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Founding the Marshall-Brennan Constitutional Literacy Project

By Stephen J. Wermiel



There are many different approaches to civic literacy, reflecting the dedication of so many individuals and organizations and their creativity committed to the task. For the Marshall-Brennan Constitutional Literacy Project, the approach has been to have law students educate young people about their rights through Supreme Court cases and moot court arguments.

Founded in 1999 at American University Washington College of Law (WCL), the program has challenged thousands of teenage students in public schools and public charter schools in Washington, D.C., to learn and think critically about First Amendment free speech values, Fourth Amendment limits on police searches and seizures, Fourteenth Amendment principles of equality, and fundamental protections like privacy and the right to vote.

Congressman Jamin Raskin of Maryland, who founded the program when he was a constitutional law professor at WCL, retains an abiding commitment to the need for constitutional literacy education. "America is suffering from a crisis of constitutional and civic illiteracy which exposes us all to disinformation, social discord and repeated assaults on the voting rights of the people," Rep. Raskin said in a recent interview. "The Marshall-Brennan Project turns law students into law professors who educate America's high school students about their rights and responsibilities. The project is helping to restore the constitutional knowledge and agency of the American people."

For about 20 years now, the program has been expanding to numerous other law schools throughout the nation. The current lineup of Marshall-Brennan

Projects includes Arizona State University Sandra Day O'Connor College of Law in Phoenix; Drexel University Thomas R. Kline School of Law in Philadelphia; Southern University Law Center in Baton Rouge, Louisiana; Suffolk University Law School in Boston; University of Colorado School of Law in Boulder; University of Louisville Brandeis School of Law; University of New Mexico School of Law in Albuquerque; University of Pittsburgh School of Law; Washington University at St. Louis School of Law; and Yale Law School in New Haven, Connecticut.

The programs vary in size and duration, but they share the common goal of teaching students about the legal system and their rights. Much of the curriculum has traditionally involved Supreme Court cases about the rights of students, something to which students may be better able to relate. The high school students, known as Marshall-Brennan Scholars, and their law student teachers, known as Marshall-Brennan Fellows, wrestle with issues about free speech on T-shirts, in yearbooks, or on social media. They discuss the First Amendment's protection of the free exercise of religion and protection from government promoting religion. They argue over what level of suspicion police officers should have for different kinds of stops, searches, and arrests, including searches of school lockers, student backpacks, and more; and they consider the role of school resource officers. They discuss the meaning of equality under the Fourteenth Amendment, in particular how the concept relates to students of color, the gender identity of students, and sexual orientation. They argue about the meaning in school of the right to privacy, which the

Supreme Court has found implicit in the Bill of Rights and Fourteenth Amendment guarantee of liberty protected by due process.

And, of course, it would not be civic literacy if they did not discuss the right to vote. That discussion is experienced differently in different Marshall-Brennan chapters. In Washington, D.C., the focus is on the unique disenfranchisement of D.C. residents who do not have voting representation in Congress.

In other chapters, the challenges of voting are due to poverty, discrimination, and other factors, including restrictive voting laws being enacted in dozens of states.

"My teaching partner and I loved teaching high school students about areas of the law that are particularly relevant to them and their interests," said Sara Wanous, a WCL third-year student from Minneapolis. "We taught them about juveniles' rights when speaking to police, the meaning and application of the bill of rights, and other topics."

Rachel Kiefer, a WCL second-year student from Clinton, Connecticut, presented her high school juniors and seniors with a Fourth Amendment search case. "We started briefing the case in class, and students had to finish it as homework. It was really exciting to see them engage with the case," Kiefer said.

In addition to all of these substantive issues, high school students in Marshall-Brennan Projects train to participate in a moot court competition. Each year, the chapters share a hypothetical legal problem presented in the form of a case to be argued in the U.S. Supreme Court. Each year, hundreds of students study the law of the hypothetical case and also learn how to prepare and deliver an appellate argument. The experience is truly transformative for so many students who would never have imagined they were capable of standing in front of a panel of volunteer law students, lawyers, and judges and presenting arguments to them.

Each of the chapters works toward a local final competition among winners from the different Marshall-Brennan schools in a region. Then in the spring,

the local winners meet in a program-wide national moot court competition. In 2022, the National Marshall-Brennan Moot Court will be hosted by the University of Colorado Law School. The competition for 2022 involves a Fourth Amendment school search issue and a Fourteenth Amendment equal protection dispute over the discriminatory treatment of a transgender student.

Teaching constitutional literacy has become a passion for many who are involved. Congressman Raskin is one example. He became conscious of the need for students to learn about their rights after he was contacted by students at a Montgomery County, Maryland, high school who had a regular debate show on a public access channel. The debate the students organized on same-sex marriage was canceled by the channel. Raskin offered to sue the school district, but at the behest of the students, he negotiated for them, and the debate was eventually aired.

The program was implemented with the help of this author. The families of the late Justice Thurgood Marshall and the late Justice William J. Brennan Jr. agreed to have the names of those legendary legal figures attached to the program. And it made perfect sense. As a preeminent civil rights lawyer, Marshall led the fight against school segregation, culminating in his unanimous victory in *Brown v. Board of Education* in 1954. As a Supreme Court Justice from 1967 to 1991, he continued to write decisions advocating for equality in the nation's public schools. Brennan, who was on the Court from 1956 to 1990, gave a number of speeches in the 1960s

advocating for civic literacy and wrote important Supreme Court decisions in the battle for equality.

In the earliest years of the program, the widows of both justices participated in annual celebrations of the Marshall-Brennan Constitutional Literacy Project. Mary Beth Tinker also became a loyal friend of the program. She was the lead student in the landmark victory in *Tinker v. Des Moines Independent School District* in 1969 in which the Supreme Court ruled that students do not give up their constitutional rights at school. The Court ruled that Mary Beth, her brother John, and other students could not be punished for wearing black armbands to school to advocate for peace in the Vietnam War. The case remains a mainstay of the Marshall-Brennan curriculum, and Mary Beth Tinker has visited Marshall-Brennan programs often.

Others have been inspired to pursue their passion for constitutional literacy. One example is Maryam Ahranjani. She started as a Marshall-Brennan Fellow while she was a law student at Washington College of Law. She eventually became director of the national and local programs for over five years at Washington College of Law. When she moved to Albuquerque to start her own law-teaching career at the University of New Mexico Law School, she helped to facilitate a Marshall-Brennan chapter and continues to serve as its faculty adviser. The program in Albuquerque is unique in a number of ways, but notably, because it serves schools with high enrollments of American Indian and Hispanic students.

Reflecting on Marshall-Brennan,

Professor Ahranjani said recently, "I cannot overstate the impact that the Marshall-Brennan Constitutional Literacy Project has had on my professional and personal identity and that of countless other former fellows and scholars who have been involved with the Project. Together, we have learned about the Constitution and the Supreme Court's critical role in interpreting it." Ahranjani continued, "Law students and law schools have the privilege and indeed responsibility to give young people—particularly those whose lives are unfortunately sometimes negatively affected by various government actors such as the police—the tools to learn about their rights, think critically, and be advocates for themselves and their communities."

At Washington College of Law, the project is currently directed by Camille Thompson, an experienced law school administrator with a long commitment to serving the needs of and improving outcomes for students from diverse and underrepresented populations. Overseeing Marshall-Brennan locally and nationally, she has the opportunity to work toward those goals, both for law students and high school students.

Stephen J. Wermiel is a professor of practice at American University Washington College of Law and co-founded the Marshall-Brennan Constitutional Literacy Project with Congressman Raskin. He is a past chair of the ABA Section of Civil Rights and Social Justice.

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