

IN HONOR OF SANDRA DAY O'CONNOR

JUSTICE SANDRA DAY O'CONNOR: NO INSURMOUNTABLE HURDLES

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Sandra Day O'Connor has often said that, as “a cowgirl from Eastern Arizona,” she was as surprised as anyone when President Ronald Reagan nominated her in 1981 as the first woman to serve on the Supreme Court of the United States.¹ Her surprise reflects her unassuming, down-to-earth manner. But O'Connor's experiences as a cowgirl from Arizona and from serving in each branch of its state government—along with her ties to Stanford—were critical factors in her appointment. This same background, I believe, goes far to explain why, by the time of her 2006 retirement, she is regarded as the world's most influential woman lawyer, both for her role on the Court and as a global spokesperson for judicial independence and the rule of law.

O'Connor spent her childhood on her family's Lazy B Ranch, which straddled the border of New Mexico and Arizona. The remote ranch—more than 200 miles southeast of Phoenix and about 200 miles northwest of El Paso—occupied almost 200,000 acres of sparse, arid land in the high Sonoran desert. “It was no country for sissies, then or now. Making a living there takes a great deal of hard work and considerable luck.”² Much turned on the vagaries of weather and the livestock markets. Life on the cattle ranch was not easy, and when O'Connor was born the ranch house lacked indoor plumbing, electricity, and running water. By the age of eight, O'Connor had learned to mend fences, ride horses, shoot a rifle, and drive a tractor. Her earliest companions were

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1. *See, e.g.*, Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, 2004 Commencement Address at Stanford University (June 13, 2004), available at <http://news-service.stanford.edu/news/2004/june16/oconnor-text-616.html>.

2. SANDRA DAY O'CONNOR & H. ALAN DAY, *LAZY B: GROWING UP ON A CATTLE RANCH IN THE AMERICAN SOUTHWEST* viii (2002).

cowboys, a horse named Chico, and various pets, including a tame bobcat aptly named Bob.

Growing up on the Lazy B indelibly influenced O'Connor's character and perspective. She has noted that on the ranch, "[n]o task was too small to be done as well as possible. No task was too large to be undertaken."³ She also recalled that her family's ability to sustain the ranch for more than 100 years reflected "planning, patience, skill, and endurance."⁴ Of the cowboys who lived on the Lazy B, she wrote: "[They] did whatever job was required. They met the unexpected as though they'd known about it all along. They never complained, and they made the best of everything along the way."⁵ Similar qualities of self-confident determination and commitment in the face of challenges have long characterized O'Connor herself.

She left Arizona at sixteen to enter college in 1946 at Stanford. O'Connor had attended a private school in El Paso, but she still initially felt unprepared as compared to her Stanford classmates. The habits of perseverance and hard work she learned on the ranch were rewarded academically in Palo Alto. O'Connor became interested in law by taking an undergraduate course on business law taught by Professor Harry Rathbun, who was legendary for inspiring his students. O'Connor recalls that "[he] was the first person ever to speak in my presence of how an individual can make a difference; how a single caring person can effectively help determine the course of events."⁶ Some have said that O'Connor's views are marked by a strain of individualism, but I think it is individualism in this sense: the deep belief that every person can make a difference, and "even a small difference [is] worth making."⁷

Entering Stanford Law School after her junior year of college, O'Connor also flourished there. Her academic success was marked by a position on the *Stanford Law Review*. The "dignified" *Review*, "an unemotional publication to say the least, is responsible for a happy marriage."⁸ She met fellow *Law Review* editor John J. O'Connor III when they were assigned to work together on a proofreading project, which he suggested they finish over a beer at a local pub. This invitation led to forty successive dates and their 1952 wedding at the Lazy B Ranch.

O'Connor graduated near the top of her law school class and then returned to Arizona by an indirect route. Unable to obtain employment after graduation as a lawyer in a private law firm in California (she was offered a job as a legal secretary), she found that "the gender walls that blocked me out of the private

3. *Id.* at x.

4. *Id.* at 10.

5. *Id.* at 123-24.

6. Charles Lane, *The Professor Who Lit the Spark*, STAN. MAG., Jan./Feb. 2006, available at <http://www.stanfordalumni.org/news/magazine/2006/janfeb/features/spark.html>.

7. O'Connor, *supra* note 1.

8. Pat Smith, *Magazine Cupid for Lawyer Couple*, ARIZ. REPUBLIC, Sept. 27, 1957, at 14.

April 2006]

NO INSURMOUNTABLE HURDLES

1707

sector were more easily hurdled in the public sector.”⁹ She took a job as a deputy county attorney in the San Mateo County Attorney’s Office by volunteering to work initially for free. Her work impressed her supervisor, who hired her for a paid position as soon as one opened up. Thus began O’Connor’s long career as a public lawyer:

I came to realize almost immediately what a wonderful path I had taken. . . . Life as a public servant was more interesting. The work was more challenging. The encouragement and guidance from good mentors was more genuine. And the opportunities to take initiative and to see real results were more frequent.¹⁰

The O’Connors left California in 1954 for Germany, where John completed three years of military service in the Army’s Judge Advocate General’s Corps and Sandra did legal work as a civilian in the Army Quartermaster’s Market Center in Frankfurt. While they were in Germany, they enjoyed ski trips to the Austrian Alps. After their return to the United States in 1957, they settled in Phoenix, where John began private practice, and they both quickly became active in the community. Sandra operated a storefront legal practice with another lawyer for two years before taking a break to care for their three young sons—Scott, Brian, and Jay. She also found time to work on a wide variety of volunteer activities, ranging from the Junior League to Barry Goldwater’s political campaigns.

Public service would again give O’Connor opportunities to do interesting and important legal work. From 1965 to 1969, she worked in the Arizona Attorney General’s Office, where she served as counsel for several different state agencies. Appointed to fill a legislative vacancy in 1969, she was then reelected to the Arizona Senate in 1970 and 1972. The latter year she was named the first woman majority leader in any state legislative body. A political reporter remarked, “It’s too bad Sandra isn’t a man. She would really go places.”¹¹ More perceptive was another reporter, who observed that “up to now, womanhood has not appeared to be an insurmountable hurdle for Senator O’Connor.”¹²

In 1974, O’Connor successfully campaigned for a seat on the Maricopa County Superior Court. That same year, Arizona’s voters amended the state’s constitution to replace judicial elections with merit selection for judges on the state’s appellate courts and the superior courts in Maricopa and Pima counties.

9. O’Connor, *supra* note 1.

10. *Id.*

11. Ginger Hutton, *In the House: Three New Women*, ARIZ. REPUBLIC, Nov. 16, 1972, at H1.

12. *Id.* As a legislator, O’Connor sought to reduce hurdles for others as well. For example, in 1970, she sponsored legislation leading to the repeal of Arizona’s 1913 law restricting women to an eight-hour workday. 1970 Ariz. Sess. Laws 158. The restrictive law was thought to limit professional opportunities for women. *See* Lorna Lockwood, *Book Review*, 2 LAW & SOC. ORDER 320, 328 (1970) (reviewing LEO KANOWITZ, *WOMEN AND THE LAW* (1969)).

O'Connor, although succeeding in her own judicial campaign, had actively supported merit selection because she thought judicial elections undermined the quality and impartiality of the courts. Arizona's merit selection system resulted in O'Connor's appointment to Arizona's Court of Appeals in 1979 by Democratic Governor Bruce Babbitt. Although some have speculated that Babbitt acted from a desire to prevent O'Connor from becoming a rival in a future Arizona gubernatorial race, she had already decided that she preferred being a judge to holding political office.

O'Connor had served on the Arizona Court of Appeals for less than two years when she was nominated in 1981 by President Reagan to serve on the Supreme Court. In his 1980 campaign, Reagan had announced his intent, if elected, to appoint "the most qualified woman that [he] could possibly find" to the Court.¹³ He soon had the opportunity when Justice Potter Stewart retired in June 1981. O'Connor's name quickly made the list of potential nominees, in part due to strong support from her longtime friends Senator Barry Goldwater and, by then, Justice William H. Rehnquist, who had also practiced in Phoenix. Rehnquist, a classmate of O'Connor's in the Stanford Law School Class of 1952 and a colleague on the *Stanford Law Review*, was part of what *Time* magazine somewhat ironically termed the "old-boy network" of Stanford supporters for O'Connor; the network also reportedly included Stanford Law School Dean Charles Myers and former Stanford professor William Baxter, who then was heading the Justice Department's Antitrust Division.¹⁴ The White House team that vetted potential nominees was impressed with O'Connor's extensive and diverse experience in state government. One unnamed participant in the search, quoted in *Time*, remarked, "She really made it easy She was the right age, had the right philosophy, the right combination of experience, the right political affiliation, the right backing."¹⁵

President Reagan was similarly impressed when he interviewed O'Connor before announcing her nomination. O'Connor, as anyone who has met her will confirm, is a remarkably engaging person, with a disarming and friendly manner. After talking about their respective experiences in state government, Reagan was eager to hear about her experiences growing up on a cattle ranch in Arizona. President Reagan came away from the interview convinced that O'Connor was "a person for all seasons," with "unique qualities of temperament, fairness, intellectual capacity, and devotion to the public good."¹⁶

O'Connor's nomination and her subsequent confirmation by a 99-0 vote in

13. Ronald Reagan, Remarks Announcing the Intention To Nominate Sandra Day O'Connor To Be an Associate Justice of the Supreme Court of the United States (July 7, 1981), *available at* <http://www.reagan.utexas.edu/archives/speeches/1981/70781a.htm> (last visited Mar. 25, 2006).

14. Ed Magnuson, *The Brethren's First Sister*, *TIME*, July 20, 1981, at 10.

15. *Id.* at 12.

16. Reagan, *supra* note 13.

the Senate were pathbreaking events, as both she and President Reagan recognized. He said her confirmation as the first woman to serve on the Court “symbolize[d] the richness of opportunity that still abides in America—opportunity that permits persons of any sex, age, or race, from every section and every walk of life to aspire and achieve in a manner never before even dreamed about in human history.”¹⁷ O’Connor herself has described her appointment as “[o]ne of the most important bridges” that Reagan built during his presidency, “a bridge to equality.”¹⁸ She noted, “Ronald Reagan knew that his decision wasn’t about Sandra Day O’Connor; it was about women everywhere. It was about a nation that was on its way to bridging a chasm between genders that had divided us for too long.”¹⁹

As the 102nd Justice, O’Connor brought to the Court not only its first woman member, but many other things as well. After she moved to Washington, D.C., she never left behind her western roots. Visitors to Justice O’Connor’s chambers quickly recognized that this Justice came from the Southwest, and Arizona in particular. The offices displayed a branding iron from the Lazy B, Native American pottery and rugs, and western paintings and photographs. At least a few generations of law clerks were charged with maintaining a somewhat ungainly “succulent” (we were told emphatically that it was not a cactus) growing from a pot seated in the crown of a worn cowboy hat. On the Saturdays preceding oral arguments, Justice O’Connor met with her clerks to discuss the cases. These meetings usually ended with a lunch brought from home by the Justice, who believed that most food could be improved with a bit of green chile or a side of salsa.

O’Connor also was unique among her colleagues by virtue of her professional experience. She joined the Court having served on Arizona’s trial and appellate courts. (When she first joined the Court, only Justice William J. Brennan, Jr., among her colleagues had previously served on a state court—in his case, the New Jersey Supreme Court; upon her retirement, her only colleague with state judicial experience was Justice David H. Souter, who served on the New Hampshire Supreme Court.) Not only did she have experience as a trial judge, but she was also the only Justice who had successfully campaigned for election to public office and who had worked in each branch of state government. Not surprisingly, she believed strongly in the notion that under our constitutional system, states retain their distinct role as sovereign governments, not subordinated in all respects to the national government.²⁰ At the same time, she had a practical understanding of the actual

17. Ronald Reagan, Statement on Senate Confirmation of Sandra Day O’Connor as an Associate Justice of the Supreme Court of the United States (Sept. 21, 1981), *available at* <http://www.reagan.utexas.edu/archives/speeches/1981/92181d.htm> (last visited Mar. 25, 2006).

18. O’Connor, *supra* note 1, at 3.

19. *Id.*

20. *See, e.g.,* New York v. United States, 505 U.S. 144, 159-66 (1992) (O’Connor, J.)

workings, and limitations, of state governments, and that perspective also informed her judicial decisionmaking.²¹

Independent thinking and a commitment to deciding each case fairly on its own merits were the qualities that perhaps most characterized O'Connor's tenure as a Justice. Some thought that because O'Connor and Rehnquist had been law school classmates and friends and had both been involved in Arizona Republican politics, they would regularly be on the same side on the Court. But while O'Connor often voted with Rehnquist, she often did not, and they differed in some of the Court's most closely divided and difficult decisions.²² From her first term, O'Connor very much made up her own mind. She had an impressive ability to quickly read through the briefs, relevant case law, and other legal research (collected on library carts by her clerks for her review) as she worked her way to her decision in each case. As one former clerk has recalled, at the Saturday meetings to discuss the upcoming cases,

[s]he often questioned us as if we were the lawyers for the case, probing the implications of each potential argument.

In those sessions and in our written work, Justice O'Connor prodded us to get to the point and to clearly explain the precedential support for and practical consequences of our positions. She encouraged us to think for ourselves and never held it against us if she ultimately decided to disagree.²³

O'Connor also brought to the Court her indefatigable energy. Shortly after she joined the Arizona Court of Appeals, O'Connor told an interviewer, "I love to work. I seem to have a high energy level. That's probably inherited. My mother has it, and my grandmother also."²⁴ Longtime friends will tell you that O'Connor has always been amazingly hard-working, organized, and focused, while still preserving a generous sense of humor. These qualities echo the value system she learned growing up: "Personal qualities of honesty, dependability, competence, and good humor were valued most. These qualities were evident

(noting that Congress may not commandeer the states' legislative processes by directly compelling them to enact and enforce a federal regulatory program); *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 580 (1985) (O'Connor, J., dissenting).

21. See, e.g., *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982) (O'Connor, J.) (holding that exclusion of men from state nursing college violated the Equal Protection Clause and tended to perpetuate stereotype of nursing as a woman's job).

22. See, e.g., *McConnell v. FEC*, 540 U.S. 93 (2003) (O'Connor, J.) (delivering the opinion in regards to Titles I & II of the Bipartisan Campaign Reform Act of 2002 (BCRA) and concurring with the judgment in its entirety); *id.* at 350 (Rehnquist, C.J., dissenting in part in regards to Titles I & V of BCRA); *Grutter v. Bollinger*, 539 U.S. 306 (2003) (O'Connor, J.) (holding that Michigan Law School's consideration of race as a factor in admissions did not violate the Fourteenth Amendment); *id.* at 378 (Rehnquist, C.J., dissenting).

23. Michelle T. Friedland, *A Wise Justice, and a Great Boss*, 58 STAN. L. REV. 1717, 1717-18 (2006) (in this Issue).

24. Interview by H. Haskell with Sandra Day O'Connor for the Phoenix History Project 7 (Jan. 31, 1980) (on file with author).

April 2006]

NO INSURMOUNTABLE HURDLES

1711

in most of the people who lived and worked at the Lazy B through the years.”²⁵ Once in Washington, she was able, through her energy and efficiency, not only to manage the unceasing work at the Court, but also to keep a full calendar of public speaking engagements, usually on law-related topics.

In her public activities outside the Court, O'Connor became increasingly involved in efforts to promote the rule of law and to preserve judicial independence. She actively participated in judicial exchange programs sponsored by the State Department and, after 1990, efforts by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) to support legal reform and constitutional government in emerging democracies, such as the former communist countries in Eastern Europe. Illustrative is her 2003 attendance at the Arab Judicial Forum in Bahrain, where she spoke about judicial independence as a principle that, in its importance, “transcends the differences between nations' judicial systems.”²⁶ She has recognized, and helped to explain to people throughout the world, that courts must be independent of the other branches of government if a judicial system is in fact to uphold the rule of law. The ideal of the rule of law embraces not only the notion that particular cases will be decided in accord with previously established rules, but also the idea that the law (constitutional and otherwise) will apply to the government itself and will apply fairly to minorities.²⁷ O'Connor has also defended judicial independence in the United States, which she believes is undermined by those who threaten judges with reprisals for unpopular decisions, by noting that an independent judiciary was essential to the expansion and protection of civil rights in such cases as *Brown v. Board of Education*.²⁸ We can expect that Justice O'Connor will continue to speak on these important issues in forums across the world.

Just as no task was too large to be undertaken on the Lazy B, Sandra Day O'Connor found no insurmountable hurdles in her legal career. She has powerfully shown that a person's opportunities should not be limited by gender or background and that lawyers can make important contributions to their communities through public service. As a Justice, she has exemplified the ideal of the judge who is committed to considering each case carefully, independently, and fairly. We will not soon have another Justice who is also a member of the Cowgirl Hall of Fame, and the Supreme Court will greatly miss her voice of common sense and practical wisdom.

25. O'CONNOR & DAY, *supra* note 2, at 315.

26. Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, Remarks at the Arab Judicial Forum: The Importance of Judicial Independence (Sept. 15, 2003), *available at* http://www.arabjudicialforum.org/ajf_oconnor_remarks.html.

27. *See id.*; *see also* SANDRA DAY O'CONNOR, THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE 248, 258-60, 275 (2003).

28. 347 U.S. 483 (1954); *see also* O'Connor, *supra* note 26.

1712

STANFORD LAW REVIEW

[Vol. 58:1705