

South Dakota Newspapers, #66
Dave Bordewyk, Ann Volin
"We the People"
December 6, 2024

Justice O'Connor, A Personal Reminiscence: "You Mean
Sheroes?"

David Adler

I had the great privilege and pleasure, twice, to interview Justice Sandra Day O'Connor on stage at a conference on women and leadership that I organized and hosted.

I asked about her heroes. She replied, "You mean, sheroes?" Her answer, a playful and deserving rebuke to my pitiful bias (long since corrected, by the way), reflected the life and career of a trail-blazing woman who had endured waves of gender discrimination, but somehow summoned the fortitude to persevere and triumph, ultimately carving out a judicial legacy that will command respect for years to come.

Justice O'Connor, who died on December 1, 2023, was the first woman appointed to the Supreme Court. On July 7, 1981, President Ronald Reagan nominated O'Connor to the Court, which fulfilled his campaign promise to appoint a woman to the High Bench. Justice O'Connor served on the Court from September 25, 1981, to July 1, 2006, when she retired to care for ailing husband, John, who suffered from dementia.

In our two, one-hour interviews—2013 and 2014—Justice O'Connor was refreshingly candid, humorous, witty and playful. She acknowledged, perhaps for the first time publicly, that the Court had probably been mistaken in ruling on the case of *Bush v. Gore*, which settled the long, contentious presidential election of 2000, and by a 5-4 majority, seated George W. Bush in

the White House. The Court's ruling halted the recount of the popular vote in Florida that had been authorized by the state Supreme Court. The recount may not have enabled Vice-President Al Gore to overcome Bush's 537 vote advantage, but we will never know. If Gore had won Florida, he would have captured the presidency.

For reasons of modesty and discretion, Justice O'Connor was not willing to accept the scholarly acclaim that she wielded the controlling "swing vote" and, therefore, the High Bench should be known as "The O'Connor Court." Madam Justice could count votes, of course, and she had deep experience in such matters, dating back to her days as Senate Majority Leader in Arizona, but she shunned claims of leadership on the Court, which was led by Chief Justice William Rehnquist.

O'Connor and Rehnquist had enjoyed a long friendship, stretching back to their days at the Stanford Law School. They dated, briefly, but she married another classmate, John O'Connor. Rehnquist graduated at the top of their class; O'Connor was second. Upon graduation, Rehnquist received numerous job offers, befitting a top student at a top law school. O'Connor, on the other hand, didn't receive a single offer because, as she explained it, law firms were not hiring women in 1952. In a year's time, she took a position at a law firm but wasn't paid for her work—which meant, I suggested grimly, that it was more a hobby than a job.

Justice O'Connor was proud of her record on the Court, and justly so. She was a pragmatist who cared deeply about the impact of the rulings on the citizenry. We discussed several of her many noteworthy opinions. In 1992, she authored the Court's opinion in *Planned Parenthood v. Casey*, which upheld the essence of *Roe v. Wade*, and introduced the "undue burden" test, which governed state regulation of the right to

abortion. She spoke about the importance of separation of church and state, affirmative action and enforcing limitations on presidential power.

In our final time together, at the end of the conference in 2014, we repaired to a benefactor's beautiful home, located on a wooded lot, which, late that afternoon, attracted a small herd of elk. We sat in the den, enjoying a fire, fine wine and a delicious and generous platter of fruit and cheese. Our time together and a wide-ranging conversation with an iconic Supreme Court Justice was heady brew for a professor of constitutional law. We touched on the work of the Court, how it had changed since her arrival, and various decisions and approaches to interpreting the Constitution.

Well into our conversation, I told Madam Justice that I was planning to write two or three law review articles about her work on the Court and influence on American law. She flattered me greatly when she stated: "No, you will write them with me." I was nearly speechless, but in trying to maintain some equilibrium, managed to utter, "That's wonderful, I'll call your clerk to discuss it." She replied, "No, you'll call me." It wasn't long after that conversation that Justice O'Connor's health began to deteriorate. Dementia would claim her. Sadly, for me, we never had the chance to co-author law review articles.

The afternoon faded into the early evening. The elk had left the grounds. The fire had been replenished. There remained plenty of wine and the platter of fruit and cheese, but who had room to eat more of it? Justice O'Connor, in a voice that you've all encountered, in circumstances that you've all experienced, said to me, "Take that away." I chuckled but didn't move. A few seconds later, the first woman appointed to the Supreme Court looked at me and, in a tone that left no doubt that her words represented a

command from on high, declared, "I said, take it away!"
I did, of course, and immediately. Wouldn't you have?

---30---