Anatomy of an Op-Ed: A Biased Guide

by G. Epps, boy journalist[[1]](#footnote-1)

1. Lede: offbeat or interesting if possible.
	1. Not good: “What did the authors of the Oregon Constitution mean when they gave the State Senate the power to ‘advise and consent’ to gubernatorial nominations? Webster defines ‘advise’ as . . . .”
	2. Slightly better: “Oregonians regardless of party should be concerned by yesterdays’ 32-28 State Senate vote rejecting my nomination to the Governor’s Criminal Justice Commission . . . .”
	3. Best I could come up with[[2]](#footnote-2): “I was surprised when I read in this morning’s *Oregonian* that the Oregon Senate had rejected my uncle, George Epps, for service on the Governor’s Criminal Justice Commission. True, he was not qualified to serve, having spent most of his adult life as permanent secretary of the Central Richmond Elks Lodge. Even worse for his nomination, George died in 1958. Only after a second did I realize the Senators were voting on me. They found me unfit without bothering to learn my name.”
	4. A narrative lede that actually got printed even though it was about Topic A that week and I was a nobody without special qualifications: “It’s a scene that Norman Rockwell wouldn't have painted, but it's as American as any that he did: a long line of blacks waiting to vote, a small knot of whites trying to stop them. I've been there. On election day 1976, as a ‘hauler’ for the Democratic Party in Richmond, I picked up a black 18-year-old who was hoping to cast his first vote for Jimmy Carter and against Sen. Harry F. Byrd Jr. He had tried to vote earlier, but had been told there was some mixup with his registration. . . . “
2. Statement of relevance *at this moment*
	1. Note the temporal anchor in the “George Epps” lede—the vote was yesterday. It further relates to what’s going on in general right now: “In the midst of a searing recession, a new governor needs all the help he can get to tackle Oregon’s problems now. We should all be concerned by a political system that may prevent him from filling key executive positions in timely fashion.”
	2. Temporal anchor—confirmation hearings. “It is the authoritarian face of the old South -- a society that did not protect the right to vote. Is it also the face of our chief justice-designate, William H. Rehnquist? In hearings before the Senate Judiciary Committee, witnesses identified Rehnquist as the man they saw harassing black and Hispanic voters, demanding that they read from a card to prove their literacy, asking to see documents that proved they had the right to vote.”
	3. Other forms of relevance:
		1. “On the 50th Anniversary of the breaking of the great filibuster against the Civil Rights Act of 1964 . . . .”
		2. “Yesterday’s mass stabbing at Franklin Regional High School in Pittsburgh . . .”
		3. “Oral argument next week in *Susan B. Anthony List v. Driehaus . . . “*
	4. Note that the claim of relevance can refer to something that hasn’t happened—“Completely absent from the debate over legal education is any suggestion that states should increase their financial support for their public law schools.”
3. Claim of authority—*remember, the editor (and, with luck, the reader) doesn’t know you from Adam’s off ox, he or she needs to be convinced to listen to what you have to say.*
	1. Can be personal.
		1. See the Rehnquist episode—“I have been there.[[3]](#footnote-3)
		2. “As a young lawyer fresh out of school, I was part of the team that drafted that bill, called the Lily Ledbetter Fair Pay Act of 2009.”[[4]](#footnote-4)
		3. As a civil rights lawyer, I spent years trying to persuade judges and juries that disable Americans are not asking for “special rights” when they invoke the Americans with Disabilites Act’s requirement of “reasonable accommodation.” Now I study those issues as a professor at the University of Baltimore School of Law.[[5]](#footnote-5)
	2. Can be professional
		1. “Every year, I must explain to incredulous Constitutional Law students that there was a time—not that long ago—when a law requiring restaurants, hotels, theaters and other businesses to serve African American customers was considered constitutionally ‘radical’ and ‘unprecedented.’”
		2. “I have just finished a book-length history of the adoption of the United Nations Convention on Torture . . . .”[[6]](#footnote-6)
4. Summary of contending positions (or possible reasons for contested phenomenon). *Note: Don’t get too caught up in refuting other writers on the Internet (SEE EXAMPLE ONE). Write about the real world, not the Internet, and remember that you are always selling the correct view, not trying to punish the incorrect.*
	1. Contending positions
		1. Democrats argue that new legislation is needed to make good on the promise that women should be paid equally for their work. In a statement Tuesday, President Obama said [COMBINED QUOTATION AND PARAPHRASE, ACCURATE BUT VIVID]
		2. Republicans in Congress have responded that the wage gap is largely imaginary and that existing law covers sex discrimination anyway. [SPECIFIC COMBINED QUOTATION AND PARAPHRASE]. In addition, they dismiss the President’s statements as political rhetoric, aimed at November 2014. [SPECIFIC COMBINED QUOTATION AND PARAPHRASE].
	2. Reasons for contested phenomenon
		1. In the wake of the stabbings, we are sure to here again the argument that random killings are caused by sick individuals, not the ready availability of weapons. In the wake of the shootings at Sandy Hook Elementary School in December 2012, for example, National Rifle Association President Wayne LaPierre said [ACCURATE QUOTATION AND SUMMARY, NOT TOO LONG].
		2. Others will respond that, as Connecticut Governor Daniel Malloy said at the time [QUOTATION AND SUMMARY]
		3. However, unspoken in this debate will be one underlying and disturbing fact [YOUR POINT HERE].
5. Use specifics and do the necessary reporting.
	1. Do not just go on the narrative in the press; try to bring something extra to the table.
		1. In-depth reports by government or private researchers.
		2. official government documents
		3. briefs
		4. Call counsel, etc.
	2. Quotations, dates, titles
	3. Make sure you understand what has *not* yet been reported and don’t write as if you assume that one or another version of that is true.
	4. Give, in the space allotted, a fair account of those who have a different take on the subject
		1. Who they are
		2. What they think
		3. Except in rare cases, avoid sarcasm at least until the piece has established in a convincing way that the other side is deserving of ridicule
	5. Make sure you *respond* to the other sides argument.
		1. Arguments and facts
		2. Wrong way: “If Chuck Hagel is an anti-semite, I am an anti-semite. Absurd.”
6. Statement of correct position, according to author: “In fact, a nation that is serious about allowing participation of women in the workforce will directly address the greatest obstacle to their success: pervasive sexual violence, and the implied threat of sexual violence, that shape the public life of every woman, young or old, married or single, homemaker or business owner.”
7. Argument for opposing positions. *This should be low key and as fair as possible, using the Greek rhetorical mode called “prolepsis” (“*the anticipation and answering of possible objections in rhetorical speech.”)
	1. Do not caricature those who disagree, or suggest without strong evidence that they are not being intellectually honest. That is the quickest way to lose both editors and newspaper readers who haven’t thought about the question much and don’t know whether they trust you.
	2. “At its clearest, the argument against ‘equal pay’ laws relies on an assumption that we have a ‘free market’ in labor, and that the economic laws of the marketplace will reward those who participate in it according to their skill and dedication.”
	3. *Refutation* of opposing position, direct and calm: “But plausible as those arguments may seem, they assume that men and women are equally free economic agents. That assumption overlooks the statistics that starkly illustrate any American woman’s greater likelihood of suffering a violent assault in a given year. According to statistics assembled by the [AUTHORITATIVE GROUP THAT REALLY HAS DONE SERIOUS WORK, RATHER THAN ADVOCACY GROUP THAT GOES AROUND SAYING ‘THREE OUT OF EVERY TWO WOMEN WILL BE BEATEN’ FOR EFFECT], an adult woman is [DEFINITE FIGURES ON LIKELIHOOD OF CRIME OR DOMESTIC VIOENCE.] For women living in the inner city, the figures are even worse . . .”
8. What we should do about it now. There need to be specifics.
	1. Support existing legislation OR
	2. Block incorrect responses by legislators and courts OR
	3. Educate on the issue
		1. The young
		2. Decision makers OR
	4. Resolve that never again will we allow X phenomenon
	5. Remember the history that has made our society a freer place and resolve not to go back
	6. Other specific recommendation.
9. Conclusion referring back to lede: “I will never serve on the Criminal Justice Commission. That fact by itself hardly matters—the Governor has a choice of dozens of people more qualified than I am. What should matter to all of us is that partisan dishonesty threatens to exclude ordinary citizens from their right to participate in state government. Don’t imagine you are immune: If these politicians can make a menacing figure out of my poor old Uncle George, they can do it to anyone.”

Writing for the Popular Audience

* One thought per sentence. Ordinary readers need shorter sentences than do lawyers and courts, with fewer subordinate clauses.
* As far as possible, write in the active voice unless you have good reason for using the passive—for example, to render the action indefinite or impersonal.
* Vary sentence rhythm. Subject, verb, object can become wearisome. (Compare: “Authorities urge the unemployed to retrain and expand their employment search. That sounds easy. Unemployed workers quickly run into an obstacle. There aren’t any new tech jobs either.” with “Authorities urge the unemployed to retrain and expand their employment search. Easy as that may sound, unemployed workers who try it quickly run into an obstacle: there aren’t any new tech jobs either.”)
* Identify the people and institutions you discuss, quickly and accurately. (“Sen. Charles Schumer (D-NY),” “Baltimore Schools Interim CEO Tisha Edwards,” “20th-century political philosopher Isaiah Berlin,” “the National Rifle Association, the largest gun-rights group”)
* Explain legal concepts carefully and clearly, signaling to reader that you are going to explain a legal concept (“Because the South Carolina law explicitly discriminates by sex, courts are required to subject it to what lawyers call ‘intermediate scrutiny.’ This standard is slightly less demanding that the standard for laws that use race; under ‘intermediate scrutiny,’ the law must pursue an ‘important’ government interest, and it must be ‘substantially related’ to fulfilling it.”)
	+ Make sure your legal concepts are right, even if discussing them quickly (e.g., don’t fall into the habit that attributes some kind of approval to a denial of cert.). Do not sound pedantic, but remember you are selling yourself to the public as an expert. Actually being, and sounding, accurate means
		- More chance of placing
		- Less chance of being refuted or having your credibility called into question
		- more credibility with the non-legal reader
	+ Spend time making sure your explanations are accessible
	+ Consider using analogies to explain key concepts (e.g., “All other classifications are tested for a ‘rational basis,’ lawyer-speak for ‘whatever, dude.’ Consider this rule: ‘Tall people must stand in the back.’ Why? The picture will look better. Maybe some photographers would disagree, but whatever. Tall people don’t get ‘heightened scrutiny.’”
	+ Possible sources of analogy:
		- popular entertainment
		- sports
* When a legal term or idea would seem absurd to a lay person, recognize that and explain. (“The idea that ‘corporations are people’ seems like science-fiction, but in fact it is centuries old, and is the foundation of our corporate economy. That is because . . . .”)
* Use metaphors and similes.
* If you use humor, make sure it’s funny. Be doubly wary of sarcasm.
* Specifics—names, dates, quotes—prevent the dreaded MEGO.[[7]](#footnote-7)

Selling Op-Eds

*A good op-ed ideas is timely, specific, aimed or at least compatible with the target publication, professionally reported, specific, and authoritative. Remember you are selling. To quote* Glengarry Glen Ross*—“ABC. Always Be Closing.”*

* Timely
	+ Immediately after news event—hours, not days, if possible
	+ Cued to predictable events
		- anniversaries of cases, historical events
		- conclusions of investigations
		- elections, inaugurations
	+ Show awareness of what the outlet has already run on an issue, if anything
		- Length
		- Tone
		- Form
* If possible, write the entire piece first and send it attached to a careful query letter or (better) email.
	+ Find out the name of the editor; it’s possible your public-affairs people know it.
	+ If possible, enlist a friend who has published there to email the editor and introduce you.
* In query or cover letter, carefully spell out:
	+ The subject of the op-ed, specifically;
	+ How it will be different from most commentary that the editor can get from staff or news/opinion services
	+ Who you are and why you know about it. Be specific: just saying, “I’m a professor at Siwash Law School” isn’t enough.
	+ What you argue;
	+ Why you are writing it now;
	+ Where you have published before in general interest periodicals or websites;
	+ Whether you have sent it somewhere else. (Major outlets tend not to like this.)
	+ *Mental hygiene tip:* Know where you are going to send it next. When it is turned down (nobody has a perfect record), get it out to the next outlet on the list before you start feeling unhappy about the rejection.
* Tips to avoid
	+ General description of subject (e.g., “sexual assault on campus”); be specific
	+ Overbroad or inexact statement of the problem
	+ Generalized attack on media, even if your piece calls the media narrative into question. )Editor doesn’t know who you are, but the people you slam are probably his/her friends.)
* Write the correct length; editors don’t have time or interest to cut. *Never send something that is too long with a note saying, “I am willing to cut.” It will not be read.*
* Don’t use footnotes or in-line citations, but have your citations ready in case of fact-checking.
* Edit your piece carefully, however, including points of fact you regard as either peripheral or unchallengeable; in the age of newspaper staff cuts and Web journalism, you can’t count on a copy editor.
* Be consistent in matters of form—e.g., spell out numbers one to ten or use Arabic numbers for them, but don’t do both; use capitals sparingly but consistently. Don’t capitalize words like “State” or “Government,” it looks weird to ordinary people.

[**The Opinion Pages**](https://www.nytimes.com/pages/opinion/index.html) **| Op-Ed Columnist**

**Tips for Aspiring Op-Ed Writers**

[Bret Stephens](https://www.nytimes.com/column/bret-stephens) AUG. 25, 2017

*As a summertime service for readers of the editorial pages who may wish someday to write for them, here’s a list of things I’ve learned over the years as an editor, op-ed writer and columnist.*

1) A wise editor once observed that the easiest decision a reader can make is to stop reading. This means that every sentence has to count in grabbing the reader’s attention, starting with the first. Get to the point: Why does your topic matter? Why should it matter *today*? And why should the reader care what you, of all people, have to say about it?

2) The ideal reader of an op-ed is the ordinary subscriber — a person of normal intelligence who will be happy to learn something from you, provided he can readily understand what you’re saying. It is for a broad community of people that you must write, not the handful of fellow experts you seek to impress with high-flown jargon, the intellectual rival you want to put down with a devastating aside or the V.I.P. you aim to flatter with an oleaginous adjective.

3) The purpose of an op-ed is to offer an opinion. It is not a news analysis or a weighing up of alternative views. It requires a clear thesis, backed by rigorously marshaled evidence, in the service of a persuasive argument. Harry Truman once quipped that he wished he could hire only one-handed economists — just to get away from their “on the one hand, on the other” advice. Op-ed pages are for one-handed writers.

4) Authority matters. Readers will look to authors who have standing, either because they have expertise in their field or unique experience of a subject. If you can offer neither on a given topic you should not write about it, however passionate your views may be. Opinion editors are often keen on writers who can provide standing-with-surprise: the well-known environmentalist who supports nuclear power; the right-wing politician who favors transgender rights; the African-American scholar who opposes affirmative action.

5) Younger writers with no particular expertise or name recognition are likelier to get published by following an 80-20 rule: 80 percent new information; 20 percent opinion.

6) An op-ed should never be written in the style of a newspaper column. A columnist is a generalist, often with an idiosyncratic style, who *performs* for his readers. An op-ed contributor is a specialist who seeks only to inform them.

7) Avoid the passive voice. Write declarative sentences. Delete useless or weasel words such as “apparently,” “understandable” or “indeed.” Project a tone of confidence, which is the middle course between diffidence and bombast.

8) Be *proleptic*, a word that comes from the Greek for “anticipation.” That is, get the better of the major objection to your argument by raising and answering it in advance. Always offer the other side’s strongest case, not the straw man. Doing so will sharpen your own case and earn the respect of your reader.

9) Sweat the small stuff. Read over each sentence — read it aloud — and ask yourself: Is this true? Can I defend every single word of it? Did I get the facts, quotes, dates and spellings exactly right? Yes, sometimes those spellings are hard: the president of Turkmenistan is Gurbanguly Malikguliyevich Berdymukhammedov. But, believe me, nothing’s worse than having to run a correction.

10) You’re not Proust. Keep your sentences short and your paragraphs tight.

11) A newspaper has a running conversation with its readers. Before pitching an op-ed you should know when the paper last covered that topic, and how your piece will advance the discussion.

12) Kill the clichés. If you want to give the reader an *outside the box* perspective on how to solve a *problem from hell* by *reimagining* *the* *policy toolbox* to include *stakeholder voices* — well, stop right there. Editors notice these sorts of expressions the way French chefs notice slices of Velveeta cheese: repulsive in themselves, and indicative of the mental slop that lies beneath.

13) If you find writing easy, you’re doing it wrong. One useful tip for aspiring writers comes from the film “A River Runs Through It,” in which the character played by Tom Skerritt, a Presbyterian minister with a literary bent, receives essays from his children and instructs them to make each successive draft “half as long.” If you want to write a successful 700-word op-ed, start with a longer draft, then cut and cut again. “The art of writing,” believed the minister, “lay in thrift.”

14) The editor is always right. She’s especially right when she axes the sentences or paragraphs of which you’re most proud. Treat your editor with respect by not second-guessing her judgment, belaboring her with requests for publication decisions or submitting sloppy work in the expectation that she will whip it into shape.

15) I’d wish you luck, but good writing depends on conscious choices, not luck. Make good choices.

Example of how not to do it:[[8]](#footnote-8)

**Professor: Supreme Court Shouldn't Protect Speech I Don't Like**

Posted: 01/16/2015 2:10 pm EST Updated: 03/18/2015 5:59 am EDT

**EVAN BERNIC**

Assistant Director at the Institute for Justice

This Monday, the Supreme Court heard oral argument in the case of [*Reed v. Town of Gilbert, Arizona*](http://www.scotusblog.com/case-files/cases/reed-v-town-of-gilbert-arizona/), an important free speech case. Garrett Epps, a prominent law professor and contributor to the *Atlantic*, is [deeply concerned](http://www.theatlantic.com/politics/archive/2015/01/supreme-court-highway-signs-reed-town-gilbert-free-speech/384359/)that the Court will decide it in a way that leads to increased protection for speech that he does not like. Those who believe that the First Amendment should not be trumped by the subjective preferences of law professors should not fall under Epps' spell.

What is the case about? The Town of Gilbert, Ariz., has a sign code that categorizes temporary signs and restricts their size, duration and location. Under the sign code, the Good News Community Church's temporary signs promoting church services are subject to far greater restrictions than temporary signs promoting political, ideological and various other messages. That is, the sign code facially discriminates on the basis of the *content* of the messages communicated by the signs, effectively enabling government officials to act as censors.

The Supreme Court has [held](http://www.law.cornell.edu/supct/html/90-7675.ZO.html)that content-based restrictions on speech are presumptively unconstitutional, and must be subjected to the strictest scrutiny. But lower courts, including the Ninth Circuit in this case, have held that laws that facially discriminate based on content are not necessarily content-based -- not only when evaluating sign codes, but also when evaluating a vast range of restrictions on other forms of noncommercial speech, such as occupational-speech licensing, panhandling bans and noise ordinances. In this case, the Ninth Circuit held that the sign code was "content-neutral" because of the Town of Gilbert's assurances that it had no intention to discriminate. The Institute for Justice filed an [amicus brief](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/13-502_pet_amcu_rw-etal.authcheckdam.pdf), urging the Court to clarify that facially content-based statutes should not be given a pass because of the supposedly good intentions of officials.

Professor Epps disagrees. He argues that the Ninth Circuit was correct, and no amount of "obscure and powerful verbal formulas" should mislead people into thinking otherwise. The Oxford English Dictionary, he notes, defines "content" as "the things contained or treated of in a writing or document." He then calls upon the Court to clarify that the regulation of mere "marketing" should not be presumptively unconstitutional.

This is an odd conclusion, given the definition of "content" upon which Epps relies. A message relating to a church meeting is a "thing" "treated of in a writing or document," and it is a different "thing" than, say, a message relating to politics. The Town of Gilbert places these things in different categories: "Political signs" may stay up longer than, and be larger than, "qualifying event signs" that announce meetings of a "religious, charitable, community service, education, or other similar non-profit organization." The categories are thus, by Epps' own definition, content-based.

Fortunately, the Supreme Court seemed to [recognize](http://www.washingtonpost.com/politics/courts_law/at-supreme-court-signs-are-clear-that-justices-have-doubts-about-ariz-towns-law/2015/01/12/e34b80c2-9a85-11e4-bcfb-059ec7a93ddc_story.html) on Monday that Epps' argument is specious.[[9]](#footnote-9) As Justice Kagan pointed out, the reason the town treated political signs and ideological signs better than other signs was that it believed the former signs had higher value under the First Amendment. When the Town of Gilbert's attorney, David Savrin, tried to distinguish between regulating signs based on their function from regulating them on the basis of their content, Justice Scalia pointedly asked whether function does not, in fact, depend on content. When Savrin equivocated, answering that function does, "in a literal sense," depend on content, Justice Scalia pounced: "Oh, I see. What sense are we talking here? Poetic?"

What is at stake here? Simply put, would-be-censors are scared that they will not be able to exclude speech that they do not like from the marketplace of ideas. As Epps explains in the concluding paragraph of his article, a world in which speech about products and services is consistently treated like, well, speech, does not align with his preferences: "A world in which regulation of 'marketing' is presumptively unconstitutional might look different, and worse, than the one we live in now."

Epps' piece is, in essence, an anticipatory charge of judicial activism.[[10]](#footnote-10) If the Court rules that the Town of Gilbert's sign code is a content-based speech restriction, he will accuse the Court of linguistic distortion that will unleash what he refers to as "powerful forces... targeting all regulation of advertising." But it is Epps who is guilty of distortion. Statutes that distinguish between messages about different things and treat them differently are indeed content-based restrictions on speech, and the Court must clarify this in order to ensure that all speakers receive the full protections they are due.

Example of a piece that got placed:



November 20, 2001

**The Opportunist's Friend (and Foe): States' Rights**

By Garrett Epps[[11]](#footnote-11)

**DURHAM, N.C.—** ''We are all republicans, we are all federalists,'' Thomas Jefferson said in his first inaugural address. What Jefferson didn't add -- since he didn't know it yet -- was that when it comes to states' rights, we are all hypocrites.

Attorney General John Ashcroft is the latest offender. Earlier this month, the attorney general (who apparently felt that the anthrax scare and terrorism were pretty much under control) moved against the real menace to the nation: Oregon's Death with Dignity Act.

As governor of Missouri, Mr. Ashcroft once remarked: ''Those in Eastern Europe and the Russian republics know that it's futile to have an all-powerful centralized bureaucracy. And we pray that someday those on Capitol Hill will learn the same.'' Now, however, he has become the ultimate federal nurse, interposing himself -- and the Drug Enforcement Administration -- between Oregon physicians and their dying patients.

So, is John Ashcroft a hypocrite? Of course. But so are we all. One scans American history in vain to find a major figure whose position on states' rights was not directly connected to his or her position on the underlying political question. When it suits our leaders, they are in favor of broad federal power; when it does not, they claim ''states' rights.''

When Jefferson was out of office, he supported state ''interposition'' against the national government. When he got into office, he wielded federal power eagerly. James Madison made similar swerves.

When Southerners ran the government, New Englanders who opposed the War of 1812 muttered about secession. As the South felt its control slipping away, Southerners discovered the primacy of states' rights. Stephen A. Douglas believed in federal power to build railroads, but not to limit slavery in federal territories. As a Senate candidate in 1858, Lincoln vowed to protect Illinois's right to prohibit slavery. As president in 1861, he dispersed the Missouri Legislature to prevent it from voting to secede.

And so it went and so it goes -- politicians adroitly changing sides when it suits their political needs and their positions in government. Those outside of federal office fear federal power. When the outs become the ins, they find federal power much less scary.

In the 1995 Lopez case, the Supreme Court held that Congress could not outlaw the carrying of guns in local school zones -- and essentially proclaimed itself the principled referee of ''what is truly national and what is truly local.''

The justices, by implication, assure us that they can make this determination without succumbing to their own political sympathies. If in Bush v. Gore five of them decided that Florida could not be trusted to count its own votes, that is because the controversy was clearly a national matter. And if the justices decide that Congress lacks the power to permit rape victims to sue their attackers in federal court, that must be because the issue is unquestionably local.

Mr. Ashcroft's latest move will almost certainly end up before the Supreme Court. Four years ago, the court suggested that assisted suicide was a matter for the states. ''Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician-assisted suicide,'' Chief Justice William Rehnquist wrote. ''Our holding permits this debate to continue, as it should in a democratic society.''

Now Mr. Ashcroft has decided that the debate has gone far enough, and perhaps hopes that the conservative court will once again embrace the principle that my mistakes are ''truly local'' and yours are ''truly national.''

*Garrett Epps, a law professor at the University of Oregon, is the author of ''To an Unknown God: Religious Freedom on Trial.''*

**Voting Rights and Rehnquist**

By Garrett Epps

*The Washington Post*

August 10, 1986

IT'S A SCENE that Norman Rockwell wouldn't have painted, but it's as American as any that he did: a long line of blacks waiting to vote, a small knot of whites trying to stop them.

I've been there. On election day 1976, as a "hauler" for the Democratic Party in Richmond, I picked up a black 18-year-old who was hoping to cast his first vote for Jimmy Carter and against Sen. Harry F. Byrd Jr. He tried to vote earlier, but had been told there was some mixup with his registration. We checked with the office of the registrar at City Hall and were told that the young man could vote.

But at the polling place, an elderly white official quizzed the young man: How did he know that the registrar who took his voter card had really been an official registrar? Did he know that vote fraud was a criminal offense? After much hesitation, the young man dejectedly decided to go home.

Top of Form

Bottom of Form

I think of that young man often, wondering whether he carries scars because his first vote was denied to him by the threat of prison. And I can see before me the face of that election official. It is the authoritarian face of the old South -- a society that did not protect the right to vote. Is it also the face of our chief justice-designate, William H. Rehnquist?

In hearings before the Senate Judiciary Committee, witnesses identified Rehnquist as the man they saw harassing black and Hispanic voters, demanding that they read from a card to prove their literacy, asking to see documents that proved they had the right to vote. One witness described a shoving match in which Rehnquist allegedly took part.

Rehnquist doesn't deny that he was part of a Republican "ballot security" campaign; he simply says that he himself never "harassed or intimidated voters" and that he did not "personally engage in challenging the qualifications of any voters." There is no serious question that Republican functionaries did try to scare blacks away from Arizona's polls; Rehnquist simply insists that he was not out front in the effort. Further, his defenders say, this kind of challenge to voters was legal in Arizona until 1964.

Observers agree that Rehnquist will be confirmed unless senators become convinced he has lied. Surely there is a larger question here.

The right to vote is fundamental to a just and democratic government. What do we make of a man, favored with the best education our system can offer, who uses his intellect to intimidate -- or to help others intimidate -- poor people and take away that basic right? That kind of thing was wrong, whatever the laws were at the time. And what difference does it make whether Rehnquist shoved and humiliated blacks and Hispanics himself or just helped those who did the dirty work?

Voting rights for minorities were systematically denied for many years in this country. This practice was ended only by federal law, enforced by the federal judiciary. Because of the Voting Rights Act, overt intimidation has begun to go out of style. But harassment lives, and not just in the South: A federal court recently ruled that "the right of some Indians to register and to vote has been seriously interfered with" by county officials in Big Horn County, Montana who repeatedly refused to give out registration cards or illegally struck Indian voters from the rolls.

Will the judiciary, with Rehnquist at its head, be vigilant in voting-rights cases? Or will it tolerate the use of federal power against those who seek access to the polls? That's not a moot question: Here in North Carolina, U.S. Attorney Samuel Currin, a former aide to Sen. Jesse Helms, warned on the eve of Helms' reelection face-off with Gov. Jim Hunt -- no one is quite sure on what legal grounds -- that campaign workers who accepted cash to drive voters to the polls might face prosecution. Now Helms is pushing Currin for a federal judgeship.

In Greene and Perry counties, Alabama, U.S. Attorney Jefferson Beauregard Sessions III prosecuted eight civil-rights activists on vote-fraud charges for helping absentee voters mark their ballots. Though one person was convicted, Sessions' role in the prosecution was a factor in his rejection by the Judiciary Committee for a federal district judgeship.

What would happen to another 18-year-old, threatened or even prosecuted by white officials because of a registration mixup, if his case came before the Rehnquist court? Will our country enter the 21st century with a chief justice whose belief in the right to vote is in question?

*Garrett Epps, the author of "The Floating Island: A Tale of Washington," is a columnist for The North Carolina Independent.*

1. The elements herein are not intended to be exclusive, nor is their order mandatory. But I do take the position that most successful op-eds contain most of the elements in some semblance of the order above. [↑](#footnote-ref-1)
2. This is adapted from an actual op-ed I wrote that got a lot of response. Unfortunately (or fortunately for you), the original isn’t online so I have reconstructed it here. [↑](#footnote-ref-2)
3. I wasn’t a lawyer or prof at this time, so this is where an outsider tries to establish some credibility in a specialized field. [↑](#footnote-ref-3)
4. This is an example only; I wasn’t, but maybe you were. [↑](#footnote-ref-4)
5. Again, a hypothetical person. [↑](#footnote-ref-5)
6. Needless to say, if you can plug a current book or other project, do so. Reference to law review articles, on the other hand, can cause MEGO (*see infra,* note \*\*\*.) [↑](#footnote-ref-6)
7. “My eyes glaze over,” the worst reaction an editor can have. Be aware of the famous motto of Hearst editor Arthur Brisbane: “What we are after is the ‘gee-whiz’ emotion.” [↑](#footnote-ref-7)
8. I admit using this is ungenerous but I couldn’t help it, it’s such a perfect example of how not to do it. [↑](#footnote-ref-8)
9. I love this, it makes me the most important legal commentator in the country; read literally, the Justices seemed to have been peering down from the bench and saying, “Do you agree with the Epps view?” (Alas they weren’t.) You really want to remain focused on the issue and not the personality; first, it is more polite; second, it’s more persuasive; third, it’s usually more accurate, as here. [↑](#footnote-ref-9)
10. This is opinion writing malpractice of the worst sort. Instead of engaging with what another writer or speaker said, you change it to say “if X said Y, that means s/he thinks Z, and Z is wrong.” [↑](#footnote-ref-10)
11. I admit I am blowing my own horn here but it’s for a pedagogical purpose. Blow your own horn. It leads to repeat chances to write op-eds, and also to interviews, media appearances, etc. And anyway, if I don’t blow it who will (*See generally Rabbi Hillel.)* [↑](#footnote-ref-11)