



Supreme Court of the United States
Washington, D. C. 20543

JAN 29 1988

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Lewis,

What a pleasure to
read the glowing article
about Lewis III! You
must be so proud of
him. Some of the
lines in the article are
particularly good.
I am taking it home
to John.

Sandra

February 3, 1988

Dear Harry:

I recently read the Pentagon Papers case for the first time. All nine of you wrote, and the opinions occupy some 50 pages in 403 U.S. beginning at 713. I read your opinion and John Harlan's with special interest and admiration. Not having read the briefs or heard the arguments, I can only say that you and John may well have persuaded me.

Of course, the presumption against prior restraint of publication is a strong one. Yet, I have never agreed with Hugo Black's view of "unlimited absolutism" of the First Amendment, just as you do not agree. (p. 716).

I hope you and Dottie are now finding some time to rest and renew your energy after the heavy drain of the first four months of the Term.

As ever,

Justice Blackmun

lfp/ss

February 3, 1988

Dear Justice Kennedy:

This is to congratulate you most warmly on your unanimous confirmation as a Justice of this Court.

Although I will not have the pleasure of sitting with you or the intimate association that exists among sitting Justices, I do look forward to having you on the Court. You probably know that a retired Justice is entitled to have Chambers here, together with a clerk and messenger. As you may have read, I will sit on Courts of Appeals from time to time and also visit law schools. But Washington will remain my primary base.

With your experience on the federal bench, you will feel at home here from the beginning. Yet, if you ever think that I could be helpful please feel free to call me or visit.

Mrs. Powell and I regretfully will miss your investiture. Long before we knew of the date, we had accepted an invitation to spend about ten days in Florida with friends. It is with genuine regret that we will miss being here for your ceremony, and also the opportunity to meet your family and friends.

Sincerely,

Justice Kennedy

Suite 1400, 555 Capitol Mall
Sacramento, California 95814

lfp/ss

bc: The Conference

FEB 11 1988

Dear Justice Powell,

The great honor conferred by
coming to the Court is enhanced
by the knowledge I am to assume
the position you held with such grace
and distinction.

Mary and I look forward to meeting
you and Mrs Powell, and it is good
to know you will remain in Washington.

Your advice and counsel will always
be welcome.

Thank you for your warm and gracious
letter.

Yours,
Anthony M. Kennedy

5 Feb 88

February 10, 1988

MEMO TO THE CONFERENCE:

Jo and I regret that we will miss the investiture of Justice Kennedy. Some time ago we accepted an invitation to visit friends in Florida. We will be there the entire week of February 14. I have written Justice Kennedy a note.

L. F. P., Jr.

SS

February 12, 1988

Dear Justice Kennedy:

My clerk Bob Werner is helping your clerks review the accumulation of cert memos that may be discussed at your first Court Conference.

A couple of weeks ago, the Chief Justice inquired whether Bob Werner, if you should need him, would be available for some part time work with you. I enclose a copy of my letter of January 30 to the Chief.

In the past, the clerk assigned to a retired Justice has often worked part time with a sitting Justice. Apart from assisting a Justice, we have tried to afford for the clerk an opportunity to work on at least one opinion with a Justice. I give you this background because I feel some obligation for Bob Werner to have this opportunity. If this appeals to you, and seems feasible, Bob tells me that he would be happy - and indeed honored - to work with you and your clerks for roughly half of his time. He should be available for this by March 7.

If you prefer not to do this, Bob would understand. There are other Justices willing to have Bob.

Whatever your decision, Bob will continue to be available to help with the cert petitions for your first Conference.

Sincerely,

Justice Kennedy

lfp/ss
Enc.

cc: The Chief Justice



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 24, 1988

Dear Lewis:

Sometime ago, you allowed me to have your clerkship-application files for Deborah Malamud and Edward B. Foley. This note is just to let you know that I have offered a clerkship for O.T. 1988 to each of them and each has accepted. I suspect you will be pleased to know that they will be back in the building once again.

Your files are returned to you. Many thanks for letting me have them.

Sincerely,

Justice Powell

ARTHUR J. GOLDBERG

March 1, 1988

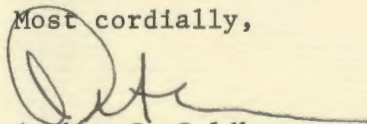
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in
jur files*
MAR 10 1988

The Hon. Lewis F. Powell, Jr. (Ret)
Supreme Court of the United States
1 First Street, Northeast
Washington, D. C. 20543

Dear Lou:

I thank you very much for your letter of comfort and condolences. It is much appreciated by my family, particularly since it comes from you, a long time friend.

Most cordially,


Arthur J. Goldberg



Supreme Court of the United States
Washington, D. C. 20543

MAR 14 1988

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

3/14/88

Dear Jo and Luis,

Thank you so much
for the lovely basket of
wine and flowers. You
really know how to
cheer up the sickly ones!
John and I will savor
the wine this weekend while
I am still taking it
easy at home.

I am feeling much
better each day and

just hoping I won't
fall too far behind
in the process.

With appreciation,

Sandra

Justice O'Connor was
operated on for appendicitis.



Supreme Court of the United States
Washington, D. C. 20543

MAR 14 1988

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

3/14/88

Dear Jo and Lewis,

Thank you so much
for the lovely basket of
wine and flowers. You

March 14, 1988

Dear Sandra:

Sally tells me that you also cannot find a copy of the letter I was sure I had written you shortly after my retirement. I certainly should have answered your beautiful letter of June 26. I have never received a letter that meant more to me. I will treasure it always.

It is not easy to describe in words how much your friendship both personally and as a Justice has meant to me. I also have said publicly more than once that no woman in the United States could have been better qualified to be "the first" to sit on this Court. You have in abundance the professional and personal qualities of a truly great Justice.

We think of you and John as quite special people who share values Jo and I always have cherished: family, home, friendships and - of course - our country. At the Prayer Breakfast of the ABA in August 1972, I spoke of other values we share. My talk was printed in U.S. News & World Report of August 28, 1972. The enclosed excerpt was printed by a friend, a lawyer in Oklahoma City.

With affection,

Justice O'Connor

lfp/ss
Enc.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 18
Suckard
May 9, 1988

Dear Lewis:

Re: May 20, 1988

Two seats are available for you for the piano dedication (in addition to you and Jo). Space is limited in the Conference Room, and we have found it necessary to give priority to sponsors and donors and to officials of the Baldwin Company. You should feel free to allocate the seats as you please. It would help me and the security people, however, if you would let me have your guests' names at your earliest convenience.

You may wish to remind your invitees that the program begins at 2:00 p.m. sharp in the East Conference Room and will be followed by a reception across the hall.

Sincerely,

Harry

Justice Powell

file - Justice

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.
RETIRED

Dear Sandra,

As you spoke Friday accepting the gift of the Grand Piano, I was reminded that you have been a priceless asset of this Court.

All of us who have served with you know, of course, that you are a quality lawyer. The "plus" is that in representing the Court, your warmth and graciousness also are greatly admired.

And when you speak, as you did last Friday, there is

appropriate substance
as well as your
natural charm.

I am not alone
in having these views.

Lewis

May 24, 1988

May 24, 1988

Dear Harry:

The piano dedication ceremony was memorable. Indeed, a description of the event and program should be included in the official archives of the Court.

We all are indebted to you personally. Your role was central, and you presided gracefully and with credit to the Court.

On a personal note, I enjoyed seeing your three daughters - although much too briefly.

As ever,

Justice Blackmun

lfp/ss

File Justice Correspondence



Supreme Court of the United States
Washington, D. C. 20543

June 14, '88
~~10 1988~~

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Lewis,

The attached opinion was announced today. It is another step down the wrong path, I fear. Because you have written about it with sensitivity, I take the liberty of sending you an early copy.

Sincerely,

Sandra

June 16, 1988

Dear Sandra:

Thank you for your note and the copy of the opinions in Shapero v. Kentucky Bar Association (June 13, 1986).

I fully agree that the Court's opinion in this case is "another step down the wrong path". I have said publicly that in my view Bates v. Arizona Bar was an unfortunate decision. It has tended to deprofessionalize one of the three ancient professions - the law.

Zauderer was decided during my absence in 1985 when I underwent surgery and missed two and a half months of arguments. I would have dissented in that case also. Your dissent in Shapero is excellent, and written with force and clarity.

I enclose a copy of the talk I made at the Georgetown commencement. In one sentence I mentioned my concern about the type of advertising that now is frequently seen. I modeled my talk after yours at Georgetown two years ago. I had been told that many at the Georgetown Law Center cite your talk as "the best in modern memory".

As ever,

Justice O'Connor

lfp/ss
Enc.

Supreme Court of the United States
Washington, D. C. 20543

7/5/88

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

Deems
It's at page 122 - and
so completely the truth
appreciatively
Bill

* * * * *

When I was in the hospital in July 1988, Justice Brennan sent me a copy of the recent book by Professor Schwartz: "Packing the Courts." The above note, with the reference to page 122, accompanied the book.

L.F.P., Jr.

July 14, 1988

Dear Sandra,

In view of your plan to visit my college, Washington and Lee University, the enclosed article from the Philadelphia Inquirer of June 12 will give you an overview of the small town of Lexington, Virginia and its rather unique place in history. I am grateful to you for planning to make this visit.

As ever

LFP/pmt.

The Honorable Sandra O'Connor
Supreme court of the United States
Washington, D.C. 20543

July 29, 1988

Dear Harry,

I read with special interest Stuart Taylor's article on you in the New York Times of July 25.

It is obvious that an earlier story that someone cut out and sent to me was without basis in fact. Indeed, having heard you talk humorously and delightfully about the Court and Justices, I was confident that the writer of the first story - if indeed he heard the speech - simply did not understand you.

Jo and I are back in Richmond for the remainder of the summer. I do plan to attend the ABA meeting in Toronto for a few days. I hope you and Dottie are still "at the lake", and that you have not had the oppressive heat and dryness that until recently we had here in Virginia.

My best to you both.

As ever,

Honorable Harry A. Blackmun
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

LFP/djb

Supreme Court of the United States
Washington, D. C. 20543

Justice File

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 1, 1988

Dear Lewis:

I have just returned from Mayos and bring you the usual greetings from David Utz and others there. As you perhaps know, he is scheduled for retirement before the end of 1988. He plans to spend the winter months at the Mayo facility in Scottsdale where apparently he will consult but not operate.

I appreciate your note of July 29. I thought the Judicial Conference speech went off rather well. Apparently, however, a Saint Louis Post Dispatch rookie reporter was assigned to be present and wrote a story with the word "unimaginative" in place of "imaginative." The AP picked it up without checking and, of course, it appeared that way in the New York Times and everywhere else. The Times retracted as to this detail the very next day (to my surprise) and then Stuart Taylor ran the nice article on July 25 to which you referred. In the meantime, C-SPAN apparently broadcast the program. This seems to have straightened out the context, much to my great relief.

We had a pleasant but brief time at the Lake, despite the fact that the weather there as elsewhere was excessively hot.

I hope things prove to be pleasant at Toronto. I know what the ABA has meant to you and how much they appreciate your being present at the annual gathering.

Sincerely,

Harry

Justice Powell



Supreme Court of the United States
Washington, D. C. 20543

*File on
jur. file*

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

August 2, 1988

Dear Lewis:

What do you think?

Sincerely,

Harry

Justice Powell

The Society of the Cincinnati in the State of New Jersey



1783

ROSS WARNE MAGHAN, JR., PRESIDENT
P.O. BOX 434
138 MAIN STREET
MATAWAN, N.J. 07747

TELEPHONE: (201) 566-0003

July 28, 1988

The Honorable Justice Harry A. Blackmun
Supreme Court of the United States
Washington, D .C.

Dear Justice Blackmun:

The Society of the Cincinnati in the State of New Jersey has directed that I extend to you an invitation to accept honorary membership in our group. I am delighted to comply with that directive. I trust you will consider this letter as our earnest appeal that you will join us.

As I believe you know, the roots of our Society go back to 1783. Our hereditary membership is limited to descendants of Continental American Army or Navy officers who saw at least three years active service in the Revolutionary War, or who died in the service, or who were honorably discharged because of wounds or the dissolution of their regiments. Our By-Laws permit also the admission of a limited number of honorary members "who have made a significant contribution to national life in the arts, literature, education science, government, or the military." In this century such members have included President William Howard Taft, Fleet Admiral William F. Halsey, author and historian Kenneth Roberts, and other eminent citizens.

I offer the above as a general outline, although I realize you are familiar with our Society. I recall your talk to us at our Fall Banquet at Anderson House several years ago.

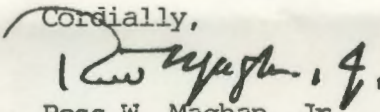
Ideally, if you will indeed consent to join us, we would like very much to have you appear at a meeting officially to accept membership. Our next meeting is scheduled for the weekend of October 8, 1988 at Anderson House, Washington, D.C., with a formal dinner on Saturday evening. I realize this is the beginning of the Fall season of the court and appreciate your busy

schedule, but this would be a particularly appropriate event, if you could arrange it.

Please know that you would truly do us honor in accepting membership in the Society of the Cincinnati in the State of New Jersey. We look forward to your reply.

With every good wish, I am

Cordially,


Ross W. Maghan, Jr
President

RWM, Jr/gaz

cc: Vincent C. DeBaun, Membership Chairman
Robert G. Harper, Vice President
Benjamin S. Sharp

August 17, 1988

Dear Bill,

I enclose two copies of a Declaration for you under the Virginia Natural Death Act (Va. Code § 54-325.8:1). This form was prepared by Tom Millhiser of my former firm. I enclose a copy of Tom's letter that suggests you call him if you have any questions. Of course, a similar form can be prepared in your Chambers for Mary.

Jo and I have signed Declarations identical to this. In addition, with the hope of making our wishes even stronger, Jo and I signed the enclosed affidavit on December 20, 1984. We had all four of our children also sign the affidavit agreeing to its contents. One of my former partners at Hunton & Williams, Waller Horsley, thought that the affidavit - as a supplement to the Declaration authorized by Virginia law - might be helpful. It is somewhat more explicit. The reference in my affidavit to an earlier one executed by us in 1974 is immaterial. The 1984 affidavit is stronger.

We return to the Court after Labor Day, and look forward to seeing you and Mary.

As ever,

Honorable William J. Brennan, Jr.
Supreme Court of the United States
1 First Street, N.E.
Washington, D. C. 20543

LFP/djb

cc: Thomas McN. Millhiser, Esquire
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

HUNTON & WILLIAMS

707 EAST MAIN STREET

P.O. Box 1535

RICHMOND, VIRGINIA 23212

TELEPHONE 804-788-8200

TELEX 6844251

August 16, 1988

2000 PENNSYLVANIA AVENUE, N.W.
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WASHINGTON, D. C. 20036
TELEPHONE 202-955-1500

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P. O. BOX 3889
NORFOLK, VIRGINIA 23514
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ONE HANNOVER SQUARE
P. O. BOX 109
RALEIGH, NORTH CAROLINA 27602
TELEPHONE 919-899-3000

FIRST TENNESSEE BANK BUILDING
P. O. BOX 951
KNOXVILLE, TENNESSEE 37901
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By Hand
Personal and Confidential

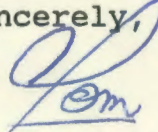
The Honorable Lewis F. Powell, Jr.
Parcel Post Building
6th Floor
Richmond, VA 23219

Dear Justice Powell:

In line with our telephone conversation this morning, I enclose two copies of a living will for Justice Brennan. He will need to sign and date the living will and then have it witnessed by two individuals who are neither his wife nor his blood relatives.

Please call me if either you or Justice Brennan has any questions concerning the living will. Justice Brennan also should feel free to call me directly if he has any questions.

Sincerely,



Thomas McN. Millhiser

295/930
Enclosures
cc: Lewis F. Powell, III, Esq.
Waller H. Horsley, Esq.

Sally - Bring this too

AUG 24 1988

Supreme Court of the United States
Washington, D. C. 20543

me on 9/6

Then file.

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

August 23, 1988

Dear Lewis,

John and I are back from Coeur d'Alene and the CA9 Conference. It was truly delightful. The setting is beautiful and the weather was cool. Everyone was sorry you could not be there and I hope you will be able to go another time. John and I particularly missed the chance to be with you and Jo.

Your speech at the ABA meeting was excellent. I was pleased to read the full text as it generated considerable press nationwide.

Look forward to seeing you in September.

Sincerely,

Sandra

Justice Lewis F. Powell

1988



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Dear Lewis,

I will burden
you with not one
but two speeches.

The speech on women
and the Constitution
was given recently
at the Atlanta
Conference I mentioned
to you.

Sincerely,

Sandra

WOMEN AND THE CONSTITUTION:
A BICENTENNIAL PERSPECTIVE

Remarks of
SANDRA D. O'CONNOR
ASSOCIATE JUSTICE
SUPREME COURT OF THE UNITED STATES

The Carter Center of Emory University
Atlanta, Georgia
February 11, 1988

This is a very special event. The Bicentennial of our Constitution has been the subject of more than a year of celebrations and observances. It has produced some dramatic changes for me and my colleagues on the Supreme Court. It was in order to better prepare for the 200th anniversary of our national charter that Chief Justice Warren Burger stepped down. One of my colleagues and a former Arizonan, William Rehnquist, has become our 16th Chief Justice. Antonin Scalia, a former Court of Appeals Judge, has joined us. And in a few days we will also be joined by Court of Appeals Judge Anthony Kennedy.

It seems natural for Supreme Court Justices to be enthusiastic about the Bicentennial of the document we spend so many of our waking hours thinking and arguing about—and so many pages of the United States Reports writing about. But it is perhaps not so common for most people today to examine our Constitution. Although 200 years ago most Americans debated the merits of the proposed Constitution, recent polls indicate that today almost half of our citizens do not know why the Constitution was drafted, nor even what is meant by the Bill of Rights. 75% erroneously believe the Constitution guarantees a free public education. 49% erroneously believe the President can suspend the Constitution in time of national emergency. 64% believe the Constitution establishes English as our national language. I dare say an even higher percentage have little or no understanding of how the Constitution and the Bill of Rights apply to women.

With such widespread lack of understanding about our Nation's charter, the Bicentennial celebration has been welcome indeed. It provides an opportunity for each of us to learn more about the ideas embodied in the Constitution and the ways in which they shape our lives. It is not enough to simply read the document. We need to learn how the Constitution has been interpreted and applied in the courts of this land in order to understand what it has come to mean at the end of the 20th Century. This seminar gives us an opportunity to review one particular area of constitutional law—specifically, its application to women. A most impressive group

cial policy has typically been within the bounds of general public perceptions at the time. The story of women and the Constitution is illustrative.

Abigail Adams advised her husband in 1776 to “remember the Ladies” in drafting the new nation’s charter. Women, she said “would not hold [themselves] bound by any laws in which [they] have no voice or representation.”¹ Her advice had little effect on her husband, John. He answered that men would not give up their masculine systems, but they would be fair, because in practice men “were the subjects” of their wives.² His response reflected a view of women sometimes expressed both in England and in the Colonies. It is reminiscent of the words of Samuel Johnson, the English author and conversationalist, who once told a friend: “Nature has given women so much power that the law has very wisely given them little.”³

As we all know, the Constitution ratified in Philadelphia on September 17, 1787, was produced and voted upon by 55 delegates—all men. The final draft contains no specific mention of women, although at various places throughout the document the faultlessly gender-neutral terms “person” and “citizen” are used. The Great Compromise—providing for representation in the House of Representatives on the basis of population, and representation in the Senate on the basis of two from each state—made it possible for the Constitutional Convention to produce ultimate agreement on our national charter. There was, as far as we know, no disagreement that representation in Congress should be based on the whole free population, women as well as men. The only express reference to this of which I am aware was in Resolution 7 submitted by Edmund Randolph of Virginia on June 28, which “Resolved that the right of suffrage in the first branch of the legislature of the United States ought to be in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition including those

¹ K. Anthony, *First Lady of the Revolution* 102 (1958).

² M. B. Norton, *Liberty's Daughters* 163 (1980).

³ M. F. McNamara, *2,000 Famous Legal Quotations* 571 (1967).

little evidence to suggest that at the time of its adoption in 1868, this Amendment was seen as a vehicle of women's equality under law. In fact, the 14th Amendment introduced sex-specific language into the Constitution. Section 2 of the Amendment, which dealt with legislative representation and voting, said that if the right to vote were "denied to any of the *male* inhabitants" of a state aged 21 or over then the proportional representation in that state would be reduced accordingly. Moreover, the Supreme Court determined in 1873 in the *Slaughter-House Cases*⁴ that the Equal Protection Clause should be narrowly interpreted to apply only to state laws that discriminated against blacks. Justice Miller, speaking for the Court, said "we doubt very much whether any action by a state not directed by way of discrimination against the Negroes as a class . . . will *ever* be held to come within the purview of [the Equal Protection Clause.]"⁵

The same Court on the very next day handed down the decision denying Myra Bradwell's claim that the State of Illinois had denied her the privileges and immunities of United States citizenship when it refused, because of her sex, to give her a license to practice law.⁶ The Court's holding was that the right to practice law in a state was not a *federal* privilege, but the concurring opinion of Justice Bradley reflected the 19th century view of the separate and unequal status of women. As he put it, their "natural and proper timidity and delicacy . . . unfits [them] for many of the occupations of civil life."⁷

Two years later the Court refused to sustain the claim of Virginia Minor that Missouri's male-only voting laws were unconstitutional under the 14th Amendment.⁸ The Court unanimously held that the Constitution did not confer the right of suffrage on anyone, and it noted that none of the new

⁴83 U. S. (16 Wall) 36 (1872).

⁵*Id.*, at 81.

⁶*Bradwell v. Illinois*, 83 U. S. (16 Wall) 130.

⁷*Id.*, at 141 (Bradley, concurring).

⁸*Minor v. Happersett*, 88 U. S. (21 Wall.) 162 (1874).

tion is not necessary for men. . . ."¹² The Court reasoned that protectionist legislation was justified because it was designed to compensate for the special burdens resting on women. Upon reading the Court's opinion it is apparent that many of the "burdens" the Court perceived were the result of societal stereotypes rather than actual biological differences between the sexes. The Court found, for example, that the two sexes differed in "the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for existence."¹³ Yet one sees even in that opinion an awkward attempt by the Court to come to grips with the problem of how physical differences between the sexes should affect their treatment under the law, a problem which has continued to perplex the courts in the succeeding years.

For the first half of the 20th century the Court continued to defer to legislative judgments regarding the differences between the sexes. In 1948 Valentine Goesaert and three other women challenged the constitutionality of a Michigan statute forbidding a woman from being a bartender unless she was "the wife or daughter of the male owner" of the bar. The Court in an opinion by Justice Frankfurter rejected the claim that the statute violated the Equal Protection Clause saying that "despite the vast changes in the social and legal position of women," the state could unquestionably forbid all women from working as bartenders. The Court was unwilling to second-guess the judgment of the Michigan legislature that bar ownership was hazardous to women.¹⁴

Until the latter half of this century, few women considered practicing law or medicine or any of the other traditionally "male" occupations. In family law, property law, and elsewhere, women, particularly black women, were relegated to a position that could at best be described as second class. Correctly perceiving the law as an engine of oppression, few women were eager to get on the train.

¹² *Muller v. Oregon*, 208 U. S. 412 (1908).

¹³ *Id.*, at 422.

¹⁴ *Goesaert v. Cleary*, 335 U. S. 464, 465, 466 (1948).

Following *Reed*, the Court invalidated a broad range of discriminatory statutes under the Equal Protection Clause of the 14th Amendment. For example, a federal law providing for determination of a spouse's dependency based on the sex of the member of the armed forces claiming the benefits;¹⁷ a Social Security Act provision allowing widows but not widowers to collect survivors benefits;¹⁸ a state law requiring divorced fathers to support their sons until age 21 but their daughters only to age 18;¹⁹ a state law permitting the sale of beer to women at age 18 but not to men until age 21;²⁰ a state law requiring men but not women to pay alimony after divorce;²¹ and a state statute granting only husbands the right to manage and dispose of jointly owned property without the spouse's consent.²² In 1976 in the case of *Craig v. Boren*, the Court adopted a somewhat stricter standard of review for sex-based classifications and held that to "withstand constitutional challenge [under the Equal Protection Clause] . . . classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives."²³

intermediate
level
scrutiny

All in all the Court has heard over 50 cases since 1971 involving various sex-based challenges under the Equal Protection Clause to state and federal laws relating to hiring, promotions, maternity leave, disability insurance, pension rights and seniority. Some of the challenges have been brought by women, some by men. Not all such challenges have been successful. But there is no question that the Court has now made clear that it will no longer view as benign archaic and stereotypic notions concerning the roles and abilities of males and females. A statute classifying people on the basis of sex

¹⁷ *Frontiero v. Richardson*, 411 U. S. 677 (1973).

¹⁸ *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975).

¹⁹ *Stanton v. Stanton*, 421 U. S. 7 (1975).

²⁰ *Craig v. Boren*, 429 U. S. 190 (1976).

²¹ *Orr v. Orr*, 440 U. S. 268 (1979).

²² *Kirchberg v. Feenstra*, 450 U. S. 455 (1981).

²³ 429 U. S. 190, 197 (1979).

whether they favor or oppose it, rested not on the Equal Protection Clause but on a right of privacy which the Court held implicit in the Constitution. Since *Roe v. Wade*, the Court has heard approximately 14 additional cases dealing with the regulation and funding of abortion procedures.

There is no doubt that for the remainder of this Century the federal and state courts will continue to see cases dealing with sex-based discrimination, affirmative action, reproductive rights, and other sensitive issues affecting women. As I have noted, the Court's response and the development of constitutional doctrine is typically a delayed response to changes and new developments in the Nation's focus and agenda. The Court is not a bad place from which to get some sense of the Nation's concerns, or at least its national legal concerns. The more than 4,000 petitions for review each year come from all across the country and involve a very wide range of legal issues. The Court hears oral argument in cases that have their genesis in front-page actions by Congress as well as in the actions of police officers in tiny towns. The attorneys who appear before the Court, and the clients whose problems have brought them there, present a similarly broad geographical cross-section.

E. B. White said: "Democracy is based on the recurrent suspicion that more than half of the people are right more than half of the time."³⁰ In the narrow view, the Supreme Court is based on the suspicion that five Justices are similarly correct. In the broader view, I think that the Justices contribute to the wider democracy. We struggle with national issues and attempt to define from national perspective what it is that the federal laws and the Constitution say. If you do not agree with all of the Court's holdings, you are certainly not alone. But you may be confident that we never stop trying in our writings on every case on our agenda to contribute appropriately to the fragile balances of our national democracy.

³⁰ J. Green, *Morrow's International Dictionary of Contemporary Quotations* 295 (1982).

deficiencies and imbalances. Let us look forward to completing the task of helping to make real the promise of equal justice under law.

To put it differently, the Court is somewhat akin to a Fire Department. When Congress, or the Executive Branch, or a state, lights a new fire, we are inevitably summoned to attend to the blaze. Some litigants will ask us to fan the flames, others will demand their extinguishment, and still others will request only that the fire not be allowed to spread. But unlike most Fire Departments, Justice moves slowly, so we usually arrive on the scene some years late. But once there, we must usually linger for a while. It often takes a series of decisions to flesh out a new statute, or to draw new boundaries between state and federal authority, or to reconsider the limits on government intrusions on individual rights. Eventually, of course, most of what can be done in an appellate court is completed, and thereafter we see little more of that particular conflagration. In the broad area of women and the Constitution, I would say we will linger for a good many more years.

Despite the relative gains women have made over the last 30 years, in absolute terms there are still significant gaps. For example, in my own profession, while women represent as much as 30% of associates employed by a group of large law firms surveyed by the National Law Journal in 1984, only 5% of the partnership positions were occupied by women. In Congress less than 5 out of every 100 members of the 100th Congress are women. Less than 5% of the Nation's judges are women.

Some of these disparities must be attributed to women's late start in these areas. Yet some also must be attributed to tenacious cultural and social barriers. But I am sure you agree with me that society as a whole benefits immeasurably from a climate in which all persons, regardless of race or gender, may have the opportunity to earn respect, responsibility, advancement and remuneration based on ability, and a climate in which those who do achieve success are concerned about those who cannot provide for themselves.

Despite the encouraging and wonderful gains and changes for women which have occurred in my lifetime, there is still room to advance and to promote correction of the remaining

will not be upheld absent an exceedingly persuasive justification for the classification.

The volume of cases in the Supreme Court dealing with sex discrimination has declined somewhat in the 1980s. Several of the more recent cases brought before the Court have involved interpretations of Title VII rather than of the Equal Protection Clause. In *Hishon v. King & Spalding*,²⁴ a case from this city, the Court held that once a law firm makes partnership consideration a privilege of employment, the firm may not discriminate on the basis of sex in its selection of partners. The Court has also recognized that sexual harassment creating a hostile workplace environment violates Title VII.²⁵ And last term the Court held that Title VII does not prohibit an employer from adopting an affirmative action plan taking sex into account in order to remedy the underrepresentation of women in traditionally segregated jobs.²⁶

Other recent cases have involved First Amendment challenges to state and local laws designed to end sex discrimination. In *Roberts v. Jaycees*,²⁷ the Supreme Court upheld a Minnesota statute that required the Jaycees to admit women as full voting members. Just last term the Court upheld a California law requiring Rotary Clubs to admit women. The Court reasoned that any infringement on the club members' freedom of association was justified by the State's compelling interest in eliminating sex discrimination and in assuring women equal access to leadership skills and business contacts.²⁸

Fifteen years have now passed since the Court's controversial ruling in *Roe v. Wade*,²⁹ invalidating state laws restricting abortions during the first three months of pregnancy. This decision, which is of enormous interest to women,

²⁴ 467 U. S. 69 (1984).

²⁵ *Meritor Savings Bank, FSB v. Vinson*, 106 S. Ct. 2399 (1986).

²⁶ *Johnson v. Transportation Agency*, 107 S. Ct. 1442 (1987).

²⁷ 468 U. S. 609 (1984).

²⁸ *Board of Directors of Rotary International v. Rotary Club of Duarte*, 107 S. Ct. 1940 (1987).

²⁹ 410 U. S. 113 (1973).

Happily the last half of this century has witnessed a revolution in women's legal and political status. My Chambers window in Washington, D. C., commands a view of a small brick house, the headquarters of the National Women's Party and the home of suffragist Alice Paul. It serves as a daily reminder to me that less than 70 years ago women had yet to obtain that most basic civil right, the right to vote. It also serves as a reminder that single minded determination and effort *can* bring about fundamental changes in even a well-entrenched system of discrimination.

The great catalyst for the growth of civil rights litigation generally was the school desegregation case of *Brown v. Board of Education*¹⁵ decided in 1954. In the aftermath of that landmark decision, public and legislative attention began to focus not only on racial discrimination but also on sex-based discrimination. Women emerged in significant numbers all across the country in the 1960s to demand equal opportunity, primarily in the workforce. Pursuant to its power under the Commerce Clause, Congress enacted both the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 prohibiting employment discrimination on the basis of race or sex. In 1972, Congress sent the proposed Equal Rights Amendment to the states for ratification. In response, although it was not ratified, many states became active in reviewing state legislation to remove discriminatory laws and to pass state civil rights legislation.

The Supreme Court began to look more closely at legislation providing dissimilar treatment for similarly situated women and men in the early 1970s. The first case in which the Court found a state law discriminating against women to be unconstitutional was *Reed v. Reed*.¹⁶ The case was decided in 1971, more than 100 years after the ratification of the 14th Amendment. Applying only a rationality standard, the Court struck down an Idaho law giving men an automatic preference in appointments as administrators of estates.

¹⁵ 347 U. S. 483 (1954).

¹⁶ 404 U. S. 71 (1971).

states that had been admitted to the Union had conferred that right upon women.

In 1880 the Court upheld a West Virginia law restricting jury service to men,⁹ a decision that was not overturned until 1975.¹⁰ Indeed, the practice of restricting jury service to men unless women registered separately to serve as jurors was upheld as late as 1961. That case came to the Court from Florida where an all-male jury had convicted Gwendolyn Hoyt of murdering her husband with a baseball bat. Her defense was that his marital infidelity had so enraged her she killed him in a fit of temporary insanity. She argued that the effect of Florida's system of jury registration by women had the effect of unconstitutionally depriving her of a jury of her peers. In upholding Florida's jury practices the Court said, "Despite the enlightened emancipation of women from the restrictions and protections of bygone years, and their entry into many parts of community life formerly considered to be reserved to men, woman is still regarded as the center of the home and family life."¹¹ So stating, the Court upheld the blanket excuse of all women from jury service.

It was not until after World War I and the unrelenting efforts of the Suffragettes that the 19th Amendment was adopted in 1920, finally giving women the right to vote. But even the tremendous gain of the franchise did not result in serious demands for equality in laws relating to women in the labor force. The Federal Women's Bureau, Labor Secretary Frances Perkins, and Eleanor Roosevelt, among others, opposed the first introduction of an Equal Rights Amendment, and they supported laws giving women special protection such as maximum working hours. Such a law had been upheld by the Supreme Court in 1908 in *Muller v. Oregon*, where the Court said ". . . history discloses the fact that woman has always been dependent upon man. . . . She is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legisla-

⁹ *Strauder v. West Virginia*, 100 U. S. 303 (1880).

¹⁰ *Taylor v. Louisiana*, 419 U. S. 522 (1975).

¹¹ *Hoyt v. Florida*, 368 U. S. 57, 61-62 (1961).

bound to servitude for a term of years and three-fifths of all other persons not comprehended in the foregoing description except Indians not paying their taxes in each state." The Committee on Style rephrased this language as part of Article 1, Section 2, referring simply to "free persons."

The Constitution however left the regulation and qualification of voters to be determined by each state. In 1787 only the state of New Jersey permitted women to vote, although that privilege was removed in 1807 because of controversy surrounding a particular election in Elizabethtown. It was not to be extended again to women by any state until Wyoming did so in 1869, perhaps partly with tongue in cheek. And it wasn't until the addition of the 19th Amendment in the early part of this century that the federal Constitution guaranteed all citizens the right to vote.

The ratification of the Bill of Rights in 1791 had little immediate effect on the legal status or rights of women. Its strictures were limited initially to the federal government; the states were free to continue as before in fashioning the political and legal rights of their citizens. State legislation affecting women was drawn primarily from the British common law. Only in the case of unmarried women were the laws in this country somewhat more generous than in England, at least insofar as property ownership and management were concerned.

It was not until after the Civil War and the resultant adoption of the 13th, 14th, and 15th Amendments to our Constitution that there were arguably some national guaranties for certain individual liberties which the states could not abridge. But even these additions to our Constitution did not easily translate into concepts that benefitted women as a group until the last half of the 20th Century. Until that time, despite the efforts of women such as Elizabeth Cady Stanton, Susan B. Anthony, and Sojourner Truth, society as a whole generally accepted the separate and unequal status of women.

The 14th Amendment prohibits states from "denying to any person . . . the equal protection of the laws." There is

of speakers and sponsors and participants has been assembled to address many aspects of the subject and I am honored to be part of it.

One reason the Constitution and the Bill of Rights have survived for two centuries is that they were, for the most part, intentionally drafted in broad and general terms. The drafters left to future generations the task of giving their words texture and meaning in the context of changing times and current problems. Although the power of judicial review is said by some to be the "cornerstone" of our constitutional law, courts are almost never the first to ponder the constitutional questions that come before them. Article III of the Constitution empowers federal courts to decide only genuine cases or controversies. This means that in the first instance it is up to state and federal legislators and executives to decide whether the laws they enact or the actions they are about to take are constitutional. Many provisions of the Constitution are addressed directly to legislators and executive officials. And, even when the government acts, the judiciary does not come into play until someone with a personal stake in the matter challenges the government action or practice in court.

The point is that the Supreme Court almost never has the *first* word in interpreting the Constitution. The Court is a uniquely reactive institution. Our agenda is shaped by the issues and concerns of the nation as a whole. Almost every political, economic, and social problem and change in our society has a way of finding its way eventually to the Court's marble halls. But we cannot just pluck interesting issues out of the air and decide them for the benefit of future generations. When the Court's agenda changes, as it surely did beginning in 1970 in the area of sex discrimination, the change is most frequently a delayed response to changes in the Nation's agenda. It is dictated by external forces—the actions of the other branches of government, the decisions of the lower courts, and ultimately the concerns of the public. The Court is only rarely in the forefront of establishing new major legal standards; and its articulation of principles of so-

August 26, 1988

Dear Byron,

Although you are a fly-caster fisherman who probably would be happy with a one pound trout, you may be interested in knowing that Richmond (located on the James River) is now the Bass Capital of the United States.

I enclose partial clippings from the local sports pages. I did a certain amount of bass fishing here in Tidewater, Virginia during my teen-age years, but never knew before that there are professional bass fishermen who participate in tournaments each year. I also am told, by a friend who fishes for bass, that the Solunar tables are used regularly by fisherman, and wonder whether you do this. A table is enclosed.

On the far more serious subject, I know you are saddened by the death of Art Rooney, Sr. - a friend of yours for many decades.

As ever,

Honorable Byron R. White
c/o Mr. Eugene J. Murret
Circuit Executive
United States Court of Appeals
Room C-529
1929 Stout Street
Denver, Colorado 80294

LFP/djb

File on Correspondence
with Justices

2, Colonial Williamsburg News, September 1988

Newsmakers



Sandra
Day O'Connor

Supreme Court justice Sandra Day O'Connor will join trustees

Sandra Day O'Connor, associate justice of the United States Supreme Court, has accepted an invitation to join the board of trustees of the Colonial Williamsburg Foundation, according to Charles L. Brown, chairman of the board. Justice O'Connor will be formally elected to the position at the bi-annual meeting of the full board in November.

"Justice O'Connor will be a distinguished addition to a board already composed of extraordinary Americans representing education, the arts and culture, science, business, and law," Brown said. "Colonial Williamsburg can look forward to her counsel and leadership as we seek the highest educational achievement in presenting the nation's origins to modern audiences."

Justice O'Connor will become the twenty-second trustee joining Brown, vice-chairman Abby M. O'Neill of Oyster Bay, N.Y., and Colonial Williamsburg president and chief executive officer Charles Longworth. Retired Supreme Court justice Lewis F. Powell, Jr., served Colonial Williamsburg for many years as general counsel, a board member and chairman of the board. He continues to serve as chairman emeritus.

Colonial Williamsburg is one of only two educational institutions in which Justice O'Connor will be active. She is currently a member of the National Board of the Smithsonian Associates. Until 1981, she was on the board and had served as president of the Heard Museum in Phoenix, AZ, her home before elevation to the Court. She was also a director of the Phoenix Historical Society.

An evolving program at Colonial Williamsburg, "Traditions of American Citizenship," is likely to be of special interest to the new trustee. Centered in the restored 18th-century city-county courthouse and a reconstructed law office of the period, the program will show visitors how the colonists' participation locally was crucial in the development of a distinctly American legal system, later embodied in the Constitution.

Justice O'Connor was nominated to the Supreme Court by President Reagan in 1981, becoming the first woman on America's highest court. She was previously an Arizona Court of Appeals judge and a superior court judge in Phoenix.

A native of El Paso, Texas, she was graduated from Stanford University, magna cum laude, and from its law school. Active in many civic and professional organizations, Justice O'Connor was an Arizona state senator for six years and senate majority leader in 1972.

Colonial Williamsburg News

The COLONIAL WILLIAMSBURG NEWS is published monthly for active and retired employees of Colonial Williamsburg. Contents may be reprinted with permission of the editor and credit to Colonial Williamsburg. Address correspondence to: COLONIAL WILLIAMSBURG NEWS; PO Box C; Williamsburg, VA 23187; in care of: Patrick Saylor, FSO - 238.

Member - Internal Association of Business Communicators

Manager - Employee CommunicationsPatrick Saylor
Employee Communications CoordinatorHeidi Moore

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

File - Justices

October 21, 1988

MEMORANDUM TO THE CONFERENCE

This is to let you know before you read about it in the newspaper that I am undergoing surgery today for breast cancer. Please do not be unduly concerned about it. The prognosis for my full recovery is in the range of 100%, and I do not anticipate having to miss any of the Court's oral arguments as a consequence of it. I will be back very soon among you. No flowers-- just good thoughts.

Sincerely,

Sandra

Copies to Chief Justice Burger
Justice Powell

OCT 28 1988



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

File - Correspondence
with Justice
10/28/88

Dear Lewis and Jo,

It is wonderful to be
out of the hospital and
hopefully on the mend. It
has been a severe shock
to be diagnosed and treated
for cancer. It has become
epidemic in our society
and carries with it
such a traumatic burden
both to the body and
the psyche. Depressing.

Thank you for your
good wishes, the gorgeous
basket of wine, cheese and
fruit (sampled last night),
and the dear bouquet
in our rooms at W.B.L.
We had a superb day
there.

Fondly,

Sandra

OCT 28 1988



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

*File - Correspondence
with Justice
10/28/88*

Dear Lewis and Jo,

It is wonderful to be
out of the hospital and
hopfully on the mend. I
have been a severe shock

Correspondence with
other members of
the Court

October 31, 1988

Dear Harry:

Randy Bezanson, the new Dean of the Law School at Washington & Lee University, has mentioned to me his invitation to speak at the Commencement next May.

I hardly need say that it would please me if you could fit this into your schedule. I know, of course, that May is a busy month for Justices. But a commencement speech is properly brief and informal. The content of the speech is a far less importance than the fact that a famous Supreme Court Justice made it.

I think you and Dottie would find Washington & Lee quite beautiful in May. In view of your special interest in history, you would enjoy a visit to Lexington. George Washington was a founder with a \$50,000 gift, and you know the role of Robert E. Lee. Both Lee and Jackson are buried in Lexington, and VMI ranks second only to West Point as a military school of high quality.

We who love Lexington and W&L are happy to have Randy as a new Dean. He is a quality person in every respect.

I well know the demands on a Justice of this Court, particularly in the spring. I therefore will understand if you decline. I merely wanted you to know that I join Randy in hoping that you can accept his invitation.

Sincerely,

Justice Blackmun

LFP/kk

NOV 11 1988

Supreme Court of the United States
Washington, D. C. 20543

*File on
Justices*

CHAMBERS OF
THE CHIEF JUSTICE

November 9, 1988

1988 Presidential Election

Dear John, Sandra, Tony and Lewis,

The enclosed are for your information. After the returns are completed, the gains and losses will be tallied.

Sincerely,

WHR/jg

Enc.

*What Justices do
with their "spare" time.*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 10, 1988

*Excellent
Speech on*

NOV 10 1988

"Federalism"

Dear Lewis,

Here is a copy of the speech I gave at
Washington & Lee. Thanks for your interest.

Sincerely,

S.

Justice Powell

THE 1988 PRESIDENTIAL ELECTION

1.	ALABAMA	<u>E</u> .
2.	ALASKA	<u>S</u> .
3.	ARIZONA	<u>B</u> .
4.	ARKANSAS	<u>B</u> .
5.	CALIFORNIA	<u>B</u> .
6.	COLORADO	<u>A</u> .
7.	CONNECTICUT	<u>B</u> .
8.	DELAWARE	<u>B</u> .
9.	FLORIDA	<u>B</u> .
10.	GEORGIA	<u>B</u> .
11.	HAWAII	<u>D</u> .
12.	IDAHO	<u>B</u> .
13.	ILLINOIS	<u>B</u> .
14.	INDIANA	<u>B</u> .
15.	IOWA	<u>D</u> .
16.	KANSAS	<u>B</u> .
17.	KENTUCKY	<u>B</u> .
18.	LOUISIANA	<u>B</u> .
19.	MAINE	<u>B</u> .
20.	MARYLAND	<u>D</u> .
21.	MASSACHUSETTS	<u>D</u> .
22.	MICHIGAN	<u>B</u> .
23.	MINNESOTA	<u>D</u> .
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26.	MONTANA	<u>B</u> .
27.	NEBRASKA	<u>B</u> .
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30.	NEW JERSEY	<u>B</u> .
31.	NEW MEXICO	<u>B</u> .
32.	NEW YORK	<u>D</u> .
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35.	OHIO	<u>B</u> .
36.	OKLAHOMA	<u>B</u> .
37.	OREGON	<u>D</u> .
38.	PENNSYLVANIA	<u>B</u> .
39.	RHODE ISLAND	<u>D</u> .
40.	SOUTH CAROLINA	<u>B</u> .
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42.	TENNESSE	<u>B</u> .
43.	TEXAS	<u>B</u> .
44.	UTAH	<u>B</u> .
45.	VERMONT	<u>D</u> .
46.	VIRGINIA	<u>B</u> .
47.	WASHINGTON	<u>D</u> .
48.	WEST VIRGINIA	<u>D</u> .
49.	WISCONSIN	<u>D</u> .
50.	WYOMING	<u>B</u> .

DISTRICT OF COLUMBIA D.

Sandra OL

THE 1988 PRESIDENTIAL ELECTION

1.	ALABAMA	B.	
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10.	GEORGIA	B.	
11.	HAWAII	D.	—
12.	IDAHO	B.	
13.	ILLINOIS	B.	
14.	INDIANA	B.	
15.	IOWA	D.	—
16.	KANSAS	B.	
17.	KENTUCKY	B.	
18.	LOUISIANA	B.	
19.	MAINE	B.	
20.	MARYLAND	B.	
21.	MASSACHUSETTS	D.	—
22.	MICHIGAN	B.	
23.	MINNESOTA	D.	—
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25.	MISSOURI	B.	
26.	MONTANA	B.	
27.	NEBRASKA	B.	
28.	NEVADA	B.	
29.	NEW HAMPSHIRE	B.	
30.	NEW JERSEY	B.	
31.	NEW MEXICO	B.	
32.	NEW YORK	D.	—
33.	NORTH CAROLINA	B.	
34.	NORTH DAKOTA	B.	
35.	OHIO	B.	
36.	OKLAHOMA	B.	
37.	OREGON	D.	—
38.	PENNSYLVANIA	B.	
39.	RHODE ISLAND	D.	—
40.	SOUTH CAROLINA	D.	
41.	SOUTH DAKOTA	B.	
42.	TENNESSE	B.	
43.	TEXAS	B.	
44.	UTAH	B.	
45.	VERMONT	B.	
46.	VIRGINIA	B.	
47.	WASHINGTON	B.	
48.	WEST VIRGINIA	D.	—
49.	WISCONSIN	B.	
50.	WYOMING	B.	
DISTRICT OF COLUMBIA		D.	—

B - Bush
D - Dukakis

Relingquist

2015
THE 1988 PRESIDENTIAL ELECTION

1. ALABAMA
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3. ARIZONA
4. ARKANSAS
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6. COLORADO
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8. DELAWARE
9. FLORIDA
10. GEORGIA
11. HAWAII
12. IDAHO
13. ILLINOIS
14. INDIANA
15. IOWA
16. KANSAS
17. KENTUCKY
18. LOUISIANA
19. MAINE
20. MARYLAND
21. MASSACHUSETTS
22. MICHIGAN
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26. MONTANA
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30. NEW JERSEY
31. NEW MEXICO
32. NEW YORK
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34. NORTH DAKOTA
35. OHIO
36. OKLAHOMA
37. OREGON
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39. RHODE ISLAND
40. SOUTH CAROLINA
41. SOUTH DAKOTA
42. TENNESSE
43. TEXAS
44. UTAH
45. VERMONT
46. VIRGINIA
47. WASHINGTON
48. WEST VIRGINIA
49. WISCONSIN
50. WYOMING

DISTRICT OF COLUMBIA

915

THE 1988 PRESIDENTIAL ELECTION

1.	ALABAMA	<u>R</u> .
2.	ALASKA	<u>R</u> .
3.	ARIZONA	<u>R</u> .
4.	ARKANSAS	<u>R</u> .
5.	CALIFORNIA	<u>R</u> .
6.	COLORADO	<u>R</u> .
7.	CONNECTICUT	<u>R</u> .
8.	DELAWARE	<u>R</u> .
9.	FLORIDA	<u>R</u> .
10.	GEORGIA	<u>R</u> .
11.	HAWAII	<u>D</u> .
12.	IDAHO	<u>R</u> .
13.	ILLINOIS	<u>R</u> .
14.	INDIANA	<u>R</u> .
15.	IOWA	<u>R</u> .
16.	KANSAS	<u>R</u> .
17.	KENTUCKY	<u>R</u> .
18.	LOUISIANA	<u>R</u> .
19.	MAINE	<u>R</u> .
20.	MARYLAND	<u>D</u> .
21.	MASSACHUSETTS	<u>D</u> .
22.	MICHIGAN	<u>R</u> .
23.	MINNESOTA	<u>D</u> .
24.	MISSISSIPPI	<u>R</u> .
25.	MISSOURI	<u>R</u> .
26.	MONTANA	<u>R</u> .
27.	NEBRASKA	<u>R</u> .
28.	NEVADA	<u>R</u> .
29.	NEW HAMPSHIRE	<u>R</u> .
30.	NEW JERSEY	<u>R</u> .
31.	NEW MEXICO	<u>R</u> .
32.	NEW YORK	<u>D</u> .
33.	NORTH CAROLINA	<u>R</u> .
34.	NORTH DAKOTA	<u>R</u> .
35.	OHIO	<u>R</u> .
36.	OKLAHOMA	<u>R</u> .
37.	OREGON	<u>R</u> .
38.	PENNSYLVANIA	<u>D</u> .
39.	RHODE ISLAND	<u>D</u> .
40.	SOUTH CAROLINA	<u>R</u> .
41.	SOUTH DAKOTA	<u>R</u> .
42.	TENNESSE	<u>R</u> .
43.	TEXAS	<u>R</u> .
44.	UTAH	<u>R</u> .
45.	VERMONT	<u>D</u> .
46.	VIRGINIA	<u>R</u> .
47.	WASHINGTON	<u>R</u> .
48.	WEST VIRGINIA	<u>D</u> .
49.	WISCONSIN	<u>R</u> .
50.	WYOMING	<u>R</u> .

DISTRICT OF COLUMBIA D.

AMK

NOV 14 1988

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

*Filed on
Correspondence
with Justice*

November 14, 1988

Dear John, Sandra, Tony and Lewis,

The results of the election votes is as follows: John owes the pool \$10.61, Tony owes \$0.22, Lewis owes \$9.77. Sandra won \$5.19 and I won \$15.19. Those that owe should send their money to me and I will in turn send it to the winners.

There is a \$0.22 difference between the amount owed and what was won. When there are three winners and two losers on an individual state bet, each winner receives \$.66, because the \$2.00 which was won cannot be divided by three evenly. Thus there is a two cent difference for each bet with this result ($3 \times .66 = 1.98$). Here, there were eleven such bets resulting in the \$0.22 difference.

Sincerely,

WM

*Presidential
to election*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.
RETIRED

Nov. 15, 1988

Dear Bryon,

Your tribute in the
1987 Yearbook of the
S. C. Historical Society
is one that I cherish.
I also agreed with your
view that substantial
experience at the bar
can be a "plus". You
also had it.

I add that your
friendship has meant a
great deal to me. I
also rank you as one
of the ablest lawyers
with whom I ever worked
with or fought with.

Lewis

November 15, 1988

Dear Sandra:

I enjoyed meeting with the delegation from Thailand. Mr. Van Wart was very helpful.

If I can pinch-hit for you again, I will be happy to do so.

L.F.P., Jr.

Justice O'Connor

November 23, 1988

Dear Sandra:

Your Washington and Lee speech, that I finally read, is superb. It has scholarly quality. Perhaps the W&L Law review already plans to publish it. If not, I would be happy to recommend that it does so.

You and I share identical views about federalism. I still consider Garcia to be one of the more serious mistakes the Court has made. I enjoyed your quote from Patrick Henry (p. 10). It is one I had not remembered. I have Elliot's Debates but do not expect to read them all.

I always will remember your courage in making the long trip to Lexington the day before your surgery.

With admiration.

As ever,

Justice O'Connor

lfp/ss

Mlle. Krissie Marie Kennedy
4 Rue de Babylone
75007 Paris

Dear Krissie,

Just your favorite bro checking in with my last letter before you head to California for Noel. It has been gorgeous all weekend-- about 65 and sunny.

I am writing this letter to procrastinate. I am at the office now, purportedly working on my law school applications which I swore to send out today. Guess what.

This morning I went to church; St. Vincent de Paul is our neighborhood parish. The people there seemed nice; although the priest gave a "C-" sermon: "What we have to do during this Christmas season is to figure out what Jesus Christ means to us." That was the edifying theme which he repeated ten times so everyone had a chance to ponder its rich message. I should not be too hard on the guy, I just miss Roide and Finsterbach's sermons. If you come back to Stanford for spring quarter, I will come down on Sunday to go to 4:30 church and take you out to dinner. That sounds like fun. It will be nice to get back on campus.

The sense of protectedness and community on the Stanford campus is quite opposite the vulnerability and coldness one feels in a city. You create little niches: your office, your friends' apartments, certain bars and restaurants; you can start to feel comfortable; yet, there is always that feeling when I walk or drive around alone that I am surrounded by people whom I do not know and, what's worse, with whom I have nothing in common. It is weird; I understand Gogol's "Overcoat" better now. But then again I should, we all came out from under it.

I think the French have organized things well especially in Paris. They have, through local cafes, tabacs, boulangeries and boucherie, formed in each of their neighborhoods a sense of community, which makes the huge city much less threatening and much more familiar. When you go to your same bread man or chicken lady everyday, they know you, and you know them and the other customers; it makes you feel good. It is a good system, but I guess we don't have enough time to shop like that.

I wanted to take up the fact that I said "if you come back" a couple paragraphs above. I guess I said it because I know you are having fun. I also said it because I wished that I had stayed in Oxford for the spring quarter of my junior year. Miller and I were both stricken with culture shock that spring quarter. We wished we were still in Oxford, reading English, lifting pints with our friends, rowing and playing rugby, and generally lollygagging our way through another quarter, like only an Englishman could. People always ask me, "How long were you in Oxford?"-- and I punch myself when I say "two quarters" instead of "for my junior year".

Your situation is different, I know. I could have completed my major at Oxford. Do you miss California? Me? Do you want to come back to see off Scott and all your other senior friends? I am sure these are all concerns of yours.

comes when one lives for the moment, joyous, celebrating the freedom of youth and the simplicity of life on one's own-- autonomous and unfettered by being what you think you should be, but ever so happy because you are just being you,-- STAY." Live it out; relish it Krissie. Cherish the people, all the diverse people, whom you meet and are so suprised that they are so different in background and nationality yet so wonderfully similiar in outlook and sensibility. Things are never like they are when you are an undergraduate.

With that fateful, Fitzgeraldian, comment I must sign off. I have just procrastinated my way close upon bedtime and I feel so good, as always, after writing. You'd think from reading that I feel I am a greying old man. Not so Krissie, but it is different now. It is an attitude: more regularity and responsibility, less spontonaeity and whimsy. Someday I'll have to write all these thoughts down, in Fiction, with characters who represent these feelings and live them out. I think I know how I might start, something like that:

Jimmy Carver wore a striped tie from Brooks Brothers to the Freshers' Party at St. John's. A fresher was a student in his first year at Oxford University; the party was put on in early October, the beginning of Michaelmas term, to welcome the first years to college. Jimmy stood apart from the fray of introductions and handshakes which engaged the others in the center of the room. He had his back to the wall, his pint to his lips. His pose was that of the casual observer. He was, after all, not a fresher, not a true St. John's student, and, as his casual slouch against the wall suggested, not at all British. James Henry Carver was, every inch, an American.

What do you think? Do you want to know what happens next? It is funny that I created this passage completely from my recollections of the freshers' party that I attended at Teddy Hall. Jimmy would be a lot like me, except at little more naive and not quite as good looking. Does this not sound remarkably like the opening passage of Henry James' The American? Remember, the unrefined protagonist is slouched on the divan at the Louvre. And I swear I did not notice it until the last line when I made up Jimmy's middle name. Stupendous! I have already figured out the next paragraph. Come home and help me write it! Now it is eleven o'clock and I must go. So much for my application essay tonight, this was more fun. I love you and will see you just two weeks and a day from today.

Je t'embrasse tres fort,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 9

Dear Lewis,

You have been so kind
to both John and to me.
Your help in supporting
John's acceptance into
the Alibi Club is some-
thing he deeply appreciates.
He will enjoy his
membership very much.
Your support was invaluable.
When John is happy,
so am I.

As always you
have given every
bit of assistance you
could to us.

With heartfelt thanks,

Sandra



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 9

Dear Lewis,

You have been so kind
to both John and to me.

Your help in supporting
John's acceptance into

KRISTENSEN, CUMMINGS, MURTHA & STEWART, P. C.

ATTORNEYS AT LAW

5 GROVE STREET

DEC 22 1988

P. O. BOX 677

BRATTLEBORO, VERMONT 05301-0677

JOHN G. KRISTENSEN
CHARLES R. CUMMINGS
J. GARVAN MURTHA
POTTER STEWART, JR.

TELEPHONE
(802) 254-8733
TELECOPIER
(802) 254-8860

THOMAS S. DURKIN
STEPHEN R. PHILLIPS

December 19, 1988

Honorable Lewis Powell, Retired
Associate Justice, U. S. Supreme Court
Washington, D.C. 20543

Re: Judicial Appointment

Dear Justice Powell:

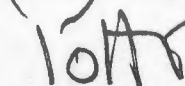
Mother told me of her conversation with you and your interest and encouragement in my seeking the upcoming federal trial court judgeship. We have only two active federal trial judges in Vermont and so vacancies do not come along often.

I am enclosing a copy of my resume. As you can see, I have taken the liberty of listing you as a reference. You do not know my legal skills, but you do know something of me and my character from early and ongoing discussions about the law and where and what type of practice to enter.

Obviously, any effort made by you on my behalf would be wonderful. The selection process is political. Nothing is certain, but without doubt your support would help.

Many, many thanks.

Sincerely,



Potter Stewart, Jr.

PSjr:pmh
Enclosure

File - Correspondence
with Justices

Note from W J B
after he returned
from hospital
in December 1988



Dear Jo and Lewis:

We cherish you among our dearest friends.
You have done so much for us. Thank you
again for that beautiful wine. We'll toast
you with it on Christmas night.

Love,

Bill

, December 28, 1988

PERSONAL

Dear Boyden:

It has just recently come to my attention that Potter Stewart, Jr. would be available for appointment to a federal District or Court of Appeals.

As we knew the Stewarts before I came to the Court, I have known Potter, Jr. for many years. After his graduation in law from the University of Virginia, he was undecided whether to go with one of the major law firms in Cincinnati or practice in a smaller community in Vermont where his married sister also lived. He discussed this with me.

In the event you may not have it, I enclose a copy of his resume which makes clear that he has become a prominent lawyer in Vermont. As the Stewarts were friends of the President-Elect, it is quite possible that he also knows Potter, Jr.

Quite apart from friendships that have lasted over the years, I am confident that Potter, Jr. would make a first rate judge.

As I am sure these are long days and nights for you, no acknowledgment of this personal letter is indicated.

Sincerely,

C. Boyden Gray, Esquire
2720 Dumbarton Street, N.W.
Washington, D. C. 20007

lfp/ss
Enc.

bc: Mrs. Potter Stewart