

O'Connor's nomination paved by other women judges

By Pamela Warrick
Chicago Sun-Times

Before the U.S. Supreme Court became an equal opportunity employer, there was Florence Allen.

When she was 7 years old, her father said, "If Florence were a boy, I'd make her into a lawyer." When she was grown, three U.S. presidents said that if Florence were a man, she'd be a Supreme Court Justice.

Florence Ellinwood Allen. Published poet. Concert pianist. First

woman to pronounce the death sentence. First woman judge on the U.S. Court of Appeals, and for three decades, best bet to become the first female on the nation's highest bench.

Two weeks ago, President Reagan nominated Sandra D. O'Connor for that honor and Florence Allen, who died in 1966, would have been as pleased as all the other women jurists who have struggled for the day a woman would get invited to join Washington's most exclusive male club.

When Reagan chose O'Connor, a 51-year-old Arizona Appellate Court justice, to sit with those who "leave their footprints on the sands of time," the president fulfilled a campaign pledge to nominate a woman to the Supreme Court.

The historic value of the move was not lost on this president who, despite his opposition to the Equal Rights Amendment, cheerfully praised O'Connor as the equal of "the 101 'brethren' who have preceded her."

Between Allen and O'Connor, there have been at least a dozen women judges publicly mentioned for justice jobs. But few of them have even come close to a seat on the big bench.

Most legal scholars agree that Allen, who was seriously considered for the Supreme Court by Presidents Franklin D. Roosevelt, Harry S. Truman and Dwight D. Eisenhower, was highly qualified for the post. What kept her — and many of those who came after her — from becoming a justice was simply her sex.

"I don't think any woman — even if were the Lord's mother — could have passed muster in the male-dominated system of the times," said federal Appeals Judge Joan Dempsey Klein, president of the National Association of Women Judges.

But the women didn't give up, although many of their sponsors did. In 1967, University of Chicago law professor Soia Mentschikoff was the front-runner among women being talked about for a Supreme Court job by then President Lyndon B. Johnson.

Although she was a quiet feminist who lived for years in the professional shadow of her lawyer husband, Karl Llewellyn, Mentschikoff once cynically compared the court system to marriage.

"Minor decisions are peculiarly the man's," she said, "... where to live, for instance. Others are the wives' decisions, the big ones, like what draperies to hang."

Mentschikoff, who was the first woman to teach at Harvard Law

School, was mentioned again as a possible candidate for the court in the 1970s, but it was another woman — Mildred Loree Lillie — who came closest to getting the nod.

In 1971, Richard M. Nixon quietly asked the American Bar Association to put its imprimatur on his proposed nomination of Lillie, now a federal judge in Los Angeles. The all-male panel voted 11 to 1 to make her the first female nominee to be turned down.

Lillie's critics said her record of reversals by higher courts made her unqualified for the job. But Nixon, searching for his niche in feminist history, cried "sexism" and replaced her name with that of a conservative white male.

But while she was still a viable candidate, the *New York Times* printed a profile of Lillie that put one of her "credentials" in the context of the times: "Though in her mid-50s," said the *Times*, "(Lillie) still has a bathing beauty figure."

Another of the leading candidates for a Supreme Court seat was Sarah

T. Hughes, the Texas judge who was presiding over trials even before Texas allowed women to sit on juries.

Hughes first came to the nation's attention when she was drafted to swear in Lyndon B. Johnson as president aboard Air Force One when John F. Kennedy was assassinated in 1963.

Often described in the press as "straightforward" but "diminutive," Hughes was an outspoken advocate of women's rights. During the Cold War, she called for women to be drafted as well as men. "War," she said, "is total."

A number of organizations at various times suggested her for a vice presidential nomination. While Hughes responded by saying she was "not so naive as to think there could be a woman vice president," she did not attempt to block her nomination.

As she told the Texas delegation at one presidential convention, "I have someone to second my nomination, but I don't have anyone to nominate me. It's in your hands."

And that's as far as it went.

SCOTTSDALE DAILY PROGRESS

JUL 22 1981

MAR JON

Skelly is rare for his honesty

Editor: Re: Rep. Jim Skelly.

I have not always agreed with Jim Skelly, but I have always known exactly where he stands on issues. Because of his honesty with the people, he is refreshing and a rarity in politics today.

It is good to know that one man in politics will not compromise his principles for the sake of political expediency or big business.

ANN HERZER
Paradise Valley

PRESCOTT COURIER
PRESCOTT, ARIZ.
JUL 23 1981

Viguerie rallies anti-O'Connor forces

WASHINGTON (AP) — Conservative Richard Viguerie says his direct-mail organization is working nearly "around the clock" to block Sandra D. O'Connor's nomination as a Supreme Court justice.

But with Senate confirmation hearings scheduled to start Sept. 8, Viguerie hints that it's the principle — not necessarily a victory — that counts.

"The only way we're going to lose this is if we fail to fight the fight," Viguerie said Wednesday.

The White House would view the conservatives as "paper tigers" if they did not mount their opposition,

he said, adding, "It's a battle that has to be waged."

Senate leaders from both parties have predicted the 51-year-old Arizona appeals court judge will win easy confirmation, despite conservatives' claims that she supports abortion and the Equal Rights Amendment.

Viguerie refused to predict whether the coalition's efforts would succeed.

He said the fight against the nomination would be aimed at reminding President Reagan of the conservative coalition that helped elect him last fall. He charged that the White House staff has not been considering the grass-roots support

that Reagan received — particularly when it came to the Supreme Court nomination.

"We are working around the clock, almost, to generate support," for the opposition to Mrs. O'Connor, Viguerie said. "These senators have to be shown there is grass-roots support."

"We're going to have some big events before the nomination takes place," he said, adding that the opposition to Mrs. O'Connor would come in letters, rallies and other protests.

"So far she's ducked the opportunity" to say publicly that she has changed her stance and now opposes abortion, he added.

Viguerie predicted that by the time the Senate returns from its August recess and starts to consider Mrs. O'Connor's nomination, the conservatives may be able to prove there is strong constituent opposition to her.

The Senate Judiciary Committee plans to open hearings on the nomination on Sept. 8, Sen. Dennis DeConcini's office said Wednesday.

Bob Maynes, spokesman for the Arizona Democrat, said DeConcini called Mrs. O'Connor to inform her the hearings will be held Sept. 8, 9 and 10 after Congress returns from its August recess.

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Direct mail giant fights O'Connor

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Judge O'Connor — Another Glorified 'Gofer'?

BY BOB GREENE

There's the potential for trouble when Judge Sandra Day O'Connor of Arizona actually joins the Supreme Court. It has to do with a tradition as old as the Supreme Court itself. And it wouldn't make any difference if she weren't a woman.

When the justices of the Supreme Court meet to deliberate, no one else is allowed in the room. This is how it has been down through the years, and this is how the justices like it.

But since there are no secretaries or assistants, any menial tasks that come up during deliberations have to be done by one or another of the justices. And, traditionally, the junior justice has been the "gofer" — the one who does the annoying dirty work.

It's part of the fraternity atmosphere of the Court. When you're the new boy you do the menial work, and then when another spot opens up, you get to have the menial work done for you. It's always been that way.

Except now we are about to have the first woman justice, and — feminist sensitivities being what they are — the other justices are going to have to decide what it will look like to have Sandra O'Connor as the "gofer."

It's not all that terrible; O'Connor is not going to have to scrub the floor or do the other justices' laundry.

But if tradition prevails, the first woman on the Court will have to:

- Get up to open the door of the deliberations room any time someone knocks.
- Take messages for the other justices.
- Take orders for coffee and snacks, and relay them to a person waiting outside.
- Go out into the hallway to relay orders from the other justices.
- Write down what books and reference materials the other justices need and then go make sure the library sends them along.
- Plan the Court's annual Christmas party.

Since 1975, Justice John Paul Stevens has had all of these duties, and no one has made all that big a deal about it. But Court-watchers feel that the justices may be a little nervous about what it's going to look like when the tasks are turned over to O'Connor.

Scott Armstrong, co-author of "The Brethren," the ground-breaking book about the Court, said that the duties of the junior justice used to be even more demeaning.

"There was a time when the junior justice actually had to serve the coffee to the others, to carry the

crumpets in and out of the room, to actually butter the bread for the other justices. I'm not kidding — the coffee and bread would be on a sideboard, and it would be the duty of the junior justice to do the buttering.

"But when Thurgood Marshall joined the Court, there was kind of an unspoken realization that it would not look good to have a black man doing those kind of things for the white justices."

Armstrong said he hears that the male justices are already thinking how to make O'Connor comfortable.

"Burger is essentially a chauvinist, but his chauvinism manifests itself in the way that he won't want her to do anything for him. You know, he'll err by opening doors for her, not by demanding that she do things for him."

"If I were going to write a script for the first conference, I would guess that Justice (William) Rehnquist will break the ice by making a few easygoing jokes, making it clear that he knows she won't expect any special treatment."

"And of course, if she's smart, she'll let them know that she doesn't want special treatment. She'll make it clear that she recognizes the traditions of the Court, that she knows she's the junior justice and that she doesn't expect to be treated any differently than other junior justices have in the past."

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'New Right' Fund-Raiser Declares War on O'Connor

Washington

A major conservative fund-raiser vowed yesterday to enter the fray to keep Sandra O'Connor from winning Senate confirmation as a Supreme Court justice.

The declaration by direct-mail wizard Richard Viguerie came as fundamentalist opponents to O'Connor opened a new First Amendment front and other foes of the Arizona judge continued to attack her record on abortion.

Fundamentalist preacher Carl McIntire, singling out O'Connor's views on the rights of religious broadcasters and church ownership of property, said, "We believe, in the area of First Amendment rights, she's very dangerous."

And Viguerie served notice, while speaking to the Washington

Press Club, of an all-out battle to convince members of the Senate to vote against the selection.

"These senators have to be shown a tremendous outpouring at the grass roots level" before they will oppose O'Connor, said Viguerie, who has raised millions of dollars for conservative candidates and causes across the nation.

He refused to say specifically what kind of campaign is being organized, saying only: "We're going to have some big events in a very public way dealing with some of these religious leaders."

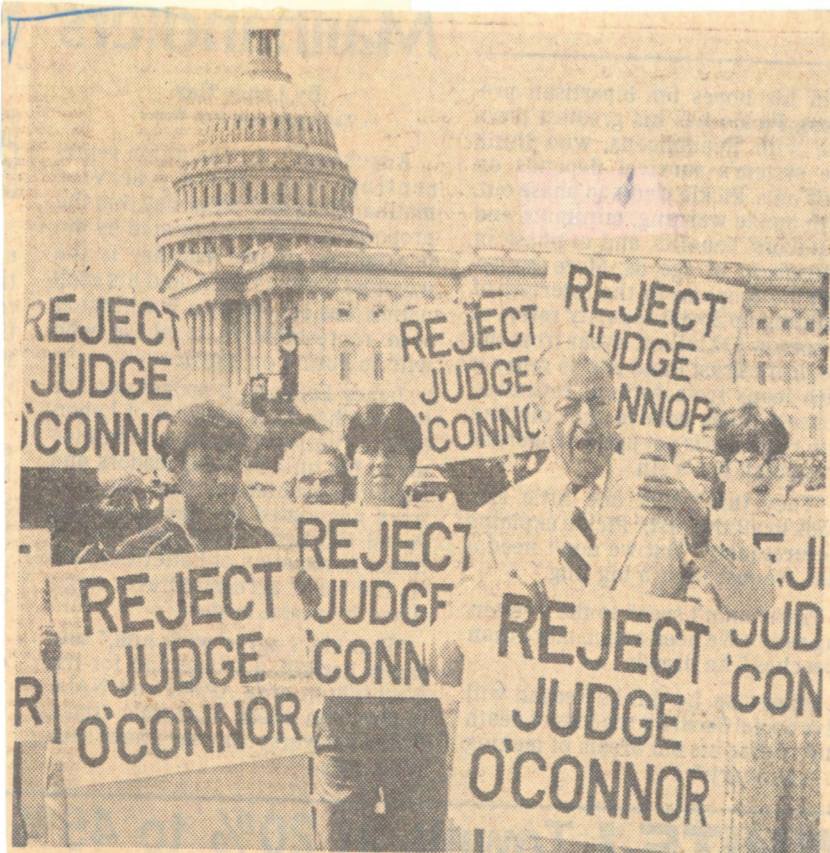
Viguerie said the New Right — an informal coalition united by ultraconservative views on both social and economic issues — has to wage a battle against O'Connor's record on the abortion issue, or else the White House "will just think we are a paper tiger."

McIntire, who described Reagan's choice as "a dark and sad day for fundamentalism in our churches," marched with about 20 demonstrators outside the Supreme Court and in front of Senate offices. One carried a sign saying, "Get a Judge Who Doesn't Fudge."

But a White House aide repeated the administration's belief she will be confirmed — perhaps unanimously. The aide said the FBI will soon complete its check on O'Connor, and her nomination for the lifetime post may be sent to the Senate next week.

Senate Judiciary Committee confirmation hearings are tentatively set for September 8 to 10, and committee aides hope the panel will vote on the nomination by September 15.

United Press



McIntire Opposes O'Connor Nomination

Dr. Carl McIntire, president of the International Council of Christian Churches (right), leads a protest yesterday on Capitol Hill against the nomination of Judge Sandra D. O'Connor to the Supreme Court.