Readings in American Law: The Gilded Age (395-001)

(2 credits) – Spring 2012
Professor Ross E. Davies (rdavies@greenbag.org; 703-993-8049; Room 410)
Professor Gregory F. Jacob (gjacob@winston.com; 202-282-5769)

Classes: Wednesdays, from 9:00 to 9:55 a.m. in Room 412. Note: The course is scheduled to run from 9:00 to 9:50 a.m., but we will be extending every class session to 9:55 a.m. to make up for the fact that we will not meet on March 28.

Office hours: By appointment.

Texts: * = on Google books; † = buy it; ‡ = in legal databases; ☐ = obscure, copies will be provided by the instructors
Charles Francis Adams, A Chapter of Erie (1869)* and Railroads: Their Origin and Problems (1878)*
H.W. Brands, American Colossus: The Triumph of American Capitalism, 1865-1900 (2010)†
Oliver Wendell Holmes, The Common Law (1881)*
Woodrow Wilson, Congressional Government: A Study in American Politics (1885)*

Assignments: Read the entire book by the first date next to which it appears, and be prepared to discuss it in class on that date. Long before the first discussion of the U.S. Reports, each student will be assigned one case from that volume on which to make a short oral presentation on one of the dates on which that book is discussed (students are free to express their preferences for particular cases at any time). Assignments are subject to change based on the pace of the course and the whim of the instructor. As should be obvious from the assignments below, you must read the Brads book before the semester begins. It will make pleasant reading during winter break.


For each class session, please:
(a) Read the assigned book or books. You should stay an assignment or two ahead of schedule, just in case.
(b) Leave all electronics (laptops, tablets, phones, etc.) outside the classroom or, if you must bring them with you, keep them closed and stowed (in a backpack, briefcase, or other bag) during class.
(c) Note and follow in-class instruction. That means, among other things, if you miss a class session you are responsible for acquiring from a classmate notes about what happened in a missed session. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of that tradition, but do not abuse it.
(d) Look up words you do not know. Use Black's Law Dictionary (9th ed.) for legal terms and a good general dictionary – the OED (online or 2d ed.), American Heritage (4th ed.), or whatever works for you – for everything else.

Purpose of the course: What is the point of reading and talking about a bunch of books from some hygone era? Actually, there are at least three points: (1) to gain deeper understanding and appreciation of an important but often under-studied period in legal history; (2) to practice the careful study of law in context; and (3) to enjoy one of the most enriching of lawyerly activities – reading about law and then discussing its meaning and function with engaged colleagues. There is a lot of reading called for here – roughly 100 to 200 pages per week – and considerable pre-class outside thinking, but if you like those activities you will like this course, because there isn’t much else required (given that the quizzes described below will be pretty easy for anyone who does the reading in attentive good faith).

Grades: Your grade will be based on two things. First, a series of closed-book quizzes (a total of six of them), which will count for 1/3 of your grade in the course. A short quiz will be administered at the beginning of the first class session in which we discuss a book (except for the U.S. Reports – no quiz for that). The quizzes are designed merely to determine whether you have, in fact, done the assigned reading. (This is, after all, a reading seminar.) They will consist of a few (ten or so) straightforward factual questions about obvious, obviously important topics in the assigned reading. That is, they will be questions that are easily answered by anyone who has simply done the reading and paid attention while doing so but are likely unanswerable by someone who has not done the reading. Second, class participation, which will count for 2/3 of your grade. Let us be clear about this up front: Evaluation of your participation in the course will inevitably be largely subjective, which means that if you do not like the participation grade you receive there will be no basis for challenging it. Having said that, you are unlikely to fail the course if you come to every class prepared to make useful contributions, do in fact make those contributions, and respectfully listen to and comment on the contributions of others. It is in part because of those expectations that there is an electronics ban for this course. You will be unable to google whatever we are talking about in class and then read something off your computer screen as though it were your own thought. You will have to read and reflect and perhaps even do a little bit of your own research before class in order to be confident that you will have something useful to share with the rest of us. What a wonderful thing that will be!

Intellectual property: We own all course content we create, regardless of form (electronic, print, audio/video, oral, etc.), including class sessions, office hours, and other meetings, and recordings of those events. You are free to share copies of course content with your classmates for the duration of the course, but other than that you and your classmates must keep all such things in any format to yourselves forever. Recording of class sessions: Is forbidden.