



TRIBUTE

The Many Sides of Sandra Day O'Connor

Larry Kramer*

Writing a tribute to Sandra Day O'Connor is no simple matter, if only because so much has already been said by so many and in such eloquent ways. It's hard to think of anything new to add. I could keep this short by simply saying, as is true, that Justice O'Connor was that very rare species of thoroughly admirable person—admirable for who she was as much as for what she did. I want to highlight the “person” in that last sentence, because so many of the tributes focus on Justice O'Connor's gender: that she was the first woman Justice on the Supreme Court, the first woman majority leader in any state legislature, and so forth. Which is, of course, both true and important: to achieve what Justice O'Connor achieved required overcoming sizeable obstacles from sexism and misogyny. The path from having to begin as a legal secretary, despite having graduated near the top of the class at Stanford Law School, to becoming an Associate Justice on the Supreme Court is humbling to contemplate.

Justice O'Connor was rightly proud of this fact, and she cared greatly about mentoring other young women lawyers. Yet there is a sense in which the focus on gender also diminishes Justice O'Connor, whose success and accomplishments came from the unique person she was: a singular mix of fierce, courageous, kind, caring, pragmatic, hardworking, indomitable, and dedicated to service and doing good.

First impressions. I first met Justice O'Connor in 1985, as an overeager law clerk for Justice William J. Brennan. “SOC,” as she was styled in the Court's internal communications, was then the Court's junior member—meaning chiefly that she was responsible for guarding the door when the Court conferenced. It was common practice for each of the Justices to take the other Justices' clerks to lunch once, and our lunch with SOC was among the earliest. These were awkward affairs: It was tough to speak freely or comfortably with any of the other Justices, though some of the more gregarious members made it a little easier. We knew Justice O'Connor had a sense of humor, if only because she kept pinned on a board in her outer office the apology note sent by

* President and Vice Chancellor, The London School of Economics and Political Science.

Washington running back John Riggins after he drunkenly told her to “loosen up, Sandy baby” at a Washington Press Club dinner. The note said simply: “Sorry! Riggo.”

We were nevertheless self-conscious and ill-at-ease. One of my co-clerks asked about her upbringing, and Justice O'Connor began talking about the ranch on which she grew up. “How many head of cattle did you have?” he interrupted innocently. With a look that could kill, she retorted, “How much money do you have in the bank?” Which is how we learned that asking about the size of a herd is considered very rude in the ranching world.

That somewhat clumsy beginning notwithstanding, as the year passed, we all got glimpses of the warm person Justice O'Connor was. Hers was probably the hardest clerkship on the Court, stories about the challenges of working for Justice Blackmun notwithstanding. But she also spent real time with her clerks outside work, the only Justice who did so when we were there. She regularly took her team on outings: for meals, to the movies, even on a daylong whitewater rafting trip. I was close to several of her clerks, and when one or another was unable to attend, I sometimes got invited to go along (including on the rafting trip). On these occasions, a different person emerged—not quite the grandmotherly figure she became in later years, nor a regular pal, but a motherly friend who cared about how you were doing.

The judge and lawyer. I also found myself admiring SOC as a Justice. I didn't enjoy clerking at the Supreme Court. Having spent the year before in the chambers of Judge Henry Friendly, who exemplified in action the values I had learned to expect of judges, I found the overtly political way the Supreme Court Justices approached cases frustrating and sometimes infuriating. And while it has become *much* worse since then—the ideological bent of my era having been supplanted in the case of several Justices by crass partisanship—it was still a letdown to see how little law as such mattered in the decisionmaking. Most of the time, most of the Justices didn't even try. They knew what outcome they would reach from the question presented, and they just left it to the clerks—mid-twenty-somethings, two years out of law school, with neither experience nor wisdom—to come up with the best justification we could. Sometimes, it felt as if they would sign on to any opinion that passed a “not facially laughable” test; sometimes, they approved opinions that didn't even do that.

But Justice O'Connor was different. She had her biases and predispositions like any living, breathing human, and these undoubtedly played a role in hard cases—the ones where the law runs out before one reaches an outcome. But you could tell that she cared about understanding and was willing to be honest with herself about where that line lay and how much room it left for her to go with her own preferences. When it was not reached, she was willing to be guided by what an honest reading of earlier cases told her was settled.

Equally important, she was willing to give serious consideration to arguments that were inconsistent with her intuitions—taking them into account in ways that led to outcomes commentators today label “moderate,” as if her conclusions reflected pragmatic but unprincipled compromises, rather than an honest wrestling with complex matters. She was, as a result, unpredictable, but for the right reasons and in the best ways.

Glimpses. I had occasional encounters in the years after clerking. Harold Acton had bequeathed NYU the Villa LaPietra near Florence, and the ever-enterprising John Sexton managed to put together what (I believe) was the first conference among Justices from different nations—in this case, the United States, Germany, Italy, Russia, and the E.U. It was 1996, and I was still a relatively young faculty member, newly in love with a woman I had met soon after coming to New York. Sarah had come with me to the conference, and I proposed to her on the second night, during dinner at a beautiful outdoor restaurant in the hills above Florence. On impulse, we decided to get married right then and there, during the conference. I asked Justice O'Connor if she would perform the ceremony. She hesitated; only later did I learn that she famously didn't like to perform weddings. But she found the idea charming enough that she agreed. Sarah and I hadn't really thought it through, and Justice O'Connor took the initiative to find out what was needed for her to perform a legal wedding. It turned out we had to go to the U.S. Embassy in Rome, which was impossible during the conference. Sarah and I got married a couple of months later, in New York, by another of the conference's attendee's, Kimba Wood.

I encountered a different side of Justice O'Connor a few years later, when I moved to Stanford Law School. She was, as you might imagine, one of the school's two most illustrious alumni (the other being her classmate William Rehnquist). But while she had been an engaged and supportive alumna, she seemed to drift away after I became dean. “Call Sandra,” one of her longtime friends, also an alum, said to me. So I did, beginning the conversation by noting how important she was to the school and saying that if I had done anything to put her off, I wanted to make it right. She paused and then said, “Well, you wrote that book”—referring to *The People Themselves*, which had been published right before I went to Stanford, and which questioned the idea of judicial supremacy.

Her concern was not academic. The courts were, at the time, under significant pressure, and attacks on judges—including even physical attacks and threats of violence—had begun. The husband and mother of a federal judge in Chicago, Joan Lefkow, had recently been murdered in what was suspected to

be payback from white supremacists angry over a ruling.¹ Justice O'Connor understood that "popular constitutionalism" was not a call for violence against judges, but she saw it as part of a shifting continuum. Rather than end the conversation, she offered to do a panel on judicial independence at the next Stanford University reunion. She then persuaded her colleague Stephen Breyer (also a Stanford alum, albeit undergraduate) to join, and they held what was by far the best and best-attended event of that year's reunion.

Justice O'Connor returned to form as an active alumna after that, and when she retired from the Court, Stanford named a street in her honor—something it had never before done for anyone while living. Befittingly, O'Connor Lane is the road leading to the law school campus.

Concerned citizen. Justice O'Connor's worries about the safety of judges and the importance of judicial independence were part of a larger concern she had about the future of American democracy. I was still at Stanford when Justice O'Connor first spoke to me about iCivics, the great passion of her final years. Having been a civil servant for most of her life, Justice O'Connor believed it essential for young people to know about and appreciate the constitutional system of government they were fortunate enough to inherit. "Inherit" is the right word, too, because she understood the need to tend to this fragile system's health, and she saw clearly and ahead of most others our failure to equip the next generation to take over.

So, in typical fashion, she acted. With support from her clerks, she went on a listening tour. She listened to students and learned how much they enjoyed games, so she put together a group to build games that would engage kids while teaching them about our constitutional system of government. And she listened to educators, making sure that the games replicated how the best teachers taught otherwise dry civics concepts. Unable to break into the sclerotic market for educational materials, she started distributing the games through her friends, particularly women state court judges. And it worked—a testament to the quality of the materials and the tenacity of their chief proponent. Gradually, iCivics grew, spreading organically from teacher to teacher, building credibility by word of mouth and the high regard in which Justice O'Connor was held. By the time she stepped down from the iCivics board in 2015, more than 85,000 teachers and three million students (including half of all middle school social studies classes) were using iCivics. Today, those numbers are still larger.

Nor was Justice O'Connor's work at iCivics limited to games. She was, in fact, central to the expansion of civics education in the United States—advocating to Secretaries of State and state legislatures, chairing the Civic

1. The killer turned out to be a different disappointed litigant whose reasons were not political.

The Many Sides of Sandra Day O'Connor
76 STAN. L. REV. 1901 (2024)

Mission of Schools (subsequently absorbed by iCivics), and even appearing on the *Daily Show* to make her case. Florida's Sandra Day O'Connor Act, which she helped get passed in 2010, remains one of the most comprehensive civic education efforts in the country.

Justice O'Connor believed in an expansive vision of civic education. She often said that students must not only know but do, and she was happiest when meeting young people and educators who used iCivics. She said that, in her eyes, iCivics was her greatest legacy.

It's a powerful legacy—though the Justice would likely weep to see how the cause she championed has since been debased by small-minded culture warriors whose lack of understanding is itself the best evidence for the importance of her final project. Yet iCivics is just one among many legacies to celebrate. To this, we must add her legacy as a pioneer for women, her legacy as a Supreme Court Justice, her legacy as a mentor and mother and friend, her legacy as a living exemplar of what it means to have high ethical standards, her legacy as someone whose stature never affected her quickness to show kindness to everyone around her, her legacy as an instinctive teacher by example, and above all, her legacy as someone who epitomized what it means to live a life of service.