was able to attain what he could not attain elsewhere: the exercise of mastery, in which the beautifully articulated formal elements of the story lock together in an absorbing narrative whole. Like the best of his fiction, it moves beyond the prison house of the author's self to achieve universal sweep, in this case probing human dreams and delusions about justice and law and pondering an idea of writing as a painful revelation that collapses into murderous chaos. ■

David J. Garrow
The Unlikely Center

SANDRA DAY O'CONNOR: HOW THE FIRST WOMAN ON THE SUPREME COURT BECAME ITS MOST INFLUENTIAL JUSTICE
By Joan Biskupic
(HarperCollins, 419 pp., $26.95)

DAVID HACKETT SOUTER: TRADITIONAL REPUBLICAN ON THE REHNQUIST COURT
By Tinsley E. Yarbrough
(Oxford University Press, 311 pp., $29.95)

KENNETH W. STARR WAS a gullible and slipshod investigator. No, not in his all-too-thorough probe of Bill Clinton's dalliance with a White House intern, but seventeen years earlier, when he was the Reagan administration's point man in the background vetting of a Supreme Court nominee.

During the presidential campaign in 1980, Ronald Reagan had declared that if elected, "one of the first Supreme Court vacancies in my administration will be filled by the most qualified woman I can find." A year earlier, Sandra Day O'Connor, then an Arizona Superior Court judge, had met Chief Justice Warren E. Burger, an inveterate political schmoozer, on a vacation outing. Soon thereafter, Governor Bruce Babbitt, a Democrat, promoted O'Connor to Arizona's intermediate appeals court. When the retirement of Justice Potter Stewart in June 1981 presented President Reagan with his first high court vacancy, Attorney General William French Smith already had O'Connor's name on his private short list. Starr, then Smith's top aide, later acknowledged that "there was a certain oddity to her being in the mix at all," since O'Connor was a "judicial unknown," but Reagan was intrigued by O'Connor's upbringing on an Arizona cattle ranch.

Starr flew to Phoenix to interview O'Connor, and then Smith called to invite her to Washington. On July 1, Reagan and Smith, with presidential advisers Michael Deaver and James Baker, met with O'Connor for forty-five minutes. Reagan had won the presidency as a fervent right-to-life supporter, and O'Connor was asked directly for her views. "She told Reagan she was personally against abortion," Joan Biskupic reports in her superbly thorough and perceptive biography. "She said she considered the procedure 'abhorrent.' "

When O'Connor's name was leaked to reporters as a possible nominee, anti-abortion activists objected, citing concerns about O'Connor's position as an Arizona state senator in 1970 on a bill that would have decriminalized abortion. The measure never came to a floor vote, but O'Connor had served on the committee that considered it. "There is no record of how Senator O'Connor voted, and she indicated that she has no recollection of how she voted," Starr wrote in a memo to Smith. Reagan and his advisers discounted the abortion opponents' complaints, and on July 7 the president announced O'Connor's selection. Journalists asked if he had personally confirmed O'Connor's right-to-life sentiments, and Reagan answered "yes." He was "completely satisfied."

But Starr had committed a huge error. On April 29, 1970, O'Connor had voted to repeal Arizona's anti-abortion law, and two prominent Phoenix newspapers publicly reported her vote. When asked by Biskupic to explain his oversight, "Starr said he had no reason to check local newspapers to see if her vote had been recorded. If Starr had taken such a step he would have discovered that the proposed legislation was front-page news and the subject of considerable controversy in Arizona eleven years earlier—and that O'Connor had voted for the measure to decriminalize abortion."

Instead of undertaking his own independent inquiry, Biskupic observes, "Starr had taken O'Connor's word for everything." In so doing, he had smoothed her way to a nomination that almost certainly would have been denied her had those old news clippings been discovered. But in those days Supreme Court nominees, even potentially pivotal ones, were not investigated with the rigor that journalists would deploy toward, or against, Harriet Miers and Samuel Alito twenty-four years later.

O'CONNOR'S STATUS AS THE first female nominee to the high court certainly did not protect her from harsh criticism. *The Nation* lambasted O'Connor as "barely qualified" and complained that Reagan had chosen her "almost entirely because of her sex and not on the basis of individual merit." *The Nation*'s editors further declared that "O'Connor's record is not even close to Supreme Court quality. She was not an exceptional lawyer or legal scholar, nor is she an outstanding judge." In front of the Senate Judiciary Committee, however, O'Connor acquitted herself flawlessly. Fred Barbash of *The Washington Post* described O'Connor as "the very essence of composure and self-confidence: even-voiced and even-tempered." She also reprised the denunciations of abortion that she had offered Reagan. She attested to "my own abhorrence of abortion as a remedy" and added that it "is simply offensive to me. It is something that is repugnant to me."

Biskupic observes that O'Connor's three days of testimony "revealed little," but she rightly notes that confirmation hearings, then as now, are "rituals designed to appease rather than to expose." No controversy over O'Connor's abortion record developed, and the Sen-

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ate unanimously approved her nomination by a vote of ninety-nine to zero.

THE SUPREME COURT BENCH that O'Connor joined in September 1981 was a fractious and relatively leaderless group. Chief Justice Warren Burger had lost his colleagues' respect. William J. Brennan Jr. could usually muster Thurgood Marshall and Harry A. Blackmun on behalf of liberal rulings, but securing a majority required winning over the iconoclastic John Paul Stevens and either the dour Byron R. White or the genteel Lewis F. Powell. The youngest justice, William H. Rehnquist, possessed a conservative vision but rarely prevailed in significant cases.

Biskupic offers excellent and original portrayals of the justices' relations with one another. During O'Connor's earliest years, "she collaborated with Powell, fell into an adversary role with Brennan, and was a regular target for Blackmun's cutting remarks." Powell became O'Connor's "closest colleague," and they increasingly teamed up on difficult cases. Brennan's and O'Connor's substantive legal views "differed sharply. But they were even more at odds personally," Biskupic writes, Brennan's reputation as a judicial charmer notwithstanding. O'Connor's gender influenced their relationship, just as it also affected Blackmun's behavior toward her.

Biskupic unearths a long-forgotten article from 1982 by Stephen Wermiel, a careful and insightful journalist who covered the Court for *The Wall Street Journal*. "The frequency with which Justice Blackmun has made comments, always off the record, about Justice O'Connor, surely suggests some hard feelings," Wermiel wrote. "Some Court watchers suggest that Mr. Blackmun may resent the favorable publicity and attention focused on Mrs. O'Connor's arrival last fall. But the justices scoff at suggestions of feuds." Biskupic more than confirms Wermiel's reporting, detailing how Blackmun "often mimicked O'Connor to his law clerks." In sharp contrast, O'Connor's clerks understood that she "did not abide the demeaning of other justices in casual conversation or writing, as was sometimes allowed in other chambers."

Outside the Court, O'Connor adopted "a pace of extra-curricular activities that would, over the years, become part of her national persona." No law school, college, or bar association was too obscure or too distant for O'Connor if a speaking invitation was extended. O'Connor's talks rarely offered significant substance or notable stimulation, and Biskupic does not explain what motivated her to travel hither and yon with a frequency that far outstripped any of her colleagues. O'Connor's ubiquity did not endear her to everyone: when the New York Women's Bar Association announced an award to O'Connor in 1984, sixty lawyers and law professors signed a protest letter calling it "incomprehensible and extremely disturbing" that a women's group would honor "token appointees who undermine our goals."

INSIDE THE COURT IN THE MID-1980s, O'Connor's influence increased as Powell weakened with age. Biskupic portrays Powell as a "gentlemanly peacemaker" who was "the bridge between the ideological poles" that Brennan and Rehnquist represented. When a long hospital stay kept Powell away from the Court in early 1985, "his absence exacerbated tensions that had been rising" for months. Biskupic quotes at length from a memorable letter that Rehnquist wrote to the absent Powell, recounting with remarkable frankness the foibles of their colleagues in the justices' private conference. "I sometimes wish that neither the Chief nor Bill Brennan would write out all their remarks beforehand and deliver them verbatim from the written page," Rehnquist wrote. Brennan "sounds like someone reading aloud a rather long and uninteresting recipe. Then of course Harry Blackmun can usually find two or three sinister aspects of every case which 'disturb' him, although they have nothing to do with the merits of the question. And John Stevens, today, as always, felt very strongly about every case."

Powell's decline and departure coincided with O'Connor's own blossoming. Biskupic records that by 1985 O'Connor "was making a turn from being a reliable conservative vote to becoming a more centrist justice," and her evolution became even more pronounced just a few years later. In 1986 Burger retired, and Rehnquist became chief justice after surviving a bruising Senate confirmation battle. Antonin Scalia won unanimous approval to take Rehnquist's seat, but he "immediately alienated Powell," Biskupic reports. Scalia's first year was also Powell's last. "Your announcement leaves me devastated," O'Connor wrote to Powell upon learning of his retirement. He was "irreplaceable," O'Connor told him, for "no one on the Court has been kinder than you. There is no one with whom I have felt as free to discuss our cases and how to resolve them."

In Biskupic's account, O'Connor's increasing influence came largely at the expense of Brennan. Brennan turned eighty in 1986, and with the old liberal "relying more on his clerks," leadership of the Court began "slipping from Brennan's grasp into O'Connor's," Biskupic writes. "O'Connor managed the resolution of cases in a way that increasingly caught Brennan off guard," and "in negotiations with other justices, she often accentuated her state legislative and state court experience. Her message was that she knew the practical effects of rulings."

BISKUPIC DOES AN IMPRESSIVE job of emphasizing how O'Connor's six years as an Arizona state senator sharpened the skills that allowed her to become an influential justice. O'Connor served a stint as senate majority leader prior to becoming a judge, and Biskupic repeatedly invokes O'Connor's legislative experience as the lens through which her judicial success must be understood. Still, the O'Connor who sat on the U.S. Supreme Court from 1989 until early 2006 repeatedly seemed far more moderate, and far less conservative, than the younger jurist who throughout the early and mid-1980s sounded eager to overturn *Roe* v. *Wade* and eliminate affirmative action.

That move toward the center climaxed soon after O'Connor experienced the first great personal crisis of her life, a diagnosis of breast cancer in 1988. Immediate surgery was necessary, and "she was very scared," her son Jay told Biskupic. "I had never seen her like this." When her "life-threatening experience with cancer" was past, O'Connor exhibited the "increased determination" of "an emboldened survivor," Biskupic writes. "Her confrontations with fellow justices were overt and had a new clarity," as *Webster* v. *Reproductive Health Services*, a 1989 abortion case, starkly revealed. First in a 1983 case, and again in a 1986 one, O'Connor had harshly criticized *Roe* v. *Wade*, but in Biskupic's view

she "was never ready to sign an opinion undermining the core of *Roe*."

In *Webster*, O'Connor surprised most observers by refusing to join Rehnquist, White, Scalia, and Anthony Kennedy, who had replaced Powell, as the crucial fifth vote against *Roe*. Six years earlier she not only had claimed that *Roe*'s trimester-based analysis of abortion was "on a collision course with itself," but also had declared that "potential life is no less potential in the first weeks of pregnancy than it is at viability or afterward." Those sounded like the words of the nominee who had assured Ronald Reagan that abortion was "abhorrent"; but in *Webster*, "with her vote now the decisive one," O'Connor "retreated" from her earlier criticisms of *Roe* and declined to reconsider its constitutional validity.

Biskupic calls *Webster* "a turning point in [O'Connor's] acceptance of the right to abortion," and in retrospect *Webster* also marked a breaking point between the consistent conservatism that O'Connor demonstrated during her early years on the Court and the far more socially conscious moderation that dominated much of her jurisprudence in the years after 1989. From Kennedy's arrival in early 1988, through the departures of Brennan in 1990, Marshall in 1991, and then White and Blackmun in 1993 and 1994, the Supreme Court saw more than half its membership turn over in just six years. Those changes left O'Connor as the third most senior justice, after Rehnquist and Stevens, and they also solidified her role at the ideological center of a Court that otherwise could split evenly in many high-visibility cases.

THE NEW JUSTICES WHO ARrived in the early 1990s—David Souter and Clarence Thomas as nominees of President George H. W. Bush, and then Ruth Bader Ginsburg and Stephen Breyer as nominees of Bill Clinton—added one vote to the Court's conservative wing and three votes to what passed for the left. None of the newcomers was a crusading judicial progressive in the tradition of Brennan, Marshall, and eventually Blackmun, but the conservative trio of Rehnquist, Scalia, and Thomas found its ability to shift the Court rightward hugely constrained by the three Republican nominees who were evolving in somewhat unexpected ways—first O'Connor, then Kennedy, and finally Souter.

This trio's decisive importance was highlighted in 1992 by the astonishing decision in *Planned Parenthood* v. *Casey*, a case almost everyone had expected would result in *Roe* v. *Wade's* demise. Instead, a five-justice majority re-affirmed abortion's constitutionally protected status. (*Casey* is once again a familiar case owing to then–Judge Samuel Alito's sole dissent in favor of Pennsylvania's spousal-notice requirement when the case was before the U.S. Court of Appeals for the Third Circuit.) When *Casey* reached the Supreme Court, Souter and O'Connor recruited Kennedy, who had endorsed an explicitly anti-*Roe* opinion just three years earlier in *Webster*, as a surprise fifth vote to uphold the core of *Roe*.

At that time, Kennedy was far more extensively excoriated by anti-*Roe* partisans than either O'Connor or Souter. Yet as the years have passed, Souter's supposed apostasy has come to loom larger to conservative right-to-lifers than have O'Connor's or Kennedy's votes. O'Connor's drawn-out retirement from the Court has elicited countless hosannas for her deliberate and consensus-affirming positions on a host of hot-button issues. In decided contrast, the utterly private Souter, who totally shies away from the public-speaking opportunities that repeatedly draw both O'Connor and Kennedy into the public eye, has become the favorite whipping boy for right-wingers angry that the Court has not reversed course on a host of socially controversial issues.

TINSLEY YARBROUGH'S BIOGraphy of Souter is vastly different from Biskupic's life of his colleague. While O'Connor's family members and all her fellow justices except Souter gave interviews to Biskupic, Yarbrough was shut out of Souter's personal circle, with the exception of just a few New Hampshire acquaintances. "He declined to be interviewed for this book, as did his law clerks," Yarbrough writes. "Cooperation in such a project, he told one of his friends, might offend certain of his colleagues on the Court." Ironically, the colleague Souter most likely had in mind was O'Connor, who was always especially leery about scholars' obtaining private information about the justices' work habits. As Biskupic recounts, when O'Connor learned in the early 1990s that Brennan was quietly allowing selected writers to read his old case files, including ones that post-dated her arrival on the Court, she bluntly upbraided him. Several years later, when Marshall's papers were opened to researchers following his death, O'Connor took the lead in protesting their access. But O'Connor and others absorbed an even worse affront in 2004, when Blackmun's copious files became publicly available five years after his death. As Biskupic understatedly reports, multiple "justices revealed privately that they felt Blackmun had betrayed the institution."

Souter's status as the conservatives' *bête noire* hinges on a controversy that dates back to his nomination as Brennan's successor in 1990. At the time, many observers wrongly viewed Souter's selection as the handiwork of White House Chief of Staff John Sununu, a former New Hampshire governor who had promoted Souter from the trial bench to the state Supreme Court in 1983. But as anyone knowledgeable about New Hampshire Republican poli-

tics recognized, Souter was actually the protégé of Senator Warren Rudman, a decidedly moderate Republican, who had energetically recommended him to President Bush. Years earlier, as New Hampshire's attorney general, Rudman had named Souter his deputy. He then arranged Souter's appointment as his own successor and later to a series of judgeships, culminating with Souter's confirmation to a seat on the U.S. Court of Appeals for the First Circuit earlier in 1990.

For anyone willing to acknowledge the facts, Yarbrough's account of Souter's nomination sets the record straight. Bush himself told reporters at the time that "there was almost a certain recusal on the part of Governor Sununu" during the selection process, and soon thereafter Senator Rudman firmly warned that "it would be a mistake to associate this nomination in any way with John Sununu. John Sununu did not know David Souter at the time that he appointed him to the New Hampshire Supreme Court, other than casually." Indeed, Sununu appointed Souter as payment of a political debt to Rudman, and Sununu's famous claim that Souter's Supreme Court nomination represented a "home run" for conservatives was a bit of right-wing braggadocio that he has never managed to live down.

In 1990 reporters had a difficult time getting a clear read on Souter's judicial record in New Hampshire. Nina Totenberg of National Public Radio complained that Souter's two-hundred-plus written opinions on New Hampshire's high court involved only "the most arcane and uninteresting state issues." In 1977, a local newspaper had quoted Souter as remarking that "I don't think unlimited abortions ought to be allowed," but in 1990 few commentators highlighted an opinion from 1984 in which Souter had applied a state-law precedent with which he personally disagreed. "The consequences of what I believe was an unsound conclusion in that case are not serious enough to outweigh the value of *stare decisis*," he wrote then. In 1990, Souter told one journalist that he viewed himself as being "closer to the center than some but still on the right side," but anyone who watched carefully his confirmation hearing testimony to the Senate Judiciary Committee should have had no doubts that Souter was a judicial traditionalist with an especially high regard for existing precedents. He was in no sense an ideologue.

After winning overwhelming Senate confirmation by a vote of ninety to nine, Souter found the learning curve of a new justice to be steep indeed. He admitted during his first year that he was simply "trying to keep from being inundated by the flow of things to be done," and the following summer he immediately retreated home to New Hampshire. In a letter declining a speaking invitation that Blackmun had proffered, Souter confessed that "I have wanted as much as possible to be alone to come to terms in my own heart with what has been happening to me." He added that "I have also felt a need to engage in some reading and thinking about matters that will be coming before the Court."

Blackmun's now-public papers provide that revealing gem, and others. A year later, after *Casey* had preserved *Roe*'s essence, Souter reiterated to Blackmun that "for the time being I'd like to leave the summer months wholly free for the kind of self-education I have worked at in July and September for the past two years." In a letter to Blackmun in 1994, Souter self-deprecatingly cited "the more frightening gaps of legal learning that the Court's business so clearly exposed" as a reason for his summer isolation. "I need some period of the year when I can make a close approach to solitude. I spend each July decompressing and seeing people throughout the month; when August comes it is time to withdraw as best I can."

These letters to Blackmun will likely remain the best on-the-record portrait of the private Souter for many years to come. Yarbrough recounts one of Souter's New Hampshire friends quoting the justice as saying that he has "the world's best job in the world's worst city," and Souter's strong preference for spending as few days as possible in Washington has long been known. Yet Souter acknowledged not only a deep longing for New Hampshire, but also a strong distaste for the public appearances that have been O'Connor's special forte for more than two decades now. "In a perfect world, I would never give another speech, address, talk, lecture or whatever as long as I live," Souter told Blackmun. "God gave you an element of sociability"—though some of their colleagues might question just how much—"and I think he gave you the share otherwise reserved for me."

Yarbrough endorses today's consensus view that in his fifteen years as a justice Souter has accumulated "an increasingly liberal voting record," so that he now is, "in most issue areas, one of the most liberal justices" on the Court. Similar comments are numerous indeed; Emily Bazelon recently declared in *The Washington Post* that "Souter has simply shifted to the left as the country has shifted to the right." But almost no one who is closely acquainted with Souter will accept such facile characterizations. As a close friend of his recently told the *Concord Monitor*, "I don't think anyone who knows David thinks he's changed one bit since being on the Court." And Warren Rudman, Souter's political sponsor and still a good friend, made the same point to *Legal Times*: "Anyone who ever listened to his testimony would know that he was a judge in the model of Harlan or Frankfurter. He certainly wasn't in the mold of a real conservative." (Rudman may be guilty of a certain ideological presentism in believing that Harlan was not a "real conservative," whereas Scalia and Thomas presumably are.)

But Charles Douglas, a conservative former state Supreme Court justice who served with Souter and whose libertarian streak Souter rarely if ever shared, has protested to the Concord paper that Souter "was a conservative judge, very definitely a conservative judge on the court here. So it was surprising to see him change positions when he got to reading *The Washington Post* every day." Souter does not read *The Washington Post* daily or even weekly, but Douglas's sourness is more than mirrored by John Sununu. Five years ago Sununu acknowledged feeling "a lot of disappointment in where David Souter has ended up on the Court," and more recently Sununu broadened his complaint. "Souter is absolutely different from what Souter and Souter supporters represented he was, not only during the vetting process but during his whole career," he told *Legal Times*. "Everybody is disappointed, and with all due respect to those who were not, they were part of the deception."

Accusing Souter and Rudman, and perhaps others, of practicing "deception" in 1990 is sheer bitterness: if any deception occurred, it was practiced by Sununu on himself. But self-deception may also apply to Souter too, if a little-noted speech he gave three years ago is to be taken at face value. Souter likes flying no more than he enjoys public speaking, so when he traveled to Stanford Law School to speak at a tribute to the late Gerald Gunther, it was a highly unusual gesture. In 1994, Gunther published a definitive biography of Learned Hand, a federal judge in New York who became a famous advocate of judicial restraint during a judicial career that stretched from 1909 until his death in 1961. In 1958, a series of lectures that Hand delivered on the Bill of Rights appeared in book form, and in 1976 Souter cited that small volume as a life-changing experience: "I read it and reread it, and from that came my fatal commitment to the law. And with that commitment a philosophy of constitutional constriction on the law."

Yarbrough correctly emphasizes that "Souter's record on the U.S. Supreme Court is hardly consistent with Hand's jurisprudence"—which makes Souter's tribute to Gunther, and to Hand, very puzzling. "If I had the power, I would see to it that no judge in America entered office without reading Gerry's life of Hand," Souter declared. "It gives good counsel to judges of all times and places, and particularly to appellate judges like me, in the place where I am sitting at this very time."

Souter acknowledged that Hand viewed the exercise of judicial power "with a diffidence near to fear sometimes," but he contended that "Hand's necessities are every judge's common obligations: suspicion of easy cases, skepticism about clear-edged categories, modesty in the face of precedent." Souter said that to "just decide the cases as they come along" is all a judge should aspire to do—but of course Souter, like every justice, does betray at least some clear agendas. In Souter's case, as Yarbrough emphasizes, his strongest commitment is as "the Court's most ardent defender of precedents requiring church-state separation." Yet in practice Souter has never shown any of Hand's exceptional hesitation to strike down dubious government practices, and his "moderately liberal, strongly nationalist jurisprudence firmly grounded in a deep commitment to precedent" is exactly what his confirmation testimony pointed toward.

Yarbrough correctly opines that given Souter's deep preference for New Hampshire over the nation's capital, "he may have little difficulty deciding to leave Washington sooner rather than later." O'Connor's own retirement announcement took everyone by complete surprise, including her fellow justices. "I heard it on the radio" on the way to work, Scalia told Biskupic. Chief Justice Rehnquist, who died two months later, had told O'Connor that he would not be stepping down, thus clearing the path for O'Connor's own departure. As Biskupic tactfully but straightforwardly reports, O'Connor's decision to retire was based largely upon her husband's increasingly serious struggle with Alzheimer's disease. His mental decline had begun in the late 1990s with odd bouts of forgetfulness, and Biskupic suggests that indiscreet comments that John O'Connor made at an election night party in November 2000 about his wife's desire to retire only during a Republican presidency reflected the disease's impact. Biskupic relates that O'Connor herself privately disputes stories that she was rooting for George Bush over Al Gore that night, but Biskupic's interviews with other justices shed no additional light on O'Connor's subsequent behavior in *Bush* v. *Gore*.

Yet her colleagues' comments to Biskupic do attest to O'Connor's impact on the Court. Biskupic rightly says that O'Connor cannot "be measured in terms of a large constitutional vision," and she acknowledges that O'Connor's proclivity for narrow, fact-specific decisions could produce results that "sowed confusion." As Stephen Breyer, with whom O'Connor developed a bond, told Biskupic, "If there are great unknowns out there, she does not believe you should go further than you have to go."

Biskupic refrains from either endorsing or contesting Jeffrey Rosen's categorization of O'Connor as a "judicial politician" who over time became "even more astute than Congress at reflecting, with exquisite precision, the views of the median American voter." Biskupic likewise hangs back from Rosen's characterization of Antonin Scalia as "an intellectual bully," but she confirms earlier accounts of how Scalia's repeated aspersions about O'Connor's opinions "got under O'Connor's skin." Scalia admitted to Biskupic that he had thrown "an occasional barb" at O'Connor, but John Stevens commented more frankly: "Everybody on the Court from time to time has thought he was unwise to take such an extreme position, both in tone and in position. She probably feels the same way."

Such tensions notwithstanding, the final decade of the Rehnquist Court was a far happier time than either the Burger years or the late 1980s and early 1990s. "Now, you have a group of people who really enjoy each other's company," Clarence Thomas told Biskupic. On oral argument days, Thomas recounted, all of the justices finally began to eat lunch together "because of Justice O'Connor's insistence." O'Connor may not be leaving behind any constitutional landmarks, but there is no doubt that her impact on the Court reached far beyond simply being The First Woman.

Looking back at the full story of both O'Connor's and Souter's ascendancies to the Court, the lesson is crystal clear that supporters' beliefs about how a nominee will vote, even on an issue where a president himself boldly asks a nominee for her personal commitment, can be dashed when that individual ascends the bench. Neither Sandra Day O'Connor nor David Souter sought to deceive anyone at the time of their selections, but illusions may abound in a highly politicized confirmation process, and on the bench as well. Just as most supporters of O'Connor failed to foresee her judicial trajectory, and many who voted for Souter likewise misunderstood the man before them, so those who cast votes for and against Samuel Alito should have done so with the understanding that predictions about future judicial behavior are often wrong. This is the bad news and the good news. ■