

10-21-1985

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

Sandra Day O'Connor  
*US Supreme Court Justice*

Follow this and additional works at: <https://ir.library.illinoisstate.edu/delawarevfensterer>



Part of the [Criminal Law Commons](#)

---

### 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.

This Conference Note is brought to you for free and open access by the U.S. Supreme Court papers, Justice Blackmun at ISU ReD: Research and eData. It has been accepted for inclusion in Delaware v. Fensterer, 474 U.S. 15 (1985) by an authorized administrator of ISU ReD: Research and eData. For more information, please contact [ISURed@ilstu.edu](mailto:ISURed@ilstu.edu).

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."

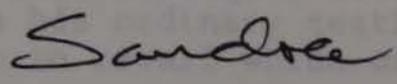
Page 5, lines 14-17:

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