

Tribute to Justice Souter

SANDRA DAY O'CONNOR

When the U.S. Supreme Court Justices took their seats at the beginning of the 2009 Term, the Bench looked different. Gone from the Bench, after nineteen years, was David H. Souter. He returned to his home in New Hampshire, a state he likes enormously. Justice Souter will be missed by his former colleagues and by advocates before the Court, by legal scholars nationwide and by all who follow the Court's work and activities.

I was privileged to serve on the Court with Justice Souter for more than fifteen years. He was an admirable Justice and is a cherished friend. While serving on the Court, Justice Souter produced 157 majority opinions, 121 dissenting opinions, and 83 concurring opinions. He served as the Circuit Justice for both the First and the Third circuits. His opinions were always thoroughly researched and written, with full explanations of the facts, the issues, and the governing principles. He cut no corners and explained his reasoning in depth.

His writing was evidence of his scholarly nature. He was, after all, a Harvard Law School graduate, a Rhodes Scholar, a former New Hampshire trial court judge, a New Hampshire supreme court justice, and a judge on the First Circuit Court of Appeals. His opinions, written while he was on the Supreme Court of the United States, were as methodical as they were measured. Justice Souter's concurring opinion in *Washington v. Glucksburg*¹

captured his judicial philosophy nicely. He wrote: "[T]he usual thinking of the common law is suspicious of the all-or-nothing analysis that tends to produce legal petrification instead of an evolving boundary between domains of old principles. Common-law method tends to pay respect instead to detail, seeking to understand old principles afresh by new examples and new counterexamples. The 'tradition is a living thing,' albeit one that moves by moderate steps carefully taken."² His careful approach to opinion-writing meant that he very seldom felt compelled to make a major alteration to one of his circulating opinion drafts because he wrote such thorough explanations in his original draft opinions.

Justice Souter was an especially treasured colleague on the Bench. He has a delightful sense of humor and a natural wit that often entertained his colleagues. He has a remarkable memory for details of conversations and events going back a great many years. The Justices



Sandra Day O'Connor served with David Souter on the Bench for more than fifteen years. They are pictured here at Souter's oath-of-office ceremony in 1990, shortly after the New Hampshire Justice was confirmed.

often have lunch together in the Justices' dining room on days of oral argument or conference. Justice Souter would eat his customary cup of yogurt and contribute to the conversation with the occasional story, always told with humor and vivid detail. One day at lunch, someone mentioned a family wedding one of the Justices had recently attended. Justice Souter said the discussion reminded him of a story told to him by Justice William Brennan's son. He told us that Justice Brennan's father was, at the time, Democratic Party "boss" in New Jersey. His granddaughter got married to a young man whose grandfather was the Republican Party "boss" in New Jersey. Someone asked Justice Brennan's father, "Doesn't it bother you that your granddaughter is marrying the grandson of your archrival?" "No," said Justice Brennan's father. "You have to remember that we always stood shoulder to shoulder against the interests of the people."

From time to time, I would have reason to stop by Justice Souter's Chambers to inquire about some Court matter. He would always cordially welcome my unannounced visit to his Chambers. Entering his Chambers was unlike entering any other Chambers at the Court. He disliked bright lights and his office was always rather dark. Only some natural light from windows illuminated his personal office. Every part of the floor space between his desk and the

couch was piled high with books. Often even the seats on the couch, save one for a visitor, would be stacked with books. Justice Souter is a reader and a collector of books. There was simply not enough space in his Chambers for the ever-growing number of books on his "reading list."

There is an enormous amount of reading of court documents and opinions that every Justice must do in order to keep up with their work at the Court. But that did not prevent Justice Souter from reading many other books as well, books unrelated to the work of the Court. He was also a student of history and the various figures in the Court's history. The walls in his Chambers were hung with paintings of such people as Daniel Webster and Henry Clay alongside former Supreme Court Justices Bushrod Washington and Harlan Fiske Stone.

It is customary at the Court for law clerks in the various Chambers to invite each Justice to join them for lunch at some time during the Term of the Court. Justice Souter was gracious about accepting such invitations. He would bring his own cup of yogurt for his lunch and would talk to the law clerks at length in conversations lasting well over the appointed hour. Needless to say, the law clerks were always delighted and impressed.

Justice Souter did not accept many of the numerous invitations sent to him for social

events in Washington, D.C. He typically declined invitations for speaking engagements throughout the United States and in other countries as well. He preferred to return to New Hampshire at every opportunity. For years, he had a Volkswagen automobile, and he would drive it up to Weare as soon as the Term ended and as soon as the holiday and winter recesses occurred. While in Washington, D.C., he would rise early every day and run on the grounds of the Naval base at the foot of Capitol Hill before coming to the Court for the balance of the day and often late into

the evening. He remained a bachelor and had no need to interrupt his work to meet family obligations, as most of the Justices typically would do. Now, back in New Hampshire, Justice Souter has managed to replace his daily Capitol Hill runs with frequent hikes across the White Mountains near his home.

ENDNOTES

¹*Washington v. Glucksberg*, 521 U.S. 702 (1997).

²*Washington*, 521 U.S. at 769 (quoting Justice Harlan's dissent in *Poe v. Ullman*, 367 U.S. 497, 542 (1961)).