

NOTE: Dean Steve Woolpert Provides Op-Ed On Kagan Supreme Court Justice Confirmation In Contra Costa Times In a guest commentary in the Contra Costa Times, School of Liberal Arts Dean Steve Woolpert shares his thoughts about opposition to the recent confirmation of Elena Kagan as a Supreme Court Justice. Woolpert argues that criticisms about Kagan's political background - as a Senate Judiciary Committee staffer, a domestic policy adviser to President Bill Clinton, and more recently, as the Solicitor General in President Barack Obama's administration - actually point out important aspects of Kagan's strengths and that her political acumen will benefit her as a Supreme Court Justice. A politics professor, Woolpert has studied the history of the high court and the confirmation process for Supreme Court Justices.

LexisNexis® Academic

Download Request: Current Document: 2
Time Of Request: Tuesday, February 14, 2012 15:25:26 EST
Send To:

SAINT MARY'S OF CA, ACADUNIV
SAINT MARY'S COLLEGE OF CALIFORNIA
PO BOX 4290
MORAGA, CA 94575-4290

Terms: ((Steve Woolpert))

Source: Contra Costa Times
Project ID:

2 of 10 DOCUMENTS

Contra Costa Times (California)

August 7, 2010 Saturday

Readers' Forum: Justices need political savvy more than lower court experience

BYLINE: By **Steve Woolpert** Guest Commentary

SECTION: OPINION; Columnists

LENGTH: 690 words

CRITICS OF Elena Kagan are concerned she would be the first Supreme Court justice without any prior judicial experience since William Rehnquist and Lewis Powell joined the Court in 1972. Her opponents have also characterized Kagan as a "political lawyer" or "political operative" because of her prior service as Senate Judiciary Committee staffer, a domestic policy adviser to President Bill Clinton, and more recently, as the Solicitor General.

Which is the more important qualification for a Supreme Court Justice: prior judicial experience or prior political experience? History shows that Kagan's lack of judicial experience is far from unusual. Among the 101 Justices who served on the Supreme Court between 1789 and 1979, 42 had no judicial experience whatsoever. Among them are many of the most illustrious names in America's judicial history, including five Chief Justices -- Roger Taney, Salmon Chase, Morrison Waite, Melville Fuller and most notably, Earl Warren.

In 1957, Supreme Court Justice Felix Frankfurter said, "One is entitled to say without qualification that the correlation between prior judicial experience and fitness for the Supreme Court is zero." Bills are regularly introduced into Congress requiring future justices to have experience on lower courts, but they have never been enacted.

On the other hand, the vast majority of Supreme Court justices engaged in public service, often elective, or participated in political activity prior to their appointment. The most obvious example is Chief Justice Howard Taft, who joined the bench in 1921 after serving as president.

Chief Justice Charles Evans Hughes missed the presidency by a mere 3,000 California votes in 1916. Indeed, political activity in the party of the appointing president is almost an informal requirement for nomination.

These two patterns illustrate crucial facts about the role of the Supreme Court. First, there is little congruence between the work of lower courts and that of the highest. The Supreme Court hears only the most exceptional cases. In rendering judgments about the actions of representative governmental bodies, it breathes life into fundamental constitutional provisions that were not designed to be precise rules of action.

Second, justices engage in negotiation and bargaining among themselves when deciding cases. Especially in closely divided cases, justices often modify their opinions to attract the support of their colleagues. Draft opinions in the 1989 case of *Webster v. Reproductive Health Services*, for instance, show the court was preparing to strike down *Roe v. Wade* until Justice Sandra Day O'Connor -- the crucial fifth vote -- forced Chief Justice William Rehnquist to soften his reasoning.

Readers' Forum: Justices need political savvy more than lower court experience Contra Costa Times
(California) August 7, 2010 Saturday

Kagan has been lauded by colleagues as a consensus builder. If her political skills help her to become a persuasive leader, she could attract the swing vote of Justice Anthony Kennedy on future cases.

Third, the Supreme Court has no enforcement power of its own. It depends upon the other two branches of government to implement its rulings. The impact of the landmark *Brown v. Board of Education* decision in 1954 was negligible for years until the executive branch pressured Southern school boards to desegregate.

After the Civil War, Congress famously blocked the court from striking down its reconstruction program in the South by withdrawing the court's jurisdiction over a case (*Ex Parte McCordle*) after oral arguments had been completed.

In politically controversial cases, therefore, the court must weigh the risk of antagonizing the president and Congress against the risk of weakening constitutional principles.

Such calculations require political prudence as much as legal expertise. Practical political experience helps Justices estimate what course of action congressional or executive officials are likely to pursue in these circumstances.

Decisions of the Supreme Court are a mix of statecraft and law. Now that Elena Kagan has been confirmed her prior political experience is likely to be as great an asset as her legal acumen.

Steve Woolpert is is dean of the School of Liberal Arts at Saint Mary's College in Moraga.

LOAD-DATE: August 7, 2010

LANGUAGE: ENGLISH

GRAPHIC:

PUBLICATION-TYPE: Newspaper

Copyright 2010 Contra Costa Newspapers
All Rights Reserved