

SANDRA DAY  
O'CONNOR

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*How the First Woman on the Supreme Court  
Became Its Most Influential Justice*

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JOAN BISKUPIC

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## PROLOGUE

As Sandra Day O'Connor celebrated her 51st birthday in suburban Phoenix on Thursday, March 26, 1981, Supreme Court Justice Potter Stewart and Attorney General William French Smith spoke confidentially in the solarium of Stewart's home in the lush Palisades neighborhood of northwest Washington, DC.<sup>1</sup>

The private meeting had been arranged by Stewart's old friend George H. W. Bush, then the vice president. Appointed to the bench by President Eisenhower, Stewart had decided to retire in June, at age 66, at the end of the Court's term. To give President Ronald Reagan time to pick a successor, Stewart needed to inform Smith now. But he wanted his decision kept quiet until June.

The next day, Smith asked an assistant to begin research on a list of potential Supreme Court nominees. Without mentioning his conversation with Stewart, Smith said the office should prepare for the possibility of a vacancy occurring in the summer. It had been six years since the last Supreme Court appointment, and all but two of the justices were over 65, so Smith's request was not extraordinary. Working with White House counsel Fred Fielding, Smith already had begun an informal short list of possible nominees. Smith scrawled his names on a pink telephone message slip in his office.

"Who's O'Connor?" asked the assistant, Ken Starr, when Smith handed him the slip. "All you've got here is a last name."

"That's Sandra Day O'Connor," Smith said. "She's an appeals court judge in Arizona." Smith knew little more about her, only that her name had been passed on by at least one person in his circle. A few other women's names made the list, along with a couple of men, including Robert Bork, a Yale University law professor and former U.S. solicitor general, a favorite of political conservatives.

Smith planned to inform President Reagan early the next week that he would soon have an appointment to make to the nation's highest court. But before Smith could arrange a private conversation, fate intervened. On Monday, March 30, Reagan was shot and wounded as he was leaving the Washington Hilton after a speech. The bullet hit the president under his left arm, narrowly missed a vital artery, and lodged in his left lung. Secret Service agents rushed him to a hospital, where he underwent emergency surgery.<sup>2</sup>

Reagan returned to the White House living quarters two weeks later, but it was not until April 21, nearly a month after Smith's conversation with Justice Stewart, that the attorney general thought the president was sufficiently recovered to hear of the impending Court vacancy. A longtime Reagan confidant distinguished by his silver hair and year-round tan, Smith disclosed the news as the two men talked in the president's private study on the third floor of the White House. As a candidate in 1980, Reagan had promised the nation a woman justice, and now he told Smith of his preference for a female nominee.<sup>3</sup>

Smith said that a search was already underway and that women were included on the list.

O'Connor's credentials did not make her an obvious candidate. She was not on a federal court or top state court, as many nominees in the recent past had been. Instead, she was a judge on a state intermediate court handling criminal and civil appeals. But she was also a former state senator with deep and well-maintained political connections to the Republican Party. In the fall of 1971, she had created a vast network to advance the Supreme Court nomination of William Rehnquist, her old Stanford Law School classmate. She had then become cochairman of Richard Nixon's 1972 reelection campaign in Arizona. She was also old friends with senator Barry Goldwater, an early apostle of the conservatism that Reagan had since brought to Washington. Strengthening her hand considerably was a bond she had developed with Chief Justice Warren

Burger after a vacation together. They had been guests of a mutual friend on a houseboat trip on scenic Lake Powell in Utah in 1979. Burger had appointed O'Connor to judicial commissions that gave her exposure in national and even international legal circles.<sup>4</sup>

O'Connor also stood out at a time when women, especially Republican women, were a rarity on state and federal courts. When Stewart announced his retirement on June 18, news reporters immediately focused on the few women judges with Republican connections, such as Cornelia Kennedy, a judge on the U.S. Court of Appeals for the Sixth Circuit, and Joan Dempsey Klein, a judge on the Los Angeles Superior Court.<sup>5</sup>

Starr, then 35 and Smith's chief lieutenant in screening the backgrounds of potential nominees, reviewed O'Connor's court rulings. The son of a Texas minister, Starr had gone to Duke Law School and landed a plum job as a law clerk to Chief Justice Burger, before settling into practice with Smith at the Los Angeles law firm of Gibson, Dunn and Crutcher. Starr then followed Smith into the Reagan administration.

The research on O'Connor in Arizona fell to another Justice Department lawyer, F. Henry "Hank" Habicht, a 28-year-old native of suburban Chicago. He flew to Phoenix to look up legislation O'Connor had sponsored and to interview her former colleagues in the Arizona legislature. Wearing a jacket and tie in defiance of the broiling Arizona sun, the Midwesterner did not go unnoticed, and word of Habicht's visit soon reached O'Connor.<sup>6</sup>

At the White House, the idea of a female nominee was gaining momentum, although *who* that would be was still an open question. "I think it is imperative that you appoint a woman to the Supreme Court," wrote Lyn Nofziger, Reagan's longtime political advisor who served as liaison to conservative groups. "It means you will live up to a commitment you made and have that behind you. It will go a long way toward solving the problem we have with the lack of women in this administration in high places. It will take off your back the impression, however unjustified, that you and your senior staffers are anti-women." The Reagan cabinet had no women, although the administration's most prominent female appointee, Jeane Kirkpatrick, U.S. ambassador to the United Nations, had cabinet status. As Nofziger and other Reagan advisors saw it, the search for a candidate was about politics as much as it was about legal qualifications—not a new development in Supreme Court selection.<sup>7</sup>

The next day, on June 23, Smith briefed Reagan on the leading candidates. The president was interested in O'Connor. Her childhood on the Lazy B ranch intrigued the man who had adopted California as his home, rode horses, and chopped wood for exercise. For Reagan—the self-styled nontraditional politician—O'Connor's turn as a legislator and her relative lack of judicial experience made her more attractive than conventional nominees.<sup>8</sup>

Another major asset was that she appeared to have sidestepped the political traps of the day: abortion and the Equal Rights Amendment. She had worked for women's rights, but not in the hard-line way that defined the more vocal elements of the movement. "I come to you tonight wearing my bra and my wedding ring," she used to tell local audiences. She had stuck with dresses and pearls as her female contemporaries moved into pantsuits.<sup>9</sup>

Two days later, on June 25, Smith called O'Connor for the first time. She had heard that the Justice Department was nosing around, so the call was not entirely unexpected. But the timing was inopportune: she was recuperating from a hysterectomy. Smith told her that she was being considered for a "federal position." She knew Smith's background at the law firm of Gibson, Dunn and Crutcher, and she immediately kidded, "It must be a secretarial position, is it not?" This remark alluded to an episode O'Connor had never forgotten: after she had graduated from Stanford Law School in 1952, his Los Angeles law firm offered her only a legal-secretary job. But on this June 1981 day, Smith ignored the allusion and told O'Connor that Starr and another aide would be flying out to interview her in two days. They wanted to meet at her house rather than a public place, so that they could keep the process confidential.<sup>10</sup>

At the time, Starr was surprised that the relatively unknown O'Connor had become such a focus of attention. "There was a certain oddity to her being in the mix at all," he said later. "Judge O'Connor was in Arizona, not on an impressive court, not in a key state. I was skeptical. She was a judicial unknown." But in the living room of her white adobe home, Starr found, "she had clearly prepared for us." She gave elaborate answers to their questions about constitutional law. When they took a break for lunch, she served them a salmon mousse salad she had fixed earlier.<sup>11</sup>

Starr left O'Connor's house ready to give Smith a glowing report and having no idea that she had recently been through the ordeal of a hysterectomy. Later that evening, after hearing from Starr, Smith called O'Connor. He asked if she could come to Washington, DC, to meet him as soon as possible. Because of her surgery, she told him, she would first have to obtain her doctor's permission to travel. She did, and on June 29, O'Connor met Smith and his wife, Jean, at the Jefferson Hotel, a sophisticated Beaux-Arts hotel and residence downtown, where the Smiths lived.

"Jean and I agreed that the judge was a highly intelligent, straightforward, and altogether charming person," Smith wrote later. "Perhaps it was the power of suggestion, or the example set for decades by her fellow Arizonan, Barry Goldwater, but it seemed to us that Sandra Day O'Connor, both in her looks and in her personality, had that same direct friendliness one associates with the wide-open territory where she lived."<sup>12</sup>

Smith arranged for O'Connor to have breakfast the next morning, June 30, with other men whose opinion would be important to her candidacy: Deputy Secretary of State and Reagan confidant William P. Clark (a former justice of the California Supreme Court, appointed by then-Governor Reagan) and Deputy Attorney General Edward C. Schmults. Later that afternoon, Smith introduced O'Connor to White House counsel Fred Fielding and the so-called Troika: Edwin Meese, counselor to the president; James Baker, chief of staff; and Michael Deaver, deputy chief of staff.<sup>13</sup>

One of those participants said later that O'Connor did not challenge anyone's idea of what the first woman on the Court should *look* like. "I know this sounds awful," he said, "but you don't want someone who looks like William Taft. She was very attractive and engaging." O'Connor understood the point. "When I first ran for the state legislature," she later recalled, "it was simply a matter of political reality that, in order to get elected, a woman had to appear and act 'feminine.' People gave up their traditional notions only grudgingly."<sup>14</sup>

By July 1, all that was left was for the candidate to meet the president of the United States. O'Connor's name was still under wraps, and Smith and Fielding wished to keep it that way. Neither of them wanted to accompany O'Connor into the White House, for fear of drawing attention

from prying reporters. So, Smith's secretary, Myra Tankersley, arranged to get O'Connor as soon as word came down that the president was available to meet her.<sup>15</sup>

Shortly before 10 a.m. on July 1, O'Connor's phone rang. Tankersley said she would pick her up outside a drugstore on Dupont Circle near O'Connor's hotel. It was an overcast Wednesday morning in Washington, as O'Connor, dressed in a lavender suit, waited for her ride. And when she stepped into that car, she stepped onto the national scene, where she has remained for nearly a quarter of a century.

## I

## PIONEER ROOTS

To ready herself for the birth of her first child, Ada Mae Day left her home on an Arizona ranch and her husband of three years. She traveled two hundred miles east, to her mother's place in El Paso, Texas, to be near a city hospital. After baby Sandra was born on March 26, 1930, at the Hotel Dieu Hospital, Harry Day came by train to see Ada Mae and his new daughter. "Although I cannot say that I feel any great parental love for Sandra yet," Harry wrote to his wife upon his return to the Lazy B, "I would like to see her and touch her again."<sup>1</sup>

Sandra was a mixed blessing for Harry. The deep passion he felt for Ada Mae was complicated by the infant, as was the burden of making a living from the dry expanse of the Lazy B. He could not abide separation from his young wife. "I wonder continually what you are doing, where you are, who you are with," he wrote to her a year after they married. "I wonder what you will be like when I see you again. Will you be changed? Somehow I am afraid you will be different."<sup>2</sup> Harry's insecurities were ratcheted up by the looming Depression. Even before the arrival of this new mouth to feed, life was defined by scarcity. Too little water. Too few hands for the work to be done.

Decades later, as a Supreme Court justice, Sandra Day O'Connor would write a nostalgically sweet memoir of her ranch childhood. In it, her father, Harry, is painted as a rugged American type, a self-taught

man who would become the greatest single influence on her life. Yet, beneath the Gary Cooper of her portrayal, was a man who bequeathed a complex legacy to his children. Harry Day was harsh, demanding, and unpredictable. But Sandra left the Lazy B with a lesson in the virtues of hard work, a talent for maneuvering among tough characters, and a competitive drive that sustained her through a journey no woman had taken before.

HARRY DAY WAS THE fifth and last child of Henry Clay Day, who headed off from Vermont in the mid-1870s to make his fortune. The father, named for the Whig politician Henry Clay, had worked his family's farm in Coventry, Vermont, until 1865, when he turned 21. Then he moved west, first laboring in a general merchandise store on the Canadian border, and later opening his own building-supply business in Wichita, Kansas. There, when he was 35, he met and married Alice Edith Hilton, 18, the daughter of a rector in the Episcopal Church. With his angular New England visage, bushy mustache, and stone-faced demeanor, H. C. Day was marked by his Yankee heritage. But he also could not stay put. He constantly looked for fresh adventures and travel.

In 1880, Day sought acreage in the newly opened public lands of the New Mexico Territory for the grazing of livestock. Down in Mexico, he bought a herd of cattle and settled on a parcel of his new land south of the Gila River, on what would become the border between New Mexico and Arizona. The Mexican cattle had been branded on the left hip with a B lying down flat—a "lazy" B. So, he named his ranch for the brand, and it endured as the Lazy B through the generations. Joining the rush for open range, H. C. Day arrived just as cattle-grazing conditions were becoming harder for ranchers. Dry spells and overstocking were quickly destroying the arid and fragile land. Cattle prices were tumbling. The pioneers were being sorely tested.<sup>3</sup>

Day hired a foreman to manage operations at the Lazy B, began taking steps to move his family to the more pleasant environs of Pasadena, California, and continued his travels, now to England and Germany. The flinty New Englander wanted to be based in California, in a promising city where the orange trees blossomed year round, but Day soon discovered that the ranch foreman was stealing from him.<sup>4</sup> So, he brought

his family back to the Gila River valley and the Lazy B, where he built a house and a one-room school for his children. The youngest of H. C.'s and Alice's children, Harry was born at that ranch house in 1898 and lived there until he was about 10 years old. H. C. Day, by then, had a foreman he trusted, and California continued to beckon. He moved his wife and children back to the sweetness of Pasadena. An athletic boy with an attractive smile, young Harry thrived in city schools. He won state swimming awards. So pleased was he to graduate in 1918 from Pasadena High School that he saved his fancy, typeset commencement program and high school picture until the day he died.<sup>5</sup> Harry wore the trappings of city life well. In photographs from these years, Harry looks the dashing young fellow in blazer and cap. He had hopes of college and travel to exotic places.

H. C. was preoccupied, as usual, with his business enterprises. As a father, he was more aloof than affectionate.<sup>6</sup> On the other hand, Harry's mother, Alice, doted on the boy. When he was away from home, she wrote him long, worried letters about whether he had enough clothes to keep warm and whether he was taking care of himself. "Be a good boy and don't lift heavy things or do anything else to injure yourself," she wrote at one point.<sup>7</sup> From both parents, Harry received a sense for business and handling financial affairs.

Harry's dream, born in his Pasadena years, was to attend Stanford University. But as he graduated from high school, Harry was drafted for World War I. The war, however, ended before he saw any action. Then, in 1919, H. C. Day's health slipped and, as he worried about the ranch's finances, he sent Harry, the second of his two sons, to check on its operation. Harry, then 21 years old, found the land a terrible place to live, and hoped to stay at the Lazy B only long enough to make some money and then find someone else to run it.

But when H. C. Day died in 1921, Harry, then 23, was the only one available to take over. "I think if you try your best that you will be able to make some money out of the place or else be able to sell it for a good price when the drouth is over," his mother, Alice, wrote in response to one of Harry's letters in which he was trying to extract himself from the obligation of living on the bleached-brown land and at the mercy of a wildly fluctuating cattle market.<sup>8</sup> Harry's mother and older brother, Courtland, wrote Harry continually from California about how he should handle

the problems brought on by deals made before he took over. Harry alone shouldered the burden of being there. "I would be glad to help you in any way—should we retain the ranch—and would be glad to come there and spend what time was necessary," Courtland wrote at one point, "but I feel that the ranch must first be in a position so that it could pay me to do this. . . . Here is the situation in plain words. I am earning here \$300 a month. . . . Now you see if I quit my job to go to the ranch, I would have no income besides what I got out of the ranch. I would still have to keep up my family expenses and I would not expect the cattle business to pay me anything near what I am getting here." At the end of Courtland's letter, written in elegant cursive, he struck a sympathetic note: "I know it must seem hard for you at times to have to stick there out in the hills all the time."<sup>9</sup>

Harry's desire to attend Stanford or return to Pasadena withered in the dusty struggle to make the ranch profitable.

But once, on a visit to El Paso, his luck was good. It was in the summer of 1927, while he was in town to buy some new bulls, that he was smitten by a cattleman's daughter. The attraction was mutual.

Ada Mae Wilkey had been born in Mexico in 1904, the first of three children of W. W. Wilkey and Mamie Scott Wilkey, who were living in Sonora at the time. Soon after Ada Mae was born, the family moved to Douglas, directly across the border in Arizona. In another move, W. W. Wilkey bought the Duncan Mercantile general store and acquired a cattle ranch north of the Gila River. Only about thirty miles from the Lazy B, the Wilkeys crossed paths with H. C. and Alice Day—and their children—when the Days were in the region of the ranch. But Harry was six years older than Ada Mae and, of course, paid no attention to the girl. A few years later, when Ada Mae was in high school, her parents sold the Duncan Mercantile. The Wilkeys moved with their three children to El Paso, where they bought a second cattle ranch, close to Fort Hancock.

Ada Mae's formative years, spent within an easy ride from the Lazy B, may have enhanced her attraction to Harry and the Day family ranch. And at age 23, when she met Harry again, the slender, charming Ada Mae was experienced enough not to be intimidated by Harry's hardened veneer. She had graduated from the University of Arizona (a rarity for a woman born at the turn of the century) and been married and divorced

(also rare). She plunged into life with infinite energy and was not afraid of the isolated life of the Lazy B.

Mamie Wilkey, on the other hand, was worried: Harry was temperamental, had little money, no college education. The Lazy B had no running water or electricity. What kind of life would her daughter have there? It was not for Mamie Wilkey to answer. After a three-month, long-distance romance, Ada Mae and Harry eloped and were married by a Presbyterian minister in Las Cruces, New Mexico.<sup>10</sup> Harry sent a telegram to his sister Eleanor in Pasadena on September 19, 1927: "Hope you won't be too surprised to hear that I married today. Although I have never said anything to you, we have been engaged three months so I didn't take a leap in the dark. Planning for you to visit us as soon as we are settled. She is just the kind you would have picked for me."<sup>11</sup> Mamie Wilkey had a few last words when her daughter's move seemed inevitable: "Ada Mae, don't ever learn to milk the cow."<sup>12</sup>

Harry was one year shy of 30 at the time. He had accepted the family mandate to run the ranch, but he was making his own life with the hand he had been dealt.

THE GREAT DEPRESSION ARRIVED with their daughter Sandra. Banks closed. Hundreds of thousands of people lost their jobs. As markets collapsed, livestock in places like the Lazy B died on the hoof. Across the country, as historian David Kennedy wrote in *Freedom from Fear*, "haggard men in shabby overcoats, collars turned up against the chill wind, newspapers plugging the holes in their shoes, lined up glumly for handouts at soup kitchens."<sup>13</sup> Harry at least had food, a house, and some family money. ("I don't know what I would have done if I had not had an inheritance from my parents," Harry wrote in later years to his sister Eleanor.)<sup>14</sup> He might have to walk away from the ranch but he would never be destitute and he would not starve.

On the morning of Sandra's birth, March 26, 1930, the *Tucson Daily Citizen* and *Arizona Daily Star* reported on the sinking cattle market, plunging agriculture prices, and national unemployment figures. The *Arizona Star* happened to publish a piece about the doings of the U.S. Supreme Court (at the time, housed inside the Capitol). A syndicated

"Washington Bystander" column focused on the nation's newly appointed chief justice, Charles Evans Hughes, who had succeeded William Howard Taft: "Stroll by the Capitol any of these fine, bracing March mornings along about 9 a.m. and you are apt to see a sturdy, upright man in his late sixties come striding briskly up the hill and disappear into the Supreme Court area of the vast building. He wears, you will note, a neatly trimmed beard, now turned almost white, and sweeps along in vigorous fashion at a round pace, as though he had business in hand. Then you might say to yourself, 'Well, I have seen a sight. There goes Chief Justice Charles Evans Hughes, getting on the job early.'"<sup>15</sup>

The nation was still mourning the passing of Taft, who had died on March 8 at age 72. In a bizarre coincidence, the recently retired chief justice (and, of course, the nation's twenty-seventh president) had died on the same day as Justice Edward Terry Sanford, who was 64. As United Press International reported the dual deaths on March 8, "Death [for Taft] came unexpectedly at 5:15 p.m., only five hours after it had reached its tragic hand into the court over which Taft formerly presided and struck down apparently one of the most robust members. . . . [Sanford] collapsed in the dentist's chair and passed away soon afterward."<sup>16</sup>

Sandra was barely two years old when drought seared the ranch again. Harry could not afford to purchase feed for the cattle. He tried to find a buyer for a couple hundred thin cows. In the *Lazy B* memoir she coauthored with her brother, Alan, she wrote that the one man who even bothered to look at the cows was so disappointed by their withered condition that he said, "I wouldn't take that bunch of cows if you gave them to me. It wouldn't be worth the shipping charges."<sup>17</sup>

Harry was depressed. Compounding his troubles was a protracted lawsuit over ownership of portions of the *Lazy B*, brought on by H. C. Day's collaboration and subsequent falling out with a partner.<sup>18</sup> It was this legal struggle that caused Harry to despise lawyers and to want redress through his daughter's becoming one.

Sandra's early life was buoyed by the spirit and aspirations of her mother. Unlike Harry, who had drawn the short straw in the family and was stuck with the ranch, Ada Mae made the very deliberate choice to live there. "Harry, I want to give you laughter and courage, ambition and fulfillment, and in that way, I shall find my own," she had written to him shortly before they eloped in 1927.<sup>19</sup>

Even in hard times, Ada Mae, who washed diapers in buckets of water hauled up to the house by cowboys, wore dresses and stockings. Her aesthetic sensibility turned the small adobe house into an oasis. Meals were served on fine dinnerware. She delighted in playing love songs on the upright piano she brought from her childhood home.<sup>20</sup> Even in the desert, she cultivated a small flower garden. In time, she subscribed to *Vogue*, *House Beautiful*, and the *New Yorker*. When she was finished devouring the recent magazines, she stored them in closets and under beds, to read again.<sup>21</sup> Ada Mae enjoyed entertaining visitors. "You hardly ever saw her in an apron," her only son, Alan, recalled. "When company came, she would sit down and have a drink. She would get up occasionally, and pretty soon, she would say, 'Dinner's served.' and it would be a gourmet dinner. You'd wonder where that came from."<sup>22</sup>

With her way of dressing and keeping up her home, she promoted a certain status for herself that may have been incongruous but that was accepted by her family and the ranch hands. In the *Lazy B*, Ada Mae is painted with a dignity that recalls a portrait by Wallace Stegner (O'Connor's favorite author) of the early West protagonist in *Angle of Repose*: "The camps all but doffed their caps to Susan Ward, as if she had been a lady from a castle instead of from a cottage."<sup>23</sup>

Ada Mae tried to expose her oldest child to the best of ranch life. On long walks across the *Lazy B*, she pointed out unusual plants and insects and looked for Indian artifacts, obsidian arrowheads, pottery shards. She taught Sandra to read by age four. She instilled in her daughter a love of music and a gift for entertaining, along with a talent for cards and a spirit of adventure.

Harry skimped through the Depression. He made some money from a federal initiative that bought up cattle to feed the hungry. According to Harry's business records, he kept the number of cowboys low and paid modest wages, about \$50 apiece per month. "I wish you could see the cattle now," Harry wrote to his brother, Courtland, in Pasadena in 1936. "They look better in flesh and also better in quality than I ever remember seeing them."<sup>24</sup> By the early 1940s and World War II, the ranch turned the corner. Beef prices soared, saving cattle ranchers everywhere.

President Roosevelt's New Deal helped in part to bail out the *Lazy B*, but Harry loathed the Democratic president. Harry Day was a man of individual initiative, and FDR's social welfare agenda rankled him. Alan



said Harry would listen to the president's radio reports until "steam would come out of his ears." One often-told family story revolved around his father's anger that FDR reinstated Daylight Saving Time during the war. In Harry's mind, "now the son of a bitch is telling us when to get up and when to go to bed."<sup>25</sup>

Radio broadcasts also brought news of FDR's clash with the Supreme Court. The dire economic conditions had prompted Roosevelt to launch a set of initiatives with Congress to restore agricultural prices and industrial production. But the recovery programs designed to lift up workers meant the unparalleled expansion of federal power and restrictions on business. (Harry was not unwilling to take the benefits—perhaps he had no choice—but he was angered by the broader federal interference.)

The Supreme Court then was firmly on the side of individual enterprise and business, over the interests of workers. The era began with a 1905 decision, *Lochner v. New York*, invalidating a New York law setting maximum hours for bakery workers. The Court said that a "liberty to contract" was part of the liberty embodied in the due process clauses of the Fifth and Fourteenth Amendments. That meant that any laws interfering with the fundamental right to contract—for example, limiting hours of employment or requiring a minimum wage—would be struck down except in compelling circumstances. That view of the Constitution, shielding business from government interference, was invoked three decades later, as the Court vigorously disapproved of Roosevelt's penchant for experimenting with federal solutions to the nation's economic calamity.<sup>26</sup>

Two decisions in May 1935 helped set off a near-crisis in American constitutional law. First, the justices ruled that Congress violated the due process guarantee and overstepped its authority to regulate interstate commerce when it established a pension system for railroad workers. The Retirement Act of 1934, intended to help vast numbers of men survive in retirement, was a variation on Roosevelt's ambitious Social Security legislation then pending. Nineteen days later, the Court struck down the National Industrial Recovery Act, which established "codes of fair competition" for wages, prices, and trade practices, and made clear the right of labor to organize for collective bargaining. It was the heart of the recovery effort drafted in the famous "100 Days" of 1933. The Supreme Court said that in the NIRA, Congress exceeded its power to regulate in-

terstate commerce and wrongly delegated its legislative authority to the president.<sup>27</sup>

Roosevelt was furious at the Supreme Court. "We have been relegated to the horse-and-buggy definition of interstate commerce," he declared to reporters at a news conference after the rulings were handed down.<sup>28</sup> At the time, the Court was filled by men born in the mid-nineteenth century. The majority were Republicans and four were staunch conservatives (known as the "Four Horsemen"), voting consistently against FDR's New Deal.<sup>29</sup>

The following year, 1936, after Roosevelt won reelection by a landslide, he set out to change things. He proposed that Congress pass a statute letting him appoint an additional member of the Supreme Court for each sitting justice over age 70. This plan would have enabled FDR immediately to name six new justices and likely be assured a majority to support his New Deal programs. In a March 9, 1937, radio address, the president declared, "We have . . . reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself."<sup>30</sup>

The plan backfired. As one FDR biographer, Ted Morgan, wrote, "He had violated his own method for making sure he had support before he went ahead. Court packing was the one great topic . . . and there were acres of editorials."<sup>31</sup> Roosevelt was criticized by fellow Democrats in Congress as well as in newspapers that had supported his reelection. It was a blunder of unusual magnitude for a president considered a master politician. There is little doubt that at the Lazy B, Harry had plenty to say about high-handed Roosevelt and the tempest over the Supreme Court.

Perhaps because of Roosevelt's pressure, or perhaps for a host of other reasons that have been speculated on through history, it soon became clear that the justices were ready to abandon their conservative approach and let the federal government take steps to spur economic recovery. On March 29, 1937, in a 5-4 decision, the Court upheld Washington State's minimum-wage law for women.<sup>32</sup> That decision effectively reversed a ruling a year earlier that had voided a New York State minimum-wage law. Justice Owen Roberts, who had voted to strike down the similar New York statute on the grounds that it interfered with the liberty to contract, cast his vote for the Washington law.

The turnabout by Roberts, who had succeeded Sanford in 1930, was

popularly called "the switch in time that saved nine." Chief Justice Hughes, who had succeeded Taft, wrote the majority decision in the Washington State case, which put to rest the principle that the "liberty" embodied in the due-process guarantee protected a "liberty to contract" that prevented government regulation of business. The decision ushered the Court into a new constitutional era. Thus, the two justices appointed in the year of Sandra's birth helped create the ideological alignment that moved the nation through the Court-packing crisis of 1937. The rest of the New Deal stood.

LIFE ON THE RANGE SHAPED Sandra's early years, but so did her absence from it. At age 6, she was sent away to school in El Paso, the home of her maternal grandmother, Mamie Wilkey. As a child, Sandra could not shed the fear that her parents wanted her out of the house and might not welcome her back. It was a long and lonely existence, by all accounts. "The real trauma of living in a remote ranch area is the educational problem of children," she said years later. "You really have limited choices. It's kind of a poor choice whichever way you go."<sup>33</sup> Some ranch and farm mothers obtained materials to try to teach their children at home, as Ada Mae tried with Sandra one year. An alternative was for mother and children to move into town, where there were schools, as Ada Mae tried once with Sandra's younger sister, Ann, born in 1938, and brother, Alan, born in 1939. But in their early years of marriage, Ada Mae and Harry could not bear to be away from each other.

Sandra attended the Radford School for Girls, which was founded in 1910 in El Paso and known for its rigorous traditional education. In those years, many girls boarded, and when they returned home for vacations, it was to beautiful, well-appointed places that young Sandra could only envy. Rather than board at Radford, Sandra lived in a bungalow in El Paso with Grandma Wilkey, a determined woman whose temperament was often compared to her son-in-law Harry's. Sandra later described her grandmother as an excessively talkative woman who forced her granddaughter to learn to keep out distractions as she read and studied.<sup>34</sup>

At Christmas, at Easter, and during summer vacations, Sandra returned home. But each time these reunions ended, she felt torn again from her parents, nicknamed "MO" and "DA."<sup>35</sup> "I climbed on board

and sat at a window waving at MO and DA as the train slowly moved along the track and out of sight of my parents and the town."<sup>36</sup> The lingering pain would be so great that Sandra would say in a 1980 interview that "I dislike El Paso to this day, largely because I was homesick."<sup>37</sup>

A school picture taken when she was about 10 years old bears out her unhappiness. There Sandra stands, sullen, alongside mostly smiling girls. Many have bows in their hair and a look of self-assurance in their stance. Sandra has neither. She also is much darker-complected than the others, no doubt the product of weeks on the sun-blazed Lazy B. For a girl so young, she looks unusually hardened:

For some of her years at Grandma Wilkey's and the Radford School, Sandra had a favorite cousin at her side. Flournoy, a year older, was the daughter of Ada Mae's sister, Evelyn. (Ada Mae and Evelyn had one brother, Scott.) During their years together, Sandra and Flournoy shared a room at their grandmother's, and activities at school. While Sandra was reserved as a child, Flournoy was a natural charmer. She was featured in local fashion shows and was a flower girl in El Paso society weddings.<sup>38</sup> Flournoy's father's family had long been business and political leaders in El Paso, which gave Sandra some exposure to the town's upper crust as she was growing up.<sup>39</sup>

A letter that Grandma Wilkey wrote to the two girls attested to their grandmother's attention as well as to the differences between Sandra and Flournoy. On each page of the six-page letter, Mamie Wilkey pasted charming cutout pictures of fashionable women, children, and animals. "Dear little cousins," she wrote on the first page. "This is a picture of a bride. When you all get to be big girls you will be brides, too. Flournoy, I want you to tell Sandra the difference between a bride's wedding gown and a wedding dress. You have seen both. Which do you like best?"<sup>40</sup>

Even with the companionship of Flournoy and Grandma Wilkey, Sandra was heartsick away from the Lazy B. An episode that occurred when she was 11 reveals her uncertainty about how she fit in: "One of my school friends said she knew something about me and my mother. 'Oh. What is that?' 'I'm not supposed to tell,' she said. 'Come on. You have to tell me!' 'Well, my mother says your mother was married to somebody else, not Harry Day.' . . . I was shocked and frightened. Had I been adopted? Is that why MO and DA sent me off to school in El Paso?"<sup>41</sup> Sandra asked her grandmother Wilkey, who acknowledged that Ada Mae

had a short-lived first marriage and that Sandra was indeed the child of Ada Mae and Harry.

The tale provided a glimpse into the psyche of a woman who kept her emotions under cover. As an adult, O'Connor did not dwell on deficits, and, in fact, became adept at accentuating what she had rather than what she did not. Rarely did she speak about life in El Paso, preferring to cast her life for the public in terms of the ranch rather than the considerably longer time away from it at Grandma Wilkey's and private school. Once, when the *New York Times* asked a number of prominent people to describe a piece of school artwork that had impressed them, O'Connor answered in a way that further revealed the disturbing impressions she retained from her El Paso years. "The artifact I remember best from my childhood was a death mask of Pancho Villa. It showed his face after death, complete with a bullet wound in the forehead. It was on display at Miss Radford's School for Girls . . . which I attended for some years. Just why it was there I never knew, but the horror of it is still part of my memory bank."<sup>42</sup>

When O'Connor returned to the school as a justice in 1987 and received a symbolic key to the school, she referred to the late principal as a "frightening" woman. She probably meant it as a joke—a news report of the day said she humorously remarked that she was not sure the principal would want her to have the key. But it was clear that the kind of upbeat tone she adopted about her ranch girlhood stopped when she described her substantial time away at school in El Paso. A former dean of girls at Radford recounted Sandra's unhappiness years later: "She loved riding horses and she got homesick for her family."<sup>43</sup>

Sandra's younger sister, Ann, had similar longings when she was eventually sent away. But she did not cope quite as well. "I used to say that I didn't have an identity until I was 40. Don't draw conclusions from me because Sandra was able to handle it. Sandra was always much more sure of herself, more at ease. . . . Why? She is who she is."<sup>44</sup> Ann repeatedly said, "Sandra had no choice. That's why she handled it." For Harry Day's eldest, there was an acceptance that life was not easy.

When Ann and Alan were sent to Mamie Wilkey's in El Paso, after Sandra already had graduated, they made enough of a fuss to end up back at the ranch. They attended local schools, although their parents believed the Duncan, Arizona, school district, thirty miles away, offered an inferior education. They also felt no kinship with the locals.

"They remained aloof from the community," Alan said. "They would never go in to the county fair. They didn't have their kids join the 4-H. . . . In a small town, the town revolves around the school. The town gets behind their football team. They never went to PTA meetings. They never came and met my teachers. They never watched me play football. They never came to my high school graduation."<sup>45</sup> Recalled Ann, "When I graduated from Duncan High School . . . he [Harry Day] came to my graduation. My mother did not. She was just not happy that her daughter was graduating from Duncan High School."<sup>46</sup>

Harry and Ada Mae lived their Arizona ranch life, even reveled in it as they grew old together. But they were not part of the greater ranching community. Too much of Pasadena and El Paso remained within them and held them apart from their neighbors.

For eighth grade, Sandra won a year in local school, after constantly begging her parents to let her stay at the ranch. They enrolled her in the Lordsburg, New Mexico, public school, across the Arizona border but only twenty miles away. Each morning before sunrise, either her mother or father would drive Sandra over eight miles of ranch road to a highway intersection where she would wait for a bus. The bus ride took an hour. She would not return until after sundown. By the end of the year, her parents decided the education was not worth the trouble of getting it.<sup>47</sup> Years later, grown up and appearing before senators at her Supreme Court confirmation hearing, Sandra referred to this as a life lesson against busing to achieve racial integration. She concentrated not on the societal goal of integration but on the cost to an individual child.<sup>48</sup> Back in the mid-1940s, she returned to Radford, then moved on to El Paso's Austin High School, from which she graduated at age 16.

Whatever else might be said of the justice's ranch life and school days, they certainly steeled her for other challenges. Said brother Alan, "Since she was a little girl, she was never afraid of work and never afraid of a challenge. She had gone through life, instead of fighting those things or getting worn out, allowing those things to take her places that other people wouldn't go."<sup>49</sup>

In the summer before her last year of high school, Sandra had an experience that left a lasting impression. Told in her usual blithe manner, the episode nonetheless revealed the emotional isolation of her childhood even when she was home at the Lazy B. On a July morning in 1945, at age

15, she climbed into an old truck, checked to make sure it had enough gas, and began driving the dirt roads to bring lunch to her father and the cowboys out branding calves. Heading south over an especially rugged area, she suddenly felt the truck wobble. The left rear tire was flat. Sandra knew how to change a tire. Since she was 8, she had been driving on the ranch. But after placing rocks by the truck's tires to keep it from rolling, and jacking it up, she discovered rusted lug nuts that would not budge. She had to figure another way. She jacked the truck down and tried to loosen the lug nuts by stomping her foot on the lug wrench. The nuts cracked loose. She jacked up the truck to finish the job. She was soaked with perspiration, her dark hair dripping.

When Sandra arrived at the camp, she was an hour past the crew's usual lunchtime. She was eager to tell her father about how she figured out how to change the tire. She wanted to win his praise. But her father ignored her.

When he finally spoke to her, he said, "You're late."

She explained the flat tire.

"You should have started earlier," he said. "You need to expect anything out here."<sup>50</sup>

As Harry told her to expect anything, he taught her to expect nothing. While his daughter's *Lazy B* tales exhibited an at-times incongruous cheeriness, she did allow that Harry "had periods of moodiness and depression. He was very critical of MO and Alan during these periods. He wanted things done his way, which he was certain was the best way."<sup>51</sup>

In her recounting, O'Connor provides no analysis of the emotional freight her childhood left her with. But stripped of its wistful gloss, her version of events reveals a series of episodes in which she tries desperately to prove herself. She would paint a screen door over and over until it was exactly to her father's specifications. Would these experiences with her father cause her to want to prove herself as an adult? Did she believe they prepared her to achieve in the male-dominated spheres she entered? She did not address those questions. Rather, she concluded, "As the first child, nine years older than the next, I received all the attention and love that DA had to give during those early years. . . . I developed a love for the land and for the way of life on the ranch that has stayed with me. Spending hours each day at the dinner table discussing ranching, politics, or economics is a treat that many young people don't experience."<sup>52</sup>

Alan recalled that his father was "on his best behavior when she was around, because Sandra would bring up stimulating subjects that he would want to talk about. And they would mentally head down the path together."

With Alan, Harry was quicker to anger. Alan recalled a time when he was a teenager handling cows in a corral with his father and other cowboys. "We're working cattle and I'm working a gate and paying attention, doing what I think is a good job. And all of a sudden he comes over and just gets on me and says, 'Why did you let that cow through?' I say, 'You didn't signal that the cow was coming this way.' And he said, 'You can't treat me like that. What the hell's the matter with you?' And I said, 'Look, I didn't hear you say shut the gate.' And he said, even louder, 'Yes you did. I said it plainly.' I didn't know what to say. He had me in a box and there was no way out. I was scared to death."<sup>53</sup>

Alan said he wanted to put the anecdote in the *Lazy B*, but his sister would not allow it. Still, Alan concluded about his father, "he made it happen on a tough piece of land while people around him were falling apart."<sup>54</sup> Most important, remembrances of Harry Day reveal how a powerful American woman took root in a place where little else could.

He died in 1984, three years after his daughter had joined the Supreme Court. Two years later, the family began selling the *Lazy B*. In the next generation of the Day family, there were no takers for the uncertain prospects of a cattle ranch. They opted to get out with their money rather than to hire someone to work the ranch for them. "It's hard to go back out there," said Ann. "It was like a death in the family."<sup>55</sup> Both Ann and Alan have taken trips back to the ranch. Justice O'Connor has not returned to the land.<sup>56</sup>

In effect, the penning of the *Lazy B* memoir was her way of going back, her way of preserving the ranch as she wanted it preserved. The effort was unusual because justices, especially sitting justices, rarely write memoirs.<sup>57</sup> She said she intended to capture a life that most Americans did not know firsthand. When Sandra returned to the house after the ordeal of the flat tire and told her mother of her father's reaction, Ada Mae said only, "He gets that way." Sandra learned from her mother's talent for making "a hard life look easy." And she would cloak her ambition and drive in the mantle of dutiful daughter, devoted wife, tireless public servant, and, finally, determined first woman justice.

## "THE RULES OF THE GAME"

Upon graduation from high school in 1946, Sandra Day chose Stanford University, the school to which her father had aspired. Founded in 1891 by California senator Leland Stanford and his wife, Jane, the university occupied a lush green expanse that once was a horse farm in Santa Clara County, California. Its buildings, designed by American architect Henry Hobson Richardson, were modeled after the old San Juan Capistrano Mission. The campus offered natural abundance and the promise that was absent on the Lazy B. Here Sandra could prove herself and open doors that had long been closed to her father.

Harry and Ada Mae drove their eldest daughter to the Palo Alto campus in early September. In the postwar flush, Harry favored Chryslers and every year traded last year's four-door sedan for a newer model.<sup>1</sup> Sandra arrived with the university's largest enrollment to date, slightly more than seven thousand students, nearly twice the prewar classes of four thousand. According to the *Stanford Daily* newspaper, 3,900 of the students were veterans. For a late-1940s campus, there was also a significant female population. Sandra joined some two thousand female students.<sup>2</sup>

At 16, she was younger than most others, and she worried that she would not fit in. But her choice and timing were perfect. The girl who had dreaded El Paso had learned in that grief to turn life's shortfalls into

challenges. In the optimistic postwar environment of Palo Alto, she blossomed. The university was also maturing from a high-quality regional institution into a national one.

Sandra was in a dormitory with other girls from rural areas, including Diane Cooley, who grew up on a prosperous ranch in Watsonville, California. Cooley remembered Sandra as a shy, insecure girl whose accent, a combination of Lazy B and the Radford School, was different.<sup>3</sup> She also remembered how quickly Sandra learned to navigate the girls' social rituals. After the first school dance, Cooley said, "she came back with this *cute* guy, Andy, a returning vet, who had a red convertible. We were blown away." As Sandra's status among the girls rose, her sense of social inferiority diminished. She also had a major advantage. "She had gorgeous clothes," said Cooley. "Her mother was very stylish, and her grandmother also saw to it that she had the right things." In photos, Sandra seems easily one of the girls, wearing fashionable sweaters and pearls or a scarf knotted at her neck.

She earned high grades. On the Lazy B, verbal skills were less valued than the ability to change a flat tire. But Sandra had a natural verbal facility, with grammar honed at the Radford School, and she spoke up in class. Based on her grades, she earned membership in the Cap and Gown, the senior women's society.<sup>4</sup> She also was an enthusiastic and adroit competitor who loved all manner of sports and games. Her worries about fitting in were dissolving into successes as she took advantage of the opportunities presented to her by Stanford.

Outwardly, she conformed and was very much the coed. Like many young women in that era, perhaps most, she might have seemed to be interested mainly in attracting a husband with potential and becoming the perfect housewife. Her classmates recalled that she never adopted an air of being smarter than other students. She simply outperformed most of them. She studied economics, learning the theoretical side of what she had witnessed firsthand as the Lazy B struggled to stay in the black. When she returned to the ranch for Christmas and summer vacations, she tangled heatedly with her father at the dinner table. "The Keynesian economic theories I was learning at Stanford were not consistent with [father's] pay-as-you-go economic theories," she wrote.<sup>5</sup> She was gaining intellectual independence, her ambitions stirred.

From a legendary economics professor, Harry Rathbun, Sandra

learned the notion of community—another concept in opposition to the ways of her father and mother, who had isolated themselves from some of the Gila River locals. Professor Rathbun's lectures on the roles individuals play in the evolution of the human spirit and in communities were popular on campus. He taught business classes from 1929 to 1959, and in 1950, not long after he met Sandra, he received the Stanford students' designation of "great teacher."<sup>6</sup>

Rathbun was the first major intellectual force in Sandra's life. He had been influenced by Henry Burton Sharman, a University of Chicago theologian who in the early 1900s developed a philosophy of individual responsibility based on the life of Jesus. Sharman considered what lessons from the Gospels were scientifically possible and used them as a model for individual ethics and behavior. He held seminars in the Canadian wilderness each summer, attended by Rathbun, who brought back to his own Stanford students what he had learned. Rathbun's approach was, by turns, spiritual and pragmatic.<sup>7</sup> Gazing inward did not come naturally to the people of the Lazy B, but the future justice was intrigued by the idea fostered by Rathbun that individuals could find their place and make a difference in the world.

Rathbun's view of the law also appealed to Sandra's competitive nature and belief in an orderly universe. "The law is the expression of the rules of the game which all men play—that of getting along together as members of an organized society," he wrote in a 1941 collection of essays on the law.<sup>8</sup>

The lesson Sandra took from Rathbun, she said in a later interview, was that an individual had a responsibility to the community. "I had never heard that before," she said. "He wanted to persuade us to go out into the world and do something. Because of that professor, I went to law school."<sup>9</sup> Her parents, having loathed their reliance on lawyers to settle their business problems at the ranch, realized the benefit of having one of their own in the family and agreed to pay for law school.<sup>10</sup> Rathbun himself admonished, "no layman ought ever to be led to believe it safe for him to rely on his own legal knowledge to the extent of acting as his own lawyer any more than to believe that he may safely be his own physician or surgeon. . . ."<sup>11</sup>

In 1946, the year Sandra entered as an undergraduate, Carl Spaeth, a former assistant U.S. secretary of state, had taken over the Stanford law

school. He recruited new faculty, instituted a law review, and oversaw the development of a new law school building.<sup>12</sup> By the time Sandra was accepted in the program, Stanford was able to offer an education rivaling the well-established East Coast schools.

She impressed her classmates as unusually confident, particularly since she was a mere 19 when she finished her undergraduate work and entered law school. She was one of only five women in the class. A fellow student, William Rehnquist, who was detoured by World War II and entered law school at age 25, was impressed by her practice of asking any question without fear of ridicule, a trait she had developed with her father. She and Rehnquist became members of the law review.

She was smart but she also played a bit of the ingenue. Fellow law student Fred Steiner remembered noticing Sandra at a school dance. "Girls were in short supply. Sandra was one of the two beauties. I was lucky enough to have one dance with her, learning that she, too, came from Arizona. Beyond that, I learned little more—for she drew me out, learning all she could about me and letting me know, in the subtle ways women have, how lucky she felt to be with me in the same room, at the same school, and in the same class, sterling fellow that I was. When we parted, I was impressed with her, but even more with myself. I had somehow been infected and inflated with the idea I was a meld of Prince Charming and Socrates."<sup>13</sup>

Steiner said he "fell for it, hook, line, and sinker." Only later did he realize "that she was one of the leading lights of the law school." He said, "She never acted that way to you." They attended classes in the new law school building, dedicated by visiting Supreme Court Justice Robert Jackson in July 1950. Coincidentally, Jackson was introduced to Rehnquist during that event. When Rehnquist graduated in 1952, Jackson hired him to be a law clerk, putting Rehnquist on a path that would only beget other opportunities.

Sandra Day and Bill Rehnquist became friends beyond the classroom. A native of suburban Milwaukee and son of a paper salesman, Rehnquist had been in the Army Air Corps, then enrolled as an undergraduate at Stanford on the G.I. Bill. He obtained his B.A. in 1948, went off to Harvard for an M.A., then returned to the law school in 1950. He and Sandra dated briefly, went to a few movies together. Years later, she described Rehnquist as "always amusing, intelligent, with lots of interests outside

of the law."<sup>14</sup> Steiner, who was friends with both Sandra and Bill, said no one would have predicted their future fates. "We were all young colts in a pasture, callow youths," Steiner said.<sup>15</sup>

Whatever romantic attraction Sandra might have felt for Rehnquist faded when she met John O'Connor III, another law student and the son of a San Francisco physician. In manner and breeding, he was very far from the Lazy B. "John was witty, charming, and very smooth," recalled Diane Cooley, Sandra's friend from her undergraduate days. "He always came to everything dressed for the country club. He was a new breed of cat for her."<sup>16</sup>

John's family had emigrated from County Kerry, Ireland. His grandfather came over with a younger brother, sent across the Atlantic on a steamship by a father determined to keep his spirited younger son out of local trouble. And the O'Connor boys made good. Joined by two other brothers, they became physicians and hospital administrators. As such, they helped to found St. Francis Hospital in San Francisco. John J. O'Connor III was born at the hospital on January 10, 1930, delivered by an uncle. John's mother, Sara Flynn, had grown up in St. Louis and Denver and was a swimmer who won statewide competitions. The O'Connor family was well off, and even in the Depression was able to keep hired help.<sup>17</sup>

By the time he arrived at Stanford, John was good-looking, with thick, dark hair and a broad smile. He enjoyed telling tales and playing jokes. But he also had drive, and, while in law school, wrote daily notes to himself about the importance of staying focused. He studied hard and after his first year became a member of the law review.

Sandra and John became better acquainted while proofreading and checking the citations in a law review article. After working on it at the library, John suggested they go to Dinah's Shack, a local diner. "Beware of proofreading over a glass of beer," Sandra quipped later. "It can result in unexpected alliances."<sup>18</sup> After their first encounter, Sandra said, neither of them dated anyone else. John later recounted to family that they went out forty-one nights in a row.<sup>19</sup>

On a spring break from classes, she took O'Connor home to meet her parents. "MO made me feel comfortable right away," John told family members. He said Sandra's father was another story. "You had to prove

to Harry Day that you were the right kind of person before he would really open up. In addition, it was clear that Sandra was his treasure."<sup>20</sup>

What transpired at the first visit to the ranch has been told many times, including in the *Lazy B* memoir. But it is worth repeating here, for the rendering the story offers of Sandra's father and of the man she would marry—the rancher and the city boy, the domineering presence and the promising suitor.

"The branding irons were heating in the fire, and the crew were putting the calves through the branding chute one at a time," she wrote. "DA was branding them. Others were castrating them." Her father did not acknowledge Sandra and her beau until he went to the corral fence and took down a piece of baling wire that was hanging there. "He straightened it out and reached into a dirty-looking bucket and pulled out a couple of bloody testicles. DA trimmed them a bit with his pocketknife, then put them on the baling wire and placed them in the branding fire, where the 'mountain oysters,' as we called them, sizzled and cooked. DA turned them to cook all sides, then brought the baling-wire skewer over to John and said, 'Here, John, try some of these.' John gulped a bit and said, 'Sure, Mr. Day.' He plucked one of the oysters off the wire and popped it in his mouth. 'Umm, pretty good,' he said." John did not flinch. Sandra thought: "Welcome to the Lazy B."<sup>21</sup> And that is how she ended the tale. A reader cannot help but wonder about the psychological complexities that produced such a moment as father tested the city-bred beau who had been able to go to college and law school and faced a future of great promise.

"Of wide interest is the announcement of the engagement of Miss Sandra Day to John Jay O'Connor III," the *El Paso Times* reported on October 8, 1952.<sup>22</sup> They were married on December 20, 1952, at the ranch. As recorded separately by the *Lordsburg Liberal* (New Mexico) newspaper, Sandra emerged as no dusty rancher's daughter. She wore a gown of white nylon tulle with pleated bouffant skirt. She carried a bouquet of white camellias.<sup>23</sup> Hundreds of friends, family, and neighbors attended the wedding. The feast included meat from cows Harry had killed and slow-cooked over pits. Sandra and John flew to Acapulco for their honeymoon.

This was her first major commitment as an adult. John offered Sandra

many obvious advantages, including status and a good financial future. But she must have known the deeper commitment she was winning from a 1950s husband: an appreciation of her independence and ambition and a willingness to sacrifice some of his own drive for hers.

The bride returned with her husband for his final semester of law school at Stanford. With her freshly minted 1952 diploma, she sought full-time legal work. She interviewed with several law firms in California, among them the Los Angeles-based firm of Gibson, Dunn and Crutcher. She had graduated in the top 10 percent of her law-school class and been on the board of editors of the *Stanford Law Review*.<sup>24</sup> But she received no offers from any of the law firms, and Gibson, Dunn offered her only a position as a legal secretary. "I declined that," she said.<sup>25</sup> She eventually found work as a deputy county attorney handling civil cases in the San Mateo County attorney's office, in an area just north of Stanford.

What happened to Sandra O'Connor was not an exceptional experience. Many female, black, and Hispanic lawyers were unwelcome in the corporate legal world. O'Connor was actually more fortunate than some other law graduates, because she did not have to support her family alone.<sup>26</sup>

After John graduated in 1953, he was drafted into the army, and Sandra accompanied him to Germany, where he worked in the Judge Advocate General Corps. Sandra obtained a job as a civilian attorney for the United States Quartermaster Corps in Frankfurt. That office arranged the sale of equipment and supplies the U.S. government had left over from World War II. On weekends and holidays, Sandra and John traveled throughout Europe and began the serious downhill skiing that would become a regular part of their family vacations. "After John had finished his army service, we decided to stay the winter until either the money or the snow ran out," she said later. "To be [safe], we bought our tickets home. Who could believe you could enjoy skiing every day for three months? Then our money and the snow ran out together and we came home."<sup>27</sup>

She really came home. It was 1957, and Sandra was expecting their first child. They decided to settle in Phoenix, the capital of Arizona, rather than in more populous California. "John and I felt that by living in Phoenix we would have an opportunity to be more actively involved with our community than might be the case if we were to return to Califor-

nia," she said.<sup>28</sup> They weighed the advantages of their contacts in the big city of San Francisco against the opportunities to be big fish in the smaller pond of Phoenix. Sandra also liked the idea of her children growing up within driving distance of the Lazy B. Harry and Ada Mae were in high spirits over their daughter's return to the state and looked forward to their first grandchild.

The O'Connors already had friends in Phoenix. Bill Rehnquist and his wife, Nan, and Fred Steiner and his wife, Jacque, had settled there. Thousands of people like them were flocking to the Sunbelt after the war. Between 1947 and 1957, Arizona's population and economy boomed. In Phoenix alone, the population rose from 156,000 in 1945 to 450,000 in 1959. Air-conditioning made the low desert areas comfortable and allowed business and industry to maintain year-round production schedules.<sup>29</sup> The new Arizona economy, shedding reliance on the traditional "three Cs"—cotton, cattle, and copper—was diversifying with light manufacturing and service sectors.<sup>30</sup>

John took a job at Fennemore Craig, one of the oldest and largest law firms in the Southwest. Sandra was unsure what kind of work she might find. She was certain, however, that she would part company with most of the women of her generation who settled for a housewife's existence. She plunged into tasks with high energy. She seemed always a woman with a mission, and often several at once. As she prepared for admittance to the Arizona bar in the summer of 1957, she planned for the birth of her first child.

John and Sandra rented a small apartment. One of the first items this competitive couple bought was a ping-pong table.<sup>31</sup> Their shared legal background drew the attention of the *Arizona Republic*, which published a feature story on the couple a week before they were to be jointly sworn in to the state bar at the Capitol. The story referred to their budding romance at the *Stanford Law Review* and noted that Sandra previously had worked for San Mateo County. "She probably was the youngest and, undoubtedly, the prettiest assistant DA to be found anywhere," the reporter wrote in a piece that would for years set the admiring tone of local coverage of O'Connor.<sup>32</sup>

Sandra and John were sworn into the Arizona bar on October 5, 1957. Their son Scott was born three days later.

Sandra did not wait long to return to the working world. After secur-



ing a babysitter for Scott, she found that the law firms still were not hiring women lawyers.<sup>33</sup> But she was master of her own fate. In spring of 1958, she set up a law firm with a University of Michigan law graduate whom she had met while studying for the bar exam. Her partner, Tom Tobin, had gone to Princeton before studying law at the University of Michigan. He had then traveled through Europe, the Soviet Union, and the Far East. O'Connor and Tobin rented space in a shopping center in Phoenix, alongside a grocery store, television repair shop, liquor store, and dry cleaners. It was a growing blue-collar area, Tobin recalled, and they both immediately joined as many local civic clubs as possible to get their names out in the community and drum up business.<sup>34</sup>

"We did everything that we could get," O'Connor said. "If there were local merchants who needed a lease prepared or some advice concerning a contract or commercial matter, we would handle that; if people in the . . . area had a marriage or divorce problem or had a landlord-tenant problem, we were available to handle that. And we also took criminal appointments because, in those days, we didn't have a public defender's office and if you were willing to accept appointment for a criminal case then you could go down to the courthouse and wait in the courtroom during the criminal arraignments and the judge would consider appointing you to do something, and then you were paid some grand sum like \$25 for your services."<sup>35</sup>

Tobin recalled that the cases usually involved burglary or assault. "Most of the time you'd make a deal with the county attorney to get some of the charges dropped," Tobin said. "Or, you'd enter a plea of not guilty and arrange to go up and see [the defendant] in the courthouse jail." He and O'Connor split money from the cases.<sup>36</sup>

Perhaps inspired by Stanford professor Rathbun's notions of community, perhaps intuitively knowing where to seek power, perhaps both, O'Connor also became involved in politics. She campaigned on behalf of local Republican candidates and earned appointments to county boards and panels.

Recalling these years, Tobin said he has no memories of O'Connor showing up with her baby son in arms, or her being preoccupied by the demands of motherhood. She did not appear stretched thin, he said. From early on, she made it look easy—even if it was not. But when her

second child, Brian, was born in 1960, O'Connor no longer could work miracles. Scott's babysitter moved to California and O'Connor could not find an adequate replacement, so, she said, "I then stayed home myself for about five years and took care of those two."<sup>37</sup>

She did not really stay home. She stepped up her political involvement. She became a precinct committeeman, then county vice chairman for the Republican Party. She kept her hand in the practice of law, too, writing wills and serving as a trustee for the Federal Bankruptcy Court in a number of cases that could be handled from home. In 1962, O'Connor had a third son, Jay. "Do marriage, families, and careers for women mix?" she asked years later in a speech to Arizona State University students. "It depends, of course, on the personalities of the husband and the wife and the special needs of the children. For me, the answer has been emphatically 'Yes!' . . . The ultimate happiness to me is the feeling of fulfillment which comes from doing constructive work for the good of society and mankind."<sup>38</sup>

"It helps to marry someone with the understanding and expectation of both partners that the wife intends to pursue her separate career," O'Connor added. "If this is clear at the outset, there is less likelihood of subsequent disappointment by the husband who experiences a greater share of responsibility for child care as a result." John, who was moving up on the Fennemore track, supported her many endeavors and did not seem nervous about his place in the world.<sup>39</sup>

Indeed, out of the shadow of the O'Connors who had prospered in San Francisco, John was making a name for himself. He joined the Young Republicans and Phoenix Rotary Club, and eventually became president of the Rotary. He was a member of the boards of the local United Way and, fittingly for his family background, the Maricopa County General Hospital. He cut a sophisticated figure in his tailored suits and was considered a raconteur. He also was known for his goofy sense of humor. When he was running for president of the Rotary Club, he listed his qualifications as: "Beautiful wife. Rich father-in-law. Pool hustler." He took to handing out mock business cards with ridiculous occupations.<sup>40</sup>

His wife, meanwhile, found a way to combine the roles of mother, spouse, and professional woman that few of her peers were able to manage. For many women, the demands of motherhood and the realities of a

woman's place in the early 1960s proved insurmountable obstacles. But, by most accounts, Sandra O'Connor easily overcame these and not at the cost of her traditional views of wifehood and motherhood.

She put herself into the center of every undertaking and sought to be indispensable. She worked her way up in the Phoenix Junior League—the status organization for ambitious wives. She turned the white adobe-brick house she and John built in suburban Paradise Valley into a community hub, entertaining friends and holding election-night parties. She cooked the way her mother did: frequently, for many guests, and seemingly effortlessly.

Phoenix kept up with her. By 1960, the year the O'Connors moved into the adobe house on Denton Lane, Phoenix was the largest city in the Southwest. Light manufacturing, defense, and tourism played growing roles in Arizona's economy. Most important for O'Connor the politician, the population and economic growth turned Republican a state that had been staunchly Democratic from 1912 until World War II. The new young immigrants, many of them men like Rehnquist, were more individualistic, philosophical conservatives. An influx of senior citizens transforming the state into a retirement mecca also had strong Republican loyalties.<sup>41</sup>

The power of organized labor and Democrats' other traditional constituencies was declining. "We didn't have any damn Republicans in this state," one old Democrat grumbled, "until they invented air-conditioning."<sup>42</sup> The O'Connors mingled with the state's postwar elite, including publisher Eugene Pulliam, banker Sherman Hazeltine, and jeweler Harry Rosenzweig, who became state GOP chairman.

The optimism felt by the O'Connors was not shared by African-Americans, Native Americans, and other minorities who lived in the rundown sections of Phoenix. Bradford Luckingham, author of *Phoenix: Southwestern Metropolis*, wrote that Native Americans in the 1960s "remained poor and lived in the deteriorating downtown neighborhoods," while de facto segregation put African-Americans in the worst schools and jobs.<sup>43</sup> In a similar vein, Robert Alan Goldberg, a biographer of Republican senator Barry Goldwater, wrote, "A strict color line scarred Phoenix, dividing black and white worlds socially, economically, and residentially. While discrimination was mainly of a de facto nature, it proved as restrictive and humiliating to blacks as the system existing in

the South. . . . Unlike southern states, Arizona granted blacks the vote, but whites tested this right on occasion."<sup>44</sup>

As Republican numbers swelled in Arizona, the U.S. Supreme Court also affected political power. The justices originally had turned down appeals to get involved in state redistricting, with Justice Felix Frankfurter saying memorably in 1946 that the Court should not enter the "political thicket."<sup>45</sup> But then, in 1962, the justices abandoned the view that they should stay out of legislative redistricting battles, and, two years later, imposed a "one person, one vote" rule on the states.<sup>46</sup> That required state legislatures to reapportion districts to represent an equal number of people—no more favoring of sprawling but sparsely populated rural areas at the expense of growing urban areas. In Arizona, the ruling suddenly meant that half the members of the state legislature—fifteen senators and thirty representatives—would be from Phoenix's Maricopa County. The reapportionment shifted control from the Democrats to the Republicans.<sup>47</sup>

SANDRA O'CONNOR'S FIRST EXPERIENCE with a statewide campaign had been the 1958 reelection bid of Barry Goldwater, the heir to a department-store fortune who became the patriarch of modern conservatism.<sup>48</sup> It was just a year after she had returned to Arizona and while she cared for her one-year-old son and tried to generate business at the law firm with Tobin.

When he first won in 1952, defeating then U.S. Senate Majority Leader Ernest McFarland, Goldwater broke the Democratic lock on the state. His stature increased as business boomed in Arizona. All economic indicators continued to rise: income, housing starts, bank deposits, federal contracts, and employment.<sup>49</sup> Goldwater's opposition to big government struck a chord with the new citizenry.

In his reelection bid, Goldwater won with 56 percent of the vote in 1958, a year that saw more losses among Republican senatorial candidates than victories. His clear victory enhanced his prominence nationally and generated a greater in-state following for his ultraconservative ideas. Goldwater advocated militancy in foreign affairs and opposed the budding civil-rights movement of the day. He ended up voting against the landmark 1964 Civil Rights Act. Goldwater also opposed the Senate cen-

sure of the red-baiting Wisconsin senator Joseph McCarthy, and became a hero to the John Birch Society, which was emerging in the late 1950s.

Goldwater insisted that his opposition to antibias laws, open housing ordinances, and forced desegregation did not mean he was racist. Rather, he said, it was "impossible to legislate moral conduct." "You cannot pass a law that will make me like you or you like me," he said. O'Connor did not appear troubled by his position on civil rights or a worldview of women that held they were better off at home raising children than alongside men on the job.<sup>50</sup>

In 1964, O'Connor vigorously supported Goldwater's presidential bid. He lost by a landslide to Lyndon B. Johnson, but her involvement in his campaign deepened her connections to GOP power brokers in the state. The following year, 1965, O'Connor went back to work full-time as an assistant state attorney general. "I had the three boys in a situation where I felt I could then find babysitters again and be somewhat active in the legal profession," she said, but then admitted: "Really, I needed to go back to work, because I had gotten so busy in civic and community affairs that I was desperate to go back to work so I wouldn't have so much to do and I'd have a good excuse."<sup>51</sup> She said she had liked working in the San Mateo County attorney's office after graduating from Stanford and thought the Arizona attorney general's office would provide a similar experience.

Assisted by her network of Republican insiders, she was hired by Republican attorney general Bob Pickrell. "I really wanted to work part-time rather than full-time, but there was no chance of getting a part-time job; that was unheard of," O'Connor said. Her desire to work part-time did not reflect her need to be home with her children. Rather, her election to president of the Phoenix Junior League "was a big commitment in terms of time, so I very much needed part-time employment at the Attorney General's office."<sup>52</sup>

As an assistant attorney general, O'Connor represented state agencies and boards—further widening her contacts. "I did the best I could in order that they would feel that I was indispensable," she said. "Then when I told them that I very much needed to work only part-time and asked them if they wouldn't work out an arrangement for me, they then agreed to do it because, by then, they decided that they needed me even on my terms."<sup>53</sup> Her moves demonstrated her ability to make herself cen-

tral to the operation, as well as her skill at negotiating for what she wanted.

Somehow, she also managed to keep her strong hand in the household and the raising of her boys. "My mom was definitely the caretaker of the house," said Jay, her youngest son. "She organized everything. She had help, certainly, from a maid and a babysitter, but she ran the household and figured out all the meals and all the planning." After dinner, the boys did their homework or went off to a swim-meet or other sports activity. O'Connor turned to work she brought home from the office or played tennis. Recalled Jay, "My mom would rarely flop down on the couch."<sup>54</sup>

In 1969, her connections and industriousness paid off again. As newly elected President Richard Nixon was setting up his administration, he chose Isabel Burgess, an Arizona state senator, to be on the National Transportation Safety Board. O'Connor pursued her open seat. Clearly, O'Connor had laid the groundwork for political appointment. She was friendly with Burgess and knew the county board supervisors who would make the appointment (all of them Republican). Local press reports of the day said O'Connor actively sought the appointment in meetings with supervisors. Years later, however, O'Connor recounted her actions in this bland fashion: "I went to [the supervisors] and asked them if they would consider appointing me to the vacancy in the state Senate. There were several other people interested, but I was selected, and I filled the vacancy and then ran for the Senate thereafter at the next election and the election after that."<sup>55</sup>

With Republicans controlling the legislature, O'Connor quickly obtained the chairmanship of a legislative committee in the Senate—State, County and Municipal Affairs—and a seat on the Appropriations Committee and on the Judiciary Committee. "In the years when I started in the legislature," she recalled, "it was the beginning of the movement in the '60s where many women around the nation were claiming more in terms of their desire to be treated equally and to have equal opportunities at work. I was the beneficiary, really, of a lot of that sentiment in that people were more than willing to give me responsibility."<sup>56</sup>

They were willing, and O'Connor was ready. In barely twelve years, including the five that she ostensibly was home with her sons, she had worked her way into a position of considerable political clout. This Sen-

ate appointment moved her in from the fringes of influence—all her community activities—to the center. Her life until now had been a series of trade-offs and compensations: accepting the next-best job, volunteering without pay. The Senate appointment put her inside the corridors of power.

The following year, when O'Connor explained her interest in politics in a speech, she quoted anthropologist Margaret Mead: "If women want real power and change, they must run for public office and use the vote more intelligently' . . . I think Dr. Mead is absolutely right about this."<sup>57</sup> Years later, O'Connor elaborated, tying power to the well-learned lesson of hard work on the Lazy B: "Power [is] the ability to do. For both men and women, the first step in getting power is to become visible to others—and then to put on an impressive show."<sup>58</sup>

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## A SUPREME COURT OPENING

Sandra O'Connor walked briskly into the basement auditorium of the Phoenix City Hall on October 21, 1971, and took a seat in a folding chair for a meeting of the Phoenix Historical and Museum Commission. She and other community leaders were there to discuss the preservation of the history of a city that had been founded a century earlier on the ruins of a prehistoric farming civilization and named for the mythical bird that burns itself on a pyre and arises from its own ashes. Before 1971, the historical record of Phoenix's frontier days was piecemeal and disorganized. City leaders had decided that it was time to begin to document and preserve the past. With the history of the Lazy B ranch running deep in her bones, O'Connor was part of this pioneer heritage.<sup>1</sup>

As usual, O'Connor, a state senator, was juggling many obligations as she made time for this inaugural meeting of the commission called by Mayor John Driggs. In the Arizona Senate, she was busy with a special session to redraw the state's legislative and congressional districts. After nearly four weeks of negotiations, senators were within hours of finishing the plan—one that O'Connor had helped steer to favor Republican incumbents.<sup>2</sup> There was O'Connor's family, too. Her boys were now ages 14, 11, and 9, and she made a point of being home to fix them dinner. As a