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SPRING 2007 SEMINAR
WHY JUDICIAL BIOGRAPHY COUNTS

SYLLABUS (revised)
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MEETING DATES AND TIMES: February 7 and 21, March 7 and 21, April 11 and 18 (all Wednesday evenings), 6:00-8:30 p.m. The seminar will meet in **Burns 415** at the George Washington University Law School, 20th and H Streets NW, Washington, DC.

GENERAL DESCRIPTION: There has been an explosion of books about the Court and its members as the public has grown more aware of the importance of the Supreme Court in daily life. Some justices, such as Oliver Wendell Holmes, William O. Douglas and Thurgood Marshall, are so colorful that their lives readily lend themselves to biographical treatment. Others, whose contributions are largely restricted to the realm of jurisprudence – such as Stephen Field or Joseph Story – are important but make more difficult subjects for the writer. Then there are critics, such as Richard Posner, who believe that judicial biography is useless (at least for lawyers), since all that matters is the ruling in the case. This seminar will explore the nature of judicial biography and try to determine how much, if it all, biography helps us to understand the workings of the Court and its rulings.

INTRODUCTION TO THE READING ASSIGNMENTS: Following are the session assignments for this seminar. Note that ICS cannot offer academic credit for this seminar, but students may be able to earn graduate credit through their home departments by completing an independent research project in conjunction with the seminar. Participants who are seeking course credit for this seminar should speak to me at the first session, so that an appropriate writing assignment can be set.

SYLLABUS

- **Session I (February 7, 2007)**

Introduction to the course and a discussion of the goals. Primarily, we want to know of what value judicial biography is, especially in the context of legal and constitutional history. Second, how does one tell “good” judicial biography from “bad.” The words themselves are clearly subjective, but through discussion and reading we ought to be able to come up with some criteria, both general and specific. For this opening session, please look over the special issue on judicial

biography of the *NYU Law Review* (June 1995), especially the article by Judge Richard Posner, as well as my article, "Conflict Among the Brethren: Felix Frankfurter, William O. Douglas, and the Clash of Personalities and Philosophies on the United States Supreme Court," *Duke Law Journal* (1988): 71-113. (**Note:** the Posner and Urofsky essays will be available for a limited time at <http://docs.law.gwu.edu/ics/texts/posner.pdf> and <http://docs.law.gwu.edu/ics/texts/urofsky.pdf>.)

- **Session II (February 21, 2007)**

For this session we will explore some of the elements that make for "good" judicial biography. Please read the indicated chapters from the following:

Alpheus T. Mason, *Brandeis: A Free Man's Life* (New York: Viking, 1946), ch. 32-36.

Alpheus T. Mason, *Harlan Fiske Stone: Pillar of the Law* (New York: Viking, 1956), ch. 16, 34, 35.

Dennis Hutchinson, *The Man Who Was Once Whizzer White* (New York: Free Press, 1998), ch. 14-17.

Also recommended: R. Kent Newmyer, *Supreme Court Justice Joseph Story: Statesman of the Old Republic* (Chapel Hill, NC: UNC Press, 1985)

- **Session III (March 7, 2007)**

More "good" biography.

G. Edward White, *Justice Oliver Wendell Holmes: Law and the Inner Self* (New York: Oxford University Press, 1993), ch. 11-12.

Paul Kens, *Justice Stephen Field* (Lawrence, KS: University Press of Kansas, 1997), ch. 1, 2, 9.

Also recommended: Mark Tushnet, *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991* (New York: Oxford University Press, 1997)

- **Session IV (March 21, 2007)**

A chance to talk to another judicial biographer, Judge John Ferren. Skim through the section on Rutledge's pre-judicial career in Ferren, *Salt of the Earth, Conscience of the Court: The Story of Wiley M. Rutledge* (Chapel Hill, NC: UNC Press, 2004) and carefully read the chapters on his judicial years.

- **Session V (April 11, 2007)**

“Bad” judicial biography. A comparison of Bruce Murphy, *Wild Bill: The Legend and Life of William O. Douglas* (New York: Random House, 2003) and James F. Simon, *Independent Journey: The Life of William O. Douglas* (New York: Harper & Row, 1981). Read chapters 34-39 in Murphy and chapters 28-30 in Simon.

- **Session VI (April 18, 2007)**

Writing about Brandeis. Reading assignments to come.

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ABOUT ICS: The **Institute for Constitutional Studies** is the nation’s premier university-based institute dedicated to ensuring that future generations of Americans understand the substance and historical development of the U.S. Constitution. Located at the George Washington University and associated with the GWU Law School, ICS is co-sponsored by the American Historical Association, Organization of American Historians, American Political Science Association, and Association of American Law Schools. ICS prepares younger scholars and college instructors to convey to their readers and students the important role the Constitution has played in shaping American society. ICS also provides a national forum for the preparation and dissemination of humanistic, interdisciplinary scholarship on American constitutional history.