



## TRIBUTE

# Lessons I Learned from SOC on Life, Law, Decency, and the Public Good

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Before my grandmother, Ida C. Nix, a deeply religious woman, passed at the age of ninety-nine, she would often joke: “When God is ready for me, He’s going to have to chase me down and He better be running fast!” I have thought of this often since the passing of Sandra Day O’Connor, a similarly indefatigable woman who became, during her twenty-four-year tenure, the most influential Justice on the Supreme Court. I have sometimes smilingly wondered if the angels in heaven had any idea of what was coming and if they are struggling to keep up!

I know I did, along with most everyone who knew her. Her zest for life, her insatiable curiosity, her exhaustive preparation, and her ability to juggle with apparent ease so many competing interests and demands were stunning: a heavy court docket of over eighty cases a year, meaningful time with her close-knit circle of family and friends, commitment to daily aerobics sessions at the Court, love of competitive games of golf and tennis, contributions to civic life, and genuine and active concern for her extended family of law clerks and Court staff. In between all of this, she somehow helped launch an initiative to train thousands of judges abroad on the rule of law. While “retired,” she started a non-profit to impart civics lessons to the nation’s youth.

To an outside observer, only one or two of these commitments would be more than enough to fill a life. But to SOC, the juggle seemed effortless. And even if, at times it became hectic, her overflowing plate was non-negotiable.

And that brings me to the first lesson I learned from SOC:

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## **I. Lesson One: Live Life to the Fullest**

Like many young, single female lawyers who had the privilege of attending first-rate schools and were on the brink of a legal career, I worried about whether I would be able to have a successful career, find a supportive husband who would not be threatened by my achievements and build a family, and contribute to the public good. Justice O'Connor not only embodied all of my hopes for my own life but demonstrated time and again that one need not let any societal or self-imposed barriers stand in the way of a fulfilling life.

I had asked her once during lunch in her Chambers a couple of years after my clerkship how she and John navigated her elevated position, and she answered matter-of-factly that it had always been important that he had his own interests and friends, as did she. I did not fully appreciate the wisdom of that answer at the time, but over the years, I have come to understand the value of the way they organized their lives, enjoying so many shared interests together (it was a treat to see her emerge in evening attire for a night of ballroom dancing, which she and John both loved) while giving each other the freedom to pursue their own spaces.

Her expectation that we, as law clerks, would have similarly high-powered, fast-paced, and complete lives was daunting. And she conveyed that expectation right from the start, instructing us to leave our growing mound of cert petitions, case memos, and draft opinions behind while she took us on a dizzying array of field trips—from sailing, to the National Arboretum, to after-hours tours at the Smithsonian. She also took us on a tour of the largest mail sorting facility in the United States, where she told the Post Master General how fascinating their testing of futuristic equipment was and complimented him on his prototype for self-stick stamps. At the time, these outings were sometimes a respite and other times felt like a burden. But much later, I realized they carried with them an implicit message: No matter how busy you are, make time for enjoyment and exposure to new experiences and learning opportunities.

The high bar she set to fully experience life has been an important guidepost in evaluating hard choices throughout my career. In fact, I think my willingness to embrace the best job opportunity that presented itself at the moment, whether working in the State Department, writing for television, becoming a U.S. ambassador, or litigating as a partner in a law firm, stem from the encouragement she and other role models gave me to proactively design the life I wanted. And as she predicted, perhaps guided by her own multifaceted career journey, I now leverage all of my eclectic experiences and skill sets in my work so nothing is ever wasted. What mattered most, in her view, was having a full and interesting life. She certainly achieved that in spades and inspired us to pursue the same.

## **II. Lesson Two: Figure It Out**

As those who knew her are acutely aware, Justice O'Connor had little appetite for excuses. Fueled by her hearty upbringing on an Arizona cattle ranch, the Lazy B, she had a no-nonsense approach to life. She wanted things done on time, in the right way, with no fuss or mess. And while always kind and caring, she expected her law clerks and Chambers staff to meet the same high expectations she set for herself.

Even when it came to her own career journey, she talked dispassionately about the obstacles she experienced, even as she made a number of important Court rulings to protect the rights of women and minorities. Much has been written about Justice O'Connor's early career when, despite graduating near the top of her class at Stanford Law School, the only offer she received from a law firm in 1952 was to be a legal secretary. (I have often wondered how those lawyers felt after she was nominated and sworn in as an Associate Justice!) Her bar admission certificate from the Northern District of California did not even acknowledge her name, referring to her only as Mrs. John Jay O'Connor. Even after returning to the States in 1957, after John O'Connor's military service in Germany, she was still shut out of traditional law firms who continued to discriminate against female lawyers.

I imagine that this gender bias was devastating at the time, particularly for such a talented young woman who had matriculated to Stanford University at sixteen years old and graduated with both a B.A. and a J.D. in only six years. Although she acknowledged the discrimination she experienced, she did not dwell on these inequities, preferring instead to emphasize how she strategized around the obstacles to achieve her career goals; she forged a career in the more hospitable state government, becoming a trial court judge, legislator, majority leader of the Arizona Senate, and finally, an appellate judge before being nominated by President Ronald Regan to be the first woman Justice on the Supreme Court. It was a remarkable journey but not a surprising one in retrospect, given the sheer magnitude of both her IQ and EQ and commitment to playing the long game, leaving the naysayers in her trail.

I perhaps tend to focus more on the deep-seated structural and institutional barriers faced by underrepresented minorities and women that can make individual agency difficult, particularly when combined with socioeconomic barriers. But Justice O'Connor's model for confronting the obstacles she faced has stayed with me: Figure out how to climb over, go around, dig underneath, find a side door—do whatever it takes to keep moving forward.

During the gathering of law clerks at the Supreme Court prior to Justice O'Connor's memorial service, many of us heard for the first time the long, detailed and surprisingly personal letter she had written to the District Attorney for San Mateo County seeking employment after the secretarial offer. It was her first brief of sorts, laying out the case for why she should be

hired, addressing both the many ways she could contribute to the office and rebutting every potential objection the District Attorney might have. No headcount for another lawyer? She would work for free. No office to put her in? She didn't need much and would share a desk with a secretary. She acknowledged being poor at shorthand and fast at typing. Ultimately, with a mix of irresistible charm and cogent points that would become her hallmark, the letter won over the District Attorney, securing her first legal job. It was unpaid, but she was on her way.

I have thought about her approach and perseverance recently as some of the disappearing safety nets society has come to rely on have made it necessary for us to find other ways to keep moving forward. I can almost hear her now: Yes, it will be hard and complicated. No, the pathway isn't clear. But roll up your sleeves, get to work, and figure something out.

### **III. Lesson Three: Take Each Case as it Comes**

The ornate courtroom was hushed when the Justices filed in to announce their decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>1</sup> the case that would determine the viability of *Roe v. Wade*<sup>2</sup> during the 1991-92 Term. The courtroom was packed with journalists, lawyers, students; all of the law clerks were crowded into the seats on the side. You could hear a pin drop. Then Justice O'Connor began reading one section of the 5-4 decision; her two co-authors, Justices Kennedy and Souter—itsself an unusual occurrence—would follow, each reading another section from the bench which not only reaffirmed *Roe* but enshrined Justice O'Connor's "undue burden" test for evaluating abortion regulations. It was, by far, the most dramatic announcement of the Term. As Justice O'Connor began reading in her distinctive Arizona lilt, another clerk turned to me and whispered, "Brave." I nodded in agreement.

SOC often broke the ice at oral argument by asking the first question, zeroing in on the weaknesses of an advocate's position. But this leadership role seemed different. We knew history was being made in real time, that her legacy would be defined in large measure by the opinion, and that as much as she would be heralded by proponents of *Roe*, she would face searing criticism and accusations of betrayal, largely from members of her own party. She did not arrive at her decision easily or lightly but applied the same principles she always had: Consider each case on the merits, embrace pragmatic decisions rooted in the facts, respect precedent, and resist adoption of a sweeping ideological agenda that would lead to overly broad and unmoored rulings.

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1. 505 U.S. 833 (1992).

2. 410 U.S. 113 (1973).

A few years after my clerkship, she wrote a dissent in *Veronia School District v. Acton*,<sup>3</sup> a case permitting a school district to drug test athletes without evidence of wrongdoing, that reflected this judicial approach. Noting that some crises are “real” and should be regulated while others are not, she instructed that “the only way for judges to mediate these conflicting impulses is to do what they should do anyway: stay close to the record in each case that appears before them, and make their judgments based on that alone.”<sup>4</sup>

SOC’s Chambers were ground zero for scrutinizing the merits of each case. We would gather on Saturdays in her Southwestern-style office over home-cooked meals she had prepared and discuss the briefs and our memos on cases for upcoming hearings. While ensuring that we ate heartily, she would not only question us on the law but would dig deeply into the factual record, often bringing up minute details she found probative. We learned quickly not to overlook anything. And she was always focused on whether there was a narrower way to decide the case, reluctant to issue grand pronouncements that would bind the Court in future cases. Her disciplined reasoning and grueling preparation were impressive and certainly kept us on our game.

SOC’s approach also planted the seeds for her ascendance on the Court. As with her rise to become majority leader in the Arizona Senate—the first woman in the nation to hold such a position—Justice O’Connor’s measured approach and ability to forge a consensus around her positions led to shifting alignments on the Court driven by her views of a particular case; she shunned being put in a box and never hewed strictly to either the conservative or liberal wing. She was, as Ruth Marcus wrote in the *Washington Post*, “a politician in the best sense of that word, using her experience as an Arizona state legislator both to craft consensus among her colleagues and to take the pulse of a nation whose buy-in, she understood, is essential to maintaining the court’s legitimacy.”<sup>5</sup> Because she rejected broad ideological positions and was committed to deciding each case on the merits, she became the most important swing vote on the Court, lending the crucial fifth vote to many of the Court’s most controversial cases, from voting rights, individual liberties and affirmative action to states’ rights and the separation of church and state.<sup>6</sup>

For those in her clerkship family who became judges or law professors, I suspect SOC’s judicial approach and temperament have likely been hugely

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3. 515 U.S. 646 (1995).

4. *Id.* at 686.

5. Ruth Marcus, *Not Merely the Right Woman, Sandra Day O’Connor Was the Right Justice*, WASH. POST (Dec. 2, 2023, 12:55 PM EST), <https://perma.cc/U764-JAXM>.

6. As Erwin Chemerinsky once put it, “Lawyers who argue and write briefs to the Court know that often they are, for all practical purposes, arguing to an audience of one.” Erwin Chemerinsky, *Essay, Justice O’Connor and Federalism*, 32 MCGEORGE L. REV. 877, 877 (2001).

impactful in shaping their own approach to the courtroom or classroom. And as a litigator and advocate, I have sought to integrate her pragmatic approach in positioning cases for success, looking at all angles to find the most reasonable and compelling arguments for largely divided benches. In fact, not long after I joined a law firm, I tried to internalize Justice O'Connor's perspective in briefing a redistricting case for the Court's consideration. We had a tall order because the State's prior maps creating a majority-Black district had been struck down on equal protection grounds and summary judgment had been granted against the State of North Carolina. But by leveraging the record establishing that the new map was reasonably configured to achieve the political goal of creating a safe Democratic district, rather than racial alignments, we were able to persuade the Court to reverse the three-judge District Court's grant of summary judgment.<sup>7</sup> Ultimately, the Court upheld the State's redistricting plan, with Justice O'Connor, a former legislator, casting the decisive vote with the majority.<sup>8</sup>

SOC's absence from a Court that has become increasingly politicized and shows little regard for precedent has left a huge void. While I did not always agree with her decisions, I fully embrace her judicial approach of taking each case as it comes. We can only hope that the current Justices will follow suit.

#### **IV. Lesson Four: Do Your Part to Solve the Big Problems**

When Justice O'Connor generously swore me in as U.S. Ambassador to UNESCO, she looked intently at me at the ceremony, and said, "I'm handing the baton over to you now."

It was a weighty mandate from someone who had made such an enormous investment in public service throughout her life. Among other things, she helped the American Bar Association launch the Central European and Eurasian Law Initiative (CEELI) after the fall of the Berlin Wall resulted in nearly two dozen newly-independent countries with new judges in need of training. Almost every summer, as a board member and ambassador to CEELI, she traveled to one fragile state or another to impart the importance of the rule of law and accountability.

During my time as a political appointee at the State Department in the Clinton Administration, I became immersed in the effort to hold the perpetrators of the genocides in the Balkans and Rwanda accountable. Justice O'Connor readily agreed to meet with my colleagues at the State Department and was a helpful sounding board for building support in the international community for the establishment of the international war crimes tribunals and

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7. *Hunt v. Cromartie*, 526 U.S. 541 (1999).

8. *Easley v. Cromartie*, 532 U.S. 234 (2001).

rebuilding civil society and the rule of law. Like us, she embraced the importance of ensuring that those who had instigated the slaughter of millions of people were brought to justice.

Even when she “retired” to take care of her ailing husband John, SOC continued to devote herself to public service. Deeply troubled by the lack of even basic knowledge about the inner workings of the executive, legislative and judicial branches of government, SOC launched a non-profit organization, iCivics, to provide teachers and young people with civics lessons through games and other interactive resources. She saw a need and filled it. During a fundraising trip to Los Angeles, I was surprised when she told me she believed iCivics was her greatest contribution in light of the magnitude of the need to help youth understand the rubrics of our democracy.

SOC’s encouragement—indeed, her clarion call—for her clerks to contribute to the public good has been a constant reminder to me to make time to give back. Although my dad, a civil rights lawyer, and my mom, who raised funding for non-profits serving at risk communities, had always told my siblings and me that “to whom much is given, much will be demanded,”<sup>9</sup> the two giants in the legal profession for whom I clerked—Justice O’Connor and Justice Thurgood Marshall—amplified that axiom and made it impossible to ignore that responsibility. I remember telling SOC that, after leaving the State Department, I was joining a law firm and hearing a trace of disappointment in her voice. “Oh.” Aware that I had been a former *New York Times* reporter who briefly covered the law, she said: “I always thought you would be the next Linda Greenhouse.” Then she paused and said she was sure I would find a way to do more than just legal work. Leaving nothing to chance, she promptly introduced me to the Executive Director of the ABA CEELI program, “suggesting” I join its advisory board, on which I served for several years.

During my ambassadorship in Paris, I often found myself following Justice O’Connor’s example of blending of hospitality and dialogue over meals to build bridges among delegations from the member states. It did not always achieve our goals, but sharing a meal and a glass of wine was a good start. More importantly, there were big global problems to solve, just like SOC encouraged—indeed, mandated—us to take on.

## **V. Lesson Five: Value Everyone**

Finally, and perhaps most importantly, Justice O’Connor inspired each of us in her extended family to be kind and decent to everyone we encountered. When people ask me what she was like, I always say the same thing: She was the most gracious person I have ever known.

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9. *Luke* 12:48.

No matter where we were—a Chinese restaurant in downtown D.C., a fancy dinner at the Courthouse, or a picnic by the Cherry Blossoms—Justice O'Connor was kind and approachable to everyone she encountered. Although many people often did not recognize her in public without her robe, she was always gracious and paused to chat when they did.

On one trip to visit her in Arizona, we met at a local restaurant called “Egg I Am.” She greeted all the wait staff, many by name, as well as restaurant guests. When my friend Char Hart, who lived in Scottsdale, arrived to pick me up, she invited her to join us for tea while we finished up our meal. On another visit to SOC's home, she again invited Char to join us in the living room to chat. And years later, when SOC swore me in at the State Department, the Justice remembered Char, which stunned us both and deeply moved Char.

There are hundreds of those stories, each one fueled by her own down-to-earth style and intrinsic respect for the worth of each individual. Remarkably, despite her influence and many accolades, Justice O'Connor was a true servant-leader who made the well-being of others a priority. In fact, she always made visitors feel as though *they* had done *her* the favor by visiting her. In a city filled with egos, this was rare indeed. And, of course, most significantly, she gave up her seat on the Court, a job she loved, to care for her husband after he developed Alzheimer's—an ultimate testament to love, selflessness and sacrifice.

For all of these reasons and many more, Justice O'Connor epitomizes greatness in all the many facets of the word. I am so grateful for the lessons she taught me—about life, law, human decency, serving the public good, and so much more. I am also acutely aware that the only way I can truly honor her and her legacy is by putting those lessons into practice and continuing to find tangible ways to improve the world on which she left such an indelible mark.