

Women on The Bench

Female Judges Have a Place in the City's Legal Tradition

BY BLAKE GREEN

Proponents and opponents of the nomination of Sandra Day O'Connor to the U.S. Supreme Court may debate her qualifications, but no one can dispute the symbolic significance of her appointment.

Just like the "black seat" and the "Jewish seat," today, when O'Connor is sworn in to join the eight male justices, there will be a "woman's seat" on the highest court in the land.

As the first of her sex to hold such a position, she will be under tremendous pressure probably for as long as she sits on the court. While it would be nice to think otherwise, no one really expects there to be more than one woman on the Supreme Court for a long time.

Although the concept of a woman as judge in this country has taken 200 years to become a reality at the top of the judiciary system, women have been dispensing justice in the nation's courts for more than 100 years.

Esther Morris, remembered by posterity as a "plain-spoken shopkeeper's wife," was the nation's first female magistrate. She was appointed a justice of the peace in 1870 in Wyoming, where the year before history was also made when the territorial legislature voted in the nation's first women's suffrage.

Things went somewhat more slowly in San Francisco, where a woman was not appointed to sit on the bench until 1930. Mary Wetmore, secretary to a State Supreme Court justice, was sworn into office as a Municipal Court judge in July of that year. However, she died of

appendicitis little more than a month later.

Her replacement, Theresa Meikle — "the public-spirited women of San Francisco well deserve to have representation on the California bench," said Governor C.C. Young, who made both appointments — fared better: 12 years on the Municipal Court, 20 on the Superior Court, the first woman in the city to hold such a post.

Meikle, who specialized in juvenile and human relations cases, was the first woman in the state to become presiding judge of the Superior Court in 1955, and there was speculation that she was the first in the nation.

As part of its Municipal Court system, San Francisco once had what was called the Women's Court, handling prostitution and domestic relations cases. Presiding judges in this court, however, were usually men, and its abolishment in 1956 had nothing to do with strides toward removing sexism; it was purely an economy move.

The city, in the words of one of its legal historians, "had a long tradition of having at least one woman judge," but not until 1970, when the late Agnes O'Brien Smith ran and was elected to serve on the Municipal Court, did a woman become a judge without the aid of prior appointment to the seat.

The first woman to reach the Superior Court by election (and the second in San Francisco's history to serve on the court) was Ollie Marie-Victoire, a Municipal Court judge when she was elected in 1978.

Many people give Governor Jerry Brown high marks for his



Theresa Meikle

appointment of women and minorities to the bench. His selection of Rose Bird to head the State Supreme Court made her the first woman in California to serve on the court and the first in the nation to be a chief justice.

Brown's other firsts in female judicial appointments locally include Municipal Court judges Mary Morgan (the first acknowledged lesbian judge in the U.S.) and



Sandra Day O'Connor



Rose Bird

Lillian Sing (the first Chinese-American judge in Northern California). Marilyn Hall Patel, a Municipal Court appointee of his (to the Oakland-Piedmont district) was elevated to the U.S. Federal District Court by President Carter, making her the first female in the 129-year history of that court.

Marie-Victoire, who was appointed to the Municipal Court by then-Governor Reagan, is not



Ollie Marie-Victoire

among those dispensing accolades for Governor Brown's performance, however.

Brown, she says, "is a slob on appointing women. He's been very good on the muni court (there are currently seven women serving in San Francisco, six appointed by Brown), but he has never, never named a woman to the Superior Court. There've been lots of promises, but absolutely nothing delivered."

In the seven years since Marie-Victoire came to the bench, some attitudes have changed, some haven't. She picks her words carefully: "My acceptance is not total" among her fellow — "and that certainly is the right word here" — judges.

But she says she does think that the lawyers who once "seemed a little bit uncomfortable" trying cases before her no longer feel this way — "although maybe this is because I'm more comfortable now."

Much of the change in attitude has occurred because of the influx of young lawyers, many of them women, Marie-Victoire says. She was one of four women in her graduating class at Hastings; O'Connor was one of four (in a class of 102) at Stanford.

Today, one in three law school graduates is a woman, and women represent between 10 and 15 percent of the legal profession. This also means that there are more women in the pool of experienced practitioners from which future judges will be selected, making it likely that more women will be appointed to the bench.

"The watershed date" for the change in the profile of the legal profession was 1970, according to Joanne Garvey, president of the San Francisco Bar Association. A female lawyer, Virginia Lum, currently heads the Barristers Club of San Francisco, and San Francisco attorney Ruth Church Gupta is certain to be elected — no one is running against her — to the Board of Governors of the State Bar of California.

Before 1970, only about 2 percent of lawyers were women. Garvey says, for several reasons:

"Although you never heard it discussed," says Garvey, who graduated from Boalt Hall in 1961 (one of five women in a class of 140), "there was probably a quota in those days." Just as today, when the application of a 60-year-old man to law school is refused because he won't have long to practice, women were rejected then because "why take up a place when she's just

going to get married and never practice?"

Once a woman did graduate from law school, she faced enormous difficulties finding a job. O'Connor, who was in the top of her class, applied to a number of law firms in Los Angeles and San Francisco, one of which (the firm of Attorney General William French Smith) offered her a job as a legal secretary. She eventually went to work as a deputy county attorney in San Mateo County.

Even when it was generally accepted that women had to be better than their male counterparts to make it in law, they were still passed over. However, Garvey points out, in the '70s, many larger law firms began to lose top graduates to other branches of the field (such as civil service). "Women were always among the top" in these classes, and the firms were forced to realize that "there was a pool of talent that had been neglected."

Judges are political creatures — O'Connor is a Republican; during Democratic administrations, Shirley M. Hufstедler, a judge on the Ninth Circuit of the Federal Court of Appeals (which sits in San Francisco) was considered the leading female candidate for a Supreme Court vacancy. A 1949 graduate of Stanford, Hufstедler was appointed to the court by President Johnson (making her only the second woman to hold such a post and the highest ranking woman in the federal court system at that time).

President Carter, who did not have the opportunity to appoint a Supreme Court justice, named Hufstедler secretary of the Department of Education.

Many women lawyers, however, have neither a political base nor "friends in the right network," Garvey says. This situation is changing as the number of women involved in politics grows — "and I mean running the show, not just stuffing envelopes."

In philosophy, women, whether judges or lawyers, "vary as much ... as men do."

"While their backgrounds may be quite different," Garvey says of the men and women in this field, "they've all gone through legal training and this produces more similarities than differences."

"I think there is an advantage to having women on the bench," Garvey says, "because it gives it a larger view. And I think there's an advantage to several women on the bench because they'll have several different views."

Courting the Judges

Sandra Day O'Connor (right), who will be sworn in today as the first woman Supreme Court justice, and Chief Justice Warren Burger were among the guests yesterday at a Rose Garden reception given by President Reagan.

The reception was held for about 150 federal judges from district and appellate benches, but the spotlight was on O'Connor.

After a speech by Reagan, she and the other Supreme Court members had lunch inside the White House.



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