

The Huffington Post



Peggy Drexler

The Supreme Court: Why Women Matter

Posted: June 8, 2009 03:51 PM

While the media wallowed in the mush-brained nattering over a few out-of-context statements said to reveal Judge Sonia Sotomayor as "racist," something interesting was happening over at the place where she aspires to work.

We saw a quick glimpse of why her gender is every bit as important to the Supreme Court as her heritage. Given the stubborn issues still facing women today, perhaps even more so.

In a case brought by four women against AT&T, the Court ruled that decades-old pregnancy leaves taken under old pension rules do not have to be counted in calculating pension payouts.

It was a small case, with limited immediate impact. Business won and women lost - by a vote of seven to two.

One of those dissenting was the lone woman on the Court, Justice Ruth Bader Ginsberg. Justice Ginsburg, who says her tireless support of workplace equality was shaped by her own professional struggles, wrote: "Certain attitudes about pregnancy and childbirth throughout human history have sustained pervasive, often law-sanctioned, restrictions on a woman's place among paid workers and active citizens."

The question is: does that kind of gender identification have a place in the land's highest court? Simple answer: yes.

Even though the Court refutes it, and Judge Sotomayor was attacked for saying it, the Court does make policy. Just ask all the retirement-age women who will see each pension check for the rest of their lives reduced by the length of their long-ago pregnancy leave.

Whether they are made, affirmed or changed, national policy must reflect the fact that the community the Court directs and protects is 50.7 percent women. Those women still feel the pull of centuries of lesser-citizenship, where the first meaningful equal-pay legislation is just months old, and where one seated Justice is there largely because of a viscous smear campaign against a woman who questioned his moral fitness to serve.

We are not talking about symbolic diversity. We are not talking about role models and success stories. We are talking about bringing a kind of life perspective to the court that will not find its way there on its own.

Women like Justice Ginsberg and former Justice Sandra Day O'Connor who have fought their own battles against workplace inequality come out of those battles with a unique appreciation for the pain.

The same is true for gender's judicial flashpoint. If men got pregnant, reproductive choice would be in the Bill of Rights - if not a sacrament. Yet, we were a vote or two shy of limiting or denying that choice. Women will see that threat as no man possibly can.

Perspectives impact rulings.

A recent study of federal appeals court judges by academics at Northwestern University and Washington University found that female judges are 10 percent more likely to rule in favor of women bringing sex discrimination suits. And when female and male judges hear a case together, the male judges are 15 percent more likely to rule for the plaintiff than when the judges are all men.

The Court recently heard arguments in a suit brought by a 19-year old woman who, as a 13-year old honor student, was strip-searched by school nurses who were looking for prescription-strength Ibuprofen (none was found). The male justices treated it as trivial - even amusing. Justice Stephen Breyer said: "In my experience, when I was eight or 10 or 12 years old, you know, we did take our clothes off once a day, we changed for gym, OK?"

Reports of Justice Ginsberg's obvious exasperation during the arguments were followed by a *USA Today* interview, where she said of her fellow Justices: "They have never been a 13 year-old girl. It's a very sensitive age for a girl. I didn't think my colleagues, some of them, quite understood."

Understanding other lives is not the forte of homogeneous groups.

In the same 2001 speech where she praised the decision making ability of a "wise Latina," a remark that so inflamed the right, Judge Sotomayor also said something that has gone largely unreported. "I accept the thesis," she said, "of... Professor Steven Carter of Yale Law School...that in any group of human beings there is a diversity of opinion because there is both a diversity of experiences and of thought."

As the court grapples with issues that can change the lives of tens of millions of women, those female experiences and thoughts must have a place in the debate. And the only path to securing that place is through more women on the Court.