

## IN-VERSION

John K. Setear\*

It is 1985. Ronald Reagan is battling the Evil Empire. Joe Gibbs has just taken the Washington Redskins to two Super Bowls. Michael Jackson, resculpted but not yet freakish, leads a huge chorus in “We Are the World.” Sandra Day O’Connor has been the First Woman on the U.S. Supreme Court for four years and, in the Washington social milieu of the time, *still* probably resides on the A-list ahead of *any* of the aforementioned men.

So, if you clerked for Justice O’Connor in 1985, everyone you met anywhere knew who your employer was once they knew who your employer was. Everyone anywhere would then tend, incomprehensibly, to skip over such important questions as how *you* got such a great job, or whether you were worried that you might persuade her to adopt a position that law professors would then gleefully tear to pieces for generations to come. Instead, they would invariably ask, “What’s she like?”

“Really smart,” would be an excellent and accurate answer—but, sadly, one that was often dismissed. Inquisitors tended already to believe either that all Justices were smart (if the inquisitor was a normal person) or that all Justices must be dumb (if the inquisitor worked for a member of Congress). Additionally, the occasional wiseacre would ask, “Well, then, how come William H. Rehnquist graduated first in that Stanford Law School class and Sandra Day only graduated third?” (I have always wondered who graduated second: Wally Pipp, Jr.?)

“Okay,” your inquisitor would respond, “she’s really smart. But what’s she *like*?”

“Ah, well,” you would say. “*Really* great to work for, actually. She really cares about us as people. She has a party for each one of us on our birthday, with ice-cream cake and a bottle of champagne. She asks us whether we’re dating and tries to set up people who are single. She takes everybody out, one at a time, for a night-on-the-town kind of thing at some point during the year.<sup>1</sup>

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\* Professor of Law, University of Virginia School of Law; Law Clerk for Justice Sandra Day O’Connor, October Term, 1985. Rachel Setear provided both critical suggestions and crucial encouragement. Margo Browning and John Thompson supplied a literary reference from their vast mental warehouse thereof.

1. My excursion was to see Henrik Ibsen’s *The Wild Duck*. It involved many very

She'll take us all to the opening of a National Gallery exhibition every once in a while. And the whole chambers goes on an outdoor outing towards the end of the Term."

At this point, your interlocutor would be suitably impressed, especially if said interlocutor had talked to any other Justice's law clerks, as they would be limited in their misty-eyed anecdotes to tales of how their Justice now elbowed them on the basketball court less aggressively than he had at the start of the Term, or had never seen pizza, or had endearingly assumed away the state-action jurisdictional requirement. So, despite putting in what were often long hours, my co-clerks and I knew that we were incredibly lucky not just to work for any Justice, but to work for our particular Justice.

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It is 2006. I am attending the first O'Connor law clerks' reunion since the Justice announced her retirement. I assume that it will be like many reunions before—a chance to catch up a bit with old friends sharing similar memories, an opportunity occasionally to play the *éminence un peu plus grise* with the ever-(relatively)-younger current clerks, a minute or two with the Justice for some warm hellos and hearty updates. I assume also that the schedule will be like that of many reunions before—dinner and then some remarks from the Justice summarizing the happenings at the Court since the last reunion, listing recent births of “grandclerks” (as she calls her clerks' children), and emphasizing how absolutely *critical* the clerks are to her work and how she doesn't know *what* she would do without us.

This year, however, the brief set of remarks was much briefer and different in a way that must have made pretty much everyone's throat swell and eyes well up with tears, as she described the view just past the bench:

I've hired four clerks a year for twenty-five years. Now that I'm retired, there won't be many more, so this is pretty much all of you. I won't say too much more because, if I do, I'll start to cry. I hired all of you because I thought that I would like you. Over the years, I've come to love you, too. I really love you all.

Now, I'm more or less in touch with my feminine side, but I've still pretty much always felt that I'm a man trapped in a man's body, so I'm not much of a crier. I will readily admit that I was pretty close, however. My wife, Rachel, who couldn't come to the reunion, started to tear up at the antepenultimate sentence just *hearing* the story, and her lower lip went completely a-blubber at the closing.

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unhappy people, a great deal of dialogue, a duck, an attic, and, at its climax, the suicide of a child caused by the philosophical fervor of one of the adult characters. By its end, I was utterly drained, both psychologically and physically. “Well!” said the Justice as we exited, for once more or less at a loss for words. The Justice's husband, John O'Connor, graciously picked up the conversational slack: “That,” he opined more pithily than the most experienced theater critic, “was the longest damned play I've ever seen.”

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To some extent, the whole weepy-ness of the situation is understandable, even archetypical: an older, famous, indeed historic, figure to whom you have a special connection, and to whom you owe a great deal, inverts the hierarchy implicit in the relationship. You think that you owe me a lot, says the authority figure, but, really, I owe *you* a lot. In this case in particular, and in contrast to some similar situations that I've seen, the statement was both gracious and plainly heartfelt.

There is, however, a subtler inversion in the closing of Justice O'Connor's remarks that evokes a crucially relevant, if perilously gendered, relationship. Your parents love you from the start and, if you're at all lucky, they come to like you. Justice O'Connor told us that, for her part, she had liked each of us from the start and had come to love us. Inverted-parental, but still parental. That she calls our children "grandclerks" is also some indication that she sees the relationship as in some way parental. And given her gender, a parental aspect makes her some variation on a mother.

This leads me now to wonder whether what I meant by my fact-laden answer to those inquiries of two decades ago about "what's she *like*?" is that she was like a mom. A mom remembers your birthday. A mom wants to know whom you're dating and will, unprompted or indeed even if explicitly forbidden, endeavor to set you up with someone if you're single. She takes you on cultural outings. (White-water rafting, which was the outdoor excursion during my clerkship, doesn't fit so well with traditional motherhood, I'll admit.) She cooks for you, which the Justice did once a week for us while we sat around and talked about important issues before the household-equivalent, i.e., the cases before the Court. All of this bears a definite, though plainly incomplete, resemblance to a mother's role. Justice-Mom, perhaps, or, for punsters who know how much parents are taken for granted, maybe Justi-Mom.

Perhaps the very mention of such a possibility is patronizing (matronizing?), or antifeminist, or rebarbatively pop-psychological. But I am, after all, talking about a relationship between a maternal figure and that quasi-oxymoron, *adult* children. Justice O'Connor, after all, didn't bring us milk and cookies every day. She didn't make choices for us about our friends or our clothes. She didn't dry our tears. (There's no crying in baseball or in the O'Connor chambers, at least not when the manager or Justice, respectively, is present.)

In contrast to the typical maternal situation, of course, there was a wide variety of quotidian contexts that were impossible to take for granted in our situation—the excitement, pressure, and history of the Court, for example, and the Justice in her roles as whirlwind, boss, and first woman on the Court. Still, it *was* possible, as with one's family of origin, to take for granted some ambient phenomena that the passage of time would reveal to us as extraordinary, if only because the Justice herself took them as given and immutable. Working hard. Taking the work seriously but not taking ourselves too seriously. A respectful, but not worshipful, attitude towards judicial precedent. The realization that

what is before you now is the most important thing before you. Reminders of the importance of family and of place.

To pursue the analogy in a potentially more poignant direction, every child initially thinks not only of his or her surroundings as ordinary but also of his or her parents as omniscient and omnipotent. Eventually, of course, these beliefs give rise to the diametric oppositions of adolescence and finally, one hopes, to a more balanced and sympathetic view of a parent's humanity. As I saw her in the middle of the 1980s, Justice O'Connor, as a Justice and as a person of such accomplishment—a *woman* of such accomplishment—had an aura of perfection and invulnerability about her. (And not just because her early-years hairdo looks in some photographs as if it could deflect a hail of bullets.) But as the years went by, and I heard that Justice O'Connor's own parents had died, that she had breast cancer, or that she was stepping down from the bench for family reasons, I came to realize that this person of unearthly energy and confidence was nonetheless vulnerable, like all the rest of us, to the passage of time.

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Quite recently, the subtle bonds of this relationship wafted their way into my reactions to the combined pages of *Lazy B*, Justice O'Connor's memoir of ranch life,<sup>2</sup> and two critical evaluations of those pages, Joan Biskupic's full-length biography, *Sandra Day O'Connor*,<sup>3</sup> and the review of *Lazy B* by Linda Greenhouse for the *New York Times*.<sup>4</sup> I enjoy literature; I enjoy writing; I am skilled, as an academic, in taking the joy out of both for the sake of analytical rigor; and of course, I was once the Justice's law clerk. Yet it was not as critical reader, self-conscious writer, rigorous academic, or nostalgic law clerk that I found myself reading these works, but rather as semi-son. From that slightly myopic perspective, the book made perfect sense, while the writings of others

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2. SANDRA DAY O'CONNOR & H. ALAN DAY, *LAZY B: GROWING UP ON A CATTLE RANCH IN THE AMERICAN SOUTHWEST* (2002). The book is written in what one might call first-person sandralar—that is, Sandra Day O'Connor uses the first-person singular and refers to Alan Day in the third person, although both are listed as authors and appear side-by-side in the dust-jacket photograph. (Justice O'Connor's other sibling, Ann, is the first person thanked in the acknowledgments. *Id.* at 319.)

Convinced of the virtues of thorough research by a variety of penetrating questions from Justice O'Connor in connection with my bench memos during my clerkship, I also consulted *Chico*, Justice O'Connor's book for children. SANDRA DAY O'CONNOR, *CHICO: A TRUE STORY FROM THE CHILDHOOD OF THE FIRST WOMAN SUPREME COURT JUSTICE* (Dan Andreasen illus., 2005). *Chico* recounts a memorable adventure that Sandra Day had on the back of the beloved, titular horse, but does not add significantly to *Lazy B* (except for the full-color illustrations).

3. JOAN BISKUPIC, *SANDRA DAY O'CONNOR: HOW THE FIRST WOMAN ON THE SUPREME COURT BECAME ITS MOST INFLUENTIAL JUSTICE* (2005).

4. Linda Greenhouse, *Happy Trails*, N.Y. TIMES, Feb. 3, 2002, at G10 (reviewing *Lazy B*).

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about it appeared to be almost perfect nonsense. Indeed, a handful of fundamentally affectionate quasi-clichés, set out in turn below, are adequate to capture my reaction to the thousands and thousands of words:

*Nobody criticizes family—except family.* I love my mother, but once in a great while, I find something that she does to be exasperating. I love my mother-in-law, but once in a great while, I find something that she does to be exasperating. If I criticize my mother to my wife, then my wife tries to be evenhanded but supportive. If I criticize my mother-in-law to my wife, then she glares at me and tells me to mind my own business—even though my wife and her brother freely call each other on the phone to vent their (rare) mutual exasperations about their mother. That’s just the way it is, I suppose.

So, by way of analogy, it’s okay for *me* to have a little gentle fun with Justice O’Connor’s 1985 hairstyle, but I found myself glaring at the pages penned by Ms. Greenhouse whenever they evinced the slightest hint of criticism of *Lazy B*. For example, Ms. Greenhouse (accurately) points out that *Lazy B* fails to help those possessed of “Eastern, urban sensibilities” in any self-directed effort to reconcile Young Cowgirl Day of *Lazy B* with the Other Sandra Day O’Connor, “the prim and button-down onetime president of the Phoenix Junior League, at home at formal dinners and on country club golf courses, who grew up to become the first woman on the United States Supreme Court.”<sup>5</sup>

My immediate, visceral reaction? Judge the book by its cover, Ms. Greenhouse—its back cover, that is, whereon Jill Ker Conway, who grew up on a sheep ranch in the Australian outback, receives more blurbing real estate than do east-coast PBS media darlings Doris Kearns Goodwin, who grew up in Brooklyn, and Jim Lehrer, whose family ran a bus company, combined. Or at least judge the book by its title, which puts *the ranch* front and center, and its subtitle: *Growing Up on a Cattle Ranch in the American Southwest*. It is *not* a book called *From Ranch to Robe: My Path from Saddle to Supreme Court*, as your Eastern, urban sensibilities might have noticed if they would ever stop chattering on their cell phone while sipping their lattés and tapping on their laptops.

If I might proffer additional evidence, Amazon.com lists the book’s leading statistically improbable phrases as “holding pasture,” “roundup crew,” “east pasture,” and “rough string.”<sup>6</sup> (The last phrase denotes those horses that are especially difficult to acclimate to their role.) This is a book with one chapter called “Jim Brister,” and a later one called “More About Jim.” Those nursed on the *New York Times* are unlikely to find the book the equivalent of 496 pages of

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5. *Id.* at G10.

6. If you mouse over the photograph of *Lazy B*’s cover on its page at Amazon.com, then you will see a list of “SIPs,” which is the abbreviation for statistically improbable phrases. Amazon.com, <http://www.amazon.com/gp/product/0812966732/103-4547125-9597427> (last visited Mar. 23, 2006).

Dave Eggers.<sup>7</sup>

Ms. Greenhouse also calls the book a “palimpsest,” a word that I admit that I had to look up. A “palimpsest,” as it turns out, is a parchment that has been written on, erased, and then written on again. A palimpsest? Hah! As Scott Bales mentions in his tribute,<sup>8</sup> Justice O’Connor keeps pieces of her ranch right there in her office. She did *not* erase her past and rewrite it like some bespurred James Gatz.<sup>9</sup> And, anyway, get your view of the book’s shortcomings straight: did she *write* too much about the ranch, or *erase* too much about the ranch?

Joan Biskupic evinces some disappointment that *Lazy B* is an incomplete memoir even of Justice O’Connor’s girlhood, since the book omits any discussion of the (temporally larger) portion of her youth that Sandra Day spent in El Paso, garnering a more extensive education than could be had while ensconced in the Great American Desert.<sup>10</sup> In El Paso, in contrast to the *Lazy B*, Sandra did not keep a bobcat as a pet and, apparently, was often unhappy.<sup>11</sup> So? Justice O’Connor can view her past through rose-colored glasses if she feels like it! Is the book subtitled *There and Back Again: The Habits of Girlhood from Arizona to Texas*? Or *My Desert, My Despair*? It is not.

Ms. Biskupic also sniffs at the book’s omission, allegedly at Justice O’Connor’s insistence, of an anecdote by Alan Day that portrays their father in an irrational, angry, and unflattering light. Likewise, Ms. Biskupic, and surely others, have made note of *Lazy B*’s unwillingness to take up the psychosexual gauntlet thrown down by the fact that the *very first thing* that Sandra Day’s father does when he meets Sandra Day’s future husband is to take some bloody testicles just semi-surgically liberated from a bull, fry ‘em up, and hand ‘em to

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7. Cf. DAVE EGGERS, *A HEARTBREAKING WORK OF STAGGERING GENIUS: A MEMOIR BASED ON A TRUE STORY* (2000). The Amazon.com review of Eggers’s book notes that there’s a good bit of staggering genius before you even *get* to the true story, including a preface, a list of “Rules and Suggestions for Enjoyment of This Book,” and a 20-page acknowledgements section complete with special mail-in offer, flow chart of the book’s themes, and a lovely pen-and-ink drawing of a stapler (helpfully labeled “Here is a drawing of a stapler.”).

Amazon.com, <http://www.amazon.com/gp/product/0684863472/qid=1143128311/103-4547125-9597427> (last visited Mar. 23, 2006) (emphasis in original). The first three SIPs listed for this book are “f\*\*\*ing wallet” (no stars in original), “guardianship papers,” and “green fluid.” *Id.*

8. Scott Bales, *Justice Sandra Day O’Connor: No Insurmountable Hurdles*, 58 STAN. L. REV. 1705, 1709 (2006) (in this Issue).

9. You may know James Gatz by the name that he made up for himself later: Jay Gatsby. See F. SCOTT FITZGERALD, *THE GREAT GATSBY* (1925).

10. BISKUPIC, *supra* note 3, at 18 (“As an adult, O’Connor did not dwell on deficits and, in fact, became adept at accentuating what she had rather than what she did not. Rarely did she speak about life in El Paso, preferring to cast her life for the public in terms of the ranch rather than the considerably longer time away from it at Grandma Wilkey’s and private school.”).

11. *Id.* at 16 (“It was a long and lonely existence, by all accounts.”); *id.* at 17 (noting that in a school picture, Sandra Day, “[f]or a girl so young . . . looks unusually hardened”); *id.* (“Sandra was heartsick away from the *Lazy B*.”).

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the future husband to wolf down (or throw up, I suppose, although, as it happened, John O'Connor passed the tasty-testes test with flying colors).<sup>12</sup> Is the book called *Oedipus and the O'Connors*? Nope. *Bobcat on a Hot Tin Roof*? Nope.

While we're on the subject of Justice O'Connor's father, let me note my semi-filial peckishness at the way that Ms. Biskupic observes a supposed shortcoming in *Lazy B* that leads her to hear at least an echo of insecurity and even desperation:

In her recounting, O'Connor provides no analysis of the emotional freight her childhood left her with. But stripped of its wistful gloss, her version of events reveals a series of episodes in which she tries desperately to prove herself. She would paint a screen door over and over until it was exactly to her father's specifications. Would these experiences with her father cause her to want to prove herself as an adult?<sup>13</sup>

The only fact in this passage, as opposed to secondhand psychologizing, is the assertion that "O'Connor"—doesn't she even deserve a first name?—"would paint a screen door over and over until it was exactly to her father's specifications." In fact, the young Sandra Day did *not* paint the screen door "over and over" like some Elektra-fied Sisyphus. She started to paint a screen door on which, as Justice O'Connor tells the tale herself, "the wood was badly weather-beaten and the surface was rough."<sup>14</sup> Her father therefore pointed out to her—within thirty minutes of the start of the project and as soon as he actually saw her painting the door—that she should remove the old coat of paint first, and then sand the resulting bare wood, before putting on a new coat. Our future memoirist, now armed with knowledge in the mental toolbox of every careful handyperson, then preps the surface properly, paints the door, and cleans up after herself to the no-words-wasted evaluation of her father, "That's all right then." Young Sandra thereby painted the door only once, plus however many times she had painted it in the first thirty minutes of her work, which is hardly the same as painting it "over and over."

Anyway, you can see how protective I get.

*We expect parents to have a difficult time talking about sex.* Apparently many of my own peers wish to be the best friend of their child(ren), courting the offspring's approval—there's an inversion for you—and chatting away day and night on the wireless umbilicus of the cell phone. Perhaps such parents swap detailed tales of sexual misadventure. I was perfectly content as a child, however, for us all to be aware that sex existed, and aware that the other was aware, but otherwise to leave it at that. Justice O'Connor displays the same charming reticence about such matters in *Lazy B*. Most of her chapter about

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12. For the anecdote, see O'CONNOR & DAY, *supra* note 2, at 285; see also BISKUPIC, *supra* note 3, at 27 ("A reader cannot help but wonder about the psychological complexities that produced such a moment as father tested the city-bred beau . . .").

13. BISKUPIC, *supra* note 3, at 20.

14. O'CONNOR & DAY, *supra* note 2, at 33. For the complete anecdote, see *id.* at 33-34.

Rafael “Rastus” Estrada amply demonstrates the author’s admiration for this cowboy’s skills, work ethic, honesty, and ability to succeed despite illiteracy and a right leg several inches shorter than his left. He is the “[o]ne man [who] was always at the Lazy B,”<sup>15</sup> at least in the longer run. Once in a while, in the shorter run, he did leave the premises:

Rastus went to town about once a month. He would cash his paycheck and put the money in his wallet. There wasn’t much he needed or wanted. A haircut. A barbershop shave. A couple of days sitting around the Bonnie Heather Bar playing poker. Maybe a visit to the town prostitute. When he was ready to go back to the ranch, he would find someone to give him a ride. He never drove a car, never owned one.<sup>16</sup>

Did you catch that? Shave and a haircut, two bits—er, two days’ worth of poker. Then bum a ride back to the Lazy B. Oh, and “[m]aybe a visit to the town prostitute.” Maybe? What does that mean, exactly? Did Justice O’Connor establish, after interviewing Mr. Estrada exhaustively on the topic, that an average of 0.72 visits to town yielded a situation in which he traded some of that money in his wallet for sex? Or does she mean “maybe” in the sense of “I suppose he must have had sex at some point in his life . . . it’s only natural . . . and he wasn’t married . . . and—oh, can we not talk about this any more, please?” I’m guessing the latter.

The whole idea of a town prostitute is sufficiently awkward to the author that said prostitute remains nameless, you will notice. This unnamed urban sex worker had at least one other customer, also anonymous, who figures in the tale of how the marvelously monikered Bug Quinlan came to his calling as a cowboy/cook:

Bug had started the journey as one of the cowboys, but the man who was hired as the cook had been to town before the trip started, and he developed a bad case of venereal disease. DA [Justice O’Connor’s father] let the cook go and Bug volunteered to be the new cook. It turned out to be a fine choice.<sup>17</sup>

The description of the causative condition in this passage—“a bad case of venereal disease”—is a bit vague, isn’t it? Even a country doc, after all, seems unlikely merely to tell a patient that the latter has “a bad case of venereal disease” rather than a bad case of syphilis or herpes or *something*. Also, that nameless cowhand contracted some fast-acting venereal disease, wouldn’t you say? He goes to town and, before a trip of 120 miles can end, he’s fired for venereally induced dereliction of duty?

In fact, the only time that the author bears down on a carnal topic involves libidinous amphibians:

After we went to bed [following a rainfall] we could hear the first sounds of the spadefoot toads, which had emerged from their holes under the bed of the dirt tank. . . . The sounds of the toads making their love calls at night would

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15. *Id.* at 53.

16. *Id.* at 55.

17. *Id.* at 86.



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last through the night, each night for a week or ten days, until apparently the sexual urge was satiated and we could all get some sleep.<sup>18</sup>

And with the apparent satiation of the sexual urge, passive voice and all, we may blessedly leave this line of analysis behind.

*A parent's past is fascinating.* I'm not sure that, ordinarily, I would be mesmerized by detailed stories of frontier life. In fact, I know I wouldn't, because I once had to read out loud many, many pages of a book in the *Little House on the Prairie* series in which the author described in excruciating detail how to make bullets,<sup>19</sup> and I could barely keep my eyes open (even though my daughter kept poking me at any sign of torpor). I was, however, intrigued to hear in *Lazy B* about cow cutting, well maintenance, cow roping, horseshoe making, and cow herding, because Justice O'Connor was telling the stories.

And, as implied in the previous dismissal of palimpsest-related charges, it doesn't take much effort to see how Justice O'Connor's youth might have affected her later life. In just one paragraph about her mother—and you can even cut out quite a bit of it—those who know Justice O'Connor can see her as well: “the only woman among a crew of men,” possessed of “inherent dignity and a great deal of poise,” who “managed somehow to do [her] work . . . but still maintain her well-dressed appearance.”<sup>20</sup> And young Sandra Day, in contrast to her mother, actually rode the range and rounded up cattle, persuading all those hard-riding, chain-smoking cowboys that a little girl deserved not only their tolerance but also their respect. With that experience, you have to imagine that keeping Justice Scalia at bay would be no more difficult than roping a rocking horse.

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So Justice Powell may have been right to say that the Supreme Court is like “nine little law firms,” but it also proves to be true that, in at least one case, it can be something like an extended family, with a warm and intelligent matriarch at its head. Twenty years ago, much was indiscernible in the glare of the Court and the dazzle of the (First Female) Justice, and, in any event, I was at least moderately obtuse. All of us, I think, had to grow and mellow and lose things for all to become clear. But now we know that Justice O'Connor's “guessing” that she would like us—in addition, of course, to our great grades and fabulous recommendations—led to our selection. And, now that the longer-term secret that she came to love us is out as well, I think that I can speak both *to* Justice O'Connor and *for* the stretched-out, not-so-rough string of her law clerks when I say: “We all really love you, too.”

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18. *Id.* at 134. There follows a paragraph describing the life cycle of the desert spadefoot toad, “among the most amazing of the desert animals.” *Id.*

19. LAURA INGALLS WILDER, *LITTLE HOUSE IN THE BIG WOODS* 45-51 (Harper Trophy 1971) (1932).

20. O'CONNOR & DAY, *supra* note 2, at 45.

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