Three-credit Seminar for Fall 2006—"Court and Constitution", taught by Dean Emeritus Frank Beytagh

"Court and Constitution" is a newly added 3-credit seminar that will be taught by OSU C/L Dean Emeritus Frank Beytagh during the Fall 2006 semester. (Classes are scheduled, in 75-minute segments, from 4:00 to 5:30 p.m., on Tuesdays and Thursdays, in Room ___.)

An overview of the course coverage is as follows:

1) An in-depth focus on the beginnings of the U.S. Supreme Court (and the federal judiciary generally) in our constitutional system (the Articles of Confederation, the Constitutional Convention, Art. III, the Federalist Papers, the Anti-Federalists' opposition, the Judiciary Act of 1789, and the early Courts of the late 18th century);

2) Then, a detailed consideration of the important and controversial concept of "judicial review" (as recognized in Marbury), and of landmark cases of the Marshall Court (Martin, McCulloch, Gibbons, etc.);

3) Next, emphasis on the constitutional and Court-developed (justiciability) limitations on judicial review under Art. III and other constitutional or statutory provisions;

4) Analysis of the Court's major "mistakes"—Dred Scott, Plessy, Lochner, Korematsu, and, some would argue, Roe;

5) An overview of the largely ineffectual Courts from the Civil War to the New Deal;

6) Then, the Hughes Court of the late 1930's, and its landmark decisions;

7) Next, the Warren Court era of the 1950's and 1960's, and the leading constitutional themes it developed;

8) Next, attention to the important decisions and directions of the more recent Burger and Rehnquist Courts, with specific focus on varying approaches toward constitutional interpretation by the judiciary;

9) Also, the processes currently used for appointing and confirming SCt Justices, the pros
and cons of an independent national judiciary, and the relationship between the USSCt and State Courts;

10) Then, focus on current issues before the Court (presidential power, “gay marriage”, discrimination on the basis of sexual orientation, Bush v. Gore, the “right to die”, the federal judiciary and international terrorism, consideration by the Sct of foreign constitutional courts and law, and political gerrymandering, as well as the pros and cons of switching from lifetime tenure for Justices to terms of years or a constitutionally prescribed retirement age for federal judges, etc.);

11) In addition, attention to Court processes and pertinent statistics, including the certiorari process, the Sct Rules, briefing and oral argument in the USSCt, Court organization and operations, the special role of the Chief Justice, the functioning and impact of the Solicitor General’s office, the roles played by the Justices’ law clerks, etc.;

12) Finally, attention will also be given to currently pending constitutional cases of consequence, and, in a general way, to the predictive future of the USSCt.

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Readings for each seminar session will be from prepared materials available from the Bookstore, or occasional handouts. Specific assignments will be made at the end of the preceding class. There is no casebook, and there will be no final exam. Instead, each student will prepare and submit (early in the course) a short paper (10-15 pp.) on a leading or current Sct Justice from a listing provided by FXB, and (toward the end of the semester) a longer paper (roughly 25 pp.) on a recently decided Sct constitutional case of consequence or on a Court-related topic selected from a list provided by FXB.

The only prerequisites for taking this seminar are the C/Law’s required courses in the constitutional law field. The basic objective of the seminar is to study the USSCt and its relationship to the US Constitution in a more detailed and in-depth manner than is possible in the more basic survey courses.