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BOOK REVIEW OF CURRENT ISSUES IN CONSTITUTIONAL LITIGATION: A CONTEXT AND PRACTICE CASEBOOK BY SARAH E. RICKS

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Current Issues in Constitutional Litigation\footnote{Sarah E. Ricks with Evelyn M. Tenenbaum, Current Issues in Constitutional Litigation: A Context and Practice Casebook (Carolina Academic Press 2011) and Teacher’s Manual (Carolina Academic Press 2011).} introduces students to the constitutional and statutory doctrines necessary to litigate 4th, 8th, and 14th Amendment claims, and 1st Amendment prisoners’ religion claims. Its practical approach is unusual and rooted in the law practice experience of its two authors, Sarah Ricks, Clinical Professor at Rutgers-Camden Law School, and Evelyn Tenenbaum, Professor at Albany Law School. My perspective is unique because while I was in law school I was assigned an early draft of the casebook, I worked as a research assistant on a later version, and now, several years later, I have viewed the final result as a practicing attorney.

While most federal law casebooks present United States Supreme Court cases and require students to interpret the law from the case, this was the only casebook I was assigned in law school that laid out the doctrinal law, demonstrated how that law was applied differently throughout the circuit courts, and encouraged students to create litigation strategies and examine the perspectives of all parties involved in each potential litigation scenario.\footnote{Christy Whitfield is an attorney advisor at the Office of Disability, Adjudication, and Review for the Social Security Administration and a former law clerk to the Honorable Gloria M. Burns, United States Bankruptcy Judge for the District of New Jersey.} The structure of the book allowed me to examine perspectives beyond my own and taught me to assess each potential case from every party's angle. This casebook introduced me to actual legal documents, such as
amicus briefs, jury instructions and discovery requests, and showed me practical applications of knowledge gained from Civil Procedure and Federal Courts courses. Above all else, Current Issues in Constitutional Litigation taught me that context is the key in constitutional litigation and all litigation, and this has profoundly helped me in my three years of legal practice since graduating from law school.

Current Issues in Constitutional Litigation does not "hide the ball." The doctrinal law is clearly presented in a narrative summary. Unlike traditional casebooks, where students are required to delve through cases to interpret the current state of an area of law, here both Professor Ricks and Professor Tenenbaum explain the current doctrinal law in the introduction to each chapter prior to presenting the cases and statutes. This approach allows students to focus on using the doctrine in law practice simulations and discussing practical litigation strategies instead of simply attempting to interpret cases.

The book includes the necessary statutes and Supreme Court opinions but is not limited to those sources. Rather, Current Issues in Constitutional Litigation uses many types of legal documents to tell the tales of constitutional litigation. Students read not just judicial opinions but documents that lead up to judicial opinions, including complaints, Amicus Curiae briefs, transcripts of oral arguments, discovery documents, and expert reports, and documents that

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3 E.g., id. at 401 (discussion of absolute immunity doctrine).

4 E.g., id. at 564-67 (class action complaint against city).

5 E.g., id. at 592-98 (Brief of Amici Curiae).

6 E.g., id. at 157-61 (Supreme Court Oral Argument).

7 E.g., id. at 285-89 (discussion of evolution of complaint through discovery process).

8 E.g., id. at 334-38.
implement judicial opinions, including jury instructions and proposed amendments to statutes. Exposure to legal documents helps prepare students for their roles as practicing attorneys or law clerks for the courts.

Current Issues in Constitutional Litigation introduces Supreme Court precedent and reveals the divergence between circuit courts applying the same Supreme Court case. The cases in the book are edited in a manner that permits easy navigation of the determinative facts and law. An Arizona law student assigned the book commented: "I love the text book because it is edited in a way that the opinions are relevant to the content of the class." Unlike many casebooks, Current Issues in Constitutional Litigation incorporates visual aids such as graphs and charts to clearly depict significant doctrinal legal tests, which gives students multiple resources to use while attempting to grasp new legal doctrines. Additionally, unlike most casebooks, this casebook prefaces excerpted documents with questions to guide the students’ reading, which focuses their attention on the significant fact patterns and questions before the court and the strategies the attorneys use to deal with such issues.

Current Issues in Constitutional Litigation also outlines, through examples and law review articles, the important role non-precedential opinions can play in the evolution of law and

9 E.g., id. at 66-67 (Model Jury Instructions).

10 E.g., id. at 463 (proposed amendment to Prisoner Litigation Reform Act).

11 E.g., id. at 169-88.

12 E.g., id. at 184-88 (excerpt of Butera v. District of Columbia, 235 F.3d 637 (D.C. Cir. 2001)).

13 E.g., id. at 241, 257 (charts relating to when off-duty police officers can be acting under color of law).
the necessity of recognizing a circuit's non-precendential opinions in creating litigation strategies.\textsuperscript{14}

Professor Ricks moves away from a teaching method where students spent the majority of their time reading Supreme Court cases and then discussing them. Rather, the book and course are structured around law practice simulations that cast students in a variety of professional settings to reinforce what students have learned about each doctrine. The students may be asked to play the role of: plaintiff's attorney, defendant's attorney, or judge in a circuit court oral argument;\textsuperscript{15} attorneys involved in an interoffice debate representing plaintiff or defendant regarding whether to seek certiorari to the Supreme Court;\textsuperscript{16} counsel for non-profit, counsel for executive agency, counsel for municipalities' organization, or counsel for police association involved in testifying before a state legislative committee;\textsuperscript{17} plaintiff's attorney, defendant's attorney, or judge in a jury charge conference before a district court judge;\textsuperscript{18} city's in-house counsel with opposing views on how to handle adverse rulings and settlements;\textsuperscript{19} plaintiff's attorney, defendant's attorney, or mediator involved in a settlement conference before the federal appellate mediators;\textsuperscript{20} and defendant or defendant's attorneys with opposing views on

\textsuperscript{14} E.g., id. at 188-93.

\textsuperscript{15} Id. at 113-14, 260-61, 612-14.

\textsuperscript{16} Id. at 198-200, 530-32.

\textsuperscript{17} Id. at 395-98.

\textsuperscript{18} Id. at 326-27.

\textsuperscript{19} Id. at 398-99.

\textsuperscript{20} Id. at 532-33.
whether to settle or appeal to the circuit court.\textsuperscript{21} This simulation method helps students learn to orally present legal ideas and become comfortable with orally interacting with judges, supervising attorneys, and other legal professional through these role playing exercises.

Additionally, in exercises throughout the book prior and subsequent to cases, statutes, and other legal materials, the book suggests assigned roles for students and questions to both structure classroom discussion and creates an avenue for students to practice skill sets required for legal professionals. For example, the students are assigned roles as: law clerk to a trial judge deciding a 12(b)(6) motion;\textsuperscript{22} summer associate deciding whether to represent an inmate \textit{pro bono};\textsuperscript{23} an attorney briefing a case immediately following specific Supreme Court decision;\textsuperscript{24} attorney assigned to review circuit court model jury instructions for consistency with Supreme Court doctrine;\textsuperscript{25} plaintiff's attorney assigned to interview a client;\textsuperscript{26} attorney for local government advising whether a city policy should be amended;\textsuperscript{27} attorney to a non-profit advising what statutory amendments should be sought after adverse Supreme Court ruling;\textsuperscript{28} and plaintiff's attorney drafting document requests.\textsuperscript{29} These exercises help the students learn how as

\begin{itemize}
\item \textsuperscript{21} \textit{Id.} at 435-36.
\item \textsuperscript{22} \textit{Id.} at 48-49.
\item \textsuperscript{23} \textit{Id.} at 63.
\item \textsuperscript{24} \textit{Id.} at 135.
\item \textsuperscript{25} \textit{Id.} at 193-94.
\item \textsuperscript{26} \textit{Id.} at 257.
\item \textsuperscript{27} \textit{Id.} at 307-08.
\item \textsuperscript{28} \textit{Id.} at 455.
\item \textsuperscript{29} \textit{Id.} at 550-51.
\end{itemize}
professionals they can shape doctrine by advocating for different interpretations of the same governing law through briefs and other types of advocacy and reform. These exercises also demonstrate to the students the importance of factual investigation and discovery for gathering the facts necessary to represent a client and prove or disprove a claim.

Current Issues in Constitutional Litigation prepares students for law practice by providing pertinent factual context. Discussions of the training and work details of prison guards, police officers, and social workers aid students in assessing litigation strategies and allow students to view multiple perspectives of parties involved in constitutional litigation. For example, in the chapter involving Eighth Amendment prisoner litigation, Professor Ricks presents general information about prisoners and prison guards, including information about prison healthcare and prison violence— all key factual context for Eighth Amendment prisoner claims. Additionally, the book discloses the training, pay, and work details of police officers, prison guards, and social workers and the emotional toll and physical health and safety issues involved with these occupations.

Professor Ricks discusses alternative remedies for bad conduct by government workers and protecting individuals, such as a grand jury report involving a criminal indictment against social workers who failed to protect a child. Additionally, the statement of the unsuccessful

30 E.g., id. at 38-44, 50.

31 E.g., id. at 264-67.

32 E.g., id. at 39-41.

33 E.g., id. at 155-56.

34 Id. at 224-28.
plaintiff after the Supreme Court rejected her claim that constitutional violation had occurred when police officers failed to enforce a restraining order exposes the raw emotion and heartbreak involved in constitutional litigation.\textsuperscript{35}

This fuller factual context approach influences how students read and understand the truncated report of facts in legal opinions. For example, when I read this book as a student, learning more about the factual context for litigation helped me to better understand the differing roles of attorneys, judges, legislators, and the administrators responsible for implementing constitutional doctrine. By presenting possible constitutional litigation factual contexts, this casebook helped me to appreciate the competing pressures of attempting to remedy or prevent constitutional violations while also being fair to government employees confronted by challenging circumstances and limited budgets. The materials also reveal the significant challenges of funding plaintiff’s civil rights litigation.

Professor Ricks discusses statutes, including 42 U.S.C. § 1988 and the Prisoner Litigation Reform Act,\textsuperscript{36} and other constitutional concepts and procedural issues necessary for constitutional litigation. For example, the book includes a discussion of why defendants may seek removal of a § 1983 claim from state to federal court.\textsuperscript{37}

In addition, the book addresses the historical purpose and motivation behind the enactment of 42 U.S.C. § 1983.\textsuperscript{38} Professor Ricks investigates resistance by former Confederate States to Post-Civil War Reconstruction and includes testimony of survivors of Ku Klux Klan

\textsuperscript{35} Id. at 386-89 (Jessica Lenahan, Statement of Jessica Lenahan for Inter-American Commission on Human Rights (Mar. 2, 2007)).

\textsuperscript{36} E.g., id. at 437-466.

\textsuperscript{37} Id. at 470-73.

\textsuperscript{38} Id. at 3-17.
violence.\textsuperscript{39} Professor Ricks discusses how historical responses shaped the evolution of § 1983 and its current operation in constitutional litigation, which gives students a perspective on the statute’s importance in protecting individual rights from government interference.

Practice Pointers are included throughout the book to enlighten students on best practices for efficiently researching the current case and statutory law on specific constitutional litigation topics.\textsuperscript{40}

The companion website to \textit{Current Issues in Constitutional Litigation} is filled with additional resources, including links to relevant websites, articles, videos, and guest speakers.\textsuperscript{41} Students are instructed throughout the book to watch YouTube videos that demonstrate different scenarios that depict actions encompassed in constitutional litigation.\textsuperscript{42} These videos can be found on \textit{Current Issues in Constitutional Litigation}'s website.\textsuperscript{43}

The Teacher's Manual is a 444-page "Course in a Box" that includes detailed teaching notes, a variety of syllabi, detailed in-class exercises and evaluation suggestions, sample essay exams and answers, sample multiple choice questions, additional websites, and other teaching materials.\textsuperscript{44} Teachers can choose to use portions or all of this resource.

Sarah Ricks practiced law for eleven years, including several years as an appellate and legislative attorney for the City of Philadelphia, for whom she litigated dozens of appeals before

\textsuperscript{39} \textit{Id.} at 3-17.

\textsuperscript{40} \textit{E.g., id.} at 314, 582.

\textsuperscript{41} \url{http://constitutionallitigation.rutgers.edu/}.

\textsuperscript{42} \textit{E.g., Ricks, supra} note 1, at 561. This YouTube scene is of a bar security tape of an off-duty police officer assaulting a bartender.

\textsuperscript{43} \url{http://constitutionallitigation.rutgers.edu/}.

\textsuperscript{44} \textit{TEACHER’S MANUAL} (Carolina Academic Press 2011).
the Third Circuit and state appellate courts. She clerked for the Honorable Thomas N. O'Neill, Jr., of the United States District Court for the Eastern District of Pennsylvania.\textsuperscript{45} Prof. Tenenbaum, who contributed chapters on prisoners' 1st Amendment religion claims and Eleventh Amendment sovereign immunity,\textsuperscript{46} litigated 42 U.S.C. § 1983 claims on behalf of the State of New York for eighteen years. The authors’ collective experience as practicing attorneys in this field has greatly influenced their choice of materials and produced a book that focuses student attention on the skills necessary for constitutional litigation.

Other professionals and students have praised \textit{Current Issues in Constitutional Litigation}. Karen Blum, Professor of Law at Suffolk University Law School, commented that:

Sarah Ricks has created an incredibly useful, contextually-based casebook that tells the story of constitutional litigation from many different perspectives. Students go behind the scenes and come to understand litigation from reading not only case law, but from examining briefs, oral arguments, pleadings, and expert opinions. . For professors and students who want more from legal education than the unadorned case-method approach can provide, Professor Ricks has compiled a set of materials that brings the case law to life.\textsuperscript{47}

One Rutgers-Camden student assigned the book commented that: "It took a very practical approach. In addition to learning about civil rights law, we learned a lot about how the law works in practice, and also about different factors besides the law that attorneys and parties need to consider in lawsuits.” Another Rutgers-Camden student stated: "I thoroughly enjoyed reading jury instructions, appellate arguments, etc. . . . It gets mundane to have to read cases all of the time, and this provided a nice change of pace, and allowed me to get a deeper insight into why

\textsuperscript{45} \url{http://camlaw.rutgers.edu/directory/sricks/}.

\textsuperscript{46} \textit{Id.} at 622-720.

\textsuperscript{47} Ricks, \textit{supra} note 1, at XXXV.
the opinion came out the way it did."

One regrettable omission from the casebook is a section on damages and other remedies. Although these topics are mentioned, the casebook lacks thorough coverage of these issues—issues practicing attorneys must know how to navigate to strategize litigation and appropriately advise their clients. A second topic that deserves fuller discussion is Bivens actions against the federal government.

In sum, the materials as a whole – the casebook, companion website with resources, links and videos, and the Teacher’s Manual – are filled with materials and strategies for professors to successfully help students both learn about constitutional litigation and reflect on their future professional roles. Unlike traditional law school casebooks, with Current Issues in Constitutional Litigation, the students have the opportunity to view cases, statutes, and factual scenarios as practitioners and create litigation strategies through simulated law practice problems and the use of research practice pointers. From my perspective as a former law clerk and now as an attorney advisor in the beginning years of practice, I appreciate how the book’s practical approach helped me transition from student to lawyer by exposing me to real legal documents, casting me as a practitioner, and teaching me to "think like a lawyer" while I was still in law school.