

U.S. Supreme Hearts: Six men convened in Philadelphia in 1787 to frame the U.S. Constitution. In it they defined the Supreme Court. Their Constitution is a living document, interpreted by judges, often with decisions that traverse. The Supreme Court is the highest court from which there is no appeal. Its justices are appointed for life by the president. Its decisions are the law of the land that governs men and women. In the 1930s, Chief Justice Charles Hughes stated: "We are under a Constitution but the Constitution is what the Judges say it is."

In his book, *Man & Wife in America: A History*, Henry Hartog writes how patriarchy and misogyny were present in the legal culture as well as in the words and worlds of judges. He notes that after the framing of the Constitution, for over 160 years, all the public officials and the authoritative legal voices were all male, judges, legislators, juries, treatise writers, all of them. As late as the 1950's Hartog writes, women were a minuscule fraction of American lawmakers. Questions arose if gender and/or race had entered into legal decisions and statements.

In 1952, prior to his appointment to the Supreme Court, in a memo during deliberations that led to the *Brown v. Board of Education** decision, William Rehnquist, a white male wrote: "To the argument . . . that a majority may not deprive a minority of its constitutional right, the answer must be made that while this is sound in theory, in the long run it is the majority who will determine what the constitutional rights of the minorities are." Women are the majority (51%) but systemically are a minority in economic, social, and political decisions and seats of decision-making powers.

During America's first 192 years, not one female was a judge on the Supreme Court defining and deciding what is law. All law making-and-breaking Supreme Court decisions were decided by "men only" until 1981 when Sandra Day O'Connor became the 104th and 1st woman Supreme Court Justice. O'Connor was the solo woman on the Court for eleven years when in 1992 Ruth Bader Ginsburg became the 109th and 2nd woman Supreme Court Justice.

Rather than being strictly liberal or conservative, O'Connor was both and neither, often the swing vote. During oral arguments about a widow denied use of her property, most of the justices focused on legal precedents. O'Connor said, "Why not give this poor, elderly woman the right to go to court?" In a student-on-student case of a fifth grade girl sexually harassed by a boy, O'Connor rejected the argument that this decision would teach "little Johnny" the wrong lesson about federalism but argued, it would ensure that "little Mary may attend class."

Ginsburg's philosophy of equal treatment for women and MEN who do not conform to society's gender-based stereotypes, allows for men to assume traditional female roles, i.e., her victory in the case of a young widower whose wife had died in childbirth and, because of "his" gender, was ineligible to receive SS benefits to enable "him" to work part-time and stay home to care for his baby. In the famous 1991 Supreme Court decision to allow women to attend the all-male Virginia Military Institute, Ginsburg reformulated the question before the court, not whether a female can be admitted to the all-male VMI, but whether the government can constitutionally deny admittance to a qualified applicant because of gender.

In America's 222-year history, a meager thirteen years of law making and breaking Supreme Court decisions decided upon by two women and seven men ended and reversed in 2005 when O'Connor retired and was replaced by a male Supreme. That same year, after Chief Justice Rehnquist died, another male Supreme was appointed, leaving Ginsburg the solo female voice on the Court, a voice challenged by cancer and aging.

In 2001, in a speech during a conference discussing Latino and Latina presence in the judiciary, responding to the saying that, "a wise old man and wise old woman will reach the same conclusion in deciding cases," Judge Sonia Sotomayor stated: "First...there can never be a universal definition of wise. Second, I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who

hasn't lived that life." Again, questions arose if gender and/or race had entered into legal decisions and statements.

In 2005 in his senate vote against confirming Supreme Court Chief Justice John Roberts, in regard to the judicial decision-making process, then-Senator Barack Obama stated that where: "...constitutional text will not be directly on point...Legal process alone will not lead you to a rule of decision...in those difficult cases, the critical ingredient is supplied by what is in the judge's heart." To date, the 110 Supreme Court Justices' hearts have been in 108 men and 2 women.

In 2009, to replace retiring Supreme Court Justice David Souter, President Obama nominated Judge Sotomayor to become the 111th, and 3rd female, U.S. Supreme heart.

*The 1954 *Brown v. Board of Education* Supreme Court decision, stating separate but equal was not legal, overturned the 1896 *Plessy v Ferguson* Supreme Court decision stating separate but equal was legal.