

*Inside the  
Supreme Court:  
The Institution and Its Procedures  
Second Edition*



*Susan Low Bloch  
Vicki C. Jackson  
Thomas G. Krattenmaker*

# **INSIDE THE SUPREME COURT: THE INSTITUTION AND ITS PROCEDURES**

**Second Edition**

By

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*For my husband, Rich, whose love and patience supported me  
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and make me proud.*

*S. L. B.*

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the law is an inspiration.*

*V. C. J.*

*For Bevra , who inspired me, and for Lily,  
whom I hope to inspire.*

*T. G. K.*

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## Preface to the Second Edition

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Our second edition generally follows the structure of the first edition, with a few modifications. We have added a new co-author, Professor Vicki C. Jackson, who has enriched the book significantly. Professors Bloch and Jackson took primary responsibility for updating the research. Tom Krattenmaker continued his involvement with the book, joining Bloch and Jackson in the final organizing and editing stages.

While retaining the basic structure of the first edition, this edition updates it considerably and adds Questions and Comments throughout the chapters. Chapter One now introduces students to two principal cases, *Planned Parenthood v. Casey* (as in the first edition) and *Lawrence v. Texas*. In addition, it has a more extended discussion of the Court's role generally and the role of *stare decisis*. Chapter Two retains its focus on the appointment process; we have updated the materials with excerpts from the nomination and confirmation proceedings of John Roberts and Samuel Alito, with readings on some of the more recent controversies including the role of the American Bar Association, and with discussions of proposals to modify the appointment process. Chapter Three continues to focus on the certiorari process and to provide materials designed to enable students to conduct "mock" conferences on real, pending petitions for certiorari. Its new materials include a detailed historical treatment of the Judges' Bill of 1925, excerpts from the ongoing scholarly discussion of the reasons for the dramatic decline in the number of cases granted cert in recent years, and brief studies of two special circumstances: death penalty litigation and certiorari prior to judgment.

Chapter Four retains the two major case studies of the first edition, the abortion cases (with some updating) and the Nixon Tapes case (followed by a brief Note on *Bush v. Gore*). Chapter Five covers the same topics as in the first edition, but with substantial sections of new material, reflecting a burgeoning scholarship on the role of the Chief Justice, the law clerks, and the advocates, including the Solicitor General and amici curiae. Finally, Chapter Six is no longer concerned with proposals to establish a new national court of appeals; few observers think the Court today is over-worked and such proposals appear to have run their course, at least for now. We continue to explore proposals to expand public access to the Court and its proceedings and we have added two new sections. One addresses recent controversies that some believe threaten the independence of the judiciary, and the other discusses some proposed reforms affecting the appointment and tenure of Supreme Court Justices, including term limits or mandatory retirement ages for the Justices.

We completed most of our research in 2006, noting some developments from 2007. We officially closed the book on updates with the Supreme Court's adoption of new rules on July 17, 2007.



We are enormously indebted to many people. Our Research Assistants over the last few years have been very helpful, so we would like to thank Professor Bloch's RAs—Nicholas Boski, Angela Butcher, Susan Cooke, Charles Eberle, Kelly Falls, William Fanaras, Ariel Goldman, Glenn Laken, Ted Metzler, Andrew Smith, and Roxanne Tingir, and Professor Jackson's RAs—James Caputo, Eric Cochran, Jason Cohen, A. Laura Collier, Alida Dagostino, Nancy Dinsmore, Amber Dolman, Andrew Eberle, Justin Ford, Joseph Gallagher, Soraya Kelly, Maria Kokiasmemos, Rebecca Lee, Kristy Martin, Emily O'Brien, Jeffrey Poulin, and Michael Scherzer. We would also like to thank Ralph Freeman, Terican Gross, Soraya Howard, Roselle Singer and Steven Wagner for their excellent administrative assistance. And, of course, we want to thank the many librarians and staff in Faculty Support who have helped us over the years. In the first edition, we thanked Georgetown Law Center staff including Charles Barnes, Mary Ann DeRosa, Leonard Gavin, Toni Patterson, and Vicki White, as well as a Georgetown student, Antonio Anaya, and we repeat those thanks here, for this work builds on that of the first edition. For this edition, we add a specific note of thanks as well to George Belton, Sylvia Johnson, Toni Patterson (again), Ronnie Rease, and Cathy Strain, who along with many other staff provided us with invaluable aid. Among the many wonderful librarians who have helped us, we want to specifically thank Jennifer Locke Davitt, Catherine Dunn, Barbara Monroe, Thanh Nguyen, Sara Sampson, Mabel Shaw, and Amy Taylor. Finally, we are also very grateful for the continuous support and encouragement from Georgetown Deans Judith C. Areen and T. Alex Aleinikoff, and the Georgetown University Law Center Writer's Grants that facilitated our work.

Our families have provided us much needed support, space (physical and emotional), and sustenance beyond measure throughout this long process. Specifically, we want to thank Rich, Rebecca, and Michael Bloch, Bob, Jacob, Michael, and Sophie Taylor, and Bevra, John, and Caitlin Barile Krattenmaker.

## Tributes (from the First Edition)

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Three people planted the seeds of this book in the 1960s. Professor Glendon A. Schubert published *Constitutional Politics* in 1960. Subtitled “The Political Behavior of Supreme Court Justices and the Constitutional Policies That They Make,” this book introduced wider audiences to the view that the political and institutional dimensions of the Supreme Court could be studied systematically and that such study could enhance one’s appreciation of the quality of U.S. constitutional law. Professor J. Roland Pennock’s seminar in Public Law and Jurisprudence at Swarthmore College and Professor Louis Henkin’s seminar on The Supreme Court at Columbia Law School made this study come alive and raised many of the questions explored in this book.

Most of our work has consisted of a lot of research, seeking materials that might shed light on the politics of the Supreme Court. For magnificent help in conducting this research, we are indebted to hundreds of Georgetown University Law Center students<sup>1</sup> who have taken our seminar and found ever better materials for subsequent students to study. Most especially, we have been blessed in the past few years with a succession of energetic, dedicated, and talented research assistants who are virtually co-authors of this book. Each deserves a personal paragraph of thanks, but we have to settle for thanking them collectively. Thanks, then, to Mark Adams, Sharon Albright, Patrick Brown, Matthew McCabe, Katherine Miller, and Marc Sorini.

Our colleagues at Georgetown, as well as at several schools throughout the country, for many years have helped us locate materials and track down issues. In this regard, it would be unfair not to single out Professor Vicki Jackson of Georgetown, who has provided aid and comfort at every step of this journey. In addition, Professor Steve Wermiel, of Georgia State helpfully reviewed the entire manuscript and suggested many valuable additions. We are also very grateful for the continuous support and encouragement from Georgetown Dean Judith C. Areen and Georgetown University Law Center Writer’s Grants that greatly facilitated our work.

Our families have helped us keep this project going, by pretending to be interested in reading the final product and by making space available, in countless ways, for the time necessary to get it done. Bless you, to

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<sup>1</sup> At the time we wrote this book, Thomas G. Krattenmaker was Professor of Law at Georgetown University Law Center.



Rich, Rebecca, and Michael Bloch and to Bevra, Ken, and John Krattenmaker.

The debt we owe to all the people mentioned above is incalculable. In the final analysis, however, what really drove us to organize and create this book was the inspiration we received from Justice John M. Harlan and Justice Thurgood Marshall, the finest public servants we have ever known and the best bosses we have ever had. If readers find things of value in this book, as we hope they will, please let that discovery be another testament to the memories of these great Justices.

## **Note on Editing**

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As in the first edition, we did not want the materials selected for this book to appear as thirty second sound bites, so we have tried to let our authors have their say. But we have also tried to hold everyone to his or her central points. We have eliminated most citations (including internal references) and footnotes without indicating their omission. Other omissions are generally indicated by ellipses or brackets, as appropriate; textual material that has been added, or slightly modified, is indicated by brackets.

\*

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