

# Daily Journal

## Historic Milestone: Women Form Majority on State Supreme Court

### Female Majority Not Raising Eyebrows

*Justices and court observers say the new dynamic will affect the court in subtle ways.*

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Occasionally at the state Supreme Court's weekly conference, all three women on the court vote as one bloc to grant review of a case.

When that happens, Justice Joyce L. Kennard said, "I would simply smile and say, 'Yeah, women power,' and laugh and chuckle about that."

Women power is about to become the norm.

Starting in January, when 3rd District Court of Appeal Justice Tani Cantil-Sakauye is sworn in as chief justice, women will become a permanent majority on the seven member court for the first time in its history.

A popular question in California legal circles these days is how the new gender balance will affect the way the court conducts its business.

When asked about the change, Kennard, the most senior woman on the court, said she hadn't given much thought to the new female majority.

"It occurred to me women in general have come a long way when one no longer raises eyebrows," she said.

Legal observers said they don't expect the court's gender makeup to drastically change the way the court conducts its business.

Justice Carol A. Corrigan tends to vote with conservative justices Marvin R. Baxter and Ming W. Chin. Justice Kathryn Mickle Werdegar frequently teams up with the court's only Democratic appointee, Justice Carlos R. Moreno.

Kennard has a reputation for being independent, and Cantil-Sakauye is known as a moderate.

Each of the women on the court is strong-minded and independent, said attorney Charity Kenyon of Kenyon Yeates.

"Each has her approach to questioning and decision making," she said. "I've never thought that the differences among them or between them and the other justices would be attributable to gender."

Lisa Perrochet of Horvitz & Levy agreed, saying the women don't form a regular voting bloc on the court.

"That really epitomizes why I couldn't say this is going to be any kind of sea change by having four women as opposed to three women," Perrochet said.

When Perrochet participated in a panel discussion about the future of the court, she was asked not once, but twice, about the impending female majority.

"It's more interesting to me that people keep asking the question," she said. "From the outside, it seems to be a group that listens to viewpoints. I don't know why that would change."

More significant than the gender change is the fact that Cantil-Sakauye, at age 51, is younger than her colleagues, and brings a different perspective to the technology that's become ubiquitous in society, Perrochet said.

As an example, Cantil-Sakauye carries an iPhone, something her predecessor did not do.

The court has operated with a female majority before, but only temporarily. It can happen when appellate court justices are temporarily assigned to the court to fill in for a recused justice.

In 2009, for example, Justice Eileen Moore of the 4th District Court of Appeal sat in for Chief Justice Ronald M. George, and provided the

crucial fourth vote to preserve consumer class actions, *In re Tobacco II Cases*, 2010 DJDAR 7059.

Gender does play a role in certain cases that come before the high court, said M.C. Sungaila of Snell & Wilmer, an appellate specialist and advocate for women's issues.

In gender discrimination cases, for example, a woman's point of view could make a difference in the outcome, Sungaila said.

"Women will be able to put themselves in the shoes of the plaintiff, and perhaps look at the case a little differently than their colleagues," she said.

U.S. Supreme Court Justice Ruth Bader Ginsburg underscored the point last year in a case involving a 13-year-old girl who had been strip-searched by Arizona school officials looking for drugs.

During oral argument, as other justices downplayed the embarrassment, Ginsburg, the lone woman on the court at the time, expressed concern for the teenager.

When asked about her colleagues' comments during the arguments, she told USA Today: "They have never been a 13-year-old girl.

"It's a very sensitive age for a girl," she added. "I didn't think that my colleagues, some of them, quite understood."

With President Barack Obama's appointment of two women - Sonia Sotomayor and Elena Kagan - the U.S. Supreme Court reached a significant gender milestone, as well. Three of the nine justices are women, the highest ratio in the court's history.

Studies of women in the business world show that the biggest differences come when women reach 33 percent of an organization, particularly when they're in leadership roles, Sungaila said.

"It's almost like when there's a certain critical mass, women start feeling more willing to stand up for women because they're not the only one there," she said. "They don't have to speak for every woman."

Justice Dana Fabe of the Alaska Supreme Court, who was in San Francisco in October for the

National Women Judges Association, talked about how it felt to serve as the first and only woman on that court for 13 years.

Although Fabe has a good relationship with her male colleagues, she said their communication has been formal and has taken place mostly in writing.

When Justice Morgan Christen joined the court last year, she stopped by Fabe's office and invited her for a latte. Recalled Fabe: "I thought, 'Do I want to get a latte?! Yes!'"

While women are thought of as being more collegial, Chief Justice Ronald George has made an effort to foster good working relationships on the Supreme Court.

At the court's weekly conference, the justices usually spend about 30 minutes discussing their personal lives or current events, George said.

Although having a female majority might not necessarily be a game changer, George said it's not insignificant.

"Every single change to the court changes the dynamics."