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*REMARKS AT CEREMONY
FOR THE HONORABLE
SANDRA DAY O'CONNOR*

By The Honorable Ruth Bader Ginsburg,
Associate Justice of the United States Supreme Court,

The Honorable Mary M. Schroeder,
*Chief Judge of the United States Court of Appeals for the
Ninth Circuit and ALI Council member,*

The Honorable D. Brock Hornby,
*Judge of the United States District Court for the
District of Maine and ALI Council member, and*

The Honorable Sandra Day O'Connor,
Retired Associate Justice of the United States Supreme Court

*The ceremony for The Honorable Sandra Day O'Connor
convened in the Grand Ballroom of The Mayflower,
Washington, D.C., on Wednesday morning, May 17, 2006.
President Michael Traynor presided.*

President Traynor: Justice Ginsburg is on a quite tight schedule and is going to need to return to the Court after her remarks, so we will begin with remarks and tribute by Justice Ruth Ginsburg, a great friend to The American Law Institute. She will begin our ceremony, and then she will have to leave, and then will be followed with remarks by Chief Judge Mary Schroeder of the Ninth Circuit and U.S. District Judge Brock Hornby.

Ruth, we welcome you. Thank you very much.

Justice Ruth Bader Ginsburg: It is a pleasure to be with you this morning to pay tribute to a great judge and a grand citizen of the U.S.A. Collegiality is essential to the operation of any multi-member bench. Sandra Day O'Connor, in my view, has done more to promote collegiality among the U.S. Supreme Court's members, and with our counterparts abroad, than any other of the now 110 Justices. My colleague, Stephen Breyer, wrote of that quality: "Sandra has a special talent, perhaps a gene, for lighting up the room . . . she enters; for [restoring] good humor in the presence of strong disagreement; for [producing constructive] results; and for [reminding] those at odds today . . . that 'tomorrow is a new day.'"

Of all the accolades Justice O'Connor has received, one strikes me as describing her best. Growing up on the Lazy B Ranch in Arizona, she could brand cattle, drive a tractor, fire a rifle with accuracy well before she reached her teens. One of the hands on the Ranch recalled his clear memory of Sandra Day. "She wasn't the rough and rugged type," he said, "but she worked well with us in the canyons—she held her own." Justice O'Connor did just that at every stage of her professional and family life.

Her welcome when I became the junior Justice is revealing. The Court has customs and habits one cannot find in the official Rules. Justice O'Connor knew what it was like to learn the ropes on one's own. She told me what I needed to know when I first came on board—not in an intimidating dose, just enough to enable me to navigate safely my first days and weeks.

At the end of the October 1993 sitting, I eagerly awaited my first opinion assignment, expecting—in keeping with tradition—that the

brand-new Justice would be slated for an uncontroversial, unanimous opinion. When the list came round to me, I was dismayed. The Chief gave me an intricate, not at all easy, ERISA case, on which the Court had divided six to three, and Sandra was among the three. I sought her advice. It was simple: “Just do it,” she said, “and, if you can, circulate your draft opinion before he makes the next set of assignments. Otherwise, you will risk receiving another tedious case.” (*Laughter*) That advice typifies Justice O’Connor’s approach to all things. Waste no time on anger, regret, or resentment; just get the job done.

As first woman on the Supreme Court, Justice O’Connor set a pace I could scarcely follow. To this day, my mail is filled with requests that run this way. The great lady is just coming in, I see.

(Justice O’Connor received a standing ovation.)

I was telling you about the challenge I had as second woman on the Court. Well, the mail I received, and still do, runs this way: Last year (or some years before) Justice O’Connor visited our campus or our country, spoke at our bar or civic association, did this or that. The next words, politely phrased but to this clear effect—now it’s your turn. (*Laughter*) My secretaries once imagined that Justice O’Connor had a secret twin sister to share all her appearances. The reality is, she has an extraordinary ability to manage her time.

Why does she travel to Des Moines, Brazil, Rwanda, Mongolia, when she might rather fly fish, ski, play tennis or golf? In her own words:

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. . . . As women achieve power, the barriers will fall. As society sees what women can do, as *women* see what women can do, there will be more women out there doing things, and we’ll all be better off for it.

Of her journeys abroad, her former law clerk, Ruth McGregor, now Chief Justice of the Arizona Supreme Court, said that Justice O’Connor has “worked tirelessly to encourage emerging nations [to live under the rule of law]” by maintaining “democratically elected legislatures . . . [and]

independent judiciaries”; at the same time, she strongly “remind[s] us that this country could lose the rule of law if we do not act to protect our precious heritage.”

In the 12½ years we have served together, Court watchers have seen that women speak in different voices, and hold different views, just as men do. Even so, some advocates, each Term, revealed that they had not fully adjusted to the presence of two women on the High Court. (*Laughter*) During oral argument, distinguished counsel—including a Harvard Law School professor and more than one Solicitor General—began his response to my question: “Well, Justice O’Connor . . .” (*Laughter*) Sometimes when that happened, Sandra would smile and crisply remind counsel: “She’s Justice Ginsburg. I’m Justice O’Connor.” (*Laughter*) Anticipating just such confusion my first term as a member of the Court, the National Association of Women Judges had T-shirts made for us. Justice O’Connor’s read, “I’m Sandra, not Ruth,” (*laughter*) mine, “I’m Ruth, not Sandra.” (To my sorrow, I am now what Sandra was for her first 12 years of service on the Supreme Court, the lone woman.)

But Sandra remains close by. She has moved to chambers next to mine and is continuing her involvement in an array of “off the bench” activities. Prime among her current undertakings is one to which the ALI might usefully contribute. Sandra is endeavoring to encourage all concerned with the health and welfare of our federal system to join forces to preserve the independence of the judiciary from the political branches of government, and the independence of judges from the partisan expectations of some who supported their appointment.

To conclude these remarks, I will recall the surprise appearance Justice O’Connor made one night, some seasons ago, in the Shakespeare Theatre’s production of *Henry V*. Playing the role that evening of Isabel, Queen of France, she spoke the famous line from the Treaty scene: “Hap’ly a woman’s voice may do some good.” (*Laughter*) Indeed it may, as Justice O’Connor has constantly demonstrated, and will continue to demonstrate, in all her endeavors. (*Applause*)

President Traynor: Thank you so much, Justice Ginsburg, for that lovely tribute. (*Applause*)

A great friend of the Institute, Justice Sandra Day O'Connor has served her country and our profession magnificently throughout her life. She has spoken to us wisely, including her incisive and diplomatic remarks about the pertinence of international law in appropriate cases. She has fostered our work, including introducing the ALI-ABA video to assist volunteer lawyers, encouraging them to undertake not just one but one or more of these challenging cases.

As an inspiring leader, she is devoting her wisdom and energy to critical issues, including judicial independence, and is actively cochairing, with Justice Breyer, a conference on the judiciary, cosponsored by the Institute and by the Georgetown Law Center. The conference will be at the Center on September 28 and 29 and will involve primarily leaders of business, the nonprofit community, and media.

As our second tribute speaker, let me introduce our great friend and colleague, the Chief Judge of the Ninth Circuit, Mary Schroeder. (*Applause*)

Chief Judge Mary M. Schroeder: Thank you, Michael. It is an honor to share the dais with two great and powerful ladies, and I know that Sandra's influence will continue for many years to come in her many fields of endeavor.

I think there are probably no two members of the Institute whose careers have been more intertwined than Sandra's and mine. Our first collaboration occurred more than 35 years ago, when I was one of a handful of women associates in a Phoenix law firm and she was majority leader of the Arizona State Senate.

The Arizona state bar had announced an ethics opinion that would have made it almost impossible for women lawyers with lawyer husbands, and that included almost all 12 of us, (*laughter*) to become judges or practice in large firms, and Sandra and I, therefore, worked out an arrangement to change that. I enlisted the late great ALI Council member John Frank to help me do the research and we drafted a letter. Sandra made the draft a lot more diplomatic and evenhanded, (*laughter*) and then she signed it and sent it off to the bar. Poof: The offending ethics opinion promptly vanished.

In 1979, I was there when Sandra took my seat on the Arizona Court of Appeals, with her husband John helping her don the robe, and Sandra thereby became the second woman to serve on the Arizona Court of Appeals. And, in 1981, I was proudly in Washington representing the Ninth Circuit as Sandra took the oath from Chief Justice Burger to become the first woman to serve on the United States Supreme Court.

For five years, Sandra and I were the first and still the only all-woman team of circuit justice and chief circuit judge in the federal courts. I have seen Sandra off to countless barbecues, luncheons, teas, cocktail receptions, dinners, and even a fishing expedition—for trout, not documents—(*laughter*) and through it all and for the past 25 years Sandra has constantly been in the spotlight and always surrounded by admiring throngs, particularly of young women and girls.

Raised with cowboys in the West, she found herself in a more public role of decisionmaker than any woman in our nation's history. This must have been an enormous burden, but Sandra handled it all with unceasing grace and charm.

To our generation, Sandra, and to the much larger generations of women in the law that followed ours, you will always be the role model's role model. Thank you, Sandra Day O'Connor, very much. (*Applause*)

President Traynor: Thank you, Mary. And now, Brock Hornby. Thank you.

Judge D. Brock Hornby: Thank you, Michael.

Justice O'Connor, John O'Connor, Chief Judge Schroeder, colleagues of The American Law Institute: Why, you may ask yourself, is Hornby up here with all these luminaries? Well, I am here to give you the earthly perspective, to speak for the rest of us. I am just a working trial judge and a former state appellate judge. Justice O'Connor was once a working trial judge, a Superior Court justice in Maricopa County, Arizona. For those of you who don't know, that's Phoenix. She was elected in 1974 and served until 1979. She was a former state appellate judge as well, on the Arizona Court of Appeals, as Chief Judge Schroeder has just mentioned, from 1979 until President Reagan appointed her in 1981

to the Supreme Court. So, in my remarks about Justice O'Connor, I want to begin with those perspectives that are familiar to me and were once familiar to her.

In my preparations, I discovered a website, brainyquote.com. I'd never heard of it before, but you won't be surprised to learn that it has a number of quotations from Justice O'Connor. The one I like best is this: Said Justice O'Connor, "Do the best you can in every task, no matter how unimportant it may seem at the time. No one learns more about a problem than the person at the bottom." I think she was talking about trial judges. (*Laughter*)

In fact, Justice O'Connor never forgot the perspective of a trial judge or of state judges. I believe that that perspective and her own experiences as a state trial and appellate judge beneficially informed her thinking and her opinions at the Supreme Court. Let me give you just two examples, the first from early in her first year on the Court and the second quite recent. Exhibit 1, *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.* [456 U.S. 844, 857-858 & n.20 (1982)], June 1, 1982, Justice O'Connor speaking for the majority, and I quote, "The appellate court was not entitled simply to disregard the District Court's finding An appellate court cannot substitute its interpretation of the evidence for that of the trial court simply because the reviewing court 'might give the facts another construction, resolve the ambiguities differently, and find a more sinister cast to actions which the District Court apparently deemed innocent.'"

There Justice O'Connor demonstrated her appreciation for the important institutional role that trial courts play, and no, Chief Judge Schroeder, she wasn't reversing the Ninth Circuit, it was an East Coast circuit that will remain unnamed. (*Laughter*)

Exhibit 2, *Blakely v. Washington* [542 U.S. 296 (2004)], June 24, 2004—we talked about this case a couple of days ago, as you remember—Justice O'Connor dissenting. I quote [*id.* at 323-324 (citations omitted)]:

Numerous other States have enacted guidelines systems, as has the Federal Government. Today's decision casts constitutional doubt over them all

The practical consequences for trial courts, starting today, will be equally unsettling: How are courts to mete out guidelines sentences? Do courts apply the guidelines as to mitigating factors, but not as to aggravating factors? Do they jettison the guidelines altogether? The Court ignores the havoc it is about to wreak on trial courts across the country.

There Justice O'Connor was speaking of both state and federal trial courts. Once again, she was sensitive to institutional roles in the job that state and federal trial judges have to perform. She was able to get beyond the internal logic of a finely crafted appellate opinion and assess the practical consequences for state judiciaries and federal judiciaries. And I submit to you that that appreciation of institutional role has been a hallmark of Justice O'Connor's writing on the Court.

Justice O'Connor also has a profound concern for the role of the judiciary as the third branch of government. I have learned the degree of that concern through my service as Chair of the Judicial Branch Committee for the Judicial Conference. I can tell you that Justice O'Connor, as you have heard from other speakers this morning, is devoted to preserving the independence of the judiciary, both state and federal. You've already read in the press about her speaking out on those topics in recent months. You will be hearing more, as President Traynor has just mentioned, about her organized efforts to energize support for, and understanding of, the third branch in today's difficult environment, and I am proud that the ALI is taking part in that. Justice O'Connor, I'll also point out, is very committed to improving civic education in high schools and elsewhere so that American citizens better understand why judicial independence is so important.

But no appreciation of Justice O'Connor would be complete without referring to her personal interest in people and the time that she sets aside for individuals. An illustration from my good friend Sarah Evans Barker, who is a federal trial judge in Indiana. Soon after Justice O'Connor was appointed to the Court, she was scheduled to speak at the Seventh Circuit Judicial Conference. There were only four women judges in the Seventh Circuit at the time—they were all trial judges—and Sarah

phoned Justice O'Connor's secretary with some trepidation to inquire if the Justice might consider meeting with the four of them. And she said, "I hope it's not inappropriate," when she called. Well, soon thereafter, Sarah received a personal phone call back from Justice O'Connor saying, "Sarah, I got your message. What a great idea."

And those personal phone calls, by the way, are another trademark of Justice O'Connor. I know, I've been the recipient, and I think of one that came into my office about three months ago. One of my law clerks picked up the phone to her surprise to hear Justice O'Connor on the other end. She said she was reluctant to wash her hand all day after having that experience. (*Laughter*)

In any event, the meeting took place. Justice O'Connor and her husband, John, spent 45 minutes with the trial judges over lunch, and all four of them felt special. There are endless other examples like that.

But finally, an illustration from Justice O'Connor's international role. I was privileged to accompany Justice O'Connor and John O'Connor and a handful of other judges to China, in 2002, invited by the People's Supreme Court of China for the first court-to-court exchange. My favorite image from that experience comes from the inner sanctums of the Forbidden City in Beijing, a beautifully appointed room, Justice O'Connor sitting side by side with then-President Jiang Zemin, sipping tea out of elegant china and talking about his then upcoming trip to President Bush's Crawford, Texas, ranch. As the audience drew to a close, Justice O'Connor leaned over to President Jiang Zemin and said very slowly and carefully—each had an interpreter—"Mr. President, I cannot leave without reminding you that our country remains deeply concerned about China's treatment of prisoners of conscience." President Jiang listened politely, he said nothing, but the rest of us felt our chests swell with pride at the moral courage that she had demonstrated at that time.

What it all comes down to is this: Justice O'Connor practices the art of statecraft, on the Court, within the state and federal judiciary, among the branches of government, internationally, or, where all statecraft begins, on a person-to-person level. We trial judges and state judges

shall sorely miss her influence on the Court. All Americans will miss her steadying role, and by the way, (*turning to Justice O'Connor*) Senators Collins and Snowe, whom I met with yesterday, asked me to convey that same message to you.

But we eagerly anticipate the new initiatives upon which she has embarked. With her energy, her intelligence, and her good will we know that she is sure to be successful on these new initiatives.

Justice O'Connor, we are privileged to have you among us. Thank you. (*Applause*)

President Traynor: Thank you, Brock. My son and his family are now the proud possessors of the book *Chico*, personally autographed by Justice O'Connor. I read the book to my four-year-old granddaughter, Emma, who doesn't know the difference between grandpas and Supreme Court Justices and so forth, and Emma's verdict was, "Papa Mike, read it again." (*Laughter*)

I think we'll be reading the words of Justice O'Connor for many decades. I didn't ask her to make—to burden her with a big speech or anything, but I would like to welcome her if she would like to say a few words to us. (*Applause*)

Justice Sandra Day O'Connor: Thanks, Michael. Don't get up. Now really, don't do that.

I am deeply touched that Michael Traynor and The American Law Institute wanted to say a few words about me today. I don't like hearing things about myself, to tell you the truth, and I know that when major things happen, a death or a resignation or a retirement, we all want to say something about it, and that's what you've done today. I am very touched by the comments that I heard today, and I am so sorry that I got here late and didn't get to hear all of Ruth Ginsburg's wonderful statements. I love the way she expresses things and puts them together.

And I so appreciated hearing Mary Schroeder's comments—we have worked together for so many years in Arizona—and hearing from Brock Hornby on behalf of trial judges. You know, I was a trial judge, and I remember so clearly how hard it was to make correct rulings on all the

evidentiary points that have to be made instantly from the bench. I was so sympathetic, because I don't think they ought to be overturned on appeal, and I always thought (*laughter*) that, at the end of the day, the trial judges usually got it right, so it has been really a treat to be here this morning, and I thank you very much.

And Michael, I am so grateful for the assistance of The American Law Institute, our most prestigious, distinguished legal organization in this country, the help that will be provided in focusing on Article III of the Constitution and the independence of the judiciary. It is a concept that is hard to explain to people, but we can do it, and once people understand it they are going to appreciate the need for it and I think start rejecting some of the incredible calls we have been hearing lately to have mass impeachments of judges and to strip courts of jurisdiction, to cut their budgets, and so on. This is, I think, the most serious attack that I have seen in my lifetime, and I welcome your help, because the assemblage here is thoughtful, scholarly, and helpful in every respect, and I can't thank you enough for the help, and thank you for today. I am going to leave the bench now up here (*laughter*) and leave it to you for the next part of your program, Michael.

(Justice O'Connor received a standing ovation.)