



INTRODUCTION

**Justice Sandra Day O'Connor:
Looking Back and Looking Forward**

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On December 1, 2023, with the passing of Justice Sandra Day O'Connor, the United States did not just lose an iconic trailblazer and dedicated public servant; the *Stanford Law Review* lost one of our own. Justice O'Connor was a member of the Stanford Law School class of 1952, and she served as an Editor of *Stanford Law Review*—the only woman editor on Volume 4 and the second in the *Law Review's* history. During her *SLR* tenure, Justice O'Connor—true to form—accomplished the remarkable feat of publishing both a Comment and a Note, all while “aid[ing] and direct[ing] others in their efforts” in her capacity as a revising editor.¹ It was also in her time on *SLR* that Justice O'Connor connected with two fellow editors who would figure prominently in the course of her life. In Justice O'Connor’s words, she met her husband, John Jay O'Connor, “as unromantically as possible while cite checking for the *Law Review*.”² She also became acquainted with fellow editor William Rehnquist, with whom she would later share the bench on the Court. And, while much has changed since Justice O'Connor’s time on *SLR*, editors today surely empathize with her reflection that “[t]he work was often exasperating, but it was excellent training in research and legal writing.”³

In the months since her death, numerous friends, colleagues, scholars, and commentators have offered eloquent and well-deserved tributes to the Justice’s tremendous professional and personal legacy. But given Justice O'Connor’s

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1. Letter from Sandra Day to Louis B. Dematteis, San Mateo County District Attorney 3 (Oct. 29, 1952), reprinted in Michelle T. Friedland, Tribute, *Why You Should Hire Sandra Day*, in *Her Own Words*, 76 STAN. L. REV. 1873 app. (2024).

2. *Id.* at 4.

3. *Id.* at 2.

legacy as one of the *Stanford Law Review's* most illustrious alumni, we are especially honored to publish this Special Issue—featuring eight Tributes by colleagues and former clerks—in her memory.

The authors featured in this Issue knew Justice O'Connor in various capacities and across decades of her career. Nevertheless, a few common themes emerge from their Tributes.

First, it is impossible to speak of Justice O'Connor's remarkable life without acknowledging her historic feat of becoming the first woman justice on the Supreme Court. To describe this accomplishment as herculean is an understatement. As Chief Justice Roberts reflected in his Eulogy, Justice O'Connor "had to study and launch a career in the law when most men in the established profession did not want women lawyers, let alone judges."⁴

Justice O'Connor faced tremendous gender discrimination from the moment she graduated from Stanford Law School: Despite graduating near the top of her class at the age of twenty-two, she was unable to secure a clerkship or job in private practice like her male classmates, instead receiving only an offer for a position as a legal secretary.⁵ This would have been enough to defeat many impressive young professionals, but not Justice O'Connor, who continued advocating for her promise as a lawyer. In a letter to the San Mateo District Attorney's Office, published in conjunction with Judge Michelle Friedland's Tribute, Justice O'Connor matter-of-factly highlighted her numerous scholastic and extracurricular accomplishments, insisting that "[a] woman can be a valuable asset in a District Attorney's office," and even offering to work temporarily "in some other capacity" if no legal job was available.⁶ This unrelenting pursuit of a career in the law exemplifies Crystal Nix-Hines's description of Justice O'Connor's approach to overcoming discrimination and other challenges: "Figure out how to climb over, go around, dig underneath, find a side door—do whatever it takes to keep moving forward."⁷

Ultimately, Justice O'Connor's efforts to be judged by her talent and dedication rather than by her gender paid off: She received the job at the San Mateo County District Attorney's office, won a seat in the Arizona Senate, became the first woman majority leader in the United States, became a county and then a state judge, and eventually arrived at her beloved "marble temple," the Supreme Court.⁸ But it was not only Justice O'Connor who reaped the

4. John G. Roberts, Jr., *Eulogy for Justice Sandra Day O'Connor*, 76 STAN. L. REV. 1863, 1864 (2024).

5. Friedland, *supra* note 1, at 1873.

6. *Id.* at 1874 (quoting Letter from Sandra Day, *supra* note 1, at 4).

7. Crystal Nix-Hines, Tribute, *Lessons I Learned from SOC on Life, Law, Decency, and the Public Good*, 76 STAN. L. REV. 1907, 1909 (2024).

8. Lisa Kern Griffin, Tribute, *Being an Icon: Reflections on Sandra Day O'Connor*, 76 STAN. L. REV. 1881, 1890-91 (2024).

benefits of her status as “the first.” As Chief Justice Roberts puts it, “Her leadership shaped the legal profession, making it obvious that judges are both women and men.”⁹ With the entire country watching, Justice O’Connor defeated the stereotype that women could not succeed at the highest levels of the legal profession, enabling women to imagine for themselves a broader range of career possibilities in the law and challenging the legal profession to honor those women’s talents.

Second, Justice O’Connor will be remembered for her jurisprudential legacy of judicial restraint, pragmatic problem-solving, and bridge-building. Justice O’Connor, who cast the decisive vote in 330 cases during her time on the bench, is broadly characterized as a moderate.¹⁰ But this impression reflects not rigid, middle-of-the-road ideological commitments but a judicial philosophy of collaboration, nuance, and humility—or, as Larry Kramer describes it, “an honest wrestling with complex matters” rather than “pragmatic but unprincipled compromises.”¹¹ In Lisa Kern Griffin’s words, Justice O’Connor represented “the construction of consensus” on the Court.¹² She took seriously the voices of others—including those perspectives which clashed with her intuitions—and strove to harmonize a cacophony of competing judicial voices into a narrow, fact-oriented decision which a broad coalition could stand behind. At a fundamental level, this approach reflects an ethos of judicial restraint. As Bradley Joondeph reflects: “[I]nherent in any narrow, case-sensitive decision is an abiding judicial modesty, a judge’s confession of her uncertainty about the answers to the broader, deeper questions. Justice O’Connor’s cautious, incremental approach . . . recognized that hers was merely one voice—and often an uncertain one . . .”¹³ In today’s era of sweeping, unprecedented, and divisive Supreme Court decisions, Justice O’Connor’s humility and moderation could not be more at odds with present norms—allowing us to see all the more clearly why her judicial approach was so precious.

Finally, Justice O’Connor is remembered for her tremendous character, both in terms of serving her country and caring for those around her. A true patriot, Justice O’Connor dedicated herself to public service projects aimed at protecting the democracy and enhancing the polity she loved so dearly. In 2009, she founded iCivics, a non-profit that furthers civics education by providing free online materials to more than 145,000 teachers and over

9. Roberts, *supra* note 4, at 1864.

10. Griffin, *supra* note 8, at 1881-82.

11. Larry Kramer, Tribute, *The Many Sides of Sandra Day O’Connor*, 76 STAN. L. REV. 1901, 1903 (2024).

12. Griffin, *supra* note 8, at 1887.

13. Bradley W. Joondeph, Tribute, *The Bridge Builder*, 76 STAN. L. REV. 1893, 1899 (2024).

9 million students in all 50 states.¹⁴ Larry Kramer, Board Chair of iCivics, recalls that Justice O'Connor "was happiest when meeting young people and educators who used iCivics. She said that, in her eyes, iCivics was her greatest legacy."¹⁵ Justice O'Connor's passion for law and public service also extended internationally. She served as a board member and ambassador with the Central European and Eurasian Law Initiative (CEELI), a nonprofit which trained judges in new post-Soviet states. Crystal Nix-Hines remembers that nearly every summer, Justice O'Connor "traveled to one fragile state or another to impart the importance of the rule of law and accountability."¹⁶

But as the Tributes in this collection highlight, Justice O'Connor's personal relationships with those around her are at least as large a piece of her legacy of service. While Justice O'Connor's clerks surely remember her rigorous standards, they also remember fondly the ways in which she infused their lives with energy and fun—through her infamous "field trips" around DC, games of ping pong and golf, rigorous hikes, and her sharp sense of humor. Justice O'Connor is also remembered for her gracious hospitality: She introduced the tradition of the Justices dining together to build a sense of community and conducted weekend oral argument preparations with her clerks over abundant home-cooked food. Despite her prestige, she knew employees at local Arizona restaurants and the friends of former clerks by name. And perhaps most importantly of all, she encouraged her clerks to live lives as full as her own. Justice O'Connor modeled devotion to family and urged her clerks to do the same; for instance, Ivan Fong recalls her advice to prioritize his role as a parent over career advancement.¹⁷ She kept up with the milestones and achievements of former clerks, sending hand-written notes to celebrate their joyous occasions. Despite her exacting nature, Justice O'Connor had the gift of "elevat[ing] everyone around her," leaving them feeling seen and cared for as individuals—a rarity, especially among such distinguished leaders.¹⁸

Given the formidable person these attributes describe, it is no wonder that so many—recalling the world that preceded Justice O'Connor's confirmation and the world she helped create—consider Justice O'Connor a turning point. She entered a legal profession entirely inhospitable to women and helped create one where women have access to and occupy many of the most influential positions in the field. She was the only woman on her volume of

14. *About Us: Inspiring a Passion for Civic Life and Learning*, iCIVICS, <https://perma.cc/449M-7PCS> (archived Oct. 2, 2024).

15. Kramer, *supra* note 11, at 1905.

16. Nix-Hines, *supra* note 7, at 1912.

17. Ivan Fong, Tribute, "Help Others Along the Way": Justice Sandra Day O'Connor's Life Lessons, 76 STAN. L. REV. 1865, 1870-71 (2024).

18. Griffin, *supra* note 8, at 1886.

SLR. Volume 76, in contrast, has achieved near gender parity not only across the journal's general body but within the executive board; 28 out of 58 editors, and 5 out of 11 executive board members, including the President, are women. More generally, more than half of all law school graduates across the country are women,¹⁹ and women compete for the most prestigious roles in the public and private sectors alike. And while Justice O'Connor was the first woman on the Court, she was not the last; five women have followed in her footsteps, and four of nine current Supreme Court justices are women. As Chief Justice Roberts reflects in his Eulogy,

Younger people today cannot understand what it was like before Justice O'Connor, in what now seems a distant past . . .

. . . The time when women were not on the bench seems so far away because Justice O'Connor was so good when she was on the bench. She was so successful that the barriers she broke down are almost unthinkable today.²⁰

Justice O'Connor left the world better than she found it in terms of gender relations. Looking back to the time which preceded her, the Justice's exemplary contributions are impossible to ignore.

As the first *Stanford Law Review* President born in the new millennium, I am fortunate to never have known a world of sex discrimination anything like that which Justice O'Connor faced. Indeed, I will confess that I have no recollection of Justice O'Connor's time on the Court; I was in kindergarten, far from anything like legal or political consciousness, when she retired. As such, I feel Justice O'Connor's exemplary contribution to the Court and to the legal profession not by comparison to that which preceded her judicial service but by comparison to that which came after, the current state of the legal profession which my classmates and I are entering.

My time in law school was defined by a Supreme Court which has increasingly departed from Justice O'Connor's ideal of justices who "stay close to the record in each case that appears before them, and make their judgments based on that alone."²¹ This judicial culture has led to radical changes in many areas of the law—and, in the process, the overturning of much precedent in which Justice O'Connor had an instrumental role.

One area of the law which has seen marked transformation since I entered law school is First Amendment law regarding school prayer. As Eugene Volokh's Tribute illustrates, Justice O'Connor was a major contributor to First Amendment religion jurisprudence, striving to carefully balance the importance of free exercise and the dangers of government endorsement of

19. *Women*, ABA PROFILE OF THE LEGAL PROFESSION 2023, <https://perma.cc/HEU2-UDZ6> (archived Aug. 17, 2024).

20. Roberts, *supra* note 4, at 1864.

21. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 686 (1995) (O'Connor, J., dissenting).

religion.²² When I was a public-school student, prayer at graduations and school-sponsored events was unconstitutional, thanks to Justice O'Connor's deciding vote in *Lee v. Weisman*.²³ But that has changed at the hands of an increasingly conservative Court. In *Kennedy v. Bremerton*, the Court “categorically overruled”²⁴ Justice O'Connor's endorsement test for Establishment Clause government speech cases, ruling that a football coach at a public high school had a constitutional right to pray at the 50-yard line after his team's games.²⁵

Then came *Dobbs v. Jackson*,²⁶ which put an end to the constitutional right to abortion care which had been established nearly fifty years earlier by the landmark decision *Roe v. Wade*.²⁷ Thirty years before *Dobbs*, in *Planned Parenthood v. Casey*, Justice O'Connor played a decisive role in affirming the “essential holding” of *Roe*—in the process protecting the abortion right from the encroaching threat of conservatives on and off the bench.²⁸ In that case, she cobbled together a coalition of three justices—previously expected to help form a conservative majority overturning *Roe*—who ultimately wrote a plurality opinion which ended *Roe*'s trimester system but nevertheless saved women's fundamental right to an abortion.²⁹ Today's Court rejected Justice O'Connor's respect for *stare decisis* and sensitivity to “the views of most Americans and . . . the experiences and needs of women”³⁰ in favor of a radical and wide-reaching ruling out of step with the views of most Americans.³¹

A year later, in June 2023, the Court issued its decision in *Students for Fair Admissions v. Harvard*,³² finding race-based affirmative action in college admissions unconstitutional. In so doing, the Court overturned *Grutter v. Bollinger*,³³ the prior decision upholding affirmative action in which Justice O'Connor wrote for the majority and cast the deciding vote. Yet again, the

22. Eugene Volokh, Tribute, *Justice O'Connor's Religion Clauses Legacy*, 76 STAN. L. REV. 1915, 1915-16 (2024).

23. *Lee v. Weisman*, 505 U.S. 577, 599 (1992).

24. Volokh, *supra* note 22, at 1923.

25. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543-44 (2022).

26. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

27. 410 U.S. 113 (1973).

28. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 833 (1992).

29. Evan Thomas, *How the Supreme Court Justice Sandra Day O'Connor Helped Preserve Abortion Rights*, NEW YORKER (Mar. 27, 2019), <https://perma.cc/RW65-2SXX>.

30. *Id.*

31. *Fact Sheet: Public Opinion on Abortion*, PEW RSCH. CTR. (May 13, 2024), <https://perma.cc/K338-96ZG>.

32. 600 U.S. 181 (2023).

33. 539 U.S. 306 (2003).

Justice took a narrow stance vulnerable to criticism from the left and right alike. Nevertheless, one fact is undeniable: O'Connor was "alone in the middle," and her vote with the pro-affirmative-action coalition saved the permissibility of race-based admissions.³⁴ This moderate course of action was also abandoned by today's Court, which broke from precedent in ending affirmative action.

I write this Introduction in the immediate wake of perhaps the most radical and transformative Supreme Court term in recent history. While several landmark decisions were rendered, I will address only two here. First, the Court handed down *Loper Bright Enterprises v. Raimondo*, overruling the long-standing doctrine of *Chevron* deference and supplanting the judgment of expert agencies with that of the Court.³⁵ Then, in *Trump v. United States*, the Supreme Court established absolute presidential immunity for all "official" acts, suggesting an expansive definition of "official" and leaving to the judiciary the task of determining what acts rise to that amorphous standard.³⁶ In so doing, the Court reached a conclusion which no other court ever has, effectively shielding the executive from criminal prosecution.³⁷ It also declined to exercise judicial restraint, refusing to limit itself to "present exigencies" in favor of a broad-sweeping decision.³⁸ In both decisions, the Court not only took it upon itself to autonomously upend two important sectors of the law with vast real-world repercussions; it enlarged its own power and prerogative in the process.

We cannot know what Justice O'Connor would have thought about the merits of each of these cases. Nevertheless, this trend of unhesitating breaks from precedent on issues of enormous public import marks—in my view—a troubling and antidemocratic departure from Justice O'Connor's sincere and admirable commitment to compromise and judicial humility. Americans, for their part, seem to agree; the most recent survey data available, from July 2024,

34. Evan Thomas, *Why Sandra Day O'Connor Saved Affirmative Action*, ATLANTIC (Mar. 19, 2019), <https://perma.cc/8D9K-9FE5>.

35. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2262 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."). For one discussion of the potential repercussions of this ruling, see Kate Shaw, Opinion, *The Imperial Supreme Court*, N.Y. TIMES (June 29, 2024), <https://perma.cc/G79V-5X38>.

36. *Trump v. United States*, 144 S. Ct. 2312 (2024).

37. Laurence H. Tribe, Opinion, *The Trump Decision Reveals Deep Rot in the System*, N.Y. TIMES (July 1, 2024), <https://perma.cc/EFG5-WHB9> ("Indeed, to my knowledge, no court has ever held that a president could be criminally immune under any circumstances.").

38. *Trump*, 144 S. Ct. at 2346-47; see also *id.* at 2370 n.6 (Sotomayor, J., dissenting) ("In reaching out to shield some conduct as official while refusing to recognize any conduct as unofficial, the majority engages in judicial activism, not judicial restraint.").

indicates that fewer than half of Americans express a favorable view of the Court.³⁹

How can we move forward from this strained moment in the history of the Court? As you will read in the coming pages, Justice O'Connor is remembered as resolutely forward-looking, unwilling to dwell on the past. If we are to ever usher in a new era of judicial pragmatism and modesty, this proactive and optimistic orientation is no doubt a necessary ingredient. But in facing this vexing question, it may also behoove us to look backwards. Justice O'Connor's jurisprudence and life offers us a model of principled yet restrained judicial behavior coupled with interpersonal grace.

In her own time, Justice O'Connor signified the arrival of a better future. Today, her legacy offers indispensable wisdom from a past era. In both cases, one thing is clear: Justice O'Connor has represented and represents many of the Supreme Court's most admirable promises—equality before the law and deference to democracy—brought to fruition. On behalf of the *Stanford Law Review*, I am proud to celebrate her legacy. I hope that, no matter how many of the bridges she carefully constructed have been torn down, we will one day live up to her memory and begin to reassemble them.

39. Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RSCH. CTR. (Aug. 8, 2024), <https://perma.cc/CF95-PLHD>.