

## *Chapter 1*

‘Professor Bookman—’

‘Answer the question.’

‘But, Professor—’

‘Ms. Edwards, do you or do you not have a constitutional right to take the pill?’

‘I don’t care.’

‘You don’t care if you have a right to use contraceptives?’

‘No.’ She shrugged. ‘I’m a lesbian.’

Book sighed. His mind offered up a list of biting retorts—not to her lesbianism, but to her lack of interest—but he decided against uttering a word. Even a tenured law professor had to be careful with class lectures these days, when every cell phone and laptop doubled as a video camera; this morning’s lecture might be that night’s viral YouTube video. So he turned from Ms. Edwards and searched the sea of faces for another female student who might care or at least be willing to

answer his question in front of the other hundred students. Most had their heads ducked behind their laptops, assured that Professor Bookman would not use his classroom authority to humiliate them in front of their peers. The days of law professors wearing bowties and suits—Book wore boots, jeans, and another Tommy Bahama T-shirt (*Nothing but Net* stenciled under a hammock strung between two palm trees)—and employing the Socratic method to browbeat their students were over. Students paying \$30,000 a year (twice that at private schools) demanded a kinder, gentler law school experience. Consequently, Book prodded them to participate in the class debates, but he did not force it upon them. Although it seemed counter-intuitive for prospective lawyers, he knew it was not everyone's nature to seek attention.

It was, however, Ms. Garza's nature.

She sought attention. She demanded attention. She sat directly in front of Book on the front row to ensure his attention. She stuck her hand in the air and puffed her chest out proudly, not to show off her feminine attributes to her handsome professor but to display the message-of-the-day printed in big black letters on her white T-shirt: *IF I WANTED THE GOVERNMENT IN MY WOMB, I'D FUCK A SENATOR*. No doubt she had chosen her attire in honor of that day's constitutional law topic as stated on the class syllabus: 'The Right of Privacy and Women's Reproductive Rights.' Book admired Ms. Garza's commitment to social justice, but after facing her (and her T-shirts) on the front row

for fifty minutes four mornings each week for eight months, her hand always waving frantically, desperate for another opportunity to espouse her political views to the class, the new had worn off. But she remained his go-to student to ignite a class debate.

‘Ms. Garza, do you have a constitutional right to take the pill?’

‘You’re damn right I do.’

‘Why?’

‘Because in *Griswold v. Connecticut*, the Supreme Court found a right of privacy in the Bill of Rights—’

Book held up an open hand. ‘Does the Bill of Rights—the first ten amendments to the Constitution—expressly mention a right of privacy?’

‘No. But the Court found a right of privacy in the penumbras of the Bill of Rights—’

‘*Penumbras*? What, Ms. Garza, is a penumbra?’

‘Uh . . . I’m not really sure.’

‘Look it up.’

While she typed on her laptop, Book sat on the front edge of his desk and surveyed the one hundred freshman students—‘1Ls’ in the vernacular, the first year of their transition from human being to lawyer almost complete—rising before him in the fan-shaped, theater-style seating in Classroom 2.138 at the University of Texas School of Law. They attended his constitutional law class, ‘Con Law’ as it was known in the curriculum catalog, only because it was a required course; they needed the class credit to earn a law degree. These students much preferred studying the

nine million words of the tax code and regulations, for their lives would be lived among those words. Those legal dos and don'ts, rules and regulations borne of generous lobbying and conveniently painted in gray rather than black and white, allowed for a lawyer's creativity.

Many a legal career had been forged in the gray margins of the law.

But not his career. He had never been attracted to the words defining capital gains. After one reading of the Constitution—4,543 words; 7,591 including the twenty-seven amendments—back when he was a 1L, he knew his legal life would be lived among the words of James Madison. He had fallen in love with the Constitution at age twenty-two and the affair continued to this day. 'We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.'

How could you not love those words?

But try though he did—and he did try Monday through Thursday from 9:10 A.M. until 10:00 A.M.—he could not instill the same love for the Constitution in these profit-minded students. If the Constitution had a Facebook page, few of these students would 'like' it. Few would follow it on Twitter. Few seemed to even entertain such lofty legal ideals as liberty and justice

these days. Those were concepts you read about in the casebooks, not rights you fought for in the real world. They were not the children of the civil rights era; they were the grandchildren. Twenty-two, twenty-three, twenty-four years old, they had grown up in an era of affluence and entitlement, beneficiaries of the fights fought before they were born. Consequently, they cared more about their job prospects upon graduation, most hoping to become well-paid corporate servants.

Who else could pay \$1,000 an hour?

And that was the role law schools now played: farm teams for the major league law firms. 'A' students were valuable commodities in the law business. They were currency. The schools funneled the best and the brightest to the plush offices on the fiftieth floors of skyscrapers across the nation. In return, the law firms endowed chairs at the law schools, ensuring the curriculum would be shaped to further corporate interests, offering such classes as: Corporations; Corporate Finance; Corporate Governance; Taxation of Corporations and Shareholders; Federal Income Taxation of Corporations; Corporate and Securities Law and Transactions; Corporation Law, Finance, Securities, and Regulation; Mergers and Acquisitions; and, of course, White Collar Crime.

Even for this millennial generation, a law degree was viewed as their ticket in life. Most, those sons and daughters of the working class, chose law school because their parents had not. They borrowed a hundred thousand dollars to finance a legal education

at UT law school (twice that at Harvard law school) because a law degree still constituted a viable vehicle for social mobility in America, a way to get ahead. To be successful. To have a better life. Perhaps even to get rich.

Others, those sons and daughters of the one percent, simply needed a station in life, a place to be when they weren't at the country club.

Only a few still came to law school with a desire to change the world. Like Ms. Garza here. She burned hot with political desire. She read off her laptop.

'*Webster's* defines penumbra as "the partial or imperfect shadow outside the complete shadow of an opaque body, such as a planet, where the light from the source of illumination is only partly cut off."'

'A shadow?' Book said. 'Let me get this straight: the Supreme Court found a right of privacy in the shadows of the Bill of Rights, where it had been lurking for almost a hundred and eighty years?'

'That's what they said.'

'But I thought the Bill of Rights lists all the rights of the people guaranteed by the Constitution?'

'That's not correct.'

'Please explain.'

'The Framers figured right-wing Republicans—'

'In seventeen eighty-nine?'

'—would read the Bill of Rights as an exclusive list of the people's rights, so James Madison added the Ninth Amendment specifically to negate that interpretation.'

‘And the Ninth Amendment states what?’

She read: ‘“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”’

‘To translate, the Framers wanted to make clear that there were other rights retained by the people, even if not specifically mentioned in the Bill of Rights?’

‘Yes.’

‘And in *Griswold*, the Court determined that one such unmentioned right was the right of privacy. The Court struck down a state law that banned the use of contraceptives, holding that that decision—whether or not to get pregnant—is within a woman’s zone of privacy. That the government has no say in such a personal decision.’

Mr. Brennan, also seated on the first row, raised his hand. He tried to transcribe every word Book uttered in each class on his laptop, more court reporter than law student. Book nodded at him.

‘Professor, after “whether or not to get pregnant,” did you say—’

‘Mr. Brennan, you don’t need to record my lectures *verbatim*. Just listen. Or better yet, participate.’

Mr. Brennan’s hands hovered over his keyboard. Book surrendered, as he had each class.

‘I said, “that decision—whether or not to get pregnant—is within a woman’s zone of privacy. That the government has no say in such a personal decision.”’

Mr. Brennan typed furiously.

‘Got it. So the rule of *Griswold* is—’

‘Mr. Brennan, this is Con Law not Civ Proc. You’re not trying to learn discrete rules of the Court. You’re trying to learn to think for yourself, which, unfortunately, few of you will ever do in the private practice of law.’

Mr. Brennan held his gaze. Book again surrendered.

‘The rule of *Griswold* is that there is an unwritten but fundamental right of privacy in the Bill of Rights, and a state ban on the use of contraceptives by a married couple violates that right. Which the Court extended to unmarried couples in *Eisenstadt v. Baird* in nineteen seventy-two.’

Mr. Brennan typed. He wore a Boston Red Sox jersey and cap on backwards. He was one of those working-class sons, intent on graduating in the top ten percent of his class, hiring on with a large Boston law firm, paying off his student loans, and living a better life than his father, a Boston cop. Mr. Brennan couldn’t get into Harvard, so he had come south for law school. He kept his head down, his fingers moving across the keyboard, and his mind focused on final exams. Book addressed the class.

‘*Griswold* was decided in nineteen sixty-five. Eight years later, the justices handed down perhaps the most controversial decision in the history of the Court: *Roe v. Wade*. In *Griswold*, the Court said a woman has a fundamental right not to get pregnant. In *Roe*, the Court said a woman has a fundamental right to end a pregnancy. Mr. Stanton, who was the appellee in *Roe*?’



Mr. Stanton occupied the top row, leaned back in his chair against the wall and dressed like the frat boy he was, his hands buried in his lap and his fingers tapping against his cell phone. Texting in Con Law class. Again, Book held his tongue. Mr. Stanton was smart and rich, and he acted the part. His father was a senior partner in a large Houston firm that had endowed two chairs at the law school. Consequently, Mr. Stanton acted more like a shareholder of the school than a student. The transition from the UT law school to the River Oaks Country Club would be smooth and seamless for E. Roger Stanton Jr.

‘Mr. Stanton, if you have a moment, would you please answer the question?’

Mr. Stanton still did not look up from his phone.

‘Sorry, Professor, I’m dumping my Facebook stock I got in the IPO. Henry Wade, the Dallas County district attorney, he was the appellee.’

‘Who was the appellant?’

Still texting.

‘Norma McCorvey, aka “Jane Roe, a pregnant single woman.”’

‘Who was her lawyer?’

‘Uh . . . I don’t know.’

‘Read the opinion.’

Mr. Stanton’s eyes lifted to his laptop.

‘Sarah Weddington.’

‘From what law school did she graduate?’

‘Doesn’t say.’

‘Anyone?’

No one.

‘Not even you, Ms. Garza?’

She turned her palms up. ‘I wasn’t born until nineteen ninety.’

Mr. Stanton, texting again: ‘Didn’t your mother know that abortion was legal in nineteen ninety, even in Del Rio?’

‘Not funny, Mr. Stanton.’

But the class thought he was; they too had grown weary of Ms. Garza. She had been born poor on the border, at the opposite end of the socioeconomic spectrum from Mr. Stanton. She had entered UT an underprivileged female; she had graduated an in-your-face feminist. Book often saw her manning the pro-abortion booth on the West Mall, the free-speech zone on campus. He finally answered his own question, something law professors often had to do.

‘Sarah attended this very law school. She graduated in nineteen sixty-seven. Only four years later, she argued *Roe v. Wade* and became the youngest lawyer ever to win a Supreme Court case.’

The students smiled, as if they could put her victory on their own resumés. Ms. Garza seemed especially proud. Perhaps Sarah the law student had burned hot with the same desire to change the world. She had certainly changed the world; some would argue for the better, some would argue for the worse, but no one could argue that she didn’t change the world. Book had won two search-and-seizure cases at the Supreme Court. Both were groundbreaking—every Supreme

Court case is groundbreaking—but neither had changed the world.

‘Mr. Stanton, what law did the appellant challenge?’

Still texting. He did not look up.

‘The Texas law that made all abortions criminal acts unless necessary to save the mother’s life.’

‘And what did the Court decide?’

‘That the law violated Roe’s right of privacy and was thus unconstitutional.’

‘Mr. Stanton, in which article of the Bill of Rights is abortion mentioned?’

‘It’s not.’

‘Why is that?’

Ms. Garza couldn’t restrain herself.

‘Because racist, misogynistic white men who owned slaves and didn’t allow women to vote wrote the Constitution!’

Mr. Stanton coughed words that sounded like ‘affirmative action.’ His posse of fellow frat boys on the back row laughed. Book did not defend Ms. Garza. She needed no help. She turned in her chair and aimed a finger (not her middle one this time) at Mr. Stanton.

‘Your days are numbered, Stanton. Apartheid in America is coming to an end. Enjoy it while you can.’

‘I will. In a month, I’ll be lying by the pool at the country club surrounded by white girls.’

‘And if you get one of those girls pregnant, your rich daddy will pay for her abortion. A poor black or Latino girl gets pregnant, your daddy wants to force her to have the baby. Fifty million abortions since *Roe*—does

your daddy want to pay more taxes to support all those babies?’

The senior Stanton was a prominent and very rich Republican in Texas.

‘No, but I’ll get him to endow a lifetime abortion pass for you. God knows we don’t need any more Irma Garzas in this world.’

The junior Stanton shared a high-five with his posse. Book kicked the front panel of the desk as if the heel of his boot was a gavel, and order was soon restored. Book had warned the students that his classroom was an intellectual free-fire zone, like the Supreme Court but more civil.

‘Mr. Stanton, if the Constitution says nothing about abortion, how did the Supreme Court determine that a woman has a constitutional right to have an abortion?’

‘They discovered it.’

‘Where?’

‘In the right of privacy.’

‘The same right of privacy they discovered in *Griswold*?’

‘Yep.’

‘Another unmentioned right lurking in the shadows?’

‘Who knew?’

‘But, as Ms. Garza correctly stated, the intent of the Ninth Amendment was to make clear that there are other rights not mentioned in the Bill of Rights that are nonetheless protected by the Constitution. The Court ruled in *Griswold* that one such unmentioned

right is the right of privacy. Mr. Stanton, isn't abortion another such right?'

'No. Abortion was not an unmentioned right of the people at the time the Bill of Rights was ratified. In fact, it was a crime at common law in every state of the Union.'

Ms. Garza stood and faced Mr. Stanton. The debate was on.

'That's bullshit, Stanton. The Court said abortion was *not* a crime at common law.'

'They lied. The only authority the Court cited were two law review articles written by the general counsel of a pro-abortion group, which articles have been roundly discredited as distortions of the common law. In order to justify their hijacking of the Constitution to push their political agenda, the liberal justices misstated history by adopting one biased author's point of view.'

'History is just a point of view,' Ms. Garza said. 'Usually written by white men biased against women and minorities. The right to have an abortion was another right not mentioned in the Constitution because women did not serve on the Constitutional Convention. Women's voices were not heard at the time, Mr. Stanton.'

'Thank God.'

Which elicited a round of boos from the women in the classroom. Book kicked his desk again and gestured Ms. Garza into her chair.

'Mr. Stanton, what was the key ruling of *Roe*?'

‘That the right of privacy includes the right to have an abortion.’

‘No.’

Mr. Stanton frowned.

‘Ms. Garza?’

‘That before viability of the unborn child, the state has no legitimate interest in the unborn.’

‘The Court so held, but was that really the key ruling of the case?’

No takers.

‘Come on, people, you’ve read the case. Think.’

Heads ducked behind the façade of laptops.

‘I know you’re back there. You can hide but you can’t run, at least not for’—he checked the clock on the back wall—‘fifteen more minutes. Was viability the key ruling of *Roe*?’

‘No.’

A small anonymous voice.

‘Who said that?’

Book searched the laptops for a face.

‘Come on, fess up.’

A hand slowly rose above a laptop.

‘*Ms. Roberts?* Was that you?’

‘Unh-huh.’

Ms. Roberts peeked over her laptop on the sixth row. She had never before spoken in class.

‘Ms. Roberts, welcome to the debate. So what was the key ruling in *Roe*?’

She looked like the shy girl in high school who had never been on a date being asked to the prom by the

football star. She took a handful of her hair hanging in her face and wrapped it around her left ear. With her index finger she pushed her black-framed glasses up on her nose. She took a deep breath then spoke in the softest of voices to the hushed classroom.

‘That under the Constitution, an unborn child is not a living human being at any time prior to birth. As Justice Stevens said, it is only a, quote, “developing organism.” Thus, the Constitution offers no protection whatsoever to an unborn child.’

‘Correct. Please elaborate.’

‘The Fourteenth Amendment states that, quote, “nor shall any state deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws.” Thus, if an unborn child were a “person,” Roe’s case would fail because the Fourteenth Amendment would expressly protect the unborn child’s right to life. So, in order to find a right to an abortion, the Court had to first rule that an unborn child is not a “person” under the Constitution. Which is exactly how they ruled: an unborn child is not a living human being and thus abortion is not the termination of a human life.’

Ms. Roberts had found her voice after eight months of Con Law classes. Another small victory for Professor John Bookman.

‘So?’

‘So, if the unborn child is not a living human being, what’s growing inside the mother—a vegetable? Dogs

and cats aren't persons under the Constitution either, but we have laws that prevent us from killing them for sport. And this ruling seems especially cruel given that the Court had previously ruled that corporations do qualify as persons under the Fourteenth Amendment and are thus entitled to the full protection of the Constitution.'

Mr. Stanton, from the back row: 'As my man Mitt said, "Corporations are people, too."'

Which evoked a round of laughter. Book kicked his desk again.

'People, this is important. Ms. Roberts is on to something. Listen up.' Back to Ms. Roberts. 'So corporations have more rights under the Constitution than an unborn child?'

'Yes. In fact, a rock has the same constitutional rights as an unborn child.'

'You're almost to the finish line, Ms. Roberts. Now tell us why that particular ruling matters.'

'Because it makes us question whether we matter. It makes us question our place in the grand scheme of things. Do human beings occupy a special place in the universe or are we just a species that has evolved to a higher state of cognitive ability than, say, chimpanzees? When our highest court of law says human beings have absolutely no rights until we're born, that delegates an unborn child to the same constitutional status as an earthworm or a tomato or a—'

'Rock?'

'Yes.'



‘And you think you’re more important in the universe than a rock?’

‘I hope so.’

‘So what are the possible legal consequences of this ruling?’

‘What if the unborn child has a genetic defect? Can the government force the woman to abort in order to avoid costly future treatment for that child? What if the government decides to solve poverty by instituting mandatory abortions, like in China? New York City public schools are giving the abortion pill to eighth-grade girls without their parents’ permission. When our highest court says that unborn humans are not “persons” under the Constitution and may be killed without constraint but corporations that manufacture weapons of war that kill millions of born humans are “persons” with constitutional rights, I say, Who are those guys? Why do they get to decide what is or isn’t human? Who elected them God? How do we know they’re right? If they’re right, who are we and what are we and what is our place in the universe? Is human life nothing more than a biological coincidence? Are our lives no more important in the universe than road kill on I-Thirty-five? Do we matter? Or are we just matter?’

‘And if they’re wrong?’

‘We’re all in deep shit, so to speak.’

The students stared at her with stunned expressions. Except Ms. Garza. She glared at Ms. Roberts.

‘What, now you’re Sarah Palin? You want women to go back to coat hangers and poison?’

Ms. Roberts did not wither under Ms. Garza's hot glare.

'I had an abortion, Ms. Garza. I was ra—'

She ducked her head, and an awkward silence fell upon the room, until Mr. Stanton said from the back row, 'Ms. Garza, you are the poster child for abortion on demand.' Which evoked a round of supportive hoots.

'Unacceptable, Mr. Stanton,' Book said. 'In this classroom we are civil lawyers, able to disagree without being disagreeable. What is my absolute rule of conduct?'

'We shall remain civil at all times.'

'You have violated that rule. An apology, please.'

Mr. Stanton seemed contrite.

'My sincere apology for my incivility, Ms. Garza.'

She faced him.

'Fuck off, Stanton.'

He threw up his hands.

The first time a student had blurted out the F-word in his class, Book had sent him packing. Eight years later, he didn't blink an eye. He was beyond being shocked by profanity—in class, in the corridors, anywhere in public for that matter. Profanity was as much a part of speech for this generation as 'howdy' was for Book's. The F-word had made its way from the locker room to the law school. Athletes, actors, CEOs, and even vice presidents employed the F-word. It's a noun, verb, adverb, adjective, and interjection. It's mainstream speech. It's freedom of speech. The

Supreme Court had in fact ruled that the government could not fine a broadcast company for the singer Bono blurting out the F-word during an award show. Book often wondered if the Framers had anticipated that the First Amendment would one day give constitutional protection to ‘fuck off.’

‘Not gracious, Ms. Garza,’ Book said. ‘People, I know this is an emotional issue. But as lawyers we must keep our heads while others around us are losing theirs. In this classroom, we are lawyers, not protestors.’

‘But we’re one Supreme Court justice away from abortion being banned in America!’ Ms. Garza said.

‘Who told you that?’

‘Biden. He said so on TV.’

‘He’s wrong.’

‘He’s the vice president.’

‘He’s still wrong.’

‘But Justice Scalia wants to ban abortions!’

‘No, he doesn’t. Scalia said that as far as he’s concerned, the states may permit abortion on demand. The conservative justices don’t think there’s a constitutional right to have an abortion, but they’ve never said that the Constitution bans abortion or that an unborn child is a “person” under the Constitution. They’ve never disagreed with the key ruling of *Roe*, that abortion is not the taking of human life under the Constitution.’

‘You sure about that?’

‘I’m teaching Con Law, Ms. Garza.’

‘Professor,’ Mr. Brennan said, taking a respite from

his furious typing, ‘do you think the Court correctly decided *Roe*?’

‘Mr. Brennan, in this classroom what I think is irrelevant. What you think is relevant. And that you think. I don’t care whether you agree or disagree with the *Roe* case, only that you think about the case. As students of the Constitution, we are more concerned with the Supreme Court’s reasoning than with its decisions, its thought process rather than who wins or loses the case.’

‘Bullshit.’

‘Ah, a dissenting opinion from Ms. Garza. In any event, we may disagree with the Court’s decisions, but so long as the justices *interpret* the Constitution, they are acting within their authority. If, however, they *amend* the Constitution, they are usurping we the people’s authority.’

Mr. Stanton: ‘And that’s exactly what they did in *Roe*. The Court can’t *interpret* words that don’t even exist.’

‘Ms. Garza, doesn’t Mr. Stanton make a good point? If the Framers of the Constitution—’

‘White men.’

‘Yes, we know that, Ms. Garza. If the Framers wanted to give a woman the right to have an abortion, wouldn’t they have just written it into the Bill of Rights?’

‘Their misogynistic belief system prevented them from considering the plight of women, just as their racist attitudes prevented them from freeing the slaves.’

‘All right. Let’s assume that to be true, that our Founding Fathers were unable, due to their upbringing, their

religious beliefs, their views about women's place in society . . . for whatever reason, they were incapable of including a right to an abortion in the Constitution. Now, fast forward to nineteen seventy-three. Women may vote, use contraceptives, attend law school. States are liberalizing abortion laws. Why didn't the Court just say to Roe, "We're sorry, but the Constitution does not address abortion. Therefore, you must take your complaint to your state legislature to change the law." Isn't that the correct action for the Court to take, to defer to the democratic process?

'Changing the law through fifty state legislatures would have taken decades, and without a national abortion right poor women like Roe might have to travel to another state to obtain an abortion. A Supreme Court opinion is the law of the land. It changes the law in all fifty states in a single moment. Like that.'

She snapped her fingers.

'But, Ms. Garza, isn't the appropriate avenue to a national abortion right a constitutional amendment? The Constitution has been amended twenty-seven times to add the Bill of Rights, end slavery, guarantee the right to vote to women and persons of all races, create an income tax, begin and end prohibition . . . Why not abortion?'

'Because the justices knew right-wing religious nuts would block a constitutional amendment granting women the right to an abortion.'

'But isn't that the nature of democracy? We the people determining our own rights?'

‘Not when they the Republicans deny me my rights.’

‘But what do you do in a democracy when you can’t convince a majority that you should in fact possess a particular right?’

‘I do what Roe did—I get the Supreme Court to give me the right I want.’

‘So, in a nation of three hundred twenty million people, nine unelected lawyers sitting as the Supreme Court should circumvent democracy by removing certain issues from the democratic process and declaring those issues constitutional in nature?’

‘Yes. And it only takes five justices to win.’

‘But by removing abortion from the democratic process, didn’t the Court poison political discourse in America? Abortion wasn’t even part of the political conversation before *Roe*. Now it’s a litmus test for judges and politicians, and it has polarized the nation. *Roe* didn’t settle a political fight; it started one.’

‘It gave women control over their reproductive decisions. Just like men enjoy.’

‘Oh, yeah,’ Mr. Stanton said from the back row. ‘We’ve got it real good. A girl lies about being on the pill, and we’re paying child support for the next eighteen years. Try telling that to your dad.’

Another awkward silence captured the classroom.

‘Uh, okay, let’s move on. In nineteen ninety-two, after two decades of protests, political fights, and contentious judicial nominations, the Court again took up a major abortion case, *Planned Parenthood v. Casey*. The Court’s stated intent was to put an end to the

abortion wars in the country. In a five-to-four decision, the Court reaffirmed *Roe* but allowed the states more leeway in regulating abortions. Justice Kennedy's lead opinion appealed to the American people to respect their decision and accept a woman's right to an abortion as the law of the land, a lawyer's way of saying, "Trust us. We know what we're doing."

Ms. Roberts jumped back into the fray.

'How are we supposed to trust those guys when Kennedy can write that nonsense in *Casey*?' She read off her laptop: 'Quote, "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." Really? Maybe it's just me, but it's hard to imagine Jefferson or Madison saying goofy stuff like that.'

Mr. Stanton, from the back row: 'I said goofy stuff like that back in college, but I was stoned at the time. I made a video and posted it on YouTube, got a hundred thousand hits.'

'And you still got into this law school?'

'Rich daddy,' Ms. Garza said.

Mr. Stanton shared a fist-bump with his buddies.

'Was Kennedy like that when you clerked for him?'

Mr. Brennan asked.

Book's clerkship for Justice Kennedy had made him a hot commodity among constitutional lawyers because Kennedy was often the swing vote in crucial five-four decisions.

'I came on board ten years after *Casey*. Kennedy was just trying to broker a peace in the abortion war. He

respects the Court, and he wants the people to respect it as well.’

‘Too late for that,’ Ms. Garza said. ‘We’re not stupid. We know the Court’s just another political branch.’

‘The Constitution is just politics?’

‘Professor, everything is just politics.’

Book felt as if he had just been told that the love of his life had cheated on him. The Constitution is just politics? The Court no less partisan than the Congress? Ms. Garza read his mind.

‘The only difference between Congress and the Court is that we can vote those Republican bastards out of Congress.’

‘Mr. Stanton—’

He looked up from his texting.

‘Ms. Garza is mistaken, isn’t she?’

‘In so many ways, Professor.’

‘Make your case.’

‘First, her T-shirts are getting old. Second, she—’

‘About the Court being a political branch.’

‘Oh. The Court is perceived as being political because the justices subverted democracy in *Roe*. In America, we don’t stage violent protests and burn down cities when our side loses an election. We organize for the next election. But we want to vote. The people didn’t get to vote on abortion.’

Ms. Roberts again: ‘As Scalia said in his *Casey* dissent, quote, “value judgments should be voted on, not dictated.” And quote, “the people know that their value



judgments are quite as good as those taught in any law school—maybe better.” I like that.’

Ms. Garza again glared at her classmate.

‘Now you’re quoting Scalia? Jesus, Liz, you wouldn’t talk for eight months, now you won’t shut up. Quote this.’

Ms. Garza jabbed her middle finger at Ms. Roberts.

‘Unacceptable, Ms. Garza. An apology, please.’

‘Oh, I’m really fucking sorry, Ms. Roberts.’

That constituted sincere for Ms. Garza.

‘Civility, people. This is a classroom, not the Supreme Court conference room on decision day. Ms. Garza, your rebuttal to Mr. Stanton’s case—the rebuttal that does not include your middle finger.’

‘Two generations of women have grown up with total control over their reproductive decisions, both contraceptives and abortion. If men get to vote on our right to abortion, they’ll take that right away from us. Then they’ll take the right to use contraceptives. Because men want desperately to control women—our lives, our liberties, our work, our pay, our sexual activity, our bodies, and most of all, our wombs.’

Mr. Stanton: ‘Trust me, I don’t want anywhere near your womb.’

The class laughed. Ms. Garza did not.

‘Stanton, you’re just mad because women won a right to an abortion.’

‘I’m mad because the liberal justices hijacked the Constitution—they made it up!’

‘You don’t know that.’

Mr. Stanton pointed down at Book. ‘He said so in his last book.’

Another round of laughter.

‘How do you know I’m right?’ Book said.

‘Because you’re down there lecturing, and we’re up here taking notes.’

More laughter.

‘How do you know I’m not just another tenured professor pushing my personal political beliefs on his captive audience of impressionable students?’

‘Because you’re not teaching over in the English department.’

The entire class laughed and let out a collective sigh of relief when the bell rang. They rose as one and gathered their belongings. Book yelled over the noise.

‘Read *National Federation of Independent Business v. Sebelius*, aka Obamacare, for the next class.’

The mass of students parted like the Red Sea before Moses. Half rushed for the doors. The other half surged down to the front and around Book, peppering him with questions and pushing copies of his latest book, *Con Law: Why Constitutional Law is the Greatest Hoax Ever Perpetrated on the American People*, for him to sign. It was currently number one on the *New York Times* nonfiction print and digital bestseller lists.

‘Professor, would you sign your book for my mom? Her name’s Sherry.’

He signed the book with a Sharpie. Another came forward.

‘Sign my book, for my dad. Ken.’

He signed. Another hand came forward.

‘Sign my Kindle.’

‘Your Kindle?’

‘I have your e-book on it.’

He signed her Kindle. She then stepped close and held out her cell phone in front of them.

‘Can I take a picture of us? For my dad? He said when you’re on the Supreme Court—’

Book had made many shortlists of potential candidates.

‘—you’ll straighten those crazy bastards out.’

She snapped a photo.

‘My dad never misses you on those Sunday morning talk shows. He loved that line yesterday on *Face the Nation*—’

Book had participated via a satellite feed from the local Austin studio.

‘—when you told that senator that you were neither liberal nor conservative, Republican nor Democrat, but that instead you were the last known practicing Jeffersonian in America.’

‘It wasn’t a line.’

The students drifted off. Book gathered his casebook and notes and walked out the door and down the narrow corridor crowded and noisy with aspiring lawyers chatting about their lucrative job offers from large law firms. Thirteen years before, he had walked the corridors of Harvard law school, aiming to do something important with his life, perhaps even to change the world. But not to get rich. Money had

never motivated him. He had found that he needed few material things in life. He lived in a small house near campus. He had acquired the Harley secondhand and made it his own. He had never owned a car, and he no longer owned a suit. Having things meant nothing to him. Doing things meant everything. And he did everything at a fast pace.

Because he knew he didn't have much time.