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Judith S. Kaye in Her Own Words: Reflections on Life and the Law, with Selected Judicial Opinions and Articles

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Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

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* The works reviewed in this issue were published in 2018 and 2019. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to azyndar.1@osu.edu and sdemaine@iupui.edu.

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Abrams, Dan, and David Fisher. *Lincoln's Last Trial: The Murder Case that Propelled Him to the Presidency*. Toronto: Hanover Square Press, 2018. 287p. \$26.99.

Abrams, Dan, and David Fisher. *Theodore Roosevelt for the Defense*. Toronto: Hanover Square Press, 2019. 379p. \$26.99.

*Reviewed by Matthew R. Steinke**

¶1 Dan Abrams is familiar to many as the chief legal affairs anchor for ABC News. Author David Fisher's many books include collaborations with celebrities such as Johnnie Cochran, Bill O'Reilly, and William Shatner. Together, Abrams and Fisher have written two recent books about trials involving U.S. presidents: *Lincoln's Last Trial: The Murder Case that Propelled Him to the Presidency* and *Theodore Roosevelt for the Defense*.

¶2 *Lincoln's Last Trial* narrates the murder trial of Simeon "Peachy" Quinn Harrison, which took place in Springfield, Illinois, in 1859. Harrison allegedly made some disparaging remarks about Greek Crafton's family. During an ensuing fight, Harrison stabbed Crafton, who succumbed to his wounds three days later. The issue at trial was whether Harrison acted in self-defense when he stabbed Crafton. The Harrison family hired Abraham Lincoln as one of their son's defense attorneys.

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¶3 A transcript of the trial was discovered in 1989, a document that greatly aided Abrams and Fisher in their storytelling. Robert Roberts Hitt, the transcript's stenographer, is the protagonist of the book, and we see the action through his eyes. It so happens that Hitt also recorded the famous Lincoln-Douglas debates that helped to transform Lincoln into a national figure. The trial and debates occur in the very early days of stenography and transcription, and it is interesting to read about the power of these verbatim transcripts as they are telegraphed to newspapers across the country.

¶4 Lincoln is such an important and legendary national political figure that his work as an attorney tends to get lumped in with everything that he did before he became president. Before becoming an attorney, Lincoln held a variety of positions: store clerk, postmaster, shopkeeper, farm laborer, surveyor, and riverboat captain. Perhaps lost a bit in the Lincoln legend is that he was an *exceptionally* good and well-regarded attorney. A fellow attorney described Lincoln as the “strongest jury lawyer we ever had in Illinois.... He could compel a witness to tell the truth when he meant to lie. He could make a jury laugh, and generally, weep, at his pleasure....” (p.45). Lincoln practiced law for more than 20 years and had tried thousands of criminal and civil cases, appearing before the Illinois Supreme Court more than 300 times. As Abrams and Fisher note, “[b]y the time he walked into the Springfield courthouse the first week of September in 1859 to defend Peachy Quinn Harrison against charges of murder, he was among the most respected and experienced attorneys in the west” (p.36).

¶5 Abrams and Fisher take readers through Harrison's trial in great detail, witness by witness, examination and cross-examination. The book occasionally seems repetitive, as many witnesses testify to similar things, but overall, readers will likely appreciate this thorough approach. Important questions were raised in the trial. Did Harrison fear for his life when he stabbed Crafton? Could Harrison have avoided using a lethal weapon in what began as a fistfight? As the conclusion of the trial approached, “everyone anticipated that Lincoln's closing argument in the Harrison case was going to be a humdinger” (p.254).

¶6 *Lincoln's Last Trial* is an engaging book about the last important trial in Lincoln's legal career, and readers see Lincoln as an attorney at the height of his powers. Abrams and Fisher do a good job describing the practice of law in the mid-nineteenth century. For dramatic and narrative effect, the authors provide some imagined thoughts and conversations of the trial participants that sometimes mix awkwardly with real quotations from the trial transcript or other accounts. However, the book overall very effectively helps readers get a sense of Springfield in 1859, the atmosphere of the courtroom, and the effect on the community of a trial in which one well-liked young man caused the death of another.

¶7 A very different trial atmosphere is presented in *Theodore Roosevelt for the Defense*, which explores the 1915 libel trial of the larger-than-life Teddy Roosevelt. Roosevelt was the former governor of New York and the former (almost) two-term president of the United States. He was a man of many experiences and accomplishments; he had “charged into heavily armed Spanish troops on the San Juan Heights, he had braved the uncharted dangers of Brazil's River of Doubt and stood tall against the great charging beasts of Africa” (p.25). Roosevelt was probably the most famous man in the country in 1915, and he was being called a liar in a courtroom in Syracuse, New York.

¶8 In the course of endorsing a nonpartisan candidate for governor of New York, Roosevelt had written an article in 1914 in which he accused Democrat and Republican political “bosses” of working together in a corrupt way to thwart the public good. One of the bosses mentioned was William Barnes, the former head of the New York Republican Party. Barnes sued Roosevelt for libel, demanding \$50,000 in damages.

¶9 The plaintiff tried to paint Roosevelt as a hypocrite. Roosevelt was railing against the party bosses in 1915, but he seemed to get along with them quite well when he was New York’s governor. The plaintiff’s attorneys produced letter after letter between Roosevelt and Republican Party officials discussing appointments and legislation. Roosevelt operated very successfully within the Republican political machine and could certainly have claimed that he worked effectively within the existing system and its political realities. Many in the courtroom, however, could have formed the opinion that Roosevelt’s views on whether an individual was corrupt strongly correlated with whether that individual agreed or disagreed with him.

¶10 As they did with the Harrison trial in *Lincoln’s Last Trial*, Abrams and Fisher take readers through Roosevelt’s trial in great detail. The Roosevelt trial lasted six weeks (versus Harrison’s trial of four days). The number of witnesses and the volume of materials presented to the jury was much greater. As the authors proceed witness by witness through the trial, the amount of information presented can feel overwhelming and occasionally a bit dull as relatively uninteresting points are covered.

¶11 The book really comes alive, however, when Roosevelt takes the stand. The plaintiff’s legal team was led by the “flamboyant and combative, nationally respected litigator William M. Ivins” (p.28). In preparation for Ivins’s cross-examination, Roosevelt “had given his counsel one specific instruction: they were not to object at all during this phase; he needed no assistance, he would take on Ivins himself” (p.100). Ivins was a highly skilled attorney, and he scored some points against Roosevelt, but Roosevelt was very difficult to contain. At one point, Ivins objected that Roosevelt was being too “emphatic” (p.114) in his gestures to the jury. The men went back and forth with their questions and answers. Roosevelt’s memory and recall of specific facts, as well as his ability to provide carefully worded answers in the face of questioning by a highly skilled trial attorney, were extremely impressive. Roosevelt would work himself up with righteous indignation but then make a joke to cause the courtroom to burst into laughter. The book provides readers with insight into Roosevelt’s personality and why he was so popular with people.

¶12 *Roosevelt for the Defense* and *Lincoln’s Last Trial* were both written with general audiences in mind. The authors explain legal concepts in an accessible way, although readers with academic or legal backgrounds may notice the absence of footnotes and legal citations that would traditionally accompany scholarly works. These books are highly recommended for public libraries and academic law libraries that purchase titles for leisure reading.

Corrales, Marcelo, Mark Fenwick, and Nikolaus Forgó, eds. *Robotics, AI and the Future of Law*. Singapore: Singer, 2018. 237p. \$159.99.

*Reviewed by Sara Bensley**

¶13 *Robotics, AI and the Future of Law* is a wide-ranging collection of chapters on the general topic of emerging technologies affecting law. The book clearly focuses on European law, though some chapters apply more broadly. The areas of scholarship each author represents diverge significantly. As a result, each chapter is a stand-alone piece, with the exception of the initial chapter in which the authors summarize the content of the subsequent entries. The introductory chapter sets out the book's overarching theme: robots and artificial intelligence (AI) disrupt by their nature, and this disruption offers both opportunities and challenges for the legal profession.

¶14 The introduction includes a brief history of the development of and the relationship between robots and AI. Then, the first couple of chapters and the last chapter present largely philosophical discussions about whether and how robots and other machines outfitted with AI fit into the current legal landscape. These chapters include "Do We Need New Legal Personhood in the Age of Robots and AI?" by Robert van den Hoven van Genderen; "The Peculiar Case of the Mushroom Picking Robot: Extra-Contractual Liability in Robotics" by Ionnis Revolidis and Alan Dahi; and "I, Inhuman Lawyer: Developing Artificial Intelligence in the Legal Profession" by Dena Dervanović. Each one is thought provoking, raising far more questions than answers and challenging the reader to consider several possibilities for how robots may (or may not) fit into existing legal structures. Key questions addressed by van den Hoven van Genderen and by Revolidis and Dahi include how a legal system should address harm caused by robots and what it really means to hold a nonhuman liable for harm. Dervanović considers robots as legal service providers and examines whether prospects for a robot lawyer are feasible.

¶15 The remaining chapters are far less philosophical. Sam Wrigley's "Taming Artificial Intelligence: 'Bots,' the GDPR and Regulatory Approaches" and Stefanie Hänold's "Profiling and Automated Decision-Making: Legal Implications and Shortcomings" delve deeply into the European Union's General Data Protection Regulation (GDPR), which went into effect in May 2018. Wrigley examines specific provisions within the GDPR and considers whether they treat data processing by bots the same as traditional (human-centric) methods of data processing. Two of the book's editors, Mark Fenwick and Marcelo Corrales, along with Erik P.M. Vermeulen, contribute a chapter aimed at how regulators and industry participants can proactively encourage development of innovative technologies using examples of "fintech" (financial services technology) successes. The authors identify the UK Financial Conduct Authority's use of "regulatory sandboxes" (p.82) as one notable success. In "The Rise and Regulation of Drones: Are We Embracing *Minority Report* or *WALL-E*?" a fairly narrow chapter, Pam Storr and Christine Storr consider the specific technology of drones and discuss three areas of regulation with

* © Sara Bensley, 2020. Emerging Legal Technology Specialist, Lawton Chiles Legal Information Center, Levin College of Law, University of Florida, Gainesville, Florida.

implications for the manufacturing and operation of drones: surveillance, privacy and data protection, and aviation. Arguably most specific of all is Steven Van Uytzel's chapter, "Artificial Intelligence and Collusion: A Literature Overview." As the chapter title suggests, the author reviews scholarly literature about the likelihood of AI leading to collusive pricing and, assuming that scenario is a realistic possibility (which is a question unto itself), whether existing competition laws are capable of addressing such a threat.

¶16 *Robotics, AI and the Future of Law* manages to avoid technical jargon for the most part and does not assume the reader has a technology background. The book is not a thorough exposition of the topic of robots, AI, and the law, but rather a series of deep dives on particular subtopics. Scholars interested in legal-philosophical aspects of emerging technologies or researching privacy regulations likely would find relevant material in this book. This book is recommended for academic collections, especially those with a European law and/or robotics focus.

Haara, Brian F. *Bourbon Justice: How Whiskey Law Shaped America*. Lincoln, Neb.: Potomac Books, 2018. 182p. \$26.95

*Reviewed by Stephanie Ziegler**

¶17 *Bourbon Justice* falls neatly into the barrel of books addressing how specific goods and services affect areas of law beyond their narrow regulatory frameworks. And as goods go, bourbon is a fascinating subject for American law as bourbon must be, by definition, American. Author Brian Haara clearly has a passion for the topic, being not only a long-standing bourbon enthusiast but also a lawyer who practices "bourbon justice." He has defended a startup distillery on a bourbon trademark dispute and writes a blog dedicated to bourbon law.¹

¶18 The technical specifications of how and where bourbon must be made drew me in, as did the brief treatment of popular misconceptions about bourbon. I learned, for example, that although most bourbon is made in Kentucky, it is produced in other states as well. In fact, I would have enjoyed reading more information about how these misconceptions came into being and what modern distilleries are doing to correct them.

¶19 One chapter of *Bourbon Justice* centers on Prohibition, discussing subjects such as "medicinal" alcohol and the law of search and seizure. Readers will see, however, that the story of bourbon and the law involves so much more than Prohibition. Haara traces the history of bourbon from the earliest family distilleries around the time of the Revolutionary War all the way to the 21st century. The full timeline of bourbon's legal history is covered in the book, including President Taft's providing official definitions of "straight," "blended," and "imitation" whiskey in 1909 (p.5), and labeling and advertising cases of very recent years. Much of the book devotes itself to these more recent lawsuits. In his discussion of bourbon-based legal disputes, Haara balances detail with readability. Bourbon enthusiasts of all sorts, from distillers to consumers, will find much of interest in this book, and

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1. See BRIAN HAARA: BOURBON. LAW. AUTHOR, <https://brianhaara.com/> [<https://perma.cc/VC6U-K5A8>].

lawyers and law students will better understand how bourbon has affected the laws of advertising, workplace safety, trademarks, and criminal law.

¶20 Haara supplements the text not only with an index but also with photos of bourbon advertisements, labels, and bottles that have been the subjects of litigation. Occasional “Tasting Notes” offer readers unique opportunities to “interact” with the material. As they read, for example, about the case of *Maker’s Mark Distillery, Inc. v. Diageo North America, Inc.* and the issue of what color and design of wax seals are permitted on bottles of alcohol, they can try sipping Maker’s Mark Cask Strength Kentucky Straight Bourbon Whisky, with its “intensification of aromas and flavors, in particular creamy vanilla, caramel, raisins, honey, and oak, with a long, warming finish” (p.41). *Bourbon Justice* is a captivating read that provides some surprising insights into the legal history of bourbon, and I highly recommend it for bourbon lovers as well as public, general academic, and academic law libraries.

Hemingway, Mollie, and Carrie Severino. *Justice on Trial: The Kavanaugh Confirmation and the Future of the Supreme Court*. Washington: Regnery Publishing, 2019. 375p. \$28.99.

*Reviewed by Matthew S. Cooper**

¶21 In *Justice on Trial*, coauthors Mollie Hemingway and Carrie Severino describe U.S. Supreme Court Justice Brett Kavanaugh’s contentious confirmation process in 2018. Severino and Hemingway provide extensive and interesting details about how Kavanaugh’s nomination came about and ultimately succeeded. The picture of the confirmation process emerges from more than 100 interviews with people closely involved, including the President, Supreme Court Justices, White House and Justice Department officials, senators, advocacy groups, and legal experts, in addition to friends, family, and former law clerks of Justice Kavanaugh. Notably, the reader sees the influence of former White House Counsel Don McGahn and Federalist Society Executive Vice President Leonard Leo.

¶22 Both authors have deep ties to the conservative legal community, ties that likely explain their remarkable access to numerous major figures involved in Kavanaugh’s nomination and confirmation. Severino is chief counsel and policy director of the Judicial Crisis Network (JCN), which was ready to fight for Kavanaugh’s nomination “on day one with a twelve-million-dollar war chest” (p.74). JCN created the website ConfirmKavanaugh.com and quickly launched ad campaigns in key states, seeking to shape public perception of then Judge Kavanaugh. Severino is also a former clerk of Justice Clarence Thomas, who is repeatedly mentioned in *Justice on Trial*. The authors draw parallels between Kavanaugh’s confirmation process and the “horrifying ordeal” preceding Thomas’s confirmation when Anita Hill accused him “without evidence” (p.44) of sexual harassment. Hemingway is no stranger to politics either. She is a Fox News contributor and a senior editor of the politically conservative online magazine *The Federalist*.

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¶23 In a “Note to readers” at the end of the book, Hemingway and Severino acknowledge their “right-of-center perspective” (p.308), but add that they “endeavored to produce an objective account that reflects a respect for the rule of law and the presumption of innocence” (p.308). The book, however, fails as an objective account. First, so few interviewees express disfavor over Kavanaugh’s confirmation that one wonders whether Hemingway and Severino contacted only individuals likely to hold pro-Kavanaugh views. Second, the authors’ right-of-center perspective shapes the narrative in significant ways. They portray Kavanaugh’s supporters as sympathetic figures fighting for a just cause in the face of many unfair obstacles. They humanize Kavanaugh, for example, by describing how he was affected by a biblical reading about enduring hardships and persecution, how he brought pizza to staffers working tirelessly to help him prepare for the hearings, and how his wife provided cupcakes to federal marshals protecting their home.

¶24 In contrast, Hemingway and Severino characterize the media and those questioning Justice Kavanaugh’s confirmation as uniformly biased, obstructionist, and not genuinely interested in the truth of the sexual misconduct allegations of Dr. Christine Blasey Ford and Ms. Deborah Ramirez. They forgo the humanizing details for Kavanaugh’s accusers or those raising questions about his fitness to serve. Regarding Blasey Ford, the authors mention unnamed acquaintances who recall her salacious high school behavior and unnamed college acquaintances who describe her purchasing drugs and regularly attending fraternity parties. Further, the authors scrutinize her Senate testimony to a greater degree than they do Kavanaugh’s. Tracking prosecutor Rachel Mitchell’s memo, they carefully note inconsistencies in Blasey Ford’s account as to who was present at the party where the assault allegedly occurred, the precise year the events happened, and whether she showed her therapist’s notes or summaries of those notes to a *Washington Post* reporter. Meanwhile, the authors are quick to accept with little comment Kavanaugh’s questionable explanations of the terms “boof[ing],” “Renate alumnus [sic],” and “Devil’s Triangle” (p.233).

¶25 Despite its authors’ claims, then, *Justice on Trial* presents a particular perspective that reflects deep hostility toward the media and a firm belief in the unfairness of Supreme Court confirmation hearings generally and Justice Kavanaugh’s in particular. Missing is the perspective of those who thought it reasonable to raise questions about Kavanaugh in light of the sexual misconduct allegations against him. A truly objective and more valuable account would give voice to opposing views. For instance, it would have been interesting to hear more about Republican Senator Lisa Murkowski’s reasons for voting not to confirm Kavanaugh beyond what she stated publicly. Instead, regarding Murkowski’s vote, the authors are quick to conclude that “[t]he media’s attack on Kavanaugh’s temperament had hit at least one of its marks” (p.277).

¶26 Notwithstanding its shortcomings, *Justice on Trial* may be a worthwhile acquisition for academic, public, or special libraries. Nevertheless, libraries acquiring this book should realize that the authors present a largely one-sided view of events. Recommended with reservations due to its lack of objectivity and balance.

Hitt, Matthew P. *Inconsistency and Indecision in the United States Supreme Court*. Ann Arbor: University of Michigan Press, 2019. 234p. \$75.

*Reviewed by Sarah A. Lewis**

¶27 In *Inconsistency and Indecision in the United States Supreme Court*, Matthew P. Hitt, an assistant professor of political science at Colorado State University, provides a systematic study of unreasoned judgments from the U.S. Supreme Court. Unreasoned judgments are judgments whose rationale is unclear. Examples are plurality opinions, which represent agreement on outcome but often not on reasoning, and *per curiam* opinions, which often present a short description of the outcome with no explanation of reasoning.

¶28 Hitt addresses the inherent tension between decisiveness and consistency, two values fundamental to American law. Decisiveness is seen in the obligation of the courts, and the Supreme Court in particular in this instance, to resolve conflict. Consistency, on the other hand, is the idea that the Supreme Court must promulgate legal doctrine. Over time, there has been a pivot away from decisiveness toward consistency. Hitt posits that the impetus for this shift was the Supreme Court Case Selections Act of 1988,² under which Congress gave the Supreme Court greater discretion in deciding what cases it would hear by limiting mandatory jurisdiction. This act has resulted in a marked decrease in the number of cases heard by the Supreme Court, although the number of petitions for *certiorari* and the number of cases heard by the federal circuit courts have increased significantly over the same period. The author argues that the Supreme Court abdicates its responsibility by not resolving splits among the circuits, cementing disparities in legal outcomes according to geography, which in turn leads to forum shopping. Moreover, Hitt argues that by prioritizing decisiveness over consistency, the Supreme Court is not operating according to what the Founders intended: acting as a body that says what the law is. In the final chapters, the author examines responses from Congress and the public to unreasoned judgments. Surprisingly, he finds both Congress and the public are outcome-motivated and do not seem as invested in consistency.

¶29 *Inconsistency and Indecision in the United States Supreme Court* is well organized. Each chapter opens with the summary of an illustrative Supreme Court case, providing interesting background information gleaned from the papers of Justices and their clerks, and ends with a conclusion summarizing key points. In each chapter, Hitt discusses how he used and analyzed data to reach his conclusions, and the book includes many charts and graphs of statistical analysis to illustrate his points. Further information on Hitt's data analysis is given in the detailed appendixes. Hitt also provides a rich list of references for researchers looking for more information about judicial decision making.

¶30 This book would make an excellent addition to any academic law library. This is particularly true for academic law libraries with collections on the U.S. Supreme Court.

* © Sarah A. Lewis, 2020. Faculty Services Librarian and Assistant Professor of Legal Research, University of Kentucky College of Law, Lexington, Kentucky.

2. 42 U.S.C. § 1257 (2018).

Kasper, Eric T., and Quentin D. Vieregge. *The United States Constitution in Film: Part of Our National Culture*. Lanham, Md.: Lexington Books, 2018. 303p. \$115.

*Reviewed by Michael N. Umberger**

¶31 Have you ever paused to consider what the original *Ghostbusters* (1984) says about freedom and the bureaucratic state? Eric T. Kasper and Quentin D. Vieregge, professors at the University of Wisconsin–Eau Claire, consider this and other questions in *The United States Constitution in Film: Part of Our National Culture*, a wide-ranging survey of the interplay between American film and constitutional law. Although the authors discuss many classics of law and film, including *Anatomy of a Murder* (1959), *To Kill a Mockingbird* (1962), and *My Cousin Vinny* (1992), their book pushes beyond the traditional law and film canon, finding rich sources of discussion in unexpected movies. The scope of the films analyzed runs the length of American film history, from *The Great Train Robbery* (1903) to *The Post* (2017), as well as the gamut of high and low film art, from Orson Welles's *Citizen Kane* (1941) to, somewhat shockingly, Pauly Shore's *Jury Duty* (1995).

¶32 This academic monograph is divided into 12 chapters, each centered on a major area of constitutional study. Chapters on the branches of the federal government are followed by chapters on individual rights and powers, ranging from the freedom of speech to the right to vote. Each chapter discusses specific constitutional passages and provides background on the development of an institution, right, or power in constitutional history. The analysis proceeds mostly chronologically, both in terms of constitutional and film history, and several films are discussed in depth on each subject. Kasper and Vieregge lay out how films not only serve an instructive role in popular culture but also function as aspirational visions for the country. Their belief that films powerfully shape popular understandings of the Constitution is ably demonstrated in their choices of films and discussions of how these films interpret the Constitution.

¶33 What distinguishes this study from others on law and film is its scope, taking into consideration not just modern movies but also a fair number of silent and other early films. Part of the satisfaction in reading this book lies in the joy of discovery, both because it sheds new light on old classics and because it highlights hard-to-find movies such as *The Story on Page One* (1959), *The Man* (1972), *The Front* (1976), and *The Star Chamber* (1983), as well as a number of television movies perhaps unfairly neglected today. As a result of casting a wider than typical net, the authors reveal many welcome surprises; for instance, who would have guessed that the ludicrous propaganda film *Reefer Madness* (1936) has an intelligent, contemporaneously accurate discussion of Congress's Commerce Clause powers?

¶34 The authors recognize that interpretations of the Constitution have changed over time and fairly apply the law as it existed at the time the movies were released. Where the law has shifted significantly since a film's release, the authors also occasionally speculate how the protagonists in certain films would have fared in court given those subsequent developments in constitutional doctrine. A good example of their engaging use of such speculation arises in the context of the evolu-

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tion of the Eighth Amendment's ban on cruel and unusual punishment, which the authors apply retroactively to the horrid conditions of imprisonment in *Cool Hand Luke* (1967), *Brubaker* (1980), and *The Shawshank Redemption* (1994). This passage and others like it illustrate how the popular medium of film could be used as a tool to visualize the impact of constitutional law in the real world.

¶35 The book works best when it compares films and discerns strains of constitutional doctrine that pervade both legal and popular culture. It succeeds as a survey of constitutional law in American film, although its aim for breadth rather than depth results in relatively shallow overviews that do little more than mechanically summarize particularly relevant legal plot points from individual films. An alternative approach might have been to structure the book as a comprehensive catalog of constitutional clauses, listing scenes from movies that illustrate, accurately or not, how the provisions operate in real life.

¶36 Film is a powerful medium that not only reflects popular understandings of the law but also influences how the public perceives the Constitution. The authors acknowledge that fictional portrayals of law in film often take liberties with constitutional fact, misapplying doctrine, distorting historical fact or, at least in the case of *Double Jeopardy* (1999), seemingly willfully misconstruing its central legal concepts. While these creative stretches may develop a film's artistic vision, Kasper and Vieregge emphasize that films do have real impact on how the public understands the law—it is not hard to imagine that, for many people, films serve as a primary source of constitutional law knowledge. In the authors' final analysis, film is an influential medium for education and inspiration about our nation's founding document, and this book, which concludes with a thorough bibliography and index, would fit well in a collection that values explorations of the intersection of law with popular culture. Recommended for academic law libraries as well as other academic libraries and public libraries.

Kaye, Judith S. *Judith S. Kaye in Her Own Words: Reflections on Life and the Law, with Selected Judicial Opinions and Articles*. Albany: Excelsior Editions, State University of New York Press, 2019. 536p. \$75.

*Reviewed by Jennifer Dixon**

¶37 In 1983, Judith Kaye became the first woman to serve on the New York Court of Appeals, the state's highest court. A decade later Judge Kaye achieved another first for women when she was elevated to chief judge, a position she held until her retirement in 2008. It is only natural that her long career would generate a host of noteworthy judicial opinions, speeches, and other writings. Many of them appear in *Judith S. Kaye in Her Own Words*, which provides a glimpse into the life and mind of one of the New York legal community's truly trail-blazing figures.

¶38 The book begins with more than 100 pages of memoir that Judge Kaye completed before her death from cancer in 2016. Fittingly, the memoir begins with Judge Kaye's start on the Court of Appeals. It describes discussions at the conference table, interactions with her fellow judges, and the process of how common law is made, revealing in particular detail her reasoning in a handful of major decisions.

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The memoir then discusses her “second act” as counsel at the firm Skadden, Arps, Slate, Meagher & Flom after she retired from the bench. It concludes on a more personal note, briefly delving into her childhood and family life. The tone is frank and conversational, and Judge Kaye’s passion for the law, justice, her family, and her relationships with her colleagues shines through.

¶39 A selection of Kaye’s judicial opinions, articles, and speeches follows the memoir, providing further insight into her life and career. The editorial team, which included the Honorable Albert M. Rosenblatt, Kaye’s colleague on the Court of Appeals; and Kaye’s daughter, Luisa M. Kaye, faced the unenviable task of choosing works to include from among Kaye’s 637 judicial opinions and hundreds more articles. A brief introduction from a fellow judge or a former law clerk precedes each opinion in the book. This additional commentary highlights Judge Kaye’s impact on those who worked closely with her, beyond the importance of the decisions to the legal world. The selected cases range from a 1990 opinion adopting the “business judgment rule” in corporate shareholder litigation to a 2006 dissent from a decision declining to adopt marriage equality for same-sex couples in New York. These decisions are a survey not only of Kaye’s work but also of the evolution of New York law.

¶40 The other, nonjudicial writings include, for example, Judge Kaye’s New York City Bar Association lecture entitled “Dual Constitutionalism in Practice and Principle,” which made waves by exploring the role of state constitutions, especially the New York Constitution, in protecting individual rights not protected by the federal Constitution. Also included is an essay on “Women in Law,” delivered at a New York University School of Law commencement and reflecting on the “civilizing, humanizing process” (p.365) that can and should advance the law and the legal profession.

¶41 Ultimately, *Judith S. Kaye in Her Own Words* paints a striking portrait of a highly respected and multitalented lawyer and judge. Readers curious about the evolution of New York’s law and courts over the past several decades will find the book of particular interest, as will any practitioner who has appeared (or hopes to appear) in the New York Court of Appeals. In general, this book is a highly recommended addition to law libraries in the New York area, but it could also interest libraries nationwide given that Judge Kaye’s thoughtful approach to the law is sure to continue to reverberate across state lines.

Melaku, Tsedale M. *You Don’t Look Like a Lawyer: Black Women and Systemic Gendered Racism*. Lanham, Md.: Rowman & Littlefield, 2019. 183p. \$35.

*Reviewed by Tanya M. Johnson**

¶42 What does it mean to look like a lawyer? As articulated by one of the participants in Tsedale M. Melaku’s recent study, “I think that there’s still enough of a thought that a lawyer looks a certain way.... [Others] feel comfortable with you because you fit an image of what they actually think works” (p.27). This mental construct of a lawyer, particularly for those in powerful positions at elite law firms, is a white male. In these law firms, the status quo is preserved by institutional prac-

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tices that reinforce this mental construct and systematically exclude those who do not “look like a lawyer.” Through detailed qualitative research and interviews, Melaku delves deeply into the systemic nature of the racial and gendered aspects of this construct and, even more important, the intersection of race and gender. In so doing, she brings to light the unique difficulties experienced by black female lawyers within an environment “created, controlled, and reproduced by elite white men and embedded within law firms” (p.36).

¶43 Drawing on the theoretical framework of systemic gendered racism, Melaku presents a thoughtful, critical, and well-written analysis of the lives and experiences of black female lawyers within elite corporate law firms that, despite alleged progress, remain largely the province of white men. *You Don't Look Like a Lawyer* focuses on two related core concepts explained in the first chapter. First, the “invisible labor clause” describes the “added emotional, mental, and physical labor black women are forced to expend in order to survive in the white institutional spaces” (p.17) such as law firms. An unwritten rule, this invisible labor clause takes many forms, from the daily investment of time needed to project an expected physical appearance to the emotional stress caused by worrying about job performance. Second, the “inclusion tax is the additional resources ‘spent,’ such as time, money, and mental and emotional energy, just to be allowed in white spaces” (p.18). It is essentially a necessary fee that black female lawyers must pay to be included in law firms dominated by white men.

¶44 The remaining chapters of the book elucidate the myriad ways in which the invisible labor clause and the inclusion tax operate in the legal workplace. Melaku examines professional appearance early in *You Don't Look Like a Lawyer*, discussing the perceptions and stereotypes associated with not looking like the archetypal white male lawyer. She then explores black female lawyers’ outsider status within law firms, where the spaces defined by white males typically exclude black women and thereby limit opportunities. This outsider status is exacerbated by the adverse effects of limited access to external social networks that would provide assistance in navigating this space. Relatedly, this chapter discusses how negative views of affirmative action contribute not only to the isolation of black female lawyers but also to retention rates within firms. The theme of outsider status is echoed in later chapters in which Melaku discusses professional networking challenges as well as exclusion of black female lawyers from mentor and sponsorship relationships between partners and associates, all of which lead to disparities in the performance review process and limited opportunities for advancement. Melaku also scrutinizes the unique experiences of black female lawyers in an environment where the focus is usually on either race (black men) or gender (white women), while the distinct difficulties of people who fit both categories (black women) are often sidelined or ignored. She concludes with an overarching discussion of the barriers to success that black female lawyers face, which could apply equally to almost any professional setting. Finally, an appendix detailing Melaku’s research methodology is helpfully provided.

¶45 As I was drafting this review at the reference desk, a white male patron in a golf shirt approached me and, upon seeing the book, began to describe how racial and gender diversity in the legal profession has significantly improved since he first started working. He explained hiring and promoting one excellent black female lawyer during his long career in a leadership role in the legal department of a very large company. Using the wealth of explanations and examples from Melaku’s study,

I was able to challenge the man's beliefs. I explained the invisible labor clause, the inclusion tax, and the significant hurdles that black female lawyers must overcome in an environment with which he has minimal difficulties. Although the man's primary response was, "I've never thought about it that way," he was receptive to the conversation and asked a number of questions to clarify his understanding. I do not know whether I actually changed the man's mind, but clearly I made him think about the issue in a different way, and just having that conversation felt like some form of progress. In Melaku's words, I "shift[ed] the focus away from quantifying the number of associates of color and partners in firms to actually discussing how racial and gender discrimination plays a significant role" (p.119). When I first finished reading the book, I was almost disappointed that *You Don't Look Like a Lawyer* offered little discussion of specific strategies to combat systemic gendered racism, and yet there I was doing just that because of this book.

¶46 In sum, Melaku paints an accurate yet bleak, and at times emotionally disturbing, picture of the lives and experiences of black female lawyers at elite corporate law firms. *You Don't Look Like a Lawyer* is a necessary contribution to the study of the legal profession as a whole, which for too long has avoided difficult discussions of systemic gendered racism. I recommend this book to anyone who is working or wants to work in the legal profession, law librarians included. It may be particularly appropriate for law firm libraries involved in diversity and inclusion efforts within their firms and law school libraries whose faculty and students struggle with these issues. To conclude, I would like to echo Melaku's plea and "urge all readers to go beyond a shallow understanding of the experiences of the black women highlighted in this book and earnestly consider their obstacles in attempting to gain equal opportunity and access to the top and how we can clear that path of obstructions" (p.120).

Op den Kamp, Claudy, and Dan Hunter, eds. *A History of Intellectual Property in 50 Objects*. Cambridge: Cambridge University Press, 2019. 429p. \$35.

*Reviewed by David M. Haendler**

¶47 *A History of Intellectual Property in 50 Objects* uniquely combines an edited scholarly collection and a lavishly illustrated coffee-table book. It discusses a wide variety of themes in intellectual property law and history through 50 chapters, each centering its analysis on a (loosely defined) material object. For example, the reader learns about how geographical indication laws have influenced the creation of Champagne and vice versa, sees the development of U.S. privacy doctrines through the lens of the Kodak camera, explores the public domain's shifting boundaries alongside Steamboat Willie, and much more. The best chapters tell the stories of the industries, egos, and technologies behind now-ubiquitous inventions and well-known cultural artifacts, using those narratives as jumping-off points for reflection about how those inventions became ubiquitous, how those artifacts came to be well known, and the subtle interplay between law and technosocial developments.

¶48 Each object's story is told with the aid of copious illustrations. It would hardly do to tell the tale of *Oscar Wilde Portrait No. 18* and its influence on celebrity

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culture without including a copy of the photograph or to discuss the controversy over Mike Tyson's Maori-inspired facial tattoos and cultural appropriation without providing images for comparison. In some instances, the illustrations get in the way of the text—a two-page spread of Scarlett O'Hara dressing does not add much to the explanation of 19th century patent litigation over corset designs—but for the most part, they help create a work that can be enjoyed on multiple levels.

¶49 With 50 contributing authors from diverse disciplines including law, sociology, media, and history, the book covers an impressive range of themes and subjects. However, the book's breadth also necessitates considerable brevity. One could write an entire book about the development of the light bulb, and some authors have,³ but in *A History of Intellectual Property in 50 Objects*, the creation of this icon of discovery and the industrial battles over control of its market must be condensed into just a few pages. Regardless, the brevity is mostly a strength. This is not a book designed for serious research, but it is one that may inspire many productive questions. Relatedly, with so much ground to cover, the authors have little space to explain foundational concepts. Many authors assume the reader has some level of doctrinal knowledge about intellectual property law, and a reader with no background in the field will likely be confused by some of the specialized vocabulary. The book is fairly accessible and reader-friendly, but it would not be ideal as an introduction to the subject area.

¶50 Although organized in a roughly chronological order spanning 12th century Korean pottery glazing to 21st century Bitcoin mining, *A History of Intellectual Property in 50 Objects* is decidedly not a systematic or comprehensive review of how intellectual property doctrines and systems have developed over time. A reader hoping for such a straightforward narrative will leave disappointed. The playful format encourages skipping about; a reader may flip to any chapter of this history without fear he or she will miss out on important background. Law professors may wish to assign a chapter or two in isolation.

¶51 *A History of Intellectual Property in 50 Objects* is a brisk, pleasurable, and stimulating meander through a fascinating and multifaceted topic. It will be welcomed by academics looking to enrich their historical knowledge or ground their students' understandings of abstract doctrines, and anyone seeking a holiday present for an intellectual property enthusiast. Recommended for academic law libraries as well as college and university libraries.

Stevens, John Paul. *The Making of a Justice: Reflections on My First 94 Years*. New York: Little, Brown & Co., 2019. 560p. \$35.

*Reviewed by Shannon Roddy**

¶52 Justice John Paul Stevens was appointed to the Supreme Court by President Gerald Ford. He was the third-longest-sitting Supreme Court Justice, serving from 1975 until his retirement in 2010. In his first memoir, *Five Chiefs*, he recounted and reflected on his legal career. *The Making of a Justice* is a somewhat more personal memoir, opening with 100 pages devoted to Justice Stevens's pre-Supreme Court

3. See, e.g., JANE BROX, *BRILLIANT: THE EVOLUTION OF ARTIFICIAL LIGHT* (2010); ROBERT D. FRIEDEL, BERNARD S. FINN & PAUL ISRAEL, *EDISON'S ELECTRIC LIGHT: THE ART OF INVENTION* (2d ed. 2010).

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years, starting with his family and childhood⁴ and culminating with his time as a judge on the Seventh Circuit. He follows this with chapters on the Supreme Court, adopting Justice Byron White's opinion that a new Court is born each time a new Justice arrives. Thus, these chapters begin with "The Stevens Court" and end with "The Kagan Court" (Justice Stevens's successor). Each of these chapters is divided into the Court's terms.

¶53 Most of *The Making of a Justice* is devoted to discussions of key cases decided each term Justice Stevens was on the Court. Though he was appointed by a Republican president, Justice Stevens often voted with the liberal wing of the Court. In recounting his first term on the bench, he emphasizes that he joined a majority opinion upholding an earlier ruling interpreting the Civil Rights Act of 1866 as prohibiting private discrimination.⁵ He also voted with Justices Brennan and Marshall to hear a case involving the constitutionality of a Virginia statute banning sodomy.⁶ This was nearly 30 years before *Lawrence v. Texas*⁷ and 40 years before *Obergefell v. Hodges*.⁸

¶54 Justice Stevens's stance against the death penalty in particular is woven throughout the narrative. He candidly admits that he made a mistake in not voting to invalidate Texas's death penalty statute in *Jurek v. Texas*⁹ in 1976. The Justice later came to believe that the risk of putting an innocent person to death is a sufficient reason to abolish capital punishment in all cases.

¶55 Lay readers may find it difficult to wade through the technical discussions of constitutional provisions and legal doctrine. Even those with a law background will likely skim over some cases. Everyone except Supreme Court experts will likely need to look up the cases or refer to secondary sources to more fully understand and appreciate Justice Stevens's commentary.

¶56 Those without legal training or a particular interest in the law should still find aspects of the book enjoyable. Justice Stevens includes enough entertaining anecdotes to keep the narrative moving. Intermingled with his discussion of key cases, he describes memorable events in his and his clerks' lives, with a particular emphasis on sports. He recounts playing ping-pong against Justice William Rehnquist, learning to ski in Aspen, and playing golf at Augusta National.

¶57 Baseball fans should especially enjoy parts of the book, as the Justice peppers his memoir with interesting baseball stories, including a firsthand account of arguably the most famous home run in history: Babe Ruth's called shot. It happened during game three of the 1932 World Series, and Justice Stevens sat with his father about 20 rows behind the third-base dugout.¹⁰ The book's index, disappointingly, does not contain entries for baseball or sports, although the Chicago Cubs,

4. The Justice's memory is quite remarkable, as he recounts events from when he was five or six years old, including a brief meeting with Amelia Earhart.

5. *Runyon v. McCrary*, 427 U.S. 160 (1976).

6. *Doe v. Commonwealth's Attorney for Richmond*, 425 U.S. 901 (1976).

7. 539 U.S. 558 (2003).

8. 576 U.S. 644 (2015).

9. 428 U.S. 262 (1976).

10. Law librarians may be particularly gratified to learn that the Justice's Babe Ruth story involves a bit of research. Justice Stevens recounts that a few years ago, after he told his story at a judicial conference, a "young bankruptcy judge" (whom he does not name) (p.18) disputed his account of the direction of the Babe's called shot. Justice Stevens promptly directed his law clerk to research the issue, and he was ultimately vindicated.

the Justice's beloved hometown team, does merit its own entry. Indeed, he describes throwing out the first pitch at a Cubs game (it made it to the plate despite being a bit high and outside) as "unquestionably the highlight of [his] career" (p.451).

¶58 Throughout the book, Justice Stevens is unfailingly kind and gracious, referring to friends, former colleagues, law clerks, and secretaries by name as often as possible. While he does not shy away from noting when he felt a colleague's decision or reasoning was flawed, he never makes ad hominem attacks. Those hoping for more gossipy anecdotes about the Court should look elsewhere. Perhaps the Justice's strongest personal criticism is when he notes that all the Justices supported Justice Rehnquist's elevation to Chief Justice "because [they] knew he would do a significantly better job than Burger had" (p.225). One is left to wonder what objections he had to how Chief Justice Warren Burger ran the Court.

¶59 *The Making of a Justice* concludes with a description of Justice Stevens's surprise 94th birthday party and a letter of birthday wishes from President Obama with a handwritten postscript: "We miss you on the Court!" (p.531).

¶60 This is an appropriate book for all types of law libraries, as scholars, practitioners, and public patrons alike should find aspects of it educational and enjoyable. It is highly recommended.

Suzor, Nicholas P. *Lawless: The Secret Rules That Govern Our Digital Lives*. Cambridge: Cambridge University Press, 2019. 210p. \$99.99.

*Reviewed by Andrea Alexander**

¶61 The title *Lawless: The Secret Rules That Govern Our Digital Lives* is perfectly calibrated to grab the attention of readers who've been jaded by years of clickbait headlines and ominous articles about privacy and the dangers of Internet surveillance. Within the first six pages, though, Nicholas Suzor justifies the extremity of his title by providing a timely and relevant narrative that shows exactly how unregulated the Internet is. To illustrate this, he uses the Charlottesville Unite the Right rally tragedy and its aftermath, demonstrating how a lack of regulation resulted in private companies effectively operating as policymakers and enforcers to quell the white supremacist tide of the Daily Stormer website. Suzor competently lays out the sometimes-problematic nature of the contemporary Internet, where the lack of articulated and enforced rules serves to encourage open discourse and knowledge exchange—but also to fuel the propagation of online communities that promote hate and violence. He supports his ideas with a smart and well-researched discussion showing some of the many areas of law implicated in our own digital lives. The subsequent chapters in part 1 detail the consequences of this digital Wild West with examples like social media harassment of women, minorities, and LGBTQIA+ individuals; revenge porn; and file sharing of copyrighted materials—topics that are familiar and germane to law students.

¶62 Part 2 may be less accessible for some readers due to its shift from the largely concrete problems to more nebulous, policy-based potential solutions. Given how thoroughly the Internet has infiltrated our lives, there is virtually no end to the possible areas that could be regulated. But the many nuances inherent in

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these potential areas of regulation make it difficult to propose specific means of handling the challenges set out in part 1. Suzor addresses those difficulties:

It's a mistake to look at particular controversies and mistakes in isolation. The real problem is systemic; it's about how platforms are designed, how their rules are set out and enforced, and how they choose to do business. The open question is what we should expect from platforms: what are their obligations? There are no easy answers to many of these questions, many of which involve difficult trade-offs. (p.129)

Part 2's broadness—its lack of specific policy recommendations and lighter hand with the examples that keep part 1 moving at a quicker clip—is a feature, not a bug, but the change in focus may have an impact on how readers experience this book.

¶63 *Lawless* is helpfully structured with a detailed table of contents, an index, and extensive endnotes (although flipping back and forth to those may irritate readers accustomed to legal-style footnoting on the relevant page). Slim at 171 pages of text, it is a relatively quick read. But the book's thesis is also its biggest weakness as a secondary legal source: this area *is* largely lawless, meaning that the book cites few primary law sources. It may therefore prove unhelpful in a court library or law firm setting. In addition, its scholarly tone may not appeal to most readers of popular nonfiction. Although the quick pace of the digital world may make this book soon outdated, it will remain helpful as a snapshot of a moment in history when the unregulated Internet's problems are clear while solutions are still largely out of reach. This affordable title will appeal to law students and faculty members researching the topic for a seminar or article touching on Internet law, women and law, harassment, international law, copyright, and more. Recommended for academic law libraries.

Thomas, Evan. *First: Sandra Day O'Connor*. New York: Random House, 2019. 476p. \$32.

*Reviewed by Kevin Rothenberg**

¶64 In her later years on the Supreme Court, Justice Sandra Day O'Connor displayed an embroidered pillow in her chambers that read, "Maybe in error, but never in doubt" (p.340). Jeffrey Rosen, a constitutional law professor writing for the *New York Times Magazine* in 2001, considered the pillow a pithy summation of her flaws as a judge: "[S]he views the court in general, and herself in particular, as the proper forum to decide every political and constitutional question in the land" (p.340). To her defenders, like former clerk Ronnell Anderson Jones, the pillow spoke instead to her deep sense of duty to Court and country, and her need to be resolute in her decision making, remarking that "[s]he didn't like those 'Most Powerful Woman in the World' articles.... She did not relish her role as the fifth vote. I heard her agonize over it...." (p.341). Biographer Evan Thomas, charitable to O'Connor to a fault, gives yet a third interpretation, positing that the embroidery represented the complex, many-faceted O'Connor herself. In his words, "[s]he could present a confusing or contradictory image. She could be charming or brusque. She could be disarmingly straightforward; she could also be roundabout and sly" (p.341). More striking perhaps than the pillow (which was a kitschy gag

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gift from a few of her friends) is that a distinguished constitutional law professor, a former Supreme Court clerk, and a seasoned editor of *Newsweek* and *Time* each thought the pillow spoke to something deeper about O'Connor—and that each of them apparently heard something different.

¶65 *First*, Evan Thomas's new biography of Sandra Day O'Connor, is flush with these kinds of anecdotes, and necessarily so. To a generation of Supreme Court litigators and journalists, Justice O'Connor was enigmatic. She was not an ideological purist like Antonin Scalia or Ruth Bader Ginsberg, not an effete like Stephen Breyer, not a one-of-a-kind original like David Souter, and not a proud independent like John Paul Stevens. Instead, as Clarence Thomas put it, she was "the glue" (p.301) that held the Justices together—a moderate, a pragmatist, a dealmaker, an expert from her days as the Arizona Senate majority leader in massaging, persuading, whipping, cajoling, and negotiating strong personalities, while rarely revealing too much about herself to others.

¶66 Such a complex and guarded person can make for a difficult biographical subject. Thomas, a veteran of extensively researched, well-sourced biographies of eminent Americans including Dwight D. Eisenhower, Robert Kennedy, and Richard Nixon, thankfully resists the temptation to oversimplify. The biography, over 400 pages (including 40 pages of endnotes, a bibliography, and an index) and spanning nearly 90 years, carefully lays out the details of Justice O'Connor's life from the beginning up to the present, showing how certain formative personal and intellectual experiences informed her decision making both as a private individual and as a Supreme Court Justice.

¶67 Some of these formative experiences bear elaborating. On the Lazy B. Ranch where she grew up, she learned to be self-reliant, to make no excuses for herself, and to use her innate intelligence and steely determination to overcome any challenge no matter how daunting: lessons she would carry into her professional life. Undeterred by pervasive and vicious sexism, she ruled the Arizona Senate and eventually became, in some observers' eyes, the de facto chief justice; more than one commentator referred to the Rehnquist Court as the "O'Connor Court" (p.308) instead. As an undergraduate and then a law student at Stanford University, she became deeply committed to the civic life and health of the United States. Her confidence in the essential rightness of America's civic and political system later gave her the confidence to make difficult and sometimes controversial decisions on issues like abortion and affirmative action for what she saw as the good of the country, even when she had personal reservations. Through her lifelong commitment to the welfare of people—as socialite par excellence in Phoenix and Washington, bridge builder and occasional arm twister in the Arizona Senate, the unifying force within the Supreme Court, and an advocate for justice and fair play around the world—she became an exemplar of how a person can, in the words of one of her clerks, "do it all" (p.295).

¶68 Sandra Day O'Connor is an extraordinary figure, and it is easy to get swept up by the story of her life; to grow to admire, like, and retroactively root for her; and, in turn, to give O'Connor the benefit of the doubt. Thomas is not immune to this appeal. Though he presents both sides of the arguments surrounding her jurisprudence, his sympathies mostly lie with her defenders. In his telling, she was a humble and patriotic public servant who sought careful, incremental change and flexible standards rather than bright-line rules, and curbed the worst partisan

excesses that began to creep in after her departure. Scholars more steeped in constitutional jurisprudence may not agree on such a universally positive assessment of her tenure on the Court. Thomas also often downplays the impact that her personal political leanings may have had on her decision making while on the Court. For example, Thomas endorses the most generous reading possible of *Bush v. Gore*,¹¹ perhaps her most contentious decision. In his view, by voting to halt the recount in Florida, she did not act on her own political preferences but instead made the hard decision the country needed, sparing it from a protracted and painful political struggle. Many will find his account of the 2000 election specifically, and the role that her politics played in her jurisprudence generally, somewhat unconvincing.

¶69 Despite these shortcomings, Thomas expertly illustrates how specific experiences from O'Connor's past surfaced again and again throughout her life, informing both her private and professional lives. By book's end, a nuanced portrait of O'Connor emerges: at once complicated, brilliant, and sympathetic, sometimes flawed and perhaps a bit too self-assured, but far more often noble and inspiring. *First* is likely to become one of the (or perhaps the) standard biographies of Sandra Day O'Connor and deserves a place in any academic law library's collection.

Wehle, Kim. *How to Read the Constitution and Why*. New York: Harper, 2019. 334p. \$26.99.

*Reviewed by Vanessa Seeger**

¶70 Kim Wehle is a professor of law at the University of Baltimore School of Law and legal expert for CBS with credentials almost as long as her book. In *How to Read the Constitution and Why*, Wehle makes a compelling argument for why each citizen of the United States should read the Constitution and understand generally what it actually says. She uses plain language and real-world examples to explain each article and section of the Constitution in the context of present-day politics. She reasons that understanding the provisions of the Constitution is important because

[a] prohibition on murder is meaningless if there are no police officers or prosecutors to enforce it or if a judge's order sending a convicted criminal to prison can be ignored for the right price.... Accordingly, if a provision of the Constitution is *not* enforced, it becomes worthless. (p.8)

¶71 Wehle emphasizes that each time a Supreme Court case or piece of legislation interprets the Constitution in a new way, each time the Supreme Court or Congress chooses not to enforce a measure of the Constitution, that decision has long-lasting ramifications. She notes that “[o]nce [an interpretation] gets in the government’s ‘toolbox,’ it can be picked up for use at any time” (p.14).

¶72 *How to Read the Constitution and Why* begins by exploring each branch of government and the articles of the Constitution that imbue them with power. She discusses the implications of each word, each comma, and each glaring lack of definition. For instance, how does the Constitution define “executive power”? Does the

11. 531 U.S. 98 (2000).

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President have the power to pardon anyone, including himself? Do executive orders and presidential proclamations have authority under the Constitution? If administrative agencies were created as entities of the executive branch, but have the power to create regulations with the force of law like the legislative branch, and can hold hearings and trials like the judicial branch, how does this system uphold the separation of powers?

¶73 The majority of the book explores “rights” and what is or is not guaranteed under the Constitution. Each amendment in the Bill of Rights is discussed in turn, with multiple hypotheticals and examples to give context. As a result, the book bogs down somewhat. Wehle’s extensive use of examples, while well intentioned, seems excessive and distracting. While the plain language of the text is appreciated, her use of words like “period” and “full-stop” to emphasize limitations starts to wear.

¶74 Overall, Wehle does a good job of discussing multiple administrations representing both parties throughout the history of the United States. Those who come into this book expecting a discussion of the constitutionality of presidential powers, from the Affordable Care Act to waterboarding to the dismissal of James Comey, will find an insightful book written in terms easy to understand by laypersons. However, the reading experience may not be as comfortable for all readers, particularly those with conservative leanings. The introduction constructs multiple hypothetical situations to discuss presidential powers in general that could be construed as accusatory toward the current administration. The chapter addressing the Second Amendment is likely to read as biased by more ardent supporters of that particular amendment.

¶75 I would recommend this book for members of the general public who want to better understand the Constitution and its implications in modern politics, but it may not be academic or objective enough for most law libraries.