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STEREOSCOPE

U.S. Supreme Court Justice Sandra Day O'Connor

As we are about to convene the Covid-19-postponed Bench Bar Conference on Mackinac Island from September 30th to October 2nd, this issue of the *Stereoscope* recalls Justice Sandra Day O'Connor's visit to the island some 38 years ago, to attend the Sixth Circuit Judicial Conference. Court historian, Hugh Brenneman, Jr., paints a portrait of who she was in those early years, on and off the Court, and tells interesting and amusing stories of her time on the island and what the Conference may have foreshadowed.

—David J. Gass, President

The Historical Society for the U.S. District Court for the Western District of Michigan

A Couple of Days on Mackinac Island

-The Second Day -

By Hugh W. Brenneman, Jr.

Two U.S. Supreme Court Justices named Day have visited Mackinac Island. These are the stories about the speeches they gave, the dignitaries they dined with, the fun they had, and the beds they slept in.[1] The first Day on Mackinac Island was William Rufus Day, and the second Day was Sandra Day O'Connor. "The Second Day" is about the visit of Justice Sandra Day O'Connor.[2]

Sandra Day O'Connor grew up a cowgirl in the Arizona desert.[3] She could sit a horse before she could walk, drive a pick-up as soon as she could see over the dashboard,[4] mend fences and rope and brand cattle.[5] She drove a tractor as a youngster.[6]

By the time she took her seat on the U.S. Supreme Court, she had graduated high in her class at Stanford Law, practiced law with the U.S. Army in Germany, quit law practice to raise a family, been the first female state senate majority leader in the country, been both a trial and an appellate judge, sentenced a contract killer to the gas chamber, and been president of the Phoenix Junior League.

There wasn't much she hadn't seen.

Her new Supreme Court brethren were tough and opinionated older men. Well, the rough ranch hands she grew up with were certainly opinionated older men, and very tough. One ranch hand had given himself a root canal by plunging a red-hot piece of baling wire into his tooth. Sure, Whizzer White was famous for his iron grip when he shook hands,[7] but so was her father.

Sandra Day O'Connor had always managed to hold her own.

Nobody outworked her. Twelve hours a day, six days a week, she worked. She had herded senators, wrangled trial lawyers and branded cattle. How hard could it be to handle these eight Justices? She had already declined a marriage proposal from one of them.

Sandra Day O'Connor was the first woman named to the nation's high court in its 191-year history. In anticipation of the arrival of this day (although not necessarily "this Day"), the Justices had decided in 1980 to discontinue the use of "Mr." in their titles, as in "Mr. Justice . . . " It had been a prescient decision.[8]

Now it was July 1983, and Justice O'Connor had just completed her second year on the Court. The week the term ended, she flew to Mackinac Island to attend the annual Sixth Circuit Judicial Conference. The conferees were excited. Even after her first couple of years on the Court, she remained a mystery to many, although it was commonly agreed that she was likely to become the swing vote on key issues.[9]

There was speculation. There were questions. And people always wanted to meet her. Within hours of her arrival on the Island, several young federal prosecutors from Grand Rapids would have that opportunity.

But for the rest of us who want to learn about the things that had influenced Justice O'Connor's life, and who were not so fortunate as to meet her in person, the best place to start is at the very beginning . . .

From left to right: Mother Mae Wilkey Day with brother Alan Day, her sister Ann Day, and Sandra Day, March 24, 1940

Sandra Day O'Connor Institute Digital Library

"Just as the twig is bent the tree's inclined."

-- Alexander Pope, 1732.

Sandra Day O'Connor was born on March 26, 1930,[10] but until she was seven years old her family's four room adobe house had no electricity nor running water.[11] Their cattle ranch was the *Lazy B*,[12] where Sandra's grandfather had initially run 6,000 head of cattle. Once part of the New Mexico Territory, it was 250 square miles of high desert, roughly one-fifth the size of Rhode Island. It was located south of the Gila River, headquartered in Arizona and spilling over the

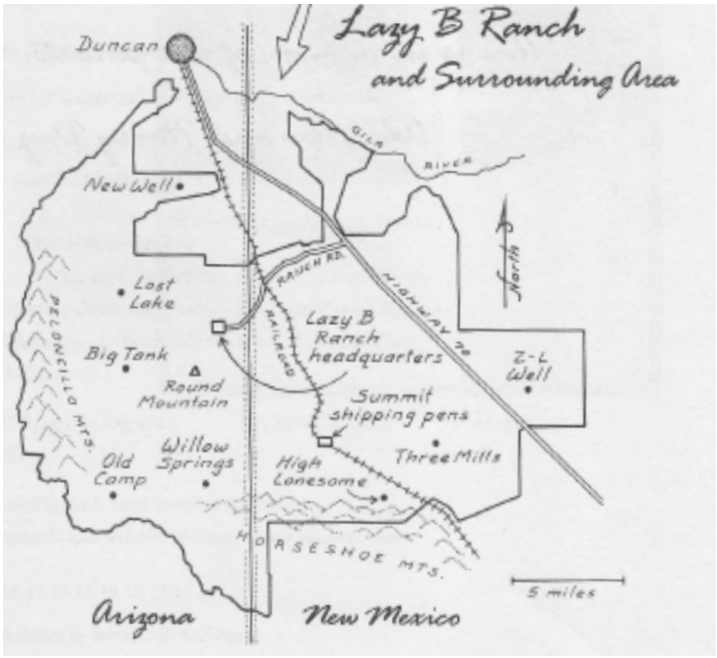


Diagram from Lazy B: Growing Up on a Cattle Ranch in the American Southwest *(New York: Random House, 2002).*

border into New Mexico. All of this land lay within what was known as the Gadsden Purchase, which had been acquired from Mexico after the Mexican-American war.[13] This was land that the U.S. Fourth Cavalry had later wrestled away from Geronimo, Cochise, and the Chiricahua Apaches, in the late 1800s.

During the following century, it was the ranchers who wrestled with the land itself for their living. It was parched, rocky land, covered with creosote bushes, yucca and broomweed,[14] along with some oak and mesquite trees.[15] Kit Carson said of this land that it was *"so desolate and God-forsaken that a wolf could not make a living on it."*[16] When Sandra Day was driving on the ranch, she took her .22-caliber rifle, and there was always a pistol in any vehicle. *"Whenever we saw a jackrabbit or a coyote,"* she said*, "we'd shoot them, because six jackrabbits could eat as much as one cow."*[17]

Life on the isolated ranch was primitive. There were no neighbors close at hand, and Sandra had little contact with other children during the first six years of her life.[18] A rancher learned that there was no one you could call for repairs, and to do it yourself if it needed to be done.[19] "*The value of hard work and honest, fair dealing were drilled into us constantly*" by her father, said Sandra. "*We learned to appreciate the desert and how difficult it is to make a living on that arid land*."[20]

"Do or Do Not. There is No Try."

-- Yoda

Sandra recalled as a young girl, but big enough to drive the lunch for the ranch hands out to them at a distance point on the ranch, how the old pick-up had had a flat tire in the middle of the desert, far from any help. She had to change the tire herself, and the rusty lug nuts on the wheel weren't cooperating. After jumping up and down on the lug wrench, she got some movement. Then she had to jack the truck up and down several times to get the heavy old wheel off and the new one on. As a result, she was an hour late delivering the noon meal to the men (which she and her mother had gotten up before dawn to start preparing).

Far from any praise for her self-reliant effort, she was greeted with only a stony silence from her father. His only comment that evening was, "She should have anticipated a flat tire."[21] This lesson, and it was not the only one, stayed with her. Work was hard and had to get done. When she became a state court judge, O'Connor was reputedly a tough judge who ran a tight ship and could be brutally short with unprepared attorneys.[22] And like her father, in later life she could be controlling.[23]

This upbringing gave rise to the characteristics of self-reliance, clear-eyed practical thinking, and directness that marked the rest of Day's life.

"The value system we learned was simple and unsophisticated and the product of necessity. What counted was competence and the ability to do whatever was required to maintain the ranch operation in good working order . . .Personal qualities of honesty, dependability, competence, and good humor were valued most," wrote O'Connor.[24]

"You can survive and even make a living in that formidable terrain," she said, *"but it was never easy. It takes planning, patience, skill and endurance."* Nevertheless, there was never a doubt that this cowgirl was proud of growing up on the ranch.[25]

The nearest little town was Duncan, Arizona, and it was a 30-mile road trip from there to the ranch. The road ran south from the town, then wandered into New Mexico before returning to Arizona. The last nine miles were unpaved and so dusty the Day family could see a car coming five miles away.[26]

Young Sandra on a horse, circa 1940

The Arizona Republic

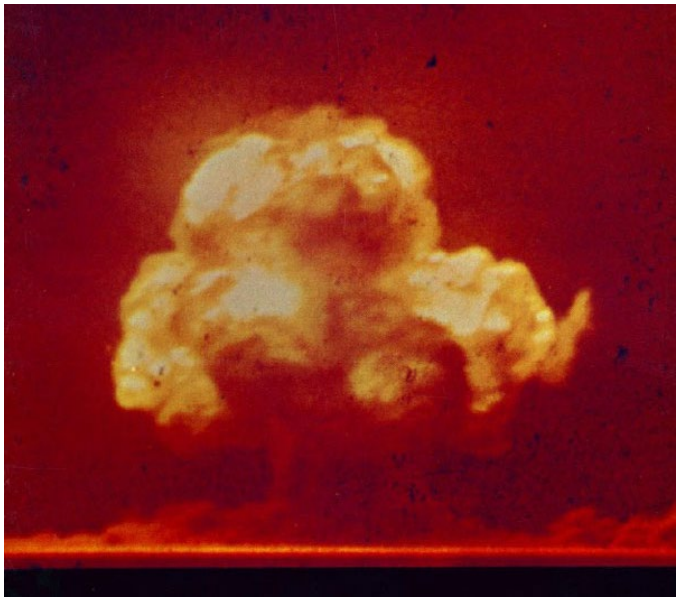
The family only went into town once a week, for mail and groceries and to pay bills. Then they would fight over the numerous magazines and newspapers they received, such as the *Wall Street Journal*, *Time, Saturday Evening Post, The New Yorker,* the *Los Angeles Times, Vogue* and *National Geographic*, *"because we were kind of starved for news, and we loved to read everything we could put our hands on."* There were also a couple of old AM radios on the ranch with bad reception.[27]

In those days, many rural areas in America did not have electricity. The Lazy B only had kerosene lanterns and a gasoline generator that Sandra's father would run for about three hours at night.[28] The Rural Electrification Act (REA), passed during the Roosevelt administration, was supposed to correct that situation, but it wasn't reaching everyone. Day's father told the REA people that he would put up poles and run power lines, which would meet REA specifications, if he could get hooked up. So while Sandra was at college, the ranch

got electric pumps to run the wells, and her mom got a refrigerator, washing machine and a vacuum cleaner, which helped with "*all those things that hadn't been easy to do before*." The ranch even got a television after Sandra came home from college.

One of Day's strongest memories from her early years had been the silence. There was no ambient noise, no electric motors running, no air-conditioners humming, no telephones ringing, no planes overhead, no traffic. Occasionally the cattle might stir, or there might be a coyote at night. If the wind came up, the windmills would slowly begin to turn and creak, and their machinery would start to bring water up from deep in the ground. "*The suck rods had to go all the way down the 800 feet, and as they moved up and down, you could hear them, and so I got used to that.*" But if the cattle were still and the wind wasn't blowing, there was silence in the desert, complete utter silence - a "Deafening Silence," she called it.

She didn't even hear the atomic bomb explode.



Trinity Test Site (July 16, 1945)
Photo Los Alamos National Laboratories

On July 16, 1945, 15-year-old Sandra was up early, around 4 am. She and her father were getting ready for a round-up. As she rinsed dishes in the kitchen sink after some breakfast and coffee at 5:30 am, she saw an enormous ball of fire and then a huge cloud went up. But the Days heard no sound.[29]

The explosion had occurred about 180 miles to the east. Had a munitions dump blown up? After all, the country was in the middle of World War II. Only later would the Days learn they had personally witnessed the first-ever detonation of a nuclear bomb, and with it the dawn of the nuclear age.[30] The building of the atomic bomb had been a closely guarded secret throughout the war. Ranchers in the region knew nothing about it. Even Harry Truman had only been told of the project three months earlier, after he became President.[31]

Cow Bells to School Bells

Local schooling was unavailable to Sandra due to the ranch's remote location. She attended a private school in El Paso, Texas, two states and 200-plus miles away, where her grandparents lived.[32] During eighth grade she lived at the ranch and needed to be bused 75 miles round trip to school, and developed a loathing for busing.[33] "*Busing is often not very beneficial to the child*," she said.[34]

Sandra expanded her horizons with her parents during summer breaks. The family sailed on a yacht up the Inside Passage of Alaska; took a banana boat to Cuba and Honduras; and motored the length of the Mississippi River, visiting every state capitol on the way.[35]

Day skipped two grades and finished high school at age 16 with high marks,[36] although she tried to conceal her scholastic ability from her classmates because good grades were not fashionable. Notwithstanding her own academic abilities, however, she was awed by her new classmates when she reached college. She said that the depth of their knowledge made her feel deficient.[37]

The remedy for that was hard work, and she was no stranger to hard work. She graduated magna cum laude from Stanford University in 1950, and two years later, at age 22, completed law school at Stanford.[38] Although official rankings were not kept, it's believed she was second or third in her class, and she was an editor of the law review. By the time she had graduated, she had garnered the prized Order of the Coif[39] along with four marriage proposals, including one from classmate William Rehnquist.[40]

The man she did marry was John Jay O'Connor III, another law review editor whom she had met when

Sandra and John O'Connor on their wedding day, December 20, 1952

from Sandra Day O'Connor Institute Digital Library

they edited an article together. This led to 40 dates in 40 nights. They continued dating during her last two years of law school.[41] Although he was actually a couple of months older than Sandra, John had always been a class behind her at Stanford, both as an undergraduate and in law school. They were married at her family's ranch on December 20, 1952, six months after she finished law school.[42]

Sandra had been a little concerned about how John would get along with her family. He was, after all, a city boy from San Francisco who knew nothing about ranch life. She didn't even know if he could ride a horse. Her family was all ranch life. Would the cowboys accept him? Like many cowboys of that period, the crew at the Lazy B were mostly single men with no wives or families, who stayed at the ranch their whole working life and became almost part of the rancher's family.

John's first visit would be telling.

The family, of course, knew that Sandra and John were arriving for a visit, and on the scheduled day could see the cloud of dust miles away.

As Sandra recalls it:

> *Dad and the cowboys were down at corral branding calves. There was a branding fire in the middle of one of the corrals. Dad knew we were there but never looked up to acknowledge us. Finally, kind of reached up and touched the brim of his hat, the universal sign that, 'Yeah, I know you are here.' Finally, Dad stuck out his hand, the hand of a working man, a little like shaking hand with Byron White. You knew you had a handshake. And dirty and bloody. Said glad to meet you. Then Dad went to the corral fence and took down a piece of baling wire that was hanging there. He straightened it out and into a skewer, and reached into a dirty-looking bucket near where they were branding the calves, where the cowboys who were castrating the bull calves just threw the testicles. I mean they just cut them off and threw them in the bucket. My father reached down and pulled a couple out and took his pocket knife out of his pocket and trimmed them up a little bit. I mean they were a bloody, dirty mess down there. And he stuck them on this skewer that he had made, and he put the 'mountain oysters' as we called them in the branding fire where they sizzled and cooked for a while. Dad turned them to cook all sides, and after he thought they were done, he pulled the skewer out and held it out to John, and said, 'Here John, try some of these'. And I think John was pretty astonished. I would have been. But he was great. He plucked one of the 'oysters' off the end of the baling wire skewer and popped it in his mouth and chewed it up and sort of swallowed hard and said, 'Oh, very good Mr. Day.' We used to have more than our share [of mountain oysters] I'm afraid… cattlemen sort of thought they were a delicacy. And actually my mother knew how to prepare them and they weren't too bad. When I grew up everything was deep fried, even an otherwise good steak, and so you fried the mountain oysters too, dipped in a little milk and egg and bread crumbs, and they weren't too bad served with some cocktail sauce.*[43]

The story of the Mountain Oysters is instructive about the family into which John was going to marry. And Sandra Day O'Connor's willingness to tell the story publicly reflected her own down-to-earth upbringing on the Arizona ranch.

Although Sandra had excelled in the classroom, the same would not initially be true in the marketplace. She realized that she had been "*ignorant and naïve*" about

women being hired as lawyers. It never occurred to her that "*there weren't women lawyers out there and that it might be hard to get a job as one. I never thought about that*." From being on the ranch surrounded by men, she said that she "*learned that women could do all right and be accepted if they could do the job. I guess that's why I assumed when I went to law school that I wouldn't have any trouble getting a job*."[44]

The story about Sandra Day O'Connor's attempts to find employment after law school is legendary, and a marker for the progress of women in the practice of law. While classmate William Rehnquist went off to Washington, D.C., to clerk for Supreme Court Justice Robert H. Jackson,[45] she couldn't even get an interview. "*I called at least 40 of those firms* [which had solicited interviews from Stanford law graduates] *asking for an interview, and not one of them would give me an interview. I was a woman, and they said, 'We don't hire women,' and that was a shock to me. It was a total shock. It shouldn't have been. I should have known better. I should have followed what was going on, but I hadn't. And it just came as a real shock because I had done well in law school, and it never entered my mind that I couldn't even get an interview.*"[46]

She received only one offer, from the Los Angeles office of Gibson, Dunn & Crutcher, which she emphatically declined. They said she could be a legal secretary.[47] She would soon share this story with the young prosecutors coming to visit.

"There ain't no Miller Time."[48]

When she finally obtained employment, it was only after working for the county attorney of San Mateo County for no pay. Once she proved herself to be valuable, she was given a paying job as the deputy county attorney.[49]

Things improved when she followed her husband to Frankfurt, Germany for his duty as an Army JAGC Officer. She became a civilian attorney with the Quartermaster Corps.[50]

After three years, they returned to Phoenix and Sandra entered private practice.[51] She and John started raising a family. But when her second child, Brian, came along, she decided to be a full-time homemaker.[52]

After five years staying at home, O'Connor returned to the world of law, and did so with a vengeance. She later said of herself:

> *"I think that many women have a great amount of energy, which I have been blessed with, and a hardy constitution. I think many women are happier juggling various roles than not having the opportunity. I'm like that."*[53]

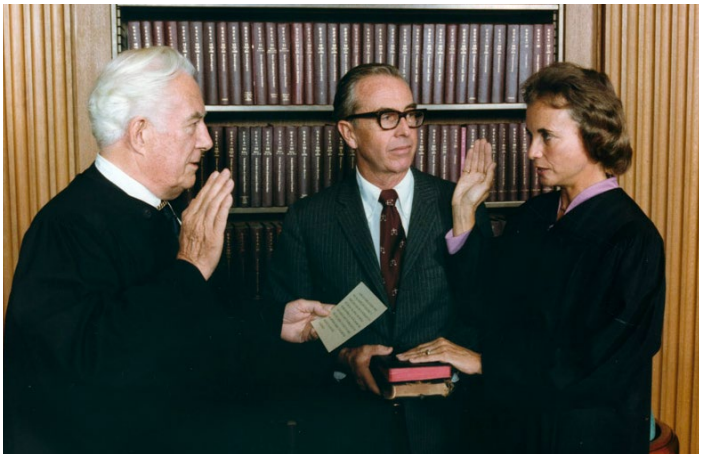
In 1965, she became an Assistant Attorney General for Arizona. Four years later, she was appointed to fill a vacancy in the Arizona senate. Once she was a senator, she persuaded her constituents to elect her to the same job twice more, while convincing her fellow senators to make her the first female senate majority leader anywhere in the country.[54] She then led the effort to eliminate all Arizona laws that discriminated against women.

In 1975, she changed course. She won election as a judge of the Maricopa County Superior Court,[55] and served there until she was appointed to Arizona's Court of Appeals in 1979.

All of this was a prelude to the big job. In 1981, President Ronald Reagan nominated her to the United States Supreme Court. Although never on Arizona's highest court, she was nevertheless an established figure in Arizona legal circles. Now she was on the national stage. She was 51 years old.

President Reagan and his Supreme Court Justice nominee
July 15, 1981
U.S. National Archives and Records Administration

Sandra Day O'Connor confirmation hearings in 1981 in Washington, D.C.
David Hume Kennerly—Getty Images



Being sworn-in as a U.S. Supreme Court Justice
The U.S. National Archives

O'Connor worked hard to prepare for the confirmation hearings. She "crammed" for the hearings, her son said. Always being prepared was her mantra.[56] She knew that she needed to become very familiar with federal law, and she would not embarrass herself or her gender by a lack of preparation.

> *"I felt a special responsibility . . . as the first woman. I could either do an adequate job so it would be possible for other women to be appointed without* [people] *saying, 'Oh, see a woman can't do it,' so it became very important that I perform in a way that wouldn't provide some reason or cause not to have more women in the future. That was very important to me."*[57]

Whether or not she actually needed a champion in the confirmation process, she had one in Senator Barry Goldwater from Arizona. O'Connor had campaigned for Goldwater in 1964 when he ran for president, and he had urged her name at the White House.

As it turned out, it was helpful to have a champion. Her nomination by a Republican president was generally well-received across the political spectrum. She was viewed as a progressive Republican.[58] Typical of the liberal reaction to her nomination was the pithy observation of University of Michigan Law Professor Yale Kamisar, who said: "*Give the devil his due; it was a pretty good appointment.*"[59] The opposition to her came chiefly from far-right groups, particularly those who opposed abortion. When the Rev. Jerry Falwell, head of the Moral Majority, claimed that all "good Christians" should be concerned about O'Connor's nomination, Goldwater responded: "*Every good Christian ought to kick Falwell right in the ass.*"[60]

It didn't hurt that the confirmation hearing for the Court's first female nominee, who was both well-prepared and charming, was conducted by an all-male Senate Judiciary committee before a nationwide audience, which included the wives of the Committee members and the rest of the women voters of America. It was the first televised hearing of a Supreme Court nominee. Senator Bob Dole (R-KS) told her that she was "*among friends*," and that became patently evident when the committee chairman, in the midst of the hearings, arranged "a candlelit, flower-bedecked lunch of quail in the old Supreme Court chamber in the Capitol," and his wife held a tea in her honor with Washington women. [61] The nomination was O'Connor's to lose, but that wasn't going to happen.

O'Connor was unanimously confirmed by a Senate vote of 99-0 on September 21, 1981, and she was sworn in and took her seat four days later. She had made the cover of Time Magazine two months earlier.[62]

"Waiting for the Morning Plane . . ."

– with apologies to Bruce Catton

U. S. Marshal John Robert Kendall and his security detail waited on the tarmac of the small Pellston airport. They were expecting an important arrival. As the federal marshal for the Western District of Michigan, Kendall was tasked with providing security for the Forty-Fourth

US Marshal John Kendall

Annual Sixth Circuit Judicial conference, being held this July on Mackinac Island. Attending would be federal judges, attorneys and law school deans from Michigan, Ohio, Kentucky and Tennessee.

At the moment, his duty consisted of personally meeting the plane of Supreme Court Justice Sandra Day O'Connor and escorting her to the Grand Hotel. As the nation's first female Justice, and coming to be seen by many as sitting astride a continental divide of the Court, the jurist had already become its most visible member.

Her appointment had been popular, but it had generated a lot of serious threats against her. The marshal had to insure that no harm came to her, or to Supreme Court Justice John Paul Stevens, who would be arriving later, or for that matter, to any of the numerous other federal judges in attendance.

Kendall was a relatively new federal marshal. Like O'Connor, he was a Reagan appointee. But unlike some U.S. Marshals over the years, John was more than a political choice.[63] He was a real policeman. He had served as the Undersheriff of nearby Grand Traverse County and as Chief of Police of Harbor Springs. Before that he had served in Vietnam.

Justice Sandra Day O'Connor was scheduled to give remarks to the Conference at its morning session on Saturday, July 9, 1983.[64] That would be *sixty years to the day* that another U.S. Supreme Court Justice, also named "Day," had died on Mackinac Island. Justice William Rufus Day had died on the Island on July 9, 1923.

Well, that was an unfortunate coincidence.

History was not going to repeat itself. No Supreme Court Justice, regardless of their name, was going to be lost on Marshal Kendall's watch.

She was arriving on a commercial flight. When the plane rolled to a stop and the passengers exited, Kendall was surprised to see that Justice O'Connor was traveling alone—no companions, no deputy marshal, not even a law clerk. Just a single lady of medium height wearing sensible travel clothes: a light jacket, silk blouse and black slacks. Her hair style was what has been described as "modest PTA."[65]

"Bright Island in the midst of Northern Seas, . . ."

– Grace Franks Kane

After the marshal introduced himself and his detail, the first stop was Mackinaw City for a ferry ride to Mackinac Island. It was a short 20 minute drive from the airport and they made it in time to catch the 1:30 pm ferry.

Kendall did not intend that his party would wait in line for ferry boat tickets once they reached the docks. He had arranged with his friend, Bill Shepler, owner of the Shepler Ferry line, to board the boat directly.

John also knew that on a summer's ferry boat ride to Mackinac Island he could not have Justice O'Connor crowded in with the rest of the passengers. Captain Shepler graciously agreed to allow them to join him on the bridge. John had asked that their arrival be kept confidential.

Secrets are hard to keep in any small town, and Mackinaw City was no different. By the time they arrived at the ferry, a large crowd had already gathered at the dock, craning to see America's famous female Justice. They had their cameras ready.

Bill met the party and took them on board. The boat filled quickly and cast off on schedule. As it churned through Lake Huron, the passengers knew that Justice O'Connor was onboard, but they probably did not realize that she was the one steering the boat! Captain Shepler let her pilot the boat half the way to the Island.

In addition to momentarily being the Great Lakes newest pilot, Justice O'Connor was a horsewoman, golfer, tennis player, and a person of seeming unflagging energy.[66] Now, during the crossing, she inquired about windsurfing in the Straits!

Marshal Kendall had not foreseen his charge windsurfing in the Straits, nor did he want to see it. He immediately grasped the logistical, indeed hair-raising,

challenges of such an outing. John didn't know how much windsurfing Justice O'Connor had done, growing up in the Arizona desert, but the possibility of having to explain how he had lost America's newest sweetheart to the depths of Lake Huron flashed through his mind.

Displaying his usual calm, bemused and engaging manner, however, he quickly pointed out the unpredictable currents and winds of the turbulent water in the Straits, caused by the narrow passage between the peninsulas where two of the Great Lakes merge, with islands and shoals in the middle. These winds were notorious.[67] And huge freighters came through the Straits! Not to mention the various random pleasure craft. For good measure, John pointed out that the cascading St. Marys[68] river, separating America and Canada with its 23-foot fall, drained into Lake Huron to the east.

Perhaps Justice O'Connor only had a passing curiosity about windsurfing, but John was relieved when she started talking about the other recreational sports on the Island! *Oh Buoy!*

"The Isle is full of noises, sounds and sweet airs, that give delight, and hurt not.

–Shakespeare's *The Tempest*

The Arizona cowgirl must have felt at home as she stepped onto the Mackinac Island dock. The shops lining Main Street were reminiscent of an earlier rural, perhaps even western, America. And here the Islanders had long since proclaimed the horse king, having banned the use of automobiles since the 1800s. Horses, up to 600 every summer, were everywhere. The shuffling of these gentle giants as they patiently waited their next fares, the clip-clop of their hooves as they walked along the pavement, the evidence they left in the wake of their passing. A far cry from Washington, D.C., but not so different from Arizona.

Another big crowd eagerly awaited Justice O'Connor's arrival. Pomp and circumstance was in the air. Carriages were lined up, including a private one for her from the Grand Hotel's extensive collection. She probably rode in the same carriage, known as a vis a vis, that carried then-President Gerald Ford to breakfast with the Sixth Circuit in 1975.[69] Considering where their guest was raised, perhaps they should have brought saddle horses instead.

The carriage parade (John Kendall called it a "carriage-cade") left Main Street and turned up Cadotte Avenue,[70] the long, sloping hill to the Grand Hotel.[71]

Justice O'Connor noticed the hotel's golf course on the right side of the carriage, carved out of a field where cows used to roam. Cadotte Avenue paralleled the ninth hole and passed by the Little Stone Church built from fieldstones left by the glaciers. It was a charming nine hole course, winding its way between trees and hills, with a pond on the 7th hole. On that hole you drove your tee shot off a cliff toward the pond, and had to shoot your second shot (or third, if you laid up close to the water) over the pond to land on the elevated green on a high plateau; too short and you were in the water, overshoot the green and your ball flew over the plateau and back down into the town. Everybody pointed that out. Despite the polite chit-chat in the carriage, Justice O'Connor could feel more than a twinge of anticipation at getting out on the course.

Vis a vis carriage

The Grand Hotel, Mackinac Island

O'Connor had an 18-handicap[72] and had famously practiced at a driving range for two years (she said it was more like four years) before she ventured out to play her first round of golf. As in all things, she obsessed about performing well.[73]

And she was passionate about golf. So it was a continuing source of frustration that the all-male Burning Tree Golf Club in Bethesda, MD, near her condo in the Kalorama area north of DuPont Circle, in Washington, D.C., wouldn't let her join the club, or even play the course.[74] But she knew that she would be welcome on this hotel's little course.[75]

And for good measure, the hotel had tennis courts on the other side of the street. She was equally avid about tennis and was a decent player.[76]

Horses, golf, tennis! Did she really have to take time out to speak to a bunch of judges and lawyers! Couldn't they just read her opinions?

And, in fact, they had been doing just that, from her first days on the bench two years ago right up to the past Wednesday.

Justice O'Connor had become a familiar presence to Sixth Circuit Judges right out of the gate when she twice overruled the Circuit in landmark habeas cases within months of joining the Court.

Rose v. Lundy[77] had been the first habeas case.[78] Noah Lundy had been convicted of rape and sodomy and sentenced to serve 120 years at the Tennessee State Penitentiary. Lundy eventually filed the usual petition for a writ of habeas corpus in federal court. Among his various claims were several Constitutional challenges to his state court conviction that he had not fully raised in the state courts.

Normally, exhaustion of state court remedies was required before a prisoner could bring the case to the federal court, since the state should first be given an opportunity to correct its own mistakes. In this instance, however, a federal district judge considered all of Lundy's claims, as well as several instances of apparent prosecutorial conduct not even raised in the habeas petition,[79] and overturned the conviction.

The State of Tennessee appealed to the Sixth Circuit. It argued that the federal district court should have dismissed outright a "mixed petition" that contained both exhausted and unexhausted claims.

But the Sixth Circuit affirmed.

The Supreme Court heard oral argument on October 14, 1981, less than three weeks after O'Connor joined the Court. The new Justice was assigned to write the Court's opinion.

O'Connor was no friend of the liberal application of habeas relief and she was a staunch believer in the exhaustion requirement. This had become obvious in an article that she had written for the *William and Mary Law Review*.[80] In her article, published only a month after Justice Potter Stewart announced that he was stepping down from the Court,[81] and while she was still a state appellate judge, O'Connor strongly endorsed the deferential concepts of exhausting state remedies as a prerequisite to bringing a federal action, and of giving finality to a state court judgment on federal constitutional issues where a full and fair adjudication had been provided in the state court. Urging federal judges to give greater weight to the factual findings of the state courts, she pointedly stated: "*When the state court judge puts on his or her new federal robe he or she does not become immediately better equipped intellectually to do the job*."[82]

Now she was wearing a federal robe, and she abided by her own admonition. In her opinion reversing the federal courts below, she wrote that a U.S. district judge must dismiss mixed petitions without considering any of the claims raised, leaving a prisoner to return to state court to present his unexhausted claims or amend his petition by dropping unexhausted claims.[83]

Lightening Never Strikes the Same Place Twice?

A month later, Justice O'Connor reversed the Sixth Circuit in another high-profile habeas case. *Engle v. Isaac*[84] was an action involving three separate habeas cases that had arisen in Ohio. And O'Connor's feelings about deference to state court proceedings could not have been more explicit.

Each of the three habeas petitions had raised constitutional claims regarding jury instructions pertaining to self-defense. None of the defendants had challenged the constitutionally of the self-defense instructions at

trial, thus violating an Ohio state procedural rule that required contemporaneous objections be made to jury instructions. The Ohio Supreme Court did not grant relief to any of the defendants.

Each defendant then unsuccessfully petitioned for a writ of habeas corpus from a federal district court in Ohio.

The Sixth Circuit Court of Appeals, however, in a ten-judge en banc hearing (with four dissents) reversed all three district court orders.

Justice O'Connor wrote the opinion. She said that rigid enforcement of procedural rules was necessary for the certainty that comes with the end of litigation. The petitioners' failure to contemporaneously object to the jury instructions meant that they could not challenge the constitutionally of those instructions in a federal habeas proceeding.

All of O'Connor's own legal experience, except for her time in Germany, had been gained in the three branches of state government.[85] Perhaps this was why she had long been apprehensive of the extent of federal court intrusion into state proceedings.[86] This wariness found expression in the language of her *Isaac* opinion:

> "We have always recognized, however, that the Great Writ entails significant costs. Collateral review of a conviction extends the ordeal of trial for both society and the accused. As Justice Harlan once observed:
>
> 'Both the individual criminal defendant and society have an interest in insuring that there will, at some point, be the certainty that comes with an end to litigation, and that attention will ultimately be focused not on whether a conviction was free from error, but rather on whether the prisoner can be restored to useful place in the community.'
>
> By frustrating these interests, the writ undermines the usual principles of finality of litigation.
>
> Liberal allowance of the writ, moreover, degrades the prominence of the trial itself. A criminal trial concentrates society's resources at one 'time and place in order to decide, within the limits of human fallibility, the question of guilt or innocence.' Constitution and law surround the trial with a multitude of protections for the accused. Rather than enhancing these safeguards, ready availability of habeas corpus may diminish their sanctity by suggesting to the trial participants that there may be no need to adhere to those safeguards during the trial itself.
>
> We must also acknowledge that writs of habeas corpus frequently cost society the right to punish admitted offenders. Passage of time, erosion of memory, and dispersion of witnesses may render retrial difficult, even impossible. . .
>
> Finally, the Great Writ imposes special costs on our federal system. The States possess primary authority for defining and enforcing the criminal law. In criminal trials, they also hold the initial responsibility for vindicating constitutional rights. Federal intrusions into state criminal trials frustrate both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights."[87]

These reversals of the Sixth Circuit would dominate the world of habeas law for years to come; so, yes, judges in the Sixth Circuit knew her.

But that was last year's news. The Supreme Court had just completed another term this very week, and had provided the Conference fresh grist for the mill. The best part was that Justice Sandra Day O'Connor, their guest, had been right in the middle of the controversial cases.

On Wednesday, the last day of the term, she had written a decision in *Michigan v. Long*[88] overruling the Michigan Supreme Court. *Long* held that police could conduct a "protective" search of the passenger compartment of a stopped car without a warrant, even if the driver was outside the vehicle and not under arrest.

The case arose in Barry County, Michigan, when David Long, apparently driving under the influence "of something," ended up in a ditch. Two deputy sheriffs approached his car and asked for his license and registration, but Long generally acted unresponsive. Eventually, as the deputies accompanied Long to the rear of his car, they spotted a hunting knife on the floorboard. Shining a light into the car to search for more weapons, they found marijuana under a front seat armrest (they also found 75 pounds in the trunk).

Justice O'Connor commented that the officer *"clearly cannot be required to ignore the contraband"* during a legitimate search, and said that the search was justified "*if the police officer possesses a reasonable belief on specific and articulable facts*" that the driver is dangerous and "*may gain immediate control of weapons*." The decision extended to vehicles the "stop and frisk" rationale of *Terry v. Ohio*,[89] which permitted warrantless frisking of suspects under certain circumstances. This decision impacted all of the federal courts, and police nationwide, for years.

In the same case, the Court also announced a new rule to clarify if it had jurisdiction to review a state court decision: Henceforth, the U.S. Supreme Court would assume that an appeal it received from a state court was based on federal law, and therefore within its jurisdiction, unless the state court "clearly and expressly" stated that its decision was based on independent and adequate state law.

If the Supreme Court had to reverse a Michigan court on the eve of the Sixth Circuit conference on Michigan's magic island, at least this time it wasn't a federal court.[90]

But the conversations about new court rulings was just getting started. The best was yet to come.

Another decision impacted the very authority of Congress itself. In *INS v. Chadha*, Justice O'Connor joined the majority in striking down the 'legislative veto,' which had existed for 50 years.[91]

Legislative veto provisions, which had been inserted into a couple hundred various pieces of legislation, allowed either house of Congress, by a simple majority, to block specific decisions that the President or federal agencies had made pursuant to statutes empowering them to take those actions. This had been a hotly contested issue for years.

The initial reaction to *Chadha*, when the Court ruled that the House of Representatives had exceeded its Constitutional powers by exercising a legislative veto provision contained in an immigration statute, was that the Supreme Court had curtailed Congressional power to curb the President's authority. The Court believed that it was acting to preserve the separation of powers. Because of the Court's broad decision, Congress could no longer promulgate, in any law, a provision granting unto itself a legislative veto over subsequent executive branch actions taken in furtherance of that statute.[92]

This had not been a popular decision on Capitol Hill.

Senator Joseph R. Biden, Jr. (D-DE) commented on what happened immediately following this decision, in an article he wrote a year later.[93]

"*The immediate reaction, . . . in Washington was near panic. One wire service reported the decision as a 'shattering blow to legislative power.' Scholars, editorial writers, lawyers, and many of my colleagues in Congress denounced the Court's uncompromising rigid interpretation of the Constitution, a decision which, in the words of Justice White's dissenting opinion, 'strikes down in one fell swoop provisions in more laws enacted by Congress than the Court has cumulatively invalidated in its history.*'"

Congress immediately held hearings, taking testimony from more than 40 witnesses. A task force was formed. Numerous bills were introduced to solve the problem "*created by the Supreme Court*." Legal counsel from both houses of Congress issued voluminous analyses of the decision's ramifications. "*In short,"* wrote Biden, "*there was never any danger that the problem would suffer from inattention*."

Biden ultimately concluded, however, that *Chadha* was "*much more of an inconvenience than a disaster. . . It is almost possible to say that the Supreme Court has saved Congress from itself*," by stemming the movement toward full-blown congressional reviews of agency regulations, which Congress was ill-equipped to perform.

Biden found the consequences of the *Chadha* decision more problematic in the field of foreign affairs, pointing out that Congress would not have given the President authority to make arms sales if it could not have reserved to itself the power to reverse those sales.

For better or worse, the announcement of the *Chadha* decision, just two weeks before the Sixth Circuit Conference, was certainly providential, because the Conference was scheduled to explore *the relationship* between the Courts and Congress.

"The Best Way to Predict the Future is to Construct it."

--Peter Drucker

If stripping away a half-century-old power of Congress was not enough to gain the attendees' attention, there had been the Supreme Court's abortion ruling just three weeks earlier in *City of Akron v. Akron Center for Reproductive Health, et al*.[94] If any issue grabbed the spotlight in the eighties, and does so today, it is abortion.[95] At least one abortion case will be on the Supreme Court's October, 2021 docket.[96]

Given that Sandra Day O'Connor's position on abortion had been a focal point of her confirmation, and now here she was at the Sixth Circuit Conference just weeks after participating in her first abortion case, it could only have been cosmic irony that this abortion case had arisen in the Sixth Circuit in the first place.

The Court had decided in *Akron* that certain requirements of the City of Akron's abortion regulation ordinance were unconstitutional, affirming in part and reversing in part the Sixth Circuit's decision.

Justice O'Connor filed a dissent. She urged that an 'unduly burdensome standard' be applied to challenged regulations throughout the entire pregnancy, and she urged rejection of the trimester approach.

If any were inclined to breeze past her opinion because it was only a dissent, they should not have done so. It was a blueprint for law to come. A few years later, O'Connor would write the plurality opinion in *Planned Parenthood v. Casey*,[97] the case that would overrule *Akron*. Here the Court reaffirmed the existence of a woman's Constitutional right to an abortion established by *Roe v. Wade*, but also said that the state's compelling interest in protecting the life of an unborn child means that it can ban an abortion of a viable fetus under any circumstance, except when the health of mother is at risk. The court's emphasis on viability rejected the unnecessarily rigid trimester formula that Justice Blackmun had so doggedly researched in the medical library at the Mayo Clinic in Minnesota when he was writing *Roe*.[98]

Building on her dissent in *Akron*, Justice O'Connor also said that laws restricting abortion before the fetus was viable should be evaluated under the 'unduly burdensome standard' rather than under the previous 'strict scrutiny analysis.'[99] This remains the law (as of this writing).

The Conference planners must have been ecstatic with this line-up of new cases. Nobody wants to go to a dull meeting.

Any fantasies that Sandra Day O'Connor may have indulged in of escaping to the playgrounds of Mackinac Island were, of course, fleeting. Justice O'Connor had replaced Justice Potter Stewart as the Circuit Justice of the Sixth Circuit,[100] and 1983 marked her first visit to Mackinac Island in that capacity.[101] Developing her professional relationships with the judges and lawyers in attendance, along with improving the administration of justice, were benefits of the Conference.[102]

And yes the attendees milling around the Grand Hotel were eagerly looking forward to meeting the Justice, but gatherings would have to await their scheduled times. She deserved a moment to relax, and she was looking forward to stretching her legs on the golf course.

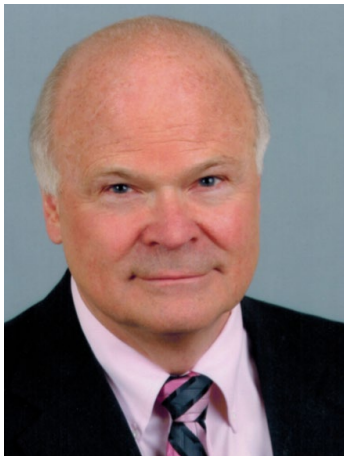
Arriving at the hotel, the Justice told her minder that she would like to play some golf, but specified that she did not want to play with any federal judges. Did he know anyone she could play with? The Marshal said, "I play golf,"[103] and he said that he would see what he could arrange. While Justice O'Connor changed clothes, Marshal Kendall walked across the street to the pro shop.

The first people he met at the golf course were former U.S. Senator Robert Griffin[104] and prominent Detroit attorney and former Michigan Court of Appeals Judge George Bashara, who were just coming off the course. John knew both men and asked them if they would like to play a round of golf. Having just completed their game, they demurred.

John re-phased his question. Would they like to play a round of golf with a new Supreme Court Justice?

Well, of course, they would be happy to play some more golf.

Senator Robert Griffin



US Attorney John Smeitanka

Having organized his foursome, John returned to the Grand Hotel. Justice O'Connor was staying in the Presidential Suite.[105] John escorted her down the back stairs, past the dray wagons where the luggage from the ferries was being unloaded, and across the street to the golf course.[106] John had obtained rental clubs from the pro shop. The game was on!

The Jockey Club,[107] a small lounge belonging to the Grand Hotel, sits on the west edge of the golf course near the pro shop. After hours, the bar was a great venue for conventioneers to sing and carouse a little in the late evening, without waking other guests. Its red-tiled roof was also a big marker for the 4th hole.

This writer happened to be sitting at an outdoor table at the Jockey Club the same afternoon that Justice O'Connor and her foursome were playing. At that time, the fourth hole was a blind tee shot down over a hill to a green that was situated immediately to the east of the Jockey Club. Because a golfer could not see the green from the tee, Justice O'Connor did not know where to aim her drive. Senator Griffin kindly gave Justice O'Connor the usual instruction. Pointing to the red roof of the bar, he told her to hit her ball over the hill, letting it drop down just left of the roof.

When the players came down over the hill, Justice O'Connor began searching for her ball, something not unusual to see a player do on this hole. I spotted the little white ball under a nearby bush. Before I could help myself, my Boy Scout training kicked in and, without either hesitation or thinking, I sprang from my seat, hurried over to the Justice and pointed out where her ball lay.

In my defense, a little wad of white paper can sometimes resemble a golf ball, from a distance. Her reaction was tolerant, par for a person who disliked unsolicited assistance.[108] Still, I quickly back-pedaled and apologized. I considered introducing myself, perhaps under an assumed name, but thought better of it, and quickly sat down. Justice O'Connor was able to finish her round without any further assistance from me.

"The best laid schemes o' mice an' men.
Gang aft a-gley."

--Robert Burns

John Smeitanka was the U.S. Attorney for the Western District, and before he left for Mackinac he had had an excellent idea. Several attorneys in his Grand Rapids office were women. He thought that it would be a wonderful opportunity for them to meet the first lady Justice of the United States Supreme Court. She was an inspiring example for women in the legal profession.

He discussed with his colleague, Marshal Kendall, the possibility of bringing the women up to the Island for a private introduction to Justice O'Connor. Kendell talked to the Justice on their trip to the Island, then told Smeitanka, now on the Island himself, that he could bring his attorneys up to the Grand Hotel to meet the Justice.

Smietanka telephoned down to Grand Rapids. It was a weekday so he knew that his Assistant United States Attorneys would be hard at work. He asked who among them would like to come up to the Island to meet Justice O'Connor. AUSAs Thomas Gezon, Dan and Jeanine LaVille, and law clerk Diane Munson readily accepted. They all piled into a van and headed north. Tom Gezon drove.

It was only a few hours drive to the ferry. A nice day. Pleasant companionship. An opportunity to spend a few minutes with the new Supreme Court Justice the whole country was talking about. Maybe pick up a box or two of fudge. All this at the boss's invitation! What could go wrong?

She wasn't feeling well.

The prosecutors from Grand Rapids and their leader, John Smeitanka, had assembled in a small conference room just inside the lower level entry to

the Grand Hotel, across from where the registration desk now sits.[109] As the moment approached for their private meeting with Justice O'Connor, the excitement became almost palpable. True, they were experienced lawyers and frequently appeared before judges. It was not in their nature to become easily flustered. But the woman they were about to meet was not just any jurist either. Her picture had been on the cover of Time Magazine and plastered across the rest of America as well. She was accomplished, self-confident, charming, and no-nonsense. She had vaulted to the top level of the Third Branch, and she was destined to be at its pinnacle in those cases where she would cast the deciding vote.[110] And she had branded cattle. In legal circles, she was a rock star.

July 20, 1981 cover of Time *Magazine*

Even those few who argued before her in Washington, D.C., didn't get to sit down for a personal chat over tea. She rarely ever gave media interviews.[111] This was going to be truly special.

The attorneys waited.[112] 20 minutes went by. . . 30 minutes. . . the anticipation grew . . . and with it some anxiety . . .

Finally, Justice O'Connor's husband, John, appeared. And he did not bring good news. He told the attorneys that Justice O'Connor had become ill – a stomach problem someone recalled, a dizzy spell from playing golf another thought they were told – and she could not come down to meet with them!

John could tell that the young attorneys were crestfallen. Despite their disappointment, Dan LaVille expressed the sense of the group, saying that they completely sympathized with her situation, not to worry about it, and that they wished her a speedy recovery. Such a genuine expression of concern was typically Dan, of course.

Mr. O'Connor asked them to wait a few more moments. He returned to the suite and told his wife that the group was small in number, and not the larger group that she had expected to meet in the Tea Room. She said, "If they don't mind meeting with a sick old lady in bed," they were welcome to come up to her bedroom. He went back down to tell them that they were invited up.

Marshal Kendall escorted the party to the President's Suite. When they arrived, they heard the same comment from her about them having to put up with an "old lady who was sick." Of course, they took the self-effacing remark no more seriously than they had a few minutes ago.[113]

Marshal Kendall left a deputy in the corner of the room, but did not stay himself. "*It was their party*," he recalled. Besides, it turned out that he had other work to do.

The attorneys remember Justice O'Connor sitting up in bed when they arrived, wearing pajamas and a lovely pink satin robe with a multi-color design. This was certainly not her normal attire! They had not expected a black robe, but not this either. When they came in the suite, she had her covers pulled up to her waist, but eventually she got out of bed and moved around, then sat in one of the leather chairs in the beautiful suite as the conversation continued.

The visit lasted about a half-hour. Initially, each attorney entered separately and was introduced to the Justice. Once they were more or less assembled, John Smietanka asked the first question to get the conversation started.

The Justice wanted to hear about their careers and where they thought they were headed. She paid attention to each one of them. She was anxious to encourage women in the legal profession. Diane, the law clerk, asked the Justice for advice about what she should do with her career. O'Connor told the attorneys her own story about only being offered a job as a legal secretary when she graduated from law school, despite finishing high in her class. Her response, she said, had been: "*Hell, no!*"

She had taken her first job, a job not unlike their own, but without pay just to prove that she could do it! She talked about government service, something they all had in common, and about government service having traditionally been one of the few avenues open to women. That was something she was familiar with.

The young attorneys listened closely to the path she had blazed. And, whether by inspiration or coincidence, the two young women in the room would follow it. Diane would become a prosecutor and an official in the Department of Justice. And, like Sandra Day O'Connor, she would write books inspired by her own life. Jeanine, already a prosecutor, would become a judge.[114]

The attorneys also recalled Justice O'Connor's husband, John, quietly taking care of her and bringing her tea, but remaining in the background. At one point, he answered a telephone call from the UPI. The attorneys well remember Justice O'Connor telling him to tell the press, *"I'm occupied!"* Justice O'Connor also made a point of introducing John and calling him, "*the best husband in the world*." It wasn't just because he brought her tea; she felt that he had enabled her to do what she had done career-wise.

The meeting had been a satisfying experience, and the time had come to leave. The young prosecutors immediately arranged for the hotel to send a dozen roses to Justice O'Connor's suite to show their appreciation. The day she left the Island, O'Connor asked Marshal Kendall to give the roses to Justice Stevens' wife, who was coming up to the Island that same day. A signed portrait of Justice O'Connor was subsequently given to Jeanine LaVille. When Jeanine became a judge herself, the portrait found a permanent home in her chambers.

Justice O'Connor's medical problem came as no surprise to her.[115] It was a non-life-threatening condition that flared up occasionally and she had been prescribed medication for it. She just didn't happen to have the medication or a prescription with her. And that could become a real problem if you were on an island that had no pharmacy and no doctor.

But the man who wore the star had gone to work. Calls had been made.

The Marshal called his friend, the Chief of Police in Mackinaw City.

The Police Chief called the local pharmacist.

The local pharmacist called Justice O'Connor's own pharmacist in Washington, D.C.

The Grand Hotel Presidential Suite

The Grand Hotel Theatre

After consultation, the local pharmacist filled the prescription.

The medication was then sped to the Island by Coast Guard fast boat.[116]

When the boat reached the dock, a deputy hurried the medication up to the Presidential Suite at the Grand Hotel.

This resolved the problem.

Justice O'Connor recovered quickly. She was able to make her scheduled presentation to the Conference, and to get in a game of tennis with Pierce Lively, the incoming Chief Judge of the Sixth Circuit.[117]

It was customary for the Circuit Justice to give the Conference a "scorecard" each year of how Court of Appeals decisions fared during the past year on appeal to the Supreme Court. This had sometimes proven to be of quiet satisfaction to those district judges whose decisions had been reversed by the Court of Appeals but who were later vindicated by the Supreme Court.[118]

Justice O'Connor spoke briefly to the assembled members of the Sixth Circuit Conference and she commended the Court of Appeals. She pointed out that courts at every level across the country were overloaded with cases, but that relatively few cases from the Sixth Circuit had needed the attention of the Supreme Court. "*Only three of the other 12 circuits had fewer cases taken to the Supreme Court during the last term*." She said that the decrease in petitions "*must be related in some fashion to the economic slowdown, but I don't know how*."[119]

The Saturday program was held in the Grand Hotel's Theatre. It was unfortunate the program was being held indoors - outside it was sunny and in the high 70s.

The Grand had long been a venue for entertainment coming to the Island. In times past, the Great Lakes cruise ships *North American* and *South American* used to dock at the Island and send their onboard troupes up to the Grand to perform in the Casino (now called the Theatre). While entertainment was not on this morning's agenda, fireworks can sometimes pop up anywhere unexpectedly.

Perhaps it was only a coincidence that presiding on Saturday morning was the Hon. Cornelia G. Kennedy of the Sixth Circuit Court of Appeals. Two years earlier she had been on Reagan's short list of four, perhaps only two, women, including O'Connor, being considered for the Supreme Court spot.[120]

Hon. Cornelia G. Kennedy

Cornelia Kennedy, too, had been a pioneer. She had not only been the first woman to be appointed as a judge on the federal court for the Eastern District of Michigan, but in 1977 she became the first female chief judge of *any federal district court* in the United States.[121]

Whatever Reagan's reasons were for selecting O'Connor, it probably helped that both she and the President had risen to success in state governments of neighboring Western states, and that O'Connor was a real cowhand, something that the Hollywood cowboy from Illinois (Secret Service codename: "Rawhide") always dreamt of being.

Justice O'Connor and Judge Kennedy had shared similar indignities breaking into the boys' club. Not only could Justice O'Connor not play golf at Burning Tree, she couldn't even find a ladies' room convenient to the courtroom at the Supreme Court.[122] For her part, when Judge Kennedy was elevated to the Sixth Circuit, she was given a hot plate to warm her lunch. The men on the court ate at the University Club of Cincinnati, an all-male private dining club that excluded women.[123]

Adjustments to the new reality were still occurring. Three months after the Mackinac Island conference, Justice O'Connor had to chastise the New York Times, of all papers. She wrote a letter to the editor correcting the paper's October 12, 1983 reference to "the nine men" of the Supreme Court of the United States. She wrote: "*For over two years now SCOTUS* [the Supreme Court of the United States] *has not consisted of nine men . . . If you have any contradictory information, I would be grateful if you would forward it as I am sure the POTUS, the SCOTUS, and the undersigned (the FWOTUS) would be most interested in seeing it*."[124]

"We have serious problems to solve, and we need serious people to solve them."

--President Andrew Shepherd[125]

The consequential topic for the panel discussion that July morning was the "The Changing Judicial Process: The Congress and the Judiciary."

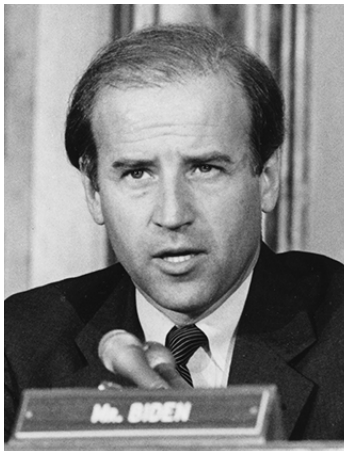
Two of the panelists had been in the U.S. Senate; one had helped remove a sitting President from office; the other would become President.

The first was Bob Griffin, a man of unswerving integrity. It was Griffin who, while Minority Whip for the Republican Party and a longtime supporter and friend of fellow Republican President Richard Nixon, had written to the President and told him that if he defied a House Judiciary subpoena to release his tapes, *"I want you to know that I shall regard that as an impeachable offense and vote accordingly."* Six days later President Nixon resigned. Griffin had also orchestrated Barry Goldwater's visit to the White House to convince Nixon that his position was hopeless and that he should resign.[126] Republican Senators had put the best interests of the nation ahead of party, and had acted to remove a Republican president.

The other Senator that morning was Joe Biden.

Two law professors on the panel were Academia powerhouses, and both had written on dilemmas in the courts. Professor Daniel J. Meador of the University of Virginia Law School had been instrumental in creating the U.S. Court of Appeals for the Federal Circuit. He also developed his law school's graduate program for judges. Judge Richard Enslen, sitting in the audience, would receive a Master's Degree from Meador's program two years later.[127]

Professor Robert M. Cover had joined the Yale Law School faculty during the preceding year and had been named the Chancellor Kent Professor of Law and Legal History.[128] While only in his early thirties, Cover had published a book entitled "Justice Accused: Antislavery and the Judicial Process,"[129] a masterful analysis of the dilemma that judges face when they must hand down rulings based on laws that they consider unjust or oppressive.[130] In 1981, Cover received a Guggenheim Fellowship for research on the Supreme Court. Born in 1943, Professor Cover was the youngest of the panelists and was considered a rapidly rising star, perhaps even a candidate for the Supreme Court one day. Tragically, he would die of a heart attack just three years later.[131]



Senator Joe Biden

All of the remaining panelists were intimately familiar with the workings of the courts and Congress, having been lawyers or Congressmen, or both.[132] Two were then in Congress, and a third had been, and was now a federal judge. Another panelist, Stuart J. Dunnings, Jr., a prominent Lansing attorney, had spent a lifetime in the trial courts as that city's first black practicing attorney.[133]

The panel had a big topic that morning, and the heavy hitters to handle it.

The focus was on the rift between Congress and the courts. Historically, conflict had characterized that relationship, and the participants took that as a given. Senator Griffin was the moderator of the panel, and began the discussion by observing that the general public would be surprised to hear that there was a wide gap of misunderstanding between the Congress and the judiciary. It was apparent that the solution was improved communication and mutual cooperation. Judge Harvey agreed with Griffin and said that the courts, for their part, were working on programs to iron out this lack of communication.

Professor Meador pointed out the that the courts had no real constituency pushing their interests in Congress. Thus, it was hard for the judiciary to get Congress' attention.

Legendary West Michigan trial lawyer, and now Congressman, Hal Sawyer, pled the case for Congress.[134] If the courts were impatient with Congress, and Hal Sawyer stressed that they were, there was a need for patience and cooperation from the courts in dealing with the House of Representatives. He pointed out that the House did not always "*arrive at conclusions*

easily" due to the great diversity among its 435 members. The mixture of race, religion, sex, socio-economic status and individual philosophies often bogged down decision-making.

But it was what the Senator from Delaware said that drew the most attention that morning, and bears the most scrutiny today.

Senator Joseph Biden was, in 1983, the ranking member on the Judiciary Committee. When he rose to speak at the Conference, he offered several observations, and they weren't at all the mild fare that one might have expected a guest speaker to serve up to a room full of federal judges with lifetime appointments.

First, Biden said he felt that changing social mores would affect the United States more than anything else within the coming two decades. He likened these to a glacier slowly but massively moving through the country. Changing social mores, he predicted, would tremendously impact our laws and legislation. He was right on target, and, remarkably, he made this evaluation without even knowing of the impact of social media, since there was no social media yet.

Biden also identified the issues of abortion and gene splitting as potential time bombs if they were not dealt with. Nearly forty years later, as this is being written, abortion is clearly the time bomb he predicted.[135]

Interesting observations, but not exactly fireworks.

But Biden was just warming up. He then took his opportunity at the lectern to chastise the judges. "*It seems some of you have lost touch with the public mood,*" the outspoken young Senator told them.[136] "*The judicial system suffers a case of elitism which places judges on a pedestal as they try to dispense wisdom without knowledge of the changes taking place in the country. These changes are taking place faster than institutions can adjust, so judges must come down off their pedestals and help precipitate change in the structure of Congress and the Judiciary,"* he added with the gift of certainty.[137] This hadn't been the first time Biden had attempted to instruct O'Connor. At her confirmation hearing, he had told her: "*You have an obligation to be an advocate for women.*" She just smiled.[138]

These remarks contrasted with Professor Cover's comments the previous day, when the professor had given a historical perspective on the changing judicial process and the Congress and the Courts.[139] Cover had argued, in fact, that there was a place for the Supreme Court on a pedestal, and by implication for the other federal judges as well. He had said that "*from time to time we must turn to nine people who can exercise independent judgment against power. This is why we put robes on them.*" He went on, "*To maintain their special powers, we must continue to give Supreme Court Justices special status, tenure, exemption from certain rules, and insulation from salary reduction*." Glancing over at Justice O'Connor, who was sitting in the front row of the audience in the Theatre, the Professor said that the "*nine Supreme Court justices are unique*," because this exercise of independent judgment "*does not depend upon what Congress does.*"

Judge John Feikens from the Eastern District picked up on Professor Cover's theme in a lecture a few years later. Feikens said, *"The blunt fact is that many elected officials duck sensitive political issues as a matter of survival. This is not a phenomenon. This reality undoubtedly caused the framers of our Constitution to provide for appointment of lifetime, independent federal judges. . . They foresaw that in a democratic society there is a compelling need for independent, tenured judges who could, on critical issues, call the shots." [140]*

The remarks of both the professor and the judge recall Justice Robert H. Jackson's famous observation three decades earlier about the Court's independence: "*We are not final because we are infallible, but we are infallible only because we are final.*"[141]

Biden wasn't done. He called the judges "*arrogant*," for forgetting about politics. "*You forgot where you came from.*" Essentially, he said, "*You think you are better than we are. I have seen your backgrounds as a member of the Judiciary committee, and you are no smarter than we are.*"[142]

These comments did little to bridge the gap of misunderstanding that Senator Griffin had referenced at the outset.

Nevertheless, there was some applause from the audience. The three newest Judges from Western District applauded. The marshal applauded.

"We're from Congress, and we're here to help!"

Were Biden's thunder bolts merely cast down to seize the day, by a Senator still suffering a hangover from the *Chadha* decision two weeks earlier? If the Supreme Court could hamstring Congress by eliminating its legislative veto, was Biden responding that Congress could assert its undoubted authority to reform the practice and procedure of the courts?[143] Biden had always been a passionate speaker, but occasionally his words had a way of going astray.

But perhaps it was something more than mere pique. Were those at this Mackinac gathering witnessing the germination of a true desire by Biden to revamp the judicial process? If so, was he in it for the long haul?

Events over the next several years would prove that Senator Biden was quite serious. He was intent on reducing delays and costs in the trial courts. The Democrats gained control of the Senate in the 100st Congress, and Biden became the Chairman of the Judiciary Committee in 1987. In 1988, he prompted the Brookings Institution to form a task force to "develop a set of recommendations to alleviate the problems of excessive cost and delay" in civil litigation. Then, utilizing many of the provisions in the report that followed,[144] Biden introduced S. 2027,[145] known as the Civil Justice Reform Act of 1990 (CJRA), on January 25, 1990. He said that hearings would be held on the proposed legislation.

When the hearings on the legislation were announced, Judge Enslen, who had heard Senator Biden's harangue at Mackinac Island a few years earlier and applauded, immediately wrote to the Senator expressing his support. Within weeks he was testifying before the Senate Judiciary Committee.[146] Changes were on the horizon for federal trial courts, and the Western District of Michigan, home to the Island where the gauntlet had been thrown down to Justice O'Connor and the other federal judges, would soon be knee-deep in making them a reality.

The stated purpose of the CJRA was to implement in all 94 federal districts a civil justice expense and delay reduction plan to facilitate adjudication, streamline discovery, improve judicial case management and provide for just, speedy and inexpensive resolution of civil disputes.

The CJRA also called for "the exploration of the wide range of alternative means of dispute resolution [ADR], including arbitration, mediation, the mini-trial and the summary jury trial." This had Judge Enslen's fingerprints all over it. He had been an early proponent of ADR, writing and speaking about it extensively.[147] It had been the subject of his Master's thesis for Professor Meador's graduate program, and because of his advocacy of ADR, the Western District had long been an ADR leader.[148]

The CJRA's attempt to reform federal trial procedure was unquestionably controversial from the start. Whether the CJRA was unnecessary meddling by Congress, or long overdue reform of the courts, it was opposed by both the Judicial Conference, the governing body of the federal courts,[149] and by the Federal Judges Association.[150]

The Judicial Conference even tried to preempt any Congressionally-imposed case management by promulgating its own "14-Point Program" to address cost and delay in civil litigation in district courts. The Conference candidly acknowledged that it hoped that its "adoption of this ambitious, unprecedented undertaking would persuade the [CJRA] sponsors that legislation in this area was unnecessary."[151]

Reagan had famously said that, *"The nine most terrifying words in the English language are 'I'm from the government and I'm here to help.'"* Many judges felt those words apropos to this Congressional intrusion.[152]

Biden needed support from someone in the judiciary, and he got it in Judge Enslen's oral presentation at the Senate Hearings, together with his written statement of almost 50 pages.[153] Summarizing all of Judge Enslen's testimony, the staff director of the Senate Judiciary Committee said:

"*Judge Richard A. Enslen of the U.S. District Court of the Western District of Michigan aptly described the task force as 'Users United'*[154] *noting that it represented the 'heavy-weight thinking in every spectrum of our judicial system.' He added that 'to read that task force report and not be impressed as a Federal district judge is to miss, I think, the whole game.' Judge Enslen concluded that '[t]he report's analytical and thought-provoking thesis offers compelling argument to often illusive solutions to reducing delay and cost.'"*[155]

Powerful and timely testimony from a West Michigan jurist.

Enslen was a gifted communicator, and as one of the few federal judges to endorse the proposed legislation, his words had added import. Biden wouldn't forget.

As a direct result of Judge Enslen's testimony before Congress on the CJRA, and because of his active implementation of ADR, the Western District of Michigan was named in the final version of the legislation[156] as one of the two demonstration districts in the nation to implement differentiated case management (DCM).[157] As such, the District was mandated to design and experiment with a DCM system that would assign all general civil cases to appropriate processing tracks, depending on their type and complexity. This exercise would demonstrate whether or not cost and delay reduction were best served by more structured judicial management. The District was to analyze the results and report back.

Western Michigan's implementation of the CJRA, and its DCM component, fell on Judge Gibson's watch as Chief Judge.[158] This meant that new procedures, extensive research and analysis, and comprehensive reports were required. Additional staff had to be hired. A bench-bar advisory group was created. Forms and procedures were standardized, and time goals established for each track. Neither Gibson nor his judicial colleagues could have foreseen this train barreling down on them on that Saturday morning in July 1983.

But for the bar generally, it was increasingly evident that the days when attorneys set the pace of court proceedings were coming to an end. Now, when a case was filed, the courts would manage its progress.

The title of the Conference – "The Changing Judicial Process: The Congress and The Judiciary"-- had been prophetic. Within a decade of the *Chadha* decision coming down, Congress had flexed its own muscle, and emphatically demonstrated its power to impact the Court's judicial process.

As Senator Biden would later remind the judiciary in a *Stanford Law Review* article:

> *"Congress and the federal courts share* ***a mutual obligation*** *to ensure that our judicial system offers all Americans justice in civil and criminal matters within a reasonable time and at a reasonable expense.* ***Neither branch alone*** *can accomplish this important goal.* ***The federal judiciary cannot adequately solve systemic problems affecting congestion, delay, and costs in the courts without appropriate legislative reform instituted by Congress."***[159] (Emphasis added).

At least two members of the Supreme Court were likely to read this article. They had both been editors of the *Stanford Law Review*.

Another Day Had Come and Gone

The morning darkness still lingered as the Justice and the marshal arrived at the Island's lonely airstrip. Justice O'Connor would soon be leaving on a chartered flight. She would be taking a trip to Venice soon, he understood.

As they waited, Justice O'Connor asked John if he would take her picture standing next to his two deputies.

And then she was gone.[160]

About the Author

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Endnotes

1 There is nothing salacious in this article, although there is an amusing story about the Day family's recipe for preparing mountain oysters.

2 "A Couple of Days on Mackinac Island – The First Day," the story of Justice William Day, will be published in a subsequent issue of the Stereoscope.

3 Open letter to the American public from the Hon. Sandra Day O'Connor dated October 23, 2018.

4 John Heilpern, "Out to Lunch with Sandra Day O'Connor," *Vanity Fair*, 20 March 2013.

5 Sandra Day O'Connor, *Chloe: A True Story from the Childhood of the First Woman Supreme Court Justice* (New York: Dutton Children's Books, 2005); ABC News Interview, Aug 29, 2005; Ed Magnuson, Evan Thomas, Joseph J. Kane, "The Brethren's First Sister." *Time Magazine* 118, no. 3, (July 20, 1981)(roping).

6 Day Family Papers, 1885-1985, MS 42, Library and Archives, Central Arizona Division, Arizona Historical Society.

7 The first time that Justice O'Connor shook hands with Justice Byron White "*tears squirted out of my eyes, because he squeezed my hand so hard, it hurt me. And I couldn't believe it. . . I think he had no concept of how hard his handshake was. . . And so when I shook his hand, I grabbed his thumb in my right hand - so that he couldn't crush my hand again. . . He had a killer handshake.*" 'Out of Order' At The Court: O'Connor on Being The First Female Justice," Interview on NPR's *Fresh Air* with Terry Gross, March 5, 2013.

8 Presidential candidate Ronald Reagan promised during his 1980 campaign that if elected he would appoint a woman to fill the first vacancy on the Court.

9 Justice O'Connor had an antipathy toward the description of her as being 'the swing vote,' to the extent that the term was used to mean a person who just tried to make decisions based not on legal principles but on the direction they thought the Court ought to take. She was fine with the term if it was meant as praise for a Justice maintaining an open mind and being willing to hear arguments and be swayed by them. Terry Gross, *Fresh Air*.

10 Sandra was the first child, and because of the primitive ranch conditions her mother wanted her to be born in El Paso, Texas, where her own parents lived. They returned to the ranch as soon as her mother was able to travel. Interview with Brian Lamb, C-Span.org January 23, 2002 (http//www.booknotes.org/watch/168338-1/Sandra-day-O%E2%80%99Connor).

11 Matthew Haag, "Sandra Day O'Connor, First Woman on Supreme Court, Reveals Dementia Diagnosis," *New York Times*, 23 Oct 2018.

12 Two books authored by Justice O'Connor describe her upbringing on the ranch. She and her younger brother, H. Alan Day, co-authored a book: "*Lazy B: Growing Up on a Cattle Ranch in the American Southwest* (New York: Random House, 2002). She wrote this book to preserve some memories of ranch, which had been sold in the late 1980s, after having been in her family for 100 years. She authored another book for younger people, *Chloe, supra*. O'Connor's upbringing clearly shaped her character. These books are a showcase of her formative years. Where any factual details differ between Sandra Day O'Connor's books and subsequent interviews, the writer has deferred to the written source.

13 Brian Lamb, *Interview;* Day Family Papers; O'Connor, *Lazy B*. The high desert was land above 5000 feet, even on the flat part. High up in the mountains could be found petroglyphs of ancient Anasazi. Dry, windswept and clear, the land was tolerably hot in the summer and rarely below freezing in the winter. Water was scarce. There was very little grass and rain was worshiped, although when it came the creeks and rivers, including the Gila, could quickly turn from trickles of water into raging torrents.

The Gadsden Purchase allowed the Southern Pacific Railroad to run a line all the way from New Orleans to Los Angeles. Except for the railroad, it was primarily public land in 1880, when Day's grandfather began homesteading, open for use by anyone with cattle to graze. Following statehood for Arizona and New Mexico in 1912, much of this land became the property of the federal government and the states and was parceled off to ranchers based on the water they had available for grazing cattle. This was measured by how far a cow could be expected to travel for water. The Lazy B Ranch had 35 wells and windmills spread over 160,000 acres. Of this, 8560 acres were owned by the Lazy B Ranch corporation (the Day family), 30,000 acres were leased from Arizona, 22,000 acres from New Mexico, and the balance was federal land administered by the Bureau of Land Management. Increased bureaucratic regulation by the BLM reduced the number of cattle the ranchers could graze. Ultimately, the Lazy B would support about 2000 cattle. It was still the largest and most successful ranch in the region.

14 Al Kamen and Marjorie Williams, "Woman of the Hour: Sandra Day O'Connor – As the swing vote on a divided Supreme Court – is now the most influential woman in America. But don't try telling her that." *Washington Post*, 11 June 1989; *Reprinted* by Marjorie Williams, as "How Sandra Day O'Connor Became the Most Powerful Woman in 1980s America," *Washington Post,* 29 March 2016.

15 Brian Lamb, *Interview.*

16 O'Connor, *Lazy B*.

17 O'Connor, *Lazy B; Vanity Fair*, 20 March 2013. When asked about guns, she said she did not foresee any change to the Second Amendment. The ranch had taught her about the necessity for pistols and long guns, but not machine guns. She added, "*I do not see the need for a resident of the United States to have an assault weapon.*"

18 Day Family Papers, 1885-1985, MS 42, Library and Archives, Central Arizona Division, Arizona Historical Society.

19 *Washington Post*, 11 June 1989.

20 O'Connor, *Lazy B.*

21 This was exactly what Federal Judge Wallace Kent, holding court in Kalamazoo, told Grand Rapids Attorney Stephen Bransdorfer when Bransdorfer was late to court because of a flat tire.

22 *Washington Post*, 11 June 1989.

23 Evan Thomas, *First – Sandra Day O'Connor* (New York: Random House, 2019) at 341.

24 O'Connor, *Lazy B.*

25 Matthew Haag, "Sandra Day O'Connor, First Woman on Supreme Court, Reveals Dementia Diagnosis," *New York Times*, 23 Oct. 2018.

26 Lordsburg, New Mexico, a little larger town, was even farther away in the opposite direction.

27 O'Connor, *Lazy B*; Brian Lamb, *Interview*.

28 O'Connor, *Lazy B*.

29 O'Connor, *Lazy B.*

30 Brian Lamb, *Interview*. On July 16, 1945, the first nuclear bomb, called Trinity, was detonated at the Alamogordo Test Range, 210 miles south of Los Alamos. New Mexico. The Plutonium-based device created a crater 300 meters wide. The test had been scheduled for 4 AM. At 3:30 AM General Groves and J. Robert Oppenheimer pushed the time back to 5:30 AM due to rain. At precisely 5:30 AM, Monday, July 16, 1945, the nuclear age began. Energy released was the equivalent of 21,000 tons (21 kilotons) of TNT. Little Boy, an untested uranium bomb, was dropped on Hiroshima on August 6, 1945. Fat Man, the plutonium weapon tested at Alamogordo, followed three days later at Nagasaki. Japan surrendered within days. See, F.G. Gosling, *The Manhattan Project: Making the Atomic Bomb* (DOE/MA-0001; Washington: History Division, Department of Energy) January 1999, 48-49.

31 Over a half century later, Justice O'Connor would host a woman who was just four years older and who had experienced that war first-hand. Queen Elizabeth II was O'Connor's guest at the 400th anniversary celebration of Jamestown, Virginia, England's first permanent settlement in the New World. O'Connor chaired the celebration, which was held on May 4, 2007. Despite the disparity in their upbringing, the two women shared several similarities. Both had grown up in the shadow of dominant men, yet each had risen to the top of their respective worlds, achieving a stature admired by most and equaled by few. They had each had married only once, to highly accomplished men who were willing to walk figuratively (and sometimes literally) a half-step behind. As young girls, each woman had ridden horses but learned how to drive trucks. Elizabeth rode horses on her family estate in Windsor, and she was trained as a truck mechanic and driver in the British Army during World War II. These were good conversation starters, but the two ladies probably found other things to talk about as well.

32 Brian Lamb, *Interview*; Day Family Papers.

33 *Washington Post*, 11 June 1989.

34 Jane O'Reilly and Thomas Evan, "Here Comes La Judge," *Time Magazine* vol. 118, issue 12 (September 21, 1981).

35 Day Family Papers; O'Connor, *Lazy B*.

36 *Washington Post*, 11 June 1989.

37 Brian Lamb, *Interview.*

38 Day completed her undergraduate major in three years, but needed additional credits for her degree. She applied and was accepted for early admission to law school, so her first year classes at law school counted as credits for her undergraduate degree, "*so then I had two additional years of law school.*" Brian Lamb, *Interview.*

39 Given to the top ten percent of the class.

40 Thomas, *First: Sandra Day O'Connor*. Rehnquist was editor-in-chief of the law review and class valedictorian at Stanford Law School. He would cross paths with Sandra again when they both ended up in Phoenix for awhile and when he served as legal counsel for the Goldwater Presidential Campaign in 1964.

41 Day Family Papers.

42 Thomas, *First - Sandra Day O'Connor*.

43 A combination of O'Connor's recollection as found in her book, the *Lazy B*, and as given to Brian Lamb, *Interview*.

44 Brian Lamb, *Interview*.

45 Rehnquist clerked for Jackson beginning in 1952. Jackson might well have been named Chief Justice by that time, following the death of Harlan F. Stone in 1946, had he not then been serving as the United States Chief Prosecutor at the Nuremberg trials.

46 Terry Gross, *Fresh Air.*

47 *Time Magazine,* 20 July 1981. Years later, however, two attorneys who had been at Gibson, Dunn & Crutcher decided that she was would be satisfactory for the Supreme Court. William French Smith had been a partner at the firm when O'Connor had applied for a job and was now Attorney General of the United States; Kenneth Starr, appointed as counselor to Attorney General French in 1981, vetted O'Connor for President Reagan.

48 Tony Mauro, "Twelve Hours a Day, Six Days a Week," *Times Herald* (Port Huron, Michigan), 20 September 1983. Justice O'Connor concurred with this assessment by a friend.

49 "Sandra Day O'Connor." *Oyez,* 25 Sep. 2018, www.oyez.org/justices/sandra_day_oconnor.

50 She served as a civilian attorney for Quartermaster Corps (Quartermaster Market Center) in Frankfurt from 1954-1957.

51 *Washington Post*, 11 June 1989. She practiced law in Maryvale, AZ, with another attorney from 1958 to 1960.

52 In her case, 'full-time homemaker' was a somewhat elastic term. During her time as a stay-at-home mom from 1960 to 1965, she served as a precinct committeewoman for family friend Barry Goldwater's 1964 presidential campaign; wrote and graded state bar exams; became president of the Phoenix Junior League; volunteered as a juvenile court referee; and was occasionally appointed as a trustee in bankruptcy cases. And she had another baby, named Jay. *Washington Post,* 11 June 1989.

53 *Times Herald*, 20 September 1983.

54 *New York Times,* 23 October 2018; Washington Post, 11 June 1989.

55 This could be a rough job. In 1978, she sentenced a man to die in the gas chamber for a contract killing of a man who had stolen drugs. "Death Penalty is Ordered for Dope Murder." *Arizona Republic,* 14 November 1978.

56 *Washington Post*, 11 June 1989. Indeed, she began reading the briefs for her first term of Court even before she was confirmed.

57 Terry Gross, *Fresh Air.*

58 *Washington Post,* 11 June 1989.

59 *Time Magazine,* 20 July 1981.

60 *Time Magazine,* 20 July 1981.

61 *Time Magazine,* 21 September 1981.

62 *Time Magazine,* 20 July 1981.

63 Some U.S. Marshals are simply political appointments with no law enforcement experience. For that reason, the number two person in a marshal's office is a career law enforcement officer known as the Chief. Where the Marshal has actual experience, like John, and, historically, the other marshals appointed in Western Michigan, the office is doubly blessed. After 13 years as U.S. Marshal, Kendall and his friend from the Grand Rapids Federal building, retiring Special Agent Bob DuHadway of the FBI, formed "DK Security, Inc.," which became one of the 50 largest security companies in the United States.

64 Official program for the Forty-Fourth Annual Sixth Circuit Judicial Conference.

65 For Justice O'Connor's usual attire, see *Time Magazine*, 20 July 1981; *Washington Post*, 11 June 1989; Kim Azzarelli, "Sandra Day O'Connor: A Trailblazer and My Mentor," *New York Times,* 26 October 2018.

66 *Washington Post,* 11 June 1989.

67 Dr. John Bailey, a fifty-year resident of Mackinac Island, wrote of the winds in 1895: *"For this is the central point between the three great lakes which surround it, and which seem incessantly tossing balls at each other. For no sooner has the wind ceased blowing from Lake Michigan than Lake Huron hurls back the gale it has received, and Lake Superior in its turn sends forth its blast from another quarter, and thus the game is played from one to the other; and as these lakes are of vast extent, the winds cannot be otherwise than boisterous, especially during the autumn."* John Read Bailey, M.D., *Mackinac Formerly Michilimackinac* (Ann Arbor: Richmond & Backus Co. 1895) 39.

68 Sometimes written as the St. Mary's River.

69 On July 13, 1975, President Ford spoke to the Sixth Circuit Judicial Conference at a breakfast meeting at the Grand Hotel. The open top vis a vis carriage had two bench seats facing each other, and two drivers with red jackets and black top hats. Ford was accompanied by Governor Milliken; Marjorie Griffin, wife of Senator Bob Griffin; and Dick Keiser, the Special Agent in Charge of the Secret Service's Presidential Protection Division. After breakfast, Jerry and Betty attended services at Trinity Episcopal Church along with the Griffins and the Millikens. The Fords then walked down to May's Fudge Shop to buy some fudge. Ford used open carriages throughout the day, as he toured the Fort, played tennis with Governor Milliken, and golf with Senator Griffin. *Daily Diary of President Gerald R. Ford*, July 13, 1975, Gerald R. Ford Library. Archivist Ken Hafeli of the Ford Presidential Library wrote that Ford's use of carriages "seem[ed] to really illustrate the lack of pretension exhibited by President Ford and the Ford family during their time in the White House." Gillian Brockell, "Pence had a motorcade. But when Ford visited car-free Mackinac Island, he traveled by horse-cade," *Washington Post*, 22 September 2019.

In a public relations disaster, Vice President Michael Pence chose to experience Mackinac Island entirely differently when he came to the Grand Hotel on September 19, 2019,

to speak to the Michigan Republican Leadership Conference. He arrived at the back of the Grand Hotel from the island airport, in a motorcade of two trucks and six large, and apparently armored, SUVs, and entered through the kitchen. The convoy was shielded by State Police officers on bikes, and secret service agents with sunglasses. After giving his speech, he returned to his helicopters the same way he came. Id.; Paul Egan, "VP Pence Arrives on Mackinac Island with Eight-Vehicle Motorcade," *Detroit Free Press*, 22 September 2019; MLive/You Tube, Rachel Premack/Business Insider, 23 September 2019, 11:04 AM; Vanessa Swales, "A Motorcade on Mackinac Island? Pence's Visit Breaks a Long Tradition," *New York Times*, 22 September 2019; Tara Law, "A Motorcade on Michigan's Mackinac Island? Some call Vice President Mike Pence's Flouting Vehicle Ban 'Disrespectful,'" *Time Magazine*, 22 September 2019. Apparently it wasn't the Republicans whom Pence feared, but it may have been the horses. He claimed that a racehorse had bitten him on the arm a year earlier. Chris Bumbaca, "VP Mike Pence says Triple Crown Winner American Pharoah Bit Him During Visit to Kentucky Farm," USA Today, 14 September 2019.

70 Also referred to as Grand Avenue.

71 The headquarters for the Sixth Circuit Judicial Conference in 1983 was the Grand Hotel, although even this large venue could not house all of the attendees and their spouses. Some had to lodge at other hotels on the island. It was suggested to those from the home district, the Western District of Michigan, that it might be appropriate for them to do so.

72 Ed Magnuson, Evan Thomas, Joseph J. Kane, "The Brethren's First Sister," *Time Magazine*, 20 July 1981.

73 *Washington Post*, 11 June 1989.

74 Burning Tree was opened as an all-male club in 1923. Legend says that it was formed by a foursome of men from the Chevy Chase Club, who had gotten stuck behind a slow-playing group of ladies. Burning Tree remained an all-male bastion throughout the time Sandra Day O'Connor lived in Washington. Women were not allowed on the premises, even as employees, and there were no women's restrooms. Customarily, the club extended honorary memberships to Justices on the Court, and several accepted. The club declined to tender such a membership to Justice O'Connor. On the other hand, in a 1989 ruling, the Supreme Court, including O'Connor, declined to extend to Burning Tree the benefits of a Maryland property tax break, because the club continued to exclude women. Emily London, "Burning Tree Golf Club: Sexism isn't up to par." *The Black and White,* (Walt Whitman High School, Bethesda, MD) 10 June 2019. Whatever sympathy her husband John offered her may have been of cold comfort. After all, he was a member of the famous and very exclusive all-male Bohemian Club, located outside San Francisco. *Washington Post,* 11 June, 1989.

75 In fact, women have been playing the course since its earliest days, shortly after the turn of the last century. *See*, Mike Fornes, *Mackinac Island's Grand Hotel* (Charleston, SC: Acadia Publishing, 2021) 78.

76 *Time Magazine*, 20 July 1981.

77 455 U.S. 509 (1982)

78 A state prisoner is entitled to relief under 28 U.S.C. sec. 2254 if he is held in custody in violation of the Constitution, laws or treaties of the United States.

79 455 U.S. at 513.

80 Sandra D. O'Connor, "Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge," 22 *Wm. & Mary L. Rev.* 801 (May, 1981).

81 Justice Stewart informed Attorney General William French Smith on March 26, 1981, that he was going to retire. Biskupic, *Sandra Day O'Connor,* at 1.

82 Id. at 812.

83 The risk in the latter instance was that a petitioner might forfeit later review of his unexhausted claims in federal court, if he should return there a second time.

84 456 U.S. 107 (1982). This case was argued on December 8, 1981, less than two months after *Rose v. Lundy,* and the decision issued on April 5, 1982, only a month after *Rose*.

85 She had held executive offices as a deputy county attorney and an assistant state attorney general; a legislative office as a state senator; and judiciary positions in two different state courts.

86 Fred Barbash, "Judge O'Connor's Bravura Stirs a Throb in Conservative Hearts," *Washington Post,* 13 September 1981.

87 456 U.S. at 126-128 (citations omitted). In his dissent, Justice Brennan's criticism of the Majority for ignoring the 'total exhaustion' rule set forth in *Rose v. Lundy* only a month earlier, led him to proclaim, *"Sic transit Gloria Lundy!* In scarcely a month, the bloom is off the *Rose."* 456 U.S. at 141. Regardless of whether his analysis was correct, his quip became part of Supreme Court lore.

88 463 U.S. 1032 (1983).

89 392 U.S. 1 (1968).

90 However, Chief Justice G. Mennen Williams of the Michigan Supreme Court, who staying at his beautiful cottage up on the bluff just west of the Grand Hotel, was at the Conference representing the Michigan judiciary. Williams had concurred in his court's majority decision. People v. Long, 413 Mich. 461 (1982). If he was disappointed with O'Connor's opinion rejecting that decision, he didn't show it in a pleasant photo the two had taken together. *Mackinac Town Crier*, vol. XXX, no. 6, week of July 16-22, 1983.

91 462 U.S. 919 (June 23, 1983).

92 Linda Greenhouse, "Powers May Shift," *New York Times,* 24 June 1983.

93 Sen. Joseph R. Biden, Jr., "Who Needs the Legislative Veto?" *Syracuse Law Review* 35 (1984): 685-701 [citations within article omitted]. Biden at the time was Ranking Minority Member on the Senate Judiciary Committee; and Member, Senate Foreign Relations, Budget, and Intelligence Committees. He was also a speaker at the Conference.

94 462 U.S.416 (June 15, 1983).

95 A good illustration of this controversy in the late 1980s occurred across the street from the federal courthouse in Grand Rapids. To celebrate the Bicentennial of the U.S. Constitution, the city's Bicentennial planning committee built Constitution Park on the Grand River, with financial support from members of the bar. Constitution Park boasted two permanent podiums, symbolizing the differences of opinion protected throughout in the Constitution (e.g., freedoms of speech and religion, trial by jury, right to vote, petition, and assemble, etc.). To ensure a good turnout at the dedication of the Park, the committee decided to stage a debate, and chose as the subject of the debate the provocative question of abortion. The topic proved so volatile that the debate had to be staged inside the adjacent Kent County Courthouse instead, where security could be provided, rather than in the new Park. Three decades later, the Park has disappeared, but the abortion controversy continues to rage.

96 *Dobbs v. Jackson Women's Health Organization,* No. 19- 1392.

97 505 U.S. 833 (1992).

98 Thomas, *First – Sandra Day O'Connor* at 193.

99 An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability. To satisfy a strict scrutiny standard, a law or regulation must be justified by a compelling governmental interest and be narrowly tailored to achieve that goal or interest, and must be the least restrictive means for achieving that interest.

100 Individual Supreme Court Justices are routinely assigned to the various circuits to serve as 'Circuit Justices,' handling applications for stays of lower court judgments; stays of execution; extensions of time and other procedural matters, until the matters can be resolved by the Supreme Court. See, 28 USC 42 (June 25, 1948; 62 Stat. 870)

101 The previous year the Judicial Conference had met in Asheville, N.C., where Justice O'Connor had also spoken.

102 Circuit conferences were initially mandated by Congress to bring federal judges and lawyers together annually to discuss judicial administration. *See,* 28 U.S.C. sec. 444 (1939). Traditionally, some lawyers came as delegates chosen by individual judges, and some were Life Members who had achieved this status after attending a certain number of conferences. The conference continues, but is no longer required by law.

103 This was an understatement. Kendall was an excellent golfer.

104 Robert P. Griffin had served 22 years in Congress, beginning in 1957. He co-authored the bi-partisan Landrum-Griffin Act in 1959. He was in the U.S. Senate from 1966 to 1979, having defeated two Michigan Democratic Party icons, Governor G. Mennen "Soapy" Williams and Attorney General Frank Kelley, and was Republican Whip from 1969 to 1977. In addition to his Congressional service, he was a trusted confidant and close friend to two Presidents, Nixon and Ford. He served as floor manager for Ford at the 1976 Republican Convention and was instrumental in securing the presidential nomination for Ford over Ronald Reagan. He would serve as the first chairman of the Board of Trustees of the Gerald R. Ford Foundation. In 1986, his legal career went "full circle," when he was elected to an eight-year term on the Michigan Supreme Court. He had begun his legal career in the State's highest court as a law clerk to Justice John Dethmers.

105 The President's Apartment, now the Presidential Suite, was built by Grand Hotel famous owner, Stewart Woodfill, in hopes of enticing a President to come to his hotel, specifically FDR. Woodfill's "if you build it, he will come" approach is still a work in progress. Six Presidents have visited the Grand, but only one, Gerald Ford, did so while in office, and he actually stayed overnight at the Governor's Mansion as a guest of Governor William Milliken. John McCabe, *Grand Hotel* (Mackinac Island: Unicorn Press, 1987) 139, 144, 247; Fornes, *Mackinac Island's Grand Hotel*, 103. (Both volumes mistakenly give the year of Ford's presidential visit as 1976; Ford visited in 1975. White House Daily Diaries). *See*, "Field of Dreams," (1989).

106 Such is the lifestyle of 'the rich and famous.' Being escorted down backstairs, and through kitchens and garages, to bypass the public is not done just in the movies. At one judicial conference, a judge from Grand Rapids and his wife sought out the freight elevator to avoid the crowd exiting from one of the sessions. When the freight elevator door opened, already on board was Supreme Court Justice John Paul Stevens and two deputy marshals.

107 Originally known as the "Snack Bar," its name was changed in the sixties to the "Grand Stand" and it is now known as the "The Jockey Club at the Grand Stand." John McCabe, *Grand Hotel* (Sault Ste. Marie, Michigan: The Unicorn Press, 1987) 147, 233.

108 "I think Sandra would rather not be seen to need help . . . There's not a lot that one can do for Sandra." Friend Nancy Ignatius, quoted in *Washington Post,* 11 June 1989.

109 The room later became the valet's office, and more recently has been remodeled altogether.

110 Constitutional scholar and Dean of the University of California, Berkeley, School of Law, Erwin Chemerinsky, was fond of saying that when he was arguing before the Supreme Court, he would have put her picture on the cover of his brief if it had been permitted. There is more than a kernel of truth behind this humor. Lawyers often knew that they were playing to an audience of one. O'Connor, in fact, reportedly tired of receiving briefs making allusions to ranch life. Thomas, *First – Sandra Day O'Connor,* at 348. But Thomas documents a more elaborate appeal that he suggests was made to O'Connor in *Grutter v. Bollinger,* 539 U.S. 306 (2003), the landmark affirmative action lawsuit defended by the University of Michigan Law School. Thomas argues that the defense knew O'Connor's vote would be decisive and called Kent Syverud to testify as an expert witness at trial. Although Syverud was the Dean of the Vanderbilt Law School and a former associate dean at the University of Michigan Law School, and a highly qualified witness, he was also a friend and former law clerk of Justice O'Connor. When the case reached the Supreme Court, the Court split 5-4, and in writing the opinion for the Court, O'Connor "*bought [Syverud's] argument that a 'critical mass' was necessary to ensure that minorities did not feel isolated or tokenized, and that nonminority students heard their diverse voices.*" *Id.*, 348-353; Evan Thomas, "Why Sandra Day O'Connor Saved Affirmative Action," (*The Atlantic,* March 19, 2019).

111 *The Times Herald,* 20 September 1983.

112 The collective recollections of the attorneys and Marshal Kendall, are taken from oral interviews with the writer, and used with their permission. Neither Justice O'Connor nor her (now deceased) husband could be interviewed.

113 The "old lady" remark was apparently one that she would make occasionally. Three decades later she would still be referring to herself as an "old lady." *Vanity Fair*, 20 March 2013.

114 Thomas Gezon would later go into private practice with John Smietanka. Jeanine LaVille became a judge in the 61st District Court in Grand Rapids, and Dan became the Clerk of the Bankruptcy Court in Western Michigan from 1999 to 2019. Diane Munson would become a federal prosecutor, and an official in the Department of Justice in Washington, D.C. She married David, a federal law enforcement agent who frequently worked undercover. They now write crime novels and live in an undisclosed location.

115 *Washington Post,* 11 June 1989. According to her friend Jean Douglas, O'Connor did not speak readily about medical problems. *"She keeps everything quiet. She wants to keep everything to herself."*

116 The arrangement for Coast Guard boats to patrol the Island during the conference was not generally known to the attendees. But it was not unusual. For example, on one occasion, when federal judges at a judicial conference in Baltimore took a chartered sight-seeing cruise around Baltimore Harbor, they were closely accompanied by Coast Guard fast boats armed with mounted machine guns.

117 Apparently, she was less reluctant to play tennis with a federal judge than to play golf.

118 When the reversals began increasing, a Conference planner told a Circuit Justice before one conference that the Judges – meaning the Circuit Judges - really weren't interested in the report.

119 Diane Hofsess, "Justice O'Connor Commends Sixth Circuit Efficiency." *Mackinac Island Town Crier*, vol. XXX, no. 6, Week of 7/16/1983 – 7/22/1983.

120 *Time Magazine*, 20 July 1981; She had also been on the short lists of Presidents Nixon and Ford. Douglas Martin, "Cornelia G. Kennedy, a Pioneering Federal Judge, Dies at 90," *New York Times*, 23 May 2014.

121 "The Hon. Cornelia Groefsema Kennedy, '47," Law Quadrangle https://quadrangle.law.edu/3752-21. When her sister, the Hon. Margaret G. Schaeffer, became a judge on the 47th District Court in Farmington Hills, Michigan, they became the first sister judges in the United States.

122 Terry Gross, *Fresh Air.*

123 *New York Times,* 23 May 2014. Even after she gained admittance to the University Club as its first female member, the club continued to refer to itself as a "Gentlemen's Club".

124 "O'Connor Seeks Justice," *Petoskey News-Review* (Petoskey, Michigan), 13 October 1983. Justice O'Connor coined FWOTUS as shorthand for the first woman on the Supreme Court.

125 "The American President" (1995).

126 "Robert P. Griffin Dies at 91; Michigan Senator Urged Nixon to Quit,"*New York Times*, 17 April 2015. Jack Lessenberry, "Griffin More Than His Big Role in Nixon Resignation," *Traverse City Record Eagle*, 25 April 2015;

Robert Griffin, Michigan Supreme Court Historical Society, micourthistory.org, 2015.

127 Professor Meador, the James Monroe Professor of Law at the Law School, had developed legislation for the implementation of the new court in 1982, and that Court had just concluded its First Annual Judicial Conference in May 1983. In the Spring preceding the Sixth Circuit conference, Meador had also published an article addressing the litigation explosion in appellate courts. In it, he suggested a subject matter organization approach, to assure that on any appellate court there would be only one voice speaking on any given area of law, because there would only be one group of appellate judges deciding a given type of federal appeal. Daniel J. Meador, *An Appellate Court Dilemma and a Solution Through Subject Matter Organization*, 16 U. MICH. J. L. REFORM 471 (1983). Professor Meador was the founding director of the University of Virginia Law School's graduate program for Judges. "Daniel J. Meador, 1926-2013,"*UVA Lawyer*, (Univ. of Va. L. Sch, Spring 2013). Judge Enslen received his Master of Laws in the Judicial Process from this program in 1985.

128 Chancellor Kent, by coincidence, was the man for whom Kent County, Michigan, is named. Kent had represented Michigan in its dispute with Ohio during the Toledo War.

129 New Haven: Yale University Press, 1975.

130 "Tributes to Robert M. Cover," *The Yale Law Journal*, vol. 96 no. 8 (July 1987).

131 "Robert M. Cover Dies; Legal Scholar at Yale," *New York Times*, 20 July 1986.

132 These were: Hon. John Conyers, Jr., U.S. Representative from Michigan; Hon. Harold S. Sawyer, U.S. Representative from Michigan; Hon. R. James Harvey, a Federal Judge from the Eastern District of Michigan, and formerly a Congressman; Stuart J. Dunnings, Jr., Esq. from Lansing.

133 Dunnings' former law partner, the Hon. Benjamin F. Gibson of the Western District of Michigan, was in the audience.

134 His long-time courtroom nemesis, and equally outstanding trial attorney, the Hon. Wendell A. Miles, now Chief Judge of the Western District of Michigan, was watching from the audience.

135 Biden also predicted that by 2000 five states would be predominantly Spanish-speaking, which would adversely impact those Americans who did not speak the language. This forecast may have been a little premature, but two out of three predictions wasn't bad.

136 Senator Biden was born November 20, 1942, and was 40 years old when spoke to the judges.

137 Sharon Morloka, "Judicial-Legislative Gap Hinders Lawmaking Process," *Mackinac Island Town Crier*, vol. XXX, no. 6, week of 7/16/83-7/22/83.

138 Joan Biskupic, *Sandra Day O'Connor* (New York: HarperCollins, 2005) at 97.

139 Diane Hofsess, "Hostility Noted Between Courts, Congress," *Mackinac Island Town Crier,* vol. XXX, no. 6, week of 7/16/83-7/22/83.

140 At the time of the Conference, Judge Feikens was the Chief Judge of the Eastern District of Michigan, having succeeded Judge Kennedy in that capacity. He spoke at Calvin College on October 3, 1991, and his remarks were published by the Detroit College of Law. John Feikens, "Federal Courts Are Governing Society Today: Should They?" *Detroit College of Law Review* (Winter, vol. 1991, issue 4): 1363.

141 *Brown v. Allen,* 344 U.S. 443, 540 (1953). This decision was issued February 9, 1953, while William Rehnquist was his law clerk. It is safe to assume, however, that the quip was Jackson's own. Jackson was regarded as one of the Court's best writers, who let his personality shine through in his words. The job of his staff, if anything, was to try to restrain Jackson if necessary, by exercising some "prudent censorship." See, Nanneska Nall Magee, "Playing It Dangerous: Justice Jackson's Passionate Style," *Scribes Journal of Legal Writing* (1991), 123.

142 Recollections of several attorneys and Marshal Kendall.

143 *See, e.g., Estrella v. U.S.,* 488 U.S. 361, 387 (1989); *Sibbach v. Wilso*n, 312 U.S. 1, 9-10 (1941).

144 The task force, comprised of a long and distinguished list of diverse members, produced a report titled, "Justice for all: Reducing Cost and Delay in Litigation, Report of a Task Force." (Brookings Inst. 1989).

145 On May 17, 1990, Biden introduced S. 2648 as a revision of S. 2027, to reflect comments raised at the hearings on the original version of the CJRA.

146 Hon. Robert Holmes Bell, "From the Memorial Held at the Kalamazoo Courthouse on May 7, 2015," *Stereoscope* vol.13, issue 1 (Spring 2015): 15.

147 *See, e.g., SJT, "Mediation," and Mini-Trials in Federal Courts: An Interview with Judge Richard A. Enslen*, Alternatives to the High Cost of Litigation (a publication of the Center for Public Resources), October 1984.

148 In 1984, Congress named the Western District of Michigan as one of ten districts to receive funding for an experimental program of court-annexed arbitration. Pub. L. No. 98-411 (1984). The Western District also had an ADR procedure then known as Michigan Mediation

(lawyer evaluation rather than actual mediation), and it was being used successfully in the early 1980s. Judge Enslen reported that approximately 75% of the cases the Judges sent to mediation settled at the hearing or within twenty days following it. D. Marie Provine, "Settlement Strategies for Federal District Judges," (Federal Judicial Center publication, 1986): 51-56. Enslen also adopted the Summary Jury Trial shortly after it was developed in the Northern District of Ohio by the Hon. Thomas D. Lambros in 1980, and got it instituted it in the Western District of Michigan as W.D. Mich. LCivR 44(b). See, Provine, *supra* at 69; "Memorandum to Judge Richard Enslen (W.D. Mich.) from Magistrate Hugh W. Brenneman, Jr. (W.D. Mich.), Summary Jury Trials" (Oct 18, 1984) (on file at the Federal Judicial Center).

149 The Judicial Conference initially raised an objection to S. 2027 for being too mandatory and rigid, and later objected to its substitute, S. 2648, as an "unwise legislative intrusion into procedural matters that are properly the province of the judiciary." Patrick Johnson, "Civil Justice Reform: Juggling Between Politics and Perfection," 62 *Fordham L. Rev.* 833 (1994).

150 Diana Murphy, "The Concerns of Federal Judges," 74 *Judicature* 112, 114 (1990). Judge Murphy was a Judge in the District of Minnesota and president of the Federal Judges Association.

151 Johnson, *Fordham L. Rev.;* "Conference OKs Plan to Cut Court Costs, Delays in Civil Litigation," (*Nat'l L. J.*,21 May 1990): 5. However, the Judicial Conference also designated a special task force of its own to work with the Congressional committees considering this legislation.

152 Press conference, August 12, 1986.

153 Hearings on the Civil Justice Reform Act of 1990 and Judicial Improvement Act of 1990 before the Senate Judiciary Committee, 101st Cong. 2d Sess 277 (1990)

154 This sound-bite cropped up repeatedly in subsequent articles.

155 Jeffrey J. Peck, "'Users United': The Civil Justice Reform Act of 1990," *Law and Contemporary Problems,* vol 54, no. 3 (Summer, 1997): 108 [internal citations omitted].

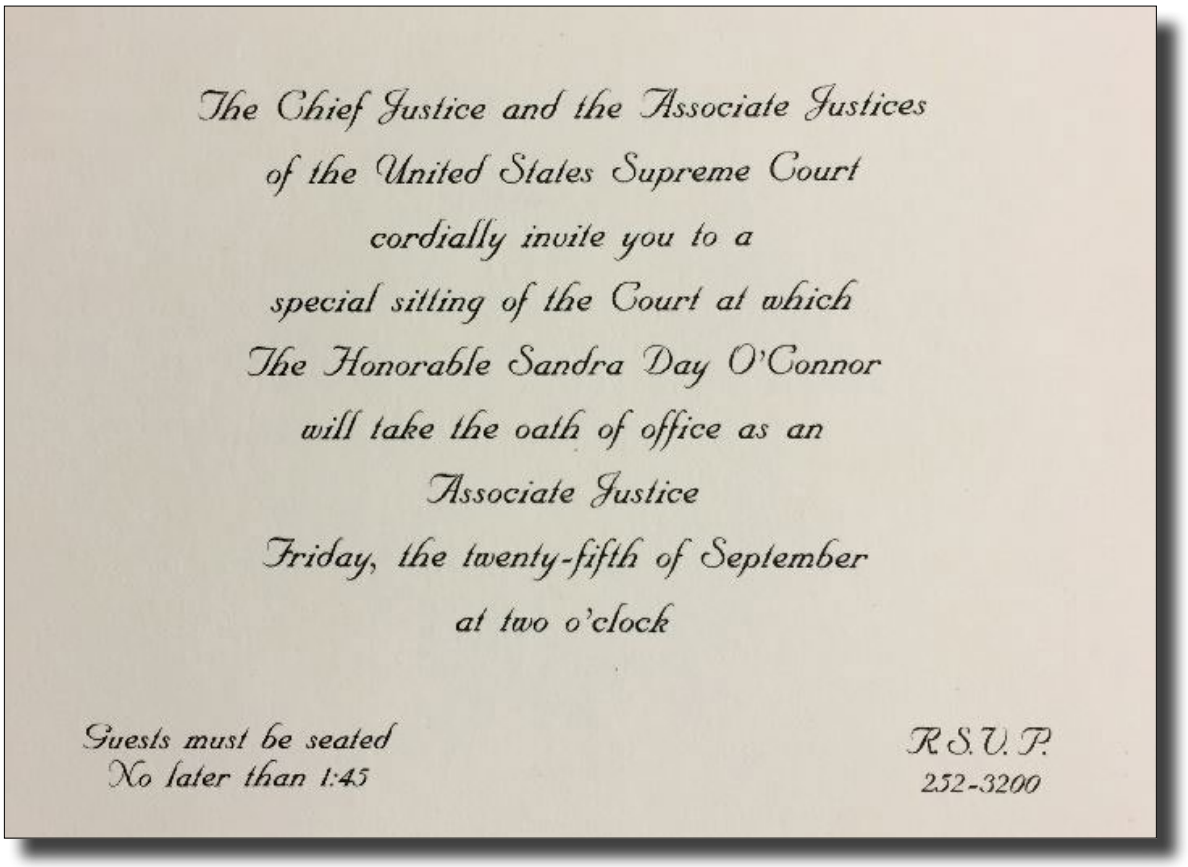
156 The CJRA of 1990 was enacted as Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990).

157 "Report to the Judicial Conference Committee on Court Administration and Case Management – A Study of the Five Demonstration Programs Established Under the Civil Justice Reform Act of 1990," (The Federal Judicial Center, January 24, 1997) at iii.

158 Hugh W. Brenneman, Jr., "'The Gentleman Judge' Remembering the Hon. Benjamin F. Gibson (1931-2021)" *The Stereoscope*, vol. 18, issue 2 (April 2021): 14.

159 Joseph R. Biden, "Congress and the Courts: Our Mutual Obligation," *Stanford Law Review,* vol. 46, no.6 (July 1994): 1285-1302. Biden also quotes Judge Enslen's testimony in this article.

160 And herein lies a mystery. The careful reader will have noted an inconsistency in the recollections about Sandra and John O'Connor's trip to the Island. Marshal John Kendall was firm in several interviews with the writer about the Justice arriving and leaving the Conference alone. Her husband John was not present. And, to state the obvious, it was the marshal's duty to pay close attention to the persons surrounding the Justice. On the other hand, all of the attorneys who visited Justice O'Connor in her suite are equally sure that her husband John was present, as they have also told the writer. I have been fortunate to have personally known the marshal and all of the attorneys, both before these events occurred and ever since. I would believe any of them without hesitation. At the time I began researching this article, John O'Connor was deceased and his wife was understandably no longer responding to inquiries. Can anyone offer an explanation . . . ?


The Chief Justice and the Associate Justices
of the United States Supreme Court
cordially invite you to a
special sitting of the Court at which
The Honorable Sandra Day O'Connor
will take the oath of office as an
Associate Justice
Friday, the twenty-fifth of September
at two o'clock

Guests must be seated
No later than 1:45

R.S.V.P.
252-3200

Invitation to Justice Sandra Day O'Connor's Investiture Ceremony

The Burger Court in the Justices' Conference Room on the day of Justice O'Connor's Investiture.

Standing, from left: Justices Harry A. Blackmun, Thurgood Marshall, William J. Brennan, Jr., Chief Justice Warren E. Burger, Justices Sandra Day O'Connor, Byron R. White, Lewis F. Powell, Jr., William H. Rehnquist, and John Paul Stevens.

Photograph by Bill Fitz-Patrick, The White House

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