

# Ronald Reagan Presidential Library Digital Library Collections

---

This is a PDF of a folder from our textual collections.

---

**Collection:** Meese, Edwin III: Files  
**Folder Title:** Appointments – Supreme Court –  
Sandra Day O'Connor (4)  
**Box:** OA 2408

---

To see more digitized collections visit:  
<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:  
<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: [reagan.library@nara.gov](mailto:reagan.library@nara.gov)

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

✓ F. O'CONNER

July 7, 1981

PERSONAL AND CONFIDENTIAL

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

I am attaching a list of objections to the nomination of Sandra O'Conner that were sent to me by various people.

I felt that you should have this list for your use in such discussions as you may have with Senators and interested citizens.

With best personal regards,

Respectfully,

Strom Thurmond  
Chairman

ST:jep

Enclosure

SANDRA O'CONNER

1. During 1970 she supported an abortion on demand bill in the Committee on the Judiciary of the Arizona Senate and in the Arizona Senate Republican Caucus.
2. In 1972 she introduced in the Arizona Senate the Equal Rights Amendment ratification resolution.
3. In 1973 she was the prime sponsor in the Arizona Senate of S. 1190, a bill to allow abortion information to be sent to minors without parental consent.
4. In 1974 she voted in the Arizona Senate against a resolution petitioning the United States Congress for passage of the Human Life Amendment.
5. In 1977, at the request of Bella Abzug, she served as keynote speaker at the Arizona state convention of the United Nations' International Women's Year.
6. The July 2, 1981 issue of the Phoenix Gazette stated  
"In 1974, O'Conner sponsored a measure to submit the Equal Rights Amendment to an advisory referendum but it died in committee. That same year she was one of 9 Senators to oppose a bill which would have outlawed abortions in Tuscons University Hospital unless the mother's life was in danger."
7. Women Today, which publishes a directory of feminist organizations, lauded her in a feature article.
8. She is reported to be an intimate friend of Mary Crisp and other Republicans generally identified with the liberal wing of the Republican Party.
9. She is believed to have gone on record against tuition tax relief.
10. She may have publicly espoused stringent gun control.
11. As a judge of an inferior court of a state bench she is viewed by many as inadequately experienced for the position of Justice of the United States Supreme Court.



THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 7, 1981

REMARKS OF THE PRESIDENT  
UPON ANNOUNCEMENT OF  
SUPREME COURT NOMINEE

The Briefing Room

10:46 A.M. EDT

THE PRESIDENT: Ladies and gentlemen, I have a statement to make and then following that statement, if there are any questions you might have, I shall refer you to the Attorney General.

As President of the United States, I have the honor and the privilege to pick thousands of appointees for positions in federal government. Each is important and deserves a great deal of care for each individual called upon to make his or her contribution, often a personal sacrifice, to shaping the policy of the nation. Thus each has an obligation to you and in varying degrees has an impact on your life.

In addition, as President, I have the privilege to make a certain number of nominations which have a more lasting influence on our lives, for they are the lifetime appointments of those men and women called upon to serve in the Judiciary in our federal district courts and courts of appeals. These individuals dispense justice and provide for us these most cherished guarantees of protections of our criminal and civil laws. But, without a doubt, the most awesome appointment is a guarantee to us of so many things because it is a president -- as a president, I can make an appointment to the United States Supreme Court.

Those who sit in the Supreme Court interpret the laws of our land and truly do leave their footprints on the sands of time -- long after the policies of presidents and senators and congressmen of any given era may have passed from public memory, they'll be remembered.

After very careful review and consideration, I have made the decision as to my nominee to fill the vacancy on the United States Supreme Court created by the resignation of Justice Stewart. Since I am aware of the great amount of speculation about this appointment, I want to share this very important decision with you as soon as possible. Needless to say, most of the speculation has centered on the question of whether I would consider a woman to fill this first vacancy. As the press has accurately pointed out, during my campaign for the presidency I made a commitment that one of my first appointments to the Supreme Court vacancy would be the most qualified woman that I could possibly find.

MORE



Now, this is not to say that I would appoint a woman merely to do so. That would not be fair to women, nor to future generations of all Americans whose lives are so deeply affected by decisions of the Court. Rather I pledged to appoint a woman who meets the very high standards that I demand of all court appointees. I have identified such a person.

So today I am pleased to announce that upon completion of all the necessary checks by the Federal Bureau of Investigation, I will send to the Senate the nomination of Judge Sandra Day O'Connor of Arizona Court of Appeals for confirmation as Associate Justice of the United States Supreme Court. She is truly a person for all seasons -- possessing those unique qualities of temperament, fairness, intellectual capacity and devotion to the public good, which have characterized the 101 brethren who have preceded her.

I commend her to you and I urge the Senate's swift bipartisan confirmation so that as soon as possible she may take her seat on the court and her place in history.

Q Do you agree with her position on abortion, Mr. President?

THE PRESIDENT: I said that I was going to turn over all questions to the Attorney General here and let him answer the questions.

Q But the right-to-life people object. We just wonder if --

THE PRESIDENT: All those questions the Attorney General is prepared to answer.

Q Mr. President, you have such a firm position on that. Can you give us your feelings on her position?

THE PRESIDENT: I am completely satisfied.

Q On her right-to-life position?

THE PRESIDENT: Yes.

Q And did you interview her personally?

THE PRESIDENT: Yes.

END

10:50 EDT

THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release

July 7, 1981

BRIEFING  
BY  
ATTORNEY GENERAL WILLIAM FRENCH SMITH  
FOLLOWING ANNOUNCEMENT BY THE PRESIDENT  
ON SUPREME COURT NOMINATION

The Briefing Room

10:50 A.M. EDT

Q The FBI checks have not been completed, is that correct, Mr. Attorney General?

ATTORNEY GENERAL SMITH: That's correct.

Q Do you think it was sound to make a nomination public before final FBI checks had gone into the background so thoroughly that you knew there wasn't any problem there?

ATTORNEY GENERAL SMITH: We have gone into her background quite thoroughly. We are well aware of the fact that there have been times in the past when the FBI check has been concluded before the nomination has been sent up. In this case, the President has announced his intention to nominate, of course, subject to the FBI check, and once that's completed, then the nomination will be sent up.

Q What about opposition of the right-to-life groups? There's been a great deal of that since Mrs. O'Connor's name has surfaced.

ATTORNEY GENERAL SMITH: Well, as the President has stated, he is satisfied with her position and her record with respect to the right-to-life issue and her record in that respect is for all to see and I'm sure that that may be one of the aspects that will be considered during her confirmation hearing. But I want to emphasize the fact that there has not been a single-issue determination made in connection with this selection.

MORE



Mrs. O'Conner has been considered with respect to her overall qualifications and background and there has not been any effort to focus in on any one issue and judge her on that basis.

Q Well, you handpicked her because she is a conservative, have you not? I mean, you have a general tendency of what her feelings are and where she stands on the issues.

ATTORNEY GENERAL SMITH: She has been chosen because of her overall qualifications and background.

Q That has nothing to do with her political leanings?

ATTORNEY GENERAL SMITH: The only, if you want to call it "political leanings", that were taken into consideration was whether or not she fell generally within the President's overall judicial philosophy.

Q Tell us about the process of selection now? Exactly when was the decision made? Was it last night?

ATTORNEY GENERAL SMITH: The decision was made yesterday, but of course the process has been an extended one. It commenced really when we first learned of Justice Potter Stewart's determination to resign -- that was late last March. We had the intervening problem, of course, of the shooting incident which delayed matters a bit.

We also respected Judge Stewart's request that his resignation not be made public until June 18. Despite that fact, however, we did what was necessary within that constraint to develop candidates that we would present to the President for his consideration and that process was --

Q How many were there?

ATTORNEY GENERAL SMITH: It's a little hard to say at any one time. We had a rather extensive list of very highly qualified people. It's a little hard to put a number on it. I would say that during my first presentation to the President there may have been 20 or 25 names on the list.

Q When was that, sir?

ATTORNEY GENERAL SMITH: That would have been sometime, I believe, in early June.

Q You mentioned her overall qualifications. What are they? Can you be more specific about that?

ATTORNEY GENERAL SMITH: She has an outstanding academic record. She graduated from Stanford with highest honors when she was 20. She graduated from Stanford University Law School when she was 22, also with highest honors. She was Order of the Coif in her second year, and since that time, of course, she's had wide ranging experience both in the legislative branch in Arizona and also on the judicial branch.

Q What about her judicial record?

ATTORNEY GENERAL SMITH: Judicial record? We found it to be quite satisfactory. We naturally read all of her opinions. We have discussed her qualifications, her outlook, her judicial philosophy



with a large number of people and we have heard nothing but good.

Q If I may follow up, what is her judicial philosophy?

Q We want to know about Helen Thomas' question here.

MR. SPEAKES: He'll be here for a few minutes, so let's go one at a time.

Q Yes, but let's just go back to Helen Thomas' question that it's the President's desire that he appoint someone who would interpret the law and not make it. Are you satisfied and will you expand on your answer as to whether this nominee fits that category?

ATTORNEY GENERAL SMITH: We think she definitely does.

Q Why?

ATTORNEY GENERAL SMITH: In other words, we're satisfied that she looks upon the judicial function as being one which is intended to interpret and apply the law and not to make it. We're satisfied, the President is satisfied that she recognizes that it is the elected representatives of the people who should be enacting the laws, and that it is the function of the judiciary to interpret and apply those laws -- and in reviewing her opinions alone, in addition to the responses that we've had from numerous inquiries, we're satisfied that that is what she has done.

Q When did she first become a candidate?

ATTORNEY GENERAL SMITH: She was on the original list which would go back two or three months.

Q You mentioned her judicial philosophy a minute ago. What did you mean by that?

ATTORNEY GENERAL SMITH: Just what I just said. In other words, we're satisfied that she views the function of the judiciary to be to interpret and apply the law, not to make it. And of course, that accords with the President's judicial philosophy, which saying it another way is that it is the responsibility of the elected representatives of the people to enact laws and not that of the judicial --

Q Was she the best qualified woman candidate or the best qualified candidate?

ATTORNEY GENERAL SMITH: We were fortunate to have on the list a large number of very qualified people and she was one of those.

Q Is this the last woman that we're going to see this President nominate to the Supreme Court now that he has fulfilled that campaign commitment?

ATTORNEY GENERAL SMITH: I'm sure that in the future the President will do what he did this time. He will look at the overall list of candidates and from that list he will make a selection, and that could be a male or a female.

Q Would you like to be the next nominee? Your name has come up frequently.

ATTORNEY GENERAL SMITH: Thank you, no.

Q Do you have any idea on what the President meant by saying he was satisfied with her views on abortion? Has she expressed them specifically to him and has she modified them in any way in recent times? Do you know what her views are?

ATTORNEY GENERAL SMITH: As far as we know, she has not modified her views. We have been satisfied that they have been consistent and that her record in this respect is satisfactory to the President.

Q When did she see the President? How long did the interview take place, and who else in the administration interviewed her, please?

ATTORNEY GENERAL SMITH: I don't want to get into the specifics as far as who was interviewed and how long. But I can say that the President did interview her and he --

Q Well, how long and when?

ATTORNEY GENERAL SMITH: Well, it would have been on July 1st, when he had an extended discussion with her.

Q You say you have read her opinions on legalized abortion?

ATTORNEY GENERAL SMITH: I didn't say that she had any judicial opinions dealing with that subject. I said that she had a certain record in the Arizona legislature with respect to that, and that's open for all to see.

Q How long did the President meet with her, and where?

ATTORNEY GENERAL SMITH: Well, he met with her, of course, in the Oval office. I can't tell you off-hand how long it was, but it was certainly sufficient for him to accomplish what was intended to be accomplished in such an interview.

Q Did you interview her, sir?

ATTORNEY GENERAL SMITH: Oh yes. On various occasions.

Q One of the votes in the legislature, I understand, was to legalize abortion under certain conditions in Arizona, a vote she cast in 1970. How does that square with the President's philosophy?

ATTORNEY GENERAL SMITH: As a matter of fact I don't think you can -- I think what you've said is not necessarily an accurate representation of what happened there.

Q She did not cast her vote in favor of abortion?

ATTORNEY GENERAL SMITH: I don't think that there is any point in my trying to dissect what happened on the floor of



the legislature in Arizona. That is a matter of public record, and it is, as I say, open for all to see and will undoubtedly be a subject of discussion later on.

Q Perhaps the fact that the FBI checks have not been completed and this is sort of a rushed announcement this morning, there are going to be many who are going to feel that she was named today because opposition has been mounting, particularly from right-to-life groups?

ATTORNEY GENERAL SMITH: This has not been a rushed procedure in any sense. It has been a very thoughtful procedure. It has commenced --

Q The announcement was rushed.

ATTORNEY GENERAL SMITH: The announcement was an announcement which was made when the announcement was intended to be made. If you can call that rushed I supposed that's rushed. Actually the whole process has been a very efficient, effective, orderly process. We're very satisfied with both the timing and the occasion.

Q Were outside groups consulted, like the ABA? Was Burger consulted, was Stewart?

ATTORNEY GENERAL SMITH: With respect to all of the candidates, there was a great in-depth review and discussion, analysis, research, opinion reading. Everything that was done that was required, not only with respect to this candidate, but with respect to other candidates, to determine basic qualifications and talent, background and so on.

Q Were you consulted?

ATTORNEY GENERAL SMITH: Yes, certainly.

Q If the process was so orderly, Mr. Attorney General, why then were the FBI checks not made prior to this announcement this morning?

ATTORNEY GENERAL SMITH: Well, we're quite satisfied from our own investigation of the background and the factual basis of this situation. And we are content that -- to announce an intent to nominate, subject to the FBI check. If something should develop there that we are not aware of then we will react to that situation. But we don't consider that to be a particularly unusual circumstance.

Q What specific opinions of her's manifested the philosophy that you were seeking?

ATTORNEY GENERAL SMITH: Well I don't think I can get into the specifics here. The opinions did indicate that as an appellate judge, for example, she did not attempt to substitute her judgement for that of the trial court, but she reacted in accordance with the appropriate appellate restraint. There are specific examples of that and certainly enough to satisfy us that overall that, together with other factors, that she fits within the President's judicial philosophy.

Q Did you inquire into her feelings on the exclusionary rule?

MORE

7-7-81



ATTORNEY GENERAL SMITH: Well, during this process we've discussed a whole category of issues, and once again, no single position, no single issue was in any way determinative. It was a matter of looking at the whole spectrum of her activities, background, viewpoints.

Q Who were the people in Washington who recommended her to you?

ATTORNEY GENERAL SMITH: Well, I don't think it would be appropriate for me to discuss that aspect of it.

Q What effect do you think the opposition of these right-to-life groups and other groups would have on her confirmation?

ATTORNEY GENERAL SMITH: Well, having gotten into her background to a substantial degree, we're satisfied that she will have no problem as far as confirmation is concerned. We're also satisfied that no single issue will dominate or determine as far as the confirmation process is concerned.

Q Why are you so certain of that?

ATTORNEY GENERAL SMITH: Well, insofar as any Congressional hearing is concerned, I suppose one shouldn't be too certain about anything, but that certainly is our evaluation and conclusion at this point.

Q Were there other candidates interviewed by the President?

ATTORNEY GENERAL SMITH: Well, I think it would not be appropriate for me, again, to get into the process as far as specifics are concerned.

Q It's a simple question, though. Did he meet with others?

ATTORNEY GENERAL SMITH: It's a simple question, but I don't think it's appropriate to respond because I think that it would do a disservice to other candidates for me to try to become specific as to who was interviewed, who was not interviewed, how many were interviewed.

Q We're just asking "whether", not "who" or "how many".

ATTORNEY GENERAL SMITH: Well, as I say, I don't think it would be appropriate for me to get into that.

Q When do you expect the formal nomination to be ready to be sent to the Senate?

ATTORNEY GENERAL SMITH: Just as soon as possible and certainly would be at the conclusion of the FBI check and we would hope shorter than that. We would hope, for example, to expedite the FBI check.

Q When will hearings be scheduled, sir? Do you have any idea? Is it going to be the fall, after the August recess?

ATTORNEY GENERAL SMITH: Well, we would hope to have hearings scheduled just as soon as possible. We haven't had the occasion to discuss that with Chairman Thurmond yet and haven't determined upon a specific date, but, certainly we would hope to have it as soon as possible so that, if it is at all likely, we could have the nominee confirmed in time for the opening of the fall term of the Court.

Q When was Senator Thurmond informed of your choice?

MORE

ATTORNEY GENERAL SMITH: Well, Senator Thurmond has been aware of various candidates. He was informed of the President's decision shortly after he made it. Which would have been, I believe, this morning.

Q Sir, now that you've examined her record, could you tell us what percentage of her opinions have subsequently been upheld or overturned by the Supreme Court?

ATTORNEY GENERAL SMITH: By the Arizona Supreme Court? No, I'm afraid I couldn't.

THE PRESS: Thank you.

END

11:15 A.M. EDT

THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release

July 7, 1981

The President today announced his intention to nominate Judge Sandra Day O'Connor to be an Associate Justice of the Supreme Court of the United States, filling the vacancy created by the resignation of Justice Potter Stewart. Judge O'Connor presently serves on the Arizona Court of Appeals. The President will forward to the Senate his nomination of Judge O'Connor upon completion of the required background check by the Federal Bureau of Investigation.

Judge O'Connor, age 51, earned both her undergraduate and law degrees at Stanford University. She received her B.A. magna cum laude in 1950, and her LL.B. with high honors in 1952. She was a member of the Board of Editors of the Stanford Law Review and a member of the Order of the Coif. Judge O'Connor was admitted to the Bar of the State of California in the year of her graduation and to the Bar of the State of Arizona in 1957.

Judge O'Connor practiced law in Phoenix, Arizona, for a number of years. She served as Assistant Attorney General of Arizona from 1965 to 1969 and served in the Arizona State Senate from 1969 to 1975.

In 1974, Judge O'Connor was elected to the Superior Court for Maricopa County, Arizona. She served on that court until she was appointed to the Arizona Court of Appeals in 1979.

Judge O'Connor is married to John Hay O'Connor III. They have three children.

# # #



✓ O'Connor

THE WHITE HOUSE

WASHINGTON

July 7, 1981

MEMORANDUM TO: JAMES A. BAKER, III  
FROM: ELIZABETH H. DOLE  
SUBJECT: SUPREME COURT NOMINATION  
CONFIDENTIAL CALL-OUTS

The following organizations will be contacted in solicitation of support for the President's Supreme Court nominee:

Business

Business Roundtable  
U.S. Chamber  
NAM  
NFIB  
BGRC

Ethnic Group

Nat'l Italian American Foundation  
Order Sons of Italy in America  
UNICO (Ital. Fraternal Org)  
Polish American Congress  
AHEPA (Greek Fraternal Org.)  
Ukrainia Congress Comm. of America

Women's Organizations

Gen. Fed. of Women's Clubs  
Business & Professional Women  
National Women's Political Caucus  
Congresswomen's Caucus  
Rural American Women  
Association of American Univ. Women  
Nat'l Association of Women Judges  
NY Women in Banking

Consumers

National Consumers League  
Consumer Federation of America

Disabled

U. S. Council for the Int'l Year of the Disabled Persons

Aging

American Assoc. of Retired Persons  
National Council on Aging

Health

American Academy of Ophthalmology  
American Medical Assoc.  
American Federation of Hospitals

Jewish Organizations

American Jewish Congress  
American Jewish Committee  
Bnai Brith  
Anti-Defamation League  
National Jewish Community Relations Council  
Hadassah

Labor

MEBA  
Teamsters  
AFL-CIO Building and Trades Dept.  
Plumbers  
AFL-CIO

Agriculture

American Farm Bureau Federation  
Nat'l Council of Farmer Coops  
W.I.F.E.  
American Soybean Assn.  
Nat'l Assn of Wheat Growers  
Corn Growers Assoc.

Blacks & Youth

American Assoc. of MESBICS  
Coalition for Social & Economic Change  
National Business League  
70001  
National Assoc. of Black Manufacturers  
Health Occupation Student Assoc.  
Future Farmers of America

Opinion Leaders\*

R. Emmett Tyrrell  
George F. Will  
John O'Sullivan  
Irving Kristol

Conservative Leaders\*

Paul Weyrich - CSFC  
Terry Dolan - NCPAC  
Howard Phillips - TCC  
Rep. Mickey Edwards - ACU  
Phyllis Schlafly - Eagle Forum  
Jerry Falwell - Moral Majority  
Peter Gemoni - Nat. Pro-Life PAC  
Cooper Hold - VFW  
Mylio Kraijo - Am. Legion  
Richard Viguerie - Cong. Digest  
Tom Winter - Human Events  
Ed Feulner - Heritage Foundation  
Reed Larson - Nat'l Right to Work

\* Areas of concern for opposition



✓ F O'Connor



# Office of the Attorney General

Washington, D. C. 20530

July 7, 1981

MEMORANDUM TO: Herbert Ellingwood  
Deputy Counsel to the President

FROM: Hank Habicht *HH*  
Special Assistant to the Attorney General

SUBJECT: Appellate Court Decisions of Judge Sandra O'Connor

Enclosed, per your request, is a synopsis of Sandra O'Connor's Court of Appeals decisions prepared during the early phase of our search process. The asterisks (\*) denote her criminal decisions.

In the criminal law area, Judge O'Connor displays strong deference to trial court rulings and findings. She also frequently employs "waiver" rules to preclude appeals based upon procedural objections, and has an apparently healthy disdain for the exclusionary rule, which she reaffirmed in interviews. In the State Senate, she sponsored a death penalty bill after the Furman v. Georgia decision, as well as other legislation, such as increased penalties for drug offenders.

Please advise of any questions you may have on the foregoing.

Attachment

HONORABLE SANDRA D. O'CONNOR

Arizona Court of Appeals

SANDRA D. O'CONNOR (Arizona Court of Appeals)

<u>TAB</u>	<u>CASE</u>	<u>SUBJECT MATTER</u>	<u>HOLDING (MAJORITY OPINION)</u>	<u>OBSERVATIONS</u>
A	<u>Helena Chemical Co. v. Coury Bros. Ranches, Inc. (1980)</u>	<u>Standard for granting new trial.</u>	For plaintiff-appellant. Restrictions by trial judge upon cross-examination and refusals to admit evidence are generally not grounds for a new trial if objections are not raised in a timely fashion at trial.	1. Reversed trial court grant of new trial. 2. Conclusory but concise opinion based upon need for finality in litigation
B	<u>Blair v. Stump (1980)</u>	Equal Protection	For plaintiff-appellee. Forcible entry and detainer statute which requires tenant to post bond of double annual rental irrationally discriminates on its face against indigent and many nonindigent tenants.	1. Upheld lower court findings. 2. Concise and clear equal protection analysis.
C	<u>Cooper v. Arizona Western College District Governing (1980)</u>	State Open Meeting Law	For defendant-appellant. Actions of college governing Board were not irreversibly void under open meeting statute because they were taken in executive session, since a later public session to discuss the Board decisions could cure the defect.	1. Reversed lower court nullification of Board actions. 2. Opinion displays impressive statutory construction skills and desire not to overturn executive branch administrative actions if at all feasible
D	<u>J.C. Penney Co. v. Arizona Dept. of Revenue (1980)</u>	Equal Protection: Constitutionality of rental occupancy tax.	For defendant-appellee. Legislative distinction between tenants of tax-exempt lessors and non-tax-exempt lessors is rational in view of entire state tax legislative scheme.	1. Affirmed lower court findings. 2. Opinion engages in a careful review of entire tax law scheme in an effort to preserve state legislative
E	<u>O'Malley Lumber Co. v. Riley (1980)</u>	Construction of State Mechanic's Lien Statute.	For plaintiff-appellee. Plaintiff contractors who rebuilt defendants home from the foundation created a new "dwelling" which permitted recordation of mechanic's lien under state law.	1. Affirmed trial court. 2. Opinion reasons that statutory construction should avoid resort to extraneous evidence of legislative intent when statute's meaning is clear on its face.



	<u>TAB</u>	<u>CASE</u>	<u>SUBJECT MATTER</u>	<u>HOLDING (MAJORITY OPINION)</u>	<u>OBSERVATIONS</u>
* F		<u>State v. Miguel</u> (1980)	Requirement of 12-member jury in Criminal trial.	For defendant-appellant. Arizona statute requiring 12-member jury for felonies involving potential prison terms of more than 30 years applies to multi-count criminal charges in which consecutive sentences would exceed 30 years.	1. Ordered retrial with 12-member jury. 2. Despite retrial order, Judge O'Connor addressed and rejected the defendant's sufficiency of evidence objection to guide the lower court on retrial.
* G		<u>State v. Brooks</u> (1980)	Armed robbery: 1. Fourth Amendment propriety of automobile stop. 2. Voluntariness of confession.	For state-appellee. 1. Investigative stop of defendant's automobile was based upon reasonable suspicion. 2. Trial court determination that defendant's confession was voluntary under all circumstances was not erroneous.	1. Upheld lower court conviction. 2. Opinion thoroughly reviews more than 10 procedural objections asserted by defendant, deferring to the trial court determination employing "harmless error" rule in each case.
H		<u>Ryan v. Industrial Commission of Arizona</u> (1981)	Eligibility for state employee benefits.	For defendant-respondent. State industrial commission finding that employment contract was consummated outside of Arizona and therefore is not governed by Arizona law, is supported by substantial evidence.	1. Upheld administrative determination in favor of employer. 2. Concise opinion which accords reasonable deference to administrative agency determinations.
I		<u>Andrews v. Andrews</u> (1980)	Review of trial court child support ruling.	For defendant-appellee. Trial court setoff of mortgage payments made by husband against child support arrearages was not abuse of discretion.	1. Upheld trial court judgment. 2. Opinion is noteworthy only in its application of a deferential standard of review.

<u>TAB</u>	<u>CASE</u>	<u>SUBJECT MATTER</u>	<u>HOLDING (MAJORITY OPINION)</u>	<u>OBSERVATIONS</u>
J	<u>Thompson v. Ariz. Department of Economic Security (1980)</u>	Entitlement to State unemployment benefits.	For plaintiff-appellant. The fact of consistently late payments of wages may make employee's resignation sufficiently "involuntary" to entitle her to statutory unemployment benefits.	1. Remanded administrative agency dismissal of claim. 2. Well-reasoned opinion.
X K	<u>Town of El Mirage v. Industrial Commission of Arizona (1980)</u>	Administrative procedure requirements at workmen's compensation claim hearing.	For defendant-appellant. Award of workmen's compensation cannot be based upon hearing in which employer was not afforded an opportunity to cross-examine claimant on key factual issues.	1. Award to claimant set aside. 2. Award of social insurance funds must be based upon fair hearing procedures.
* L	<u>State v. Ferrari (1975) (Sitting on Arizona Supreme Court by designation)</u>	Review of trial court evidentiary rulings and jury instructions in murder trial.	1. Felony-murder instruction was proper. 2. Failure of court to change venue was proper in view of limited and stale nature of pretrial publicity. 3. Calling of certain fact witnesses by the court was not an abuse of discretion.	1. Trial court conviction upheld. 2. Extremely thorough but deferential review of each basis for the appeal.
* M	<u>State v. Blevins (1981)</u>	Sufficiency of evidence to support manslaughter conviction.	For the State. Vehicular manslaughter conviction may be sustained on circumstantial evidence alone.	1. Trial verdict upheld 2. Deferential review of trial court fact findings
N	<u>Magma Copper Co. v. Arizona Department of Economic Security (1980)</u>	When misconduct by employee disqualifies him for unemployment benefits.	For plaintiff-appellee. Mere fact that employee is incarcerated does not, without more, disqualify him for unemployment benefits unless employer proves work-related misconduct.	1. Administrative agency determination upheld in well-reasoned opinion.
* O	<u>State v. Schoonover (1981)</u>	1. Voluntariness of guilty plea. 2. Review of evidence adduced at sentencing hearing.	1. If guilty plea agreement clearly sets forth constitutional rights which defendant waiving by guilty plea, judge need not orally apprise defendant of each right waived. 2. Judge's refusal to permit defendant to take certain depositions prior to sentencing hearing was not abuse of discretion.	1. Sentence and guilty plea upheld. 2. Reasoned application of waiver and harmless error in appellate review of criminal matters.

<u>TAB</u>	<u>CASE</u>	<u>SUBJECT MATTER</u>	<u>HOLDING (MAJORITY OPINION)</u>	<u>OBSERVATIONS</u>
X P	<u>State v. Morgan</u> (1981)	Propriety of prosecution closing arguments.	For State. Prosecution mention of defense's failure to present any evidence was not, in context, a violation of defendant's Fifth Amendment right to remain silent.	1. Conviction affirmed. 2. Opinion strains somewhat to avoid overturning conviction but appears to be correct on the facts.





✓ F O'CONNOR

Office of the Attorney General  
Washington, D. C. 20530

July 7, 1981

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM:

KENNETH W. STARR *KWS*  
COUNSELOR TO THE ATTORNEY GENERAL

On Monday, July 6, 1981, I spoke by phone on two occasions with Judge O'Connor. She provided the following information with respect to her public record on family-related issues:

- As a trial and appellate judge, she has not had occasion to rule on any issue relating to abortion.
- Contrary to media reports, she has never attended or spoken at a women's rights conference on abortion.
- She was involved in the following legislative initiatives as a State Senator in Arizona:
  - In 1973, she requested the preparation of a bill, which was subsequently enacted, which gave the right to hospitals, physicians and medical personnel not to participate in abortions if the institution or individual chose not to do so. The measure, Senate Bill 1133, was passed in 1973.
  - In 1973, she was a co-sponsor (along with 10 other Senators) of a bill that would permit state agencies to participate in "family planning" activities and to disseminate information with

respect to family planning. The bill made no express mention of abortion and was not viewed by then Senator O'Connor as an abortion measure. The bill died in Committee. She recalls no controversy with respect to the bill and is unaware of any hearings on the proposed measure.

--- In 1974, Senate Bill 1245 was passed by the Senate. Supported by Senator O'Connor, the bill as passed would have permitted the University of Arizona to issue bonds to expand existing sports facilities. In the House, an amendment was added providing that no abortions could be performed at any educational facility under the jurisdiction of the Arizona Board of Regents. Upon the measure's return from the House, Senator O'Connor voted against the bill as amended, on the ground that the Arizona Constitution forbade enactment of legislation treating unrelated subject matters. In her view, the anti-abortion rider was unrelated to the primary purpose of the bill, namely empowering the University to issue bonds to expand sports facilities. Her reasons for so voting are nowhere stated on the record.

--- In 1970, House Bill 20 was considered by the Senate Committee on which Senator O'Connor then served. As passed by the House, the bill would have repealed

Arizona's then extant criminal prohibitions against abortion. The Committee majority voted in favor of this pre-Roe v. Wade measure; a minority on the Committee voted against it.

There is no record of how Senator O'Connor voted, and she indicated that she has no recollection of how she voted. (One Senator voting against the measure did have his vote recorded.)

Judge O'Connor further indicated, in response to my questions, that she had never been a leader or outspoken advocate on behalf of either pro-life or abortion-rights organizations. She knows well the Arizona leader of the right-to-life movement, a prominent female physician in Phoenix, and has never had any disputes or controversies with her.



*F: Supreme Court  
Appointment*



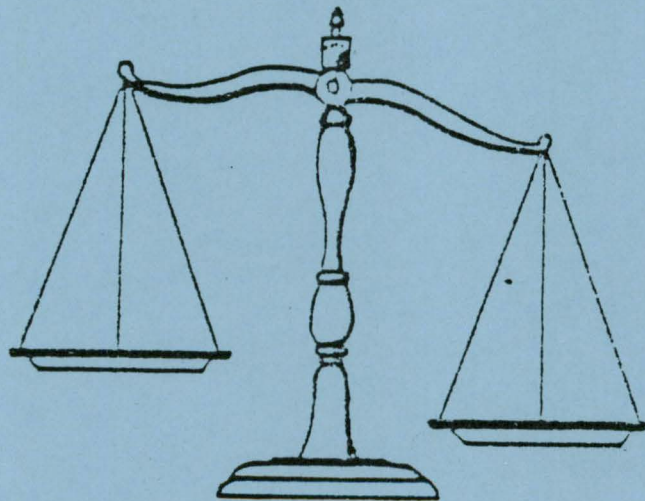
# The White House NEWS SUMMARY

---

## First woman is named to U.S. Supreme Court

THE NOMINATION OF JUDGE O'CONNOR

Initial Editorial Reaction to President Reagan's Announcement



A White House News Summary Special Edition

Wednesday, July 8, 1981



## THE NOMINATION OF JUDGE O'CONNOR

### Initial Editorial Reaction to President Reagan's Announcement

#### A Landmark For The Court

"The highest court in the land has been an all-male bastion for much too long, and we're happy to see Reagan breach the wall. Let's hope the Senate will act on the nomination as speedily as possible - in fairness to Judge O'Connor and to the court, which ought to be at full strength when it reconvenes in the fall."  
(The New York Daily News, 7/8)

#### The Retiring Judiciary

"There is going to be continuing pressure in the future to deimperialize the Judicial Branch. But maybe along the way it would be well to remember that insofar as the disenchantment with the overreaching judges was more than a partisan complaint, it was not an end in itself...That, and not a simple passivity, is the kind of restraint we're going to be looking for from Mrs. O'Connor's opinions and from Mr. Reagan's future appointments."  
(The Wall Street Journal, 7/8)

#### A Person For The Court

"President Reagan has chosen a woman for the Supreme Court - and more. Other Presidents have had the will, or the opportunity, but never both. The very presence of a woman in the cloister will have a healthy effect on justice."  
(The New York Times, 7/8)

#### More Than A Woman

"It is as a woman that Mrs. O'Connor's nomination is most newsworthy, but it is as a judge on the court of last resort that her nomination will be and should be appraised. And if she does join the court, in the long run it is as a jurist, not a woman, that she will leave her footprints in the sands of time."  
(The Baltimore Sun, 7/8)

#### The Nomination of Mrs. O'Connor

"That President Reagan has gone to the second tier of a state court structure in his search for a female nominee may be less a commentary on Judge O'Connor's qualifications than on a system that, until the quite recent past, kept almost all women lawyers from reaching high places in their chosen profession. Our first impression of her qualifications is that the Senate will find nothing to impede her confirmation."  
(The Washington Post, 7/8)

New Ground, New Directions

"It was important as a symbol of the nation's new sensitivity toward equal rights that a woman be appointed to the U.S. Supreme Court for the first time in its 191-year history. It was important that the nominee possess the necessary qualifications... and from the evidence at hand, O'Connor is well qualified."  
(The Los Angeles Times, 7/8)

A Landmark Appointment to the Supreme Court

"The choice of Sandra Day O'Connor is also a commendably prompt redemption of Reagan's campaign pledge to fill 'one of the first Supreme Court vacancies in my administration' with the 'most qualified woman I can find.' It's all the more commendable because political compatibility with all of the President's single-issue constituencies is not among O'Connor's qualifications."  
(Newsday, 7/8)

Reagan Choice For High Court Good Politics

"And what Ronald Reagan has done in this case is make a safety play by keeping both his promise to appoint a woman and his commitment to choose someone with conservative views on the functions of the judiciary. That may not satisfy the extremists of left or right, but it is winning politics in anyone's book."  
(Jack W. Germond & Jules Witcover, The Washington Star, 7/8)

-end-

(Copies of editorials and columns attached.)



## A landmark for the court

From all accounts, President Reagan picked a winner and made history as well by selecting Sandra O'Connor to fill the vacancy on the Supreme Court.

The highest court in the land has been an all-male bastion for much too long, and we're happy to see Reagan breach the wall. It's a signal honor for the Arizona jurist and a long-overdue recognition of the fact that in law, as in other fields, women have come into their own.

But Judge O'Connor promises to bring to the court more than a history-making label. She was a top student at Stanford Law School, a respected lawyer in Arizona and the Republican majority leader of the State Senate before being named to an appellate court—by a Democratic governor.

People familiar with Judge O'Connor's work on the bench give her high marks on all counts—grasp of the law, judicial temperament and clear, cogently written opinions.

The chorus of approval is not unanimous. The Right to Life Committee and the Moral Majority already have protested what they regard as Judge O'Connor's "pro-abortion" leanings. What that means, we suspect, is that as a private citizen the judge doesn't share their particular views on abortion.

But her entire record argues that she would not on the bench let her personal views intrude on her judicial actions. Apparently, she does not subscribe to the old Earl Warren philosophy of the Supreme Court's right to invade every nook and cranny of American life.

In this sense, Mrs. O'Connor is judicially nonpartisan in the best meaning of that term. She is not the Warren kind of "activist" judge that Reagan himself said he did not want on the high bench. And that should be enough for the Moral Majority and its allies.

The President is satisfied that Judge O'Connor shares his view that judges should interpret the laws, not make them. He has made his choice, and it looks like a good one. Let's hope the Senate will act on the nomination as speedily as possible—in fairness to Judge O'Connor and to the court, which ought to be at full strength when it reconvenes in the fall.



# The Retiring Judiciary

THE WALL STREET JOURNAL, 7/8

When he announced his intention yesterday to name Sandra O'Connor to the U.S. Supreme Court, President Reagan seems to have fulfilled not one but both of his long-standing commitments on the subject. First, of course, he had promised to search for a qualified woman to fill a vacancy; not surprisingly, it appears he has easily found one. But second, it looks like the nominee meets the ideological test Mr. Reagan said he would apply—not the test of political conservatism, but the test of belief in a philosophy of judicial restraint. Mr. Reagan is fed up with the imperial judiciary. So are a lot of people. So is the Supreme Court itself. The question is whether they are fed up for the right reasons.

About five years ago commentators began to notice that a new kind of judicial activism was abroad in the land. It involved a certain role reversal: The traditionally conservative courts seemed now to be fighting the Executive and Legislature in behalf of the liberal principle of extending government's protective scope.

Moreover, the new activism seemed on its way to becoming entrenched so that it could not be easily reversed by elections or swings of opinion. The courts were operating by expanding the definitions of basic constitutional concepts like standing and due process; such ground once broken is difficult to abandon. The courts also had a seemingly ever-growing field of overall government activity and public interest lawyers to cope with; this, too, seemed a near irreversible trend.

Conservatives didn't like the development because they saw liberals using the courts to protect themselves against the swelling conservative tide in electoral politics. But conservatives said the problem was more general than that. The danger, they argued, was that the courts were reaching for partisan definitions of constitutional rights in order to subvert the legitimate authority of democratic politics.

The Burger Supreme Court had certainly done its share of the judicial colonizing the critics were worried about, but in the decisions it handed down this term the court showed that it has begun to take the case against the imperial judiciary quite seriously.

There were first of all the big decisions. The Justices upheld the President's power to take U.S. citizens' claims against Iran out of American courts and put them in the hands of an international tribunal. The court similarly upheld the Secretary of State's

authority to take away Philip Agee's passport once he had decided that the former CIA agent threatened national security. And the court endorsed the discretionary power of Congress to set up an exclusively male military draft.

There were other such decisions as well: upholding Congress's and OSHA's right to promulgate unreasonable occupational health standards, defending localities' powers to ban topless dancing and keep Hare Krishna proselytizers from wandering around state fair grounds, standing up for state government powers in the imposition of severance taxes. Of course there were qualifications in these opinions, and partial dissents, and the special circumstances of particular cases, and disclaimers by the Justices about how the holdings were really narrower than they might appear. But through the opinions did run the thread of a newly self-conscious deference to Legislative and Executive authority.

On some of these decisions we liked the bottom line and on some we didn't. We think the holding on Iran was a big mistake; in distinct contrast, we are not mourning the obliteration of Philip Agee's passport. But like them or not, we found the majority opinions in the prominent cases sometimes disquieting. On issues from Hare Krishna to the draft, they trotted past free speech, due process or equal protection issues that were not merely lurking in the bushes but standing in the middle of the road waving banners. You don't have to be overly sensitive to think such questions were at least worth a more extended arm wrestle.

There is going to be continuing pressure in the future to deimperialize the Judicial Branch. But maybe along the way it would be well to remember that insofar as the disenchantment with the overreaching judges was more than a partisan complaint, it was not an end in itself. It called for deference to the democratic process, but not an indiscriminate deference: It asked instead that individual rights be both defined with self-discipline and defended with care. It was a plea, in other words, that the judicial concern for individuals not be allowed to fly apart into an incoherent defense of both anarchy and statism.

That, and not a simple passivity, is the kind of restraint we're going to be looking for from Mrs. O'Connor's opinions and from Mr. Reagan's future appointments.



## A Person for the Court

President Reagan has chosen a woman for the Supreme Court — and more. Other Presidents have had the will, or the opportunity, but never both. Give him credit, as the National Organization for Women does in calling the appointment of Sandra Day O'Connor a victory. The nation's highest court, which remained segregated by race for a century after the Civil War, is a male club no more.

Give the President credit also for honoring his own campaign promise. Not the cheap pledge that he would soon name a woman justice, but the assurance he gave after the Republican platform called for naming only judges who "respect traditional family values and the sanctity of human life."

He would not be so straitjacketed, he said, but would, as Presidents are entitled to do, seek jurists who shared his philosophy. The right-to-life movement and other extremists are already giving him — and Justice-designate O'Connor — the backhanded honor of opposing the nomination because she showed moderation on some social issues during the

period that she served as an Arizona state Senator.

Mrs. O'Connor's political record in the Arizona legislature will surely be aired in the confirmation process. Her total record, we suspect, will show a lawyer, public servant and state court judge of the even temperament and open mind that the nation's highest court deserves.

The President has been fortunate to find in Judge O'Connor a woman of legal talent and public accomplishment as well as the right political bent. Those who know her agree that she is scholarly and smart. She is described as neither as brilliant nor as reactionary as some of the men the President considered. She is a person of ability in a profession still dominated by male achievers.

The retiring Justice Potter Stewart said he admired most a judicial opinion that did not betray the sex of the author. That is a test the brethren of the Court would have flunked as recently as last week. The very presence of a woman in the cloister will have a healthy effect on justice.



## More Than a Woman

President Ronald Reagan is certainly going to leave his footprints in the sands of time. He will go down in the history books as the president who finally nominated a woman for the Supreme Court. After 192 years and 101 brethren, we have a sister, Sandra O'Connor.

It's long past due.

This assumes Mrs. O'Connor will be approved by the Senate. She is already being opposed by those elements in the Republican party who object to the Equal Rights Amendment, which she has supported, and by the right-to-life lobby, because she has supported abortion in some cases. But we do not believe a Republican Senate will turn down a Republican president's first nomination to the court.

However easy this nomination may fare in the Senate, it still took boldness on Mr. Reagan's part. He could have avoided a fight, by naming a man, since his campaign promise was only that *one of his first* Supreme Court nominees would be a woman. Or he could have named a woman who had no record on sensitive issues, or whose record was acceptable to the right wing. That the president did not take an easy path says something about him. He not only has a sense of history, he has a sense of appropriateness. It would have been as wrong to name a woman who opposes the femi-

nist movement on its most important issue, E.R.A., as it would have been in the 1960s to choose as the first black justice one who did not offend segregationists.

So we think Mr. Reagan deserves high praise for his decision.

There is something remarkable about this nominee besides her sex. Her judicial experience is four years as a state court trial judge and two years on Arizona's intermediate appellate court. Not since the Civil War has a justice joined the court direct from a court of this level. Even justices chosen from states' highest courts are rare. Mrs. O'Connor's five-year service in the Arizona Senate is also a characteristic not usually found among justices. Her state court and legislative careers could be valuable to the court, providing as they do a state perspective on federalism. You would assume that as a Supreme Court justice she would give proper Reaganist deference to the decisions of state lawmakers and state judges.

It is as a woman that Mrs. O'Connor's nomination is most newsworthy, but it is as a judge on the court of last resort that her nomination will be and should be appraised. And if she does join the court, in the long run it is as a jurist, not a woman, that she will leave her footprints in the sands of time.

## *The Nomination of Mrs. O'Connor*

THE DECISION of President Reagan to nominate Sandra Day O'Connor of Arizona for a seat on the Supreme Court is far more than the fulfillment of a campaign commitment. It marks the end of a long road for all those women who have ever practiced or aspired to practice law. Just 109 years ago, the court on which Judge O'Connor will sit if the Senate confirms this nomination upheld the power of the states to prevent women from becoming lawyers.

The vestiges of the thinking that produced that now unthinkable discrimination linger on. But the ascension of Judge O'Connor to the nation's highest court would help eliminate more of them, regardless of how she votes on constitutional questions. The fact that a woman has, at long last, been selected for one of these seats of great power will make the continuance of sexual barriers in lesser jobs more difficult to justify.

In some ways, when you think of it, it is incredible that this should have to come as such a momentous event in 1981, that it should have this aspect of novelty and "breakthrough" to it. And we hasten to suggest that it will merely compound the grotesque thinking that has created such a situation if the great legal and political powers-that-be regard a seat on the court for one female as some kind of equity. Female justices should not be considered as some one-of-a-kind token or representative or quota-filler. Mr. Reagan has helped redeem the shame of his predecessors who wouldn't quite dare to do what he has done. He is to be congratulated for that. Now let us hope there will always be men and women on the court and that this will come to seem ordinary.

From her record in Arizona, it appears Judge

O'Connor has been a good politician, a quality lawyer and a far better than average trial and appellate judge. The kinds of cases she has handled on the state bench, naturally, bear little or no resemblance to those that routinely come before the Supreme Court. This means there are few, if any, clues in her judicial career as to how she will vote on broad constitutional questions. But that is not unusual. Rarely has the public record of any nominee laid bare his judicial philosophy, and sometimes the public record has been totally misleading as an indicator of judicial behavior.

Those who have known Judge O'Connor's work over the years describe her as a conservative but not reactionary Republican and believe she is more likely to end up closer to the philosophical position of Chief Justice Burger than to that of the other Arizonan on the court, Justice Rehnquist. If that is so, the change on the court from Justice Stewart to Justice O'Connor may not alter its direction substantially.

Rarely, if ever, has a president reached so far down into the state judiciary to find a Supreme Court justice. Most of them have come from higher ranks of the judicial system, from national political positions or from the nationally known law firms. That President Reagan has gone to the second tier of a state court structure in his search for a female nominee may be less a commentary on Judge O'Connor's qualifications than on a system that, until the quite recent past, kept almost all women lawyers from reaching high places in their chosen profession. The Senate, of course, must now subject Judge O'Connor's record to the same close scrutiny it has given other nominees. We don't know how this will turn out. Our first impression of her qualifications is that the Senate will find nothing to impede her confirmation.



# New Ground, New Directions

It was important as a symbol of the nation's new sensitivity toward equal rights that a woman be appointed to the U.S. Supreme Court for the first time in its 191-year history. It was important that the nominee possess the necessary qualifications.

President Reagan's selection of Arizona Judge Sandra D. O'Connor to succeed Justice Potter Stewart met the compelling historic requirement of putting a woman on the court; and, from the evidence at hand, O'Connor is well qualified.

Since her graduation from Stanford University law school in 1952, she has had a distinguished career in public life that embraces both law and politics.

O'Connor, 51, was first appointed to the Arizona Senate in 1969, was elected twice to that body and in 1973-74 served as Republican majority leader—the first woman in the country ever elected to that post. During her service in the Arizona Senate, she supported a modernized mental-treatment and -commitment law, pushed for open-meeting laws and supported constitutional spending limits. Gen-

erally regarded as a conservative, she reflected a more liberal stand on women's issues. In 1974, she sponsored a bill to present the equal rights amendment to an advisory referendum. On an even more controversial issue that same year, she opposed a bill that would have forbidden abortions unless the mother's life was endangered.

She left the Legislature in 1974, and was elected a Superior Court judge, a position that she held until appointed to the Arizona Court of Appeals 18 months ago. Her service on that court drew praise from her colleagues. Appeals Judge Donald Froeb said of her, "She has a razor-sharp mind, which, combined with a steady temperament, makes her well-suited for the tough questions that would be presented to a Supreme Court justice."

Sen. Dennis DeConcini (D-Ariz.) called her "a conservative, but not in a reactionary sense." His judgment appeared to be confirmed by the instant displeasure over her appointment voiced by right-wing leaders. But their opposition will not likely have much effect, nor should it.



# A Landmark Appointment to the Supreme Court

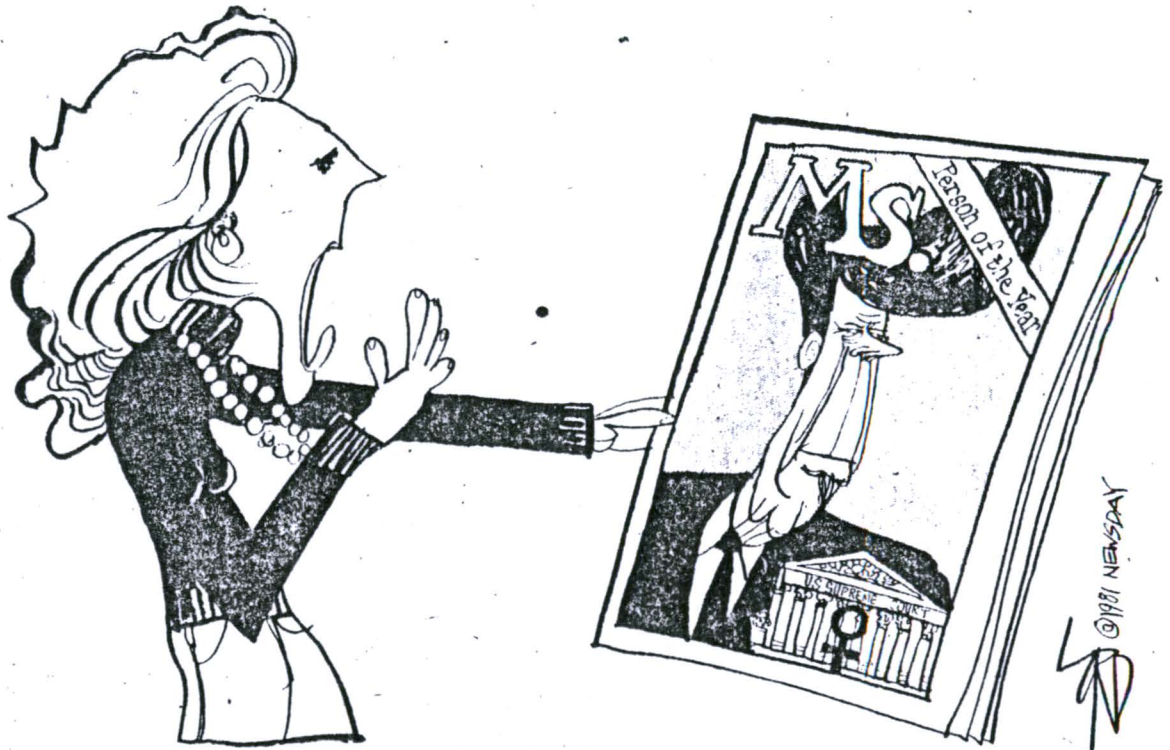
President Reagan's selection of a woman to sit on the Supreme Court is a landmark decision that departs from 101 precedents; that's how many male justices there have been since 1790.

The choice of Sandra Day O'Connor is also a commendably prompt redemption of Reagan's campaign pledge to fill "one of the first Supreme Court vacancies in my administration" with "the most qualified woman I can find."

It's all the more commendable because political compatibility with all of the President's single-issue constituencies is not among O'Connor's qualifications. Within hours of the announcement that she would be nominated, she was under public attack from the right-to-life movement and the Moral Majority.

It seems that O'Connor, as an Arizona state senator in the early '70s, supported ratification of the Equal Rights Amendment. She also opposed a bill that would have banned abortions at the state university hospital except when a woman's life was endangered.

Predictably, the head of the National Right-to-Life Committee complained that Reagan had ignored the 1980 Republican platform plank calling for the appointment of judges "who respect traditional family values and the sanctity of innocent human life." But ignoring the platform is a president's prerogative, and Reagan pronounced himself "completely satisfied" with his nominee's position on abortion.



Newsday Cartoon by M.G. Lord

Predicting a Supreme Court justice's judicial philosophy on the basis of political inclinations is a notoriously treacherous business, and in any case that's not the purpose of Senate confirmation hearings. But whatever the flavor of her Republican politics, there's no doubt that O'Connor is an achiever.

She was a Stanford law graduate at 22, ranking third in the class in which William Rehnquist, now a Supreme Court justice, was first. She has spent most of her working life in government service. She was majority leader of the Arizona senate

in her third term, and she was elevated to the state's second highest court 18 months ago (by a Democratic governor) after five years as a trial judge. She got high marks for integrity in an Arizona bar association poll last year; 90 per cent of the respondents recommended her reappointment.

That resume, as far as it goes, would be a credit to any judicial nominee. Now the Senate should give Sandra Day O'Connor exactly the same careful scrutiny it would give to any other aspirant to the ultimate guardianship of the nation's laws and Constitution.



Germond & Witcover

## Reagan Choice For High Court Good Politics



The selection of Sandra D. O'Connor for the Supreme Court is a vintage example of the pragmatic political style of Ronald Reagan.

Neither the president nor any of his political advisers have any illusions about his ability to win broad or lasting support among women's movement activists. His own attitude on abortion and the Equal Rights Amendment makes that an impossibility.

But by using his first opportunity to fulfill his promise to choose a woman for the court, Reagan has disarmed the most vocal of his critics and put them on the defensive with the great majority of those voters for whom women's issues are not central concerns.

As a practical matter, everyone knowledgeable about government and politics understands that the appointment of a woman to the court, in itself, isn't going to improve the position of women in general in achieving equality under the law. That would be true even if Sandra O'Connor were a flaming zealot on women's issues, which is something she most decidedly is not. So-called "women's issues" make up only a tiny fraction of those that reach the court, after all.

But to those millions of voters for whom those issues aren't emotional imperatives, the president now can be presented as a leader who not only kept his promise but was willing to do something so many of his liberal predecessors never managed to accomplish, for all their high-blown talk about equality for women.

The fact that O'Connor's record in support of abortion and ERA already has inspired a backlash among Reagan's most conservative backers is, in a sense, an added political benefit for the president. It makes it easy for the White House to depict him as a man following a reasonable middle-course unsatisfying to the extremists on either end of the ideological spectrum.

And if there has been a single message in the opinion surveys of the last few years, it has been a reaction against political extremism. We

have an electorate that is determinedly middle class and middle road — and, more to the point, one impatient with arguments over political theology at the expense of practical effectiveness in dealing with national problems.

In making this decision, as in his campaign against Jimmy Carter last year, Ronald Reagan has aimed directly at that great center and, in the bargain, found a jurist whose opinions apparently coincide with his own desire for what Richard Nixon used to call "strict constructionists" on the court.

The short-term benefit of the president's decision is obvious. The choice of O'Connor at the first opportunity is certain to make Reagan's life easier when other vacancies occur on the court over the next few years. There could be as many as four or five other openings, and the president now will be free to fill them without a lot of nagging from the press and the women's movement about keeping commitments.

There may come a time, of course, when the cry will go up for women to enjoy equality of representation on the Supreme Court, which is clearly a reasonable enough expectation. But it is likely to be some years before that kind of demand has serious political credibility with the public at large.

Over the long term, the choice of Sandra O'Connor is not likely to mean much politically, assuming that her confirmation by the Senate is achieved without serious incident. Supreme Court appointments get a lot of attention at the moment they are made, and a president can do himself considerable damage with a choice that goes sour. Richard Nixon's nomination of G. Harrold Carswell, for example, was not something he was anxious to boast about in later years.

But the fact is that voters who make decisions on presidents on the basis of their appointments to the court are clearly the exception rather than the rule. Political and legal professionals may make judgments about the quality of judicial appointments, but the Supreme Court is too far removed from the lives of most people to influence their verdicts.

On the other hand, voters do form judgments about how well a president is doing on the basis of how much controversy he evokes — and from what quarters he is subject to criticism.

And what Ronald Reagan has done in this case is make a safety play by keeping both his promise to appoint a woman and his commitment to choose someone with conservative views on the function of the judiciary.

That may not satisfy the extremists of left or right, but it is winning politics in anyone's book.