

Former Clerks Say Justice O'Connor Still Worth Emulating

By Ryan Boysen

Law360 (December 1, 2023, 8:19 PM EST) -- BigLaw attorneys mentored by former U.S. Supreme Court Justice Sandra Day O'Connor, who died Friday after a lengthy battle with dementia, say she'll be remembered as an incisive jurist who always put facts and practical considerations above abstract ideological commitments, as well as a deeply gracious and down-to-earth woman who never let her dedication to the law overshadow her zest for life.

Several attorneys who clerked for Justice O'Connor before she retired in 2006 told Law360 Pulse she was a larger-than-life figure even by the standards of Washington, D.C., high society. Simultaneously warm and self-deprecating, and deeply interested in people, she was also a ferocious workhorse who was keenly aware of the need to lead by example as the nation's first female Supreme Court justice. Her passing was announced Friday by the Supreme Court.

"I think now, with the benefit of hindsight, we can say that her brand of narrow, fact-based decision making was the right way to go," said former clerk Charles A. Blanchard, now a partner at Arnold & Porter Kaye Scholer LLP who previously served as general counsel of both the U.S. Air Force and U.S. Army.

"The chaos that's been created by the current Supreme Court is the result of an approach that has less respect for precedent, and is more inclined to rush towards grand pronouncements," Blanchard added. "I hope that someday we return to the way Justice O'Connor did things."

Justice O'Connor grew up on a ranch in Arizona, riding horses, fixing things by hand and shooting game.

"She was raised in a very practical way," said Sambhav Sankar, who clerked for Justice O'Connor and is now a senior vice president at Earthjustice, an environmental law organization.

"She was somebody who came to have enormous power over people's lives, but never really sought it out," Sankar added. "She never believed she was destined for this, and she had an enormously humble view of her role on the court, and the court's proper role in society."

Sankar and others said Justice O'Connor would regularly joke that she ended up on the Supreme Court simply by being "in the right place at the right time."

Then-President Ronald Reagan pledged during his campaign to put a female justice on the Supreme Court, and he owed a favor to Barry Goldwater, the Arizona senator whose unsuccessful 1964

presidential run nonetheless laid the groundwork for the stridently conservative approach that would win Reagan the White House in 1980.

As the former Republican Majority Leader in the Arizona Senate, Justice O'Connor was well-acquainted with Goldwater and was serving on a midlevel Arizona court of appeals when Reagan became president. Then things seemed to fall into place. Just a year later, she became the newest justice on the Supreme Court.

Despite her conservative bona fides, however, as a jurist, Justice O'Connor was anything but an ideologue. She always put great importance on knowing the facts and understanding the impact of a given ruling in the real world, an approach many ascribe to her upbringing and years as a legislator, both experiences that set her apart from her fellow justices.

That made her a true swing vote on the closely divided Supreme Court, which for most of Justice O'Connor's tenure was helmed by then-Chief Justice William Rehnquist, a former Stanford Law School classmate. However, she wasn't any less rigorous in her legal analysis. She just came at things from a different perspective than her colleagues.

"I think some people have interpreted her practicality as meaning that she wasn't as intellectual as the other justices," said former clerk Carolyn Frantz, now a co-head of Orrick Herrington & Sutcliffe LLP's public companies practice. "That's not true. She was incredibly bright."

"This was a deliberate legal philosophy that she held: In order to understand what the right legal conclusion is, you need to understand its ultimate impact on the world," Frantz added. "I think that gets lost about her. As a former legislator, she was an expert on how laws impact institutions and human behavior."

Crystal Nix-Hines, a former Justice O'Connor clerk who's now a partner at Quinn Emanuel Urquhart & Sullivan LLP and co-chairs the firm's crisis law and strategy group, echoed that sentiment. In fact, she said, it was Justice O'Connor's intense desire to brush past legal arcana and drill down on specifics that led to her intimidating reputation for rapid-fire questioning.

"She was never shy about breaking the ice and getting to the bottom of things," Nix-Hines said. "She didn't like long-winded answers and memos."

Justice O'Connor was a notoriously hard worker, and she demanded a lot from her law clerks — an expectation that was no less real even though it was never quite explicitly vocalized.

However, she took a holistic approach to mentoring and always took her clerks out of chambers for regular field trips around Washington, D.C. No matter how heavy the workload, she never let them forget that life was about more than just the law.

"Even if we had a cert pool deadline the next day that would affect the entire Supreme Court, that was not considered an acceptable excuse for missing a field trip," said former clerk Stan Panikowski, now a partner at DLA Piper who co-chairs the firm's appellate practice.

"It would simply be a silent indictment of our failure to get the work done early," he added.

Michael A. Scodro, a former clerk who's now a partner in Mayer Brown LLP's appellate practice, said

these qualities enriched the lives of all the attorneys who came up under Justice O'Connor.

"She took her role as a mentor in all respects very seriously," he said. "Most people only know her in terms of her jurisprudence or her approach to oral argument, but she was also extraordinarily personable who deeply cared about her clerks."

Every former clerk who spoke with Law360 Pulse had a similar story. Justice O'Connor would go out of her way to set up single clerks with dates and was always genuinely interested in celebrating milestones like the birth of a child or commiserating over tragedies like the death of a friend.

She also had a wicked sense of humor — so much so that many of her former clerks were unwilling to give examples.

"All I can say is that she had some clerks who were extremely buttoned up, and I think some of the things she'd do and say really shocked them," said Susan Creighton, who now leads Wilson Sonsini Goodrich & Rosati PC's antitrust and competition practice.

Sankar, the Earthjustice attorney, said the same.

At the end of every Supreme Court term, all of the clerks gather to perform skits where they mock the justices. Some justices are less fond of the annual tradition than others, but Justice O'Connor would never miss it.

One year, everyone else was too afraid to play Justice O'Connor, so Sankar grabbed an old wig she had lying around and did it himself.

"Do you have any idea how terrifying that is?" he said. His fear turned out to be misplaced.

"She thought it was hilarious, she loved it," he said.

Despite not taking herself too seriously at times, when she wanted to, Justice O'Connor could convey a sense of gravitas that left those around her stunned.

"She wasn't taken with herself, but she was also never afraid to be Justice Sandra Day O'Connor," Sankar said. "It was this marvelous, sphinxlike attitude she had. She knew exactly who she was."

--Editing by Jay Jackson Jr.