

**THE SWAY OF THE SWING VOTE:
JUSTICE SANDRA DAY O'CONNOR AND HER INFLUENCE
ON ISSUES OF RACE, RELIGION, GENDER AND CLASS**

FOREWORD

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In October 2004, the Women, Leadership & Equality (WLE) program at the University of Maryland School of Law and the University of Maryland Law Journal of Race, Religion, Gender and Class co-sponsored a symposium entitled "The Sway of the Swing Vote: Justice Sandra Day O'Connor and Her Influence on Issues of Race, Religion, Gender and Class." This interdisciplinary symposium was held as the journal's annual Town Hall and featured four panelists, Drs. Barbara Palmer and Diane Lowenthal of American University, Professor Stephen Gottlieb of Albany Law School, and Professor Marley Weiss of the University of Maryland School of Law. The symposium was moderated by Professor Jana Singer of the University of Maryland School of Law.

More than fifty percent of American students entering law schools are now women. The WLE program is dedicated to exploring the gap between the large number of women lawyers entering the profession, and the very small number of women lawyers in leadership positions.¹ To that end, the WLE Program fosters research and scholarship through symposia like this one. It offers students selected as Fellows the opportunity to work in women's organizations like the National Women's Law Center, the National Organization for Women Legal Defense Fund, and the International Association of Women Judges. The program offers its Fellows an innovative curriculum that supplements their traditional legal training with professional skills training in communications, personal negotiation, networking, and other leadership skills.

One might say that the pinnacle of the legal profession is a seat on the highest court in the land. No one woman in the legal profession symbolizes leadership like Sandra Day O'Connor. Her appointment as

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1. More information about the WLE Program can be found at <http://www.law.umaryland.edu/specialty/wle/index.asp>.

the first woman justice to the United States Supreme Court spoke volumes to women lawyers and law students in terms of the new opportunities open to them. However, more than twenty years later, there is still a dearth of women leaders and women judges on the American bench.

This symposium focused on the influence of Justice O'Connor on those issues that the WLE program and the University of Maryland Law Journal of Race, Religion, Gender and Class aim to address, including race, religion, gender and class. The panelists were asked whether Justice O'Connor's gender differentiates her decision-making. I have heard Justice O'Connor on the topic of women in the legal profession and, in her view, asking whether women practice law or decide cases differently than men is a dangerous question because it evokes 19th century judicial opinions like *Bradwell v. Illinois*.² In his concurrence in *Bradwell*, Justice Bradley noted that women were not well suited to the practice of law because "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."³

As with all judges, Justice O'Connor brings her life experience to the bench. It could well be that her experience growing up on an isolated ranch and her varied legal career all influenced Justice O'Connor's decision-making as much as her gender. The culture of self-sufficiency that existed on that ranch and her struggles to obtain a legal position other than legal secretary after having graduated second in her class at Stanford Law School⁴ were all formative experiences in her life. Her role as wife and mother of three sons also influences her view of the world and thus her judicial decision-making. Like many women of her era and many women today, her legal career followed a varied path.⁵ O'Connor's broad legal experience has no doubt been an

2. 83 U.S. 130 (1872).

3. *Id.* at 141.

4. Justice O'Connor graduated from Stanford with a B.A. in 1950 and magna cum laude from the law school with an L.L.B. in 1952. She was an editor of the Stanford Law Review and was elected to the Order of the Coif. See Oyez Project, Northwestern Univ., *Sandra Day O'Connor: Biography*, at http://www.oyez.org/oyez/resource/legal_entity/102/biography.

5. Justice O'Connor has held a wide variety of judicial and legislative offices at both the state and federal level. They are as follows: Judicial experience: Nominated by President Reagan as Associate Justice of the United States Supreme Court on July 7, 1981, confirmed by the United States Senate on September 22, 1981, and took oath of office on September 25, 1981; appointed to the Arizona Court of Appeals by Governor Bruce Babbitt and served from 1979 to 1981; elected judge of the Maricopa County Superior Court, Phoenix, Arizona. and

important component of her decision-making and it demonstrates that there is no single road to leadership in the profession.

The authors in this issue bring an interdisciplinary perspective to Justice O'Connor's jurisprudence. In their paper *Justice Sandra Day O'Connor: The World's Most Powerful Jurist?*,⁶ Drs. Barbara Palmer and Diane Lowenthal look at her influence through the lens of political scientists and challenge the accuracy of the public perception of Justice O'Connor as "the most powerful woman in America."⁷ They use judicial decision-making theory to provide a statistical overview of Justice O'Connor's decision-making behavior and to measure her influence on the United States Supreme Court. They assert that "the evidence regarding Justice O'Connor's position and influence on the Court is, to some extent, mixed"⁸ and conclude that, while not influential in all cases, Justice O'Connor does in fact have more influence than many other justices "on particular types of decisions, such as civil liberties, cases decided by one vote, and landmark opinions."⁹

In his paper, *Sandra Day O'Connor's Position on Discrimination*,¹⁰ Professor Stephen Gottlieb explores Justice O'Connor's decision-making in cases involving discrimination based on race, gender, sexual orientation and disability. In his opinion, Justice O'Connor has recently demonstrated a greater openness to remedying issues of racial discrimination than she has previously.¹¹ He sees some incremental movement in her jurisprudence in this area.¹²

served from 1975 to 1979. Legislative offices: Appointed Senator in 1969 and subsequently reelected to two two-year terms, serving in the Arizona State Senate from 1969 to 1975; elected Senate Majority Leader in 1972; served as Chairman of the State, County, and Municipal Affairs Committee in 1972 and 1973; also served on the Legislative Council, on the Probate Code Commission, and on the Arizona Advisory Council on Intergovernmental Relations. Legal Positions: Deputy County Attorney, San Mateo County, California, 1952 to 1953; Civilian Attorney for Quartermaster Market Center, Frankfurt, Germany, 1954 to 1957; private practice of law in Maryvale, Arizona, 1958 to 1960; Assistant Attorney General, Arizona, 1965 to 1969.

See Cornell University Legal Information Institute, *Supreme Court Collection, Sandra Day O'Connor*, at

<http://supct.law.cornell.edu/supct/justices/oconnor.bio.html>

6. See generally 4 U. of Md. L.J. OF RACE, RELIGION, GENDER & CLASS 211.

7. *Id.* at 238.

8. *Id.*

9. *Id.*

10. See generally 4 U. of Md. L.J. OF RACE, RELIGION, GENDER & CLASS 241.

11. *Id.* at 245-47.

12. *Id.*

One of the primary goals of the WLE program is to foster research and scholarship in the area of gender equality. The symposium's authors have given us perspective on the influence and decision-making of a major pioneer in the legal profession, Justice Sandra Day O'Connor. The Program is pleased to join with the University of Maryland Law Journal of Race, Religion, Gender and Class to present these new articles on her jurisprudence that make a significant contribution to the scholarly canon in constitutional law, judicial decision-making and the impact of gender on these areas of the law.