

Statement submitted by
Arizona Governor Bruce Babbitt
to Senate Judiciary Committee
September 11, 1981

Mr. Chairman, Members of the Senate Judiciary Committee.

I am honored to appear before this Committee to testify on behalf of Judge Sandra Day O'Connor as President Reagan's nominee to the United States Supreme Court.

This Committee will hear from many witnesses regarding Judge O'Connor's outstanding record as student and law review editor, her exemplary family life, her achievements as a State Legislator and Senate Majority Leader, Prosecutor, private practitioner, Assistant State Attorney General, Trial Court Judge, Appellate Court Judge, and community leader. The richness, diversity and depth of her experience and her impeccable character have been attested by all, even those who appear in ostensible opposition to her nomination.

I appear today sharing some common ground with Reverend Falwell, Dr. Gerster and Mr. Lofton for I too have had my differences with Judge O'Connor. Prior to becoming a judge, Mrs. O'Connor served as the Republican Majority Leader of the Arizona Legislature. I am a Democrat.

Two years ago, in October of 1979, I had occasion to reflect seriously on our political differences when her name appeared on a list of three lawyers, two Democrats and one Republican, submitted to me by a merit panel for a seat on the Arizona Court of Appeals. Under the Arizona Constitution, I had complete discretion to select from that list. I selected Mrs. O'Connor despite the fact that I did not share many of her political views. I selected her even though I could find fault with some or even many of the thousands of votes she had cast during her legislative career.

It occurred to me then that compiling a scorecard of legislative votes may be the correct way to select a Senator or a

Governor. But it is manifestly the wrong way to select a judge. The judicial function is distinctive, separate and apart from the legislative function. The judge's job is not to compile a score-card for review by the Americans for Democratic Action or the Americans for Constitutional Action; it is to defend and interpret the Constitution and laws of the United States.

The criteria that I applied to select Mrs. O'Connor over two fellow Democrats were essentially two. First, does she possess the necessary traits of intellect, character, legal excellence and judicial temperament? The answer was and is, yes, clearly manifest by both the paper record and the witnesses before this Committee.

The second proper question is whether she possesses a judicial philosophy acceptable to those who make the appointment. My answer to that question was again, yes. Mrs. O'Connor is a judicial conservative in the older and institutional meaning of that word, the meaning best expressed for me in the opinions of Justice Frankfurter. She has a strong sense of the tripartite nature of American government, of the delicate lines between judicial construction and judicial invention, and a feeling for the inherent limits within which the branches of government must function if we are to maintain that balance and tension that preserves our liberties and makes government work.

I would suggest one reason why this nomination has been received so enthusiastically by the Governors of the 50 states. Like the President, the Governors believe that our Federal system, that two-tier division of powers between the national government and the states, has in recent decades become seriously unbalanced. A great deal of the erosion of our Federal system can be laid directly at the feet of the United States Congress. However, much of the problem also lies with the United States Supreme Court. The Court in pursuit of worthy goals has not infrequently extended the reach of Federal power in ways that have compromised and undermined the ability of state courts, state legislatures and Governors to carry out the responsibilities assigned to them by the Constitution.

Many of us who believe that the time is now at hand to re-examine these issues of constitutional ends and means are greatly encouraged by this nomination.

Judge O'Connor is the splendid product of a new generation of state and local leaders who know the Constitution, who advocate good and competent government, who believe in civil rights and whose motives are untinged by racism, and who also understand what John Dickinson meant when he compared the Federal system to a Newtonian solar system, "in which the states were the planets and ought to be left to move freely in their proper orbits."

As your Chairman has pointed out, for the first time in 24 years a nominee for the Supreme Court comes before this Committee with experience gained in the turbulent front lines of a state court, the only courts of general jurisdiction in this Republic. And for the first time in 42 years, a candidate appears before this Committee with experience in a state legislature, the only forums in this Republic where all the great and mundane matters of daily life and business surface to be debated and acted upon. However divergent this rich and variegated experience may be from more common entry points, such as Wall Street, the Justice Department and the Federal bench, I believe that the Supreme Court, its judicial business and our aspirations for a renewal of the Federal system will be greatly enhanced by the addition of Sandra Day O'Connor.