

Daily Journal

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Catching up with Justice Kagan



It was my great honor, and truly a privilege, to spend much of the day and evening listening to Supreme Court Justice Elena Kagan last Friday, Sept. 7. My husband and I attended the weekend celebration to dedicate South Hall, the first addition to the University of Michigan Law School Quad since 1932, the year my father graduated from Michigan Law.

When I received my Ph.D. from Michigan in the Jury Behavior area, it was the University of Michigan Law School, in conjunction with the ABA Foundation, that funded my research. My husband, Skip Kessler, graduated from the Law School '73, as did my father '32 and my great uncle '06.

The keynote speaker for this celebratory weekend was Supreme Court Justice Elena Kagan.

Briefs versus oral arguments. Given my litigation background, my research study of legalese versus plain English in Appellate Advocacy, and my repeated insistence in mediations on terse briefs, I was particularly interested in Justice Kagan's view of the relative importance of briefs versus oral arguments. While she maintained that written briefs are critical, she did state that oral arguments can make a difference. In fact, she emphasized that unlike prior courts, this Supreme Court was made up of justices who asked many questions during oral argument. Oral arguments "can sway people ... or you can also lose a case," she said.

Collegiality and the court. Justice Kagan really likes her job. She previously was solicitor general, and before that dean of Harvard Law School. But she is really enjoying this part of her life. It is truly her life's work. She indicated that the Supreme Court, with all its rules, is "the most intimate and warmest" of all the places she has worked. I was very surprised by this because I always thought of this court and the justices as so formal. I was in awe of the grandeur, pomp and circumstance of the

court after having been sworn in there last year as part of the Beverly Hills Bar Association's yearly trip to the Supreme Court, which made her personal insight rather surprising to me.

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Justice Kagan's three jobs on the high court. One of the high points of Justice Kagan's remarks was the insight into her excellent sense of humor. She described her role as the newest justice as threefold, in addition to writing opinions:

* Taking notes during the justices' conferences and disseminating those notes to the proper clerks.

* Answering any knock on the door during the justices' private conferences. It was funny when she said that the first couple of knocks on the door went unanswered while all the other justices just stared at her, until she realized it was her job to answer the door. Usually it was just someone forgetting his or her glasses, coffee or something like that.

* Serving on the Cafeteria Committee. Apparently, Justice Kagan will always be known as the justice who installed the frozen yogurt machine in the U.S. Supreme Court cafeteria.

Women on the high court. Justice Kagan said that she did not believe that having three women as justices on the court impacted the court's decisions. She did, however, emphasize that she felt that the young school children who visited on field trips to view the court proceedings, both the boys and the girls, were impacted by seeing three females sitting on the court. She said she wished there were five women.

Partisanship. Probably the most significant issue, from a controversial prospective, covered by Justice Kagan was her response to questions on whether the justices voted along political party lines. Justice Kagan strongly stated that the justices decide based on how they approach Constitutional decision-making, views about precedents and their own methodology. She did not feel that political views impacted the justices' decision making. Helping the Democrats or helping the Republicans, she said, is not "the way we think."

This was a memorable weekend for me and not just because Michigan beat Air Force. Getting to listen to and chat with Justice Kagan renewed my already great awe of her intelligence and professionalism. The surprise was how down-to-earth and humorous she is.