



INSTITUTE *of* JUDICIAL  
ADMINISTRATION  
NYU SCHOOL OF LAW

## New Appellate Judges Seminar July 13-18, 2014

### **AGENDA**

Intended Audience: New judges (up to four years of appellate experience) on state supreme courts, state intermediate courts of appeals, and federal courts of appeals.

Objective: To offer a seminar and dialogue combining practical and theoretical training for new appellate judges with some exposure to substantive law and judicial ethics.

Faculty: The sessions will be co-directed by Professors Oscar Chase, Samuel Estreicher and Troy McKenzie of NYU School of Law. The judicial faculty in residence throughout the seminar includes Hon. Shirley S. Abrahamson of the Wisconsin Supreme Court, Hon. Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit, Hon. Martha Craig Daughtrey of the U.S. Court of Appeals for the Sixth Circuit, Hon. Roderick L. Ireland of the Massachusetts Supreme Judicial Court, Hon. Gary Katzmann of the Massachusetts Appeals Court, Hon. Diarmuid O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit, Hon. Bea Ann Smith of the Texas Court of Appeals (retired), and Hon. Jeffrey Sutton of the U.S. Court of Appeals for the Sixth Circuit.

Additional faculty members include Peter Buscemi, Esq. (Morgan, Lewis & Bockius LLP), Hon. John Gleeson (U.S. District Court for the Eastern District of New York), Hon. George Marlow (New York Statewide Judicial Director of Ethics Education and Counsel), Hon. Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit, Professors Rachel E. Barkow and S. Andrew Schaffer (NYU School of Law) and Timothy Terrell (Emory Law School), and Isaiah Zimmerman, Ph.D. (Washington School of Psychiatry). Benjamin H. Diessel, Esq. and Vanessa A. Lively, Esq. of Cravath, Swaine & Moore LLP, under the supervision of David R. Marriott, Esq., will argue the appeal on Monday morning.

Ian H. Gershengorn, Principal Deputy Solicitor General of the United States, will deliver the opening address on Sunday evening.

2014 IJA Summer Fellows Brian J. Mendick and Catherine I. Siebel (both NYU Law '16) prepared the Bench Memorandum and assisted in the preparation of other material for the Seminar.

Location: The Opening Reception and Dinner and all of the group sessions will take place in Lipton Hall, 108 West Third Street, New York. The locations of other sessions are as indicated on the Agenda.

*These sessions are made possible in part by the generous support of Thomson West and Time Warner Inc.*

## **SCHEDULE OF SESSIONS**

### **Sunday, July 13**

|                |  |  |
|----------------|--|--|
| 4:45 p.m.      | <b>Meeting for Program Faculty</b>   | Faculty Club,<br>D'Agostino Hall,<br>108 West Third Street |
| 6:00 p.m.      | <b>Registration Begins</b>   | Lipton Hall,<br>108 West Third Street                      |
| 6:00-7:00 p.m. | <b>Cocktail reception</b>  | " "  |
| 7:00-9:00 p.m. | <b>Dinner</b>  | " "  |
|                | <b>Welcoming Remarks:</b>  |  |
|                | Prof. Oscar Chase and Prof. Samuel Estreicher                                  |  |
|                | <b>Opening Address:</b>  |  |
|                | Ian H. Gershengorn, Principal Deputy Solicitor General<br>of the United States |  |
|                | Introduction by Prof. Troy McKenzie  |  |

### **Monday, July 14**

|                      |  |                                       |
|----------------------|--|---------------------------------------|
| 8:30-8:50 a.m.       | <b>Continental Breakfast</b>   | Lipton Hall,<br>108 West Third Street |
| 8:50 a.m.            | <b>Opening Remarks</b>   | " "                                   |
|                      | Professor Oscar Chase  |                                       |
| 9:00 a.m.-12:00 p.m. | <b>Moot Court Exercise—Oral Argument: <i>Heien v. North Carolina</i></b>   | " "                                   |
|                      | Session Facilitator: Professor Troy McKenzie   |                                       |
|                      | Judges: Justice Bea Ann Smith, Judge Rosemary Barkett, Judge<br>Martha Craig Daughtrey, Chief Justice Roderick Ireland<br>( <i>presiding</i> ), and Judge Diarmuid O'Scannlain |                                       |
|                      | Counsel: Benjamin H. Diessel, Esq. and Vanessa A. Lavelly, Esq.<br>(Cravath, Swaine & Moore LLP)   |                                       |
|                      | 9:05—Pre-argument conference among presiding judges  |                                       |
|                      | 9:10—Arguments and appellant rebuttal  |                                       |
|                      | 9:50—Judge breakout groups (of 5) discuss and decide case  |                                       |
|                      | 10:20—Presiding judges decide case   |                                       |
|                      | 10:45—Report and discussion of attendee judges' decisions  |                                       |

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|-----------------|--|--|
| 12:15-1:15 p.m. | <b>Lunch</b><br>Speaker: Trevor W. Morrison<br>Dean, NYU School of Law   | Lipton Hall,<br>108 West Third Street                          |
| 1:30-3:00 p.m.  | <b>The Decisional Process</b><br>Judges Jeffrey Sutton and Diane Wood<br>Facilitators: Professors Samuel Estreicher and Troy McKenzie  |  |
| 3:15-4:45 p.m.  | <b>Conferencing &amp; Process of Decision-Making<br/>(Breakout Sessions)</b>   | All Breakout Sessions<br>are on Third Floor of<br>Furman Hall: |
|                 | <b>Group A. State Supreme Courts</b><br>Chief Justice Roderick Ireland (Facilitator) and Chief Justice Shirley Abrahamson  | Furman 310   |
|                 | <b>Group B. State Intermediate Appellate Courts and Military Courts I</b><br><b>(Judges' Last Names Beginning with Letters A-K)</b><br>Judge Bea Ann Smith (Facilitator) and Prof. Oscar Chase       | Furman 316   |
|                 | <b>Group C. State Intermediate Appellate Courts and Military Courts II</b><br><b>(Judges' Last Names Beginning with Letters L-Z)</b><br>Judge Rosemary Barkett (Facilitator) and Judge Gary Katzmann | Furman 318   |
|                 | <b>Group D. Federal Courts</b><br>Judge Martha Craig Daughtrey (Facilitator), Judge Diarmuid O'Scannlain and Judge Jeffrey Sutton  | Furman 324   |

### Tuesday, July 15

|                      |   |  |
|----------------------|---|--|
| 8:30-9:00 a.m.       | <b>Hot Breakfast</b>  | Lipton Hall,<br>108 West Third Street  |
| 9:00 a.m.-12:15 p.m. | <b>Opinion Writing I: Beyond Logic to Coherence and Strength</b><br>Professor Timothy Terrell   | " "  |
| 12:30-1:45 p.m.      | <b>Lunch: Topics in Legal Research</b><br>Judge Rosemary Barkett and Susan Gass   | " "  |
| 2:00-4:00 p.m.       | <b>Conferencing and Collegiality</b><br>Dr. Isaiah Zimmerman, Judge Martha Craig Daughtrey, Chief Justice Roderick Ireland, Judge Gary Katzmann and Professor Oscar Chase (Facilitator) | " "  |
| 7:00-9:20 p.m.       | <b>Broadway Play: "A Gentleman's Guide to Love and Murder" (Optional)</b>   | Walter Kerr Theatre<br>219 W. 48th Street<br>(bet. Broadway & Eighth Avenue) |

**Wednesday, July 16**

Lipton Hall,  
108 West Third Street

|                      |   |     |
|----------------------|---|-----|
| 8:30-9:00 a.m.       | <b>Continental Breakfast</b>  |     |
| 9:00 a.m.-12:15 p.m. | <b>Opinion Writing II: Clarity and Character</b><br>Professor Timothy Terrell | " " |
| 12:15-12:45 p.m.     | <b>Class Photo</b>  | TBA |

**Thursday, July 17**

Lipton Hall,  
108 West Third Street

|                      |  |   |
|----------------------|--|---|
| 8:30-9:15 a.m.       | <b>Hot Breakfast</b>   |   |
| 9:15 a.m.-12:15 p.m. | <b>Statutory Interpretation</b><br>Professor Rachel Barkow and Judge Jeffrey Sutton  | " "   |
| 12:30-1:45 p.m.      | <b>Lunch</b><br><b>The Perspective of an Appellate Advocate</b><br>Peter Buscemi, Esq.   | " "   |
| 2:00-3:00 p.m.       | <b>Opinion Writing III: Editing Discussion</b><br>Professor Timothy Terrell, Chief Justice Shirley Abrahamson and Judge Bea Ann Smith  | " "   |
| 3:15-4:45 p.m.       | <b>High Quality Justice in a High Volume World<br/>(Breakout Sessions)</b>   | All Breakout Sessions are on Third Floor of Furman Hall:<br><br>Group A. <b>State Supreme Courts</b><br>Chief Justice Roderick Ireland (Facilitator) and Chief Justice Shirley Abrahamson |
|                      |  | Furman 310  |
|                      | Group B. <b>State Intermediate Appellate Courts and Military Courts I</b><br><b>(Judges' Last Names Beginning with Letters A-K)</b><br>Judge Bea Ann Smith (Facilitator) and Prof. Oscar Chase       | Furman 316  |
|                      | Group C. <b>State Intermediate Appellate Courts and Military Courts II</b><br><b>(Judges' Last Names Beginning with Letters L-Z)</b><br>Judge Rosemary Barkett (Facilitator) and Judge Gary Katzmann | Furman 318  |
|                      | Group D. <b>Federal Courts</b><br>Judge Martha Craig Daughtrey (Facilitator) and Judge Jeffrey Sutton  | Furman 324  |

|                |   |   |
|----------------|---|---|
| 6:30-9:30 p.m. | <b>Reception and Dinner</b><br>Appreciation of Retiring AJS Faculty Members | Park Café<br>10th Floor, 1 Time<br>Warner Center,<br>West 58 <sup>th</sup> Street<br>(bet. 8 <sup>th</sup> & 9 <sup>th</sup> Avenues) |
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| <b><u>Friday, July 18</u></b> |   | Lipton Hall,<br>108 West Third Street                      |
| 8:30-9:00 a.m.                | <b>Continental Breakfast</b>  |  |
| 9:00-10:30 a.m.               | <b>Current Problems in Criminal Law</b><br>Judge John Gleeson and Professor Andrew Schaffer   | " "  |
| 10:45 -12:15 p.m.             | <b>Issues in Judicial Ethics and Judicial Independence</b><br>Judge Martha Craig Daughtrey, Justice Gary Katzmann, Justice George Marlow and Judge Bea Ann Smith; Professor Oscar Chase (Facilitator) | " "  |
| 12:15-1:30 p.m.               | <b>Lunch for Seminar Faculty and IJA Fellows</b>  | Faculty Club,<br>D'Agostino Hall,<br>108 West Third Street |