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Youth Justice in America

Maryam Ahranjani

University of New Mexico - School of Law, maryam.ahranjani@law.unm.edu

Andrew G. Ferguson

Jamin B. Raskin

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Youth Justice in America

Second Edition

Maryam Ahranjani

American University

Andrew G. Ferguson

University of the District of Columbia

Jamin B. Raskin

American University



Los Angeles | London | New Delhi
Singapore | Washington DC



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CONTENTS

Foreword / x

Preface / xii

About the Authors / xiv

1. AMERICAN SOCIETY, CRIME, AND THE CONSTITUTION / 1

The Constitution and Crime / 5

“We the People” and the War on Drugs:
Politicians and Their Families, Athletes, Entertainers / 6

Criminal Justice: Not the End of the Story / 9

The American System of Juvenile Justice / 10

What Is the Juvenile Justice System? / 11

Why a Separate System for Juveniles? / 11

Are Juveniles Different? American Society’s View / 13

Are Juveniles Different? The Court’s View / 13

A Brief History of Juvenile Justice / 14

What Happens in Juvenile Court? / 17

Copping a Plea / 18

- D. L. v. State of Florida / 20

Juvenile Detention / 23

Juvenile Delinquency and Guilt / 26

- In the Interest of Jeffery Glassberg / 27

When a Child Is Treated as an Adult: Waiver to Adult Court / 29

Judicial Review of Waiver to Adult Court / 31

- Kent v. United States / 32

2. WHAT IS CRIME? / 36

Constitutional Limits on Government’s Power to Make Crimes / 36

The Principle of Notice / 37

The Principle of Harm / 39

- Lawrence v. Texas / 40

The Structure of Criminal Laws / 42

Theft Offenses / 43

Offenses against Property / 43

Offenses against the Person / 44

Inchoate Crimes / 45

Defenses / 46

3. THE SECOND AMENDMENT, YOUTH, AND SCHOOLS / 50

The Second Amendment and Young People / 50

History of the Second Amendment / 50

The Meaning of the Second Amendment / 50

- District of Columbia v. Heller / 52

The Second Amendment and Schools / 61

4. FOURTH AMENDMENT: PROTECTION FROM UNREASONABLE SEARCHES AND SEIZURES / 65

The Right to Be Left Alone / 65

The Exclusionary Rule / 66

Reasonable Expectation of Privacy / 68

- Katz v. United States / 70

Fourth Amendment Search / 71

Constitutional Garbage / 72

- California v. Greenwood / 73

Constitutional Baggage / 76

- Bond v. United States / 77

Other Expectations of Privacy / 79

Plane View / 80

Copped Out / 80

Non-Company Business / 80

City Heat / 81

Expectation of Privacy or Not? Search or Not? / 82

- United States v. Jones / 84

What Is a Seizure? / 89

Bad Bust Stop / 90

The Free-to-Leave Standard / 90

- United States v. Mendenhall / 91

Seizure and Consent / 93

Consent to Search / 93

- Florida v. Bostick / 94

Seizures on the Street / 97

- California v. Hodari D. / 98
- Probable Cause and the Warrant Requirement / 101
 - Probable Cause* / 102
 - Totality of Circumstances Test* / 103
- Illinois v. Gates / 103
 - The Warrant Requirement* / 107

5. EXCEPTIONS SWALLOW THE RULE: WARRANTLESS SEARCHES / 111

- Exception 1: Emergency Circumstances—Hot Pursuit, Destruction of Evidence, and Public Safety / 113
- Exception 2: Plain View / 116
- Exception 3: Search Incident to an Arrest / 118
 - Chimel v. California / 118
- Exception 4: Automobile Exception / 120
 - Automobile Exception in Practice* / 122
 - The Problem with Pretext* / 124
- Whren v. United States / 125
- Exception 5: Consensual Searches / 128
 - In Re J. M., Appellant / 128
- Exception 6: Stop and Frisk / 131
 - Terry v. Ohio / 132
 - Refining the Definition of Reasonable Suspicion* / 138
 - Illinois v. Wardlow / 138
 - A Reasonable Search* / 141
 - Realities of Reasonable Suspicion* / 142
- Exclusionary Rule Review / 146

6. SCHOOL SEARCHES / 150

- Search of Belongings / 151
 - Standard for Searches* / 151
- New Jersey v. T. L. O. / 152
 - T. L. O. Review* / 158
- Drug Testing and After-School Activities / 159
 - Vernonia School District v. Acton / 159
- Drug Testing for All Students? / 167
 - Board of Education of Pottawatomie County v. Earls / 167
- Strip Searches / 173
 - Safford Unified School District v. Redding / 173
- Metal Detectors and the Constitution / 178
 - In Re Latasha W. / 179

7. FIFTH AMENDMENT: PRIVILEGE AGAINST SELF-INCRIMINATION / 182

The Screaming Eagle / 183

Not Taking the Stand / 184

The Purposes and Values Served by the Fifth Amendment / 184

Protections against Self-Incrimination / 186

The Miranda Case / 188

- Miranda v. Arizona / 188

Juveniles and the *Miranda* Warnings / 194

The Michael C. Case: Juvenile Waiver / 195

- Fare v. Michael C. / 196

The Haley Case / 200

What Is Custody? / 201

- J. D. B. v. North Carolina / 202

Exercises: Custody or Not? / 206

Answers: Custody or Not? / 208

Pull Over, Jack / 209

- Ohio v. McCarty / 209

What Is Interrogation? / 212

Exercises: Interrogation or Not? / 214

Answers: Interrogation or Not? / 215

The Dangers of False Confession / 216

8. SIXTH AMENDMENT: RIGHT TO COUNSEL / 222

The Right to Legal Counsel / 223

Role of Legal Counsel / 223

Initial Meeting: Establishment of an Attorney-Client Relationship / 224

Continuing Representation: Protection of Rights / 225

Pretrial Duties: Investigation and Advice / 225

Trial / 226

Sentencing / 226

Role of the Defense / 228

Powell v. State of Alabama / 229

- Powell v. State of Alabama / 230

Gideon v. Wainwright / 234

- Gideon v. Wainwright / 236

Right to Counsel for Juveniles / 239

The Case of Gerald Gault / 239

- Application of Gault et al. / 240

Juvenile Waiver of Right to Counsel / 244

Right to Effective Counsel / 246

Test of Ineffectiveness / 247

Reality of Ineffective Counsel / 248

A Quick Career Quiz / 249

9. CRUEL AND UNUSUAL PUNISHMENT / 252

The Death Penalty Today / 252

The Death Penalty and Juveniles / 254

The Supreme Court and the Juvenile Death Penalty / 254

Turning over a New Leaf? / 255

- Roper v. Simmons / 256

Juveniles and Life Imprisonment without Parole / 264

- Graham v. Florida / 265

- Miller v. Alabama, Jackson v. Hobbs / 271

10. THE FUTURE OF YOUTH JUSTICE / 280

The Goals of Criminal Punishment / 281

Record Prison Populations / 282

First, Do No Harm: State Struggles with Record of Juvenile Injustice / 283

Movement toward Decarceration / 290

The Racial Dynamics of the Criminal Justice System / 292

Felon and Ex-Felon Disenfranchisement / 295

Gendered Offenders / 296

Life in Prison without the Possibility of Parole / 298

Appendix A: The Case of Robert Jones / 302

Appendix B: Constitution of the United States / 304

Appendix C: Glossary / 321

Appendix D: Bibliography / 328

Appendix E: Marshall-Brennan Fellows 1999–2014 / 333

Index / 341



FOREWORD

At some point in your life, you probably will be stopped by the police. Are you prepared? After you read this book, you will be. Think of it as an instruction manual for the real world.

Most people have no idea what their rights are. Your locker gets searched, or a cop pats you down. Maybe you are angry, you feel like your privacy was invaded, but you don't know what to do. What if you get locked up? Should you talk to the police? You heard on TV that you have a right to a lawyer, but is that really true? At this point you are probably clueless, and that is a dangerous thing. If you don't know your rights, it is more likely that your rights will be abused. Knowledge is power.

I needed a book like this when I was a teenager. As a kid, I didn't trust the police much, and some of them seemed to feel the same way around me. When I was thirteen I rode my bike to a mainly white neighborhood. I stuck out maybe, a black kid riding his bike anywhere he pleased through the segregated neighborhoods of Chicago. That, however, was the last thing on my mind. It was a beautiful day. I felt free in a way that you feel only when you are thirteen and it is spring and you are on a bike. I felt like the whole world was mine. Until a police car pulled up next to me and the window rolled down and a cop asked, "Is that your bike?"

Now what was I supposed to say? Of course it was my bike. Why was he asking? I was angry but my mother had taught me to always be polite to police officers. I mumbled something and sped off. I did not like feeling accused and scared when I had not done anything wrong.

Fast forward to the future. I am grown now and live in a neighborhood with a lot of crime. Once I came back to my house, and something didn't feel right. A window was open that I didn't remember opening. No way was I going in that house alone. Who did I call? The police, of course.

When they came, "they" turned out to be one guy. I explained the situation to him, and he said he would go in and look around. He went inside, looked around, and said everything looked fine. I said "What about the closets?" We went back inside, and he looked in every closet. Nothing was amiss, so the officer left to respond to another call. I was totally freaked out, but it was just another day on the job for him.

It reminded me of a public service commercial from years ago. It showed the classic dark and stormy night, and you saw this haunted-looking house. There was a roll of thunder and something made the door of the house creak open. Then you heard the announcer say, "You wouldn't go in that house for a million dollars. A cop does it for a lot less than that." It's true. I don't always like cops, but sometimes I need them.

The people who wrote the Bill of Rights had some of the same conflicting feelings that I have about police power. They wanted to be safe. They wanted to be free. So they made some strong rules. This book is about those rules.

The rules, as you will see, are kind of radical. The Constitution is very suspicious of authority. It gives citizens all kinds of freedom, and it greatly limits the power of government. Maybe you will agree with the way the Supreme Court has interpreted these principles, maybe you will not agree. In any case, I hope that you finish this book with a new respect for the awesome privileges that you have as a person who lives in the United States of America.

You have important responsibilities also. It's up to you to make sure that the country lives up to its highest ideals. You have to agitate when you feel as if it's not doing so. The Beastie Boys have a song in which they say, "You gotta fight for your right to party." Really, though, you have to fight to keep all of your rights.

Even today, in one of the greatest, most free nations there ever was, there are too many people who are locked up. There are still some police officers who don't follow the rules. If you see the police do something that you think is wrong, you should be respectful and polite, for your own safety. But pay close attention and, at the appropriate time, you should report your concerns. Vigilance is one of the obligations of being a good citizen. Another responsibility, obviously, is to obey the law. My hope is that you will learn about the juvenile justice system from this book, and not from personal experience!

Each year, thousands of young people find themselves accused of crime. The Constitution belongs to them, as much as it belongs to anyone else. As you read this book, think about ways to make our justice system more fair. Our society is far from perfect, but young people have the imagination and the power to make it better. Read this important book, and then decide what your role shall be.

Paul Butler
Professor of Law
Georgetown University Law Center

Paul Butler is professor of criminal law, civil rights, and jurisprudence at the Georgetown University Law Center. A graduate of Harvard Law School, Butler formerly served as a federal prosecutor with the U.S. Department of Justice, where his specialty was public corruption.



PREFACE

We have been involved in an educational experiment since 1999. We work with dozens of law students who teach a course every year in “constitutional literacy” to hundreds of high school students in Washington, D.C., and Maryland. This experiment, the Marshall-Brennan Constitutional Literacy Project, has been launched in high schools and law schools across America, from Camden, New Jersey, to Tempe, Arizona. Thousands of young people, including the residents of juvenile correctional facilities, are reading and using the Constitution as a tool for understanding and changing their lives and communities.

The first text that we developed, *We the Students*, analyzes a collection of cases involving issues that affect students at school: censorship of school newspapers, prayer in schools, segregation, affirmative action, sexual harassment, and so on. Many high school students, however, pressed us to go further. This text responds to students’ deep interest in the criminal justice process—the police, prosecutors and defense lawyers, judges, the process of investigation, and a young person’s rights and responsibilities in the system.

Many students are curious about the intrinsically fascinating aspects of the criminal justice process. However, many teenagers are drawn to the subject because they have been participants in the process—through direct and repeated encounters with police, prosecutors, and judges. Others are interested because they have friends and family who are participants—willing or unwilling—in the process. The first edition of this text resulted in one of our committed Marshall-Brennan alumni, Nisha Thakker, founding a nonprofit organization called the National Youth Justice Alliance—to recruit and train law students and lawyers to teach students in detention about the criminal justice process using the text. Nisha has reported that young people, even repeat offenders, are so hungry for the information in this text that pages are ripped from the copies at the detention facility in which she and her volunteers teach and that students routinely ask how they may obtain a personal copy of the text.

In this second edition of *Youth Justice in America* we have fine-tuned and elaborated on our conversation about the Constitution. *Youth Justice* provides a broad overview of constitutional rights in the criminal justice process as well as detailed studies of particular cases, most of them involving young Americans who have gotten into serious trouble. The book portrays a part of America that we do not always want to see but certainly cannot afford to ignore.

In this edition of *Youth Justice* we present sobering statistics and carefully edited cases related to guns in society and in schools, searches and seizures, right to counsel, privilege against self-incrimination, execution and life imprisonment of juveniles, and more. The case law is enhanced with stunning photographs, teaching hypotheticals, and recurring features, including “Your Thoughts,” “Points to Ponder,” and “Additional Sources.” “Your Thoughts”

poses hard questions to elicit students' opinions on topics raised in subsequent sections. "Points to Ponder" offers follow-up reflections on tricky issues. "Additional Sources" directs students to further reading on the subject. The text is accompanied by helpful appendix features, including a class exercise, the U.S. Constitution, a glossary of legal terms, and a bibliography.

We hope that everything you learn in these pages will help you "increase the peace," strengthen democracy, and advance justice in your communities.

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Maryam Ahranjani

It would be impossible to list the countless high school students, law students, and colleagues who have inspired me to think about this text and imagine its potential. I would, however, extend tremendous gratitude, in particular, to Margaret Montoya, Nisha Thakker, Claire Griggs, Jeff Wojcik, Kelly Pretzer, and Mulan Cui, all of whom have demonstrated humbling and critical support for the text and its underlying ideals. Each of them gave everything they could to make sure this edition catapults the first edition. I also thank my parents, my sisters, my husband Paul, and our beautiful boy Rumi, whose being frames my outlook and inspires absolutely everything I do. Thanks also to my brilliant co-conspirators Jamie Raskin and Andrew Ferguson.

Andrew G. Ferguson

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Jamin B. Raskin

Thanks to my wonderful coauthors, the indispensable Angela Davis, Cynthia Jones, Dean Claudio Grossman, Mary Beth Tinker, Paul Butler, Christine Murphy, and Qiana Parker. My wife, Sarah, and my children, Hannah, Tommy, and Tabitha, give me hope and joy every day. All power to the Marshall-Brennan Fellows and to the young people who learn from them.

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ABOUT THE AUTHORS

Maryam Ahranjani is a mother, lawyer, adjunct professor of law, and associate director of the National Marshall-Brennan Constitutional Literacy Project at American University Washington College of Law. One of the first Marshall-Brennan fellows, she has overseen the growth of the project to twenty-three law schools in the United States, South Africa, Hong Kong, and Japan.

Andrew G. Ferguson is an associate professor of law at the University of the District of Columbia David A. Clarke School of Law. Formerly a practicing public defender in Washington, D.C., representing juvenile, adult, and appellate clients, he was awarded an E. Barrett Prettyman Fellowship at the Georgetown Criminal Justice Clinic and clerked for a federal judge on the United States Court of Appeals for the Fifth Circuit. He is also author of *Why Jury Duty Matters: A Citizen's Guide to Constitutional Action* (NYU Press), the first book written for jurors on jury duty.

Jamin B. Raskin is a professor of constitutional law and the First Amendment at American University Washington College of Law and founder of its acclaimed Marshall-Brennan Constitutional Literacy Project, in which law students teach constitutional literacy courses in public high schools across America. He is also a Democratic state senator in Maryland and the Majority Whip of the Maryland Senate, and he serves as a member of the Senate Judicial Proceedings Committee. He led the successful floor fights in the Senate to repeal the death penalty and to pass marriage equality. He is the author of *We the Students: Supreme Court Cases for and about Students*, 4th edition (CQ Press, 2014) and *Overruling Democracy* (2003), a *Washington Post* best-seller.