

COURTHOUSE DEDICATION: JUSTICE O’CONNOR REFLECTS ON ARIZONA’S JUDICIARY

Justice Sandra Day O’Connor

In October 2000, Justice Sandra Day O’Connor visited Arizona to dedicate two new federal courthouses: the Sandra Day O’Connor United States Federal Courthouse in Phoenix and the Evo Anton DeConcini United States Federal Courthouse in Tucson. The following is a compilation of Justice O’Connor’s comments given at the dedication ceremonies.

It is a great pleasure to be in Arizona this week to participate in the dedication of not one, but two, new federal courthouses—one in Tucson and one in Phoenix.

The dedication of the Phoenix courthouse is an occasion that has, for me, a sense of unreality. How is it that the name of a cowgirl from Eastern Arizona would be carved in stone on this large new federal courthouse in Phoenix? As many of you know, I grew up on a cattle ranch in Greenlee County, miles from any town. My ambition as a child was to be a cattle rancher like my father. That was not to be, and, in time, I entered law school at Stanford. I knew only one lawyer at the time. He practiced law then in Lordsburg, New Mexico, and years later was appointed a federal district court judge. I did not know where a law degree might lead.

When I graduated from law school in 1952, I received no offer of employment as a lawyer. There was one half-hearted offer of a job as a legal secretary. In time, I persuaded the District Attorney of San Mateo County to give me a job as a deputy. My career as a lawyer was launched. John and I were married, and within a year he was drafted, then accepted in the Judge Advocate General’s Corps, and assigned to a post in Germany. I gave up my hard-won job and followed John to Germany, where I obtained a job as a lawyer in the Quartermaster Market Center in Frankfurt am Main. On John’s discharge from the Army in 1957, we came to Phoenix. John accepted a position in the law firm of Fennemore Craig. Wally Craig, who later became a federal district court judge here in 1963, was the hiring partner.

Once again, I failed to find a law firm that would consider hiring a woman. I established a neighborhood law office in partnership with Tom Tobin.

We had a humble practice and tended to specialize in whatever we could get. As part of our plan to meet expenses, I accepted a number of appointments to defend indigents in the criminal justice system. A couple of such appointments were made by federal district court Judge David Ling. The work I did gave little hint that the Phoenix courthouse would someday bear my name.

Life always takes unexpected turns—mine certainly did. My subsequent years as an assistant attorney general and as a state senator prompted me to seek office as a Superior Court judge. I was elected and later appointed in 1979 to the vacancy created on the Arizona Court of Appeals when Judge Mary Schroeder was appointed to the Ninth Circuit Court of Appeals.

Like my own personal history, the history of the federal district of Arizona had somewhat inauspicious beginnings. The people of Arizona viewed with caution the role of the judiciary—particularly the federal judiciary—in the lives of the citizenry. That healthy suspicion of the judiciary can be traced back to the State's founding. Three key tools of democracy in the Arizona territory were the initiative, referendum, and recall. When Arizona sought statehood at the beginning of this century, Arizonans wanted to ensure that the people would control the government. To that end, the Arizona Constitution provided for the recall of judges, along with provisions for referendum and initiative measures. President Taft objected to the recall of judges provision, and Congress conditioned statehood on its deletion. Arizona voters acquiesced to the President's wishes and deleted the provision, only to reinstate it promptly after being admitted to the Union.¹

Soon after Arizona was admitted to the Union in 1912, it was necessary to establish a federal court in the State. Controversy swirled around the proposed appointment of Richard E. Sloan, former territorial judge and governor, as the new federal judge for Arizona. Judge Sloan, a Republican and the choice of President Taft, was opposed to the principle of recall as applied to judges. Arizona's two U.S. Senators, both Democrats, opposed the appointment of Sloan. They hoped that if they could hold out until after the next election, a democratic President could be elected and a new nominee for the federal court would follow. Senator Henry Fountain Ashurst had made his views of federal judges clear when speaking on the subject of worker's compensation laws: "They have come to sit as judicial tyrants, not caring how many feet or hands are cut off."² Judge Sloan was given a recess appointment by President Taft as the federal district court judge, but the Senate failed to confirm the appointment.

With the concern about Judge Sloan's appointment, an idea was proposed to create an advisory recall mechanism to be applied to federal judges in Arizona. The State Legislature in May of 1912 enacted a law providing that upon petition of fifteen percent of the electors requesting resignation of a U.S. District Judge for

1. See JOHN D. LESHY, *THE ARIZONA STATE CONSTITUTION: A REFERENCE GUIDE* 8, 10–12, 17–18 (1993).

2. John S. Goff, *The Organization of the Federal District Court in Arizona, 1912–1913*, 8 AM. J. LEGAL HISTORY 172, 175 (1964).

the District of Arizona, the Secretary of State would hold an election for which the ballot would read, “[S]hall [name of judge] be requested to resign from the office of United States District Judge,” with boxes marked “Yes” and “No.” Immediately below that question, the voter would find an option to recommend certain candidates for the position.³ Those of you who are judges will be interested to know that the law contained no provision allowing the judge time to get out of town before the resignation was requested. Although the people of Arizona have yet to use the advisory recall procedure, I understand it remains on the books to this day, in nearly its original form.⁴ Let’s hope it will remain untested and unused.

When John and I arrived in Phoenix in 1957, the state of the federal judiciary was not quite as precarious as it was in the early days. Judge David W. Ling was the sitting district court judge in Phoenix. Judge Ling was a native of Arizona—he was born while his father was attending law school at the University of Michigan and returned with his parents to Prescott when he was six months old. Judge Ling practiced law for thirteen years in Clifton, was county attorney there, and then served on the superior court of Greenlee County. My family’s home and ranch were in Greenlee County, and my parents knew and admired Judge Ling.

Judge Ling was not a man of pretension. On the day he was sworn in, Judge Ling announced that he had a date to go fishing the following morning that he did not intend to miss. During his time on the bench, he was known as a man of few words. When asked why he published so few opinions, he replied: “If you want a written opinion about your case, you take it to the Ninth Circuit. That’s what they’re there for.”⁵

In 1957, Judge Ling was the only federal district judge for the Northern District of Arizona. He sat in Phoenix, and Judge Walsh sat in Tucson. Judge Walsh was born in Massachusetts in 1906, attended Georgetown University Law School, and came to Mesa, Arizona, in 1928. He was in private practice there until 1941, when he became County Attorney. Judge Walsh served on the Maricopa County Superior Court for two years before he was nominated by President Harry Truman for the federal district court, Southern Division, on July 3, 1952. His nomination was confirmed by the United States Senate two days later on July 5. Times have certainly changed!

Between them, Judge Walsh and Judge Ling handled all the staggering federal district court caseload in Arizona until 1961, when another judgeship in Phoenix was added. Until that time, Judge Ling carried a staggering caseload. It was reported that his work never suffered, and he was an excellent trial judge.

A few years after I arrived in Phoenix, Judge Richard Chambers became Chief Judge of the Ninth Circuit—the first Chief Judge from Arizona. He served in that role from 1959 to 1976. Chief Justice Rehnquist has told me that he heard that Dick Chambers had been practicing law in Tucson when Barry Goldwater

3. See Laws of Arizona 1912, Ch. 65, An Act approved May 17, 1912.

4. See A.R.S. §§ 19-231 to 19-234 (2000).

5. Chief Justice William H. Rehnquist, *Remarks Made at the Temple University School of Law Centennial and Convocation*, 69 TEMPLE L. REV. 645, 649 (1996).

first ran for the United States Senate. Dick served as Barry's campaign coordinator in Southern Arizona. Barry was elected, and when a vacancy occurred on the Ninth Circuit Court of Appeals, Dick Chambers let the Senator know of his interest in being appointed. In due course, he was. Later, several Arizona lawyers asked Senator Goldwater if he had considered any other names for the appointment. The Senator said, "No, I didn't know anyone else would be interested."

Judge Chambers is recalled as a wonderful, intelligent jurist with a great sense of humor. He was known to have circulated a number of letters and memoranda to fellow judges on the Ninth Circuit, usually signed by his horse, Tom, with the sign of a horseshoe. He loved horses, and would often go riding in the late afternoon after he got off the bench. His love of horses had its limits, however. At a dinner party with another judge, after chewing on a tough piece of meat, he remarked, "I knew the horses we rode today were pretty old, but I didn't know we'd be having them for dinner tonight."

Judge Chambers presided over the Ninth Circuit during its years of greatest expansion. He led the court to move its southern California headquarters from Los Angeles to Pasadena—a renovated Spanish colonial hotel—viewed as a controversial decision at the time, and now recognized as visionary. Judge Chambers led a campaign to preserve and restore many historic buildings. I think he would have been very happy with the new federal courthouse in Phoenix.

Likewise, the Evo Anton DeConcini United States Federal Courthouse in Tucson is a beautiful building that captures some of Southern Arizona's special Spanish heritage. It has two courtyards and some handsome art that symbolizes some of Arizona's Spanish influence. Fittingly, this building will bear the name of an Arizonan who contributed in many ways to the development of Pima County.

Evo Anton DeConcini was the quintessential American—he was born in 1901 in Iron Mountain, Michigan, to an Italian father and an Austrian mother. He moved to Tucson with his sister when he was twenty. He worked in a gas station to help pay his way as a student at the University of Arizona. Almost immediately, he began to invest in real estate in the City of Tucson. About ten years later, he attended the University of Arizona law school and then married his wonderful wife, Ora Webster, from Thatcher, Arizona. It is said that after mass on Sundays, Judge DeConcini would take his family driving around Tucson looking at real estate that might be available for purchase—especially corner lots. In time, he was said to own all four corners of every important intersection in the city. Evo and Ora DeConcini became two of the most influential people in Arizona. They had a daughter and three sons, one of whom became a powerful United States Senator.

The late Chief Judge of the United States District Court in the Southern District, Richard Bilby, remembered Evo DeConcini as "a fine lawyer. He knew the law and how to get things done." Judge DeConcini was active in politics in the Democratic party; he supported several successful candidates and remained interested in politics all his days. He served, as you have heard, for a term on the Pima County Superior Court, a term on the Arizona Supreme Court, and a brief

period in-between as Attorney General. He was also very active in various civic and charitable activities.⁶

Judge DeConcini's former law partner, John McDonald, said: "To me, greatness in a man is not based on the position he held, fame, or success, but how he treats his family and friends, contributions he makes to his community, and the way he lives his life. The Judge was the greatest man I have known."

There is a story told to me by Tom Chandler that illustrates Judge DeConcini's character. A distraught mother, whose son was criminally charged with many felony counts, came to the law offices of Evo DeConcini to obtain representation for her son. A young associate of Judge DeConcini turned the woman away, telling her that neither he nor the Judge could find time to represent her son. The lady then told the young associate that her husband would cash in his life insurance policies and that she would pay a large fee. The young associate said money was not the issue. Neither he nor the Judge had time to take the case.

As the lady was leaving the suite in tears, Judge DeConcini came out of his office with an armful of paperwork. He saw the sobbing lady, put down his papers, and went to her, asking what was wrong. She asked if he was Judge DeConcini and when he said he was, she asked if he would see her, and he said of course he would see her. One hour later, she left his office, and the Judge was her son's lawyer.

His plea for probation for this teenager was one of the most eloquent and moving pleas ever made in an Arizona courtroom. The young man received a minimum sentence and, with the Judge's help, was paroled after a short stay in prison. Again with the help of Evo DeConcini, he was permitted to join the United States Army, where he served well for twenty years and thereafter completed his college education and became a juvenile probation officer in the San Francisco area of California.

For many years at Christmas time, Judge DeConcini got a letter from his client, thanking the Judge for saving him from a life of crime and helping him become a useful citizen, committed to helping keep young people out of the criminal justice system. (As a footnote, the Judge's fee was about ten percent of what was justified. He confided in his young associate that he would have charged the mother nothing, but he did not want to hurt her pride by offering her charity.)

Evo DeConcini was a superb husband and father by all accounts. His son, former Senator Dennis DeConcini, reflected that family loyalty by supporting the dedication of this splendid building to his father, who played such an important role in Pima County for more than sixty years. Judge DeConcini stood for fairness, integrity, and civility in the legal profession. The Tucson courthouse named for him should be the "Civility Courthouse" and should set a standard for Arizona and the nation that would have made him proud.

6. *See generally* EVO A. DECONCINI, HEY! IT'S PAST 80! A BIOGRAPHY OF A BUSY LIFE 129, 135 (1981).

A new chapter of Arizona leadership on the Ninth Circuit is beginning this year as Judge Mary Schroeder becomes the new Chief Judge of the Ninth Circuit—the first woman to hold that position. In an article last fall, John Frank and Attorney General Napolitano listed the five C’s of Arizona—“copper, climate, cotton, citrus, and cattle”—and then listed Judge Schroeder’s five C’s—“competence, civility, compassion, clarity, and creativity.”⁷ During her accomplished career in private practice at Lewis & Roca, her years on the Arizona Court of Appeals, and her twenty years on the Ninth Circuit, Judge Schroeder has established a record of excellence. As the Ninth Circuit Justice, I look forward to Judge Schroeder’s leadership of the largest circuit in the country.

Arizona—and the nation—has been blessed by the superb quality of the federal judges in this State over the years. On the Court of Appeals now, in addition to Judge Schroeder, are Judge Bill Canby, on senior status; Judge Michael Hawkins, a former law partner of John’s at Bryan Cave; and Judge Barry Silverman.

On the District Court in Southern Arizona now are Chief Judge William Browning, a longtime friend, and Judge Alfredo Marquez, John Roll, Frank Zapata, and Raner Collins—a veritable potpourri of Arizona’s cultural diversity.

On the District Court in the Northern District, Judge Charles Hardy (on senior status); Judge Charles Muecke (senior status); Judge Earl Carroll; Judge P.G. Rosenblatt of Prescott; Judge Roger Strand (recently senior status), a former colleague of John’s at Fennemore Craig; Judge Ros Silver, daughter-in-law of my old friend and Arizona Pioneer woman lawyer, Rose Silver; Chief Judge Stephen McNamee; and three brand new appointees, Susan Bolton, Jim Teilborg, and Mary Murguia.

You may notice I did not mention Judge Robert Broomfield, now on senior status. The Phoenix Courthouse is really the Broomfield Courthouse. He served as the Chief Judge of this District until 1999, and he was responsible for requesting funding for this building and for planning it and supervising its completion. Bob Broomfield exemplifies the best qualities of a judge. I know, because when I served as a Superior Court judge, he was the Presiding Judge. There is no one more fair, judicious, wise, and humble than he. Although my name is outside on the wall, Bob’s heart, soul, and effort are part of the very foundation and fabric of this building.

So what do we make of the new edifice in Phoenix? An old friend, Bill Meeks, wrote a letter to the editor this summer saying he thought this new building deserved the “ugliness award.” He went on to say it was rumored it would be named for Sandra Day O’Connor, and, if true, “she should sue.” It is true, and I will not sue. This building, like Arizona, is spacious and full of light and air. The atrium will be cooled by a remarkable evaporation and misting system, combined with a new kind of glass that will deflect the sun. To my eye, this building

7. John P. Frank & Janet Napolitano, *Judge Mary M. Schroeder: Twenty Years*, 31 ARIZ. ST. L.J. 705, 714 (1999).

recognizes the innovation in architectural design we see often in this part of Arizona. It symbolizes the vastness of the landscape in Arizona, the power of the sun and sky, and the openness of our judicial system in the courts today. It is as true today as it was in 1835 when Alexis de Tocqueville wrote:

Scarcely any political question arises in the United States that is not resolved sooner or later into a judicial question....The language of the law...becomes in some measure a [common] tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society...so that at last the whole people contract the habits and the tastes of the judicial magistrate.⁸

Arizonans must be appreciative indeed that thanks to Senator Kyl, we have two splendid new courthouses and three new District Court judges. And Senator Kyl offered the legislation required to place my name on the Phoenix courthouse. I am deeply and profoundly appreciative of this remarkable honor, which I wish could be shared with all the men and women who have held office in this District and in Arizona as federal judges.

As for the new Evo DeConcini Courthouse, I share with all of you the sense that this honor is one that is richly deserved for the endless contributions made by Evo DeConcini, his wonderful wife Ora, his splendid children, Senator Dennis DeConcini, Dino, Danielle, and his twelve grandchildren. We owe warm thanks to former Senator DeConcini, to Senator John Kyl, and to Congressman Kolbe for their strong support in obtaining these two courthouses.

Millions of people will enter these buildings in the years ahead, some as lawyers on behalf of clients, some as litigants or witnesses, some as jurors, some as new citizens of this country, some as merely visitors. Winston Churchill once said, "We shape our buildings and afterwards our buildings shape us."⁹ My hope is that all those who enter will leave secure in the knowledge that justice is open, illuminated, and makes room for everyone, and that in this place facts are determined correctly, legal issues resolved fairly and wisely, and equal justice under law is rendered to all.

8. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280 (Everyman's Library ed. 1994)

9. Winston Churchill, Address to the House of Commons (Oct. 28, 1943), available at <<http://www.placeperformance.com/churchill.htm>>.