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Introduction to Symposium: An Enigmatic Court? Examining the Roberts Court as It Begins Year Three

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Introduction

Douglas W. Kmiec* & Kenneth W. Starr**

PROFESSOR KMIEC: We have styled this symposium as a question: Is the Roberts Court enigmatic? We have borrowed the terminology “enigma” from Winston Churchill’s famous 1939 quotation, where he said, in relation to the mysterious actions of Russia at the time, “I cannot forecast you the actions of Russia. It is a riddle, wrapped in a mystery, inside an enigma; but perhaps there is a key.”¹

Our topic today is not a foreign nation, but our own Supreme Court. We have brought some fine talent to give us a key to its understanding.

In its short life, the Roberts Court has been many things. It has been an advocate of unanimity and consensus and a provider of five-to-four opinions. It has been the defender of stare decisis and precedent, and the engine for the hollowing out of some of that precedent. It is a Court of nine that sometimes seems to be governed by one. It is a Court that is often described as ideologically divided between liberal and conservative, and yet nothing more than a neutral umpire calling balls and strikes.

Out of all of these different characterizations and more, those of us who teach, those of us who practice, and those of us who simply want to respect the work of the Court, desire more than an enigmatic understanding of the Constitution and its interpretation. Today, four panels should lead to this better understanding.

The first is an overview of the Roberts Court prior to the beginning of this Term.

In our second panel, we will be examining Justice Roberts’ desire to make the Court speak with one voice, as an institution, and explore to what degree

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1. Winston Churchill, British Prime Minister, Wartime Broadcast in Response to the Soviet-German Boundary and Friendship Treaty (Oct. 1, 1939), *available at* http://www.chu.cam.ac.uk/archives/allery/Russia/CHAR_09_138_46.php.

he's been successful in achieving that aspiration and what tools are available to him to accomplish it.

In the third, we will indulge in a discussion of competing methods of constitutional interpretation. First we will lay out theories of interpretation. Then we will look very carefully at the jurisprudence of individual members of the Court.

Finally, we will look ahead at the cases on the docket of the Supreme Court this year, perhaps even a few speculations about what may be in store for the Court in light of the 2008 presidential election.

To further introduce the topic, please welcome Dean Kenneth Starr.

DEAN STARR: Thank you, Professor Kmiec. We do indeed have a fine roster to examine the work of the Court, and we are grateful for the return of Dean Sullivan and Professor Amar, and also to welcome for the first time, Professor Rosen and Ms. Biskupic.

A recent *Time* magazine cover featured a photograph of our 51-year-old Chief Justice with the provocative title "The Incredibly Shrinking Court."² In the accompanying article, David Von Drehle wrote that Roberts' combination of keen intelligence and undeniable charm was such that one of his college professors, the liberal Laurence Tribe, who was to have been with us today, continues to extol Roberts' wisdom even as he laments the conservative course that the Roberts Court has taken.³

So is the Court, as our distinguished chair and convener, Doug Kmiec, has put before us, enigmatic? Is it a riddle? Is it a mystery? Well, let's begin the discussion in earnest.

2. David Von Drehle, *The Incredibly Shrinking Court*, TIME, Oct. 22, 2007.

3. *Id.*