

## **MODERN SUPREME COURT CONFIRMATION SEMINAR (*Law 615*)**

This course will focus on how the modern Senate confirmation process has changed over time and reasons for this change. Special emphasis will be given to many of the constitutional rulings and policy disputes that have contributed to a greater level of scrutiny for the Court. Also the course will look at whether the increased scrutiny itself has caused the Court to engage in controversial rulings and policy disputes it otherwise may not have or whether controversial rulings have led to the greater scrutiny.

Additionally the class will focus on institutional causes of the enhanced scrutiny in the political process including divergent expectations for the Court's role on the part of the Executive and the United States Senate as well as the public generally. Picking key modern Supreme Court nominations, the course will examine the selection criteria used by Presidents, the review of the nominees by the United States Senate (and in particular the Senate Judiciary committee) and the role that outside interest groups play in this process. Readings will include also the legal and policy issues that animate all of the parties to this process.

### **Course Time and Place:**

TBD

### **Required Readings:**

Additional or updated readings will be distributed one week prior to class date if necessary.

### **Grading: Class Participation and Paper**

**Class participation:** (50%) assessed by attendance and *active* participation in class and weekly (250 word) topical based on reading assignments

**Paper:** (50%) due the week of the last class

## **Course Schedule:**

**Week 1:** Introduction and discussion about the course and the Madisonian Dilemma

### **Assigned Reading:**

“A Brief Overview”

<http://www.supremecourtus.gov/about/briefoverview.pdf>

Article III, Section 1 of the United States Constitution

Marbury v. Madison

<http://www.leaderu.com/socialsciences/meese.html>

Federalist papers no. 10, 78,79,80, 81, 82

Institutional History of the Court

<http://www.supremecourtus.gov/about/institution.pdf>

*Failed Nominees to the United States Supreme Court*

<http://www.answers.com/topic/list-of-failed-nominations-to-the-supreme-court-of-the-united-states>

## **Week 2:**

Expectations of a Modern Supreme Court contrasted with the Framers' Court

### **Assigned Reading:**

*Dred Scott v. Sanford* 1857

*Plessy v. Ferguson* 1896

*Korematsu v. United States* 1944

*Ex parte Quirin*, [317 U.S. 1 \(1942\)](#)

*Bowers v. Hardwick* 1986

*Missouri v. Jenkins* 1990

*Bush v. Gore* 2000

*Kelo et al v. City of New London et al* 2005

*Grokster v. RIAA* 2005

*Hamdan v. Rumsfeld*, [548 U.S. \\_\\_\\_\\_ \(2006\)](#)

### **Week 3: The Judicial Selection Process**

#### **Assigned Reading:**

Excerpt "The Original Understanding" Chapter 7 Bork, Robert H. 1990. [The Tempting of America: The Political Seduction of the Law](#). New York: The Free Press.

Biographies of the current Justices of the Supreme Court

<http://www.supremecourtus.gov/about/biographiescurrent.pdf>

A brief overview of nominations

<http://www.senate.gov/artandhistory/history/common/briefing/Nominations.htm>

### **Week 4: The Senate Judiciary Committee**

#### **Assigned Reading:**

Committee Chairman, past and present

<http://judiciary.senate.gov/chairman.cfm>

Committee history

<http://judiciary.senate.gov/information.cfm>

### **Week 5: The Role of Outside Interest Groups**

William G. Myers, III, The Role of Special Interest Groups in the Supreme Court Nomination of Robert Bork, 17 Hastings Const. L. Q. 399 (1990) at 419

<http://www.washingtonpost.com/wp-dyn/content/article/2005/07/04/AR2005070400843.html>

[http://news.yahoo.com/s/nm/20050824/ts\\_nm/court\\_roberts\\_dc](http://news.yahoo.com/s/nm/20050824/ts_nm/court_roberts_dc)

[http://www.allianceforjustice.org/spotlight/2001\\_02\\_AFJ\\_Biennial\\_Report.pdf](http://www.allianceforjustice.org/spotlight/2001_02_AFJ_Biennial_Report.pdf)

[http://www.cfif.org/htdocs/legislative\\_issues/federal\\_issues/hot\\_issues\\_in\\_congress/confirmation\\_watch/kennedy\\_unbecoming\\_conduct.htm](http://www.cfif.org/htdocs/legislative_issues/federal_issues/hot_issues_in_congress/confirmation_watch/kennedy_unbecoming_conduct.htm)

[http://www.judgeroberts.com/epresskit/ginsburg\\_precedent.pdf](http://www.judgeroberts.com/epresskit/ginsburg_precedent.pdf)

<http://www.csmonitor.com/2005/0708/p03s02-uspo.html>

[http://www.usatoday.com/news/washington/2005-07-19-groups-ads\\_x.htm](http://www.usatoday.com/news/washington/2005-07-19-groups-ads_x.htm)

[http://www.cfif.org/htdocs/legislative\\_issues/federal\\_issues/hot\\_issues\\_in\\_congress/confirmation\\_watch/supreme-court-matters.htm](http://www.cfif.org/htdocs/legislative_issues/federal_issues/hot_issues_in_congress/confirmation_watch/supreme-court-matters.htm)

[http://www.independentjudiciary.com/resources/docs/John\\_Roberts\\_Report.pdf](http://www.independentjudiciary.com/resources/docs/John_Roberts_Report.pdf)

## Week 6: Thurgood Marshall

### Assigned Reading

Closed Chambers “The Price of Good Intentions” pp 343-372  
Miranda v. Arizona

The Modern Supreme Court Confirmation Process “Paradise Lost: Political Commitments Sought” Horace Cooper

## Week 7: Abe Fortas

### Assigned Reading:

[http://www.supremecourthistory.org/04\\_library/subs\\_volumes/04\\_c20\\_c.html](http://www.supremecourthistory.org/04_library/subs_volumes/04_c20_c.html)

Stuart Taylor—“A justice from the Real World” Investor’s Business Daily

<http://www.law.umkc.edu/faculty/projects/ftrials/scopes/fortasepperson.html>

*Gideon v. Wainwright*, [372 U.S. 335 \(1963\)](#)

<http://www.michaelariens.com/ConLaw/justices/fortas.htm>

<http://www.nacdl.org/public.nsf/ChampionArticles/19980316?opendocument>

## Week 8: Clement Haynsworth,

**Assigned Reading:** John P. Frank, *Clement Haynsworth, the Senate, and the Supreme Court* (U.Va Press, 1991) Chapter 7, “Senatorial Slugging Match”

<http://www.uiowa.edu/~030116/153/articles/kaplan.htm>

[http://writ.news.findlaw.com/scripts/printer\\_friendly.pl?page=/commentary/20010809\\_shenkman.html](http://writ.news.findlaw.com/scripts/printer_friendly.pl?page=/commentary/20010809_shenkman.html)

<http://www.tnr.com/doc.mhtml?i=w050905&s=stuntz090705>

<http://www.uscourts.gov/ttb/apr98ttb/page4.html>

[http://www.gopusa.com/commentary/hcooper/2005/hc\\_0811p.shtml](http://www.gopusa.com/commentary/hcooper/2005/hc_0811p.shtml)

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/10/09/ING5FF355H1.DTL>

**Week 9: G. Harrold Carswell**

**Assigned Reading:**

“The Bitter Trial of G. Harrold Carswell”, *Time Magazine* Monday, Apr. 20, 1970

[http://seattletimes.nwsourc.com/html/nationworld/2002549369\\_miersdoubts09.html](http://seattletimes.nwsourc.com/html/nationworld/2002549369_miersdoubts09.html)

<http://www.loc.gov/rr/law/nominations/carswell/hearing.pdf> (Pages 1-72)

**Week 10: William H. Rehnquist**

**Assigned Reading:**

**Roe v. Wade 410 U.S. 113 (1973)**

**GRISWOLD v. CONNECTICUT, 381 US 479 (1965)**

<http://a255.g.akamaitech.net/7/255/2422/26sep20051215/www.gpoaccess.gov/congress/senate/judiciary/sh99-1067/324-325.pdf>

<http://www.loc.gov/rr/law/nominations/rehnquist-aj/hearing.pdf>

pg 295 - 304 testimony of Clarence Mitchell NAACP

**Week 11:**

Robert Bork

**Assignment:**

“The False Prophets of American Conservatism” Henry V. Jaffa  
(<http://www.claremont.org/writings/980212jaffa.html>)

[http://www.washingtonpost.com/wp-dyn/content/article/2005/07/11/AR2005071101670\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/07/11/AR2005071101670_pf.html)

<http://www.csmonitor.com/2005/0707/p02s01-uspo.html>

[http://www.classroomlaw.org/documents/youth\\_summit\\_2005/lesson07\\_citizen\\_role/lesson07\\_handout02.pdf](http://www.classroomlaw.org/documents/youth_summit_2005/lesson07_citizen_role/lesson07_handout02.pdf)

<http://www.washtimes.com/books/20041009-103404-2341r.htm>

<http://vodreal.stanford.edu/Hoover/800/robert.ram> or  
<http://vodwins.stanford.edu/Hoover/800/robert.asx>

## **Week 12: Nov 7**

Douglas Ginsburg and the “Constitution in Exile”

### **Assignment:**

A book review: “The Rehnquist Revolution”

<http://www.tnr.com/docprint.mhtml?i=20041227&s=sunstein122704>

**Baker v. Carr.** 369 US 186 (1962)

**Harper v. Virginia** Board of Elections. 383 US 663 (1966)

## **Week 13:**

Clarence Thomas

### **Assigned Reading:**

<http://www.law.cornell.edu/supct/html/04-108.ZD1.html>

<http://straylight.law.cornell.edu/supct/html/03-6696.ZD1.html>

[http://straylight.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0503\\_0001\\_ZD.html](http://straylight.law.cornell.edu/supct/html/historics/USSC_CR_0503_0001_ZD.html)

<http://chm.gmu.edu/courses/122/hill/hilloutline2.htm>

<http://www.museum.tv/archives/etv/H/htmlH/hill-thomash/hill-thomas.htm>

[http://encarta.msn.com/media\\_461549642/Clarence\\_Thomas\\_Confirmation\\_Hearings.html](http://encarta.msn.com/media_461549642/Clarence_Thomas_Confirmation_Hearings.html)

[http://www.forerunner.com/forerunner/X0304\\_Clarence\\_Thomas\\_Nomi.html](http://www.forerunner.com/forerunner/X0304_Clarence_Thomas_Nomi.html)

## **Week 14: Harriet Miers**

*“White House Counsel Miers Chosen for Court”*

<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100300252.html>

*“Law.com’s 100 Most Influential Lawyers”*

[http://www.law.com/special/professionals/influential/l\\_m.html](http://www.law.com/special/professionals/influential/l_m.html)

*Analysis: The Harriet Miers Nomination*

[http://www.foxnews.com/printer\\_friendly\\_story/0,3566,171137,00.html](http://www.foxnews.com/printer_friendly_story/0,3566,171137,00.html)

*“Miers, Under Fire From Right, Withdrawn as Court Nominee”*

<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102700547.html>

## **Week 15 (Last Class)**

No lecture meeting; Extended office hours

Turn in paper

### **Instructor:**

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