documents and speeches. America's core democratic values overlap, and they sometimes conflict with each other. Developing and disputing their meaning and application is a part of our democratic tradition. This handout addresses four core democratic values: *due process*, *equality*, *justice*, and *rule of law*.

Due Process

The phrase “due process of law” appeared first in an English statute in 1354, which codified the 1215 Magna Carta. That first text stated: “No man of what[ever] state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law.” In those early days, “due process” meant most crucially that rules should be established in advance, and that court procedures should be fair. In the United States, the Constitution's Fifth Amendment recognizes numerous more specific guarantees against unfair treatment for criminal defendants, and then dictates more generally that “No person shall . . . be deprived of life, liberty, or property, without due process of law.” This first Due Process Clause, in the Bill of Rights, was originally applicable only against the federal government. It was joined in 1868 by the Fourteenth Amendment's similar requirement, applicable against the states: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” While many procedural protections are, in different circumstances, considered “due,” the core of due process is that individuals must be provided notice of the government's claim against them and an opportunity to be heard by a fair decisionmaker at a meaningful time and in a meaningful way.

Equality

American ideals of equality have been central to our self-conception from the dawn of the republic, when the Declaration of Independence proclaimed, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Of course, the ideal dramatically outpaced the reality. At various times in American history, American Indians were dislocated and slaughtered; women forbidden to own property or participate in democratic self-governance; Asian immigrants barred from citizenship. And most shamefully, enslavement of African Americans marred American equality for generations, and slavery's aftermath continues to undermine achievement of this key value.

But even as a matter of theory, the claim of equality is not that everyone is equally strong, smart, or talented. It is that governments, to be just, must value all people equally and give them equal respect. As the Universal Declaration of Human Rights puts the idea, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” A government acts unjustly if it protects the rights of some of its people while denying the same protection to others, because all people share a common humanity and value. Equality claims have been vital and often persuasive over

the course of American history. A claim of equal humanity and worth motivated the movement to abolish slavery in the nineteenth century and the movement to abolish Jim Crow segregation in the 1960s. Similar claims have been pressed by women seeking the vote and more recently seeking equal treatment in employment, education, and other endeavors. Gay and lesbian people, people with disabilities, and members of religious minorities have all founded often-successful civil rights movements on the shared democratic value of equality.

Only after the Civil War and end of American slavery did the Constitution centrally and plainly embrace equality, with the Fourteenth Amendment's Equal Protection Clause. It reads, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." (The Supreme Court has made clear that this requirement applies to the federal government as well.) Ratification of the Fourteenth Amendment was, however, just one step in our nation's hesitant expansion of who is considered part of "We the People" and our still in-progress task of bolstering equality.

Justice

Justice is a vital goal of our Constitution, stated as such in its Preamble:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

The Constitution's most central drafter, James Madison, explained in *The Federalist* (#51), "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." But what does "justice" really mean? Political, philosophical, and legal thinkers agree that the idea of justice combines "desert" (deservingness), procedural fairness, and distributional fairness.

Some philosophers emphasize "*desert*"—justice, they say, requires that people be treated in accordance with the praiseworthiness or blameworthiness of their conduct. The Roman legal thinker Cicero, for example, wrote that "Justice renders to every one their due." This idea was a key part of Martin Luther King, Jr.'s famous *I Have a Dream* speech, when he described his "dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."

Procedural justice is a different aspect of justice, encompassing procedural fairness not just in court but in all dealings between individuals and their government. Ideas about procedural justice may be quite a bit broader than *Due Process* (see above). For example, some scholars have identified the key dimensions of procedural justice to include not just the right to a hearing but to decisional transparency and procedural respect for the dignity of participants. Procedural justice helps ensure that societal conflicts are settled in an orderly, non-arbitrary, and respectful manner.

Distributive justice addresses the distribution of good—money, resources, benefits—among people. Public programs that provide medical care, housing, food, money, etc. for people who

need them implement an idea of distributive justice. But of course members of any democracy can and do debate how much resource redistribution justice requires.

Rule of Law

When John Adams, the United States' second President, drafted the Massachusetts Constitution, in 1780, he included a phrase that soon became famous: the state, he wrote, should have “a government of laws and not of men.” In *Marbury v. Madison*, the 1803 Supreme Court case establishing judicial review of the constitutionality of legislation, Chief Justice John Marshall borrowed the phrase and applied it to the whole of the United States. The phrase encapsulates the core democratic value of *rule of law*—as English theorist John Locke put it in 1690, people should “not be subject to the inconstant, uncertain, unknown, and arbitrary will of others,” but are, rather entitled to laws and rules that are:

- Developed and adapted under fair procedures.
- Announced in advance.
- Applicable to everyone, including the government.
- Binding and enforced.

Additional Sources:

- DANIELLE ALLEN, *OUR DECLARATION: A READING OF THE DECLARATION OF INDEPENDENCE IN DEFENSE OF EQUALITY* (2014)
- Yick Wo and the Equal Protection Clause Video (20 mins), available at: <http://www.annenbergclassroom.org/page/yick-wo-equal-protection-clause>
- “Right to Equal Protection of the Laws” from *Our Rights* by David J. Bodenhamer, available online at: http://www.annenbergclassroom.org/files/documents/books/our-rights/chapter_3_our_rights.pdf
- U.S. Constitution: Fourteenth Amendment (History and Meaning), available at: http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Fourteenth%20Amendment_Our%20Constitution.pdf
- “We Are All Slaves of the Law” from *The Pursuit of Justice* by Kermit L. Hall and John Patrick, available online at: http://www.annenbergclassroom.org/files/documents/books/the_pursuit_of_justice/200_203_epilogue.pdf
- Law and the Rule of Law, available at: <http://judiciallearningcenter.org/law-and-the-rule-of-law/>

Handout 4
Court Procedure and Core Democratic Values

Directions: Consider the following values and principles. Then, for each democratic value or principle listed, select one court procedure and explain how it reflects that value or principle.

Democratic Value or Principle	Exemplary Quotations	Court Procedures	Explain <i>how</i> the procedure you selected reflects the value or principle
<p>Rule of Law. This principle means that both the government and the governed should be subject to the law. Laws, not individual rulers, should govern—and the laws should apply to everyone.</p>	<p><i>If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.</i> —James Madison, Federalist Paper No. 51 (1788)</p>	<input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review	
<p>Justice. People should be treated fairly in the distribution of the benefits and burdens of society. One important component of justice is “desert”—people should be treated in accordance with the praiseworthiness or blameworthiness of their conduct.</p>	<p><i>Justice renders to every one their due.</i> —Cicero, De Legibus (43 B.C.) <i>I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.</i> —Martin Luther King, Jr. (1963)</p>	<input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review	

<p>Due Process. This is a constitutional right granted to citizens by clauses of the Fifth and Fourteenth Amendments of the United States Constitution. All persons have rights to “life, liberty, [and] property,” and the government cannot take away any of those rights unless it observes “due process of law.” The government must follow fair procedures in taking action with respect to an individual and their liberty or property.</p>	<p><i>No person shall...be deprived of life, liberty, or property, without due process of law...</i> —Fifth Amendment, U.S. Constitution (1791)</p> <p><i>...[N]or shall any State deprive any person of life, liberty, or property, without due process of law...</i> —Fourteenth Amendment, U.S. Constitution (1868)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	
<p>Equality. The government must treat similarly situated people the same. This clause of the Fourteenth Amendment has been the source of the expansion of rights and antidiscrimination battles during the past half century.</p>	<p><i>No State shall...deny to any person within its jurisdiction the equal protection of the laws.</i> —Fourteenth Amendment, U.S. Constitution (1868)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	

Handout 4: Answer Key
Court Procedure and Core Democratic Values

NOTE: Student responses will vary. What is important is that students accurately explain how the chosen procedure reflects the core value or principle.

<p>Democratic Value or Principle</p>	<p>Exemplary Quotations</p>	<p>Court Procedures</p>	<p>Explain how the procedure you selected reflects the value or principle</p>
<p>Rule of Law. This principle means that both the government and the governed should be subject to the law. Laws, not individual rulers, should govern—and the laws should apply to everyone.</p>	<p><i>If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.</i> —James Madison, Federalist Paper No. 51 (1788)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	<p>Rule of law applies to all of these procedures. For example, anyone can have a complaint filed against them, and everyone has the opportunity to submit an answer to the complaint. Whether a case is settled or goes to trial, all parties are subject to and protected by the law.</p>
<p>Justice. People should be treated fairly in the distribution of the benefits and burdens of society. One important component of justice is “desert”—people should be treated in accordance with the praiseworthiness or blameworthiness of their conduct.</p>	<p><i>Justice renders to every one their due.</i> —Cicero, De Legibus (43 B.C.) <i>I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.</i> —Martin Luther King, Jr. (1963)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	<p>Beginning with jury selection during pre-trial, everything in the trial process is designed with justice or fairness in mind. Jury members are supposed to be selected according to their ability to make fair decisions. Rules for opening statements, closing arguments, direct and cross examination, and evidence are designed to focus on questions, testimony, and evidence that are directly relevant to the case and will not unfairly sway the judge or jury. If there is a jury, the judge gives them information about the law that will help them make a fair decision, and if either party has reason to</p>

			<p>believe that the trial was unfair, they are allowed to appeal their case for review.</p>
<p>Due Process. This is a constitutional right granted to citizens by clauses of the Fifth and Fourteenth Amendments of the United States Constitution. All persons have rights to “life, liberty, [and] property,” and the government cannot take away any of those rights unless it observes “due process of law.” The government must follow fair procedures in taking action with respect to an individual and their liberty or property.</p>	<p><i>No person shall...be deprived of life, liberty, or property, without due process of law...</i> —Fifth Amendment, U.S. Constitution (1791)</p> <p><i>...[N]or shall any State deprive any person of life, liberty, or property, without due process of law...</i> —Fourteenth Amendment, U.S. Constitution (1868)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	<p>All aspects of pre-trial and trial are also part of the “due process of the law” because there are established rules and procedures that must be followed for defendants and plaintiffs. The fact that people can file a complaint in the first place comes from their right to due process. Then, rules and procedures provide everyone the right to the same legal process to ensure that their rights are protected.</p>
<p>Equality. The government must treat similarly situated people the same. This clause of the Fourteenth Amendment has been the source of the expansion of rights and antidiscrimination battles during the past half century.</p>	<p><i>No State shall...deny to any person within its jurisdiction the equal protection of the laws.</i> —Fourteenth Amendment, U.S. Constitution (1868)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Complaint <input type="checkbox"/> Pre-Trial Process <input type="checkbox"/> Jury Selection <input type="checkbox"/> Opening Statements & Closing Arguments <input type="checkbox"/> Direct Examination & Cross Examination <input type="checkbox"/> Rules of Evidence <input type="checkbox"/> Deliberation & Verdict <input type="checkbox"/> Appellate Review 	<p>The jury selection process seems most relevant here because it is intended to ensure that everyone has an equal chance for a fair trial.</p>

Lesson 3
What is civil rights litigation? What purposes does it serve?

Lesson Objectives

Students will be able to:

- Define civil rights and civil liberties.
- Explain that there are a variety of constitutional clauses and statutes that exist to guarantee people's civil rights and liberties.
- Independently research and present court cases that have enforced civil rights laws, aimed at safeguarding constitutional rights.
- Describe how people use the legal system to enforce their civil rights and liberties.

Materials

- Handout 5: What Are Civil Rights and Civil Liberties?
- Handout 6: Final Writing Assignment and accompanying rubric
- Access to Civil Rights Litigation Clearinghouse website (<http://www.clearinghouse.net/>) for demonstration. This lesson will require Internet access for teacher demonstration and for student research.
- A teacher-designed assignment sheet for research of civil rights litigation. Suggested guidelines are provided below.

Lesson Assessments

- Blog/Discussion Posting/Oral Presentation highlighting examples of civil rights litigation. Individual teachers can design this assessment based on their resources and time available.

Instructional Activities

Anticipatory Set

- Remind students that you previously looked at *Brown v. Board of Education* and that it was an example of a civil rights case. Tell them that you are going to focus on civil rights litigation in this lesson.
- Ask students what they already know about *civil rights* and write their ideas on the board.

Direct Instruction

- Give the students **Handout 5: What Are Civil Rights and Civil Liberties?**, and discuss with them the definition of civil rights and civil liberties. You might try to get them to come up with some examples of claims that fit in each section of the diagram. Emphasize to them that the list of statutes is not for them to memorize, but rather to show them the range of issues covered by modern civil rights law.
- Consider a case like *Brown v. Board of Education*. In that case, African-American parents in Topeka, Kansas and their children filed a complaint in a federal trial court arguing that the Topeka school district was denying them equal protection of the law under the Fourteenth Amendment by operating separate public schools for white and black children. The plaintiffs alleged that the defendants' conduct denied them educational opportunities equal to those provided to white children, solely based on race. Further, the plaintiffs argued that separate was inherently unequal. Even if the government made every effort to provide segregated facilities equal resources, the black children who were forced by state law to attend racially segregated schools “do not and cannot” enjoy the educational benefits afforded to white children. They argued that the stigma of being excluded from white schools by the government affected black students' ability learn by creating a feeling of inferiority.
 - What was the purpose of this lawsuit? Certainly, it was to get a court order requiring Topeka to integrate the public schools. But this was also a “test case,” carefully crafted to lead to a change in the law more generally, and persuade the Supreme Court to announce that school segregation violates the Constitution.
- Introduce students to the Civil Rights Litigation Clearinghouse website and explain to them that they'll be using the site to explore civil rights cases that are recent and ongoing. Show them the [*Brown v. Board*](#) case again as an example of how cases on the site are presented and organized.
- Point out that the legal issue in the case was “equal protection.” Explain that the Equal Protection Clause is part of the Fourteenth Amendment of the U.S. Constitution:

Equal Protection Clause (U.S. Constitution, Amendment 14):

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction *the equal protection of the laws*.

- Now it is the students' turn to explore the website and learn about the wide variety of civil rights litigation. Explain to them that they will be working in groups, using the website to explore different court cases, by case type and “issue” or “cause of action.”

Unit 1: Lesson 3
Introduction to Civil Rights and Litigation

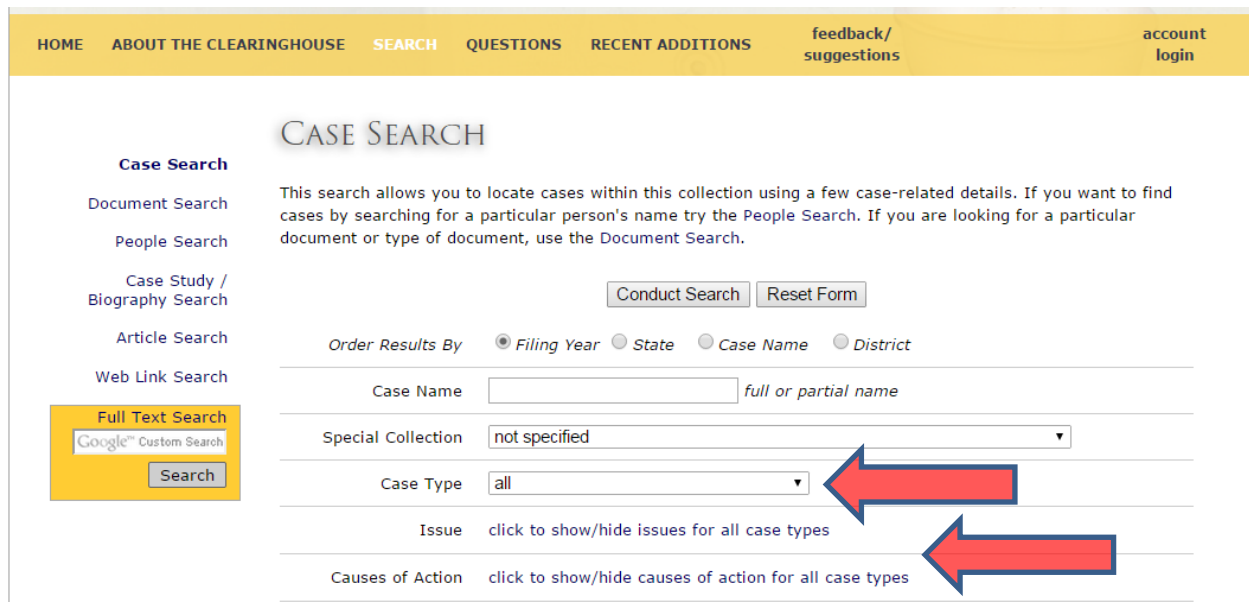
Steps for navigating the Civil Rights Litigation Clearinghouse website are immediately below.

Steps:

- A. Go to <http://clearinghouse.net>. Click on “search”



- B. On the search page (<http://www.clearinghouse.net/search.php>) pick a case type, and then an “issue” or a “cause of action.”



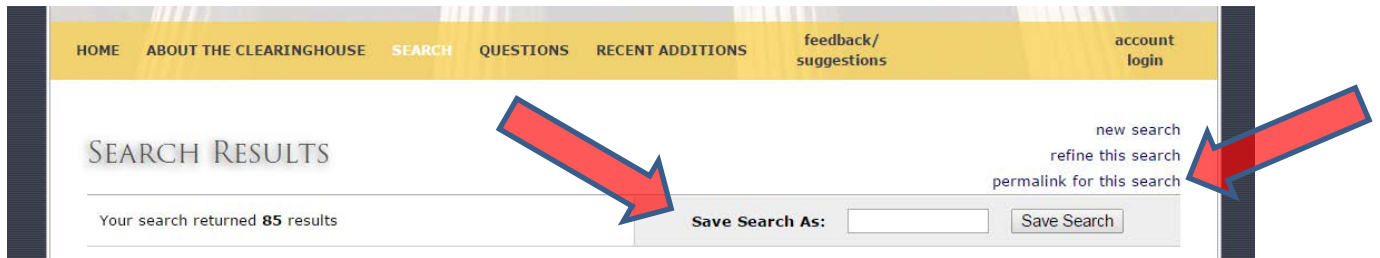
“Issues” cover many different types of case characteristics. For purposes of this exercise, you may wish to instruct your students to focus their attention on a particular “constitutional clause” under “issue.” “Cause of Action” covers the statute that authorizes the lawsuit.

Unit 1: Lesson 3
Introduction to Civil Rights and Litigation

The students' task is for each group to look at two or three cases in the case type they choose and put together a short presentation/blog/discussion thread, per your instructions, which includes at least the following elements:

- A brief explanation of what is in dispute in these cases (i.e., What is the argument between the parties?)
- The constitutional clause(s) or statutory guarantees at issue in the cases within the special collection, including an explanation of what the clause means (i.e., What legal principle is at issue in these cases?)
- Which part of the civil rights diagram does the case type fit into?
- A statement about the significance of these court cases (i.e., How are people using the legal system to protect their rights?)

NOTE: If your students wish to save their searches and cases in the Clearinghouse, they can register for an account (if they are over 13 years old), and then do so. In addition, searches and cases have “permalinks,” which they can obtain by clicking on the “permalink” button, and then record and use over.



Guided Practice/Independent Practice/Homework

- Provide at least some class time to make sure students can navigate the website on their own. Have students work in class and/or at home to complete their presentations/blogs. Allow enough class time for students to present their work, if applicable.
- The overall conclusion these cases support is that civil rights litigation like *Brown v. Board* continues to play an important role. Civil rights cases are far from universally successful, but they have transformed schools, prisons, mental health facilities, housing authorities, police departments, child welfare agencies and more. Civil rights cases are based on the Constitution and many civil rights laws.
- Remind students that they have been looking at ways people use civil litigation to protect their civil rights. Ask them to discuss as a whole class to what extent the legal system serves to protect people's rights.

Independent Practice/Homework

- Pass out **Handout 6: Final Writing Assignment**. Ask students to write a persuasive essay in response to the question: Do court procedural rules adequately reflect the values and principles of American constitutional government?

Handout 5 *What Are Civil Rights and Civil Liberties?*

Sometimes, the rights Americans enjoy are divided into the conceptual categories of “civil rights” and “civil liberties.” These are phrases whose meanings have shifted over time. And often, even lawyers and scholars use the terms imprecisely or synonymously. The difference is explained below.

It is important to know the differences in the definitions because some sources and texts emphasize the distinction. It is worth noting, though, that very little turns on any difference between civil rights and civil liberties. Violations of civil rights and civil liberties are equally illegal, and the activist and advocacy communities that protest or bring lawsuits about those violations usually do not distinguish them.

Civil Rights

In the 19th century, “civil rights” was used to mean rights relating to property and the court system—the right to inherit and own property, sign an enforceable contract, testify under oath, and the like. In our era, however, civil rights is used to signify something very different. The phrase has become inextricably linked to the Civil Rights Movement of the 1950s and 1960s, and to the kinds of claims of equality and antidiscrimination that participants in that movement made.

Today, antidiscrimination—that is, civil rights—claims can be made against the government or private individuals, organizations, or corporations. Claims against the government may arise under the U.S. Constitution’s 14th Amendment, which includes the “Equal Protection Clause”:

Equal Protection Clause (U.S. Constitution, Amendment 14):
Nor shall any state . . . deny to any person within its jurisdiction the **equal protection of the laws.**

There are also a large number of federal and state civil rights statutes that prohibit employment discrimination, housing discrimination, discrimination in contracting and service at stores, voting policies and practices, and more. Each has slightly different coverage, but they enforce many types of equality, including race, gender, disability, and age. Because federal law is, under the Constitution’s Supremacy Clause the “supreme law of the land,” state or local laws cannot reduce the equality protections provided under federal law, but they can be *more* protective.

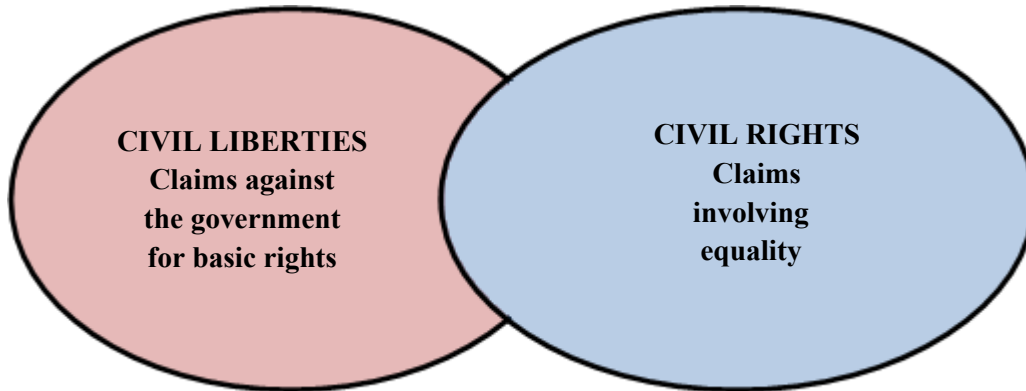
Civil Liberties

If you are being precise, current practice is to use the phrase “civil liberties” to refer to protections against government actions and abuses that are *not* related to discrimination. The core civil liberties are protected by the U.S. Constitution’s First Amendment—freedom of speech, press, and assembly, and freedom of religion, but the term is used more broadly to cover the rest of the Bill of Rights, as well.

U.S. Constitution, Amendment 1:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

In sum, *civil liberties* involve constitutional claims against the government for basic rights. *Civil rights* involve constitutional and statutory antidiscrimination claims against the government, individuals, groups, or corporations.

What are civil rights and liberties?



Civil Liberties
(vs. Government)
Freedom of religion, speech, press, peaceable assembly, right to petition the government for redress of grievances; freedom from unreasonable searches and seizures; rights against cruel and unusual punishment; right to privacy, right to marry, to have children, to raise one's children, to fair government procedures; voting rights, etc.

Civil Rights
(vs. Government)
“Equal protection of the laws” (No race or sex discrimination by the government)

Civil Rights
(vs. individuals, groups, corporations)
No discrimination in employment, housing, education, etc. on the basis of race, sex, national origin, ethnicity, disability, age, etc.

Background on Sources of Civil Rights and Liberties:
A Partial List of Constitutional Provisions and Statutes

- A. *Bill of Rights* (the U.S. Constitution's first ten amendments). These rights were added to the Constitution shortly after its adoption as a means of protecting individuals against the threat of the newly powerful federal government. Courts have since held that these guarantees apply against state and local governments as well. Highlights include:
- First Amendment: Freedom of religion, speech, press, peaceable assembly, petition the government for a redress of grievances
 - Fourth Amendment: Freedom from unreasonable searches and seizures
 - Fifth Amendment: Rights against compelled self-incrimination and to fair governmental procedures
 - Eighth Amendment: Rights against excessive bail, excessive fines, and cruel and unusual punishments
- B. The *Civil War Amendments*. After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments were added to the Constitution to:
- Abolish slavery
 - Ensure voting rights to all men
 - Guarantee equal protection under the law
 - Extend due process requirements to the states
- C. In 1920, the *Nineteenth Amendment* was added to the Constitution to extend voting rights to women, and in 1971, the *Twenty-Sixth Amendment* extended the right to vote to citizens eighteen years of age or older.
- D. There are many *civil rights statutes*, some emerging from the Civil Rights era of the 1950s and 1960s, of which *Brown v. Board of Education* was a part:
- The Civil Rights Act of 1964: prevents discrimination in public places on the basis of race, color, religion and national origin
 - The Voting Rights Act of 1965: prohibits racial discrimination in voting by regulating election administration
 - The Fair Housing Act of 1968: prohibits discrimination in sale, rental and financing of housing based on race, religion, national origin and sex

Other statutes have also added important protections:

- The Age Discrimination in Employment Act (1967): prohibits employment discrimination against people 40 years of age or older
- Title IX of the Education Amendments of 1972: forbids educational institutes to discriminate based on gender
- The Rehabilitation Act of 1973: forbids discrimination on the basis of disability by recipients of federal funding
- The Individuals with Disabilities Education Act (1975): requires public schools to provide a free and appropriate public education to kids with disabilities
- The Pregnancy Discrimination Act (1978): prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- The American with Disabilities Act (1990): forbids discrimination on the basis of disability and requires reasonable accommodations of disability by employers, governments, and others
- The Religious Land Use and Institutionalized Persons Act (2000): requires accommodation of religious practice in land use and jails and prisons

Handout 6
Final Writing Assignment

Write an essay responding to the following question: *Do court procedural rules adequately reflect the values and principles of American constitutional government?* Feel free to refer back to previous handouts from this Unit to help you respond; *Handout 4* may be particularly relevant.

Unit 1: Lesson 3
Introduction to Civil Rights and Litigation

Rubric

Quality	4 - Skilled	3 - Proficient	2 - Developing	1 - Inadequate	Points Earned
INTRODUCTION Background/History Define the Problem Thesis Statement	Well-developed introductory paragraph contains detailed background information, a clear explanation or definition of the problem, and a thesis statement.	Introductory paragraph contains some background information and states the problem, but does not explain using details. States the thesis of the paper.	Introduction states the thesis but does not adequately explain the background of the problem. The problem is stated, but lacks detail.	Thesis and/or problem is vague or unclear. Background details are a seemingly random collection of information, unclear, or not related to the topic.	
CONCLUSION	Conclusion summarizes the main topics without repeating previous sentences; writer's opinions and suggestions for change are logical and well thought out.	Conclusion summarizes main topics. Some suggestions for change are evident.	Conclusion summarizes main topics, but is repetitive. No suggestions for change and/or opinions are included.	Conclusion does not adequately summarize the main points. No suggestions for change or opinions are included	
MAIN POINTS Body Paragraphs Refutation	Three or more main points are well developed with supporting details. Acknowledges the opposing view, and summarizes their main points.	Three or more main points are present but may lack detail and development in one or two. Acknowledges the opposing view, but doesn't summarize points.	Three or more main points, but all lack development. Refutation of opposing arguments missing and/or vague.	Less than three main points, with poor development of ideas. Refutation of opposing arguments missing and/or vague.	
CLARITY, PRECISION, AND ACCURACY OF WRITING Sentence Clarity Proper Grammar, Spelling, Punctuation, etc.	The writer treats the subject seriously using formal language. All sentences are complete, accurate, and clear; the writer controls the point of view appropriately. Punctuation, spelling, and grammar are correct.	The writer uses some informal language and slang. Most sentences are complete, accurate and clear. Some awkward sentences do appear. There are one or two errors in punctuation, spelling, or grammar.	Some unclear or confused sentences. Work contains structural weaknesses and grammatical errors. There are some errors in punctuation, spelling, or grammar.	Many unclear or incomplete sentences. Work contains multiple incorrect sentence structures. There are several errors in punctuation, spelling, or grammar.	
Total:					