

# Ashbrook Teacher Institute

## The Origins and Development of the Supreme Court

Sunday, July 6, 2003 to Friday, July 11, 2003

### Schedule Overview

#### Sunday, July 6

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- 2:00 pm - 4:00 pm:** Check into Apartments (*Senior Apartments, Ashland University*)  
**5:00 pm - 6:00 pm:** Dinner (*Heritage Room, Myers Convocation Center, Ashland University*)  
**6:00 pm - 7:00 pm:** Introduction to Ashbrook Teacher Institutes with Peter Schramm (*Heritage Room, Myers Convocation Center*)  
**7:15 pm - 9:00 pm:** Session 1 with Professor Masugi (*Founders Seminar Room, Lower Level, Founders Hall*)

#### Monday, July 7

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- 9:00 am - 10:30 am:** Session 2 with Professor Sikkenga (*Founders Seminar Room*)  
**10:50 am - 12:20 pm:** Session 3 with Professor Sikkenga (*Founders Seminar Room*)  
**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)  
**4:30 pm - 6:00 pm:** Session 4 with Professor Masugi (*Founders Seminar Room*)  
**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)

#### Tuesday, July 8

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- 9:00 am - 10:30 am:** Session 5 with Professor Masugi (*Founders Seminar Room*)  
**10:50 am - 12:20 pm:** Session 6 with Professor Sikkenga (*Founders Seminar Room*)  
**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)  
**4:30 pm - 6:00 pm:** Guest Lecture with Robert Alt (*Founders Seminar Room*)  
**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)  
**7:30 pm - 9:30 pm:** Guest Lecture with Douglas W. Kmiec (*Seminar Room, Founders Hall*)

#### Wednesday, July 9

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- 9:00 am - 10:30 am:** Session 7 with Professor Masugi (*Founders Seminar Room*)  
**10:50 am - 12:20 pm:** Session 8 with Professor Masugi (*Founders Seminar Room*)  
**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)  
**4:30 pm - 6:00 pm:** Guest Lecture with Professor David Forte (*Founders Seminar Room*)  
**7:30 pm - 9:30 pm:** Guest Lecture with Professor David Forte (*Founders Seminar Room*)

#### Thursday, July 10

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- 9:00 am - 10:30 am:** Session 9 with Professor Sikkenga (*Founders Seminar Room*)  
**10:50 am - 12:20 pm:** Session 10 with Professor Masugi (*Founders Seminar Room*)  
**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)  
**4:30 pm - 6:00 pm:** Art of Teaching Seminar with Professor Schramm (*Ashbrook Center, 8<sup>th</sup> Floor, Library*)  
**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)  
**7:30 pm - 9:30 pm:** Lesson Planning Session with Master Teacher (*Seminar Room, Founders Hall*)

# Ashbrook Teacher Institute

## The Origins and Development of the Supreme Court

Sunday, July 6, 2003 to Friday, July 11, 2003

### Schedule Overview (Continued)

#### Friday, July 11

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**9:00 am - 10:30 am:** Session 11 with Professor Sikkenga (*Founders Seminar Room*)

**10:50 am – 12:20 pm:** Session 12 with Professor Sikkenga (*Founders Seminar Room*)

**12:30 am - 2:00 pm:** Boxed Lunch/Check Out of Apartments (*Lobby of Apartment Building A*)

## Ashbrook Teacher Institute

### The Origins and Development of the Supreme Court

Sunday, July 6, 2003 to Friday, July 11, 2003  
Ashland University

Instructors: Ken Masugi and Jeffrey Sikkenga

### Readings

(ALH): Paul Finkelman, Kermit L. Hall, William Wiecek, eds., *American Legal History: Cases and Materials* (Oxford University Press, 1996)

Harry V. Jaffa, *Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates* (University of Chicago Press, 1999)

Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (Oxford University Press, 2001)

Hadley Arkes, *The Return of George Sutherland* (Princeton University Press, 1997)

Jean Edward Smith, *John Marshall: Definer of a Nation* (Henry Holt, 1998)

Robert P. George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Intercollegiate Studies Institute, 2002)

Bradford P. Wilson and Ken Masugi, eds., *The Supreme Court and American Constitutionalism* (Rowman and Littlefield Publishers, 1998)

(Packet): Photocopied Reading Packet

### Introduction

How to teach a course on the Supreme Court in less than a week? Rest assured, you cannot complete even the essential readings in the week you are at Ashland. So you must get started **now!**

The readings listed involve, first, what we will focus on in class (mainly excerpts from Supreme Court cases) and, second, what you should do on your own depending on your interest and inclination. If you can read the complete cases, you are invited to do so. You can obtain these via the internet. <http://supct.law.cornell.edu/supct/> In some instances (the Steel Seizure case and *Dred Scott*) this will amount to over 100 pages of tiny print.

As of this writing, we do not know your specific interests within history, politics, or the law. But we can make some general recommendations. If you enjoy reading about the American founding, read the John Marshall biography. Civil War buffs should read *Crisis of the House Divided* and then Don Fehrenbacher's *Dred Scott Case*. The former is less about the Supreme Court than about the political debates on slavery and Lincoln's role in recovering the American Founding ideas, specifically the Declaration of Independence. William J. Bennett declared this book as one of the ten best books on America. Fehrenbacher won the Pulitzer Prize for his detailed history. These books will provide you with the background for others, so read at least one of these books. Then look at the Masugi-Wilson volume on various Supreme Court issues, Hadley Arkes's *Return of George Sutherland*, and Robert George's provocative *Clash of Orthodoxies*. Of course, the more you can read of the Hall, Wiecek, and Finkelman *American Legal History*, the better.

As you read, you will discover a cacophony of views—between the arguments of various commentators, the instructors, and, above all, the Supreme Court opinions and their authors, the Justices. If you insist on having course material laid out for you in neat rows and packages, you should reconsider taking on the challenge before you. You will be confused and discouraged. Your instructors will argue the cases every which way. On your own, you may start out favoring one side, and then concluding the dead-opposite has to be the case. Then you'll come to class....

For those who enjoy such challenges, we hope you will find class a rewarding experience. Your instructors have taught constitutional law in a variety of locales—Ashland University, Harvey Mudd College, James Madison College of Michigan State University, Princeton, and the U.S. Air Force Academy. What remains constant is the astonishment (and shock! and horror!) students find as they discover the work of the Supreme Court.

What we have done is to select a few representative cases from various periods of American history. We will see the Court struggle with such fundamental issues as American Founding principles, slavery and its aftermath, the New Deal, civil liberties in time of war, and the cultural and political upheavals of the 1960s and their legacy. We are not teaching a course on political or social history, as interesting as these subjects are. So we make the essential reading the cases—how the issues of the time are reflected in the law, and, moreover, how the law affects thinking about the issues.

The Supreme Court provides a rare political moment when we see how *ideas*, in the form of legal thinking and reasoning, can shape political conduct. Unfortunately, some of the triumphant ideas were quite misguided, to say the least. Other, good ideas may not have been properly implemented by the democratic branches of government.

Review the attached syllabus, and note how much we are doing in one week.

Before you come to Ashland, read at least one of the books on the reading list on a subject that interests you or on one that you would like to know more about. Just read a couple books that interest you, or at least parts of the books. Using the outline provided, brief all the assigned cases. Type out each brief.

You will have little time to read and write once you arrive in Ashland. While in Ashland, you will be asked to perform a multitude of tasks:

1. Brief the case *before* class. You should try your hand at briefs before the beginning of the session.
2. Once you finish the briefs, read the required secondary materials. Look at the appropriate sections in *American Legal History* for more background.
3. From the reading you have done before you came to Ashland, especially from the books, apply what you know to the case and how we might better understand it. Be prepared to discuss your reading in class.
4. Engage in active participation in class—the instructors will use the sometimes frightening, but always entertaining (and surely ill-named) “Socratic method.” (You might want to view the film *Paper Chase* to get some idea of that. Sorry, *Legally Blonde* is over the top, so to speak.)
5. Attend the evening guest lectures.
6. Prepare for the evening guest lectures—a few hours of reading specific assignments.
7. Prepare for the last few class sessions—a few hours of reading cases assigned from the current Supreme Court term.

Your instructors will be with you at meals and break periods for informal discussions about the class materials and anything else of academic substance you wish to bring up. If you have questions, don’t hesitate to contact us now.

Ken Masugi  
[kmasugi@claremont.org](mailto:kmasugi@claremont.org)

Jeff Sikkenga  
[jsikkeng@ashland.edu](mailto:jsikkeng@ashland.edu)

## Seminar Schedule

### Sunday, July 6

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**2:00 pm - 4:00 pm:** Check into Apartments (*Senior Apartments, Ashland University*)

**5:00 pm - 6:00 pm:** Dinner (*Heritage Room, Myers Convocation Center, Ashland University*)

**6:00 pm - 7:00 pm:** Introduction to Ashbrook Teacher Institutes with Peter Schramm (*Heritage Room, Myers Convocation Center*)

**7:15 pm - 9:00 pm:** Session 1 with Professor Masugi (*Founders Seminar Room, Lower Level, Founders Hall*)

**Topic:** Understanding the Constitution: The Steel Seizure Case (*Youngstown v. Sawyer*)

**Readings:**

- *Youngstown Steel and Tube Company v. Sawyer* (Packet)

**Supplemental/Optional Reading:**

- O'Brien, *Storm Center*, chapter 3

**Monday, July 7**

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**9:00 am - 10:30 am:** Session 2 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** Judicial Review and the Marshall Court

**Readings:**

- *Marbury v. Madison* (ALH)
- Andrew Jackson, "Veto Message of the Bill on the Bank of the United States", July 10, 1832 (Packet)
- Abraham Lincoln, "Speech at Springfield, Illinois," June 26, 1857 (Packet)
- Ken Masugi, "The Unreal Lincoln" (Packet)

**Supplemental/Optional Reading:**

- Smith, *John Marshall*, chapters 1-2
- Cases in ALH starting with *McCullough v. Maryland*, going on to *Gibbons v. Ogden* and then *Dartmouth College v. Woodward*.

**10:50 am – 12:20 pm:** Session 3 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** The Constitutional Basis of the American Nation

**Readings:**

- *McCulloch v. Maryland* (ALH)
- "Mississippi Resolutions on Succession," 1860 (Packet)
- Abraham Lincoln, "First Inaugural Address," March 4, 1861 (Packet)
- *United States v. Curtiss-Wright Export Corporation* (Packet)
- Harry V. Jaffa, *Crisis of the House Divided*

**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)

**4:30 pm - 6:00 pm:** Session 4 with Professor Masugi (*Founders Seminar Room*)

**Topic:** The Civil War and the Constitution

**Readings:**

- *Dred Scott v. Sandford* (Packet)

**Supplemental/Optional Reading:**

- ALH, p. 187-242

**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)

**Tuesday, July 8**

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**9:00 am - 10:30 am:** Session 5 with Professor Masugi (*Founders Seminar Room*)

**Topic:** The Supreme Court and the Principle of Equality

**Readings:**

- *Plessy v. Ferguson* (ALH)
- *Brown v. Board of Education* (ALH)

**10:50 am – 12:20 pm:** Session 6 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** Equality and Affirmative Action in the Mind of the Supreme Court

**Readings:**

- *California v. Bakke* (ALH)
- *Grutter v. Bollinger* (to be distributed at institute)
- *Gratz v. Bollinger* (to be distributed at institute)

**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)

**4:30 pm - 6:00 pm:** Guest Lecture with Robert Alt (*Founders Seminar Room*)

**Topic:** The Supreme Court and the Concept of Limited Government

**Readings:**

- *United States v. Lopez* (Packet)
- *Wickard v. Filburn* (Packet)

**Supplemental/Optional Reading:**

- Arkes, *Return of George Sutherland*, chapters 1-2

**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)

**7:30 pm - 9:30 pm:** Guest Lecture with Douglas W. Kmiec (*Seminar Room, Founders Hall*)

**Topic:** Natural Law Originalism — The Declaration’s Constitution

**Wednesday, July 9**

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**9:00 am - 10:30 am:** Session 7 with Professor Masugi (*Founders Seminar Room*)

**Topic:** The Japanese Relocation and the War on Terrorism

**Readings:**

- *Korematsu v. U.S.* (ALH)
- *USA Patriot Act* (to be distributed at institute)

**Supplemental/Optional Reading:**

- ALH, p. 427-437
- Ken Masugi, “Necessity and Politics: War with Justice” (Packet)

**10:50 am – 12:20 pm:** Session 8 with Professor Masugi (*Founders Seminar Room*)

**Topic:** The Supreme Court Interprets “Due Process of Law”

**Readings:**

- *Griswold v. Connecticut* (Packet)

**Supplemental/Optional Reading:**

- Robert George, *Clash of Orthodoxies*
- Bork on the First Amendment (Packet)
- Masugi and Wilson, *Supreme Court and American Constitutionalism*

**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)

**4:30 pm - 6:00 pm:** Guest Lecture with Professor David Forte (*Founders Seminar Room*)

**Topic:** Religion and Government

**Readings:**

- David Forte, *Studies in Islamic Law: Classical and Contemporary Application*, chapters 2 and 9 (Packet)

**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)

**7:30 pm - 9:30 pm:** Guest Lecture with Professor David Forte (*Founders Seminar Room*)

**Topic:** Constitutional Interpretation

**Thursday, July 10**

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**9:00 am - 10:30 am:** Session 9 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** The First Amendment: The Freedom of Speech

**Readings:**

- *Texas v. Johnson* (Packet)
- *Virginia v. Black* (to be distributed at institute)

**10:50 am – 12:20 pm:** Session 10 with Professor Masugi (*Founders Seminar Room*)

**Topic:** The First Amendment: Religion

**Readings:**

- *Lee v. Weisman* (ALH)

**12:30 pm - 1:30 pm:** Lunch (*Student Dining, Myers Convocation Center*)

**4:30 pm - 6:00 pm:** Art of Teaching Seminar with Professor Schramm (*Ashbrook Center, 8<sup>th</sup> Floor, Library*)

**6:15 pm - 7:15 pm:** Dinner (*Accent Room, Myers Convocation Center*)

**7:30 pm – 9:30 pm:** Lesson Planning Session with Master Teacher (*Seminar Room, Founders Hall*)

## **Friday, July 11**

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**9:00 am - 10:30 am:** Session 11 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** The Supreme Court and the Rights of the Accused

**Readings:**

- *Miranda v. Arizona* (ALH)
- *Dickerson v. US* (Packet)

**10:50 am – 12:20 pm:** Session 12 with Professor Sikkenga (*Founders Seminar Room*)

**Topic:** The Second Amendment

**Readings:**

- *US v. Miller* (Packet)
- Levinson, “The Embarrassing Second Amendment” (Packet)

**12:30 am - 2:00 pm:** Boxed Lunch/Check Out of Apartments (*Lobby of Apartment Building A*)