

**Linda Hirshman** [00:00:00] She was a terrific first. And it's important for our movement that the first person in a highly visible position like the first black president, Barack Obama, be great at their job. And she was great at the job of being first.

**Kaely Monahan** [00:00:25] Welcome to the second episode of The Gaggle special mini series on Sandra Day O'Connor. I'm producer Kaely Monahan. This week, the country has said its final goodbyes to the first woman to ever sit on the U.S. Supreme Court. To mark her historical life. The Gaggle is sharing in-depth interviews with those that knew her. Yesterday, we heard from her biographer, Evan Thomas. Today, we'll hear from Linda Hirshman, a lawyer, cultural historian and author of many books, including the 2016 "Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World."

[00:01:21] Hershman sat down in The Gaggle studios in spring 2022 with then gaggle host Yvonne Wingett Sanchez. For Hershman, O'Connor is something of a complicated figure. In her words, O'Connor opened the door for extreme conservatism to enter the highest court in the land. At the same time, O'Connor was a defender of moderation and believe strongly in nonpartizanship when it came to interpreting the law.

**Yvonne Wingett Sanchez** [00:01:53] To begin, can you just give us a sense of what Justice O'Connor's place in American history is?

**Linda Hirshman** [00:02:01] I have changed my mind about that subject since I wrote the book. She was the critical fifth swing vote for many years. So one might argue that her 15 years of decision making when she was the critical center of the court would be her place in American history, adding the vote counting and allowing George Bush to occupy the White House, preserving affirmative action and preventing the overruling of Roe v Wade. One might have said that that cluster of decisions would be her legacy. But in the seven years since I published my book, I have seen that the process of pulling the court in a conservative direction, which she helped enable with her vote in Bush v Gore, has accelerated to the point where the substance of her decisions will not last much longer. So you could say, Oh, she's Justice Rutherford, she's not going to matter at all. But I disagree with that. I think that her legacy is her symbolic role as the first woman on the Supreme Court of the United States. And that symbolic role matters. So I think her legacy is her symbolic role as the first woman.

**Yvonne Wingett Sanchez** [00:03:26] Your book, "Sisters in Law, How Sandra Day O'Connor and Ruth Bader Ginsburg went to the Supreme Court and Changed the World," examines the first two women justices in the context of the women's movement more broadly. What did Sandra Day O'Connor do to help the causes of women?

**Linda Hirshman** [00:03:47] O'Connor was actually a pretty good feminist when she after the movement hit in the late sixties and she was in the Arizona legislature. She was very tidy and workmanlike. So she went through the laws and she suggested changing the substantive Arizona law so that they would treat men and women equally, which was a not insubstantial accomplishment. And she denied it when she was being considered for the Supreme Court. But that denial was a lie. She actually did support the decriminalization of abortion in Arizona. So Sandra Day O'Connor is a complicated subject for a feminist because she also notoriously said to a gathering of the Kwanis or some such male group that she had arrived with her brassiere and her wedding ring. So she tried very hard as if anyone was drowning it to present herself in a conventional and unthreatening way. But the substance of her politics in those years was pretty good. She did not get the Equal

Rights Amendment ratified in Arizona, which would have been a critical state and might have made a lot of difference. She contends that she did the best she could in the votes weren't there. Her critics contend that she did not do everything she could have done. From the long lens of history, I would say Sandra Day O'Connor was probably right. By the time, Phyllis Schlafly and the Republican resistance to the Equal Rights Amendment had ginned up it was too late. It failed in a bunch of places at that moment. But when she got on the Supreme Court of the United States, she was a terrific first. And it's important for movement that the first person in a highly visible position like the first black president, Barack Obama, be great at their job. And she was great at the job of being first. She was incredibly energetic and generous with her time. She went everywhere, giving speeches and manifesting on the ground that a woman could do the job of being a Supreme Court justice just as well as a man could. And the spotlight on her was very bright, and she handled it beautifully.

**Yvonne Wingett Sanchez** [00:06:05] So you've talked about areas where she exceeded expectations or met the moment. You cited one example where she sort of came up short. How else did she come up short in the fight for women's causes?

**Linda Hirshman** [00:06:20] There was absolutely nothing in her narrative that will be more harmful than the critical fifth vote in goal. Now, it is certainly possible that if they had continued counting the votes in Florida, they would have found that Bush won Florida and hence the election, and it wouldn't have been on. Sandra Day O'Connor and the four other Republican appoint justices who joined her. But eliminating the possibility that anyone by George W Bush would be the president of the United States meant many things, including to critical conservative appointments to the Supreme Court of the United States. Justice Roberts. And Justice Alito. And they are now at this very moment in 2022, a part of the critical six justice majority conservative majority that I believe will overturn Roe v Wade and Casey v Planned Parenthood, which was O'Connor's decision. So from the standpoint of women's rights, a disastrous development for which there would not be the votes, but for the presidency of George W Bush.

**Yvonne Wingett Sanchez** [00:07:33] So broadly, how do you pencil it all out when it comes to Sandra Day O'Connor? Is she worthy of the claim to history that she had?

**Linda Hirshman** [00:07:43] Do we remember the czar that abolished serfdom in Russia in the 19th century? Okay. He was for our czar pretty good. And it was a big symbolic accomplishment and a substantive accomplishment for the serfs. But once the authoritarian regime of the Bolsheviks took over in 1917, the agreeable reformist who preceded it diminished substantially in importance. So democracy in America is under a very grave threat right now. And the very conservative Supreme Court of the United States so far has not voted to allow the conservative forces in America to overturn our representative form of government in our elections. They've so far not gone to that place. If they do and for example, conservative state legislatures can't pick electors, regardless of who wins the election in their state, then the fact that Sandra Day O'Connor went to a lot of lectures and spoke out on behalf of women's equality is not going to matter. So I think to value her and to an extent also the other subject of my book was Bader Ginsberg. To evaluate them is going to depend in part on what happens in the midterm elections in 2022, on the presidential election in 2024. The threats to our institutions of democratic self-governance is very deep and very close.

**Yvonne Wingett Sanchez** [00:09:43] You were critical of Justice O'Connor in some of her opinions, especially on abortion rights. You cast her opinion on that as almost indulgent.

And if we sort of understood your thinking correctly, you sort of described it as something that would work fine for someone of means like herself, but pretty harmful to a lot of other women. Help us to sort of process that ruling and her jurisprudence as a whole.

**Linda Hirshman** [00:10:11] So Aryeh Neier, the former head of the ACLU, in an interview for this book, told me that Sandra Day O'Connor had a perfect EQ. She had a perfect radar for where Americans emotional and political. Sweet spot was. And so in her decisions up to Planned Parenthood and including Planned Parenthood advocacy. She allowed the states to put restrictions on access to abortion of great severity. And it also established a strategy for the anti-abortion forces to pursue restrictions on abortions that would make it increasingly difficult for women to obtain them. And those kinds of restrictions fall most heavily on people who don't have the means to travel and stay away from their workplace and the caring of their other children for any length of time. So her allowing these restrictions, the waiting periods, the crazy scripts that the doctors have to rate the women, the increasingly narrowing time frame, you know, the less money and social power you have, the more vulnerable you are. So she said that restrictions had to be allowed unless they placed a, quote, undue burden on the right to abortion. And since she was the critical swing vote, the undue burden meant what was undue to Justice O'Connor. And one of the things that we know about Justice O'Connor is that she understood clearly the social place of a powerful white woman of means. It's not at all so clear that she understood what it would be like to be a black or brown woman who did not have the means to travel and wait.

**Yvonne Wingett Sanchez** [00:12:15] So her opinion was largely viewed well, was viewed as as preserving Roe v Wade. Did it plant the seeds, though, for a more conservative court to embrace abortion rights? I mean, you sort of are touching on that now. How did that sort of help ferment some of the more conservative outlooks to catch fire in some of these other states?

**Linda Hirshman** [00:12:42] The process had been going on before Casey v Planned Parenthood. Okay. Starting with the religious right in Missouri. It had been going on since the late seventies, right. The resistance to abortion ginned up after Roe v Wade. And in 1980, the Republican Party, which said that it was opposed to Roe v Wade. So that then could maybe be a crossing point. And when O'Connor got on the court, there were cases from other places, Ohio and so forth, placing increasing restrictions. So the strategy was developed before Casey v Planned Parenthood in Casey v Planned Parenthood. It was a Pennsylvania law, very restrictive, and she allowed all of the restrictions to stand except the one that would be most onerous to a rich, white married woman, which was that you had to tell your husband you were getting an abortion before you got it that she said you couldn't do. And the judge in the lower court who had said that you could do everything, including have to tell your husband was appointed to take O'Connor's place on the Supreme Court of the United States, Samuel Alito. So she enabled it in two ways. First of all, she approved all the restrictions except that one. And secondly, she voted Bush Fieger. And then she stepped down.

**Yvonne Wingett Sanchez** [00:14:03] Is there a case that you think especially reflects Justice O'Connor's sensibilities?

**Linda Hirshman** [00:14:10] You know, here's the thing that O'Connor did, because she sat on the court and was in the debate. She was able to rein in the most chauvinist and sexist behavior of her colleagues. Okay. So I would say Sandra Day O'Connor is an appellate court judge in Arizona, and six months later, she's on the Supreme Court of the

United States. And when she gets there in 1981, she finds that the court, which was down to eight because they were waiting for the next appointment, had divided 4 to 4. On the subject of whether the Mississippi College for Women could exclude men from its nursing program, a gender equality case. And often the men were the plaintiffs in those cases because Ruth Bader Ginsburg and the people at the ACLU thought that the nine all men on the Supreme Court would find a man a more appealing lineup than a woman. I can't imagine why they would think that. But anyway, Hogan was a man. But does it matter who stands for the principle that men and women have to have equal access to public education? And it was 4 to 4. And she came on a newbie on the court and she broke that tie and voted that sex discrimination in public education was unconstitutional. That's got to be her most important case because Casey's gone down the tubes and her vote in Casey was not necessary. It was 6 to 3. So Souter and Kennedy alone could have done it. I don't know if they would have done it without her. So you would have to say that Casey would be the second most important one beyond abortion.

**Yvonne Wingett Sanchez** [00:15:57] Justice O'Connor is also remembered as the pivotal vote on Bush v Gore. This is the case that effectively handed the presidency to George W Bush, as we all know, how much of her judicial legacy should be wrapped around that ruling.

**Linda Hirshman** [00:16:14] Uh, what will be left of her legacy? And two of those six votes are justices that were appointed because of what she did in Bushwick or and then retiring, which she didn't have to do. She was completely competent four years after Obama was elected so she could avoid it. So in a sense, I want to circle back to my prior answer about the czar. Her legacy depends and what one's legacy often does depend. Brandeis and Helmsley's legacy depended on the Depression. The New Deal, though FDR getting to appoint enough Supreme Court justices so that they could pick up the dissents that Holmes and Brandeis left. And we call it Holmes's and Brandeis legacies. But luck plays a big role in this question. So if we're lucky, then the good things she did preserving Roe v Wade and really supporting the employment discrimination cases in which women came to the court. My personal favorite, Hishon versus King and Spalding was the one with the white T-shirt contest. And because O'Connor, this very proper Paradise Valley Country Club matron, was on the court, she understood what it felt like to be Haitian. And so all of the rest of us young women lawyers benefited from that. So there are things to really value in her decision. Horgan's probably the most cleanest one. She's going to have to have good fortune to have her legacy matters. But in some ways, so is Earl Warren going to have to have good fortune to have his legacy matter. We can't blame them. Although she had a role, she was in the causal chain to putting Alito and Roberts on the court.

**Yvonne Wingett Sanchez** [00:18:11] Give us a two sentence primer on the wet T-shirt case.

**Linda Hirshman** [00:18:19] So Betsy Hishon was an associate and at the law firm of King and Spalding in Atlanta. And when the time came for her to be made a partner, many sexist things were said, and she was denied her partnership. And she sued them. And they defended themselves on the grounds that being someone's partner was not an employment relationship, was a partnership, and that they had unlimited discretion to choose who they wanted to be partners with. And that case went to the Supreme Court of the United States with a very sexist record behind it, because they thought they were immune. So they had said all kinds of damaging things. That summer before the argument, King and Spalding had their annual summer wet T-shirt contest at their summer party. And when some lawyer went to them, this is a firm full of lawyers, okay? This is not

some trucking company. One of their lawyers, one of them said that they shouldn't have a T-shirt contest as they were about to defend their sexist decision about Betsy in the Supreme Court of the United States. They changed it to, I don't know, something like the associate, the most beautiful associate contest or some equally sexist thing. I love this. And you have to know that the only woman, not just guard at that moment know fully what it meant to be the subject of that kind of thing. Remember when she was in the Arizona legislature? Some other alleges later he said, if you were a man, I'd punch you in the nose. And she said, the viewer, man, you would. So she was familiar, shall we say, with the casual sexism of the workplace.

**Yvonne Wingett Sanchez** [00:20:09] Looking back on America as it was back in 1981, President Ronald Reagan had promised to put a woman on the Supreme Court. Was she the right pick for a conservative Republican president? The court and the country.

**Linda Hirshman** [00:20:25] She was not the right pick for a conservative Republican president. She was. The Republican Party had already moved substantially to the right of where Sandra Day O'Connor, with her clear understanding of where the American people was, were at. So she was an anomaly and the rest of the Reagan appointees were much more conservative than she was.

**Yvonne Wingett Sanchez** [00:20:53] Was she the right pick for the country?

**Linda Hirshman** [00:20:56] Well, you know, Aryeh Neier from the ACLU would say she was, because she held the country together, seeing exactly how far she could go in these very contentious cases. And so it's possible that she was. I, Linda Hirshman, I'm not surprised by what has happened to my country in the last seven years because I saw it coming and I did not think that O'Connor's weirdly specific, very low key 50 votes reflecting the position of a lot of people in the country were going to be sufficient to hold the country together. The country has been dividing since *Brown v Board of Education of Topeka, Kansas*, in 1954. And since I'm a student of history, as you know, I just wrote a book about the abolitionist period. I recognized what was happening. So I'm you know, I do not think I didn't think it was going to hold. We bought some time. That's not nothing when you're looking at what's going on now. We bought some time, but it wasn't healing. It was not healing at some point. We're going to have to face the fact that America, like many of the countries of the Enlightenment West, is divided between an educated, cosmopolitan, diverse, small d democratically inclined population and a mostly white. Mostly uneducated. More rural. Population. That's a deep divide. It goes back to the period before the Civil War. Someone said about the Civil War. When the farmers go to war with the engineers, the farmers are going to lose. And the division between the farmers and the engineers, although it's obviously not farmers now, I mean it's probably farmers. But that division between the industrial revolution, the knowledge revolution, the urban revolution. Part of America and the rural, exurban, uneducated, mostly white part of America resembles deeply the divide between the North and the South in the 1850s. So I saw it coming. Sandra Day O'Connor was a great lady and did a great job being the first Supreme Court justice. And she was substantially better than the president who appointed her. But she couldn't she can't hold that together. Abraham Lincoln couldn't hold it together.

**Yvonne Wingett Sanchez** [00:23:52] Well, was she the right pick for the court at the time?

**Linda Hirshman** [00:23:56] Yeah, she was great for the court. And I will tell you why. It's a funny reason. She had a fabulous EQ. She gets to the court and there's all these guys who have no idea how to interact with one another, and she organizes luncheons. Like,

when we have argument, we should all have lunch together. Is that a classic? O'Connor Right. The woman who gave fabulous parties and was a wonderful cook and understood the value of social relationships. She was a great dancer. There are wonderful stories about her being the life of the party. That's not trivial. That gift for bringing people, they were of course, they weren't all white, because to Thurgood Marshall was on the court and she speaks very warmly of him. Although her votes do not reflect that degree of understanding of racial diversity. But she got them to go to lunch. And when Clarence Thomas, you may remember, the sexual harasser was placed on the Supreme Court of the United States, came to the court, you would think he would have been a pariah, but he wasn't. He wouldn't come to lunch. And she knocked on his door and said, Come on, Clarence, we're having lunch. That's a gift in a small group setting.

**Yvonne Wingett Sanchez** [00:25:11] Final question for you. Can you give us an example of something that you learned about her that you think most Americans may not know about but should?

**Linda Hirshman** [00:25:21] So after she was on the Supreme Court of the United States, she was back in Arizona for a vacation and somebody she knew in the legal community, she knew everybody in Arizona. It was a small community at that point. And she's also very good at that was going on a trip to see all of the locations where the events are having to do with a particular legal dispute had taken place and they were going in like a jeep. And she decided she'd go along for the fun of it. She was very robust. And she did. And anybody who's lived here as long as I have worked here for 40 years has had this experience. You'll get into the backcountry in a Jeep and you find yourself on the wrong side of a running wash. So the wash was running. They were going for a lunch to a ranch house or something on the other side of the wash, and they were stuck and they were waiting for the wash to go down. And Sandra Day O'Connor announced that she had to pee. They were, of course, horrified because they've got like this incredibly important honored guest in their Jeep and the washes running and all kind of looked at them and says, you know, I grew up on a ranch. This is not a problem. She goes behind a creosote or some bush and comes back a few minutes later. I hope that stalked.

**Kaely Monahan** [00:26:47] That was Linda Hirshman, the author of "Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg went to the Supreme Court and Changed the World." This interview was originally recorded in March of 2022. Tomorrow, we'll hear from O'Connor's law clerk and friend and get a glimpse of a different side to the justice.

**Ruth McGregor** [00:27:12] She has a really great laugh. And when something really tickled her, I mean, she would just laugh. Both John O'Connor and my husband just tell terrible jokes. I mean, and she was a wonderful audience for both of them because she just got she got such a kick out of the stories that they would tell. And she's, you know, that that carrying part of her, that warmth, which necessarily isn't so evident in her professional life.

**Kaely Monahan** [00:27:39] That episode will be released tomorrow afternoon right here on The Gaggle. Former Gaggle host Yvonne Wingett Sanchez led today's interview. The conversation and episode was edited and produced by me, Kaely Monahan. Additional Audio Oversight is by Amanda Luberto. News Direction is provided by Kathy Tulumello. Our music comes from Universal Production Music. Never miss an episode of The Gaggle by subscribing to us wherever you listen. And if you learned something new today, be sure to share this episode with a friend. You can also leave us a review and rate us five stars.

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