

# CONSTITUTIONAL LAW

FIFTEENTH EDITION

KATHLEEN M. SULLIVAN

GERALD GUNTHER

FOUNDATION PRESS

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FIFTEENTH EDITION

*by*

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*To Gerry*

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## PREFACE TO THE FIFTEENTH EDITION

This edition of the casebook that Gerald Gunther shaped so profoundly over so many editions is the first to be published since Gerry's death from cancer in July 2002. Gerry taught at Stanford Law School for forty years as a professor of constitutional law after beginning his career, and this book, at Columbia. At the time of his death, he was still grading papers from his constitutional law seminar, advising public television producers about the United States Supreme Court, and writing generous letters to colleagues and friends in his precise if impenetrable scrawl. These were labors of love for him, as were the many hours he spent with Stanford law students as raconteur, counselor and friend.

But perhaps Gerry's greatest professional labor of love was his work on this casebook, *Constitutional Law*. He edited cases by hand, sentence by sentence, so that all the good parts remained, and each connecting exposition was meticulously accurate. His steel-trap memory recalled the exact disposition of cases on remand and the correct spelling of the parties' names. As a proofreader, he was exacting, and could catch even an errant italicized comma. And his now-canonical organization of the subject matter into its broad structures and themes has indelibly influenced several generations of constitutional law professors. I am very proud and humbled that he entrusted me to carry on the work of the casebook, and honored to try to live up to the very high standards that he set.

This volume covers all decisions through the October 2003 Supreme Court Term, which ended in late June 2004. It thus includes, without any need for an immediate supplement, the "enemy combatant" and other important cases released at the end of that Term. In the editing of the materials, as ever, deletions are indicated by the use of brackets rather than ellipses. Most footnotes from the opinions have been omitted; those retained have been renumbered consecutively; footnotes from the opinions are denoted as such by brackets at the end.

This Fifteenth edition of *Constitutional Law* retains the structure of the Fourteenth, with two exceptions: a substantial section has been added to Chapter 6, covering separation of powers, on executive discretion in times of war or other emergency; and Chapter 9, covering equal protection, has been reorganized so that all the materials on race discrimination, from desegregation through affirmative action, are grouped together, followed by materials on gender and other classifications that have been accorded or considered for heightened scrutiny.



As was Gerry's preference, this casebook emphasizes constitutional law as a species of *law*, and aims to enable those who use it to practice constitutional law as lawyers. But this edition also seeks, through revised and updated note materials, to illuminate the historical, theoretical and philosophical background that bears on that law, and helps to inform its practice. It aims to capture the crucial parts of the Court's opinions while editing them down to lengths that make them manageable to teach. It also seeks to cover comprehensively the development of lines of cases in between major decisions.

As did Gerry, I enjoy enormously hearing from those of you who use the book, and compiling your comments and corrections for each successive edition. I owe particular thanks to Murray Dry, Kenneth Karst, Leslie Griffin, Larry Tribe, and James Weinstein for extensive comments that have greatly improved this edition. I owe thanks as well to Burton Caine, Joseph Grodin, Craig Jackson, Martin Margulies, William Rich, and Mark Weiner for eagle-eyed spotting of errata and omissions. I continue to welcome any and all suggestions for future supplements and editions.

For excellent research assistance with this edition, I thank my superb students Joshua Klein and Joshua Lipshutz. For boundless support in all dimensions of this enterprise, I thank Helen Stacy.

This volume is dedicated to the memory of Gerald Gunther, a great scholar, teacher, mentor and friend, who cared about our constitutional framework not only as an intellectual passion but as the very basis for his life and freedom. With the unforgettable force of his Old Testament visage—stern in theory but gentle in fact—his irrepressible charm, his impish smile, his musical cadences, he left his love of constitutional law alive and vibrant in all of those he touched. I hope that you will find his presence still very much alive and vibrant in this edition of the casebook, and that you will greatly enjoy teaching from it.

KATHLEEN M. SULLIVAN

Stanford, California

July 2004

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