

Lucile Lomen: The First Woman to Clerk at the Supreme Court

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Lucile Lomen was a twenty-three-year-old law student at the University of Washington when Justice William O. Douglas chose her as his law clerk in 1944.¹

Born in Nome, Alaska, on August 21, 1920, she decided to become a lawyer while she was still in grade school. She attributed her interest in law to her grandfather, Gudbran J. Lomen, a Republican lawyer who had been appointed to the Alaska Territorial Court by Calvin Coolidge in 1925 and reappointed by Herbert Hoover in 1930. Her father, who owned the local newspaper, the *Nome Gold Digger*, had not gone to college.

Graduating from Queen Anne High School in Seattle in 1937, she accepted a one-year tuition scholarship from Whitman College, a small liberal arts college in Walla Walla, Washington, from which Justice Douglas had graduated 17 years earlier. Like Douglas, she was an outstanding student at Whitman. Elected to Phi Beta Kappa, she graduated with honors in 1941.

Pursuing her ambition to become a lawyer, Lomen went to the University of Washington Law School. She did not consider Harvard, for in 1941 the Harvard Law School did not admit women. The University of Washington Law School had admitted women from the time it opened its doors in 1899. In 1941, there were three women enrolled in the law school, including Lomen.

She was an outstanding law student—first in her class, law review editor, vice-president of the law review board, and recipient of a prize for the best student essay on constitutional law, which the law review published. While achieving those honors, she worked as a part-time secretary in the dean's office at the law school.

During Lomen's first semester, the United States entered World War II. She remembered clearly the consternation of her fellow law students on December 8, 1941, and their eagerness to enlist. Many finished the school year, but only a small number of them returned the

following autumn. In 1941, there were eighty-four law students at the University of Washington; in 1943 there were thirty-five, eight of whom were women.

The war also affected recruitment of Supreme Court law clerks. Concerned about finding a first-rate law clerk for the 1944 Term, Justice Douglas began canvassing law school deans before Christmas in 1943. He first wrote to Dean Judson F. Falknor of the University of Washington because Falknor had supplied him with four of his last five clerks. He told the dean that he was aware that the choices would be limited because of the war, but nonetheless he wanted to stay with his “practice of taking men from Ninth Circuit law schools.” Although Douglas used the word “men” in his letter, that did not mean he would not consider a woman. Nine months earlier, he had told Falknor he might take a woman if she “is absolutely first-rate.”

Dean Falknor could confidently recommend Lomen, but still he thought he had a problem: no woman had ever been chosen for a clerkship at the Supreme Court. Two years earlier he had finessed the problem by recommending a very able male student a couple of ranks below the top student, who was a woman. The male student was Vern Countryman, who turned out to be one of Justice Douglas’s most successful law clerks. Now this option was not available to Dean Falknor, for Lomen was the only student in her class who qualified for a clerkship. So his choice was either to recommend her or to recommend no one.

Dean Falknor called Lomen into his office and discussed the matter with her. He told her that he wanted to recommend her. “The only fly in the ointment,” he said, “is your sex.” In her case, however, he thought that might not be a bar because of her Whitman connection. “The fact that you went to Whitman,” he said, “makes it easier because the justice can check with Whitman people he knows.”

Dean Falknor wrote Justice Douglas on December 20, saying that he and his colleagues recommended Lucile Lomen without hesita-

tion. “In our opinion,” he wrote, “she is absolutely first-rate in every respect.” He described her outstanding academic record at Whitman College and pointed out that in addition to her excellent record, she had been also very active in student activities. He then gave the names of three persons at Whitman who could give “an accurate appraisal of her intellectual activities”—Professor Chester C. Maxey, Dean William R. Davis, and S.B.L. Penrose, Whitman’s retired president. Praising her sterling academic accomplishments in the law school, Falknor mentioned that she had worked in his office as a part-time secretary. “I have never had anyone working for me,” he continued, “who has been more courteous, cooperative, and conscientious. She comes from a very fine family [and] is a young woman of the highest character and refinement. She has a pleasing appearance and an extraordinarily pleasant personality. I know that you would like her, and my colleagues and I believe that she has the capacity to do an excellent job for you.”

Dean Falknor’s recommendation of Lomen impressed Justice Douglas, who did exactly what Falknor thought he would do. He checked with one of the Whitman scholars named in his letter. Douglas knew all three men quite well. Penrose was president of Whitman when Douglas was there, and Douglas had taken a philosophy course with him. Davis, an English professor with whom Douglas had taken seven courses, had been his advisor and father confessor. Maxey, a highly respected, tough-minded political scientist, was a close friend and fraternity brother. Douglas chose Maxey to appraise Lomen for the clerkship. “This job of being a law clerk is a pretty mean one,” Douglas wrote to Maxey on December 27. “It entails tremendously long hours and is very exacting. As you can imagine, fumbles are costly.”

Professor Maxey strongly supported Lomen for the clerkship. On January 10, Douglas sent an excerpt from Maxey’s letter to Vern Countryman, his clerk for the 1942 Term, asking for his observations. “Beyond that,”

Douglas wrote, stating the nub of his concern. “I wonder if you would give me your reaction as to how you think a girl would fare as a law clerk in these surroundings which you know so well.”

Countryman, who was in training at an Army Air Force base in North Carolina, responded immediately. He told Justice Douglas that he had known Lomen quite well at the University of Washington. “She is a very intelligent woman,” he wrote, “and she is an indefatigable worker. She appears to be a very healthy young woman, with stamina enough to keep on working long and busy hours.” Responding specifically to Douglas’s main concern, Countryman continued: “As to how a girl would fare on the job, I can’t see that sex would make any difference except on the point of maintaining contact with other offices. On that score, she would not be able to keep as well informed as to what your brethren were doing

as a man could, unless, of course, your brethren also employed female clerks. But I doubt if that point is of any importance—certainly not enough to warrant choosing a man instead, unless you are satisfied that the man is absolutely first-rate because I am sure that Lomen is just that.”

Justice Douglas received Countryman’s reply on January 14. On January 29, he wrote Dean Falknor saying he would take Lucile Lomen as his clerk for the following term. Lomen, said Douglas, should “plan to report for work by the third week of September so as to get broken in before sessions of the Court actually start.” Dean Falknor responded that Lomen was very pleased to receive the clerkship.

On August 24, Lomen wrote Justice Douglas saying that she would report for duty on September 11. “I deeply appreciate the opportunity of serving as your law clerk,” she wrote,



William O. Douglas graduated from Whitman College (above), a small liberal arts college in Walla Walla, Washington, seventeen years before Lucile Lomen did in 1941. When Dean Judson F. Falknor of the University of Washington Law School told him that Lomen was the best candidate at the law school that year, Douglas asked former teachers at Whitman to appraise her abilities.



"This job of being a law clerk is a pretty mean one," Justice Douglas wrote to Chester R. Maxey (below), a highly respected, tough-minded political scientist at Whitman College, who was also a close friend and fraternity brother. Maxey highly endorsed Lomen (above), who became the first female law clerk to a Supreme Court Justice in 1944. Absent feedback from Douglas, Lomen would later seek Maxey's opinion on how she was faring in her clerkship. His reply: if Douglas has not let you know he is dissatisfied, "[y]ou are doing all right."

"and I am highly honored to become a member of your staff." At the time, Douglas was at his cabin near Lostine, Oregon, and had not planned to return to Washington until the first week of October.

Lomen arrived in Washington, D.C., the Friday before Labor Day, 1944. For a young woman who had never been east of Spokane, war-time Washington seemed overwhelming. She said the city was as David Brinkley described it in *Washington Goes to War*. She checked into the YWCA on 17th and K Streets, where she planned to stay only until she found suitable quarters near the Court, but such quarters were so difficult to find that she received special permission to stay at the YWCA for the period of her clerkship.

Bright and early the day after Labor Day, she took a streetcar to the Court. When she ar-

rived at Justice Douglas's chambers, no one was there. Learning that Justice Douglas's secretary, Edith Waters, and law clerk, Eugene A. Beyer, Jr., would not be in until 11 o'clock, she began to look around the Court. Encountering a small group of women being given a tour of the building, she quietly joined them without introducing herself. Near the end of the tour, the Court guide showed the women two impressive circular staircases that ended in a dome. Pointing to the dome, he said, "This will remind Miss Lomen of an igloo." She was astonished. "He not only knew who I was," she later recalled, "but he knew I was from Alaska and the whole business." This was her first lesson about the Court—it was a small, self-contained world in which there were few secrets.

During Lomen's first three weeks at the Court, Justice Douglas was still in Oregon. In that period, she learned her duties as a law clerk and began writing certiorari memos. She also became acclimated to life at the Court. Edith Waters introduced the other secretaries, and Lomen became a part of their social group. She would be a bridge between them and the law clerks. She recalled that the clerks accepted her "pretty well." So did the Chief Justice and Jus-



tices. Yet she sensed differences with the clerks. She thought it had to do mostly with age, legal education, and geography. Soon after she arrived at the Court, a fellow clerk asked where she was from. She answered Seattle, and he said, "Oh, you'll like it here. We have another westerner. [Byron] Kabot's from Wisconsin." In relating the story, she said: "I nearly died. But, indeed, Kabot and I, of the whole ten, thought differently ... than the way the other eight thought. They were all east-coast fellas [and] Cabot ... was hired from [Chicago]. So everybody but me had been educated ... at [Chicago,] Harvard, Yale, and Columbia. I was [also] younger.... I never knew if my problem was because I was a woman or because I was younger, or what."

Lomen met Justice Douglas one morning during the first week of October. She was working on certiorari petitions 'when he came into Chambers. He said how do you do, apologized for not putting her on the payroll earlier, said he had to get to work, walked into his office, and closed the door—all in less than a minute. She soon learned that this was typical Douglas office behavior. He did not say good morning when he arrived or goodnight when he left. She remembered him as being rather "distant" and "cool" in Chambers. He was "all business"; there were no pleasantries, no small talk, just work. At first, she did not know what to make of him and finally concluded that he was shy. Shy herself, she understood.

Determined to succeed, she tried to work as quickly as he did, which was impossible, for, as she later said, she had never known anyone who could do legal research as fast as he could. She did her best to keep up. She said that she had never worked so hard in her life. She worked sixteen hours a day, and often she remained at the Court all night to complete assignments. She would catch a few hours sleep on a leather couch in the office and awaken when the cleaning crew came in at 5:00 a.m. The only real sleep she got was on weekends; she would go to bed at 9:00 p.m. on Saturdays and sleep until noon on Sundays. She took respon-



Lomen remembered Justice Douglas as cool and distant in Chambers. He was "all business"; there were no pleasantries, no small talk, just work. Yet on the six occasions he invited her to his house for social occasions she found him jovial and warm.

sibility for the correctness of every statement of law and fact in Justice Douglas's opinions. She went over the content of his opinions with him, and sometimes disagreed with him. Carol Agger Fortas urged her to stand up to Douglas at such times. Lomen said she did, but she not could remember winning any arguments. That did not bother her, for she said that he was there to decide cases and she was there to help him.

What did bother her was Justice Douglas's failure to tell her how she was doing. Although he never criticized her work, he never praised it either. Concerned, she wrote to her professor at Whitman, Chester Maxey, stating the problem and asking for his views. Maxey wrote back saying that if Douglas had been dissatisfied, he would have told her in no uncertain terms. Since that had not occurred, he said: "You are doing all right."

Sometime in the fall of 1944, the Douglasses invited Lomen to a small dinner party at their home in Silver Spring, Maryland. The invita-

tion was one of approximately six she received to visit the Douglasses. Douglas at home, she learned, was quite different from Douglas at the office. At home, he was “a delightful fellow.” He was relaxed, warm, and jovial. Five other guests attended the party: Lyndon Johnson, Richard Neuberger, Anna Roosevelt Boettinger, and Commander and Mrs. Stanley Donogh. Except for Johnson, they had all lived in the Northwest—Neuberger in Portland and the others in the Seattle area. The Donoghs were visiting and staying with Mrs. Boettinger at the White House. Lomen felt uncomfortable with the guests. It was not only because they were older but also because they were all Democrats and, as she put it, she “was not of their persuasion.” They assumed that she was also a Democrat, and, in an effort to bring her into their conversation, one of them asked her about Democratic politics in Seattle. Tightly holding an Old Fashion that Douglas had mixed for her, she managed to blurt out that she had been too busy in law school to pay much attention to local politics. Though she felt out of place, she said that she had “enjoyed Douglas” and thought the evening was fascinating. She recalled especially how gracefully the men and women separated after dinner, the men retiring to the library to smoke cigars and talk politics and the women convening in the living room to talk about other things. At the office a couple of days later, Douglas was again in his work mode—all business.

Lomen remembered at least one occasion on which Justice Douglas was very sociable in his office. When her parents and grandparents visited her at the Court, Douglas warmly greeted them and said: “Come to tea on Sunday.” Lomen appreciated the gesture, which she said was “gracious,” especially since she had not told Douglas that her parents and grandparents were coming to Washington.

The 1944 Term went by quickly. In spring, Justice Douglas offered to help Lomen find a job. She thanked him and said that she already had two job offers—one from the Justice Department and another in Seattle. She turned

down the former and returned to Washington State, where she took a job at the state attorney general’s office. This pleased Justice Douglas, for his standard advice to law clerks was: “Go back to your roots.”

In the fall of 1945, Justice Douglas sent Lomen an inscribed photo. She responded with a chatty, handwritten letter, which she concluded by saying: “I recognize the incomparable value of last year’s experience and I am grateful to you for the opportunity which you gave me. I certainly hope to be a better lawyer because of it.”

After three years at the Washington State attorney general’s office, Lomen sought a position in the legal department of the General Electric Company. Justice Douglas recommended her “without any qualification whatsoever.” She wanted Justice Douglas’s help because one of the executives had serious doubts about hiring a woman for the position. “She has a fine mind and a firm foundation in the law,” Douglas wrote. “She has great capacity for work. is thorough, reliable and dependable in every respect.” Lomen got the position.

She worked at General Electric from 1948 to 1983, holding important positions in the company in the northwest and finishing her career at corporate headquarters in the east. After she retired, Lomen returned to Seattle, where she died on June 21, 1996, at the age of seventy-five.

Shortly before her death, Lucile Lomen reflected on the significance of her Supreme Court clerkship. She said that newspaper articles in 1944 about her as the first woman to clerk at the Court were embarrassing. “You know,” she tried to explain, “there was nothing unusual about it. I mean it was unusual that I was a woman [law clerk], but I was just a lawyer, and that is all I wanted to be.” Her year at the Court, she acknowledged, was not easy, but she said that it was “very rewarding.” She then added: “I would not have given up the experience for anything.”²

Endnotes

¹ Lomen's full name was Helen Lucile Lomen. Fairly early in her life, she dropped the Helen. At the Court she was known as Miss Lomen.

² Principal sources for this sketch were the William O. Douglas Papers, Library of Congress, containers 362, 411, 1117, and 1120; oral history interviews by Marilyn Sparks, May 20, 1991, G. Thomas Edwards, October 12, 1994, and the author, January 3, 1994. Transcripts of the Sparks and Edwards interview are at the Northwest and Whitman College Archives, Penrose Memorial Library, Whitman College.