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# Preface

“One is continually aware of the importance of the public school as an arena of legal controversy.”

JUSTICE WILLIAM J. BRENNAN, JR. (SEPTEMBER 29, 1964)

“In our system, state operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.” JUSTICE ABE FORTAS, *TINKER V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT* (1969)

This casebook is about the Constitution of the United States and how the Supreme Court and lower courts have interpreted it to govern the lives of American public school students. The cases presented here, some famous and some obscure, form a platform from which to launch young minds on a voyage of constitutional discovery. I invite America’s students to learn to read and speak the language of constitutional law by studying cases that have affected them—and will continue to affect them—directly.

I know that America’s young people can excel in constitutional law. In the fall of 1999, twenty-five law students at American University’s Washington College of Law were named Marshall-Brennan Fellows and, with the support of the Arca Foundation and Mrs. Thurgood Marshall and Mrs. William J. Brennan, Jr., went out to teach the Constitution in the public high schools of the District of Columbia. The results were astonishing as high school students rose to the occasion and developed their constitutional vision and voices.

I first decided to write this book on a dare from high school teachers who complained that there was no collection of cases to grab the attention of their students. Every summer I address a group of thirty high school teachers from all over America who are brought to Washington, D.C., by the Street Law program to study the Supreme Court. I was amazed to learn that the teachers have no easy access to major Supreme Court decisions, much less a set of carefully edited case materials to share with their own students. One teacher challenged me to write a casebook that would be “neither too complicated nor too boring.”



The 1999–2000 Marshall-Brennan Fellows at American University, with Mrs. Thurgood Marshall, Mrs. William J. Brennan, Jr., and Professor Jamin B. Raskin, in front on the right.

I believe that this book is not too complicated. I have edited away as much of the underbrush as possible while I hope not sacrificing the critical points of legal substance. And I am quite certain that readers will not find it boring. The cases presented here explore the most interesting problems facing young Americans today: censorship of high school newspapers, drug use and drug testing, racial desegregation, hate speech and the Confederate flag, religious prayer at graduation ceremonies and in other school contexts, inequality in school financing and poverty, sex education and condom distribution, privacy and responsibility, and freedom of thought and freedom of speech. In fact, a great many of our most important Supreme Court cases concern public schools; if you study them, you will know more about constitutional rights than the vast majority of adult Americans.

This casebook is designed specifically for use by high school and college instructors in social studies, history, civics, and government classes. The explanatory historical material, glossary definitions, biographical sketches, moot court exercises, and discussion questions provide classroom teachers with all the necessary material to guide their students toward constitutional literacy. As Justice William J. Brennan, Jr., noted in a remarkable address given at the University of Pennsylvania thirty-five years ago calling for constitutional education in our high schools, “a teacher need not be a lawyer to teach effectively in this area.

Sandra Day O'Connor's class at Stanford in 1948. The future Supreme Court justice is third row, second from left.

The teacher's job is not so much to supply the kind of answer a lawyer would give, but rather to raise the difficult questions to get his students worrying and thinking about the values and interests at stake.”

## **Constitutional Knowledge, Critical Thinking, Persuasive Argument, and Values Clarification**

You must first learn the basics of what the Constitution is and how the legal system works. You can then approach these cases with an inquiring and logical mind, the kind of mindset that you would bring to algebra or geometry. Why does the Court decide a case one way rather than the other? Who has the better side of the argument in a Supreme Court decision, the majority or the dissenters, and why? What makes an argument relevant or irrelevant? How does the Supreme Court go about the business of interpreting words? Is it always consistent? Should it be? Is constitutional law about facts, rules, values, or some complex interaction of all three? Why does law change over time and what makes it change?

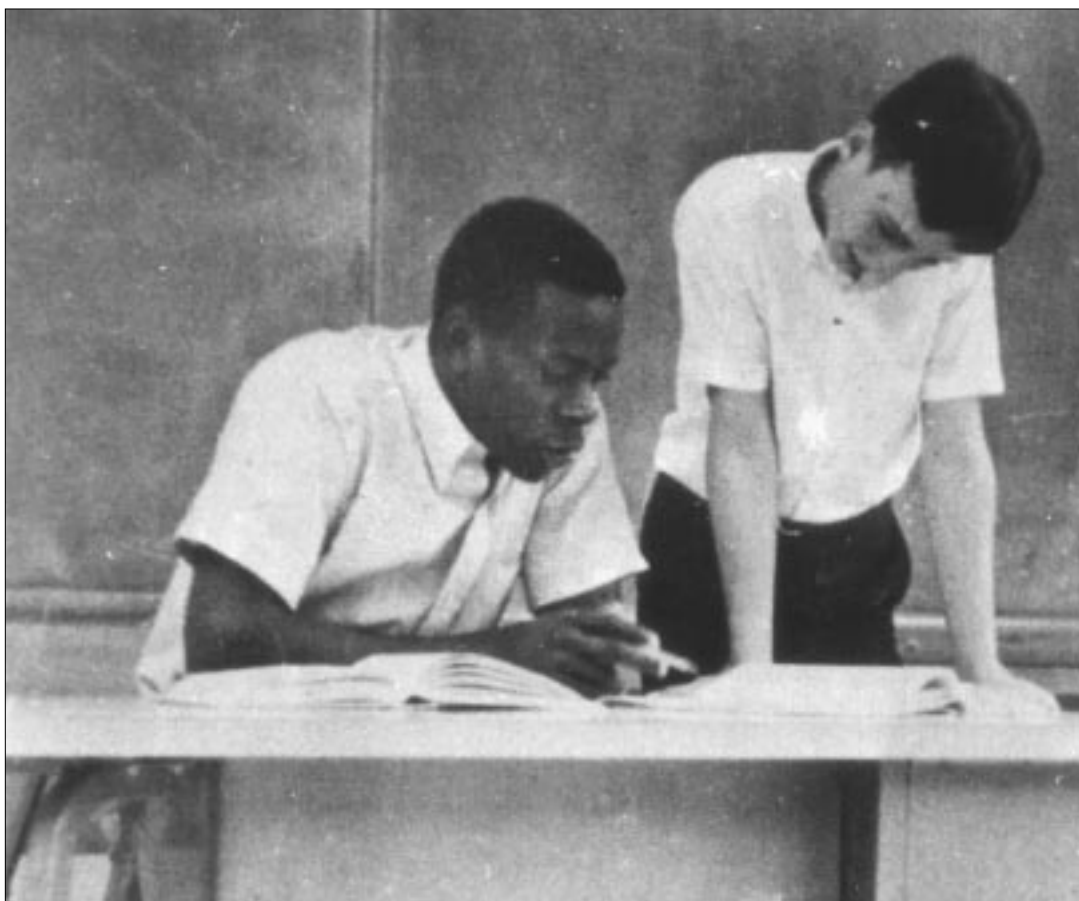


Future Supreme Court justice Ruth Bader Ginsburg's entry in her high school year book in 1950.

Future Supreme Court justice Clarence Thomas compares notes with a fellow high school student at St. John's.

Pretty soon you will discover that, when it comes to interpreting difficult constitutional issues, there are few “right” answers. Rather, there are different available arguments that are more or less convincing. This ambiguity requires us to make persuasive arguments about the meaning of the Constitution based on the different methods of interpretation. As you practice writing and arguing about the Constitution, you will improve your oral communication skills and persuasiveness and your written communication skills, including clarity, cogency, and subtlety.

In the final analysis, I hope that you will see that every great legal conflict has at its heart a clash over values and principles. Learning the Constitution in this way enables you to clarify what your values are and to engage in real dialogue with other people about the rules of our common life. No one knows what leads to disasters like the Columbine







Civic-minded students pick up trash outside a St. Louis homeless shelter. Like volunteer service, learning your constitutional rights and responsibilities is an important part of becoming a citizen.

High School massacre, which shook many Americans to the core, but it is hard to believe that the students responsible were taught to think for themselves as citizens and to appreciate the values and equal dignity of other people in the community.

I hope that you will gain from this text a love and appreciation for a document that has bound us together for more than two centuries. As Chief Justice John Marshall wrote in *McCulloch v. Maryland* in 1819, “we must never forget, that it is a constitution we are expounding.” It belongs to all of us.

## **Becoming a Democratic Citizen: Rights and Responsibilities**

I have written this casebook with one driving conviction: that, while you can be many things without knowing your own Constitution, you cannot be an effective citizen. Knowing your Constitution is not only a birthright; it is a rite of passage that allows you to become a responsible citizen in a modern representative democracy.

It is a splendid and wonderful thing to learn of your rights as a citizen, but rights exist only in the context of a working democratic community where we all assume corresponding responsibilities. Just as each of us has a legal right to speak and to be heard, we have a complementary moral obligation to listen to one another in a respectful way. Just as we have a right to insist that government not violate our rights and securities as individuals, government has the right to insist that each of us respect the rights and securities of our fellow citizens (or students). It is this tension between rights and responsibilities that creates much of the excitement of this text.

From my interactions with high school students, I have assumed that my young readers are mature and wise. I know that you will find nothing in this casebook as a license for irresponsibility; rather, you will view the material presented here as a complex challenge to fulfill the highest calling of democracy: to be an active, engaged, educated, and responsible citizen. When you think and talk seriously about the problems and cases raised in this book, you will finetune your moral and political sensibilities as a citizen of the nation and your community. And who knows? Perhaps, even now, this book is in the hands of a future U.S. president or Supreme Court justice.

## **Acknowledgments**

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This book is dedicated to my wife, Sarah Bloom Raskin, the beautiful and mysterious woman who sat across from me in Professor Laurence Tribe's Constitutional Law class at Harvard in Langdell North in the fall of 1986.

## **For Further Information**

If you have a question that you cannot answer, consult your school librarian or a law librarian at a nearby law school or university. There are also extensive bibliographies and suggestions for other contacts at the end of each chapter. You may also call the Student Press Law Center at (703) 807-1904 if your question relates to the free speech or free press rights of students. Or, you may e-mail me at [Raskin@wcl.american.edu](mailto:Raskin@wcl.american.edu) and I will get back to you with an answer as soon as I can.

Remember: It's your Constitution, and it's up to you to make it work.

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