

2019

The Marshall-Brennan Constitutional Literacy Project: An Introduction

Stephen Wermiel

American University Washington College of Law, swermiel@wcl.american.edu

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/jgspl>



Part of the [Law Commons](#)

Recommended Citation

Wermiel, Stephen (2019) "The Marshall-Brennan Constitutional Literacy Project: An Introduction," *American University Journal of Gender, Social Policy & the Law*. Vol. 27 : Iss. 5 , Article 3.
Available at: <https://digitalcommons.wcl.american.edu/jgspl/vol27/iss5/3>

This Symposium is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *American University Journal of Gender, Social Policy & the Law* by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

THE MARSHALL-BRENNAN CONSTITUTIONAL LITERACY PROJECT: AN INTRODUCTION

STEPHEN J. WERMIEL*

The Marshall-Brennan Constitutional Literacy Project was founded in 1999 with the goal of teaching local public and charter high school students about the Constitution and their rights. The aim was to empower students in their education, in their own futures, and in their communities.

The goal was indisputably valuable. Everything else seemed like a challenge. Would law students give up a dozen or more hours per week to teach constitutional rights to high school students? Would schools allow law students with minimal training to teach? Would school officials allow their students to learn about their own rights, especially their rights in school? Would high school students be interested or even care?

One person believed the answer to all of these questions was yes, that we could conquer these obstacles, and that the program would work. That person was the creator of the program, former American University Washington College of Law Professor, now Congressman Jamie Raskin. An irrepressible optimist, Raskin was so convinced of the correctness of the goal that he refused to consider that any obstacles could prevent success.

At the time, I was the new associate director of the WCL Program on Law and Government, and Raskin was its co-director. It was logical for him to ask me if I wanted to help. I was skeptical but Raskin, and the first group of WCL students he recruited, made a believer out of me.

One of the first questions, and the one on which this essay focuses, was what name to give to the new program.

Justice Thurgood Marshall was an obvious choice, Justice William J. Brennan, Jr. less so.

* Stephen J. Wermiel is Professor of Practice at American University Washington College of Law, where he has taught since 1998. He is co-author of Justice William J. Brennan's official biography: *JUSTICE BRENNAN: LIBERAL CHAMPION* (Houghton Mifflin Harcourt, 2013).

Marshall was obvious given his career-long commitment to the importance of equal educational opportunity. As a lawyer, he planned the strategy and then litigated the cases to outlaw school segregation, up to and including *Brown v. Board of Education*.¹ Marshall was a hero of the civil rights movement for his role in desegregation and leading the NAACP Legal Defense Fund.²

Marshall's place in history would have been assured even if he had not become the first African-American justice on the U.S. Supreme Court in 1967. Once he joined the Court, serving for 24 years,³ Marshall continued his strong commitment to equality, especially in education.

Perhaps his strongest expression of that commitment came in his dissent in *San Antonio Independent School District v. Rodriguez*.⁴ The Court majority found that the use of the property tax to fund public education did not violate the Constitution, even though the system resulted in unequal resources for rich and poor districts.⁵

In dissent, Marshall wrote that the "majority's holding can only be seen as a retreat from our historic commitment to equality of educational opportunity and as unsupportable acquiescence in a system which deprives children in their earliest years of the chance to reach their full potential as citizens."⁶ Critical of leaving any property tax solution to the legislature, Marshall quoted one of the most powerful lines from *Brown v. Board of Education*.⁷ He wrote, "I, for one, am unsatisfied with the hope of an ultimate 'political' solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations 'that may affect their hearts and minds in a way unlikely ever to be undone.'"⁸

1. *Brown v. Board of Education*, 347 U.S. 483 (1954) (holding schools segregated upon race a violation of the Fourteenth Amendment's Equal Protection Clause).

2. Linda Greenhouse, *Thurgood Marshall, Civil Rights Hero, Dies at 84*, N.Y. TIMES (January 25, 1993), <http://movies2.nytimes.com/learning/general/onthisday/bday/0702.html>.

3. Marshall served on the Supreme Court from 1967 to 1991. He died in 1993.

4. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 71 (1973) (Marshall, J. dissenting) (noting the majority's reluctance to further expand upon the holding in *Brown v. Board of Education*).

5. *Id.* at 1 (upholding the right to use property tax to fund public education).

6. *Id.* at 71 (Marshall, J., dissenting) (commenting on the majority's holding).

7. *Brown v. Board of Education*, 347 U.S. 483, 494 (1954) (emphasizing the effect of segregated schools on children).

8. *Rodriguez*, 411 U.S. at 71-72 (1973) (Marshall, J., dissenting) (quoting *Brown v. Board of Education*, 347 U.S. at 494) (stating that segregated schools negatively affect children).

Justice Brennan's tenure⁹ also included important commitment to school desegregation,¹⁰ and that, alone, would be enough to include him in the name of the Marshall-Brennan Constitutional Literacy Project. But Brennan also had a lesser-known interest in civic education, about which he gave several speeches during the 1960's.¹¹ His speeches could be a roadmap for the Marshall-Brennan Project.

In one such speech, Brennan explained a profound vision for the need to educate students about the Constitution and their rights. Brennan said:

Of very deep concern to me is the seeming lack of appreciation that far too many high school students and graduates have for the Rule of Law. The more specific concern is that so many Americans simply fail to understand the deeper meaning of our Bill of Rights. I do not suggest that students cannot recite the text of the first ten amendments—on the whole that seems to be done quite smoothly.

What does concern me deeply is that the import of the words in the Bill of Rights very often fails to get off the printed page and into real life. While we have made progress in giving students an appreciation of some of the principles of the Bill of Rights, we have retrogressed with others.¹²

For the remarkable commitment Marshall and Brennan shared both to the importance of education for success in our society and their belief in equal educational opportunity, the Marshall-Brennan Constitutional Literacy Project was appropriately named for the two Justices. Twenty years later, their belief in the importance of constitutional education continues to inspire law students at the Washington College of Law and at other law schools around the nation.

9. Brennan served on the Supreme Court from 1956 to 1990. He died in 1997.

10. See *Green v. County School Board*, 391 U.S. 430, 442 (1968) (holding that a freedom of school choice plan was insufficient to meet the school district's obligation to desegregate); see also *Keyes v. School District No. 1*, 413 U.S. 189, 213 (1973) (finding intentional segregation in the Denver school system).

11. See William J. Brennan, Jr., *Teaching the Bill of Rights*, Speech to the National Council on Social Studies (1962) (copy on file with the author); see also William J. Brennan, Jr., *Education and the Bill of Rights*, 113 U. PA. L. REV. 219 (1964); William J. Brennan, Jr., *Education in Constitutional Liberties and Responsibilities*, Speech to National Association for Principals for Schools for Girls (1967) (copy on file with the author).

12. William J. Brennan, Jr., *Education and the Bill of Rights*, 113 U. PA. L. REV. 219, 219 (1964) (originally delivered as a speech at the Conference on School Law).