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The Third Annual William French Smith Memorial Lecture: A Conversation with Retired Justice Sandra Day O'Connor¹

Panelists: The Honorable Sandra Day O'Connor,^{*}
Dean Kenneth W. Starr,^{**} Professor Carol A. Chase,^{***}
Professor Colleen Graffy,^{****} Ms. Virginia Milstead.^{*****}

JUDGE WEBSTER: Thank you very much. It's a privilege to be back at Pepperdine, and this time as an honorary alumnus of your great university I've been given something important to do, and that's to introduce your guest of honor.

These events in honor of William French Smith are exceptional, and today three of us, Justice O'Connor, Dean Starr, and I are lucky protégées as you might say of his period as attorney general. Ken as a distinguished Solicitor General, and a former United States Court of Appeals Judge, and of course I need say nothing further about Justice O'Connor, but I will. Ken reminded me that you have programs in front of you that describe in great detail her very distinguished life and contributions to our country. So I thought that I would instead talk a little bit about things that are not exactly mentioned there. You know, people have stereotypes about those in other professions, particularly judges. The robe perhaps, the austere life, all of those things that make them draw assumptions. What I want to talk about briefly this morning is about a very human Justice, a very caring Justice, who served with enormous distinction for twenty-five years on the highest Court of our land.

1. This conversation took place in the Caruso Auditorium at the Pepperdine School of Law on March 27, 2009. A video of the conversation is available at <http://law.pepperdine.edu/news-events/featured-stories/2009/03/supreme-legacy.htm> (last accessed 14 Oct. 2009).

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I met Sandra O'Connor almost as long ago, or longer ago as a matter of fact in 1980; we were both members of the Anglo American Exchange, a lucky organization—a program designed to help the British and our own judiciary examine procedures and differences and to try to find out what each of us could do to perhaps add some improvement. We spent two weeks in England together, found time for a few games of tennis at the American Embassy, and a few other things of great fun and lasting memory. I shall always remember those days, and we brought them—them being their leading barristers and leading judges—to the United States, where we entertained them for two weeks, sitting—letting them sit—on our courts and participate. So that was a good beginning. And it was only about a year or so later that the good news came that she had been elevated and nominated to the Supreme Court of the United States. We have had nothing but pride for her since that time.

You've read of her accomplishments and, incidentally, that's a synopsis of pages and pages and pages of honors and contributions that she has found time in a very busy life to make for the betterment of our society. But the things that I want to mention are sometimes known to others and ought to be known to you. Her great love for the Court, which of course is shared with many other judges and Justices, but her passion for civility on the Court, a practice not always observed or observed as fully and completely as she has done in those twenty-five years of service. Well, you may say, we know she's a great judge, we know she's a civil person, and we know that she's had a lot going for her, but does she have a private life? The answer is: very much a private life, and one that she has lived with great vigor and amassed an enormous number of friends. Her fifty-two year marriage to John has been a model for all of us, and even in hard times, it has been a model for us, and we remember him today as well as honoring her.

The sports: she's a cracker-jack tennis player and I know because we've been playing on Thursday evenings in Washington for I don't know how many years when she's not off doing something good for the world. Golf, I don't enjoy with her, but I know that she is a very good golfer, and her passion for fishing, especially fly fishing—she always catches fish—she's been our guest in our country place in the Blue Ridge Mountains many times. She's hauled my wife Linda away to Alaska twice now; I was not invited. I haven't decided what that means, but I know that they both caught a lot of fish and had a wonderful time in the process.

I do want to mention without taking up the time of the conversationalists who are going to be asking questions and discussing this with Justice O'Connor, but I do want you to know that she has had for many years a passion for preserving, restoring and enhancing judicial independence in the United States, and she founded an institute headquartered at the Georgetown University Law Center designed to call attention to the needs of our courts and promoting fairness, impartiality, and especially the independence which

is vital to the quality of Justice that we have in this country. In fact, I think on May 22 or thereabouts there will be another important session on promoting justice and fairness through the independence of the courts, and I'm glad to see that many, many organizations have gotten behind Justice O'Connor's move in this direction, and I think it shows signs of serious constructive results.

We're going to have three people talk today, and they're been denominated in your program as "conversationalists." They're going to be speaking of someone who has also been denominated—in a way she may not agree with—but I think it's a tremendous compliment to her: in speaking to one of the judges who prided himself on a position far away from the center of the courts, and he needs no other designation, but he referred to Justice O'Connor as a "consequentialist." When I first heard it, I said, "How wonderful. . . ." And he said, "What's wonderful about that?" and I said, "How wonderful because we need Justices on our courts who are concerned about the consequences of the major decisions that they are called upon to make." What's the fallout here if we rule this way? What about this problem and that problem and so on. And as a result, she's made the advocates before the Court prepared, much better prepared, to deal with this issue of the consequences. And so I proudly call her the consequential Justice—she may deny it, and she may not approve of it, but I think it is one of the great tributes to the contributions she has made to this Court.

In 1903, Justice O'Connor published what I think is a wonderful book called—oh I'm sorry, did I say 1903? She will not let me get away with anything. In 2003—and it's called *The Majesty of the Law*.² It's a wonderful book. It ought to be required reading in every law school, and I commend it to you. But in closing my remarks, I'd like to quote from two paragraphs, that to me sums up the greatness of Justice O'Connor in her approach to what makes the judicial system work in our country and where its role is in preserving and defending democracy and its important components: liberty and justice. This is what she wrote:

A nation's success or failure in achieving democracy is judged in part by how well it responds to those at the bottom, and the margins, of the social order. Those of us in positions of influence and power can never be complacent and comfortable with the status quo. However sturdy our foundation, however strong our legal and

2. SANDRA DAY O'CONNOR, *THE MAJESTY OF THE LAW* (2d. ed. 2004).

political institutions, we must acknowledge that our societies are not perfect.

Freedom and equality are not achieved overnight. Democracy takes work and time and constant effort. Liberty requires us to place ourselves in another's shoes, to see things may not be as fair or as equitable as they appear from our own vantage points. Justice compels us to understand the rage, to feel the pain, to respond to the cries. Although it is easy to become impatient and disheartened by process failures and social discord, we must all take the long view of democratic change. The very problems that democratic change brings—social tension, heightened expectations, political unrest—are also strengths. Discord is a sign that progress is afoot; unease is an indication that a society has let go of what it knows and is working out something better and new.³

This is a remarkable statement by a remarkable woman, and I am pleased now to turn the program over to the conversationalists and to her. Thank you.

DEAN STARR: Thank you, Judge Webster. That was a wonderful introduction, and thank you for coming all the way from Washington D.C. I think we may need to disarm Judge Webster who has a live mike—and I would hate to hear a dissenting opinion from the bench. But I doubt that there will be dissents.

As Judge Webster has said, we gather in honor of the memory of Bill Smith. William French Smith, when he was nominated as the attorney general of the United States, *Newsweek* magazine described him as a “Boston Brahman”: even though he lived his professional life here in Los Angeles, the shoe did fit. On both sides of his family he was descended from seventeenth century Puritan stock. He could trace his ancestry from both families literally to those early ships that came and settled in Massachusetts Bay Colony. And yet, early on he followed the advice of Horace Greely from a century before: “Go west, young man.”

And so he obviously could have gone to the college where his ancestors had gone, the little college founded in 1636 on the banks of the River Charles, but he came west, and he came to Los Angeles. He was a new frontier kind of person, and he came to UCLA as an undergraduate, but then went back east to his ancestral institution, the Harvard Law School, and he amassed very high academic honors along the way. A first rate mind, a first rate student, and a patriot—volunteering to serve during during World War II. He was a Navy man, and Judge Webster is very proud, as you know, of

3. *Id.* at 276.

being a Navy man. And so he served his country in World War II, and then, as soon as he was discharged, as a Lieutenant Commander—he was very proud of that—he came back west and began the practice of law straightaway, in 1946, at the law firm where he was destined to spend his entire professional career, the great law firm of Gibson, Dunn, and Crutcher, an international global law firm based of course here in Los Angeles. One of his clients is here in the room, Herb Nootbar, age 100. Herb, would you stand and be recognized?

Herb had excellent judgment about his lawyers, and Gibson, Dunn and Crutcher was very proud that Herb and Herb's companies were client's of the firm. Bill practiced law very successfully—he rose to the top of the top. When he stepped down from the firm to become the Attorney General of the United States he was on the three person executive committee of the firm's management committee. You could not move any higher in the law firm than that, and it was because he was a real lawyer, he was a lawyer's lawyer, he handled real cases. When the news media would describe him as a Rodeo Drive lawyer, I would just scratch my head in a sense of wonderment because I had started to practice of law at Gibson, Dunn and Crutcher and I knew his law practice; it was vibrant and it was not Rodeo Drive. I don't think he ever went to Rodeo Drive. It was a long way—Justice O'Connor, as you know—from his beloved San Marino, where he had a tennis court. That's what he loved to do when he wasn't practicing law.

But he was also serving his community here, he was the head of the Los Angeles Chamber of Commerce, the California Chamber of Commerce, I could go on—you get the idea. He also became very close friends with Ronald Reagan, and was an original member of the Kitchen Cabinet. Herb, as you know, there are probably three thousand people who claim to have been original members of the Kitchen Cabinet—it must have been a very large kitchen. Well, there are a lot of people who were great friends of Ronald Reagan, who was one of the most affable human beings ever to walk the planet, and a very caring and accepting person, but Bill was present at the creation, as Dean Atchison would say. And so it was that Bill became a political ally: he served Governor Regan. He never wanted a full time state position, and he never was seeking office. He loved his base at the law firm and then going to head the World Affairs Council of Los Angeles, doing myriad things. But he did agree to become the Head of the Board of Regents of the University of California system, which was virtually a full time job—you get the idea.

So it wasn't a surprise that the President of the United States would look to his longtime friend and this icon in the California legal establishment, with a nationwide reputation as one of the great lawyers in the country, to

become the nation's seventy-fourth Attorney General. And so, Bill responded and returned to the East. Washington was never his cup of tea. He just didn't like it. I said, "Well, you want to find real estate, Alice can put you in touch with a real estate agent . . ." but I got the idea that he was not going to succumb to Potomac fever when he and Jean Smith took rooms at the Jefferson Hotel in Washington D.C. He made a real statement by having just this little kind of apartment in Washington. He was not going to succumb to the siren song of Washington.

I so wish Jean could be with us. Jean Webb Smith, a brilliant and beautiful woman, Phi Beta Kappa at Stanford, and very proud of her archery prowess, a great, great, great human being who was an inspiration to all of us who were privileged to be in the shadow and in the wake of Bill Smith. I hope that you will join me—we want to send Jean a note, as she can't be here—that the audience responded with thunderous applause to honor Jean French Webb Smith.

And so, now the circle is complete, because very early on in his service as Attorney General, Bill learned—and it was shortly before the assassination attempt on President Reagan—about a Court of Appeals Judge in Arizona. A number of people in Washington D.C. were talking about this judge. Bill Webster—Judge Webster—was one of the people who made her a little bit of the—she'll get mad at me: please don't give me that look!—the talk of the town. So while Newsweek and Time Magazine and U.S. News may not have—"Who is Judge O'Connor?"—Arizonans knew full well. They had tried to get her to run for governor against Bruce Babbitt. Sandra O'Connor was elected to the State Senate and almost instantly became Senate Majority Leader. Cream rises to the top, at least in Phoenix, Arizona. Early on, Bill Smith found out about Sandra Day O'Connor, and the rest is history. Please join me in welcoming the 2009 William French Smith Memorial Lecturer, Sandra Day O'Connor.

JUSTICE O'CONNOR: I have to tell one little story though about William French Smith and Sandra Day O'Connor. May I?

DEAN STARR: This is your conversation.

JUSTICE O'CONNOR: But you weren't quite finished.

DEAN STARR: Please.

JUSTICE O'CONNOR: When I got out of Stanford Law School, it was back in the middle of the last century, long before any of your students had been born. I got out of law school in 1952, and there were always notices on the placement bulletin board at the law school: "Stanford Law graduates: call our law firm. We want to talk to you." Well I called every single one

on the bulletin board, and not one of them would give me an interview, not one. Well, I knew a young woman at Stanford as an undergrad, whose father was at Gibson, Dunn & Crutcher—he was one of the lawyers—and I said, “Talk to your dad—see if he’ll get me an interview at Gibson Dunn.”

And she did, and he did, and I made the trip down to Gibson, Dunn & Crutcher in Los Angeles, and met with this distinguished looking lawyer, and we talked and—“Oh Miss Day, you have a fine resume, but Miss Day, this firm has never hired a woman lawyer, and I do not see the time when we will. Our clients would not stand for it.” Well, I looked sort of stricken, I’m sure, so he said, “Well, Miss Day, how well do you type?” And I said, “Well, so-so,” and he said, “If you can type well enough, we might be able to get you on here as a legal secretary.” But I declined that opportunity.

I must say that I was home in Arizona and got a telephone call from a William French Smith in Washington D.C., and I had not yet met him—distinguished lawyer from Gibson, Dunn and Crutcher, formerly, and he wanted to know if I would come back to Washington and talk to them about a vacancy position. And so, I couldn’t resist: “You mean a secretarial position, right?” Anyway, I did, and so it all worked out. But it wasn’t through Gibson Dunn!

DEAN STARR: Well as you can see, the conversation has begun. I want you to also welcome our conversationalists: three wonderful colleagues from Pepperdine: Colleen Graffy, Carol Chase, and Virginia Milstead. You have their names in the program. So join me in welcoming the conversationalists.

You [the audience] are going to be welcome to join the conversation as well—you will have National Press Club style—some of you have done this before, so you know the drill, you don’t need extensive briefing. Write, or print—if you don’t know cursive—your question, and they will be gathered. There will be individuals coming up and down the aisles in a few minutes. We’re going to get the conversation going. This also goes for our—what shall I say?—the additional room. I don’t want to call it the “spillover room,” but for those of you who are also watching on our closed circuit television, you’re welcome to join the conversation, and you’re going to have blue cards so I will know that those cards or questions are coming from that spillover room. So please—you’re all welcome—we will get to as many as we possibly can in the course of the conversation, so you’re welcome to join.

So, Justice O’Connor: Bill Smith—we gather in his honor. He made a little bit of a difference in your life.

JUSTICE O'CONNOR: I'd say so. About as big a difference as one could make, and he told me, that President Reagan had said during the course of his campaign, of 1980, that if he had a chance to appoint a qualified woman to the Supreme Court, he'd like to do that. And at that time, Bill Smith said, he started to make an occasional note of a name or two of people that might conceivably be considered if there were such a vacancy. And when he wrote that name down, then he would put it on a little slip of paper under his telephone at the Department of Justice. And I guess that's where that little note was, and somehow my name got on there, and I'm not quite sure how. But it did.

DEAN STARR: Tell us about meeting Bill and the dinner that you had at the Jefferson Hotel.

JUSTICE O'CONNOR: He asked me to come back and to talk to him and then to some of the President's Cabinet the following morning, and they had rented a suite at the L'Enfant Plaza Hotel. So he wanted me to come have dinner with him and with his wife Jean the night before at the Jefferson, where they were staying. So I did, and it was really delightful because they were so wonderful, and we really had a good time, and I was delighted that Jean Smith had gone to Stanford, as I did, so we had some Stanford conversation and all kinds of other things, and it was a most delightful occasion—it really was.

DEAN STARR: Judge Webster referred to—this is the paperback version—*The Majesty of the Law*, and by the way, when you go on eBay or Amazon.com or whatever, and get *The Majesty of the Law*, if you don't have it already, you will note the proceeds go to the Arizona Community Foundation—just another sign of the kind of person that Justice O'Connor is.⁴

But in *The Majesty of the Law*, you talk about your own confirmation process. Do you want to reflect on that, especially because now we have a new President, there's a lot of talk that we may have a vacancy. Justice Ginsburg said we may have one soon, although she seems to be doing better and we are thankful about that. Could you reflect on your own process—the confirmation process?

JUSTICE O'CONNOR: The process apparently typically starts by having someone assigned by the executive branch and typically someone out of the Department of Justice, such as you were, at that time, Dean Starr, and having that person take the nominee around to meet the key people in both

4. O'CONNOR, *supra* note 2.

houses, the leaders in both houses of the Congress, and then in particular, to visit with each member of the Judiciary Committee. And the chairman of the Judiciary Committee when I was nominated was Strom Thurman.

Now you haven't lived if you didn't meet Strom Thurman—he was amazing. He had been active and a leader in every political party this country had, and some we don't now have! He'd been a Democrat, and a Dixiecrat, and a Republican, and I don't know what all. But anyway, he was a real character, and he was elderly at that time, but he was chairman of the Judiciary Committee, and I sat in his office, when I went in to meet him for the first time. “Well, now, Miss O'Connor—let me just get the President on the phone and see if he really wants me to do this for him,” and he called him on the phone, while I was right there in the office. “Mr. President, now I have this Miss. O'Connor here in my office, and apparently she's nominated for the Supreme Court; now, do you really want me to help get her confirmed? Yes, Mr. President . . . Yes, Mr. President . . . Well, I'll do my best.” And you know, he did, and did he ever know how to handle things. Now I mean, you can laugh all you like, but he knew politics, and he was amazing, and he had some people on his committee who were not going to be terribly enthused about my nomination—he knew that—and he did all kinds of things to work it out. In the first place, he had Senator DeConcini's wife, Suzy, have a luncheon or a tea for me, I can't remember which it was—

DEAN STARR: It was a tea, according to *The Majesty of the Law*⁵

JUSTICE O'CONNOR: All right, a tea, and she had the wives of all the members of the male members of the judiciary committee. So I got to meet them and they got to inspect me and decide whether they'd give a good report to their husbands or not, so that was I think helpful, and then Strom Thurman—Senator Thurman—had a very attractive wife. She had been Miss South Carolina, she was very attractive indeed, and she decided to have a tea for me on the third day of the Senate Hearing of the Judiciary Committee.

Well, that was a brilliant stroke. If she hadn't had that tea, we'd still be in that committee room today. I mean, it was going on forever. But everybody had to finish up so they could go to Mrs. Thurman's tea on the third day. But in the interim, it was an astonishing procedure, and now most of you have seen these things on television, because starting then, the

5. O'CONNOR, *supra* note 2, at xii.

television stations started giving it gavel to gavel coverage, a Judiciary Committee hearing for a Supreme Court nominee. And the Senators love that. It's free for them, and they're there all day every day, looking erudite and asking all these tough questions—I mean, it's perfect for them. So there's no way that's going to diminish in time. I mean, the Constitution is very brief as it is on most things: the President shall appoint, with the advice and consent of the Senate, the federal judges.⁶ So that's all it says, and it really is up to the Senate what it wants to make of it.

The other thing that Strom Thurman did was to have a luncheon himself for all the Judiciary Committee members, and he had John and me there, and he had all these wonderful products from South Carolina at the luncheon, and he seated me at a table with every member of the committee who was having second thoughts about having a woman, and particularly me, on the Supreme Court. So we had a nice luncheon together. He was an old fox when it came to getting things done.

DEAN STARR: A final question from yours truly about your time on the Court: I have been trained not to use the term—uh-oh, I'm getting the look—

JUSTICE O'CONNOR: No, no, I'm listening—

DEAN STARR: "Swing Justice."

JUSTICE O'CONNOR: Oh, right.

DEAN STARR: "Swing Justice." I'm not to use that term.

JUSTICE O'CONNOR: No. That's true.

DEAN STARR: And therefore, let me quote from the name of a recent book about you: *Queen's Court: Judicial Power and the Rehnquist Era*.⁷ There are those—oh, she's tapping her thumb—that is not good. Reflect on your time on the Court and your role on the Court which was obviously a consequential role.

JUSTICE O'CONNOR: Well, I think the role of every Justice, every member of that Court is a consequential role—there are only nine—and so, everybody has an important role, and many of the cases are pretty tough to decide—many of them are cases that will not be unanimous. And that's all

6. U.S. CONST. art. II, § 2.

7. NANCY MAVEETY, *QUEEN'S COURT: JUDICIAL POWER IN THE REHNQUIST ERA* (University Press of Kansas 2008).

right—I mean, these are tough issues. If they weren't, the Court wouldn't have to take them. The issues the Court takes are the issues on which the lower federal courts and the state courts have reached conflicting holdings on the proper answer. If there weren't a conflict, the Supreme Court wouldn't have to take the case. So what the Supreme Court hears are cases where you can typically make a very good argument on either side, and that means that the process of hearing and deciding the cases is fascinating, and it often results in disagreements among the Justices themselves about the proper answer. And that's fine, I mean, that is the system.

Now, a good many courts around the world that sit as collegial bodies, like we do, disagree as often as the Supreme Court of the United States, but they publish only one opinion for the Court, and those disagreements remain silent when it comes to public knowledge. But I think it's a remarkable and healthy thing in our country that we're willing to publish the separate writings of the members of the Court, and if there's a dissent, fine, let's hear it, and let's see what the arguments are on the other side, and let's understand it. And if it's on a statutory issue, the dissenting opinion can often point an avenue for the Congress to take another look, and make changes if Congress wants to make changes. So, I think the system works, but it is not one where you necessarily are unanimous in that many cases. I think the Court is unanimous, at least in the years when I was there, maybe twenty-five to thirty percent of the time, and in the others you're going to have some divisions of opinion. And that's okay.

DEAN STARR: The conversation is going to be very lively, I assure you. We're about to have Professor Chase join in, but I want to give you a flavor of the questions that are already coming in. We have quotes from King George, Barney Frank, and then this is one of my favorites: "I'm as giddy as a schoolgirl because I'm positively honored to be in your presence. You're truly an inspiration for women everywhere."

JUSTICE O'CONNOR: That's nice.

DEAN STARR: This is going to be fun. Professor Chase?

PROFESSOR CHASE: Thank you, Dean Starr. Justice O'Connor, I would like to personally welcome you back to the Law School. In the mid-1980's I had the privilege of hearing you speak at the Pepperdine University Law School dinner, and you spoke on "A Day in the Life of a Supreme Court Justice," which was fascinating. I've wondered since your retirement, is there anything in particular about sitting on the Court that you miss or,

maybe more interestingly, is there any particular aspect of being an Associate Justice that you are happy to have behind you?

JUSTICE O'CONNOR: I have been busier since I retired than I was on the Court, to tell you the truth, and so I haven't had a lot of time to sit around and think about whether I miss it or not. I really haven't had time. But, I do, of course, miss it. It's such a privilege to get to address the significant legal issues in the country. I mean, how could you not miss the opportunity to participate in deciding some of those things? I try not, however, to watch them too closely and to say, "Oh, well, I wouldn't have decided it that way," or something like that. I keep that to myself. But I do miss the contacts, on a routine basis, with my former colleagues—it's fun to do that.

I still—when I'm in Washington D.C., and I still have an office at the Court, and I'll tell you why in a minute—I still go to lunch, on days that the Justices are meeting in the dining room for lunch, so that we can have a conversation. I did that this Wednesday, and we all had lunch together, and that was fun; I like that.

And I miss my law clerks! I mean, we hire these gifted, wonderful people, and of course, each Justice has many applications in front of them, and you get to pick four, if you're a sitting Justice, and I tried to pick people that I knew I was going to like the rest of my life, and I do! And so, I miss them. I have one now, and the reason I still have an office and one clerk is something you may not know, and that is that Congress, in its wisdom, has required that retired Justices sit on the lower federal courts. Did you know that? It says "shall," not "may," and not only that, it requires me, the retired Justice, to certify that I've done "enough" for the year, and it requires our Chief Justice to do that. Now come on! And neither he nor I know what's "enough." I mean, this is ridiculous! Anyway, I'm still deciding some cases and some legal issues, but they aren't the type that is cannon fodder at the Supreme Court.

PROFESSOR CHASE: And is there anything you're glad to be away from on the Court?

JUSTICE O'CONNOR: No, not really. I mean, you know, I really had a wonderful experience there. It's hard but stimulating, and no, no, I don't. I just have gone on, and I'm doing a million other things, so I don't think about it too much.

PROFESSOR CHASE: Thank you. Justice O'Connor, in *The Majesty of the Law*, you note that approximately one-sixth of the Court's docket is typically comprised of criminal procedure cases, and in writing about why that is so, you stated that you supposed that it may be that the law of

criminal procedure is just not perfectible.⁸ Could you elaborate what you meant by that, and why that is the case?

JUSTICE O'CONNOR: Well I decided that because we have so many cases constantly on the docket trying to ask us to fine tune some principle or other. The Court I think this term is back into the confrontation clause issue, and that certainly comes up frequently in criminal cases. Once in awhile, the Supreme Court makes a big shift in doctrine, and that causes years of additional litigation to straighten it out, and that's one of those issues. The Court a few years back changed the confrontation clause meaning, and gave it new life in areas where I had thought it was settled that you wouldn't have a confrontation clause issue. And the Court made a major change and that immediately brought a flood of new cases in. And that's what happens. So I guess it isn't perfectible.

PROFESSOR CHASE: Reflecting on the confrontation clause cases, you wrote at least two very significant majority opinions during your tenure on the Court in which you carefully balanced the right of the defendant to confront witnesses against him along with the need for prosecution to, on occasion, have to offer reliable out-of-court hearsay statements and in addition, on even more rare occasion, the need to protect a particularly vulnerable witness: I'm thinking of *Maryland versus Craig*.⁹

JUSTICE O'CONNOR: Yeah, I had a case involving a little child who was the subject of an alleged criminal assault, and she was terrified to testify in the presence of the person accused.¹⁰

PROFESSOR CHASE: The change that you referred to that occurred with the *Crawford* case seems to have now resulted in law where the defendant's right of confrontation trumps everything else.¹¹

JUSTICE O'CONNOR: Apparently so. I joined Bill Rehnquist's dissent in a subsequent . . . yeah, that was not a change with which I agreed, and even on reflection I probably still don't, but that's not for me to say . . . so you didn't hear that.

8. O'CONNOR, *supra* note 2, at 11.

9. *Maryland v. Craig*, 497 U.S. 836 (1990).

10. *See id.*

11. *See Crawford v. Washington*, 541 U.S. 36 (2004).

But now this term the Court again has a case and it involves evidence in criminal cases that, for instance, is the result of testing a DNA sample or a blood sample in the crime lab of the jurisdiction that's trying the defendant and typically, across the country, they don't call the crime lab people in to physically testify, they try to get them in as public records.¹² And you don't cross examine the person unless there's some issue that tells you you're going to have to do that. And now the case before the Court this term says, "Oh yes, in every instance, that's a confrontation clause problem." And so, it's the kind of issue that's going to keep cropping up, I guess.

PROFESSOR CHASE: It sounds that way. Thank you very much, Justice O'Connor.

DEAN STARR: Colleen?

PROFESSOR GRAFFY: Justice O'Connor, I had the privilege of meeting you in my deputy assistant secretary capacity in Prague at the U.S. Ambassador's Residence. You were committing your time to judicial reforms overseas, and I understand from my former colleagues at the State Department that you leave tomorrow for Lubliano, Slovenia, and then on to Zabreg, Croatia. We have a lot of students that are interested in our global programs, and good governance, and rule of law, and I think they'd be fascinated to hear about why you're spending so much of your time on judicial reforms overseas.

JUSTICE O'CONNOR: We had an historical happening during my lifetime—maybe not in all of yours—but we had this huge chunk of the Soviet Union break off from the Soviet Union—the former Soviet Union. And it was such a big chunk that twenty-six separate nation states emerged from that chunk of property that broke off from the former Soviet Union. And when that happened, it was very sudden, and here were these different groups of people trying to form governments. It will never happen again in your lifetime or anybody else's lifetime; this was just truly unique.

The American Bar Association president, at the time, talked to Homer Moyer, who was also active in the American Bar, and they had business overseas, some, and they both made a trip over there to talk to leaders in what became Hungary, in what became Czechoslovakia (that later split), in what became Poland, and other areas. And they said, "Do you people need some help, from American lawyers and judges? Do you want some help, as you set up your new forms of government?" And they did. They said "Yes, come help us."

12. *Melendez-Diaz v. Massachusetts*, 557 U.S. ___, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009) (decided June 25, 2009).

So the American Bar started something called the Central and Eastern European Law Initiative. Now, every entity in Washington D.C. has an acronym—if you don't have an acronym, you're nothing. The Supreme Court of the United States is the SCOTUS. The President of the United States is the POTUS. Well, the Central and Eastern European Law Initiative is the CEELI, and so CEELI got volunteers: judges, Justices, lawyers, and people from around this country were willing to go over and be volunteers in all these regions and help them form systems of government. And that was an incredible opportunity. It was irresistible. I definitely wanted to be part of that, because, it's in our interest in world peace to have nations form with a sensible system of government, and help them do it. And the kind of help that lawyers and judges could give focused more on the judicial branch than anything else, but they did a lot of things—helped them write bankruptcy laws, and, you know, and criminal laws in general, and things like that.

The judicial changes were massive that they needed, because they'd been under the Soviet system, and their system of justice was telephone justice. If there were a case and the Communist government had an interest in the outcome, you'd get a phone call as the judge, and you'd be told what to do. If you didn't do it, you lost your apartment, or your car, or your life. It was that simple—you did what you were told. And to convert systems that had operated that way into something that we thought would meet our concept of the rule of law, which was our great gift.

Now let me get diverted for a minute. The first permanent English settlement, in the New World, was Jamestown. Not Plymouth, it was Jamestown. That was the first permanent English settlement. And two shiploads came in with people from England, and they brought with them a charter, signed by the King of England. And the King commanded them that in making the settlement they would apply the English common law. Now, we got from that the English language, and we got the British notion of the common law. And they'd already had the Magna Carta signed by King John where even the King is subject to the rule of law. And this was a great gift to the world. And it was certainly something that mattered to us, with the founding of Jamestown.

So, you know, it's in that spirit that we wanted to help these countries to form something that would comply with our notions of the rule of law. Now, every one of the twenty-six countries formed a civil law system, not a common law system. None of them adopted the British common law tradition of following precedents; they follow statutory law and don't worry so much about precedent. But that's what we got, and I got deeply involved in it, and still am, because we've never finished the job. But the vast majority of those twenty-six nation states are now members of the European

Union—that’s how well they’ve succeeded. And I’m proud of that, I really am. It was a good thing.

PROFESSOR GRAFFY: Thank you. I was working on America’s Public Diplomacy, and as I traveled I would constantly hear criticisms of the United States: we haven’t signed the International Criminal Court, the Senate hasn’t ratified the Law of the Sea Convention, then the detainee issues, from habeas to Geneva Conventions to of course torture claims. Has the US lost its place as global leader in the rule of law?

JUSTICE O’CONNOR: Well, it hasn’t, but we’ve certainly had a lot of criticism, and some of it probably justified. But people got used to looking at us for certain things and got a little disappointed on some of these treaty issues—the Law of the Sea and the Kyoto Protocol we didn’t sign. But it seems to me that we have to take a longer view of this, and there were some legitimate concerns about the International Criminal Tribunal. Our nation has not signed on to that, but I just served on a commission that took a look at it, and took a look at the current situation, and makes various recommendations for the country. I think over time we’re going to see a lot of interchange, and probably some of these treaties are going to get signed at the end of the day—not necessarily that one in its present form—but the Law of the Sea, and probably the one on children and youth—we didn’t sign that because of the Senator from South Carolina who objected because it said you couldn’t sentence someone who committed a murder under eighteen to a death sentence—and we had some states, including his, that permitted that. And so, we never signed that.

But now, I think the Court ruled in a case that we can’t execute people who were eighteen or younger when the crime was committed. So there probably is no obstacle to that. But I suspect we’ll see, over time, some greater involvement by our country, and maybe a little education of other countries along the way, about the reasons for our hesitations and concerns. I saw, last night, a man who is the presiding judge in the international court that sits in the Hague—not the criminal court—and he and I talked about this very problem on the criminal court, and he agrees that there are problems and issues that maybe need to be addressed. And there’s going to be another round of a conference on that very thing. And I suspect our country may well participate in that, and we’ll see what happens.

PROFESSOR GRAFFY: Somewhat related to that is that there’s been a lot of discussion about the Court’s citation of international opinion to support decisions interpreting the Constitution. Now, you’ve been quoted as saying that’s much ado about nothing—

JUSTICE O’CONNOR: Yes?

PROFESSOR GRAFFY: —is it still?—

JUSTICE O'CONNOR: Yes!

PROFESSOR GRAFFY: —and what is the relationship between international law and U.S. Constitutional norms?

JUSTICE O'CONNOR: It is still! I'm not aware of a single instance in which any member of our Court has relied on the interpretation of our Constitution given by some other court, not in our country, as any kind of binding authority on how we interpret our own. That doesn't happen! So, you know, stop complaining about it! And to complain about reading what some court in another country has to say about an issue . . . I mean, we read law review articles from schools like Pepperdine, for Heaven's sake, and see what they have to say—is that ok? I think it probably is. And it's probably ok if we read what some court in Great Britain or elsewhere has to say about some of these common problems too. But nobody's citing it as authority. So I think that's much ado about nothing.

DEAN STARR: We do, by the way, have several questions that go to this, so thank you for those questions about it, and one is very specific, saying, "Conservatives criticize this use of extra- or transnational materials. . . ." Virginia?

MS. MILSTEAD: Early on in your career, did you have any mentors, and if you did, what advice did they give you, and how did they influence you?

JUSTICE O'CONNOR: Well, my mentors were my parents, and I grew up on a remote ranch in Arizona and New Mexico, and my companions were my two parents and the cowboys. We got along great—they were good mentors, I'd say. But I didn't know any women who'd accomplished anything in the nature of work out of the home, because my mother just helped out like we all did, with whatever needed doing at the ranch, so I don't know. When I came back with my husband—he'd been serving in the military service, in the Judge Advocate Generals—and we came back in 1957, we went to Phoenix, Arizona, where my husband joined a law firm. There was a woman judge on the trial court in Phoenix at that time named Lorna Lockwood. She had risen higher than any other woman in the legal

profession in our state and she later—we elected the judges at that time—she was elected to the Arizona Supreme Court.

And the women lawyers in those days, in Arizona, would get together once every month or two for lunch at the Arizona club. And we could sit around one table—it was a little bigger than this one, but not much—and she would come, and we would talk about things, and there was a woman lawyer who practiced in a law firm there because her brother was in the firm, and so he let her. Lorna Lockwood got where she was because her father was a lawyer, and she'd practiced in the firm with him. And there was another woman whose husband was a lawyer, and the two of them practiced. So, that was all we had, really. I was kind of an outsider in that regard, I have to say. So it took a long time before people decided maybe it was okay for women to be lawyers and judges.

DEAN STARR: You mentioned the Lazy B—we'll come right back to that, Virginia. I just love the way you began this book which, again, is available! There's something you quoted—Wallace Stagner—at the very beginning, in the preface: "There's something about living in big empty space, where people are few and distant, under a great sky that is alternately serene and furious, exposed to sun from four in the morning to nine at night."¹³ One of the things that's been said about Justice O'Connor is that she's as comfortable with cowboys as she is with ambassadors and heads of state.

JUSTICE O'CONNOR: Or maybe more so.

MS. MILSTEAD: One of the observations that's been made by Dean Starr is your move from the State Senate to the Arizona Court of Appeal to the Supreme Court—there was such a momentum to your career. What advice would you give to young lawyers who are looking to progress in their own careers? What attitudes should they bring to their work, their colleagues, the mistakes they'll inevitably make?

JUSTICE O'CONNOR: Well, I don't know. I had a very hard time getting jobs as I went along, and very often I had to take a job that really didn't look too promising, to tell you the truth, when I started it. But I would try to make something of it. Let me give you one small example.

When we got back to Phoenix, I did want to work, and I had to start my own little law firm, which I did with a man I met when we were studying for the bar. We did fine, but it ended up that we had three children, and my babysitter moved to California. Now this was not good. Definitely not

13. O'CONNOR, *supra* note 2, at i.

good. And I had to stop my practice and my work for close to five years, till we got organized with those children. And I wanted to go back to work and there weren't many opportunities.

I finally got the newly elected Attorney General in Arizona to take me on as a Deputy, but they didn't have any other women in the office, and they didn't know where to put me, and they sent me out to the Arizona State Hospital for the Mentally Ill. They didn't have me committed, they just sent me out there to do legal work! And I had an office, and I didn't know what I was supposed to do, so I'll tell you what I did. I had to try to make something out of it. So I got all the doctors together, and I said, "Ok, what are the legal issues that you people are facing, and what do we need that maybe we can get changed that would help?"

Well, their big issue at the time is something that we still wrestle with: people with schizophrenia, for instance, could be put on certain prescription drugs and if they took them properly, it would keep them calm and they wouldn't run around stabbing people or doing some evil thing, but under Arizona law, you couldn't release these people, even though they were on medication, because you had to find that they were no longer mentally ill. Well they were still mentally ill, but they had to be on the medication. So we got the law changed for them, and that was helpful. You could put people on medication and get them out of the state hospital. And that was probably a good thing.

I met all the nurses and we found some things that they needed, and I met with the hospital board, and there were a lot of things they needed, and so we got all this stuff done, but the biggest need was the patients, because they were locked up and they were losing their houses and their children and their marriages and their everything: they needed lawyers. They needed legal help. So we set up a legal aid clinic. Well, it was so successful that the attorney general said, "Hmm, maybe we could use her downtown." So, I was transferred back into the mainstream and did work for the governor and the legislature and everybody else, and that was good, because that was how I learned all about Arizona state government. The Treasurer and the Auditor in Arizona would not pay a single bill unless I had okayed it. Anyway, we got along fine.

DEAN STARR: There are a number of questions about work-life balance, your progression, the kinds—

JUSTICE O'CONNOR: Oh no, let me go back to one thing, though—

DEAN STARR: Please.

JUSTICE O'CONNOR: —the point of the question. You may have to take a job, especially in today's climate, that isn't your first choice. But the point I wanted to make is, if you are smart, maybe you can make something out of it that's a lot better. That's what I'm telling you. You have to do something to make it better.

DEAN STARR: If I could intercede, because there are so many questions that dovetail with Virginia's very thoughtful question, and they kind of boil down to the experience of being, after this interesting career in Arizona, the first woman on the Supreme Court; there are just so many questions about that that I want to make sure this gets asked. And one of the very intriguing questions is: were the other Justices welcoming, and what were the dynamics of this change for the Court?

JUSTICE O'CONNOR: They were. They were. When I joined the Court, the Court was, with eight members, divided four to four on a lot of cases. They really were. It was a pretty hard nosed split there. And they needed a ninth member, the Court, just to get work done. Because if you divide four to four, the case is decided by an equally divided vote, and you haven't decided anything. You have to have five people to have a binding holding for the Court, so everyone welcomed me, and they all said, "Oh, let me know how I can help you."

But I will tell you, they are all so busy that they don't really have time to help. I mean, they're willing, but it just wasn't there. And the one who did the most for me was Lewis Powell. A Southern gentleman if ever there was one, he was fabulous. And, I'll tell you what he did for me, because, not a single person in my chambers had ever worked at the U.S. Supreme Court; we didn't have a clue how the paper went, or what we had to do in the chambers, and people are too busy to hold your hand and get you through that. And the clerks and I each took two chambers to research and see how they handled their work, and then we pooled our knowledge and we figured out how our chambers should at least start working. And Lewis Powell let me hire his second secretary—an active Justice has two secretaries—and he said it was like cutting off his right arm, but he let me do it. I can't tell you how wonderful that was, because she knew how the chambers worked. And boy, the minute that happened, we survived. So that was a godsend. Whew!

DEAN STARR: And one other interjection: another question going to your background in Arizona. In politics, and—I'm trying to now synthesize—"Did your activity in politics affect the way you approached the cases, viewed the cases that came before you as a judge, but especially as a Justice?" And then, this kind of add-on: "In light of the fact that the Court is

now full of appellate judges, do you think that that kind of homogeneity of background of experience is a good or a bad thing?"

JUSTICE O'CONNOR: Ok, I like both those questions, so let's talk about them a little bit. My experience having come through—in part of my life—the political process, I thought was great. I valued that. I don't know how it helped me on the Court but it certainly reinforced for me the difference in the three branches of government. And judges do not have the role of a legislator. As a legislator, you can pick the problem you want to work on, and say "Gee, I think we ought to tinker with the mental commitment laws," and then you can pull people together, and develop something, and introduce it and try to get it passed. As a judge, you take what comes. People file lawsuits, and they come along and you can't tinker with those lawsuits and make something else out of them, you deal with that, as a lawyer and a judge. And so, I thought that was good background.

Now, if you look at the history of the Court—what have we had now, a hundred and ten Justices in the Court's history—and most of them never served previously as a judge at all, on any court. Of course, that's in part because of the Court's earlier years, when of course they weren't—you were plucking them from all over. Today, for the first time, all nine Justices were former judges on the federal court of appeals, circuit court—do I think that's good? No! I do not. The Court has benefited through the years by having people with somewhat different experiences; you don't want nine clones up there, I don't think! I mean, they hear all kinds of issues, and I think it's better if you have some diversity of background and experience.

DEAN STARR: We'll come back to Virginia. I have a number of questions that go to . . . so let me just pose them to you now: Would you like to comment on whether *Roe versus Wade* should be overruled?¹⁴

JUSTICE O'CONNOR: I don't want to comment on it; do you want me to comment on it?!

DEAN STARR: Would you like to comment on your current views of *Miranda*—you're getting the idea that there are a number of questions that go to specific cases.¹⁵ Is there any specific case that you'd like to talk about?

14. *Roe v. Wade*, 410 U.S. 113 (1973).

15. *Miranda v. Arizona*, 384 U.S. 436 (1966).

JUSTICE O’CONNOR: No! I’m not on the Court anymore!

DEAN STARR: As I said, we’ll now return to—

JUSTICE O’CONNOR: I’m not there! For me to sit here, in a public setting, where people are going to read about it in the newspaper, and say, such and such should be overruled, or something—I mean, that’s nonsense. I’m not there anymore. That’s up to the current Court.

DEAN STARR: I think, asked and answered.

MS. MILSTEAD: You mentioned a few minutes ago that you missed your law clerks; how would you describe your relationship with your clerks and what role did they play in assisting you in your work?

JUSTICE O’CONNOR: Oh, they do so much. In the first place, I put all my clerks in the so-called “Cert Memo Pool.” That means, a pool of law clerks that, in rotation, are assigned to do research and writing a memo on every petition for certiorari that’s filed with the Court. And those pooled memos then are shared with all the Justices. And under our system at the Court, the Court’s agenda is set by the Justices because they have to review every petition that’s filed. And the Court gets close to ten thousand a year now. That’s a lot of petitions. And you have to go over all those. You read the petition and response, if there is one, and then any Justice can say, this is one we ought to talk about. We only talk about maybe fifteen percent of them, and the others are just automatically denied, because no Justice thinks it’s even worth talking about, much less voting on. So it’s a huge help to have the law clerks participate in the memo pool, and do some good research to help us identify the cases that we really should be taking, and to help us see if there’s some procedural defect that, at the end of the day, if we take the case we couldn’t even reach it because of some problem. That’s a huge help.

Then on the cases that the Court takes, the parties have to do two things: file their arguments in written form—called briefs, and they aren’t brief at all—and then they come for an oral argument at the Court that’s very limited in time. I always had a law clerk, and I didn’t care which one of them did it, they sorted it out themselves—I wanted a memo, from one of my clerks, for every argued case, because we got briefs from the parties; sometimes the briefs were terrific, sometimes they were pretty deficient, and so it’s wonderful if you have a law clerk who can pick up slack. If you have a set of briefs that’s inadequate, you’re going to get a lot more research out of your clerk. I also liked the clerk to do a little basic research and see if there was some *useful* law review piece on the issue. Often, they’re not, but

sometimes, they are. Or a good text writer right on point, on the subject to be decided, and I like that research. I liked it brought to me so that I could consider that along with briefs of the parties and the arguments.

And then they can help on the opinions—they can handle all the footnotes, for God's sake, if you have them. I decided not to have any more footnotes, but most of the opinions do, and so, it's nice to have somebody that you can rely on to check every last little correct citation. And, they're great, and I love talking to the clerks about the issues, the merits of them. I would let them weigh in with me, you know, and so we'd talk about this thing, and argue them out sometimes—that's fun.

DEAN STARR: We're getting questions about the cowboys.

JUSTICE O'CONNOR: Ok.

DEAN STARR: Don't shoot the messenger. You've told us about the cowboys, and in light of work-life balance, family life, and so forth, but there was a sweet question: How'd you meet your husband, and how did that affect your marriage—the career choice—affect your marriage?

JUSTICE O'CONNOR: My husband and I were both on the Stanford Law Review and, you know how those law reviews work: we were given some article to cite check in the library together. And it was a long article, so we were up there a long time, and so the library was about to close, and John said, "Gee, why don't we finish this up down the highway at Dinah's Shack, where we can get a beer?" And so, I think that's what we did. And we went out every night after that for forty nights in a row. And John was exhausted. So, we had to take a break. But anyway, he was fabulous. And we had a better marriage because of our mutual backgrounds at Stanford, and our interest in the law—it makes having a conversation pretty easy.

PROFESSOR GRAFFY: I know that the students are facing big interviews coming up for legal careers, and yet, you had a big interview to be the first female Justice on the Supreme Court, and I understand that a young counselor to the Attorney General flew out from the Department of Justice to Phoenix for your first big interview for this job. Maybe you could say a few words about that.

JUSTICE O'CONNOR: Well, he was sent by William French Smith, in whose honor we are meeting here tonight, along with Jonathan Rose, to go to Phoenix and check out this Sandra Day O'Connor. And, they had had a

lot of research done—I didn't know that, but they had, because I'd left fingerprints and footprints in several government agencies in Arizona, and so they had to check it all out, and then we met at my house and talked about everything they wanted to talk about. And I think John was there, he sat in on the whole thing.

DEAN STARR: John O'Connor was there?

JUSTICE O'CONNOR: Yeah, and then they had to go back, and give a report to William French Smith. I guess it was ok because that's when he called me and said, "Could you come back?" But I never believed for one minute that I would be asked to serve in the first place—Bill Rehnquist and I were classmates in law school. My husband John was a year behind us, and Bill Rehnquist and I were classmates. And he had moved to Arizona to live and practice, and I thought it was so unlikely that two people from the same law school class and the same community would be asked to serve on the Court at the same time. I just wrote it off as—this is terribly exciting, because I'd never really spent any time in Washington D.C., and I've certainly never been to the White House, so it was exciting to meet the people and talk to them, but I did not at heart think that it could happen. That was the surprise.

DEAN STARR: Life on the Court—a substantive question. During your tenure on the Court, who did you agree with most, and who did you disagree with most?

JUSTICE O'CONNOR: Well, I didn't keep a lot of tabs . . . I can't tell you. But I think that probably, and it depends on the years you're looking at, because the Court changed, but I think Bill Rehnquist and I probably did end up many, many, many times on the same opinion in a given case. And I think probably there were not as many opinions that I joined that were authored by Justice Brennan or even Justice Marshall. I don't think so. But, people have kept records of those things. I'd have to go back and look, but that's my guess.

DEAN STARR: Can you share some of the humorous moments, if there were any, humorous moments at the Court, among the Justices? And then, pretty personal question, any favorites among the Justices?

JUSTICE O'CONNOR: Yes, but I'm not going to tell you! And there were lots of humorous things, because several of them just had great senses of humor. Bill Rehnquist was—he loved a good joke and a story. He was terrific. And David Souter. Now there's a surprise for you. He never forgets a conversation. And he could have had the conversation forty years

ago, when he was a student at Harvard, and he can repeat it word for word. He is astonishing. And so he had great stories to tell us, and he remembered the funny ones, and he and Justice Breyer are often confused. Did you know that? It happens frequently, and they're back in Massachusetts somewhere, or even in D.C., and people can't tell them apart. I don't understand it myself, but that happens to them, and you can't imagine the funny stories that have resulted from that. Priceless. And, Justice Scalia is a pretty good storyteller—did you ever get him to tell you any? He was here not long ago, wasn't he? He's a great storyteller. So we've had some fun times.

DEAN STARR: Appropriate for Southern California, this question: Since you've been on the bench, T.V. shows like *Law and Order* have exploded onto the scene—do you believe that they have affected the public's understanding of the law, and of their Constitutional rights?

JUSTICE O'CONNOR: I don't think that *Judge Judy* and the other shows have helped one bit! They definitely don't show it like it is, so I don't think that's been much of a help.

DEAN STARR: I know we're not supposed to mention the birthday, but I've gotten several "Happy Birthdays" wishing a belated Happy Birthday yesterday to Justice O'Connor—

JUSTICE O'CONNOR: I'm trying not to remember or count!

DEAN STARR: And, I wish we had more time. I've been given this wonderful red stop sign which is very, very clever. But, a number of the questions do go to the confirmation process: if you could change the process, would you, and if so, how would you change it?

JUSTICE O'CONNOR: I don't even think about that, because, how can you? The Constitution is there! Are you going to amend the Constitution to do that? I don't think so! That's hard to do. And it says the President will appoint with the advice and consent of the Senate. And it's up to the Senate. And the Senate loves to be in front of television, asking questions! They love it! You think they're going to change that? No. Forget it.

DEAN STARR: And so, let me ask one truly—a lawyer's—final question: you've mentioned cameras: should there be? In the Supreme Court?

JUSTICE O'CONNOR: I wouldn't say "should." You might phrase it, will there ever be? That's a possibility, because attitudes change over time, and it's conceivable that some Court now or in the future will conclude that they're so unobtrusive that it wouldn't matter—they can just stay there and it's ok. I would not be flabbergasted if someday in the future that were the decision. But the Justices don't look forward to that, and I'll tell you why: they don't want to be media stars. They don't want to be recognized when they go down to the supermarket and buy hamburger or something. It's a better life if you don't have that. And so, I think they're very reluctant to buy into that regime.

DEAN STARR: Would you join me in saying thank you to Sandra Day O'Connor?