LAUGHTER AT THE COURT: THE SUPREME COURT AS A SOURCE OF HUMOR

LAURA KRUGMAN RAY*

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* Professor of Law, Widener University School of Law; A.B. 1967, Bryn Mawr College; Ph.D. 1971, Yale University; J.D. 1981, Yale University. I am grateful to Jean Maccharoli Eggen, Alan Garfield, Philip Ray, and Florence Wagman Roisman for reading earlier drafts of this article and offering invaluable comments. Copyright © 2006 by the author. Permission is hereby granted for noncommercial reproduction of this Article in whole or in part for educational or research purposes, including the making of multiple copies for classroom use, subject only to the condition that the name of the author, a complete citation, and this copyright notice and grant of permission be included in the copies.
I. INTRODUCTION

The United States Supreme Court, with its black-robed justices and its marble columns, has long been regarded as the most formal and opaque branch of the federal government. While the president and the members of Congress have deliberately wooed the public with election campaigns that attempt to humanize the candidate, the justices have preferred to maintain the Court’s traditional aura of remote dignity by steadfastly refusing to televise its proceedings.\(^1\) Even the current willingness of some justices to present themselves directly to the public through extrajudicial writings and television interviews has not yet erased the public image of the Court as a solemn institution.\(^2\) When a legal scholar recently tracked the incidence of humorous exchanges during the Court’s oral arguments, the *New York Times* considered the idea of laughter at the Court worthy of a front page article.\(^3\) Yet even if there have been few occasions for laughter in the courtroom, the Court itself has in the past half century become a consistent source of humor in the pages of another, less solemn American institution, *The New Yorker* magazine. The emergence of the Court as a reliable subject for *New Yorker* cartoons suggests two related developments: the growing public awareness of the Court’s role in American life and the parallel willingness of the public to appreciate—and laugh at—the impact of the Court’s jurisprudence on its own domestic life.

In its eighty-year history, *The New Yorker* has come to represent an ideal of urban sophistication in its attitude toward the arts, social behavior, and public affairs.\(^4\) And the best known aspect of *The New Yorker* is its cartoons, the twenty or so drawings in each issue that its readers turn to first and savor.\(^5\) These cartoons, as recognizable in their sphere as the Court is in its own, have set the standard for American visual humor. Over half a century ago, Delmore Schwartz observed that “it is common by now

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2. See *id*.
5. As David Remnick, the current editor of *The New Yorker*, has observed: “They are what readers read first. (Don’t lie. You know it’s true.)” David Remnick, *Foreword to THE COMPLETE CARTOONS OF THE NEW YORKER* 8 (Robert Mankoff ed., 2004) [hereinafter COMPLETE CARTOONS].
to say of something funny that it is just like a *New Yorker* cartoon.” 6 The intersection of these two institutions—*New Yorker* cartoons and the Supreme Court—is a cultural convergence that has much to tell us about the place of the Court in the public consciousness.

The publication of *The Complete Cartoons of The New Yorker*, a massive book accompanied by two compact disks containing all 68,647 cartoons for the eighty years from the inaugural issue of February 21, 1925, through early 2004,7 provides the ideal occasion to examine the way in which *New Yorker* artists have treated the Supreme Court as a source of humor for their readers. It should not be surprising that in the magazine’s early years the Court played at best a marginal role. *New Yorker* cartoons have always tended to focus primarily on the social lives of their readers—the behavior, customs, language, and relationships of the affluent urban sophisticates who comprised the magazine’s original subscription base and the broader constituency that joined them in the years following World War II.8 The home has always been the setting for a substantial number of these cartoons, a place where conversations between spouses, or parents and children, or hosts and guests, take place; the bar or cocktail party, where alcohol lubricates social exchanges, runs a close second. Until the Court penetrated the consciousness of *New Yorker* readers and was perceived by them as an influence on their private lives—and therefore a plausible topic of their conversations—it was of little use to the cartoonists who relied on an immediate spark of recognition to ignite their jokes. Conversely, when, starting in the 1950s, the Court moved from the margins to occupy a larger role as a consistent source of cartoon humor, that role signaled an important shift in *New Yorker* readers’ awareness of the Court’s work and its impact on their lives.

This domestic, interpersonal approach of so many *New Yorker* cartoons is in strong contrast to the editorial cartoons that have always

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6. Delmore Schwartz, *Smile and Grin, Relax and Collapse*, PARTISAN REV., Mar. 1950, at 292, 295. Schwartz’s comment, contained in a review of an anthology of *New Yorker* short stories, was not entirely complimentary. Read in its entirety, the sentence criticized the homogeneity of the *New Yorker* prose style as a limit on the varieties of experience the magazine was interested in reflecting: “As it is common by now to say of something funny that it is just like a *New Yorker* cartoon, so we may conclude by finding all existence New Yorkerish.” Id. In a more laudatory observation about the importance of *New Yorker* cartoons, M. Thomas Inge maintains that the magazine has “established the standards against which the works of all modern practicing cartoonists are measured.” M. THOMAS INGE, COMICS AS CULTURE 109 (1990).

7. *COMPLETE CARTOONS, supra* note 5. The number of cartoons is included on the cover.

focused on public institutions for their humor. New Yorker cartoons, unlike editorial cartoons, are not direct commentaries on the events of the day or deliberate attempts to provoke their readers. 9 One editorial cartoonist has characterized his craft by insisting that “[c]artoons are ridicule and satire by definition . . . . A negative attitude is the nature of the art.” 10 According to the authors of a history of political cartoons, they “work best when they attack.” 11 In contrast, New Yorker cartoons work not by a frontal assault but by indirection. 12 Even when, as occurs occasionally, a New Yorker cartoon addresses a controversial political issue such as busing to achieve school desegregation, the reference is oblique and often filtered through the reaction of a character. In a captionless 1970 cartoon by Edward Koren, the drivers of two identical school buses eye each other without comment; above their windshields one bus is marked “DE FACTO” and the other “DE JURE.” 13 Two years later, in a cartoon by Whitney Darrow, Jr., a patron at a neighborhood bar asks his companion, “How would you feel if they bused you clear across town to another bar?” 14 The Koren cartoon could have made a simpler point—the functional identity of two varieties of segregation—by presenting two empty buses; instead, the wary glances exchanged by the drivers also suggest the ambivalence of the human response to public policy. Darrow brings the busing issue even more clearly into the realm of the personal by allowing the drinking buddies to struggle with its human consequences. Both cartoons locate a public issue within a private context, expecting readers to understand the topical reference and to find humor in the personal response.

This interaction of the public and the private, the political and the social, distinguishes New Yorker cartoons from editorial cartoons and


10. LAMB, supra note 9, at 41 (quoting cartoonist Paul Conrad).

11. STEPHEN HESS & SANDY NORTHROP, DRAWN & QUARTERED: THE HISTORY OF AMERICAN POLITICAL CARTOONS 14 (1996). Hess and Northrop believe that “[w]ith the rare exception of applauding a peace agreement or a singular individual act of valor, cartoonists are nobody’s cheerleaders. Some cartoonists gauge their success by the hate mail they receive.” Id.

12. According to Ben Yagoda, author of a comprehensive history of the magazine, indirection was a characteristic strategy for the cartoons of the period from 1952–1962: “It was mostly through indirection that New Yorker cartoons could critique the status quo or give expression to the generalized discomfort, anxiety, alienation, or oppressiveness that many ostensibly successful, contented, and well-adjusted Americans felt but could not quite admit to.” YAGODA, supra note 8, at 279.


simple visual gags. It has made them what Ben Yagoda, a historian of the magazine, calls a “cultural categor[y], . . . a specific kind of aesthetic lens on experience.” This Article examines cartoons about the Supreme Court, its decisions, and the Constitution through that lens to explore the way in which public consciousness of the Court’s role developed in the course of the twentieth century from a distant acquaintance with the institution to precise familiarity with its jurisprudence, making the Court a suitable subject for the sophisticated humor of New Yorker cartoons.

II. CARTOON AND COURT: THE NEW YORKER TAKES ON THE SUPREME COURT

When Harold Ross, founder of The New Yorker and its editor for over twenty-five years, laid down his manifesto in a fundraising prospectus circulated several months before the inaugural issue of February 21, 1925, he clearly did not anticipate the cultural prominence and range that its cartoons would achieve. After defining the magazine as “a reflection in word and picture of metropolitan life” whose purpose is “to be so entertaining and informative as to be a necessity for the person who knows his way about or wants to,” the announcement referred only briefly to its intentions for the visual arts: “The New Yorker expects to be distinguished for its illustrations, which will include caricatures, sketches, cartoons and humorous and satirical drawings in keeping with its purpose.” “Cartoons” came third in the list, although they quickly became a signature attraction; in 1928, the magazine published the first retrospective collection of its cartoons, which subsequently became an established tradition.

Although these early cartoons reflected a limited world view, they also prepared the way for a more comprehensive perspective. One important innovation was the rejection of the then-popular format in which a cartoon consisted of humorous dialogue between two characters, illustrated by a drawing. The magazine championed the use of “the single-line caption” for a cartoon whose humor derived not from dialogue alone, but from the relationship of the caption to the “drawing,” the term The New Yorker

15. Yagoda, supra note 8, at 12.
16. See id. at 38–39.
19. Lorenz, supra note 17, at 48–49. See Lee, supra note 18, at 156.
preferred to “cartoon.” That close relationship did not, however, mean that the same person generated the drawing and the caption. In fact, most of The New Yorker’s early cartoonists supplied only the drawing, and staff members, including E.B. White, or other writers provided the caption that transformed a drawing into a successful cartoon. According to Lee Lorenz, a cartoonist as well as the magazine’s art editor from 1973 to 1993, “[t]his dialectical process between artists and writers eventually resulted in the evolution of a distinctive new cartoon style based more on character than situation which became a prototype for what most people now consider the typical New Yorker cartoon.” That dialectic faded in the 1960s and 1970s with what Lorenz describes as “the emergence of a new, very personal comic sensibility” of artists who are “essentially writers who illustrate their own pieces.” When these New Yorker writer/artists tackle political subjects, as they have done increasingly since the 1960s, their approach is most often through the reactions of their characters to the impact of the world of public affairs on their private lives.

For the Supreme Court to figure in New Yorker cartoons, their artists would need to view the Court as a part of the public world capable of impinging on the lives of their characters. And for those cartoons to amuse New Yorker readers, those readers would need to appreciate the impact of the Court’s decisions on themselves and their private world. In theory, both those ingredients were abundantly present in the mid-1930s, when the Court became the center of a national conflict over the constitutionality of Franklin Roosevelt’s New Deal legislative agenda to counteract the ravages of the Great Depression. As the Court voted to strike down key parts of the Roosevelt program and the president responded with his ill-fated Court-
packing plan. New Yorker cartoons had nothing to say about the Court’s performance or its battle with the president. According to Roger Angell, a second generation New Yorker staffer whose mother, Katharine Angell, and stepfather, E.B. White, were architects of the magazine almost from its inception, The New Yorker “uneasily found room for the market crash of ’29 but generally passed up breadlines and economic despair because there was no way to do them lightly.” In 1937 the literary critic Dwight Macdonald criticized the magazine’s “Jovian aloofness from the common struggle” and found “something monstrously inhuman in the deliberate cultivation of the trivial.” Only a single 1930s New Yorker cover, among dozens illustrating the pleasures of affluent urban life, pointed directly to the bleak economic situation. Christina Malman’s cover of May 1, 1937, showed a puzzled young May Queen holding her maypole while surrounded by picketers with signs that read “Down with Capitalism,” “Workers Unite,” and “Unfair to Labor.”

The two earliest cartoons that refer directly to the Court—and the only cartoons to do so in the 1920s and 1930s—support the description of New Yorker cartoons of this period as “almost triumphantly superficial,” at

25. Id.
26. The magazine did criticize Roosevelt’s Court-packing plan. An entry in the anonymous The Talk of the Town column in the March 13, 1937, issue rejected President Roosevelt’s contention that the critics of his Court-packing plan were also the critics of his early New Deal initiatives:
   This is balderdash. The opposition to his plan to bring the judiciary into line is from people who care not about their property, their profits, and their old Lincoln limousines, but who care about their freedom from authority—which was what started the first big doings in this country and may well start the last.
   The Talk of the Town, New Yorker, Mar. 13, 1937, at 11. That criticism of the Court-packing plan was not reflected in any of the cartoons, which completely ignored the episode.

27. Roger Angell, The First Decade 1925–1934, in Complete Cartoons, supra note 5, at 14. Yagoda agrees that “[t]he conventional wisdom, then and now, would be that the magazine blithely ignored the hard times.” YAGODA, supra note 8, at 110. During the Depression the magazine’s art “committee declined cartoons incorporating apple sellers and jokes about suicide, among other disturbing and widely communicated consequences of the Great Crash.” LEE, supra note 18, at 236–37.

29. Two of the signs are partially obliterated, but the messages are clear. The COMPLETE BOOK OF COVERS FROM THE NEW YORKER 1925–1989, at 75, 77 (1989). John Updike finds “pictorial hints . . . that not everyone was, like Don Marquis’s jaunty cat mehitabel, toujours gai” in a few other covers, but those hints are so oblique as to be doubtful references to the real suffering of the Depression. John Updike, Foreword to The Complete Book of Covers From The New Yorker 1925–1989, supra, at v, vi.
30. YAGODA, supra note 8, at 121.
times disturbingly so. The first, published in 1927, shows a well-dressed boy in the family attic, speaking into a broom with a disk on its handle that resembles a radio microphone, with the caption, “Oliver Wendell McIntosh speaking.” The joke is ambiguous and slight. Either the boy has actually been named in honor of the venerable Supreme Court Justice, by then eighty-six years old and in his twenty-fifth year on the Court, or he is imagining a legal future for himself. Either way, the cartoon reflects Holmes’s position as the first justice to achieve celebrity status and thus become a role model in the eyes of either parents or children.

If the first cartoon is slight, the second, published in 1935, is troubling to a modern reader in its seemingly blithe attitude toward the Court’s most reviled decision. The scene is a costume party, where a guest dressed as the Statue of Liberty is leaning over to whisper to a man in a Puritan costume about a third guest—drawn in black face, wearing a black robe, carrying a book and a quill pen—that “[h]e says he’s the Dred Scott Decision.” It is difficult to tell exactly what the joke is supposed to be, though it presumably depends on the incongruity of the black-robed guest, with his grim reminder of slavery, at a party whose other guests recall more admirable chapters of American history. It would be preferable but almost certainly anachronistic to read the cartoon as a satiric attack on Dred Scott v. Sandford, the case that held that no black, slave or free, could be considered a United States citizen. At this period in The New Yorker’s history, there is little likelihood that the source of the cartoon’s humor is a principled rejection of America’s racial past. The two cartoons, one invoking the Court’s most celebrated justice and the other its most vilified decision, nonetheless remain examples of its patented brand of disengaged and frivolous humor.

If, as Lee Lorenz maintains, The New Yorker in its early years “was often guilty of a kind of self-congratulatory indifference to the larger

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31. Perry Barlow, 11/12/1927, in COMPLETE CARTOONS, supra note 5 (CD-ROM disk one, 1925–1964) [hereinafter COMPLETE CARTOONS disk 1].
34. Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1856) (holding that blacks could not be United States citizens and declaring the Missouri Compromise unconstitutional).
35. Roger Angell has observed that “the racial and ethnic stereotypes in some of the old cartoons are not oddities as such—they were too widespread in the culture to count as oddities.” Angell, supra note 27, at 83. A critique of Dred Scott would clearly have diverged significantly from the magazine’s willingness to echo the prevailing attitude toward racial issues.
issues,” that indifference was erased by World War II. The magazine’s shift in focus from urban humor to world events began slowly with such observations as its 1933 criticism of anti-Semitic incidents in Germany and climaxed in the extraordinary decision to devote the entire issue of August 31, 1946, to John Hersey’s *Hiroshima*, an account of the effect of the atomic blast on six survivors. The issue contained no cartoons, a clear signal, if one were needed, that *The New Yorker* was enlarging its perspective. Although the work of the Court did not figure in any of the magazine’s cartoons of the 1940s—not even such controversial cases as *Korematsu v. United States*—the war itself remained present in numerous cartoons about military life and the return of soldiers to civilian status.

It was not, however, until the 1950s—the decade of *Brown v. Board of Education*—that the Court itself became a regular subject of *New Yorker* cartoon humor. The jokes in many of those early cartoons had nothing to do with the nature of the Court’s work, relying instead on the general nature and role of the institution. Their appearance nonetheless indicated that the Court was impinging on the public consciousness sufficiently to make it a useful basis for a simple gag cartoon. In the decades following *Brown*, the cartoons began to increase in frequency and change in substance to reflect a growing awareness of the Court’s constitutional decisions and their relevance to the usually prosperous and privileged lives of *New Yorker* readers. For the past half century, as the Warren Court transformed the jurisprudence of individual rights, the Burger Court

36. LORRENZ, supra note 17, at 80. Thus, “in the anniversary issue of 1930, a note in ‘The Talk of the Town’ proudly announced that in its five years of publication the magazine had successfully crusaded for only two issues, one of which was moving the information booth at Penn Station from the side wall to the center of the main concourse.” Id.

37. E.B. White, author of the “Comment” on those incidents, wrote that “[t]hus in a single day’s developments in Germany we go back a thousand years into the dark.” YAGODA, supra note 8, at 169 (quoting the “Comment”).

38. For an account of Hersey’s writing of *Hiroshima* and the suggestion by William Shawn, later Ross’s successor as editor, that the magazine devote an entire issue to the lengthy piece, see YAGODA, supra note 8, at 183–93.


40. In a box marked “To Our Readers” on the first page of *Hiroshima*, the editors explained the magazine’s decision to devote its “entire editorial space” to the lengthy article: “It does so in the conviction that few of us have yet comprehended the all but incredible destructive power of this weapon, and that everyone might well take time to consider the terrible implications of its use.” The Editors, *To Our Readers*, *New Yorker*, Aug. 31, 1946, at 15.


modified that jurisprudence, and the Rehnquist Court turned in a more conservative direction, New Yorker cartoons have echoed in their own way the Court’s increasing prominence in America’s social landscape.

III. THE SUPREME COURT IN CARTOONS

It is not a coincidence that only six New Yorker cartoons about the Supreme Court appeared between the magazine’s first issue in February 1925 and the first Brown v. Board of Education opinion in May 1954, while over one hundred and thirty Court-related cartoons appeared in the subsequent half century. Brown focused public attention on the Court and made the American people aware of the reach—and limits—of its constitutional authority, but Brown itself never became the subject of a New Yorker cartoon. What first interested New Yorker cartoonists of the 1950s was the idea of the Supreme Court dissociated from the substance of its decisions, and their cartoons played with the notion of authority through general invocations of the institution rather than its particular justices or cases. By the 1960s, as the Warren Court steadily enlarged the scope of constitutional protection for individual rights, cartoonists explored the intersection of the Court’s specific decisions with powerful societal currents that altered traditional sources of authority: the civil rights movement, feminism, free speech, and the rights of criminal defendants.

As the idea of the Court as a symbol of institutional power merged with the substance of its jurisprudence, New Yorker cartoonists recognized that many of these decisions affected not only public life but also personal relationships. Starting in the 1970s, cartoonists found that Court decisions on such legal issues as obscenity, police practices, and flag burning reverberated in the context of domestic life as New Yorker readers grappled with the unsettling effects of social change. New Yorker cartoonists began to focus on specific cases, confident that readers were likely to follow the Court’s work and to recognize allusions to its major opinions, particularly when those opinions affected or mirrored their own lives. By the 1980s,

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43. Stephen J. Wermiel has noted that “public consciousness of the importance and influence of the Supreme Court that began to be heightened in the Warren Court years has grown into a fuller appreciation of the role the Court plays in our society as well as an accompanying interest in the members of the Court.” Alexander Wohl, Read All About Them: Supreme Court Justices Have Become Popular Subjects for Biographers, A.B.A. J., May 1995, at 46, 48 (quoting Wermiel). Barbara Perry finds that, by 1954, “the Supreme Court had started down a road which would lead it into the public consciousness through its cases rather than its personnel.” Barbara Perry, The Priestly Tribe: The Supreme Court’s Image in the American Mind 92 (1999).


45. Inge has described the reader of New Yorker cartoons in expansive terms:
cartoonists were equally confident that their readers were sufficiently familiar with the trappings of the Court to appreciate cartoons based on the selection process for its justices and the façade of its courthouse.

An examination of The New Yorker’s Supreme Court cartoons reveals the domestication of the Court from an abstract symbol of authority to a source of both personal freedom and unsettling change. As the characters in these cartoons comment on, refer to, complain about, and make use of the Court’s decisions for their own ends, they reflect the way in which the Court has become part of the conversations, the vocabulary, and the texture of American life over the past half century.

A. THE SUPREME COURT BY NAME

When the first New Yorker cartoon to invoke the Supreme Court by name appeared in 1951, over a quarter century after the magazine’s first issue, the joke relied simply on the unassailable final authority wielded by the Court. In Sidney Hoff’s drawing, a small boy with a disgruntled expression is emerging from the kitchen where his mother is visible preparing a meal. His father, reading the newspaper in an armchair, inquires as his son slouches past him, “Well, how’d you make out with the Supreme Court?”46 The vignette reveals the family dynamic with economy: the son’s unspecified request has gone before the highest authority and been denied. Three years before Brown v. Board of Education vividly demonstrated the Court’s reach, the Hoff cartoon relied on its readers’ appreciation of the Court’s role in the judicial hierarchy. After going unmentioned in New Yorker cartoons for a quarter century, the Court became a shorthand reference for that role of final arbiter. Three years later, a customer trying unsuccessfully to return a purchase questions the uncooperative man at the complaint window about the store’s appellate structure: “All right, if you won’t, you won’t. Now, who around here is like the Supreme Court?”47

By 1957, the Court’s power was itself a source of complaint to disparate constituencies. At the upper end of the social scale, a member of a

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46. Sidney Hoff, 2/3/1951, in COMPLETE CARTOONS disk 1, supra note 31.
gentlemen’s club offers his solution for the nation’s problems to his drinking companion: “I tell you, Henry, what this country needs is a Supreme Court!” The caption plays not just on the Court’s role but also on its title, underscoring the absurdity of curing the problem of a misguided final authority by imposing another layer of review. Only three weeks later, an equally dissatisfied man, this time drinking not at an exclusive club but at his neighborhood tavern, offers his own solution to an impassive bartender: “Let ’em impeach the Supreme Court, I say! And while they’re at it they can impeach the President and the whole damn Congress!” The sentiments are remarkably similar. Like a Shakespearean clown, the protagonist of the second cartoon echoes the views of the affluent clubman in a lower social key. Both cartoons, however, make the same point. The Court’s decisions are unsatisfactory, and only a radical plan will solve the problem. The gentlemen’s club and the local bar were standard New Yorker cartoon venues for many years, and it is not surprising to see a cruder version of the same complaint return almost a decade later in another bar, with one drinking buddy asking the other, “What the hell does the Supreme Court know?”

Specific references to the Court were not always so harshly negative in tone. More sympathetically, a clergyman speaking from the pulpit to his congregation urges, “And now, if I may, a special prayer for the Supreme Court.” His gesture is a sly allusion to Engel v. Vitale, decided a month earlier, in which the Court held school prayer to be a violation of the Establishment Clause. And in an August 1990 cartoon that appeared two weeks after President George H.W. Bush had chosen David Souter to replace Justice Brennan, an attorney attempts to ingratiate himself with the judge by noting that “both my client and I were astonished that Your Honor was not nominated for the Supreme Court.”

Such positive cartoons are, however, significantly outnumbered by those in which characters are critical of the Court, although not all critics are as blunt as the complainers described above. In a December 25, 2000, cartoon, a convict chatting with his cellmate expresses his reservations in a

restrained and civilized tone: “I don’t know about you, but my confidence
in the judge as an impartial guardian of the rule of law wasn’t that high
even before the Supreme Court ruling.” That ruling is Bush v. Gore, 56
issued thirteen days earlier, and the convict is echoing verbatim the
conclusion of Justice Stevens’s dissent criticizing the effect of the
majority’s decision resolving the 2000 presidential election by rejecting
the decision of the Florida Supreme Court. The cartoon slyly contrasts
the candid skepticism of the convict—himself literally a legal system insider—
about the judicial process with Stevens’s indignation and the uproar
surrounding the decision. The caption omits quotation marks from the
Stevens language, but the reader who recognizes the passage has a fuller
appreciation of the cartoon’s ironic commentary on the episode.

In September 1990, a month after one cartoonist used the Souter
nomination as a source of judicial flattery, another presented it as an
opportunity to improve the Court. Watching television with her husband, a
wife comments that “I think it’s high time we had an enigma on the
Supreme Court.” The enigma is clearly Justice David Souter, who
appeared in televised confirmation hearings before the Senate Judiciary
Committee on September 13, 14, and 17, and took his oath of office three
weeks after the cartoon appeared. Despite his twelve years on the New
Hampshire Supreme Court and President Bush’s assurance to his
conservative supporters that the nominee’s positions would reflect their
own, Souter proved to be ideologically hard to categorize during the
confirmation process. A biographical sketch of Souter has echoed the
caption, noting that “[a]t the time of his nomination he was more of an
enigma to a national audience than nearly any other nominee over the last

Florida counties violated the Equal Protection Clause and halting the recount process).
57. Id. at 129 (Stevens, J., dissenting). For a sampling of the harsh attacks in response to the
Court’s decision, see, for example, BUSH V. GORE: THE QUESTION OF LEGITIMACY (Bruce Ackerman
59. HEARINGS AND REPORTS ON SUCCESSFUL AND UNSUCCESSFUL NOMINATIONS OF SUPREME
(Roy M. Mersky et al. eds., 1992). In light of the dates of the cartoon and the hearings, Reilly must have
based his caption on earlier discussions of the nominee’s jurisprudence. Justice Souter took the oath of
office on October 9, 1990. THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES
1134 (Kermit L. Hall ed., 2d ed. 2005) [hereinafter OXFORD COMPANION].
60. Richard H. Pildes, Souter, David Hackett, in OXFORD COMPANION, supra note 59, at 939,
940; TINSLEY YARBROUGH, DAVID HACKETT SOUTER: TRADITIONAL REPUBLICAN ON THE REHNQUIST
COURT 141–43 (2005); JANE MAYER & JILL ABRAMSON, STRANGE JUSTICE: THE SELLING OF
CLARENCE THOMAS 12 (1994).
The cartoon relies for its humor on a number of predicates: the interest of *New Yorker* readers in the membership of the Court; their awareness—or even their viewing—of the ongoing Souter hearings; the elusive nature of the nominee; and his contrast with the eight more ideologically readable members of the Court. The wife’s comment is itself enigmatic. It is not clear whether she disapproves of the Court’s decisions or of the alignment of its members or simply of the idea of predictable justices. What is clear is the assumption that readers will be informed about and interested in the Souter nomination to the extent that the word “enigma” will be a sufficient trigger for a joke with a complicated current context.

The motif of domestic conversation about the Court, particularly in response to unnamed decisions, has appeared repeatedly since the 1960s. In a 1964 cartoon by Alan Dunn, a wife who finds her husband reading in the backyard tells him somewhat plaintively “But the Supreme Court didn’t say you had to read them!” Less than two months earlier, the Court in *Jacobellis v. Ohio* had ruled that First Amendment protection applied to sexually explicit materials that were not obscene, overturning state efforts to ban the French film *Les Amants*. The husband is presumably, to his wife’s dismay, exercising his First Amendment right to read a sexually explicit book. Five years later, Dunn returned to the same theme. This time, however, the husband is chiding his wife as they read the newspaper over breakfast: “Be fair, now. The Supreme Court didn’t invent sex.” The implication is that the wife has taken exception to a new Court decision.

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63. *Jacobellis v. Ohio*, 378 U.S. 184 (1964). In his often quoted concurrence, Justice Potter Stewart declined to define obscenity, observing that “I know it when I see it, and the motion picture involved in this case is not that.” *Id.* at 197 (Stewart, J., concurring). The decision appeared on June 22, 1964.
64. Alan Dunn, 6/14/1969, *in COMPLETE CARTOONS* disk 2, *supra* note 13. Another Alan Dunn cartoon also involves a Court decision, but in a more tenuous way. As her husband rests in their backyard hammock, the wife reads the newspaper and comments on a story: “I wonder if those Tuscaroras ever stop and think how lucky they were to be born in America.” Alan Dunn, 9/15/1962, *in COMPLETE CARTOONS* disk 1, *supra* note 31. The cartoon apparently refers to the case of the Tuscarora Indians of New York State, who objected to a state plan to flood a portion of their tribal land to create a storage reservoir for a hydraulic power project. The Tuscaroras litigated the matter until the Supreme Court decided against them in March 1960, holding that the Federal Power Commission had the authority to license the New York Power Authority to proceed with its project upon payment of just compensation. Fed. Power Comm’n v. Tuscarora Indian Nation, 362 U.S. 99 (1960). The two year gap between decision and cartoon suggests that the wife is responding not to the decision itself but to the Tuscaroras’ continuing objection to some later stage in the project; the ironic caption is an implicit, if indirect, criticism of the consequences of the Court’s resolution of the case.
presumably *Stanley v. Georgia*, which found possession of obscene materials within the home protected by the First Amendment, and her husband is defending it against her sweeping attack. In a later variation on the domestic motif, another couple is reading the newspaper in the living room when the wife tells her clearly disgruntled husband, “I don’t recall your being upset by any other Supreme Court decisions.” Again, the decision is not identified, but the date suggests yet another obscenity case, *Miller v. California*, handed down about six weeks earlier, in which the Court set forth a new definition of obscenity. The final variation finds the husband and wife in harmony, watching television, with the husband observing that “[t]he Supreme Court says we can tape this if we want.” Less than three weeks earlier the Court had decided in *Sony Corp. of America v. Universal City Studios, Inc.* that home use of video cassette recorders to record television programs did not necessarily violate copyright protections.

All of these cartoons share the assumption that their readers, like their characters, are informed about the Court’s decisions and react to them, whether with pleasure (the license to read and record) or disapproval (the relaxed obscenity standard) or even, in one curious instance, with likely bewilderment. In a 1990 cartoon a newscaster reports the Court’s latest 5-4 decision to the television audience, “that atheists may not be barred from foxholes,” leaving the reader to contemplate the judicial reversal of the often quoted observation about war and religion. The even more basic assumption shared by these cartoons is that the Court’s decisions directly affect domestic life, both its activities and its conversations. The 1981 cartoon that makes this point in a zanier manner than most shows a husband and wife opening their front door to find all nine justices, accurately represented as eight men and one woman, dressed in judicial robes.
robes and arrayed in a semicircle to greet them. The caption, spoken by the husband, is “The Supreme Court! Well, this is a surprise.” The cartoon plays the social convention of the husband’s response—better suited to a chance meeting with an acquaintance—against the absurdity of the justices awaiting their hosts in formal courtroom attire. If the cartoons from the 1960s suggest the effect of the Court’s decisions on private life, this 1981 cartoon carries the point several steps further to make the justices a physical presence rather than merely an unseen influence on the domestic sphere.

The most recent cartoon to mention the Court by name is a curious commentary on its resonance for New Yorker readers. As two attorneys travel together in the back seat of a taxi, briefcases on their knees, the older one says petulantly to the younger, “We’re going before the Supreme Court in an hour, Ben. Would it kill you to sit on my lap?” Both attorneys are male and clearly working together on a major case, but the drawing offers no further clue to their relationship; they could be father and son, or partner and associate, or even romantic partners. The request may simply express the speaker’s need for some comforting before what is likely to be one of the most challenging experiences of his professional life. The cartoon’s meaning is highly ambiguous, but it does seem to follow its predecessors in using the Court’s institutional importance as the basis for its focus, the legal version of performance anxiety.

B. THE SUPREME COURT BY NUMBER

By the early 1960s, New Yorker cartoonists found it unnecessary to identify the Court by name in order to create a joke. They could supply their readers with a single visual clue—nine black robed figures seated behind a judicial bench—and expect them to catch the reference. Two cartoons illustrate the point. In the first, by Robert Day, the justices sit in a remarkably accurate version of their courtroom, with its classical columns behind the bench and the attorneys at their tables waiting to approach the lectern. One justice is turning to the chief justice and inquiring mildly, “Shouldn’t there be only nine of us up here?” When the reader turns from the caption to the drawing and counts the chairs, there are in fact ten figures on the bench. The joke depends entirely on the reader’s ability to answer

73. Id.
the justice’s question affirmatively. The second cartoon, published seventeen years later, is a variation on Day’s joke. This time there are nine justices seated in the courtroom, again drawn with surprising accuracy; the bench is angled so that the ends face toward each other, an innovation by the Court in 1972 to make oral argument more audible. The justice at one end of the bench is saying courteously to another man in a black robe standing beside him, “I’m afraid there’s been some mistake.” As in Day’s cartoon, the reader has to count the chairs to get the point of this understatement.

Day used a variation of his headcount idea in another courtroom cartoon to make a more elaborate point about the Court. This time a formally dressed court official standing beside the bench is speaking to a small boy, apparently one of the Court’s messengers: “You’re sure you’ve got it straight? Five ham and Swiss on rye with mustard, and four ham and Swiss on rye without mustard.” The sandwich split mirrors five-four splits on the Court, the narrowest voting margin. Other artists played off the number nine for simpler visual humor in uncaptioned cartoons: Mischa Richter’s drawing of the courthouse façade supported by nine pillars in the shape of the justices in their robes and Al Ross’s drawing of nine justices on the bench in a football-style huddle. Both cartoons may be read as suggesting subtler meanings—Richter’s cartoon the weighty role of the justices as the bearers of justice and Ross’s cartoon the analogy of the Court’s alignments to team sports—but this is probably giving both more heft than their artists intended. Other cartoons simply used the presence of nine justices to trigger their gag captions that contrast verbal informality with the Court’s dignity. Thus, in one cartoon a justice seated at

76. Maxwell Bloomfield, Architecture of the Supreme Court Building, in OXFORD COMPANION, supra note 59, at 51, 52.
77. Mischa Richter, 2/12/1979, in COMPLETE CARTOONS disk 2, supra note 13.
78. Until 1976, the Court employed boys to run errands for the justices. Frank Lyman interviewed by Darryl J. Gonzalez, A Voice from Behind the Bench: Recollections of a Supreme Court Page, 29 J. SUP. CT. HIST. 308, 322 (2004). For a memoir by a former messenger, see id. The tail coat worn by the Court staffer reflects the formal dress traditionally worn by attorneys arguing before the Court; in current practice, only attorneys from the Solicitor General’s office maintain the custom. ROBERT L. STERN ET AL., SUPREME COURT PRACTICE 687 (8th ed. 2002).
"I'm afraid there's been some mistake."
the end of the bench tells his neighbor, “Let justice be served. Pass it on,” \(^\text{82}\)
while in another a justice tells his colleagues, “If all you smart cookies agree, who am I to dissent?” \(^\text{83}\)
In a more substantive version of the contrast between high and low, one justice whispers to another as a lawyer stands before the Court with his elderly client, who holds her cat: “Her landlord kicked her cat! How did this thing ever get out of Small Claims Court?” \(^\text{84}\)
It is not unprecedented for the Court to take a seemingly trivial case that raises a serious legal issue, but the joke here seems unconnected to those anomalous situations. \(^\text{85}\)
The headcount of judges, together with the pillars and draperies sketched behind them, are necessary only to inform the reader that this minor case has made it to the top of the legal system.

The size of the Court figures more importantly in a 1967 cartoon by Dana Fradon, whose work frequently makes use of the Court. This time a convict relaxing on his bed is asking his cellmate, “Can you name all nine Supreme Court justices?” \(^\text{86}\) The question seems at first to be an idle guessing game, though one peculiarly tailored to the questioner’s situation. It does, however, have greater resonance. Public opinion polls have revealed how few Americans can name even three justices. \(^\text{87}\) In this vignette, both convicts, the questioner and his friend, have more reason than the average citizen to know who sits on the Court, though the implication of the cartoon is that it is not likely that they do. Most people may know the basics about the Court—its nine justices, their judicial garb, their imposing courtroom—but they are unlikely to be able to put individual names to more than a few of these powerful decisionmakers. \(^\text{88}\)

C. THE SUPREME COURT BY JUSTICE

*New Yorker* readers, generally regarded as better educated and more widely read than the general population, might, however, be expected to know more than those basics—to be able to distinguish one justice from

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85. See, e.g., Thompson v. Louisville, 362 U.S. 199 (1960) (reversing a municipal police court conviction for loitering and disorderly conduct carrying a $20 fine under the Due Process Clause).
87. In a 1995 poll, only 17% of the sample could name three Supreme Court Justices. The percentage able to identify individual justices ranged from 1% for Justices Stevens and Breyer to 31% for Justice O’Connor. The figures for the other justices were: Souter and Kennedy, 4%; Scalia, 6%; Ginsburg, 7%; Rehnquist, 8%; and Thomas, 30%. Joan Biskupic, *Has the Court Lost Its Appeal?*, WASH. POST, Oct. 12, 1995, at A23.
88. See id.
another and thus appreciate a cartoon that relies on the particular role or reputation of an individual member of the Court. Yet only a handful of cartoons have based their humor on something unique to a single justice. None of the members of the New Deal Court—not even Chief Justice Charles Evans Hughes, whose white bearded visage was so recognizable that George S. Kaufman and Moss Hart included a chorus of Hughes look-alikes in a 1937 Broadway musical—drew a mention. In fact, only four justices have been identified by name; the most prominent omissions include Justices Black, Douglas, and Brennan, and all the members of the Rehnquist Court.

It is not surprising that Oliver Wendell Holmes, the Court’s most celebrated justice, is also the only justice to figure in two cartoons. In the first, discussed earlier, a boy announces into an improvised microphone, “Oliver Wendell McIntosh speaking.” The 1927 joke rests entirely on Holmes’s strong reputation, though the precise nature of that reputation remains unarticulated. Almost exactly sixty years later, Charles Saxon drew a woman in medieval garb asking the classic fairy tale question: “Mirror, mirror, on the wall, who is the fairest of them all?” The unexpected answer that comes back to her is “Oliver Wendell Holmes.”

That punning response also has great jurisprudential resonance. It reflects Holmes’s often expressed principle that a justice’s personal views should be irrelevant to his or her judicial decisions. In his famous Lochner dissent, Holmes insisted that “the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.” The cartoon is thus more than a joke;

89. GEORGE S. KAUFMAN & MOSS HART, I’D RATHER BE RIGHT (1937). For a brief discussion of the play, see Maxwell Bloomfield, Popular Images of the Court, in OXFORD COMPANION, supra note 59, at 760, 763.
90. Douglas, for example, was an easy target for cartoonists, especially after he married his fourth wife, twenty-three-year-old Cathleen Heffernan, when he was sixty-seven. JAMES F. SIMON, INDEPENDENT JOURNEY: THE LIFE OF WILLIAM O. DOUGLAS 384 (1980). One cartoonist took advantage of the situation, drawing Douglas telling Chief Justice Earl Warren, “Sorry Chief . . . I can’t make it—I have to find a babysitter for Cathy.” BRUCE ALLEN MURPHY, WILD BILL: THE LEGEND AND LIFE OF WILLIAM O. DOUGLAS 400 (2003).
91. See supra note 31 and accompanying text.
92. Charles Saxon, 12/14/1987, in COMPLETE CARTOONS disk 2, supra note 13. The earlier cartoon appeared on November 12, 1927.
93. Id.
94. See Sheldon M. Novick, Oliver Wendell Holmes, in OXFORD COMPANION, supra note 59, at 467, 469, 472.
“Mirror, mirror, on the wall, who is the fairest of them all?”

“Oliver Wendell Holmes.”
it is an accurate recognition of Holmes’s determination to ground his decisions in legal principle rather than in personal conviction—to be dispassionate and “fair.” 96 The first cartoon appeared while Holmes was still on the bench, and the second fifty-five years after he resigned. It may not be necessary for a New Yorker reader to know any more about Holmes than the fact that he sat on the Supreme Court to appreciate Saxon’s joke, but, for a reader who does know a bit more about Holmes’s jurisprudence, the cartoon has a second level of meaning that informs and enhances its humor.

Only two other cartoons depend on a reader’s knowledge, however basic, of a particular justice’s jurisprudence. In Lee Lorenz’s uncaptioned drawing, an elderly woman, wrapped in her shawl and seated in her rocking chair, is holding an embroidery hoop on which she is carefully cross-stitching the message “Impeach Earl Warren.” 97 The cartoon appeared in September 1964, at a time when the John Birch Society had erected billboards with the same language in continuing protest of Warren’s voting record, which the Society considered Communist. 98 The determined old lady captures the zeal of the Warren Court’s opponents, who found in the chief justice, the author of both Brown opinions, the primary symbol of their outrage. 99 Her grandmotherly appearance, enhanced by her demure bun and the gas lamp on the table beside her, sharpens the contrast with her hostile message. Warren himself appreciated the joke, hanging the framed cartoon “just below his framed commission as Chief Justice of the United States” in the library of his Washington apartment. 100 For readers less familiar than Warren with the nature of the impeachment campaign, it was necessary only to know that he was the leader of the liberal Supreme Court that was disturbing various constituencies with its decisions expanding rights of racial minorities, criminal defendants, and other disadvantaged groups.

96. See Novick, supra note 94, at 469, 472.
99. See SCHWARTZ, supra note 98, at 280–81.
100. Id. at 281. Schwartz describes the figure as “an indignant caricature of Whistler’s Mother” and reports that “[a]ccording to one of his sons, ‘It really breaks him up.’” Id. See also ED CRAY, CHIEF JUSTICE: A BIOGRAPHY OF EARL WARREN 11, 392 (1997). Cray incorrectly attributes the cartoon to Phil Interlandi rather than to Lee Lorenz and assumes, like Schwartz, that the old woman is based on Whistler’s mother. Id. at 11.
The Warren cartoon was followed a year later by a subtler impeachment cartoon drawn by Alan Dunn, this time with the focus on youth rather than age. The scene is a college dorm room, with a student in a shirt and tie working at his desk; the "'67" pennant on the wall indicates that he is a junior. Another student, also wearing a tie, is standing in the doorway holding a placard that reads "Impeach Abe Fortas." In the caption, the seated student is telling his friend, "Not yet!" With its date deleted, the cartoon seems like a comment on the political effort by the Nixon administration to dislodge Fortas. But the cartoon was published on December 4, 1965, two months to the day after Fortas took his oath of office and more than three years before the embarrassing financial revelations that eventually prompted his resignation from the Court in May 1969. Dunn’s point is presumably the link between the Warren impeachment campaign and Fortas, an acknowledged liberal placed on the Court by his good friend President Lyndon Johnson. Fortas’s first opinion for the Court did not appear until November 22, 1965, and it is clearly too early to begin calling for his removal based on his voting record. The clean-cut placard-bearer—obviously no 1960s campus protester—is overeager, and his friend is cautioning him to wait until there is at least a semblance of a voting record to support his message. This cartoon makes greater demands than Lorenz’s on the reader, who must be prepared to link Fortas’s recent appointment to the ongoing anti-Warren campaign. Taken together, the cartoons demonstrate The New Yorker’s increasing willingness to assume its readers’ familiarity with the Court and its justices, even a very recent appointee, and to rely on that familiarity as a source of political humor.

The fourth and final cartoon to invoke a justice by name has nothing to do with his actual or anticipated voting record. It shows a father in suit and tie seated in his living room, talking to his adolescent son. Both father and son are black, and the son is wearing an African dashiki and hat. The father, in a tone familiar to generations of parents, is saying, “You don’t see Thurgood Marshall dressing like that!” The only thing the reader

103. For a thorough account of Fortas’s questionable financial dealings, see id. at 359–70.
104. Laura Kalman, Abe Fortas, in OXFORD COMPANION, supra note 59, at 356, 356.
needs to know is that Marshall is black and thus an important role model; it is not even necessary to understand that Marshall was the first African American named to the Court. The rest of the joke depends on the kind of sociological awareness that The New Yorker has always expected of its readers. The father’s dress and living room place him solidly in the professional or managerial class. He clearly has conventional aspirations for his son, perhaps a legal career leading to the Supreme Court, and the boy’s apparent embrace of his African roots is not in accord with that career plan. The irony, of course, is that Thurgood Marshall gained his seat on the Court, not through a conventional legal career, but through his leadership of the NAACP Legal Defense Fund and its litigation campaign for school desegregation. Part of the joke is the fact that the son’s ethnic outfit reflects a counterculture attitude that contrasts with the father’s mainstream preference, and for the reader familiar with Marshall’s career the cartoon has greater resonance than its surface intergenerational humor.

Although few cartoons identify sitting justices by name, one failed nominee has the distinction of appearing twice. The prominent conservative Robert Bork, President Reagan’s controversial choice for the Court in 1987, became the protagonist in highly polarized and protracted Senate Judiciary Committee hearings before his nomination was defeated by a vote of 58-42. The televised hearings attracted widespread attention, and Robert Weber captured the nation’s mood with his cartoon of a man reading his newspaper at home and turning to his dog, whose mouth is open. The caption reads simply “Bork! Bork!” Published more than two weeks prior to the Senate vote, the cartoon suggests that even the family pet provides no escape from the media frenzy, which has transformed a bark into two more Borks. The second cartoon appeared on February 15, 1988, ten days after the defeated Bork resigned his seat on the Court of Appeals for the District of Columbia Circuit. As a limousine exits through the gates of a cemetery, a mourner in the back seat remarks to her companion that “[h]e was grateful that he lived to see Bork unshackled.”

108. Id.
111. The cartoon appeared in the October 5 issue, and the Senate voted to reject Bork on October 23. BRONNER, supra note 109, at 327.
112. Bork resigned his seat on February 5, 1988. Id. at 339.
survived just long enough to see Bork leave the federal bench and return to the unfettered role of an outspoken conservative.\textsuperscript{114} The cartoon assumes that readers have continued to follow Bork’s fortunes and will understand that he has now freed himself from the constraints imposed on sitting judges. Two additional cartoons reflect continuing public interest in the confirmation process for Supreme Court nominees following the Bork episode. The first shows an elderly man addressing his family gathered at its Thanksgiving table: “Before we begin, I think you should all know that I once smoked a reefer in 1935.”\textsuperscript{115} At first glance, the November 30, 1987, cartoon seems to be a slight holiday joke with no connection to the Court, but the date of publication provides the missing link. Earlier that month, on November 7, Court of Appeals Judge Douglas Ginsburg, President Reagan’s replacement for the defeated Bork, had quickly withdrawn his October 29 nomination after witnesses reported that Ginsburg had smoked marijuana years before while a member of the Harvard Law School faculty.\textsuperscript{116} For readers who followed the aftermath of the Bork defeat, the cartoon clearly played with the notion that other former marijuana users might prefer to come clean in order to spare themselves Ginsburg’s (and Reagan’s) public embarrassment.

The second cartoon also required readers to be informed about Court politics, this time President Clinton’s selection process for Justice White’s replacement. After White announced his retirement on March 19, 1993,\textsuperscript{117} rumors circulated that President Clinton might choose New York Governor Mario Cuomo, who reportedly vacillated and finally announced on April 7 that he was not interested in the post.\textsuperscript{118} In Dana Fradon’s April 26 cartoon, a young man looking for a job is told apologetically by an employment agency advisor apparently about to propose a possible position, “I’ll be frank—we offered it to Mario Cuomo first, but he turned it down.”\textsuperscript{119} The joke relies on the related notions of Cuomo as an indecisive job seeker and his surprising rejection of a prized Court seat. Both cartoons are

\begin{enumerate}
\item \textsuperscript{114} See BRONNER, supra note 109, at 339.
\item \textsuperscript{115} Warren Miller, 11/30/1987, \textit{in COMPLETE CARTOONS disk 2}, supra note 13.
\item \textsuperscript{116} ABRAHAM, supra note 53, at 299; Nominations and Succession of the Justices, \textit{in OXFORD COMPANION}, supra note 59, at 1134.
\item \textsuperscript{117} Linda Greenhouse, \textit{The Supreme Court, White Announces He’ll Step Down from High Court}, N.Y. TIMES, Mar. 20, 1993, at A1.
\item \textsuperscript{119} Dana Fradon, 4/26/1993, \textit{in COMPLETE CARTOONS disk 2}, supra note 13.
\end{enumerate}
remarkably timely and clearly expect that *New Yorker* readers will be keeping themselves well informed about every stage in the Supreme Court selection process. Thus, by the late 1980s, the magazine assumes that the interest of its readers in the Court has expanded from the current justices to their proposed successors.

D. THE SUPREME COURT BY CASE

Although *New Yorker* cartoons have referred to a Supreme Court case name only twice—one for *Dred Scott* and once for *Miranda v. Arizona*—they have not ignored the substance of the Court’s work. Starting in the 1950s, they referred, with various degrees of directness, to particular rulings and their consequences. Some of these cartoons were easily deciphered, while others required the reader to have particular information about a case or a doctrine in order to get the joke. Taken together, they indicate that, from the 1950s with increasing frequency, the magazine expected its readers to be as interested in the Court’s work as in its personnel.

The *Dred Scott* cartoon invoked a case decided seventy years earlier, but the next cartoon to invoke a specific case dealt with one that had not yet been argued before the Court, much less decided by it. Alan Dunn’s drawing shows a counterman at Joe’s Busy Bee luncheonette describing a lower court ruling to a customer: “It’s like the Judge said—if a President could seize Big Steel, he could seize the Busy Bee.” The case was *Youngstown Sheet & Tube Co. v. Sawyer*, a constitutional challenge to President Truman’s decision to seize the nation’s steel mills in order to avoid the disruption of a threatened strike. On April 29, 1952, the district court granted the steel company plaintiffs a temporary injunction against the president’s seizure; in an unusual response demonstrating the importance of the case, the Supreme Court then granted certiorari on an expedited basis, waiving review by the Court of Appeals. When Dunn’s cartoon appeared on May 10, *Youngstown* was scheduled for oral argument two days later, and the press was filled with speculation about the Court’s

120. For the *Dred Scott* cartoon, see supra, note 33. For the cartoon referring to *Miranda v. Arizona*, 384 U.S. 436 (1966), see infra, note 140.
121. Alan Dunn, 5/10/1952, in COMPLETE CARTOONS disk 1, supra note 31.
likely reaction. Chief Justice Rehnquist, at the time a law clerk to Justice Jackson, has noted that the case “dominated the national legal horizon.”

*Youngstown* raised the most serious issues of separation of powers and executive authority; the cartoon translates those issues into the less rarefied terms of ordinary experience. The luncheonette owner’s concern is amusing in its reduced scale, but it also brings home the enormous consequences of the Court’s imminent decision on the president’s seizure power to readers following the *Youngstown* case.

Two years after *Youngstown*, when the Court decided *Brown*, only one cartoon made even the most tangential comment on the landmark case. In another Alan Dunn cartoon, a politician at an election debate addresses the voters, proclaiming that “on these things I stand foursquare. International Understanding! Honest Government! Racial Equality! Legalized Bingo!” Racial equality comes third in the list, just before legalized bingo; the political satire strikes only a glancing blow on the speaker. Two cartoons by Ed Fisher come significantly closer to the holding of *Brown*. In the first, set in India, the speaker looks up from his newspaper to remark complacently to his companion: “More controversy in Alabama! You’d think those people were being asked to send their children to school with untouchables.” In the second, a drawing of two identical pillared mansions, each with the same formal garden, the speaker observes that “[w]hen Colonel Cashleigh says ‘separate but equal,’ he means separate but equal!” Together the cartoons approach the issue of racial segregation: the pervasive blindness of racial bias and the hypocrisy of a system in which separate was far from equal.

It is notable that the first cartoon appeared in 1956 and the second in 1959; they responded not to the original *Brown* decisions in 1954 and 1955,

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but rather to the slow and difficult course of their enforcement. The same is true of another 1959 cartoon in which a wife cautions her husband as they proceed to a stadium for some outdoor event: “Now if you so much as mention Little Rock, I’m walking right out.” The cartoon appeared barely a year after violent resistance to desegregation in the Little Rock schools required the use of federal troops and the issuance of Cooper v. Aaron, the extraordinary decision signed by all nine justices asserting that state officials were bound by the Court’s constitutional decisions, specifically Brown. Although it avoids any direct mention of the Little Rock confrontation, the cartoon suggests that the husband’s strong views about it have become so much a part of the texture of their married life that the wife has little hope of escaping it even during a public performance. A single term—Little Rock—is considered sufficient to trigger for the reader a complicated episode in the enforcement of Brown and the powerful responses it has evoked.

The two early 1970s cartoons about school busing discussed earlier—the twin school buses marked “DE FACTO” and “DE JURE” and the analogy to the busing of bar patrons—reflect a more complex approach by their artists to the controversy surrounding the ongoing struggle to desegregate public schools, including the Court’s 1971 approval of busing as a remedy. In the first cartoon, the identical buses with their divergent signs undermine northern self-righteousness about southern segregation law; whether established by practice or law, the cartoon suggests, segregated schools are in essence the same. The second cartoon is less critical than exploratory, translating the burden of travel and displacement.

130. A third cartoon by Fisher skewed the southern position more directly. An elderly woman serving tea in her living room to a visitor in suit and tie makes clear her position on civil rights issues: “Well, Ah do hope you won’t go back North with the impression that those moderates speak for all us Southerners.” Ed Fisher, 8/5/1961, in COMPLETE CARTOONS disk 2, supra note 13. For a discussion of the treatment of race issues in the prose as well the cartoons of The New Yorker in the late 1940s and 1950s, see MARY F. COREY, THE WORLD THROUGH A MONOCLE: THE NEW YORKER AT MIDCENTURY 77–100 (1999). Corey detects a “dissonance” between the two worlds of the magazine’s “readers and contributors [who], by and large, saw themselves as liberal exemplars of the American conscience. At the same time, they often lived in privileged enclaves in a privileged country and rarely interacted as equals with people of color.” Id. at 78. The cartoons dealing with issues of segregation reflect the liberal perspective.


132. Cooper v. Aaron, 358 U.S. 1 (1958) (asserting the authority of Supreme Court decisions over state legislatures, courts, and executive officials).

133. See supra notes 12 & 13 and accompanying text.

134. See Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (approving the use of busing for desegregation in southern school districts). The case was decided on April 20, 1971, more than a year after the Koren cartoon and nine months before the Darrow cartoon. Id.
from school children to adults comfortable in their regular routines. The absurdity of the analogy suggests both a well-meaning attempt to understand the legal issue and the gap between those comfortable routines and the educational experience at stake in the busing cases.

When the Court decided *Reynolds v. Sims*, the landmark reapportionment case applying the “one man, one vote” (usually formulated as “one person, one vote”) standard to state legislatures, it took almost two years for a *New Yorker* cartoon to respond. That cartoon responded, however, in a characteristically domestic manner. Two prosperous older couples seated in a comfortable living room are apparently discussing the issue. As the hostess looks lovingly up at her husband, he proclaims to their guests that “[h]ere at 27 Briarwood Drive it’s always been one man, one vote.” The joke is the speaker’s complacency, possibly misplaced, about the equality of his marital decisionmaking process, a far cry from the sweeping political implications of the Court’s new standard, but at the same time an indicator that the apportionment formula has passed into the vocabulary of the typical *New Yorker* reader.

135. *Reynolds v. Sims*, 377 U.S. 533 (1964) (applying the “one person, one vote” standard for apportionment of state legislatures). *Reynolds* was decided on June 15, 1964. The case establishing the “one person, one vote” standard for the apportionment of congressional districts is *Wesberry v. Sanders*, 376 U.S. 1 (1964), decided several months earlier on February 17. The Court used the “one person, one vote” language in both *Reynolds*, 377 U.S. at 558, and *Wesberry*, 376 U.S. at 17. For an example of the Court’s use of the “one man, one vote” language, see *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68 (1978) (“No decision of this Court has extended the ‘one man, one vote’ principle to individuals residing beyond the geographic confines of the governmental entity concerned.”).


137. Only one other cartoon touches on the voting rights efforts of the 1960s. It shows a young black man with a briefcase deep in the jungle, addressing two Tarzan and Jane figures: “I said, ‘have you registered to vote yet?’” Leonard Dove, 4/22/1961, in *COMPLETE CARTOONS* disk 1, *supra* note 31. The date of the cartoon precedes the voter registrations projects led by the Student Nonviolent Coordinating Committee (“SNCC”) in Mississippi that began in August 1961, although such plans had been discussed earlier. The timing may explain the playful tone of the cartoon, which fails to anticipate the violent responses triggered by the project; by September, several workers had been beaten and one local black resident had been killed by a white state representative. For an account of the SNCC project to register black voters in McComb, Mississippi, led by Robert Moses, and the violence that followed, see CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960s, at 46–50 (1981). The jungle setting may reflect the perception that the campaign to register black voters targeted what one scholar has described as “the most retrograde parts of Mississippi.” MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 374 (2004).
“Here at 27 Briarwood Drive
it’s always been one man, one vote.”
The Supreme Court decision that has occasioned the largest number of *New Yorker* cartoons is without question *Miranda v. Arizona*, requiring the now familiar litany of police warnings to criminal suspects prior to custodial interrogation.\textsuperscript{138} *Miranda* was decided on June 13, 1966,\textsuperscript{139} and six weeks later the first of these cartoons appeared. Not surprisingly, it was drawn by Alan Dunn, a steady observer of the Court, and showed three suspects standing before the desk sergeant at a police station. One suspect covers his ears, the next his eyes, and the third his mouth, acting out the proverbial “hear no evil, see no evil, speak no evil” formula. The puzzled arresting officer is asking the sergeant, “What’s the Supreme Court ruling on this?”\textsuperscript{140} The cartoon predicts both the huge impact of *Miranda* on police practices and the difficulties of its application to a wide range of suspects and situations.

In the years that followed, fourteen cartoons by twelve artists mined *Miranda* for comic effect, confident that readers would easily recognize the unnamed decision. The earliest examples focus on the awareness of both police and suspect that the rules of the game have changed. In one 1966 cartoon, the interrogating officer tells the suspect that “[i]t’s my duty to tell you that you don’t have to spill the beans.”\textsuperscript{141} In another published several weeks later, the police officers at a crime scene watch a suspect in a bank robbery make his telephone call to his attorney while one reminisces nostalgically: “Remember the good old days, when all we had to do was say, ‘Fess up?’”\textsuperscript{142} A third cartoon from the same year presents *Miranda* from the suspect’s point of view. As the police officer points his gun at a man with a sack standing beside a broken jewelry store window, the suspect goes on the offensive, asking the officer, “Well, what are you stalling for? Inform me of my rights!”\textsuperscript{143} A few years later, a suspect under interrogation by the police is less well-informed about *Miranda* though quite appreciative as he remarks, “Why, this is a revelation! I never dreamed I had so many rights!”\textsuperscript{144} By 1971, the joke hinges on an anachronistic variation, with a medieval torturer telling his victim on the rack, “Before we begin, it is my duty to tell you that anything you say may be used against you.”\textsuperscript{145} This final cartoon makes clear the extent to which

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\textsuperscript{139} *Id.* at 436.
\textsuperscript{140} Alan Dunn, 7/23/1966, in COMPLETE CARTOONS disk 2, supra note 13.
\textsuperscript{141} Robert Kraus, 8/20/1966, in COMPLETE CARTOONS disk 2, supra note 13.
\textsuperscript{142} Alan Dunn, 10/8/1966, in COMPLETE CARTOONS disk 2, supra note 13.
\textsuperscript{143} Chon Day, 12/31/1966, in COMPLETE CARTOONS disk 2, supra note 13.
\end{flushleft}
the *Miranda* warnings have permeated the culture, including film and television depictions of police interrogation. Even taken out of its original context, *Miranda* language is instantly recognizable.

There is a twenty year hiatus, from 1971 to 1991, before *Miranda* reappears in a *New Yorker* cartoon, but it then recurs throughout the 1990s and into the early years of the twenty-first century. The cartoons of this second wave take the decision in two different directions. Several artists base their humor on the application of *Miranda* to a range of nonpolice settings. As a young man on a park bench apparently proposes to a young woman, one hovering cupid instructs another, “Read him his rights!”

The guard at a zoo informs disappointed families that “[w]e had to let the animals go. No one informed them of their rights when they were arrested,” playing *Miranda* against the animal rights movement. In the only cartoon to mention the case by name, a police officer at his daughter’s bedside asks, “Again? I read you your Miranda rights last night.” Finally, in a neat reversal, a movie watcher turns to the woman behind her in an attempt to stem speech: “Let me remind you that you have the right to remain silent.”

All four cartoons rely on the same assumption, that *Miranda* has become part of the cultural folklore of *New Yorker* readers.

The second batch of cartoons uses that folklore to comment on other cultural developments by varying the content of the classic warnings. In a 1998 cartoon the police inform a suspect that he has “the right to a phalanx of attorneys.” A year later a suspect is cautioned that “[a]nything you say may be used against you in a court of law, newspapers, periodicals, radio, television, all electronic media, and technologies yet to be invented.” Both cartoons target the apparatus surrounding high-profile, high-powered litigation. In a new age variation, the caution abandons the law entirely for a recital of rights emanating not from the Court but from the universe: “You have the right to remain silent, you are a child of the universe, no less than the trees and the stars. You have the right to be here. And, whether or not it is clear to you, no doubt the universe is unfolding as it should.”

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with the law.
One suspect is told that “[y]ou have the right to one hands-free phone call,” and another that “I can read you your rights or you can listen to your rights on tape.” In a retrograde variation on a popular stereotype, a police officer is told by the clerk at a doughnut shop that “[y]ou have the right to a glazed doughnut and a cup of coffee.” All of these jokes work only for the reader who recognizes and understands the \textit{Miranda} theme on which the variations are played.

Starting in the 1960s, another line of cartoons found a source of legal humor in the Court’s struggle to produce a functional definition of obscenity that would permit ready identification of material unprotected by the First Amendment. A number of \textit{New Yorker} artists followed that struggle, finding humor in both the imprecise definitions offered by various members of the Court and in their terminology. In a 1966 cartoon by Alan Dunn, a publisher advises an author whose work raises potential legal problems: “It’s sheer, unadulterated sex, and we’re all for it. Now, to make our lawyers happy, would it cramp your style to work in a little material of redeeming social importance?” The caption tracks the language of \textit{A Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Attorney General of Massachusetts}, decided four weeks before the cartoon appeared. Justice Brennan, writing for himself, Chief Justice Warren, and Justice Fortas, considered whether a work was “utterly without redeeming social importance.”

Two years earlier, Justice Potter Stewart had withdrawn in frustration from the effort to define obscenity, offering instead his own often quoted position: “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it.” That position appeared several years later in an even more colloquial

\begin{footnotes}
\begin{enumerate}
\item[153.] Arnie Levin, 5/28/2001, in COMPLETE CARTOONS disk 2, supra note 13. Levin is also the artist of the cartoon citing varieties of media and “technologies yet to be invented.” See supra note 151.
\item[154.] Alex Gregory, 1/14/2002, in COMPLETE CARTOONS disk 2, supra note 13.
\item[156.] Donald A. Downs, Obscenity and Pornography, in OXFORD COMPANION, supra note 59, at 699, 699–701.
\item[157.] Alan Dunn, 4/16/1966, in COMPLETE CARTOONS disk 2, supra note 13.
\item[159.] Id. at 420. The evaluation was based on a factor from the obscenity test announced in \textit{Roth v. United States}, 354 U.S. 476 (1957), and applied by Brennan in \textit{Memoirs}, considering whether “the material is utterly without redeeming social value.” \textit{Memoirs}, 383 U.S. at 418.
\item[160.] Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).
\end{enumerate}
\end{footnotes}
form in a cartoon in which one justice tells another that “[i]f it turns me on, it’s smut.” The speaker’s assertiveness underscores the problem of judicial subjectivity in applying the justices’ varied and elusive formulations. This may also be the only New Yorker cartoon invoked by counsel at oral argument to illustrate a point, in this case counsel’s contention that the Court’s obscenity jurisprudence made it difficult for sellers of sexually explicit materials to predict what a trial court judge was likely to rule obscene.

The Court finally settled on a definition of obscenity in 1973 in Miller v. California. That definition contained several elements, including “whether ‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest.” New Yorker cartoonists were quick to respond. In August 1973, two months after the Miller decision, Joseph Farris located one of the difficulties with the new formulation, its reliance on community standards in a highly diverse country. He shows four producers viewing a movie in their screening room. Brandishing a cigar, one gives his negative reaction: “It’s too obscene for Georgia and not obscene enough for New York.”

The reader who appreciates the likely difference between Georgia and New York audiences gets only part of the joke. Only the reader who knows that the Miller Court has chosen a variable standard understands that beneath the regional humor lies a serious problem for national distributors of films and other materials—the choice of tailoring

161. Herbert Goldberg, 11/4/1972, in COMPLETE CARTOONS disk 2, supra note 13. The earliest of the obscenity cartoons also uses a conversation between two judges to point out another difficulty in the process of obscenity regulation. The caption reads, “I agree the book is definitely obscene, but do we want people to think we’re square?” Donald Reilly, 12/5/1964, in COMPLETE CARTOONS disk 2, supra note 13. Reilly suggests a different tension, one between legal and social standards for sexual materials in the social climate of the 1960s.


163. Miller, 413 U.S. at 15.

164. Id. at 24. The phrase appeared earlier in Roth v. United States, 354 U.S. 476, 487, 489 (1957) (“Obscene material is material which deals with sex in a manner appealing to prurient interest.”).

165. Joseph Farris, 8/20/1973, in COMPLETE CARTOONS disk 2, supra note 13. Miller was decided on June 21. See supra note 162 and accompanying text. The companion case to Miller, Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973), involved an appeal by two Georgia adult movie theaters from a Georgia Supreme Court ruling that their films were obscene and therefore unprotected by the First Amendment. The Supreme Court remanded the case to the Georgia court in light of the new standard adopted in Miller. 413 U.S. at 69–70. The cartoon draws on both the language and geography of the two cases. Fifteen years later, Bernard Schoenbaum used the “community standards” language in a different context. In his cartoon, one cellmate tells another that “[a]ll along I thought our level of corruption fell well within community standards.” 7/18/1988, in COMPLETE CARTOONS disk 2, supra note 13.
works for the most conservative communities or marketing different versions for separate markets. The cartoon offers a serious critique of Miller, one offered by legal scholars in less amusing forms.\textsuperscript{166}

A second, more frivolous response to the new standard came a few months later in a cartoon showing one bemused judge confessing to another that “[t]ry as I may, I keep blowing the pronunciation of ‘prurient.’”\textsuperscript{167} Again, the joke works on two levels: the legitimate difficulty of pronouncing the word and the more abstract difficulty of applying it. Almost a quarter of a century later another cartoonist returned to the phrase “prurient interest” as a source of humor, drawing a conservatively dressed motorist passing a road sign that reads “Prurient Interests Next 7 Exits.”\textsuperscript{168} By this time the substantial gap between the phrase and its locus in Miller rendered it unlikely that any but the most legally minded readers would make the connection to the case; instead the joke relies principally on the context of the phrase, with only a faint echo of its earlier constitutional meaning.

The most recent Supreme Court case to trigger a prompt cartoon response is \textit{Texas v. Johnson},\textsuperscript{169} the controversial decision that found a Texas statute prohibiting flag burning unconstitutional under the First Amendment.\textsuperscript{170} Strong public and political opposition to \textit{Johnson} was immediate, with harsh criticism of the Court majority and calls for a constitutional amendment banning flag burning.\textsuperscript{171} The first \textit{New Yorker} cartoon on the case appeared on July 17, 1989, less than four weeks after the Court issued its June 21 decision. In Warren Miller’s uncaptioned drawing, a man in a plaid shirt and baseball cap sits on the porch of his farm house with a curmudgeonly expression on his face; an American flag flies from a bracket on the porch.\textsuperscript{172} One of the man’s hands holds a hose,

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\item \textsuperscript{166} Laurence Tribe observes that “the pressure on a publisher or distributor to conform to the lowest common denominator of sexual acceptability of course becomes enormous.” \textsc{Laurence H. Tribe, American Constitutional Law} 665 (1978). \textit{See also Erwin Chemerinsky, Constitutional Law: Principles and Policies} 832 (1997) (“[Miller] is troubling because it could have the effect of forcing national distributors to make sure that their products meet the most restrictive laws.”).
\item \textsuperscript{167} Donald Reilly, 1/14/1974, \textit{in Complete Cartoons disk 2}, \textit{supra} note 13.
\item \textsuperscript{169} \textit{Texas v. Johnson}, 491 U.S. 397 (1989).
\item \textsuperscript{170} \textit{Id.} at 414. For a detailed account of the controversy surrounding the Court’s flag burning decisions, see Robert Justin Goldstein, \textit{The Great 1989–1990 Flag Flap: An Historical, Political, and Legal Analysis}, 45 U. Miami L. Rev. 19 (1990).
\item \textsuperscript{171} \textit{See Goldstein, supra} note 170.
\item \textsuperscript{172} Warren Miller, 7/17/1989, \textit{in Complete Cartoons disk 2}, \textit{supra} note 13.
\end{itemize}
while the other rests on a fire extinguisher. He is clearly prepared to defend
his flag against the assault of any rampaging flag burners, a posture which
the cartoon suggests is, perhaps like the proposed constitutional
amendment, an excessive reaction to a seldom used form of political
protest. Five months later, after the initial hostility to the decision had
abated, Robert Weber’s cartoon underscored the disproportionate nature of
that hostility. A wife in her robe emerges from a smoky kitchen to tell her
husband, who is calmly reading his newspaper at the breakfast table, “Now
I’ve done it. I burned the toast and the flag.” The linking of the toast and
the flag, with the flag coming second, makes the point.

Although Congress failed to muster enough votes for the proposed
constitutional amendment, it did pass the Flag Protection Act, a statute its
supporters claimed could survive Johnson’s holding by prohibiting only
physical mistreatment of the flag, not political expression. The Court
disagreed, immediately striking down the new statute as a violation of the
The case revived the demand for a constitutional amendment banning flag
burning, and The New Yorker responded promptly with two cartoons. In the
first, published on July 2, a man in a suit and tie mailing a letter at the post
office gazes at the three wall slots, marked “Local Mail,” “Out-Of-Town
Mail,” and “Proposed Constitutional Amendments.” The second cartoon
appeared on July 9, four weeks after Eichman and five days after the July 4
holiday. In another uncaptioned drawing, Dana Fradon shows two sidewalk
vendors, one selling flags and the other selling copies of the Constitution,
who eye each other warily as they hold up their goods. The opposition of
flag and Constitution is clear though muted; there is no hint of imminent
violence, but the tension between the two reflects the tension identified by
the Court in its refusal to grant the flag unprecedented constitutional
protection.

Although the cases had drawn a great deal of attention, the Court’s
decisions rejecting a constitutional right to physician-assisted suicide in
Washington v. Glucksberg and Vacco v. Quill did not draw a prompt
response from New Yorker cartoonists, who focused more directly on a

174. See Goldstein, supra note 170.
related issue, Oregon’s law authorizing assisted suicide. A cartoon by Roz Chast published in January 1997, five months before the Court decisions in *Glucksberg* and *Vacco*, contains a sign reading “Lawyer-Assisted Suicide” beneath which an attorney advises his client that “I charge five hundred bucks an hour, and I’m really, really, really, really, really slow.” A month later, a second cartoon shows four men in sharp suits and dark glasses, presumably mobsters, discussing a new business venture: “Now, assisted suicide—that could be a growth area for us.” When Oregon voters rejected a ballot measure to repeal the assisted suicide statute on November 4, 1997, thus rendering the statute operative, a cartoon by J.B. Handelsman appeared less than two weeks later with a doctor cautioning his patient that “[b]efore we try assisted suicide, Mrs. Rose, let’s give the aspirin a chance.” A related cartoon followed, with the driver of an elderly passenger telling the attendant at a scenic gas station, “Yes, Oregon’s lovely, but we’re just here for the suicide.” More than a year after *Glucksberg* and *Vacco*, two cartoons played additional variations on the theme of assisted suicide. In the first, a helpful boy scout volunteers to the old woman he is helping across the street that “I also do suicides.” In the final cartoon, which responds as well to the stock market dip of two weeks earlier, police officers look out an open office window as a detective reads a note pinned to the desk chair and tells his colleagues, “Looks like broker-assisted suicide.” Unlike the flag-burning cartoons, the assisted suicide cartoons seem to be responding less to the Court decisions than to the Oregon law and the darkly humorous possibilities it provides.

E. LIFE AT THE COURT

In addition to the cartoons that view the Court and its justices from the outside, a handful provide an inside perspective on life behind the bench. In these cartoons, the justices comment, usually to one another, on the nature of their job. None of the artists attempts to represent particular justices;

180. The cases were decided on June 26, 1997. See supra notes 178–79.
these are generic characters, identifiable only by their surroundings or robes or the substance of their remarks. It is not always easy to distinguish cartoons about Supreme Court Justices from those about lower court judges, but educated guesses are possible. When, for example, a robed figure sitting in formal judicial chambers plucks at a daisy, saying “It's constitutional, it’s unconstitutional, it’s constitutional, it’s unconstitutional,” it seems a safe assumption that the 1965 cartoon is targeting the exercise of power by the justices of the Warren Court.

These behind-the-scenes cartoons suggest that the judicial life carries its burdens as well as its pleasures. A 1964 cartoon shows several justices headed for their courtroom, while one observes to another, “Decisions, decisions, decisions!” That good-humored lament about the work ahead is balanced by a later cartoon in which another justice walking through the Court building remarks exuberantly to a colleague, “Gorgeous day! Puts one in the mood for a landmark decision.” Two cartoons by Al Ross deflate the notion of the justices’ omniscience and power. In one, a justice responds to his colleague’s question about the Court’s opening ceremony with a confession of ignorance that most readers would share: “Now that you ask, I’m damned if I do know what ‘oyez’ means!” In the other, a justice turns to his colleague on the bench with a request to conceal his uncertainty from the public: “If you please, Mr. Justice, would you mind not saying, ‘Of course we could be wrong?’” Like Justice Jackson’s often quoted observation that the justices are “not final because we are infallible, but we are infallible only because we are final,” both cartoons pierce the Court’s aura of unquestioned authority.

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188. Ed Fisher, 10/23/1965, in COMPLETE CARTOONS disk 2, supra note 13. A similar cartoon shows three judicial figures on the bench, with an American flag behind them. One turns to another and asks, “Do you ever have one of those days when everything seems un-Constitutional?” Joseph Mirachi, 12/30/1974, in COMPLETE CARTOONS disk 2, supra note 13. The use of three figures and the flag in place of the pillars and drapes that usually represent the Supreme Court’s chamber indicates that the speaker is probably a member of a lower federal or state court.


191. Al Ross, 3/3/1975, in COMPLETE CARTOONS disk 2, supra note 13. The Marshal opens each session of the Court with what its website calls “the traditional chant” that begins: “The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez!” The Court and Its Procedures, http://supremecourts.gov/about/procedures.pdf (last visited Sept. 6, 2006). “Oyez,” derived from Old French, is “a call by the public crier or by a court officer (generally thrice uttered), to command silence and attention when a proclamation, etc., is about to be made.” 11 OXFORD ENGLISH DICTIONARY 22 (2d ed. 1989).


Two other conversations between justices suggest both the breadth and the dangers of their work. The first has a justice answering his colleague’s question with resignation: “‘What’s on the docket?’ Are you kidding? What isn’t on the docket?”¹⁹⁴ Coming in 1974, that response suggests a general awareness of the increasing scope of the issues before the Burger Court. The second cartoon, published almost thirty years earlier, depicts a justice with a black eye explaining its cause to his neighbor on the bench: “He said he considered our decision incompetent, delusive, and vindictive. Then he hung this mouse on me.”¹⁹⁵ At the date of publication, Chief Justice Fred Vinson had been in office barely three months,¹⁹⁶ and the Court’s 1946 term was just beginning. It is thus hard to tie this cartoon to any particular decision capable of inciting a member of the public to personal violence. In light of the timing and the artist—Peter Arno, famous for his New Yorker cartoons of elderly plutocrats and youthful showgirls¹⁹⁷—the cartoon seems to be using a Supreme Court justice as an easily recognizable foil for the story of the punch that produced the “mouse.”

These diverse glimpses of the justices show them as fallible and vulnerable, not unlike the employees at less exalted workplaces who also have to cope with unending tasks, uncertainty, and occasionally severe criticism. The humor depends on the reader’s basic perception of the Court’s dignity and power in order to humanize its justices; no specific knowledge about the justices or their cases is necessary to get the joke, which usually operates by combining judicial formality with the language, customs, and limits of ordinary life.

F. THE COURTHOUSE

Starting in 1980, New Yorker cartoonists developed a new subgenre of Supreme Court cartoons: captionless drawings of the justices’ courthouse with a series of variations on its original “Equal Justice Under Law”

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¹⁹⁵. Peter Arno, 10/5/1946, in COMPLETE CARTOONS disk 1, supra note 31. A related cartoon places the hostility on the bench. One judicial figure apparently responds to his colleague’s insulting remark: “Yeah? And just who in the hell do you think you are?” Joseph Mirachi, 11/4/1967, in COMPLETE CARTOONS disk 2, supra note 13. The wall behind the bench contains the Court’s pillars, but it also contains part of a large American flag. The setting, together with the drawing of only five judges, strongly suggests that these are state court judges and not Supreme Court Justices. If they were, this would be the most negative portrayal of the justices in any New Yorker cartoon.
¹⁹⁷. YAGODA, supra note 8, at 99–100.
Unlike most New Yorker cartoons about the Court, these cartoons make their point without filtering it through the conversation or consciousness of individuals, relying instead on a visual image. Most of these drawings are quite accurate in their depiction of the courthouse, including its classical columns, triangular frieze, symmetrical wings, and imposing flight of steps. The joke in each case rests on the reader’s ability to identify the courthouse and, once again, appreciate the contrast between its classical dignity and the nature of the new message it carries. Like the cartoon figures in judicial robes, these cartoon buildings are not always easy to identify as specifically belonging to the Supreme Court rather than to lower courts or other government entities. The details of the buildings provide one clue, and the names of the artists provide another. The ten cartoons that arguably depict the Supreme Court building are drawn by only three artists—Lee Lorenz, Michael Maslin, and Mischa Richter—all of whom contributed multiple other cartoons about the Court.

The most pointed of the Lorenz cartoons shows the courthouse with its authentic inscription but changes the frieze containing the Goddess of Liberty and other allegorical figures to the classical masks of comedy and tragedy, suggesting that the legal process has become one more form of theater. A second cartoon replaces “Equal Justice Under Law” with “News Weather Sports,” this time identifying the legal process with the events of the day rather than the enduring principles of justice. Lorenz’s third cartoon relies more simply on the building’s classical architecture; this time the inscription reads “Doric, Ionic, or Corinthian?” It echoes an earlier cartoon by Mischa Richter in which a toga-clad figure, briefcase in hand, climbs the courthouse steps together with other briefcase-carrying men in business suits. The architecture is again the joke, with the toga more appropriate to the Court building than standard lawyers’ apparel.

198. For a description and photograph of the Court building, see Bloomfield, supra note 76, at 51–52.
199. Id.
Richter, the cartoonist most interested in the comic possibilities of the courthouse, also rings a variety of changes on its inscription. In succession, appearing in cartoons from 1981 to 1997, it reads “The Rules of the Game”;205 “Decisions, Decisions, Decisions”;206 “Truth-Justice-Equality-Public Relations”;207 “Hey! Justice Truth Equality Liberty”;208 and “Truth-Justice-Mercy (As Seen On TV).”209 The focus shifts from the law as a game to the law as public relations and finally entertainment, but the theme remains the various purposes other than truth and justice to which the judicial system has been put. In his sole courthouse cartoon, Michael Maslin sounds a similar theme. He labels the building’s two wings “In” and “Out,”210 turning it into a bureaucratic machine.

It is worth noting that there were no cartoons marking the opening of the imposing Supreme Court building in 1935.211 For most of its existence, the Court had occupied handsome but somewhat cramped and inconvenient quarters inside the Capitol, and the move to a new building was a significant Washington event.212 The arrival of the courthouse cartoons in the 1980s suggests that it took almost fifty years before even sophisticated New Yorker readers could be trusted to identify the institution of the Court with its new home. By the 1980s, however, cartoonists who followed the Court and its decisions could rely on the building’s recognizably as a useful shorthand in making their satiric comments on the current state of the legal system.

IV. THE CONSTITUTION IN CARTOONS

The New Yorker’s growing interest in the Court as an accessible source of cartoon humor is paralleled by a similar, though smaller, line of cartoons dealing more generally with the Constitution. These cartoons differ from the drawings, discussed earlier, that invoke specific cases like Miranda or specific justices like Holmes. Instead of referring to particular decisions or to the Court and its justices, they rely directly on the idea of the Constitution and its increasingly pervasive role in American society. Perhaps the clearest illustration of this theme, the penetration of the

211. For a history of the Court’s accommodations, see Maxwell Bloomfield, Buildings, Supreme, in OXFORD COMPANION, supra note 59, at 117, 119.
212. See id. at 117–19.
Constitution into the texture of American life, is a cartoon showing the Statue of Liberty and Uncle Sam at home, lying in their twin beds and reading—her book is the Bill of Rights, and his the Constitution. Such cartoons clearly reflect a cultural awareness of the Court’s constitutional decisions and their impact on public and private life. Like the more explicit Court cartoons, these drawings depend for their humor on the ability of New Yorker readers to recognize, starting in the late 1960s, the expansive nature of the protections afforded by the Constitution as interpreted by the Supreme Court.

A. BEFORE THE WARREN COURT

The New Yorker published only two cartoons referring to the Constitution prior to the last years of the Warren Court. The first cartoon belongs to the magazine’s early period of frivolous humor, appearing on April 13, 1929, six months before the stock market crash and four years before the repeal of Prohibition. In one frame, an elegantly dressed man with a monocle holds a bible while his companion raises his hand to swear an oath. In the next frame, the first man is pointing to the book and whispering something that makes his companion smile. The final frame shows the book open, revealing a bottle-shaped depression, and both men are drinking. The caption reads, “. . . and to uphold the Constitution of the United States, so help me . . .” The constitutional oath has literally been emptied of its meaning and turned into an occasion for a sociable drink in violation of the Eighteenth Amendment.

The second of these early cartoons arrived six years later at a very different time, with the country deep in the Depression and the Court beginning its review of New Deal legislation. The drawing shows an elaborate construction project extending for several city blocks with half a dozen large cranes at work. One figure is interrupting the work to tell another the news: “My God, Ed! The whole damned thing’s been declared unconstitutional!” Although no specific Court decision in the weeks

216. The Amendment prohibited “the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof.” U.S. CONST. amend. XVIII, § 1.
before publication had halted a major government-funded project, on May 27, 1935, the Court had declared the National Industrial Recovery Act ("NIRA") unconstitutional in *A.L.A. Schechter Poultry Corp. v. United States*,\(^{218}\) one of the first major defeats for the Roosevelt administration’s agenda.\(^{219}\) Unlike later cartoons that refer either by language or content to specific Court decisions, this one refers more generally to the new perception that the test of constitutionality has far-reaching effects on the country’s commerce and industry. Although NIRA was a regulatory rather than a funding statute, it serves the artist as a generalized source for the climate of constitutional litigation the cartoon evokes.

**B. AFTER THE WARREN COURT**

It is curious that more than thirty years passed before another cartoon cited the Constitution or any of its provisions. In the wake of the Warren Court’s expansion of constitutional rights, however, *New Yorker* artists seemed willing to assume that their readers would recognize invocations of the Constitution in both legal and domestic contexts. A 1970 cartoon suggests the expectations raised by the Warren Court revolution, as a convict complains to his cellmate: “What’s so great about due process? Due process got me ten years.”\(^ {220}\) That same year, another cartoon shows a visibly intoxicated husband arriving home late to offer his wife the full text of the Fifth Amendment, framed by “Quote” and “Unquote,”\(^ {221}\) presumably to rely on its prohibition against self-incrimination. Another wife relies on her own version of the First Amendment to support her decision to end her marriage. As she leaves home with her suitcases, she tells her husband that “[t]he Constitution is quite clear on this point, Geoffrey. Congress shall make no law abridging my freedom to split.”\(^ {222}\) Her use of the Constitution as a charter for personal freedom from marital constraint plays off the complaint of Warren Court critics that its individual rights decisions loosened the bonds of American society and contributed to

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\(^{219}\) See LEUCHTENBURG, supra note 24, at 215.


the turbulent 1960s. In a recent variant on the theme, a bar patron responds to a telephone call from his wife with his own unusual constitutional defense: “Tell her I’m exercising my Twenty-first Amendment rights.” That Amendment, repealing Prohibition, is not widely identified by its number, but the cartoon expects *New Yorker* readers to either know or guess the provision in order to get the joke.

The idea that the Constitution provides broadly defined protections that can be shaped to support almost any desired conduct reappears in several cartoons. As two older couples share an evening visit, the hostess encourages her husband: “Darling, tell the McKessons your version of the Bill of Rights.” In the same vein, one cocktail party guest tells another, “I may not know much about the Constitution, but I certainly know what I like.” Two cartoons applied this independent perspective to the courtroom. In one, a distinguished older man on the witness stand responds to a lawyer’s question by distancing himself from standard interpretations: “As a matter of fact, I have read the Constitution, and, frankly, I don’t get it.” In the other, by J.B. Handelsman, the witness is a frowning Statue of Liberty being admonished by the judge, presumably for her far-ranging comments: “Witness will confine herself to answering counsel’s questions, and refrain from giving opinions as to constitutionality and the like.” All of these cartoons suggest a tendency to challenge authoritative interpretations of the Constitution that get in the way of individual preferences. The theme is expressed most directly in another Handelsman cartoon that shows two men with briefcases descending the Capitol’s steps. The smiling speaker reassures his companion: “Hey, the Constitution isn’t engraved in stone.”

Another pair of cartoons offers a pair of alternate strategies: the complete evasion of constitutional issues or the drafting of the document to

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225. U.S. CONST. amend. XXI.


229. J.B. Handelsman, 7/22/1991, *in COMPLETE CARTOONS* disk 2, supra note 13. Almost two decades earlier, Handelsman presented a judge experiencing a similar tension between constitutional constraints and personal preference as he tells an attorney that “[t]he Court finds itself on the horns of a dilemma. On the one hand, wiretap evidence is inadmissible, and on the other hand I’m dying to hear it.” J.B. Handelsman, 12/23/1972, *in COMPLETE CARTOONS* disk 2, supra note 13.

embrace political choices. In the first cartoon, a legislator sitting in his office close to the Capitol praises a staff member for a clever piece of drafting: “Great. You’ve touched all the bases without getting bogged down in constitutionality.”231 The constraints of the Constitution are clearly a nuisance to be avoided whenever possible. In the second cartoon, published in April 2004, the Framers themselves apparently anticipate the policies of the second Bush administration, as the speaker makes his suggestion: “Can’t we put in something about rich white guys don’t have to pay taxes?”232 The joke relies on the readers’ perception of the gap between constitutional values and the proposed policy, a gap underscored by the speaker’s colloquial language.

Another set of cartoons explores the opposite tendency, insistence on the Constitution’s unwavering authority, at least as perceived by the speaker. One man reaches into his briefcase to settle a barroom argument with his drinking companion on an undisclosed subject: “Oh yeah? Well, I just happen to have a copy of the Bill of Rights with me.”233 In yet another Handelsman cartoon, a judge asserts his role as constitutional interpreter to a defendant appearing before him: “Let me give you a lesson in American history: James Madison never intended the Bill of Rights to protect riffraff like you.”234 The first cartoon to invoke the idea of the judge as constitutional interpreter appeared in 1972, at a time when President Nixon had made clear his determination to appoint only strict constructionists, opposed to the Warren Court’s expansion of defendants’ constitutional rights, to the Supreme Court.235 A judge tells the scruffy defendant before him, “Speaking as a strict constructionist, ninety days,”236 thus linking Nixon’s two requirements.

In other cartoons, characters worry not only about the rightness of their constitutional views but also about those who share them. Thus, an elderly croquet player is surprised to find himself in unlikely agreement

235. For an account of Nixon’s strategy for the appointment of Supreme Court Justices, see ABRAHAM, supra note 53, at 253. That strategy included selection of:

“strict constructionists” who would see “their duty as interpreting law and not making law”; who would follow a “properly conservative” course of judging that would, in particular, protect society’s “peace forces” against the “criminal forces”; who would “see themselves as caretakers of the Constitution and servants of the people, not super legislators with a free hand to impose their social and political viewpoints upon the American People.”

with a left-leaning politician and insists that “I want a constitutional amendment to balance federal budgets sponsored by someone other than Jerry Brown.”237 On the other end of the political spectrum, an irate television viewer feels betrayed by a favorite conservative commentator and summons his wife: “Margaret, turn that damn thing off! William Buckley just came out in favor of the Bill of Rights!”238 Both cartoons suggest that, by the early 1980s, the way one interprets the Constitution, like one’s occupation or style of dress, has become an identifiable and valued aspect of social identity.

C. THE FIRST AMENDMENT

Judging by New Yorker cartoons, the most recognizable provision of the Constitution is the First Amendment.239 Numerous cartoons refer to its protections; surprisingly, not all of these references are to the provisions most often before the Court or in the headlines. Even more surprisingly, very few of these cartoons place the Amendment in the context of speech in a public setting. In a 1969 cartoon published six months before the end of the Warren Court, an intoxicated man announces to the bar’s other customers, “I’m for free enterprise, free speech, free assembly, free booze.”240 His four freedoms are an eclectic mix of legal and nonlegal rights that together support his choice of alcohol in a friendly tavern. A related captionless cartoon makes more explicit use of the same wordplay, with a sign in the window of Joe’s Bar that reads simply “Free Speech.”241 In yet another bar cartoon, one customer tells another, “I disagree with what you say,” then recites the full text of the First Amendment’s prohibitions and concludes that “far be it from me” to violate them.242 The link between free speech and social drinking—the latter presumably often leading to the former—also connects the First and Second Amendments when one cocktail party guest tells another his theory of the Constitution:


239. U.S. CONST. amend. I.


“The way I see it, the Constitution cuts both ways. The First Amendment gives you the right to say what you want, but the Second Amendment gives me the right to shoot you for it.” All of these cartoons transport the right of free speech from its legal setting to a purely social context. Freedom means something closer to license, and the Constitution is invoked as a guarantor of unrestrained conversation. The joke is precisely the application of the Constitution where it does not belong.

In contrast, the less frequently litigated right of freedom of assembly appears in more traditional legal contexts. Thus, when a nineteenth century potentate gazing out of his palace remarks to his servant, “My, what a beautiful day! I think I’ll restore partial freedom of assembly,” he is referring to the right as it has been interpreted by courts and legal scholars. And when a police officer confronts three winos on a park bench, their response is also grounded in the Constitution. The trio’s spokesman makes the legal argument: “Look, Officer, this is the cocktail hour, correct? Furthermore, we have the inalienable right of free assembly, correct?” Both of these cartoons rely for their humor on the incongruity of the rights claimed and the settings, both high and low, but they also stay close to the meaning of the provision they employ and require readers to be at least passingly familiar with the constitutional text.

Only a few cartoons make use of other sections of the First Amendment, but they do so with overt satirical intent. In one, a television news anchorman introduces correspondents from various cities, each one “hiding behind the First Amendment.” In another, a woman touring a cathedral stands near a sign that reads “Dept. of Motor Vehicles” and observes mildly to her husband that “[w]e seem to be getting away from the separation of church and state.” Unlike the cartoons that transfer freedom of speech into private social life, these cartoons target attitudes hostile to distinct First Amendment protections, freedom of the press and

244. Donald Reilly, 1/16/1971, in COMPLETE CARTOONS disk 2, supra note 13. In a similar cartoon by a different artist, another monarch, this time seated on his throne, hits a man over the head with a club as a courtier observes that “[h]e’s invoking executive privilege again.” Dana Fradon, 1/31/1983, in COMPLETE CARTOONS disk 2, supra note 13. Since it appeared over eight years after United States v. Nixon, 418 U.S. 683 (1974), the decision recognizing executive privilege as a constitutional right, the cartoon suggests that the term and its association with presidential power remained current for New Yorker readers.
245. For a brief account of freedom of assembly, see JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 16.54, at 1378 (7th ed. 2004).
the Establishment Clause. A third cartoon takes aim at government use of
the media. Two drafters of the Constitution, in eighteenth century garb,
confer, with one suggesting to the other that “[p]erhaps we should provide
for the separation of state and entertainment.”249 All of these cartoons place
greater demands on their readers, who must be familiar with both the First
Amendment and the current challenges to the scope of its protections.

Three cartoons offer a wider perspective on the scope and importance
of the First Amendment. In a 1979 cartoon, a man blithely responds to his
wife’s presumed concern about weakening the Amendment: “So what if the
First Amendment does go? We still have twenty-five more.”250 Ten years
later, another cartoon made a similar point about the Amendment’s power.
The scene is an expensive yacht, and the speaker is telling his cigar-
smoking friend that “I took a look at the First Amendment, and some of
that stuff isn’t funny.”251 A third cartoon, another by Handelsman, targets
even more emphatically the perception by some members of the
Establishment that the rights protected by the Amendment are harmful to
the social order. A smiling judge makes his comment in open court: “Call it
‘legislating from the bench,’ if you will, but on this occasion I should like
to repeal the First Amendment.”252 All three cartoons assume that New
Yorker readers will be familiar not only with the multiple protections of the
First Amendment but also with the ongoing debate about striking the
balance between individual rights and social order.

D. THE SECOND AMENDMENT

The only other constitutional provision to appear repeatedly in New
Yorker cartoons is the Second Amendment.253 Unlike many of the other
constitutinal cartoons, these drawings did not respond to Supreme Court
decisions; the Court has issued no major opinions on the Second
Amendment in recent years.254 In fact, two cartoons rely for their humor
precisely on the contrast between the constitutional obscurity of the
Amendment and the vehemence of its supporters. In the first, Moses holds
aloft two tablets while a man in the back of the crowd queries his

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249. Frank Cotham, 6/21/1999, in COMPLETE CARTOONS disk 2, supra note 13.
253. U.S. CONST. amend. II.
254. For a summary of the Court’s Second Amendment decisions, see 2 RONALD D. ROTUNDA &
JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE §14.2, at 520–22
n.4 (3d ed. 1999).
companion: “I understand the Ten Commandments. But what is this Second Amendment he keeps going on about?” The second cartoon relies even more directly on the absence of a body of Second Amendment jurisprudence. A woman at a cocktail party, speaking to a man in a three piece suit who is holding a rifle, apparently responds to his answer to the inevitable question about his occupation: “How very exciting! I have never before met a Second Amendment lawyer.” The underlining of “Second” expects readers to know that First Amendment lawyers are frequently encountered on the cocktail party circuit but that legal careers based on the Second Amendment are notably rare.

The earliest of the cartoons, published in 1968, expresses similar skepticism about the need for vigilant protection of Second Amendment rights. A wife turns to her husband, who lies beside her in bed clutching his rifle, and complains: “You know something? You and your right to bear arms are beginning to give me a big fat pain in the neck.” Several other cartoons expand that skepticism into stronger satiric commentaries. A captionless drawing shows a street of conventional shops, with signs reading “Pizza,” “Ice Cream,” “Video,” and “The Second Amendment Gun Shop.” The domestication of guns in that cartoon contrasts with a more dramatic vignette that makes a different point. In a cartoon series titled “Our Heroes,” the artist Sam Gross draws a flying superhero whose head is the handle of a pistol. On the ground a large and primitive-looking man stands over two smaller bruised men, their broken eyeglasses and hats lying beside them, whom he has apparently just beaten. Spotting the superhero, a victim exults: “We’re saved! It’s Second Amendment Man!” The idea that the Second Amendment protects the assailant, not the victims, appears in a cartoon, once again by J.B. Handelsman, expressing that irony within the New Yorker tradition of talking animal cartoons. As two hunters with rifles chase a pair of stags, one stag observes philosophically to the other: “It’s tough, but their right to keep and bear arms must not be infringed.”

Two of the Second Amendment cartoons return to the Framers for their humor, suggesting that the effort of gun rights advocates to root their position in constitutional history is both misguided and anachronistic. In one drawing, two eighteenth century men discuss the rationale of the

Second Amendment, mixing textual language with contemporary idiom: “A well-regulated militia being necessary to the security of a free state, we need cheap, available handguns.” The joke derives from the dual contrast of language and content; “cheap available handguns” are as far removed linguistically from the Amendment’s text as they are conceptually from “[a] well-regulated militia.” The second cartoon puts even more space between the Framers and contemporary arguments in support of ready access to guns. As one Framer signs the Constitution, he is surrounded by several others firing their rifles in the air. The signer wonders aloud “if future generations will realize that their forefathers were such gun nuts?”

These cartoons differ dramatically from an earlier cartoon representing the Framers in a more benign light. As they sit around a table, the speaker reminds his colleagues of their mission: “Remember, gentlemen, we aren’t here just to draft a constitution. We’re here to draft the best damned constitution in the world.” The cartoon is both mild and laudatory; these men have the best of intentions. In the later context of the Second Amendment, however, the Framers have been transformed by their cartoonists into the slightly daffy progenitors of a contemporary movement that appears consistently as a satiric target. All of these cartoons rely on their readers’ general awareness of constitutional origins in the work of the Constitutional Convention. Even in the absence of allusions to Second Amendment decisions by the Court, there is a broader allusion to the nation’s constitutional culture and the notion that originalism is subject to diverse and even absurd applications.

V. CONCLUSION

The trajectory of The New Yorker’s Supreme Court cartoons over the past eighty years reflects a comparable trajectory in the Court’s public profile. From the 1920s through the 1940s, the magazine’s cartoonists found almost no value in the Court or its constitutional decisions as a source of humor for their expanding audience of sophisticated readers. In the 1950s—the decade of Brown and the start of the Warren Court—cartoonists for the first time relied on those readers to recognize the Court’s institutional power as the basis for simple jokes. It was in the 1960s, as the Warren Court interpreted the Constitution to protect individual and minority rights, that New Yorker cartoons first took notice of the Court’s
jurisprudence, treating it as part of the texture of domestic life and its conversations. By the 1980s and 1990s, cartoonists could rely confidently on readers’ awareness not just of specific Court opinions but of the justices and their selection process as well.

*The New Yorker’s* transformation from a light-hearted humor magazine to a publication also engaging the most serious public issues accounts in part for this shift, but the frequency and specificity of Supreme Court cartoons in the last half century reveal something more than a revised publication policy. These *New Yorker* cartoons about the Court—sometimes frivolous, sometimes satiric, often more interested in their characters’ responses than in constitutional jurisprudence—more importantly reflect the growing public consciousness of the Supreme Court, its decisions, its justices, and its pervasive role in American life.