

10-21-1985

10-21-1985 Correspondence from O'Connor to Brennan

Sandra Day O'Connor
US Supreme Court Justice

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Recommended Citation

O'Connor, S.D. Correspondence from O'Connor to Brennan, Delaware v. Fensterer, 474 U.S. 15 (1985). Box 367, Harry A. Blackmun Papers, Manuscript Division, Library of Congress, Washington, D.C.

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HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 21, 1985

No. 85-214 Delaware v. Fensterer

Dear Bill,

I think your concerns may be satisfied by the following revisions to the circulating draft, which I am willing to make if they are satisfactory to you:

Page 4, line 32

Strike out the word "Accordingly," and insert the words "Generally speaking."

Page 5, line 13:

Insert a new paragraph: "We need not decide whether there are circumstances in which a witness' lapse of memory may so frustrate any opportunity for cross-examination that admission of the witness' direct testimony violates the Confrontation Clause. In this case, defense counsel's cross-examination of Agent Robillard demonstrated to the jury that Robillard could not even recall the theory on which his opinion was based. Moreover, through its own expert witness, the defense was able to suggest to the jury that Robillard had relied on a theory which the defense expert considered baseless. The Confrontation Clause certainly requires no more than this."

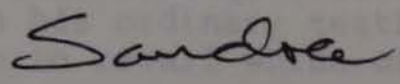
Page 5, lines 14-17:

I will make the change you suggest, so that the sentence states only that Green "lends no support to respondent."

Page 6, line 23:

Insert "generally" before "satisfied."

Sincerely,



Justice Brennan
Copies to the Conference