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# The Washington Post

JUL 8 1981

AN INDEPENDENT NEWSPAPER

## 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.

# Reagan Choice for Court Decried by Conservatives But Acclaimed by Liberals

By Bill Peterson  
Washington Post Staff Writer

The reaction yesterday to President Reagan's first nomination to the Supreme Court was an ironic one: he was condemned by conservatives who supported him all the way to the Oval Office, but praised by liberals and feminists who have found so little to like about him there.

The Rev. Jerry Falwell, head of Moral Majority, declared that the nomination of Sandra D. O'Connor to the high court was a "disaster." The National Right to Life Committee, a major anti-abortion group, pledged an all-out fight against her confirmation because of "her consistent support for legal abortion."

But Eleanor Smeal, president of the National Organization for Women, called the nomination "a major victory for women's rights." And prospects for a quick and relatively painless confirmation appeared good.

Among the first to jump aboard O'Connor's bandwagon were Sen. Edward M. Kennedy (D-Mass.) and Rep. Morris K. Udall (D-Ariz.), two of the most outspoken liberals in Congress.

"I'm really quite pleased," said Udall, who has known O'Connor as a lawyer, state senator and judge. "She's about as moderate a Republican you'll ever find being appointed by Reagan. If we're going to have to have Reagan appointees to the court, you couldn't do much better."

"President Reagan should be commended for naming a woman to the Supreme Court — the first such nominee in our nation's history and one that is very long overdue," said Kennedy.

His words were echoed by feminist leaders. "Justice O'Connor's nomination will be a major step in moving toward equal justice in every court in our land," said Iris Mitgang, chairman of the bipartisan National Women's Political Caucus.

Senate GOP leaders pledged to work for a swift confirmation. Majority Leader Howard H. Baker Jr. (Tenn.) said he was "delighted." Ju-

diary Committee Chairman Strom Thurmond (S.C.) said, "I will do everything I can to help the president."

The reaction from the New Right could hardly have been more different. Richard Viguerie, the conservative direct-mail expert, accused Reagan of rushing O'Connor's nomination because of growing opposition on the right to reports of her selection.

Others accused Reagan of betraying the Republican platform. In one of its most controversial planks, the GOP platform pledged: "We support the appointment of judges to all levels of the judiciary who respect traditional family values and the sanctity of innocent human life."

"O'Connor's appointment represents a repudiation of the Republican plat-

form pledge . . . This appointment is a grave disappointment to the pro-life public nationwide," said Dr. J.C. Willke, president of the National Right to Life Committee, which supported Reagan in the 1980 campaign.

The words from Falwell's Moral Majority were even harsher: "Either the president did not have sufficient information about Judge O'Connor's background in social issues or he chose to ignore that information . . . Judge O'Connor also has been active in feminist causes and is a supporter of the Equal Rights Amendment, which Moral Majority believes would be a disaster for men and women and would further undermine the traditional family."

Anti-abortion groups focused their opposition to O'Connor on votes she cast while a state senator and on the fact that she once spoke, as a judge, before an International Women's Year meeting.

In 1974, she voted against a rider to a football stadium bond issue that would have barred abortions at the University of Arizona hospital, according to NRLC. That same year she reportedly voted against a resolution calling on Congress to pass a Human Life Amendment in the state Senate Judiciary Committee and in the Senate Republican caucus.

In a 1970 party caucus, she also voted in favor of a bill to legalize abortion, and in 1973 was a prime sponsor of a family planning bill that would have made birth control information available to minors without the knowledge of their parents. That same year she voted for a bill giving doctors and nurses the right to refuse to participate in abortion operations.

Dr. Carolyn Gerster, former president of the NRLC, said she notified the White House Monday about the alleged pro-abortion votes, and mailed a package documenting her charges. Gerster, a Scottsdale, Ariz., physician, said, "It was common knowledge she was philosophically against us in the legislature. It is unforgivable that the White House could ignore this."

But O'Connor also has powerful Republican friends in her home state. The most important among them is Sen. Barry Goldwater, who called her nomination "a great step." After being notified of the nomination by Reagan, Goldwater said he doubted if the president "could ever find anyone more qualified to occupy a Supreme Court seat than Sandra O'Connor, whom I have known for years and greatly respect and admire."

Such words will weigh heavily even among hard-core Senate conservatives. "I assume that if she meets the satisfaction of the president of the United States and Barry Goldwater, she must have some basic philosophy I agree with," said Sen. Charles E. Grassley (R-Iowa).



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# 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 these 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.



## The Retiring Judiciary

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.



# White House Pressing Confirmation

Special to The New York Times

WASHINGTON, July 8 — President Reagan was reported today to be urging some of his conservative allies to "keep an open mind" on the qualifications of Judge Sandra Day O'Connor, his newly announced choice for the United States

Supreme Court, until her confirmation hearings are completed.

Faced with the possibility of a vigorous campaign by anti-abortion groups against Judge O'Connor, meanwhile, the White House attempted a counterattack by directly rebutting the charge that she had voted on several occasions in favor of abortions.

White House spokesmen asserted further that Judge O'Connor had never been an activist on any issues related to feminism. David R. Gergen, the senior White House spokesman, quoted the Arizona judge on the subject of the Federal equal rights amendment as being "neither as enthusiastic as some proponents nor as alarmed by it as some opponents."

Judge O'Connor, who has been described by the White House as personally opposed to abortions, has said that she will not discuss her views until the time of her confirmation hearings. White House officials acknowledge that the judge regards abortion as a legitimate matter for regulation by the legislative branch.

### Officials Optimistic

By the end of the day, Administration officials said that they were encouraged by the prospects for confirmation of Judge O'Connor in the Senate.

Yesterday, Mr. Reagan had Senator Jesse A. Helms, the Republican conservative from North Carolina, visit him at the White House to assuage his concerns about Judge O'Connor. The President also telephoned the Rev. Jerry Falwell, leader of Moral Majority, which has al-

ready come out against her nomination, saying that Judge O'Connor has advocated legal abortions and the equal rights amendment.

At the White House, Mr. Gergen quoted Mr. Reagan as saying that the reaction to the selection of Judge O'Connor had "generally been very positive."

But this evening, the White House press office released information showing that telephone calls and mail had been running heavily negative ever since the judge's possible nomination was reported in the press last week. Telegrams and mail had been 2,573 against, and 290 in favor, while telephone calls were 1,554 against and 263 in favor.

Mr. Gergen said he had no way of knowing whether there had been an organized telegram or telephone campaign by the anti-abortion movement.

White House officials reacted with some annoyance that someone whom they regarded as a conservative was being attacked by conservative groups on the abortion issue. But they professed not to be surprised and were ready today with a point-by-point rebuttal. At issue appear to be positions taken by Mrs. O'Connor on five separate occasions when she was a State Senator in Arizona.

# Reagan's Court Choice: A Deft Political Maneuver

By HEDRICK SMITH

Special to The New York Times

WASHINGTON, July 8 — With his nomination of Sandra Day O'Connor for the Supreme Court vacancy, President Reagan has won admiring applause from rival politicians for a masterly political stroke as well as a strong judicial choice.

This city still recalls that a little over a decade ago President Richard M. Nixon had to face political humiliation when the Senate rejected two of his Court nominees, Clement F. Haynsworth Jr. and G. Harold Carswell.

Now, Mr. Reagan is being credited with an astute Court selection that immediately won the endorsement of a broad spectrum, from conservatives like Senator Barry Goldwater, Republican of Arizona, to liberals like Senator Edward M. Kennedy, Democrat of Massachusetts.

The President has risked a new breach with the radical right wing of the Republican Party, which has provided his most zealous political support through the years and is now openly dismayed over Mr. Reagan's Court choice.

But in the process, several members of Congress commented, the President has blunted the right-wing stereotype that Democrats were beginning to use against him in the increasingly partisan battle over economic issues.

House Speaker Thomas P. O'Neill Jr., Democrat of Massachusetts, who has been in a toe-to-toe battle with Mr. Reagan on the budget and taxes, called a truce long enough to hail Judge O'Connor's nomination as "the best thing he's done since he was inaugurated." Meanwhile, right-wing leaders were accusing the President of betraying the Republican platform's conditions on Court appointments.

To others, the pragmatic symbolism of Judge O'Connor's selection followed the pattern of some of Mr. Reagan's early Cabinet appointments, which pleased mainstream Republicans, irritated hard-line conservatives and enabled the President to broaden his political appeal as his tenure began. Now, they said, Mr. Reagan is once again courting the political center at the expense of the radical right.

### Udall Praises Selection

"This is incredibly smart politics," said Representative Morris K. Udall, a liberal Arizona Democrat. "It's a real strike. You take all the groups in America, and there has been none more distrustful of Reagan than the women's movement. This just cuts the ground out from under them. It will be doubly delicious to the leaders of the women's movement because people like Phyllis Schlafly will be trying to take Reagan's head off."

Mrs. Schlafly, a prominent Republican activist from Illinois, has spear-

headed the effort to block ratification of the proposed equal rights amendment to the Federal Constitution. Judge O'Connor is known for having supported the amendment, though White House officials said that more recently she had expressed "some reservations" about it.

"With Ronald Reagan as President, the fact that you can get a woman appointed to the Court is remarkable," Mr. Udall asserted. "The fact that you can get someone as moderate, and as close to the center of the Republican Party as she is, is really stunning. It erases the stereotype opposition to Reagan."

Some Senate conservatives, such as Paul Laxalt, Republican of Nevada, took comfort, though gingerly, in the fact that President Reagan had pronounced himself "fully satisfied" with Mrs. O'Connor "philosophically."

Other members of Congress cited Mrs. O'Connor's conservative reputation, suggesting that initially perhaps both liberals and conservatives were overinterpreting her flexibility on such issues as abortion. As a member of the Arizona Senate in 1974, Mrs. O'Connor voted against a ban on abortions at Arizona University Hospital.

But in the face of a volley of reproof from the National Right to Life Committee and other anti-abortion and far-right political action groups, the White House took a detached view, evidently convinced that the President had effectively isolated the far right on this selection.

"There's going to be a lot of sound and fury," said one Reagan aide, "but it will wind up signifying little or nothing when it's all over."



By Judy Bachrach

# The Courtship Of O'Connor



Harrassed by the long suffering ladies of his own party, a number of whom have made it obvious by their statements to

the press that they no longer will suffer in silence, Ronald Reagan, whose record on women's rights is equaled only by his record in appointing women to exalted positions, has at last capitulated. If everything goes well for the nominee - and that is open to question right now - the Supreme Court will welcome to its ranks one Sandra D. O'Connor. Phyllis Schlafly will be spared the expense of a new black gown.

What this means for women no one knows. From long experience, blacks have found that the elevation of one of their own is most advantageous to the one who has been elevated - and it is no different with women, all too many of whom have considered their own ascension a device by which to deny that opportunity to their sisters.

Still, when the Moral Majority began squawking to the White House that Sandra D. O'Connor had been, in fact, a radical-liberal-pinko-pro-ERA and pro-choicer, it was possible to take heart. This, however, turns out not to be precisely the case. The lady is quite conservative; above all, she appears to be a supremely agile political acrobat. As an Arizona state senator, she helped sponsor a bill establishing state family planning services, a plan that drove the right-to-lifers crazy. She also voted against a request that Congress over-rule the Supreme Court abortion decision by passing an amendment. Then she turned around and voted for a bill that would have allowed doctors and hospitals to refuse to perform abortions.

So the question is will the presence of a woman in the court affect the men in the court - and if so, how? "I think her presence will have an extraordinary impact on the male justices, a really good impact," says one highly successful Washington lawyer. "In the first place, every one of those guys will want her on his

side. Every one of them will be trying to court her.

"Why? Out of gallantry, that's why. Particularly that old southerner, Justice Powell. It will change the atmosphere of the court irrevocably. The boys will have to stop swearing, for instance. But that's not all that will change.

"I'm not saying that if she differs with them, they'll all alter their opinions to suit hers. But they'll have to define them; they'll have to express them more lucidly. That's what will change. Of course, if she's smart, she'll do very little but listen and learn for the first six months."

The one thing Sandra O'Connor does appear to be is smart. Four years ago Barry Goldwater and former House Republican leader John Rhodes pressured their fellow Republican to run for governor of Arizona. She was clever enough to refuse, claiming she liked being a Phoenix judge far too much to entertain grander designs. A year and a half ago a presumably grateful and very popular Democrat, Governor Bruce Babbitt, appointed Sandra O'Connor to the Arizona appeals court.

Alas, this clarity of vision, this exclusive passion for the possible, is the property of all too few women. One thinks, for instance, of poor Shirley Hufstедler, lured from her perfectly respectable job on the federal appeals court by Jimmy Carter, who tendered empty promises of an eventual Supreme Court opening - and made her Secretary of Education. O'Connor, not being so easily seduced, got the plum instead.

In the end, the feminists did not get a feminist. Back in her Arizona state senate days, Sandra O'Connor indicated early support for the Equal Rights Amendment, but the imperatives of politics doused the flame. In the end, too, the Rev. Jerry Falwell did not get the babe he wanted, and he and his friends are promising to make trouble for O'Connor. In the end all that happened is what the headlines announced: The Supreme Court, for the first time in 191 years, got a woman. And whatever the nature of the nominee, however she turns out, it's bound to make a difference.

The other night I was told a story

"It will change the atmosphere of the court irrevocably. The boys will have to stop swearing, for instance. But that's not all that will change."

about a remarkable woman lawyer. She was so remarkable, in fact, that in an era when Harvard law school did not accept women students, she became nonetheless a visiting law professor at Harvard. Well before that, back in the '40s and '30s, this same woman had been a labor lawyer - this in an era when a number of labor lawyers wore guns to negotiating sessions.

And the woman found, much to her astonishment, that whenever she entered these negotiating sessions, a curious event would occur. The men would take one look at her and shift uncomfortably in their chairs. Then they would silently remove their guns, and put them in the back room.



# The Washington Star

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## Judge O'Connor

The appointment of Judge Sandra D. O'Connor of the Arizona court of appeals to the U.S. Supreme Court is a milestone in the process that began, many decades ago, with the suffragette movement. But if the nation is lucky it will be that only incidentally and, in judicial terms, far more.

Estimating juristic potential is a tricky business, but on paper Judge O'Connor looks promising — a law-review graduate of a distinguished law school, experienced in both the legislative and judicial arenas of state government, and by reputation a person of charm, gravity and judgment. Beyond that, only time will tell.

What can be said, with some confidence, is that if Judge O'Connor is the judge her supporters believe her to be she will *not* take as her mission the "symbolic" role which Mr. Reagan spoke of last October when he promised that "one of the first" of his Supreme Court appointees would be a woman.

No one in his right mind wants his cause judged by a "symbolic" jurist. And any judge who sits in behalf of a special interest, political or economic or sexual, should be impeached for gross misconception of office.

The same should be said of any judge who deems it his or her mission to promote, protect, or oppose, abortion as such; or women's rights as such; or men's rights as such; or any political cause as such. In the law there are only citizen's rights.

It is not, however, surprising that confusion should abound on this elementary point, or that Judge O'Connor's nomination should ignite a huge clamor — with Moral Majority, as usual, to the forefront — about the implications of her votes on ERA and abortion in the Arizona senate.

Between them, though perhaps without fell intent, Jimmy Carter and Ronald Reagan have done a great deal to confuse the public about the judge's role. They have advanced, to a new level of acceptance, the deplorable idea that the federal bench is a fit place for proportional representation of genders,

racess, interests and ethnic groups. Mr. Carter boasted in last fall's campaign of the unprecedented numbers of blacks, Hispanics and women made federal judges by him, when the only reputable test of these judges is how well and impartially they judge.

Mr. Reagan ill-advisedly chimed in with his promise that "one of the first" of his appointees would be female. The architects of the Republican platform had already contributed their share of confusion by advancing the misleading promise that no judge would be appointed unless he or she is sound on the family and "innocent human life," i.e., is anti-homosexual and anti-abortion.

It shouldn't be necessary to spell out, at this late date, the perilous implications of politicizing judicial preferment. By implication, it suggests that the role of the judge is to begin, not end, with a judgment in the most controversial cases — before the case is heard; and indeed in such cases begin with a judgment that assumes, as foreclosed, precisely what one or more, plaintiffs is arguing for or against.

There are two acceptable standards for judges and, all the more, for justices of the Supreme Court: the law as it stands, including binding precedents, and the Constitution.

That Moral Majority and others purport to find in the Fourteenth Amendment an implication that an unborn fetus is, from conception, a legal "person" is neither here nor there. It is legally and philosophically a most disputable point — we emphasize, *disputable*.

What matters is that no one who believes otherwise, or whose interest or liberty rests on a contrary view, should fear that his or her case has been decided before a word of argument has been spoken or a single brief filed.

When the nation's courts, including the Supreme Court, become tribunals of prejudgment on this or any matter, justice will have been perverted and the liberties of all will be in jeopardy.



# Reagan Again Confounded His Detractors

**D**emocrats and other detractors are, again, writing on the blackboards of their minds, "Do not underestimate Ronald Reagan."

These are the people who were sure that the conservative Republican president would not nominate the first woman in history for the Supreme Court. Or, in the unlikely event he did, just to fulfill a fairly porous campaign promise, that he would pick some right-wing harridan, given to shutting up shoplifters and putting down minorities. Much more likely, they predicted, he would choose some howlingly conventional white male.

But the president confounded them by hitting on Sandra D. O'Connor, a 51-year-old Sun Belt overachiever who has had an incomparable contemporary reality training, being the mother of three sons, with experience in three branches of state government and a long history in Republican politics.

Judge O'Connor's credentials are, in fact, so compelling that the Carter White House included her in a list of potential federal judges.

Not only did Reagan take the wind out of feminist sails - they are purring - he made his nominee the subject of emotional liberal approval for her enemies: The right wing is aflame with indignation.

Judge O'Connor's impeccability was instantly attested to by the wide range of support she attracts in her home state. Sen. Barry Goldwater counseled a swift kick in the duff for Moral Majoritarians who oppose her for her rather tentative pro-abortion and pro-Equal Rights Amendment stands.

At the opposite end of the spectrum, liberal Rep. Morris Udall speaks of her in glowing terms, comparing her favorably to her former Stanford Law School classmate, Justice William Rehnquist.

"She's not an ideologue or a fanatic. She's the Elliot Richardson of Arizona. Whenever something opens up, they think of her."

The right wing is massing to oppose her confirmation. They concede it is a losing fight. Paul Weyrich of the Free Congress Foundation admits that he and like-minded organizations will settle for "Hickelizing" her. That means their exercise will be nothing more than a "consciousness-raising" process such as Richard Nixon's nominee for secretary of interior underwent at his confirmation hearings - from which he emerged much more a conservationist than he went in.

"Next time," says Richard Viguerie, the right-wing direct mailman, "they'll think twice."

The Department of Justice press office insists that Judge O'Connor's tilt towards abortion and ERA are much exaggerated. It seems that on

abortion, she was able, in their recent tete-a-tete, to convince the president that she shares his personal abhorrence of it. On Equal Rights, says Justice, which is being bombarded with calls from outraged Moral Majoritarians, she is "ambivalent."

But most women, whether feminists or not, are much more apt to focus on Judge O'Connor's formidable achievements as an individual than on any votes about abortion - one of which, she points out, was purely technical. She voted against a ban on use of University of Arizona Hospital funds for terminating pregnancy on the grounds that the state constitution forbids non-germane amendments.

Ronald Reagan has made much of the fact that he would not consider a "judicial activist," by which he meant a liberal who makes law rather than interprets it. We know little about the judge's judicial philosophy. At her Phoenix press conference, she was so overcome by it all, not to mention the daunting presence of a special, imported, White House press aide, that she forbade any discussion of "substantive issues" - completely overlooking the fact that her long public history is replete with votes and quotes, which although not easily found because of Arizona's rather casual record keeping can be discovered.

What women probably focussed on was the attendance of her smiling husband, and her three presentable sons. They saw that one who had come through the fires of home-career juggling to the other side.

If not a "judicial activist," she must face charges of being a community activist. The judge is a joiner. She belonged to everything in Phoenix from the Junior League to the Salvation Army board. And there is nothing cursory about it.

"She came to every meeting," says an officer of the Army. "She took a big part in the planning and construction of a senior citizens' residence that was just opened."

She has also served on the Phoenix Historical Board, the board of directors of Blue Cross and Blue Shield, the First National Bank of Arizona and the National Conference of Christians and Jews, which gave her an award in 1975. "She was never just a name on a letterhead," says the executive director, Don Eagle. "She was no-nonsense, never doctrinaire, always showed common sense and logic."

What ultimately recommended her to the conservative in the White House has not been divulged. The right wing screams betrayal. The Republican platform called for a judicial selection standard of "reverence for the life of the unborn." But Ronald Reagan, obviously doesn't feel bound by party promises. He has shown a singular preference for honoring the pledges he made himself - among which was a promise, made under pressure, to put a qualified woman on the court.

While the Democrats were whomping up to picture him as the captive of the right wing, he proved that he has grasped the main point about politics: It is not just the art of the possible, it is the art of the unexpected.



# Reagan's standing with women still shaky

By Richard J. Cattani  
Staff correspondent of  
The Christian Science Monitor

Washington

With the appointment of a woman to the Supreme Court, President Reagan sought to patch a weak place in his political armor — his lack of support among college-educated women.

Mr. Reagan is unique among recent presidents in his relatively low standing among women. His more bellicose image, and his conservative stands on women's issues (like the Equal Rights Amendment [ERA] and abortion) do not tell the whole story.

Reagan's vulnerability with the women's vote means he lacks the traditional firm anchor that support from women voters usually gives an incumbent when events turn against him. Male voters, traditionally more volatile, even though they elected Reagan and continue to support him, would be more apt to leave him should the economy sour or foreign events entangle him in controversy.

The White House went to a woman for its first Supreme Court appointment to head off a predicted firestorm of controversy over reneging on what many Americans took to be a campaign promise.

Its particular choice — Arizona Judge Sandra D. O'Connor — is seen as a moderate within the conservative spectrum. This has angered issue-oriented conservatives. But it helps to position Reagan more favorably among the majority of the women's constituency, who also tend to be moderate on women's issues.

But most political observers do not see the proposed appointment of the first woman Supreme Court justice as wholly redressing the skepticism about him among women voters — particularly among college-educated and professional women but also among lower-income women who see his attitudes as harsh on social security and on a range of other economic issues important to women.

Evidence of the disparity between the views of men and women on Reagan was clear on election day, and is just as evident today.

Overall, men voted 37 percent for Carter, 54 percent for Reagan, and 7 percent for independent John Anderson last November, according to the CBS News-New York Times exit poll. Women voted 45 percent for Carter, 46 percent for Reagan, and 7 percent for Mr. Anderson.

By education, men and women high school graduates voted about the same — 45 percent for Carter. But college-graduate men and women split sharply — the men 29 percent for Carter and 58 percent for Reagan, the women 44 percent for Carter and 41 percent for Reagan.

In the latest CBS-NYT survey completed June 27, which asked about approval of the President's performance, the sex difference again appears. Overall, the public approved Reagan's performance by a 59 percent to 23 percent margin. Among men, his approval

rating was 66 percent, disapproval 19 percent. Among women only 53 percent approved, 26 percent disapproved.

The sex difference also is showing in party identification, as the policy implications of the Reagan era hit home. Women seem to be thinking Democratic. Republican ranks appear about evenly divided among men and women, in the latest CBS survey. But 41 percent of women call themselves Democrats, compared with only 30 percent of the men. Among independents, the group most apt to shift, men lead women 44 percent to 34 percent.

"In the last election, we had the largest sex difference in history — a 10 percent edge for Carter among women," says Tpm Smith, director of the National Opinion Research Center.

The principal election factor among men and women was economic performance under Carter, Mr. Smith says. After that, war and peace was the biggest concern among women, followed by the ERA and possibly abortion. "On social women's issues — abortion, ERA, would you vote for a woman president — there is traditionally no difference between men and women, or men are even a little more liberal," Smith says. "On anything to do with war or violence — capital punishment, gun control — there is a 10 percent to 20 percent difference, with women the more cautious."

White House officials acknowledge that a woman nominee was their primary choice from the outset, when Justice Potter Stewart

privately announced his retirement to Vice-President George Bush in March.

Judge O'Connor's views and actions as a legislator on a range of issues put her close to the mainstream of American opinion on these issues. She leans toward the ERA: 40 percent of the public favors it, 25 percent oppose it, and 28 percent haven't an opinion, according to the June NBC poll. On abortion, Judge O'Connor says she personally opposes abortion, thinks it suitable for legislative action, but does not take a doctrinaire stance: The public by 71 percent to 21 percent rejects a constitutional amendment to ban abortion, and prefers to leave an abortion decision to the woman and her physician. Her rejection of busing fits with the majority who oppose it.

"A woman appointee had to be a moderate," contends I. A. Lewis, opinion analyst for the Los Angeles Times. "Reagan had two choices: either appoint a woman or appoint a conservative." A conservative woman would have gained Reagan nothing with the right-to-life, anti-ERA women who were already with him, while offending the majority of women who are already skeptical of him.

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"It was better to pick a woman now, and pay those due bills from the campaign," analyst Lewis says. "Reagan came out with a pledge to appoint a woman in the first place because he was soft with women."

Michael Barone, a Democratic political strategist, agrees Reagan made a correct tactical decision. However, he does not see Reagan gaining politically from the decision in the long run.



# Reagan and high court: political winds influence nomination, recent decisions

## 1980-81 rulings leave activism to Congress

By Julia Malone  
Staff correspondent of  
The Christian Science Monitor

Washington

President Reagan's choice of a conservative new justice may not be needed to change the direction of the US Supreme Court. The change already has come.

Mr. Reagan wants justices to interpret laws, not create them. He is calling for a humble court, one that will give way to states and Congress.

The justices have shown in the just-ended session that they already feel the shift in the political winds. No longer the activists who

### Analysis

ordered schools to desegregate and legalized abortion, the justices this term appear to have placed a mat in front of their marble-halled courthouse that reads: "The buck does not stop here."

"The overriding theme is deference to Congress," says constitutional scholar A. E. Dick Howard of the University of Virginia Law School. The court has been setting that course for the past few years, he says, but it "seems to me it's been even stronger this term."

Although the high court carried the "deference" theme into several areas, the most notable was national security. The court's potentially most explosive case of the year, the challenge to the all-male draft registration

law, produced a ruling that gives Congress wide latitude in military matters. The court made it clear that in raising an army and navy, the Constitution bestows on Congress special powers that supersede the concept of equal treatment for men and women. The outcome on draft registration was almost universally expected. A decision to overrule the all-male draft in the face of great congressional opposition would have put the court precariously far out on a judicial activist limb.

Equally expected was the decision to uphold former President Carter's financial settlement with Iran to release the American hostages. Throughout US history, the Supreme Court has given the chief executive broad power in matters of diplomacy.

But what was not predicted was the high court's broad endorsement of the executive power to strip a US citizen of his passport. In the case, Philip Agee, a former CIA official who was exposing undercover CIA agents, lost his passport on the grounds that he was endangering "national security and foreign policy."

The Agee ruling sent chills down the backs of civil libertarians. It also displeased Justice William J. Brennan Jr., one of the court's two

most consistent liberals. Justice Brennan pointed out in his dissent that such power could even extend to limiting travel of news reporters in El Salvador.

One area where the high court this term moved against the prevailing winds was in safety and environmental regulations. Even as President Reagan set about deregulating US industry, the Supreme Court staunchly backed the federal power to protect textile workers from cotton dust no matter the cost. It also upheld rules that regulate strip mining.

Other important developments in the court's 1980-81 term include:

● **Sex discrimination cases:** Supporters of women's rights see one big victory and three sound defeats from the term. The court opened an important door for equal pay suits. In a publicized "comparable worth" case, the court allowed a suit even though the women, who were jail matrons, had somewhat different jobs from the men, who were prison guards.

But overall, feminist lawyers are gloomy because, as they see it, the Supreme Court refused to grant women the same equal protection rights that it has given minorities. "This court told us it's not there for us," says Judith Lichtman, director of the Women's Legal Defense Fund.

Ms. Lichtman calls the draft ruling the "worst."

● **Speech and expression:** In this area, the court went in several directions. It came down hard against expression when it in-

volved exposing CIA agents abroad, but at home, it forbade a small town in New Jersey to pass a law banning nude dancing. In a complex ruling, the court also struck down as too broad a local ban on noncommercial billboards. But it upheld a state fair's rule that confined religious solicitation to a booth.

● **Religion:** In a close (5 to 4) ruling, the high court threw out a Kentucky law providing for posting a copy of the Ten Commandments in all public classrooms. In another case, the justices gave a boost to religious freedom by requiring Indiana to pay unemployment benefits to a worker who quit his job manufacturing weapons because of religious conviction.

● **Racial equality:** The court rejected the argument that blocking off a street between white and black neighborhoods was unconstitutional. The court indicated that without proving intentional discrimination, the black community had no case.

The court saw a number of cases involving

police or fire department "affirmative action" plans for hiring minorities and women. But it refused to hear any of them, leaving those plans standing.

● **Family:** The court agreed to hear the plea of a father who wanted to block a stepfather from adopting his children. The justices also voted to hear a case involving parents who said they were unfairly denied all rights to their children and a case involving a child-snatching dispute. However, for various reasons, the court ended up dropping each of those cases without ruling.

In the one important case, the court ruled that poor parents are not entitled to free attorneys when states try to remove their parental rights.

The court bowed to parental authority by upholding a Utah statute that requires doctors to inform parents, if possible, before performing an abortion on a minor. That ruling is seen as evidence of backtracking on the court's landmark 1973 decision affirming a woman's right to have an abortion.

● **Criminal procedure and prisons:** The most important ruling prohibited the use of surprise psychiatric testimony in a sentencing hearing. The ruling overturned the convictions of eight death row prisoners.

In search cases, the high court sent mixed signals. In one case, police were forbidden to open a wrapped package found in the back end of a car. But in another, police were allowed to examine a coat found in the passenger compartment of a car after an arresting officer smelled marijuana smoke.

The court narrowed the guarantee that a person will be warned of his right to remain silent after arrest. Over spirited dissent, the court ruled that police do not have to follow a rigid formula when issuing the so-called "Miranda" warnings.

The court also ruled that housing two prison inmates in a cell built for one does not constitute cruel and unusual punishment.



Rowland Evans  
And Robert Novak

# Why Did He Choose Her?

A hurriedly prepared, error-filled memo by a young Justice Department lawyer convinced President Reagan to go through with nominating Judge Sandra O'Connor to the Supreme Court, even at grave political risk.

The memo softened O'Connor's pro-abortion record that has stunned Moral Majority elements in Reagan's coalition. That the president accepted it at face value broadened suspicions that his narrow flow of information subjects him to staff manipulation.

Even so, if the president took seriously the Moral Majority and its issues, he would have found it difficult to pick O'Connor. Thus, fundamentalists who turned on Jimmy Carter after they felt deceived by him may feel the same way about Ronald Reagan.

O'Connor surely will be confirmed. But important conservative Republicans in Congress, while keeping mum publicly, grumble privately that the president has lost control of his own administration to moderate forces in general and chief of staff James Baker III in particular.

The remarkable fact is that Reagan was unaware that the right-to-life movement found O'Connor totally unacceptable until her probable nomination leaked out just before the Fourth of July weekend. The resulting avalanche of opposition then gave the president serious pause.

For example, Trudy Camping, one of O'Connor's former state Senate colleagues, sent the White House a decade-old stack of clippings about O'Connor. They revealed a moderate social liberal supporting the Equal Rights Amendment for women, advocating free choice on abortion and urging caution in restricting pornography.

On Monday, July 6, the president telephoned Attorney General William French Smith, who had given Reagan the Justice Department's O'Connor recommendation. Reagan wanted a quick check on this abortion business. Smith turned the task over to his young counselor, Kenneth W. Starr, who telephoned O'Connor herself.

The next day, Starr handed Smith a two and one-half page memo giving O'Connor a clean bill of health on abortion by using legal gymnastics to explain her Arizona legislative record. While Starr's memo said O'Connor "has no recollection" of how she voted on a 1970 bill to legalize abortion, in fact she was a co-sponsor of the measure and voted for it as it was defeated 6-to-3 in committee.

"Judge O'Connor further indicated, in response to my questions," Starr concluded his memo, "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."

Starr did not bother to check with that "prominent female physician"—Dr. Carolyn Gerster, a national anti-abortion activist. If he had, the attorney general's man would have gotten an earful. Gerster told us "I had an adversary position with Sandra O'Connor" in the 1970s when the Supreme Court nominee was "one of the most powerful pro-abortionists in the [Arizona] Senate." Gerster still harbors an 11-year-old grievance, claiming Senate Majority Leader O'Connor broke her word by burying an anti-abortion proposal in caucus.

Based on Starr's memo, Smith reassured

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*"The more plausible reason is that Reagan shares the view that the Moral Majority is not vital to his political coalition."*

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sured Reagan that O'Connor offered no problems. Baker, David Gergen and other senior presidential aides said the same thing, contending only right-wing kooks were making a fuss. Reagan agreed, telephoning prominent anti-abortion Republicans to reassure them that "she's all right."

Eager to announce the nomination before opposition could build, nobody at the White House bothered to probe O'Connor's record. But right-wingers will bother, not in realistic hope of blocking her nomination, but to deter Reagan from similar choices for future court vacancies.

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No matter how pure future Reagan justices are, however, innocence has departed for right-to-life activists. Dr. Gerster cannot forget a 45-minute meeting with Reagan in Rye, N.Y., on Jan. 17, 1980, in which candidate Reagan promised her that his first appointment to the court would share their anti-abortion views. She chooses to believe that the president has been misled by advisers.

But the more plausible explanation is that Reagan shares the view of Jim Baker and his other aides that the Moral Majority is not vital to his political coalition. He has given that signal by ignoring its sensibilities in selecting Sandra O'Connor.

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WASH. POST  
JUL 10 1981



# Tactics of O'Connor Foes Irritate Sen. Humphrey

WASH. POST Apppt.

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By Fred Barbash and Lou Cannon  
Washington Post Staff Writers

The New Right escalated its battle against the Supreme Court nomination of Sandra D. O'Connor yesterday with charges that either the Justice Department or O'Connor herself had tried to "cover up" her position on abortion. In the process, however, the conservative group angered another one of its traditional Senate allies, Sen. Gordon J. Humphrey (R-N.H.).

Humphrey said he had taken no position on the nomination but objected to the "hip-shooting of O'Connor's opponents.... They shouldn't categorize or stereotype someone without waiting for full hearings. I don't think they've done themselves any favors."

Sen. Jesse Helms (R-N.C.) said yesterday that O'Connor would come here next week for a meeting with members of the Judiciary Committee, an unusual step to allow questioning by senators about her views on abortion.

Meanwhile, sources said the controversy was beginning to trouble the White House, which began an effort to prepare O'Connor for the confirmation fight ahead. The White House assigned its highly regarded chief lobbyist, Max L. Friedersdorf, to the case.

Day three of the battle began with a dispute about an internal Justice Department memorandum distributed by Conservative Caucus Chairman Howard Phillips and other anti-abortion activists at a morning news conference.

The memo describes O'Connor's responses on the day before her nomination to questions on her record as an Arizona state senator. Kenneth W. Starr, a top Justice Department official, reported that O'Connor indicated "that she had never been a leader or outspoken advocate on behalf of either pro-life or abortion-rights organizations." But Starr also reported that she "has no recollection" of how she voted on a 1970 Arizona bill to decriminalize abortion.

Kathleen Teague, one of the anti-abortion speakers at the news conference, said the memo showed a "cover-up" by the Justice Department or O'Connor because, among other things, O'Connor co-sponsored the bill in question and voted for it.

That was when events began back-firing on the anti-abortionists. Legislative records in Arizona contradicted Teague's claim that O'Connor co-sponsored the bill, according to the keeper of the records, Greg Jernigan. Consulting the records, Jernigan said the only abortion bill O'Connor sponsored was one giving doctors and hospitals the right to refuse abortions.

Newspaper accounts, however, confirmed Teague's statement that O'Connor voted for the decriminalization proposal in committee.

The anti-abortion group held its news conference in a room reserved in the Capitol by one of Humphrey's Senate staff members. That caused

the second flap for O'Connor's opponents.

Humphrey, generally a staunch New Right supporter, had not been informed of the purposes of the news conference. When he found out, a press aide began calling reporters to disassociate the senator from the whole enterprise. Humphrey later said he was "quite upset" by the incident.

Humphrey said he has taken no position on the nomination and did not want to be identified with one. Beyond that, he said he objected to the "hip-shooting" of the opponents. "They're objecting to most of her votes as a senator," he said. "I know full well that votes can be misconstrued."

Humphrey's reaction illustrated what appears to be a delicate but clear shift in alliances on the right with implications beyond the O'Connor dispute. Many conservative politicians, including President Reagan, seem anxious to use this opportunity to publicly separate themselves from the far-right organizations that helped elect them and to identify themselves with a more moderate conservatism.

At this point, however, Reagan and the anti-abortion forces are avoiding direct confrontations. Phillips and his allies at yesterday's news conference took pains to place the blame for the nomination on aides to Reagan, who they say misinformed the president.

White House officials have, in turn, decided not to respond to the criticism themselves. Instead, that task has been left to the Justice Department and Starr.

Yesterday, Starr dismissed the "cover-up" allegation. He said the memorandum he wrote "accurately memorialized my conversations" with O'Connor.

The memorandum does suggest that the administration might have been caught off guard by the abortion controversy. The telephone call to discuss her voting record came after officials had already spent hours talking to O'Connor and after Reagan had made the decision to nominate her.

Starr's inquiry appeared to be a last-minute response to pre-announcement indications of trouble on the abortion question.

The next round of the fight is expected to revolve around the timing of the confirmation hearings. The anti-abortionists urged the Judiciary Committee to postpone any hearings until late September. The Reagan administration is pushing for hearings by late July.



WASH. POST  
F: O'Connor  
JUL 1 0 1981

**T**HE NOMINATION of Sandra Day O'Connor to the Supreme Court has much more to do with the Reagan administration's continuing commitment to smart politics than it has to do with any commitment to equal rights for women. As historic and symbolic as it might be to finally have a woman on the Supreme Court, the most immediate impact of the nomination is that it will diffuse for some time the criticism that the Reagan administration is insensitive to the interests of women.

For a president who has consistently fared worse with women in polls, who has been repeatedly criticized by women leaders throughout his party for his failure to appoint women, and who is backpedaling on affirmative action, this was a splashy move that cannot help but boost his popularity among women — at least for a while. That he has gotten more mileage out of this one appointment than President Carter got out of more than 40 appointments of women to the federal bench is but one

JUDY MANN

# SMART

measure of the political brilliance of the nomination.

Another — and the assumption has to be that it was by design — is that the appointment has created a breach between the president and the coalition of antiabortionists and right-wing fundamentalists whose influence on the administration has been of growing concern to moderate Republican women. That breach, created by the coalition's shrill overreactions to O'Connor's abortion record, will help dissipate the perception that the president is unduly beholden to a group of people who traditionally have been quarantined on the fringes of American politics.

Bobbie Greene Kilberg, a former associate legal counsel to President Ford and the vice chairman of the Reagan-Bush women's policy advisory board during the campaign, is a moderate who believes the nomination of a political moderate to the Supreme Court is a major statement of the administration's intentions.

"They're making a statement to the American people that Ronald Reagan is not going to be an ideologue in his nominations to the court, that he's going to look at the broad record of an individual when he appoints someone, that he's going to appoint a solid person in every sense of the word," she said. "That's key to the future of the Supreme Court...."

"To me," said Kilberg, "one of her additional assets is the nature of her opposition. It is inconceivable to me that they wouldn't know they'd get this reaction from the New Right. I think it's a move to-

ward the political center... and a statement that goes way beyond the court.... I think Ronald Reagan is going to continue to surprise us during his presidency."

It is clear from the reaction of the New Right leaders that they wanted to subvert the mission of the Supreme Court of the United States to one narrow cause. They jumped on the fact that O'Connor, while in the Arizona state legislature, cast several votes that they considered "pro-abortion." That she also voted for a measure that would allow hospital employees the right to refuse to perform abortions did not matter. That she assured the president that she is personally opposed to abortion was not enough for them. For all their talk of God, motherhood and country, the New Right leaders have made it clear that in the land of their dreams no one is eligible for the Supreme Court who is not as fanatically opposed to abortion as they are.

How much they were willing to compromise the Supreme Court for the sake of a single issue is even more striking if you think how few abortion questions will be coming to the court. Out of 4,000 petitions for review of cases given the court each term, only a handful deal with abortion. Of the 300 or so cases the court agreed to review during the past two terms, it issued decisions in only two cases that involved abortion.

Far more important than the judge's position on abortion ought to be what kind of a judge she is and what she will bring to the court. At 51, she brings youth. She brings the experience of having excelled in situations in which she was in a minority. She brings the experience of having worked in and led a state legislature — an experience that gives her a unique perspective on a court that examines state legislation but whose justices have no experience as state legislators. And, having served on a state court, she brings still more experience to a court that has not had an appointee with that background since Justice William Brennan.

President Reagan had a lot to lose by appointing an ideologue and he had a lot to lose by appointing a woman who, regardless of her abortion views, could have been found judicially less than competent. From everything we know so far about Judge O'Connor, Reagan did well by himself and well by the American people.



# GOLDWATER FAULTS O'CONNOR CRITICS

## Anti-Abortion Groups Step Up Their Attacks and Senator Tells Them to 'Back Off'

WASHINGTON, July 9 (UPI) — Conservative groups today intensified their attack on Judge Sandra Day O'Connor, President Reagan's nominee for the Supreme Court, despite Republican predictions of victory and warnings from Senator Barry Goldwater that they should "back off."

The Senate Republican leader, Howard H. Baker Jr. of Tennessee, said Judge O'Connor would be "confirmed easily" but indicated that final approval might be delayed until September.

Mr. Baker said at a news conference that Senator Strom Thurmond of South Carolina, chairman of the Judiciary Committee, had assured Mr. Baker that he was "ready to move" as soon as the White House formally submitted the nomination.

Mr. Baker predicted that Judge O'Connor would be "confirmed easily either before the recess, more likely shortly after we return" on Sept. 9.

### Would Join Court in Fall

Judge O'Connor, 51 years old, a former Republican leader in the Arizona Legislature, serves on the Arizona Court of Appeals. If confirmed, she will replace Associate Justice Potter Stewart when the Court, now in summer recess, reconvenes on the first Monday of October.

Anti-abortion forces have denounced two votes that she cast in 1970 and 1974, while a member of the Arizona Senate, and to some extent her past support for the proposed equal rights amendment to the Federal Constitution.

Senator Goldwater, Mrs. O'Connor's leading supporter, declared in a Senate speech that "a lot of foolish claptrap" had been circulated about her position.

"Instead of jumping to conclusions about her views, on the basis of years' old positions that were taken in a different context and setting, why can't these people wait until the nomination hearings?" Mr. Goldwater asked. "The right-to-life groups are totally off base and should back off."

But a coalition of 21 conservative and anti-abortion groups charged that Mr. Reagan did not fully understand Judge O'Connor's voting record. The charge involved a Justice Department memorandum given to Mr. Reagan that said Judge O'Connor did not remember how she voted on the 1970 measure.

"I think when he has all the facts — if they are true — he may change his mind," said Paul Weyrich, head of the Committee for the Survival of a Free Congress. "I think the decision was made without all the cards in the deck."

The White House said that Judge O'Connor was arranging to come to Washington next week to meet with members of the Judiciary Committee. But a survey of the panel revealed no outright opposition, with about half the members leaning in favor of the nomination and others withholding judgment pending confirmation hearings.

Senator Jesse Helms, Republican of North Carolina, a leading conservative who is a member of the Judiciary Committee, told reporters today that he would not comment before he talks with Mrs. O'Connor next week.

NY TIMES

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# Reagan Accused of Betraying Right

WASH. STAR

## Coalition Blasts 'Coverup' Of Court Nominee's Record

By Phil Gailey

Washington Star Staff Writer

A coalition of conservative and anti-abortion groups, complaining that Ronald Reagan has ignored them in his administration, yesterday accused the president of political betrayal in his nomination of Sandra D. O'Connor to the U.S. Supreme Court.

The coalition warned that the nomination will cost the president conservative grassroots support for his economic program and will create new political difficulties for Republican senators who vote to confirm O'Connor over the protest of pro-life activists.

But Senate Majority Leader Howard Baker dismissed conservative criticism of O'Connor, saying it is "not likely to be a serious obstacle to her confirmation." He predicted that she "will be confirmed easily by the U.S. Senate."

Sen. Barry Goldwater, R-Ariz., called the coalition's warnings "a lot of foolish claptrap" and said conservative groups were risking their credibility by their attacks on O'Connor.

The White House believes its effort to defuse right-wing opposition to the nomination is working, but opponents vowed not to give up the fight.

Representatives of 21 "New Right" organizations held a news conference yesterday in a Senate conference room to launch a broadside attack against the O'Connor nomination, with the announced intention of making her the Ernest Lefever of the abortion issue.

"Just as liberals were active against Ernest Lefever because of his symbolism, we believe there is important symbolism in this nomination," said Howard Phillips, the national director of the Conservative Caucus.

Lefever's nomination to be the administration's top human rights official at the State Department was strongly opposed by liberals and moderates of both parties, and he withdrew his name after the Senate Foreign Relations Committee overwhelmingly rejected his selection.

Phillips and other conservatives charged that Justice Department officials had misled the president about O'Connor's record on abortion and social issues and suggested that a "coverup" of her record is still going on inside the administration.

"Clearly," said Phillips, "Ronald Reagan and Eleanor Smeal (head of the National Organization for Women) both can't be right. I'm afraid Eleanor Smeal has the facts better than the president."

The "coverup" charge came in response to a Justice Department memo prepared by Kenneth W. Starr, counselor to Attorney General William French Smith. In the memo, Starr said he had interviewed the nominee and "she indicated she had no recollection of how she voted" on a bill to end criminal prohibitions against abortion.

But Kathleen Teague, executive director of the American Legislative Exchange Council, told reporters: "The information we have on her abortion record, when compared with the information contained in the memorandum... shows an apparent *prima facie* coverup either on the part of Mrs. O'Connor or on the part of the attorney general's office, or both, of her voting record on abortion."

Trudy Camping, who served in the Arizona State Senate with O'Connor, said O'Connor, the first woman ever nominated to the Supreme Court, had supported pro-abortion legislation "throughout her term in office" despite Reagan's claim that her views on abortion are compatible with his own and the position of the Republican Party platform.

"Those of us in Arizona who have worked long and hard in the trenches to elect our president are shocked by the hurried manner in which this nomination has been handled without careful scrutiny of her record," she said.

Another part of O'Connor's pro-abortion record cited at the news conference was her sponsorship of a family planning act which her critics contend would have allowed minors to get abortions without the consent of their parents.

The coalition said its bill of particulars against O'Connor also includes her opposition to mandatory capital punishment, her support for the Equal Rights Amendment, and her vote against restrictions on the sale of pornographic materials.

Meanwhile, Sen. Gordon Humphrey, R-N.H., was embarrassed and angry after it was disclosed that he had arranged for the conservative groups to use a Senate meeting room in the Capitol for the news conference.

An aide said the senator made the room available at the request of the Conservative Caucus but did not know it was to be used as a setting for the conservative attack on O'Connor.

Humphrey is uncommitted on the nomination and, according to the aide, was "very upset" when he learned about his name being linked to the news conference.

"In the future he will see to it that the Conservative Caucus gets no help from this office in getting a Senate room," said the aide.

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# Reagan, O'Connor and the power of political paradox

7/10/81 Newsday

**O**NE OF THE SUBTLE, great, and altogether admirable strengths of the American political system is the ability of its leaders—within limits—to go against their own constituencies. Nixon the Red-baiter reopened relations with China. Johnson the Southerner pushed civil rights. And Reagan



**Beth  
Fallon**

the ERA opponent nominated Sandra Day O'Connor to the United States Supreme Court.

It is in such events that America signals that a consensus has been reached by the majority after some bitter struggle. Through its initiation by the outsider, the skeptic, the sometime opponent, the change becomes not only validated; but somehow safer. So it is with Reagan and O'Connor on this

momentous occasion.

O'Connor will not solve nor perhaps ameliorate the discrimination problems faced by American women, and her abortion position, from what former colleagues in the Arizona state legislature said yesterday, will probably turn out to be much too conservative for pro-choice people and still not rigid enough for right-to-lifers. "Those abortion votes were taken out of context," says Arizona Senate

President Leo Corbet, who served with her from 1969-74. "She is personally against abortion, but not so blind that she can't see . . . well, I should let her speak for herself."

"I think most people will feel totally comfortable with her on those kinds of issues," says former Senate President William Jacquin, now head of the Arizona Chamber of Commerce. "These people raising the issue, maybe they're doing it more for their own constituency, their own troops. She will handle herself according to the law. I think you'll all find she'll be a superb jurist."

"I'm against abortion, I've voted against it," says Corbet. "I probably believe 95% of what the Moral Majority says. But where I fall off the truck is with some people on the far right and the far left not accepting that somebody else can have a different opinion. They're so intractable they don't believe people of good will can differ on issues. This single issue stuff is destroying politics, especially local politics."

**I**T IS WITH his fringe that Reagan has problems on this nomination, just as Nixon did on China and Johnson did on race. But if you pick your shots in politics, and don't do it too often, you can go against your fringe, even while they howl "betrayal." On this one, Reagan has the best of all possible worlds. Barry Goldwater will lead the fight for O'Connor's confirmation. "He has enough chits around in the Senate that when he puts his *personal* reputation and position on the line . . . they'll go with

her," says Corbet. "And he's going to." O'Connor's support in the Republican and Conservative establishment seems solid. Corbet and Jacquin are part of that solid front.

Meanwhile, Reagan has the approval of the vast majority of women and most men, who concede that placing a woman on the court is long overdue. And in one stroke he disarms the liberal opposition to a conservative nominee. "They're pleased as hell he didn't nominate Attila the Hun," chuckles Corbet.

Getting somewhat lost in the furor is the question of what kind of justice Sandra O'Connor might be. Corbet and Jacquin are both fierce partisans. Corbet grew up on the ranch next to hers. Jacquin, who as senate president more or less had the majority leadership in his gift, says he tried to give it to her in her second year in the senate. She turned it down, waiting three years "to be ready," he says. She then defeated the incumbent, Corbet recalls.

"She prepares, she's intellectually pure in terms of willingness to look at all sides of issues," says Corbet. "She's got a great sense of balance about her. I think she'll be a great thing for this country. She will be—I'm not sure this is a super analogy but—she'll be for women what Jackie Robinson was when he broke into big league baseball. She will be an all-star."

If she is, Ronald Reagan will benefit by proxy from every woman who ever marched, or burned a bra, or hollered, or sued, for equality. So be it. Sandra Day O'Connor will benefit more. Only the fringe of the left will grudge it to her.



# Reagan's Shift To the Center Raises Clamor On the Right <sup>NY</sup> TIMES

By HOWELL RAINES JUL 1 2 1981

WASHINGTON

**F**OR seasoned watchers of President Reagan, his mid-week speech in Chicago was a familiar scene gone slightly, and tellingly, awry. His trusty index cards had given way to a teleprompter. The crisp cadences of his off-the-cuff orations were replaced by long and harshly partisan sentences that visibly wearied both Mr. Reagan and his audience. Despite the last-minute effort by aides to correct a "mistake" in the speech text, Mr. Reagan admitted that his appointment of Judge Sandra Day O'Connor to the United States Supreme Court culminated a "search for a highly qualified woman."

Thus, with a phrase, Mr. Reagan contradicted the official White House position that selection of the nation's first female justice had nothing to do with her sex. Mr. Reagan's slip was an uncouth admission of political reality, and in regard to such realities, this was a jolting week for the White House team. They face a short, hot July full of threats to Mr. Reagan's popularity, to his effort to tone down his reputation as an ideologue while holding on to his conservative base, and to the remarkable legislative gains made so far in his term.

The O'Connor appointment brought unaccustomed praise from liberals and women's groups, but it sparked an open revolt among some New Right and conservative Christian leaders. The White House gambled Mr. Reagan's prestige in a Mississippi Congressional race and lost. Meanwhile, despite Administration efforts to downplay the "social issues" on which Mr. Reagan capitalized as a candidate, opponents of busing, abortion, the equal rights amendment and the ban on school prayer are insisting that he turn back the clock on the liberalizing trends of two decades.

## 'Not Whether but How Much'

But by far the greatest threat to Mr. Reagan's political health is the Congressional resistance to his plan to cut income taxes by 25 percent in 33 months. Until now, Mr. Reagan has towered like a giant over opponents in the legislative battle. But with the approach of the August Congressional recess and Mr. Reagan's own California vacation, those early victories are threatened by the prospect of a reversal on the tax plan.

The sum of these factors is to focus attention on Mr. Reagan's performance in the President's political role. "A year ago, people were saying he couldn't get elected and if elected he couldn't govern," said David R. Gergen, the senior White House spokesman. "By every standard, I think he deserves high marks from a political standpoint. While we face an uphill battle in taxes, he has changed the focus of the debate on both cutting taxes and cutting spending. The question is not whether but how much."

The question of how much, of course, is central to the tax issue as a test of Mr. Reagan's political judgment and prestige. Last month, in passing his spending cuts, Mr. Reagan humbled Democratic leaders. In spirit at least, the Democrats have rebounded. House Speaker Thomas P. O'Neill Jr. asserted last week that a speedy vote in the House would bring passage of the more modest tax cut — 15 percent in two years — favored by the Democrats.

Even though Mr. Reagan chided Representative Dan Rostenkowski by name on the Congressman's home turf in Chicago, the House Ways and Means chairman did not ap-

vening the committee on Thursday, Mr. Rostenkowski said that tax legislation might be ready for floor action by, oh, July 29. Finally, in their most devilish move, the Democrats are trying to out-Reagan Mr. Reagan by offering businessmen and oil well owners tax breaks more generous than those in the Reagan bill already approved by the Senate Finance Committee. With such enticements, Mr. O'Neill and Mr. Rostenkowski hope to lure back the renegade "boll weevil" Democrats who tipped the earlier House budget votes to Mr. Reagan.

These factors could force the White House to a go-for-broke decision on tactics. By having his allies introduce the Senate bill as a substitute measure on the House floor, Mr. Reagan could bypass the Democratic leaders and score the greatest legislative victory of his term. But to lose this showdown on the floor would send Mr. Reagan off to his California ranch with a first defeat that could reinvigorate the staggering Democrats and seriously undermine the Reagan economic program.

## Searching for an Ideological Balance

What does Mr. Reagan think about this? Indeed, whether he ponders such choices at all or simply, as his critics allege, follows the decisions of his staff is a great mystery. Mr. Reagan's advisers have drawn a veil across Presidential decision making. But White House officials admitted that their first political firestorm came when Mr. Reagan obeyed his economic advisers' demand that he approve Social Security cuts within a few hours of seeing their proposal. Last week's storm hit when Mr. Reagan made the O'Connor choice after talking to her — and no other candidates — for less than an hour and reading a Justice Department memo that conservative activists say misrepresents Mrs. O'Connor's record on abortion.

In any case, an appointment that sets off a public spat between Senator Barry Goldwater and the Reverend Jerry Falwell has to be taken seriously by a White House trying to find its ideological balance. Mr. Goldwater, the godfather of the old right, called on "every good Christian" to kick the back end of Mr. Falwell for questioning the choice. But the White House cannot so easily brush off conservative activists and Christian fundamentalists who believe Mrs. O'Connor is insufficiently opposed to abortion and women's rights.

The Administration was stung by their "quick negative response," since Mr. Reagan faces a bundle of litmus-test "social issues" on which the politico-religious right expects him to deliver. Such followers fear Mr. Reagan is following the historic pattern that finds chief executives softening their campaign ideology to govern as centrists. They also fear the growing influence of moderates such as Chief of Staff James A. Baker, 3d, who wants Mr. Reagan to ignore divisive "social issues" until the tax cut is passed. Even so, White House aides do not believe the activists will break with Mr. Reagan and they casually suggest that the New Right is complaining so "they'll have a better chance next time."

The White House has not noticed the chastening lesson pointed up by the re-emergence of former President Carter last week. Once elected, Mr. Carter quit worrying about his core constituency of Southerners and born-again Christians, and they turned on him. Even so, Reagan advisers are more concerned about softening Mr. Reagan's hard-line image than pleasing the conservative purists. The image-softeners received a boost from the Mississippi results in which Liles Williams, the Republican backed by the New Right, lost to Wayne Dowdy. Mr. Reagan's threats to revise the 1965 Voting Rights Act apparently drove enough blacks into the Dowdy column to beat Mr. Williams. Now, some White House aides are warning Mr. Reagan not to tamper with the voting law.

Such complicated cross-pressures clearly overburdened the public relations men around Mr. Reagan last week. For example, Larry Speakes, number two man in the press office, announced a White House "policy" of not commenting on Mrs. O'Connor's qualifications. The policy was scrapped within hours, as was a subsequent policy of suppressing the fact that negative O'Connor telegrams outnumbered the positive by 2,573 to 290. And on the flight to Chicago, Michael K. Deaver, the deputy chief of staff, tried to talk newsmen out of reporting a joking explanation of the speed with which Mrs. O'Connor was selected that, as the week went along, seemed quite plausible. It was, Mr. Deaver said, like shopping for a car, and the President

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# Women's Caucus Wary on Reagan

## Alexandria Woman Slated To Lead Political Group

By Eileen Shanahan

Washington Star Associate Editor

ALBUQUERQUE, N.M. — The National Women's Political Caucus celebrated its 10th anniversary here this weekend at a convention marked by cautious praise for President Reagan's nomination of Sandra D. O'Connor to the Supreme Court, by determination to raise the necessary funds to combat the religious right — especially on the issue of abortion — and by a new dedication to its original strategy of attaining feminist goals by getting feminist women elected to office.

The convention, which drew 800 politically active women from 41 states and the District of Columbia, appeared likely to elect Kathy Wilson of Alexandria, Va., as its new national chairwoman.

Election of officers is to take place today, and Wilson, a 29-year-old Republican, seemed likely to be unopposed for the two-year term.

The outgoing caucus chairwoman, Iris Mitgang, a California Democrat, reflected a general view when she termed as "historic" the appointment of O'Connor, who would be the first woman to serve on the Supreme Court. But Mitgang also warned Reagan that he could not "with one appointment set aside his frontal attack on our goals."

A strong undercurrent of anger and anxiety ran through the convention's sessions.

Concern was expressed over the Reagan budget cutbacks, which are seen as especially harmful to women and children, over the growing strength of the anti-abortion movement and over the increasing probability that the Equal Rights Amendment will not be ratified before time runs out next June.

Only Gloria Steinem, a founder of Ms. magazine and of the caucus, openly discussed the possibility that ERA ratification might fail.

"It may lose," she said in a speech to the convention. But if it does, "We will not permit ourselves to be scapegoated — to have it said that ERA failed because we couldn't do things right. If it fails, it

will be because of the non-democratic character of state legislatures, which do not truly reflect the views of the American people."

Thirty-five of the necessary 38 states have ratified ERA, but it has been defeated in every one of the unratified states, more than once in many of them.

A theme that ran through many of the convention speeches was a denial that President Reagan's election, the growing visibility of the Christian right and the failure to obtain ratification of ERA represent repudiation of feminist goals by the American people.

Eleanor Holmes Norton, the black woman who headed the Equal Employment Opportunities Commission in the Carter administration, said, "The American people did not vote the Moral Majority into power. Nor were the president and the Congress given a mandate to embrace the policies of their bizarre anti-feminist crusade. The mandate of the last election was narrow and focused — to get hold of 10 years of unbroken inflation."

Alarm was expressed, however, over the movement toward defining abortion legally as murder through the enactment of legislation like that approved last week by a Senate subcommittee, which declared that human life begins at the moment of conception.

The caucus, which gave \$350,000 in 1980 to candidates — mostly women — who supported such feminist causes as ERA, abortion and funding for such public services as day care, adopted a budget that committed it to raise \$500,000 for 1982 political contributions and \$1 million for 1984.

Fund-raising for 1982 began at the caucus birthday party Friday night with contributions totaling \$14,000, much of it raised from the sale of posters autographed by such feminist luminaries as Steinem, Norton and Liz Carpenter, a former assistant education secretary and White House aide.

While national candidates will continue to receive financial support from the caucus, there was considerable emphasis on the need to get more women into state legislatures and local offices where more and more public policy decisions will be made under the Reagan philosophy of cutting both the size and the power of the federal government.



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# What to Ask Judge O'Connor

Some of the objections to Sandra O'Connor are about as relevant to her fitness for the Supreme Court as abortions are relevant to stadiums.

The right-to-life movement seems to think that abortion is germane to everything, so it can't understand why Judge O'Connor, when she was the majority leader of the Arizona State Senate, opposed an anti-abortion rider to a football stadium bill because it seemed non-germane. We'd be troubled if she had seen a connection.

But zealotry is not the only basis for raising questions about nominees for the Supreme Court. Their long-run philosophical positions are generally wholly unpredictable. Yet a President's most lasting legacy may reside in the mind and manner of the Justices he appoints. The Senate has a duty to explore both responsibly.

At first glance, her record is appealing. But much more needs to be known about her and about the depth and nature of her conservatism. How Judge O'Connor handles herself under questioning also will tell much about the quality of the President's choice. The art of getting confirmed is openness where possible — and circumspection when the questions get too close to prejudging issues that may come before the Court.

Some questions arise from the uniqueness of the nomination; Judge O'Connor follows 101 male justices. Others arise from the simple fact that so little is known of her outside Arizona, where she gained

prominence as an assistant state attorney general, legislator, judge and civic leader.

*What does she think will be the effect of a woman on the Court? Are there times when there is validly a woman's point of view in the law? Would she speak up for women's interests if her male colleagues seemed oblivious to them?*

*How has her personal experience with job bias influenced her view of laws against discrimination? After graduation with high honors from Stanford Law School, at least one law firm thought she was applying for a secretarial job. She had to overcome such obstacles before the women's movement and civil rights laws began to be effective. Is she indignant? Does she think others must climb the ladder the way she did, without much help from the law?*

*Does she see a special role for the Federal courts, including the Supreme Court, as a guardian of constitutional rights? Some people are inclined to fault her nomination because she lacks experience in the Federal courts. She has written that Federal judges should put more trust in state courts. Yet when there is a choice, many Americans prefer Federal courts, where judges are more independent, less tied to local politics. When is Federal judicial action necessary?*

*What in her public life demonstrates a commitment to helping people whom society has not always been eager to protect? Her own career testifies to her views about equal opportunity for women. It would be encouraging to learn that she is, in life as well as law, committed to equal justice for all.*



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## Gender and the Supreme Court

Along with a lot of other righties, Jerry Falwell is prancing around, emitting shrieks and pulling out clumps of his hair because President Reagan has appointed that lady to the Supreme Court.

Falwell said that every good Christian should be concerned about it. This means that if you didn't spend the weekend locked in the bathroom, being anxious about Sandra O'Connor and having the heaves, you might end up in Hell or Trenton, N.J. Jerry Falwell is particularly upset about Mrs. O'Connor because once she had an opinion he didn't agree with. That's horrible. Maybe even quasi-constitutional.

Randolph of Roanoke, a member of the First Congress, meant to insert a clause in the Bill of Rights saying that anybody could think anything they wanted in this country as long as Jerry Falwell didn't disagree with it. Everybody knows that John Randolph used to bring his hound dogs into the chamber of the U.S. House

of Representatives. While he was out taking them on a fire hydrant tour, the First Amendment was passed without the Jerry Falwell part.

I'm also worried about the Sandra O'Connor thing - but not because of the theological or constitutional questions it raises. I'm worried about the leering and the expense.

Mrs. O'Connor will be the first woman on the court. Not even John Marshall and Oliver Wendell Holmes, Jr. were women as far as anybody knows. What's likely to happen is that the business of the court goes into slow motion. The other eight justices will be leering at Mrs. O'Connor, digging each other in the ribs, whispering smart remarks and giggling. Mrs. O'Connor will be the only justice paying attention. When it comes to writing opinions, the others will have to rely on her. She might make the whole Supreme Court hand down an opinion that Jerry Falwell doesn't like. If that happened, the Moral Majority would

shriek and throw itself into a ravine.

Also, because she'd be the first woman, Mrs. O'Connor would have to have her own locker room. Building one would cost at least as much as a year's welfare payments to keep an unemployed family from starving. If the poor are going to do their bit by getting rickets and looking hollow-eyed, Sandra O'Connor can damned well change into her black robes in the parking lot.

Or, they could raise private money for her locker room by staging a public event. Barry Goldwater says that somebody ought to boot Jerry Falwell in the tail for raising so much hell about Mrs. O'Connor. If Sen. Goldwater is willing to do that personally, they could hire a stadium. As an added attraction, they could print up souvenir programs telling which one is the conservative and which one is the right-winger. Making that distinction would be a comfort as well as a tribute to our new Supreme Court Justice.



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# O'Connor May Tilt Scales In Favor of State Courts

For the moment, Judge Sandra Day O'Connor is no favorite of the New Right, but as a Supreme Court justice she could turn out to be.

Unless her perspective changes, she is likely to be strongly in favor of a major goal of neo-conservatives: restoring the power of state judges, at the expense of federal judges.

That is an ambition that apparently is tempting a shifting majority of the justices now on the court, and O'Connor could solidify that majority. She has made it appear that, out of her experience as a state judge, she has no fundamental doubts of the virtue of the effort.

What amounts to a manifesto by her on the subject appeared in this summer's issue of the *William & Mary Law Review*. The Arizona Appeals Court judge states the thesis plainly:

## O'Connor's Plea

"If we are serious about strengthening our state courts and improving their capacity to deal with federal constitutional issues, then we will not allow a race to the courthouse to determine whether an action will be heard first in the federal or state court. We should allow the state courts to rule first on the constitutionality of state statutes."

In fact, O'Connor goes further: if a state court has given a "full and fair" review of a constitutional challenge to a state law, she would favor giving "finality" to the decision. In other words, there would then be no second-guessing by a federal court (other than, potentially, the Supreme Court itself as a last resort).

State judges can be trusted with that kind of power, this state judge insists. "I have seen remarkable examples of the exercise of courage and judicial independence by state court judges . . . State judges do in fact rise to the occasion when given the responsibility and opportunity to do so."

O'Connor's arguments put her into the middle of a controversy stirred by leaders of the New Right who oppose abortion and school busing and who support prayer in public schools. They want Congress to take away the jurisdiction of lower federal courts (but not the Supreme Court) to hear cases on those subjects.

That is a more far-reaching proposal than O'Connor has endorsed

*Lyle Denniston covers the Supreme Court for The Washington Star.*

expressly at this stage, but she has taken a position on the basic question of Congress' power to act.

"The federal court jurisdiction can be shaped or removed by Congress," she declares flatly, citing a phrase in the Constitution and a post-Civil War ruling by the Supreme Court that seem to say that.

O'Connor's article suggests that there is "merit" in two revisions of federal court jurisdiction that would fall short of ousting those courts from review of the constitutionality of state laws. She would accept either the "elimination or restriction" of federal court power to handle cases that are based on state law, but get into federal court only because the parties are from different states.

But, she goes further, also seeing merit in a proposal to require those who seek damages for violations of constitutional rights by state officials to take their cases first through the state courts.

That is a proposal that borders on the radical, considering how important those damage lawsuits have become since the "civil rights revolution" launched by the Warren Court.

For now, there is no requirement, in law or by Supreme Court ruling, that a trip through state court is necessary before going to the federal courthouse with a civil rights case. Congress could require that, however, and Judge O'Connor straightforwardly suggests that "one would think that congressional action might be taken."

## 'Welcome' Move

"Such a move would be welcomed by state courts, as well as state legislatures and executive officers," she says.

The present majority on the Court is favorable toward enhancing state power, although it has not yet embraced the O'Connor view in the civil rights field. In criminal law, however, it has begun to take something of the same approach: limiting federal court power to review convictions in state cases, so long as those have received a "full and fair" review in state court.

That effort began in the court's 1976 decision (in the case of *Stone v. Powell*), barring federal court review of search-and-seizure issues after they have been reviewed in state courts. The favorable tone that O'Connor's article uses in discussing that decision and the trend it represents hints that she would vote to broaden it.



# 'A Master Stroke'

"Arizona Judge Sandra O'Connor, Nominated for Supreme Court, Will Be First Woman Justice," the headlines say, and my phone rings a little more these days. "Who is she, what is she like, and what does this mean for the court and for the political future of Ronald Reagan?"

I'll try to shed some light.

I'm a lawyer and a fellow Arizonan, and while I'm not a close friend of the nominee, we are acquaintances. I know her through her reputation and her very successful career in public service and as a community leader.

When people as politically diverse as Barry Goldwater, John Rhodes, Ted Kennedy and I can all support a Supreme Court nominee, it's got to be remarkable. But she will be opposed. The New Right, the Moral Majority and Phyllis Schlafly will go after her with a vengeance that is their particular trademark.

Nevertheless, I expect Mrs. O'Connor will, and ought to be, confirmed.

To understand some of what I have to say, you must understand some basic things about the Arizona Republican Party. A moderate Republican friend of mine told me in Tucson not long ago that the party had split into two camps: conservative and very conservative. "The very conservative believe nothing should be done for the first time," he said, "and the conservatives believe that a few things should be done for the first time, but not now."

The point of this is that Sandra O'Connor is a conservative Arizona Republican, but she is a sensible conservative, and in her career in the Arizona Legislature she is said to have had a vote or two that could have been deemed pro-abortion. And she is said to have supported the Equal Rights Amendment early on.

She has a good judicial temperament. She can be tough. She clearly is a conservative, but she has never placed partisan political values before justice. Those who practice in her court describe her as practical, conscientious, fair and open-minded.

Justice Rehnquist, on the other hand, is one of the brightest men I have ever met, but he is an ideologue who brings a passionate point of view to every case before him, and that point of view is always conservative. O'Connor has a reputation for treating the law in a businesslike way. She may be a kind of balance-wheel when the "brethren" lock the doors and begin to argue the disposition of important cases.

Arizona, a small state, has produced an amazing number of national candidates, congressional

leaders and national spokesmen. I think part of the explanation is that Arizona always has enjoyed a civilized kind of politics. Washington is often confounded at the contrasts, but in Arizona, it's taken for granted. The first woman chief justice of a state supreme court was Lorna Lockwood of Arizona. Sandra O'Connor was the first woman majority leader in a state legislature. Margaret Hance, the mayor of Phoenix, was perhaps the first female big city mayor in the country, or certainly one of the first.

Sandra O'Connor and the Arizona Republicans in the conservative group are not Moral Majority

types, but they are conservative when it comes to social and economic issues.

My Democratic friends ought to be grateful for this appointment. It's almost inconceivable to me that they could do any better. Ronald Reagan isn't going to appoint liberal Democrats. He's going to appoint people to the right of center wherever he can.

The appointment of O'Connor is a master stroke, comparable to Richard Nixon's going to China. It shows a flexibility, a bigness, that the Ronald Reagan stereotype doesn't recognize. It shows a political savvy on the part of the president that I had assumed was not there. I'm certain that women political activists also doubted it was there.

Lyndon Johnson had an opportunity to appoint a woman and didn't. Kennedy had the same opportunity and passed it by. So did Nixon. So

did Ford. But Ronald Reagan said he would appoint a woman, and he did.

John East and Jerry Falwell will never say yes to Sandra O'Connor. But that won't matter, because they'll make up with Reagan eventually anyway. Where else would they go?

On the other hand, the president, in one stroke, has deflected criticism from liberals and from women, two of his principal antagonists. Their silence won't last forever, but the edge has been dulled.

Does the appointment of Sandra O'Connor bother me? No, it doesn't. My liberal friends who might be upset fail, I think, to make a distinction between the electoral process and the judicial process. Electing someone who is conservative is one thing, but the process of deciding the controversies that come before the Supreme Court is quite another. In the latter case, it's the ability to understand and apply the law that counts. Sandra O'Connor's competence in this respect is not questioned.

Jerry Falwell and crew are demanding some guarantee that O'Connor will decide cases to their liking, and that's not what the system is all about. Barry Goldwater was right when he said, "I don't buy this idea that a justice of the Supreme Court has to



stand for this, that or the other thing." Goldwater understands the constitutional job of the court. I wish Falwell could grasp Barry's meaning.

You can tell a lot about people and even draw a profile by the company they keep and the affiliations they make. Her résumé has these kinds of entries: prosecutor, legislator and state senate leader, civilian employee with the U.S. Army in Germany, juvenile judge, Republican Party official, board of Smithsonian Associates, Salvation Army, Soroptomists Club, Arizona Academy, Junior League, board of Blue Cross-

Blue Shield, board of directors of the First National Bank, elected Woman of the Year and recipient of the annual award from the Phoenix Conference of Christians and Jews. And there is much more.

It may be a cliché, but in the case of Sandra O'Connor, she really *is* a pillar of the community. A consistent, decent, hard-working lawmaker, politician, mother, wife, lawyer, public servant and judge.

When one looks at Sandra O'Connor, studies her brand of Republicanism and knows the Republican friends she keeps, it was little wonder that someone in the White House called her "too good to be true."

Like I said earlier, Washington may have been a bit surprised, but out in Arizona, we take the Sandra O'Connors for granted.

*"The appointment of Sandra O'Connor shows a flexibility, a bigness, that the Ronald Reagan stereotype doesn't recognize. It shows a political savvy I had assumed was not there."*





## Was O'Connor No. 3? School Now Not Sure

STANFORD, Calif., July 13 (UPI) — Stanford University officials say that Sandra D. O'Connor, President Reagan's choice for the Supreme Court, may not have been No. 3 in her law school class after all.

When the name of the Arizona state appeals justice was first mentioned for the high court last week, The Washington Post reported she ranked third in the Stanford Law School class of 1952, the year Justice William H. Rehnquist ranked first.

[The Post's information came from Reagan administration sources who said they had talked to Rehnquist.]

The school issued a press release dated July 7 that reiterated this information — "a clear error in editorial judgment on our part" because the information was not checked, said Stanford News Service Director Robert Beyers.

When the office started to check, it found no documentation in the registrar's office or in school publications of the rankings of the 1952 law class. Although there were rankings in those days, there is wide disagreement on what they were, university officials said.

Law School Dean Charles Meyers said he has "no notion" of the individual rankings and that O'Connor told him she "never knew what her class standing was."

Beyers said all that is certain is that O'Connor was one of 10 from that class elected to the Order of the Coif, which comprises the top 10 percent of the class.

He said at least three people have claimed to have finished second in that class.



# O'Connor Foes Provide Lesson For President



Beyond the obvious significance to women of the nomination of Judge Sandra O'Connor to the Supreme Court, the move - and the reaction to it among conservatives - provides valuable instruction to President Reagan about the truly effective voices in his own Republican Party.

For all the guarded criticism from Mr. Republican of the New Right, Sen.

Jesse Helms, and the huffing and puffing of the professional ultraconservatives like Howard Phillips, it was the customarily bell-clear comment of yesteryear's Mr. Conservative, Sen. Barry Goldwater, that correctly reflected the political ramifications.

Speaking of the criticism by the Rev. Jerry Falwell, head of the Moral Majority, who questioned Mrs. O'Connor's views on abortion, Goldwater quoth, "I think every good Christian ought to kick Falwell right in the ass." And, he added, he simply didn't "buy that idea" that a true conservative could be defined on a single issue.

Neither, apparently, do many conservatives. Despite the noise, there is a clear consensus on Capitol Hill already that the O'Connor nomination will be confirmed easily, barring some unforeseen complication beyond her real or alleged views on abortion. And if so, the episode will provide another illustration of how little clout Helms and his associates really have on truly important matters.

It is a useful lesson for Reagan early in an administration that has more critical objectives than the emotional issues on which Helms has made a political living. Not only is the New Right's bark worse than its bite; it may be helpful to Reagan in the long run to have a vocal extremist element in his own party.

Helms himself brushes off suggestions he may be a paper tiger. "They haven't been talking to anybody that knows anything about it," he says. But that assessment is a common one these days.

"Jesse Helms," says one White House insider not unfriendly to the senior senator from North Carolina, "is like a guy who goes out onto the middle of the field at a football game with 80,000 people in the stands, and says, 'Give me

have the means politically to enforce his threats.

Helms, this same insider notes, has no real constituency in the Senate, and one prominent Republican senator observes: "Jesse doesn't win many. He makes a lot of noise. Anybody can put a hold on a nomination (as Helms did with several State Department nominees he didn't like). Not that many people in the Senate are as conservative as Jesse is. He puts a hold on a nomination, and the vote is 92-6. After he does that three or four times, he doesn't look too good."

Another Republican senator, also a conservative, says Helms can be a problem for the White House on the O'Connor nomination "because if he decides to go after her, he'll go after her." But he says at the same time that having Helms as a critical voice in the Senate can make Reagan seem all the more moderate. "I think every administration needs a cutting edge," is the way still another GOP senator puts it.

All this is not to say that Helms and the New Right are without leverage in the Reagan administration. White House advisers are aware of Helms' ability to raise money and tempers among conservatives, in the South particularly. And the president himself made a point of inviting Helms to the White House to discuss the nomination before it was announced. But Helms is being dealt with more as somebody to be massaged, and neutralized, than as a man with real, positive influence on policy.

"There's really nothing you can do about him," says another White House political aide. "The best way to deal with him is to leave him alone."

A measure of Helms' relative isolation in the Senate is the fact that two Republicans considered as conservative as he is, Strom Thurmond of South Carolina, chairman of the Senate Judiciary Committee, and Orrin Hatch of Utah, both have indicated they expect to support O'Connor, barring the unforeseen. Hatch echoed Goldwater in adding he has "real questions whether any single issue should be able" to keep someone off the Supreme Court.

Although some Helms allies in the anti-abortion lobby are talking boldly about retribution against those who go along with this Reagan "sell-out" of principle, others are facing reality. They say they are making noise this time around in the hope that the president will think twice when the next Supreme Court vacancy occurs.

But the fact is that this time around, Reagan holds all the high cards. Too many politically astute Republicans in the Senate recognize that he has scored a political ten-strike with the first appointment of a woman to the Court. They aren't about to let the abortion issue - or Jesse Helms - diminish the benefit to Reagan, and to the whole Repub-

WASH. STAR  
F: O'Connor  
Appr.  
JUL 1 4 1981



Ellen Goodman

# He's Done It Again

BOSTON—You might have called it an eye-opening week.

First President Reagan, a man notoriously myopic toward women, actually found one to nominate for the Supreme Court. Sandra O'Connor was not only a woman, he said, she was a "person for all seasons."

Then we watched as controversy over this person brewed between the extreme right and the merely right. To see Barry Goldwater representing the moderate middle was enough to clarify anyone's vision.

The coalition of groups alternately labeled "pro-family" or "moral majority" disapproves of Sandra O'Connor. They maintain that her voting record as majority leader in the Arizona Senate was not pure enough to pass the test of the Republican Party Platform.

That platform, you may recall, demanded judges who "respect traditional family values and the sanctity of innocent human life." But anti-abortion groups, the Moral Majority, Inc., and others criticized O'Connor as suspiciously pro-abortion and pro-ERA.

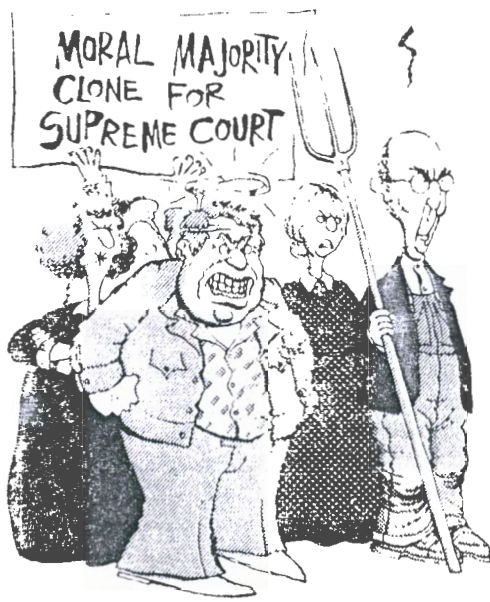
This attitude was enough to put Goldwater's famous jaw out of joint. "I'm getting a little tired of people in this country raising hell because they don't happen to subscribe to every thought that person has," he said. "You could offer the Lord's name for some of these positions and you'd find some of these outfits objecting..."

In any case, it was quite a stroke for Reagan, in the midst of all the budget cuts, to find an appointment criticized as too "liberal."

Meanwhile, O'Connor's real record turned out to be about as middle-of-the-road as you could walk. It offers little cause for exhilaration or hysteria on either side.

Those who are against abortion notice that O'Connor voted against prohibiting the use of tax funds for abortion, and also voted against a bill urging Congress to pass the so-called Human Life Amendment.

But those who are in favor of keeping abortion legal notice that O'Connor



By Auth for The Philadelphia Inquirer

seems to have personally assured the president she is against abortion.

Those opposed to the Equal Rights Amendment point out that O'Connor was one of those who introduced the amendment into the Arizona legislature in 1972. Those in favor of the ERA point out that she backed off this support.

As a judge of a state appeals court, O'Connor has not ruled on any of these hot social issues. Indeed, her lack of a record, the fact that she is neither an advocate nor an activist in any cause, is a definite advantage to her confirmation.

So O'Connor is not only a person for all seasons but for all reasons.

To begin with, she helps Reagan with his "woman problem." Women were his weakest supporters at the polls and they are still weakening. Sandra O'Connor can help stop this collapse because she is a woman, and a woman with moderate social views.

But she is a safe choice because of her conservative legal views. As someone opposed to an activist judicial role, she is unlikely to use the bench for social change.

At the same time, her appointment solves Reagan's other "problem." The president made a commitment to the

far right, to people who would replace the Constitution with the Bible according to Moral Majority leader Jerry Falwell, and return to the most traditional view of men and women. But he also had a commitment to appoint the most qualified woman he could find to the Supreme Court.

Talk about your double binds. It is virtually impossible to find a highly qualified woman who would be ultra-conservative on social issues. A woman jurist by definition is in a non-traditional role. A woman lawyer of experience and intelligence has inevitably become aware of inequality.

As a young graduate of Stanford Law School, Sandra O'Connor, for example, was refused a position in every major law firm in Southern California except one. That one offered her a job as a secretary. She remembers.

So what we have here on the way to confirmation hearings is this person. Sandra Day O'Connor, as much of a conservative as you can find in a qualified woman, and as much of a feminist as you can find in a conservative.

By gum and by grudging, Reagan's done it again.



# The Judge Gets Rave Reviews In the Hill

By Fred Barbash  
Washington Post Staff Writer

Supreme Court nominee Sandra D. O'Connor went policking on Capitol Hill yesterday, expressing her opposition to abortion and winning a prediction from the leadership that she will be confirmed without difficulty.

The Moral Majority also backed away from its earlier opposition, acknowledging that confirmation is inevitable. "We should have shut up and not said anything," said spokesman Cal Thomas. "We are working very hard to fall in line behind the president."

Though other anti-abortion groups held fast, yesterday nevertheless looked like the day ev-

erything began to fall in place for the nomination. O'Connor, carefully briefed and accompanied by a flying wedge of Reagan administration officials, made her way from office to office for brief chats and photo sessions.

After each stop, a senator would generally emerge to say how impressed he was with O'Connor. Then, trailed by about 60 reporters, camera technicians, sound crews and police officers, she would go off to the next place. Publicly, she would only say that the day was going "wonderfully."

"I'm just going around to have a chance to say hello, face to face," she said. "I understand it's traditional."

Privately, however, both O'Connor and the Reagan administration were moving fast to defuse the abortion issue. Sen. Dennis DeConcini (D-Ariz.), a Judiciary Committee member, said she discussed abortion with him and with Sen. Strom Thurmond (R-S.C.), Judiciary chairman.

"She reasserted what she had told me last week. She said she was opposed to abortion".

It was also learned yesterday that Reagan political aides were telling conservatives that she believes abortion regulation is a "legitimate subject" for legislation at the state level.

According to Young Americans for Freedom officials James V. Lacy and Bob Heckman, White House aide Lyn Nofziger, at a meeting last Wednesday, displayed a summary of the president's conversation with O'Connor to illustrate her position.

Heckman quoted the summary as saying O'Connor finds "that abortion regulation is a legitimate subject for legislation." Nofziger, who could not be reached for comment, reportedly added the word "state" in elaborating on the summary.

That is about as specific as the White House has been in describing her views. It is not necessarily inconsistent with the Supreme Court's 1973 abortion ruling, which allowed the states to regulate abortions after the first three months of pregnancy.

O'Connor's day began at the Justice Department, where she met with Attorney General William French Smith and his aides. O'Connor, Smith, aides and two White House lobbyists, Max L. Friedersdorf and Powell A. Moore, then met separate-

ly with Thurmond, Senate Majority Leader Howard H. Baker Jr. (R-Tenn.), Minority Leader Robert C. Byrd (D-W. Va.), House Speaker Thomas P. (Tip) O'Neill Jr. (D-Mass.), Senate Judiciary Committee members DeConcini and Joseph R. Biden Jr. (D-Del.), House Minority Leader Robert H. Michel (R-Ill.) and other house Republicans, and her friend, Sen. Barry Goldwater (R-Ariz.).

The half-hour with Thurmond was probably the longest encounter of the day. "I would judge that she would be confirmed," Thurmond said afterward. "I've heard very little opposition to her around the Hill. She's a very impressive lady. She has excellent credentials. I expect to support her."

Thurmond and Baker said it would be difficult to hold confirmation hearings by the end of July, as the administration requested. Both said the process probably would begin after the August recess.

The Moral Majority's half-turn on the O'Connor nomination followed its confrontation last week with Goldwater, who said that "every good Christian should kick Jerry Falwell in the ass" for Falwell's opposition to the nomination.

"The PR fallout has been incredible," Falwell spokesman Thomas said yesterday. He said the group had been assured that "some of our friends in the Senate, conservative members, will be asking questions of Judge O'Connor that had concerned us . . . . We are working very hard to fall in behind the president."



The routine seems designed for omniscience. As the House staff report described it:

"Investigators examine the applicant's education, employment and residences and conduct neighborhood checks, criminal justice information checks and credit checks. A minimum of five character references must be interviewed with a

view toward establishing the habits, loyalty and morals of the individual. Both positive and negative information must be taken into account."

If no problems turn up, physical examination and a battery of psychiatric tests come next. The final step is a polygraph test that the CIA alone requires of all its personnel, including military officers on temporary assignment.

The main goal, as Gambino has testified, is to prevent "penetration of the agency, through its personnel, by foreign intelligence services or others whose interests are inimical to those of the United States."

The FBI steps in only to conduct background investigations of candidates for the CIA directorship and deputy directorship. And even for them, the CIA's Office of Security is in charge of the polygraph tests.

About one of every 10 CIA applicants is turned down for security reasons, which run the gamut from thievery to homosexuality to "gross character deficiencies."

Another 3 to 5 percent are rejected as "unsuitable," a category of failings that ranges from "limited mental capacity" to marital difficulties. Alcoholics are considered "unsuitable." Drug users are regarded as security risks.

Hugel says he was given a polygraph, or so-called lie detector, test, though he was not asked to submit to the separate personal interview that the rules call for whenever any "significant" derogatory information has developed.

He was not clear on whether the polygraph examiner questioned him about his financial dealings, in general or in particular.

"I don't remember what they asked me on the polygraph because they asked me all kinds of questions," he said.

"They ask you whether you ever committed a crime," interjected CIA general counsel Sporkin, who joined the agency even more recently.

"They ask you that," Hugel agreed.

Despite all the seeming thorough-

ness of the CIA's routine, however, it missed the McNells. Yet Tom McNell claims that he was willing to stand up and be counted months ago. He says he had heard reports last December that Hugel was in line for a top job at the CIA and tried to contact President-elect Reagan's personnel director, E. Pendleton James, to deliver his warnings. He says James never called him back though he tried to make it plain that he had some unfavorable things to say about Hugel.

Hugel started work at the CIA Jan. 21 as a "special assistant" to Director William J. Casey, a good friend and colleague from the Reagan campaign. On Feb. 13, Casey made him the agency's deputy director for administration.

At the same time, by Hugel's account, the McNells had not been entirely forgotten. They paid off the last of their debt to Hugel. Hugel was not clear about exactly when this was, but he and his lawyers placed it around January or February.

In early May, Casey touched off shock waves in the intelligence community by naming the 56-year-old Hugel deputy director for operations.

Casey defended the appointment strenuously despite sharp protests.

At least some members of the Senate Intelligence Committee, which met yesterday with Hugel's successor, John H. Stein, suggested that Casey has not heard the last of the matter.

Sen. Daniel Patrick Moynihan (D-N. Y.), the committee's vice chairman, voiced his objections to what he regarded as the "politicization" of the operations directorate.

"With but rare exceptions, the deputy director for operations has been a career professional and never, surely, a campaign aide with no visible qualifications for the job.

"The administration," Moynihan concluded, "must ask itself how it allowed this disaster to come about in the first instance."



VATICAN CITY (RNS) — Pope Paul II has nominated 15 finalists to a new council to study organizational and economic problems of the Holy See.

Justin Cardinal Casaroli, Vatican Secretary of State, was to preside over the council's first meeting in the apostolic palace on July 13th and 14th.

Members of the new economic council include Cardinals John J. O'Connor of Philadelphia and Terence Cooke of New York.

The Vatican's press spokesman, Romeo Panciroli, said that Pope John Paul established the

economic council "after noting the suggestions made during the meeting of the Cardinals Nov. 5th-9th, 1979 and those expressed by Cardinals following that meeting."

The first plenary session of the College of Cardinals in over 400 years was convened by the Pope in 1979 for deliberations concerning Vatican finances, among other things.

The council will review the subject "in collaboration with the competent organs of the Roman Curia and more particularly with the prefecture of economic affairs," Fr. Panciroli said.

7/16/81 Wanderer

## Pro-Life Leaders Score O'Connor Nomination

WASHINGTON, D.C. — Opposition to President Reagan's nomination of Arizona Appeals Court Judge Sandra O'Connor is snowballing among pro-life groups across the country. Among the leaders of right-to-life groups who have spoken out against the O'Connor nomination are:

Fr. Charles Fiore, president of the National Pro-Life Political Action Committee who declared that "The President's nomination of Judge O'Connor to the Supreme Court indicates at least that he has been very badly served by his advisors as to Judge O'Connor's credentials as a pro-life, pro-family conservative.

"However, we in the pro-life movement now are wondering if President Reagan truly under-

stands the depth and the strength of our convictions and our dedication to this cause of causes.

"We intend to make this nomination a battle to demonstrate that the pro-life cause will never take a back seat to politics as usual.

"I was one of those invited to the White House on Feb. 17th, the day before the President's State of the Union message, to hear an appeal from him and his advisors to support the Administration's economic program.

"Many pro-life, pro-family conservatives do in fact support those economic initiatives, but now they are wondering if cooperation is to be a two-way street, or if this Administration will continue to ignore those who supplied

President Reagan with a substantial part of his majority.

"Apparently, Reagan has forgotten that it was the disaffected Democrats and independent ethnic, blue-collar Catholic and Evangelical-Fundamentalist Protestants who helped build what appeared to be the beginning of a new majority in the 1980 elections.

"It was not simply the President's personal charisma that carried the election. It was this broad and diverse constituency looking for some fundamental changes in the leftward drift of our nation as regards family life and social issues.

"It is this very constituency now that is outraged at the O'Connor nomination.

(Continued on Page 6)

WASHINGTON, D.C. — The Wanderer joined 19 other pro-family groups to issue a statement on July 9th expressing "concern" for President Reagan's selection of Judge Sandra O'Connor of Arizona as a nominee for the Supreme Court of the United States, and

urged that a "searching review" be made of the nominee's record.

The statement said in part:

"The information now available on the philosophy and attitude of Judge O'Connor is incomplete. That in itself is cause for concern. A Supreme Court Justice may well sit for a quarter of a century. It is not necessary to rush the announcement of any nominee before the completion of the traditional FBI checks are made.

"The O'Connor nomination may not have received the attention by the President's researchers that it deserved before being announced. In particular, the staff memorandum, on which the President apparently relied heavily, appears to have misleading and perhaps inaccurate statements about the record of Judge O'Connor as an Arizona state legislator.

"Insofar as Sandra O'Connor's record as a state legislator is available it is not reassuring. Her attitude on the issue of parental consent in the case of family planning services being made available to minors shows a gross insensitivity to crucial family issues."

Concern about the selection of Judge O'Connor to fill the seat on the high bench vacated by the retirement of Justice Potter Stewart centers on her record in the Arizona Legislature where she is known to have co-sponsored a bill authorizing abortion on demand in 1970.

## Wanderer Joins Coalition Urging

### "Searching Review" Of Judge O'Connor

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In 1973 she co-sponsored a family planning bill which provided birth control counseling and services (including "surgical techniques") for young people without parental advice or consent.

In 1974 she voted against a memorial to Congress supporting the Human Life Amendment. The same year she opposed a bill that would have prohibited abortions at

the University of Arizona hospital, a tax-supported institution.

Judge O'Connor has also been an ardent supporter of the Equal Rights Amendment (ERA) and, according to the July 9th issue of *The Washington Post*, she was "almost alone in the Arizona Senate in opposing publicly state aid to private schools."

(Continued on Page 8)

Nomination "Steamroller" Slowed

7/16/81 Wanderer

## Bishops Concerned About O'Connor Nomination

By PAUL A. FISHER

WASHINGTON, D.C. — Speaking on behalf of the United States Catholic Bishops, the general secretary of the U.S. Catholic Conference (USCC) said the Bishops are "disturbed" by reports of positions taken by President Reagan's nominee for the Supreme Court, and urged that this matter be "fully examined."

The USCC statement supports the concern expressed by a large

group of conservative organizations and their joint call for a "searching review" of Judge O'Connor's background.

The position of the generally liberal USCC coupled with a similar concern expressed by the conservative groups almost certainly will result in a slowdown in the previous quiet efforts to "steamroller" the nomination quickly through the Senate.

Committee in that connection with Mrs. O'Connor.

Mrs. Camping confirms the nominee did in fact "earn support" pro-legislation, and has been a consistent supporter of the Rights Amendment (ERA).

The former legislative aide of Mrs. O'Connor observed Supreme Court nominees are generally regarded as a "home state."

She was asked how she felt such an appraisal after a year is nationally known as "Conservative," Sen. Goldwater (R., Ariz.), has

(Continued on Page 8)



# White House Lists Much Plus, a Bit

F: O'Connor  
Appt.

By Lou Cannon  
Washington Post Staff Writer

White House chief of staff James A. Baker III gave a generally glowing account yesterday of the first six months of what he called "the Reagan revolution" but acknowledged that the administration had made allies "nervous" with its military buildup and had been afflicted with "squabbling and turf fighting on foreign policy."

In an admittedly partisan assessment of the administration's performance, Baker dwelt on the successes of the Reagan economic and tax programs and the nomination of Judge Sandra Day O'Connor to the Supreme Court.

He said Reagan had been successful because of "the deep-seated personal beliefs that he brings to the presidency—views that were once part of the American character and now, under his leadership, are beginning to surface once again."

However, Baker also took note of "frustrations and disappointments," including the foreign policy fights and mishandling of the Social Security issue by the White House.

"Then, too, I think that all of us

believe we could have a better job in the appointments process—both in the timeliness of appointments and in the number of women and minorities in high posts," Baker said in a speech to the National Press Club.

Reagan has recognized that not enough women are being appointed and has moved to change that, the chief of staff contended.

"The selection of fine, distinguished people like Sandra O'Connor will not be the exception but the trademark of this administration," Baker said.

The military buildup, Baker said, was necessary to match "the most massive buildup in military arms by the other side that man has ever seen."

"We recognize that the Soviets are now seizing on America's buildup to launch a major propaganda offensive against us and that some of our friends are nervous. But we are convinced that the only way to achieve a more stable, peaceful world is to engage in a steady, long-term strengthening of our military forces."

Responding to persistent criticisms that the administration's foreign policy is ill-defined, White House officials have put a heavy em-

phasis on international issues in recent speeches. All of the speeches have followed a similar line, arguing that Reagan has many foreign policy achievements even if he has yet to make a major foreign policy address.

Baker ticked off a number of these claimed achievements yesterday. He said that in Europe, Japan, Canada and Mexico "the president has begun to solidify our ties with old friends."

He also said that the administration has taken a "firm stance against Cuban-supported subversion" and begun cooperative efforts "aimed at improving economic and social conditions in the Caribbean."

As the president prepared for the economic summit in Ottawa, a number of policy decisions were being readied in the White House. Various administration officials had these comments on some of them:

- Attorney General William French Smith said the administration's far-reaching immigration policy, which has provoked internal battles over a guest-worker proposal and a "tamper-proof" identification card, would be decided upon within the next few days.

Immigration took up most of a

75-minute Cabinet meeting yesterday. Sen. Paul Laxalt (R-Nev.) said that he had been asked to take a look at the administration's proposal, meet with a group of western senators and make recommendations to the president before a final decision is reached.

- Secretary of State Alexander M. Haig Jr., in response to a question at a briefing on the Ottawa summit, reaffirmed Reagan's commitment to provide Saudi Arabia with additional aerial reconnaissance aircraft known as AWACS.

- Haig would not confirm the expected resumption of shipments of F16 fighter-bombers to Israel, which were held up after an Israeli raid on an Iraqi nuclear plant. But other officials said the decision to send the planes will be made today. Four planes were held up and another six were due for shipment this week.

- White House deputy press secretary Larry Speakes said he did not expect any decision by the president on a basing system for the MX intercontinental ballistic missile before the August congressional recess.

Staff writer Charles R. Babcock contributed to this report.

## Minus

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Over-Up" Charged

7/16/81 Wanderer

# Conservatives, Pro-Family Coalition Fired Up Over O'Connor Nomination

By PAUL A. FISHER

WASHINGTON, D.C. — A factually well-prepared group of conservatives and pro-family

7/18/81 Human Events

# High Court Nominee Disturbs Conservatives

By PAUL A. FISHER

WASHINGTON, D.C. — "are mad" and angered  
President Reagan's nomination of Sandra O'Connor to the Supreme Court appears to have eliminated the prospect of the Republican Party becoming the political home of a majority of the American people.

Neille Gray, president March for Life, said s hearing from people all c country who are "very up are saying, 'let's do somet However, she stated it possible at this time to de



Photo by James Weber

nominated to succeed to the high bench.

The principal spokesman for the group, Howard Phillips, director of the Conservative Caucus, called for a "thorough and searching review" of Judge O'Connor's record.

Phillips stood at a podium on the front of which was a large-lettered quotation from the 1980 Republican Party platform which expressed support for the appointment of judges "who respect traditional family values and the sanctity of innocent human life."

Phillips called the nomination "a major blow" to the political "alliance of social and economic conservatives who contributed to" the President's election and to the election of a number of senators and congressmen

CHICAGO — Seventy members of the Chicago based Pro Life Action League protest President Ronald Reagan's appointment of Judge Sandra O'Connor to the Supreme Court.

7/18/81 Wanderer

# O'Connor Appointment Sink Rising Hope For Republican Majori

By Paul A. Fisher



25 JUL 1981

F: Appointments/O'CONNOR

# For zealotry, it was an unwelcome jolt of reality

7/10/81 Newsday

By HARRISON RAINIE

**W**ASHINGTON—Nothing is worse for zealots than to have one of their own placed in a position of power. When a fellow-traveler takes the helm, zealots lose much of their reason for existing, because it strips them of their most potent weapons.

The ascent to leadership of a zealot removes the paranoia that fuels much zealotry, the feeling that "they" (the Rockefellers, Communists, oil companies, radical liberals, CIA or other assorted bogeymen) are running the show. It also brings reality crashing in on the leader, who finds that the world never conforms to the single-minded model that he, as a zealot, wanted to impose on it.

Ronald Reagan had the political fortune of being supported—even turned into a national figure—by a slew of groups steeped in zealotry. To his credit, he has taken a series of steps that have broken apart that coalition of right-wing groups and isolated them increasingly in a political never-never land.

The most dramatic example of his break with the diehards is his impending nomination of Arizona Judge Sandra Day O'Connor to the Supreme Court—a politically brilliant move that not only added to the isolation of the right, but muted Reagan's growing body of critics on the left.

To the right-wingers, Judge O'Connor had not voted the "true" way against abortion, the Equal Rights Amendment, pornography, family planning, teenage drinking—and in favor of the death penalty.

Most of those charges, on examination, proved false, less than ingenuous or totally lacking in documentation.

The larger point is that very few serious and important conservatives bothered to listen to the zealots' baying. "The country is going to pot economically, militarily and every other way and we spend all our time talking about busing and abortion," complained Sen. Barry (Mr. Conservative) Goldwater of Arizona. In a particularly lovely counter-assault on sickening self-righteousness, Goldwater offered that "every good Christian ought to kick [Rev. Jerry] Falwell right in the ass" for his carping about O'Connor.

**T**HE BLOWUP on the right is just the latest evidence of the fissures that have always been present in American conservatism. Those who call themselves conservatives have been both isolationist and interventionist, in favor of environmental preservation and exploitation, tax-cuttingly experimental and tight-money orthodox, country-club elitist and red-neck populist, and gung ho for unfettered free enterprise and quick to seek government-backed corporate bailouts and other big business protections.

All those groups could bring their disparate spirits into the Reagan camp in 1980 because it was easy to see him as the savior from Jimmy Carter and because Reagan was adept at exploiting their zealotry. They are finding it increasingly hard, though, to reconcile their differences now that the head zealot is in charge of the country.

In some cases Reagan has simply diffused what, just months ago were red-hot political issues. When

was the last time anyone heard a peep from the Taiwan lobby, or those who loathed the "giveaway" of the Panama Canal, or those who thought the Education and Energy Departments were full of meddling socialist regulators?

In other cases, the contradictions have caused the administration real trouble. Interior Secretary James Watt is single-handedly reviving the environmental movement (and the Democratic Party in some areas) with his anything-goes approach to Western land policy and oil drilling off the California coast.

Still, Reagan is presiding over the disintegration of the right-wing zealots' coalition. It was inevitable that he would not measure up to their wacky notions of policy purity, mostly because they need someone to beat up in order to survive. But it is heartening—even amazing—that he has done so this early in the game. After all, it took Dwight Eisenhower a couple of years to isolate himself fully from the McCarthyite fringes of his party in the 1950s.

Reagan might pay a bit of a price for this. In the words of Howard Phillips, the national director of the Conservative Caucus, Reagan's nomination of Judge O'Connor "is a major blow to the political alliance of social and economic conservatives." Phillips and other leaders of so-called pro-family groups say it could threaten votes they had helped him garner for his economic program and might even cost him the support he needs to take control of the House of Representatives next year.

The President ought to give them the back of his hand and say, "Good riddance." He is doing just fine without them.



F: O'Connor  
Appointment

# Religious right mobilizing forces to oppose O'Connor nomination

## Knight-Ridder Wire

The religious right is mobilizing its forces to fight the U.S. Supreme Court nomination of Sandra Day O'Connor, who has been accused by critics of supporting abortion on demand.

O'Connor, 51, an Arizona state senator in 1969-74 and now an Arizona Court of Appeals judge, was nominated by President Reagan July 7 to fill the seat of retiring Supreme Court Justice Potter Stewart. She is the first woman ever to be nominated to the nation's highest court.

A Sept. 3 anti-abortion rally has been scheduled in Dallas by the Religious Roundtable, the same group

that attracted 20,000 Christian fundamentalists here last August for a rally at which then-Republican presidential nominee Ronald Reagan endorsed prayer in public schools and lamented the loss of "that old time religion."

Ed McAteer, director of the Roundtable, said Tuesday that a Scottsdale, Ariz., physician, Dr. Nancy Gerster, will be principal speaker at the Sept. 3 rally.

"Dr. Gerster is a friend of Judge O'Connor and will tell anybody who has ears to hear about how the judge's voting record as an Arizona legislator was completely pro-abortion," McAteer said.

Roundtable and most other conservative and fundamental religious or-

ganizations, including the Moral Majority, are anti-abortion.

Television evangelist Jerry Falwell, head of Moral Majority, Howard Phillips of the Conservative Caucus and Paul Weyrich of the Committee for the Survival of a Free Congress will join Gerster and Phyllis Schlafly on the platform of the Sept. 3 rally, McAteer said.

Reached in her Scottsdale, Ariz., office Tuesday afternoon, Gerster said she has known O'Connor for many years.

"We're both Episcopalians at St. Bartholomew's Church (in Scottsdale) and we take communion at the same altar rail. Our sons were in the same Indian Guides group."



F: O'Connor  
WASH  
STAR

AUG 7 1981

# Supreme Court Nominee Strives to Clear Her Desk

By Lyle Denniston  
Washington Star Staff Writer

With a month to go before her confirmation hearings, Sandra D. O'Connor has not yet had time to work on ways to stay out of trouble with the U.S. Senate when it considers her nomination to the Supreme Court.

The first woman to be nominated to the court said yesterday that she has spent the past four weeks "desperately trying to complete" her unfinished duties as a judge on the Arizona Court of Appeals before preparing herself for Senate hearings.

"Frankly," she said in a telephone interview, "I have been working on matters I had under advisement."

She said her colleagues on the court have been waiting for her to produce draft opinions so that final rulings can be made in cases in which she was assigned the writing task.

Two more opinions and three more "memo decisions" - short-form rulings - must be finished, she indicated, before she can start planning the answers she will give at September hearings before the Senate Judiciary Committee.

The main item of advance preparation is to answer written questions submitted to her by Sen. Jesse Helms, R-N.C. O'Connor said she has not been able to take up that chore yet.

Many of Helms' questions apparently deal with O'Connor's views on abortion. That issue is expected to be the most difficult one for her at the hearings.

A key anti-abortion group, the National Pro-Life Political Action Committee, asked members of the committee yesterday to "demand the truth regardless of partisan political considerations."

Insisting that O'Connor's nomination "could still be rejected," the committee's executive director, Peter B. Gemma Jr., said that "everything depends on the chairman's readiness to hold a thorough hearing and on the courage of pro-lifers in both houses of Congress."

Gemma said that anti-abortion forces "are not appeased by assurances that the nominee . . . is personally opposed to abortion."

So far, no member of the Senate has taken a public position against the nomination, but several have said they have not made up their minds.

Since being chosen July 7 as Reagan's first nominee to the court, O'Connor has spent most of her time in her judicial chambers in Phoenix. She has not been assigned to sit on any new cases but is finishing up old ones, she said.

The first of her last round of rulings as a state judge came out last week, drawing some publicity. An O'Connor opinion upheld the right of a mob syndicate figure, Charles Battaglia, to receive benefits for an injury even while he remains in prison.

He suffered the injury as an iron worker in Tucson in 1977, and the state Court of Appeals ruled that he was entitled to receive workmen's compensation benefits because they are based on the loss of his earnings due to his injury, not to his imprisonment.

O'Connor said she would soon start reviewing the issues she will have to face at Senate hearings. Asked if she would be coached by someone else, she said: "No, I'm working on my own. Not that I wouldn't welcome assistance, but I will be working at my own pace."

She said she had planned to take some vacation, "but it looks like I can't. We have cancelled our plans because there is so much material I need to review and there are so many things to do."

Although thinking mostly about her final acts as a state judge, O'Connor, according to an aide, has given a little thought to one of the first actions she would have to take as a member of the Supreme Court.

That is a decision on whether to hire, as her law clerks, one or more of the three who had been chosen for the court's next term by Justice Potter Stewart before he retired in June. The three are Brian Cartwright, John Dwyer and Deborah Jones, each of whom has clerked for a judge of the U.S. Court of Appeals here.

O'Connor's nomination has not yet been sent formally to the Senate, the White House said yesterday. That may come next week.



## O'Connor Expresses Some Doubt on Rule That Bans Illegally Obtained Evidence

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON—Opponents of the rule that prevents the use of illegally obtained evidence in criminal trials may have an ally in Supreme Court nominee Sandra O'Connor.

Mrs. O'Connor, in the second day of hearings on her nomination, told the Senate Judiciary Committee that she has doubts about the so-called exclusionary rule and also that she is personally in favor of the death penalty and opposed to court-ordered school busing.

The exclusionary rule has been under fire from some quarters, including Chief Justice Warren Burger, Justice William Rehnquist and the Attorney General's Task Force on Violent Crime. Critics charge that application of the rule sometimes requires valuable evidence to be disregarded because of procedural technicalities. Defenders of the rule say it is essential to protect the rights of accused persons.

Drawing on her experience as a trial judge for four years, Mrs. O'Connor said she had seen little problem with the requirement that police officers inform persons of their rights when they are arrested.

But, she said, "the exclusionary rule . . . has proven to be much more difficult in terms of the administration of justice. There are times when perfectly relevant evidence, and indeed sometimes the only evidence in the case," is excluded when it might be usable "if different standards were applied."

"I don't want to be interpreted as suggesting that I think it (the rule) is inappropriate when force or trickery or some other reprehensible conduct has been used," she said in response to questions from the committee. "But I have seen examples of the application of the rule which I thought were unfortunate."

In her answers on the exclusionary rule and on busing and the death penalty, she emphasized that she was expressing personal views that "have no place in the resolution of legal issues." She refrained from commenting on particular cases but rather was expressing her views generally on those issues. Still, her responses shed far more light on her own attitudes than had her comments on the first day of hearings Wednesday.

On the first day, Mrs. O'Connor voiced her opposition to abortion, but her record during four years as a state senator is still likely to draw fire from right-to-life groups scheduled to testify today.

The hearings are filled with reminders that Mrs. O'Connor, once she is confirmed, will be the first woman ever to serve on the Supreme Court. Sen. Joseph Biden (D., Md.) urged Mrs. O'Connor to speak out on issues of importance to women. "I don't want you to wall yourself off, judge," said Mr. Biden. "You are a woman . . . that is something that should be advertised by you."

Some questions from the Senators, too, have called attention to the fact that Mrs. O'Connor is a woman. She responded to Sen. Jeremiah Denton (R, Ala.) that she doesn't believe women should be placed in combat in the military. But she said women as well as men should have the chance to press a button in a missile silo.

Mrs. O'Connor, 51 years old, would succeed Justice Potter Stewart, who retired.



# Abortion Vote Called Mistake By O'Connor

By Fred Barbash  
Washington Post Staff Writer

Supreme Court nominee Sandra D. O'Connor, facing her first day of confirmation hearing questioning, said she made a mistake 11 years ago when she voted in the Arizona legislature to decriminalize abortion.

It was her one important concession, in a day filled with questions about abortion, to the conservatives who have challenged her nomination. But she declined repeatedly to go any further and say how she would rule on that or any other issue on the high court.

She assured the Republican-dominated Senate Judiciary Committee, however, that she believes in a limited role for the federal judiciary in American life.

"I do not believe it is the function of the judiciary to step in and change the law because the times have changed," she said. "I do well understand the difference between legislating and judging.

"As a judge," she said, "it is not my function to develop public policy."

The opening of the O'Connor hearings, as senator after senator noted yesterday, was a historic event: the first time the Senate has ever considered a woman for the Supreme Court. Easy Senate confirmation is expected within the next three weeks.

It was also the first time since her nomination that O'Connor has explained her record and her views publicly, though she began the hearings by telling the senators that it would be improper for her to be too specific in answer to questions about specific issues she might confront on the court.

She did get specific about her actions as an Arizona state senator that have produced the only significant opposition to her nomination. She conceded, as she ap-

parently had not in previous conversations with Reagan administration officials, that she cast a 1970 committee vote (prior to the 1973 Supreme Court ruling legalizing abortion) in favor of decriminalizing abortion. She said she had to consult old newspaper reports to refresh her memory.

"At that time I believed some change in the statute was appropriate," O'Connor said in response to a question from Judiciary Chairman Strom Thurmond (R-S.C.).

"I would say that my own knowledge and

awareness of the issues and concerns have increased since those days," she said. "It was not the subject of a great deal of public attention or concern at the time.

"I would not have voted, I think, Mr. Chairman, for a simple repealer thereafter." The bill failed in the Arizona Legislature.

She defended her position on other votes challenged by the anti-abortion lobby. A family planning bill she co-sponsored, she said, was designed to provide contraception, not abortion, to Arizonans.

She voted against a 1974 legislative resolution supporting an anti-abortion amendment to the U.S. Constitution because "I was not sure at that time we had given it a proper amount of reflection."

And she opposed a rider to an appropriations bill barring abortions at a University of Arizona hospital in 1974 because she thought a rider was a procedural violation of the state's constitution.

She did vote, she said, to restrict abortion funding for poor people in Arizona, though ultimately the state decided to avoid Medicaid entirely.

O'Connor said she has an "abhorrence of abortion. It is a practice in which I would not have engaged. I'm sensitive to other views, but this comes from my own upbringing . . . my sense of how I should lead my own life. It's just an outgrowth of what I am."

But "my personal views and beliefs have no place in the resolution of any issue," she told Sen. John P. East (R-N.C.), who was pressing her the hardest on the issue. And she declined to express her views on the Supreme Court's 1973 ruling or even hint at how she might rule on future abortion issues.

She did make a point, at the beginning of the hearing, to introduce her husband and three sons, and endorse marriage and the family as "mankind's basic unit of society, the hope of the world and the strength of our country . . . ."

That reluctance to comment, traditional for Supreme Court nominees, dominated all her responses to substantive issues. In response to questions about school busing, she simply recited

the history of Supreme Court rulings. Asked for her views on proposals to strip the court of jurisdiction, she said "there were many views" about it.

She was questioned closely about a law review article she recently wrote suggesting that the nation's most used civil rights law, the Civil Rights Act of 1871, was being overused. She said she had not meant to suggest that victims of constitutional violations should be denied access to the courts, just that the state courts, as opposed to the federal courts, could handle more of these complaints.

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On discrimination against women, O'Connor had more to say. "I don't know that I've experienced much of it," she said. "My only disappointment came when I graduated [from Stanford Law School near the top of her class] and I was not successful in finding employment with any of the major firms."

Discrimination against women, particularly disparities in pay, "has always been a matter of concern," she said.

"How do you want to be remembered?" Sen. Max Baucus (D-Mont) asked her.

"Here lies a good judge," O'Connor responded. "But I'm sure I would be remembered as the first woman" on the Supreme Court.

Her testimony is to continue today.

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# Judge O'Connor—Skilled in the High Art of Not Giving Offense

For a historical figure, Judge Sandra O'Connor is an unpretentious sort.

She has bright hazel eyes, brown-gray hair, a metallic western voice. While the members of the Senate Judiciary Committee ransacked their minds for adjectives sufficient to the occasion of nominally at least passing judgment on the first woman to be nominated to the Supreme Court, she sat with her ankles neatly crossed, gravely heeding each speaker with composed attention.

She is an achieving woman without an edge. She is good-looking without being alienatingly beautiful and bright without being alarmingly intellectual.

Like the man who chose her, Ronald Reagan, she knows the high art of not giving unnecessary offense. Whenever she could, she discoursed on the importance of the separation of powers and the relationship of the states to the federal government, two safe subjects about which she plainly hoped the committee would feel she has the deepest convictions.

She must have convinced even the most dubious conservatives that she is conservative by nature if not in judicial philosophy, of which she disclosed nothing during what one senator ceremoniously called her "ordeal."

The flavor of the proceedings is better conveyed by the fact that two senators during the flowery morning suggested to her that in view of her record and the breathtaking breadth of her support—it goes from Goldwater to Kennedy, from pussycats to

militant feminists—that the White House is not beyond her grasp.

Almost two hours of the opening session were devoted to expressions of support. Only one shot was fired over the bow.

Sen. Jeremiah Denton, having first called her "a lady" in forbidden feminist parlance, praised the president for naming her, announced that he liked her, and invited her to say that she might have changed her views about abortion.

"You could still be changing your mind on this issue," he said.

And the question that formed in the hearing room and hung over it while the

judge politely fenced and parried was whether she has or she hasn't.

When she finished her brief opening statement, she deferentially sought Chairman Strom Thurmond's permission to give her real answer to the fuming Moral Majority. She introduced her "close" family with as much flourish as so disciplined a character would grant herself: her "dear" husband, John, and their three grown sons, one of whom she hopes, she said ruefully, will give up sky diving. The O'Connors will celebrate their 29th wedding anniversary in December. The nominee spoke of families

"as the hope of the world" and, in the only view she volunteered at her debut, of their importance to our nation and our life.

But hers, in the minds of the pro-life groups, is a single-issue nomination. Her four votes as an Arizona legislator on aspects of abortion brought a small demonstration to the sidewalk outside the Dirksen Office Building. The pickets carried signs saying "O'Connor, a poor choice" and wore "No O'Connor" buttons. Mostly middle-aged or older women, they were a remnant of the phantom legions who screamed at her selection and have fallen almost silent—faded under the fulminations of such right-wing stalwarts as Barry Goldwater.

They know as well as Jerry Falwell that there is no stopping the judge. If anything happened to O'Connor on her way to the Supreme Court, the women of America would storm the Senate Judiciary Committee and trash it. So the marchers' mood was relatively mild. One plump nun, cheerily chanting "life, yes, O'Connor no" seemed happy just to be out in the bright September sun. Behind her an elderly gentleman was playing "America the Beautiful" on a trumpet. He appeared to be enjoying the opportunity to display his talent, which may not be entirely in demand, since he was slightly off key.

O'Connor knew, of course, that when the last superlative had been decanted, she would have to face the music. When Chairman Thurmond mentioned "abortion," she nodded briefly and glanced over at Denton. "Very well," she said resignedly and

launched into a description of the circumstances under which, in 1970, she had voted to repeal Arizona's anti-abortion statute.

It was a long time ago, she said, and besides, the measure died in caucus. She is personally opposed to abortion, "as a means of birth control or otherwise." The law at the time was so severe that a person aiding in the abortion of a rape victim was subject to criminal penalties.

But since then, she said, her own knowledge and awareness on the question has increased. "Thereafter," she said cryptically, "I would not have voted for simple repeal."

During the lunch break, Sen. Arlen Specter, who was set upon by a band of pro-lifers in the corridor, attempted to interpret her sibylline utterance. But since he mistakenly thought she was talking about another controversial vote—a negative for an anti-abortion constitutional amendment in 1974—his intervention was not particularly useful.

After lunch, Sen. Edward M. Kennedy tried, with no better results. Again, Her Honor referred vaguely to the increase in her knowledge and awareness over the past 10 years. When Kennedy asked her if the important thing was a change of views or broadened information, she said cryptically, "the latter."

The fact is that the public has already rendered a verdict on Sandra O'Connor. They agree with the politicians, who believe that Ronald Reagan had his finest hour when he chose her. No single issue can block her way to history and the high court.

Mary McGroary

CAUTIOUS



# New Right Loses on Judge but Gains

Special to The New York Times

WASHINGTON, Sept. 16 — The cries of outrage and betrayal with which the religious right greeted the nomination of Sandra Day O'Connor to the Supreme Court 10 weeks ago had turned to whimpers by the time the television lights were shut off yesterday in the Senate Judiciary Committee hearing room.

The committee, which includes several stalwarts of the new right among its 18 members, did not produce a single vote against Judge O'Connor. The Rev. Jerry Falwell, the leader of Moral Majority, initially labeled the nomination a "disaster" because of Judge O'Connor's less than implacable opposition to abortion. But he kept his distance from the hearings and spent the day of the committee vote responding to some scathing criticism by that dean of the old right, Senator Barry Goldwater.

So quickly did the threatened battle over the nomination wither, that it might be tempting to declare the entire episode a strategic disaster for the new right.

But those who would most like that assessment to be true, politicians of both parties who have watched with unease the ascent of the fundamentalist and anti-abortion lobbies, caution that it is premature to conclude that they are in disarray.

## Serious Derailment Effort

The effort to derail the confirmation was a serious one. Richard A. Viguerie, the conservative political consultant, started publishing a newsletter called "The O'Connor Report" as a forum for critics of the nomination, and Senate offices reported a heavy

volume of negative mail. Its failure was undoubtedly a setback.

Rather than weakening the religious right for the ideological battles that lie ahead in this session of Congress, however, the lasting political effect of the O'Connor confirmation may be to raise the stakes for those battles.

Any Supreme Court nomination is special, and President Reagan's nomination of Sandra Day O'Connor was so special as to all but doom any opposition that was not based on the discovery of personal or political scandal.

President Reagan is popular, and polls showed that the idea of naming a woman to the Court was popular. Unlike the Democratic-led Senate that turned down two of Richard M. Nixon's Supreme Court nominees, the Senate in 1981 is controlled by the party that controls the White House.

## Final Stamp of Failure

Even those members of the Judiciary Committee with the closest ties to the new right and the strongest personal doubts about the nomination refused to commit themselves to the opposition camp before last week's confirmation hearings. It was those hearings that put the final stamp of failure on the stop-O'Connor effort.

Well prepared and completely in control, Judge O'Connor presented herself as what those who know her say she is: a mainstream Republican with conservative ideas about criminal justice, family values and the role of the Federal courts. By the time the first day was over, it was apparent that, by any reasonable measure, the Republicans had in Sandra Day O'Connor an ideal judicial nominee.

By the time Judge O'Connor's place

on the witness stand was taken by the outside witnesses who had been invited to testify for and against the nomination, the opposition had come to appear shrill or, more devastating, irrelevant.

During the last few hours of the day set aside for the outside witnesses, only Senator Thurmond remained at the hearing, his thin, lined face impassive as emotional speeches about the rights of the "unborn" were read into the hearing record.

It was an anticlimactic and unceremonious end to the stop-O'Connor effort. But the current session of Congress is far from over. The new right's legislative agenda of "social issues" — abortion, busing, school prayer,

## New Zeal

curbing the jurisdiction of the Federal courts — lies ahead, and in the wake of the Judiciary Committee vote, new right spokesmen said they felt not weakened but strengthened in their resolve to collect on campaign promises.

The confirmation process "took the scales off our people's eyes," Howard Phillips of the Conservative Caucus said in an interview today. He said the episode had taught the new right that neither the President nor the Republican Party can be taken on faith as allies, but must demonstrate that they are entitled to continued support.

Conservative Senators who deserted the cause on the O'Connor confirmation, Mr. Phillips said, will be hard-pressed to redeem themselves on the legislative issues in time to avert substantial defections by the "demoralized and dispirited" new right voters.

## Credibility of Threat

For that threat to be credible, it must be assumed that large numbers of those voters do in fact equate a "yes" vote on Sandra O'Connor with desertion on the substantive components of the agenda, an assumption for which there is no concrete evidence.

Nonetheless, the special factors that doomed the O'Connor opposition are in large part absent from the coming legislative efforts. There is no problem of disloyalty to the President; in fact, Mr. Reagan is personally sympathetic to much of the social agenda.

While a single-issue emphasis might seem inappropriate in a judicial confirmation, single issues are what legislation is about, especially when there are fences to mend and disaffected friends to placate. The taste of defeat has clearly given the new right a renewed taste for battle.



# O'Connor Confirmed as First Woman on Supreme Court

By Fred Barbash  
Washington Post Staff Writer

The Senate confirmed Sandra D. O'Connor as the first woman U.S. Supreme Court justice yesterday by a vote of 99 to 0.

O'Connor will be sworn in Friday as the 102nd justice of the court. At 51, she will be the youngest member of a court now dominated by men in their late 60s and early 70s, a court assembled by six different presidents: Eisenhower, Kennedy, Johnson, Nixon, Ford and now, Ronald Reagan.

The historic Senate action came early yesterday evening without real debate. Only one senator, Max Baucus (D-Mont.), did not

vote. Baucus has been a strong supporter of the nomination but was in Montana when the roll call was taken. The only issue of the day was which senator could sing the highest, longest and most effusive praises for O'Connor and President Reagan.

And thus what began in July as one of the president's most controversial decisions ended as one of his least difficult encounters with Congress.

Some suspense had remained about whether a few senators might cast negative votes or abstain because of opposition to O'Connor from antiabortion forces.

But even that doubt was swept away by

O'Connor's performance in confirmation hearings, lobbying by Reagan and an increasingly evident desire among a few undecided to avoid spoiling the party.

"Some colleagues said I'd be laughed out of the Senate if I voted against her," Sen. Jeremiah Denton (R-Ala.) said in an interview before casting his vote for confirmation. Denton, a staunch antiabortion senator who abstained from a unanimous Judiciary Committee vote last week, described his "agonizing" over the vote. "I kept wondering, what would the president think of me, what would my colleagues think of me. I was worried about my effectiveness on other issues."

Another conservative, Sen. Jesse Helms (R-N.C.), had also carefully left his vote in doubt until the last minute. He rose on the floor yesterday and announced that he would vote for confirmation "because I have faith in the president."

Six hours before the vote yesterday, Judiciary Committee Chairman Strom Thurmond (R-S.C.), beaming with pride at having steered the nomination so cleanly through the Senate, strode into the Senate gallery press room.

"I do not believe there will be a single vote" against the nomination, he announced. "The people of this country want a woman

on the Supreme Court and this nomination is highly satisfactory to the public."

After the vote, O'Connor appeared on the Capitol steps with Vice President Bush to thank the Senate. "I'm absolutely overjoyed," she said. "My hope is that 10 years from now, after I've been across the street and worked for a while, that they'll all feel glad they gave me this wonderful vote."

The lack of controversy was apparent from the moment debate began. Only two or three senators were present during most of the speechmaking.

On the floor liberals, conservatives and

the unlabeled took turns praising the president for his choice and O'Connor for her worthiness. Sen. Paula Hawkins (R-Fla.) noted with pleasure that no one had criticized the nomination on the grounds that O'Connor was a woman. The speeches were becoming repetitious until Helms rose to address the sparsely attended session yesterday morning.

"Mrs. O'Connor, Madame Justice O'Connor, as she will shortly become, has been chosen as a symbol of an important reality in the United States today," Helms said.

"Uncertainty yet exists to some degree" about her stand on abortion, he said. "But I will vote for Mrs. O'Connor because I have faith in the president of the United States and faith that she would not allow the president to be misled" on the abortion question.

"When the president nominated her, I visited him that morning and he assured me that Mrs. O'Connor shares his beliefs on abortion . . . . My faith in Ronald Reagan's words and my respect for Mrs. O'Connor as a person" dictate a yes vote, Helms said.

Staff writer Bill Peterson contributed to this article.