

Hearing on the Nomination of Elena Kagan to
The United States Supreme Court
Senate Committee on the Judiciary, July 1-2, 2010
Testimony of Hon. Fernande R.V. Duffly

Mr. Chairman and members of the Committee on the Judiciary, thank you for this opportunity to speak in support of Solicitor General Elena Kagan's nomination to the Supreme Court of the United States.

The National Association of Women Judges is the voice of our nation's female jurists. NAWJ has supported the advancement of women in the judiciary since our founding in 1979, when we sought the appointment of the first woman to the Supreme Court. It was in this chamber, in September, 1981 that Judge Joan Dempsey Klein, the co-founder of NAWJ, testified on behalf of Sandra Day O'Connor, a founding member. I am honored to be here today as NAWJ Past President and chair of our Judicial Selection Committee, and on behalf of NAWJ's current President, Alaska Supreme Court Justice Dana Fabe.

The first woman attorney, Margaret Brent, arrived in Maryland in 1683, but women were not admitted to state bars until 1869, and there were no women judges until 1870, when the first woman was appointed a justice of the peace. Nearly a century would pass before every state had a woman on the bench. The advancement of women in the legal profession has not been rapid nor inevitable, but we are now past celebrating our firsts. We look forward to celebrating full diversity on our nation's courts.

Justice Fabe and I are appellate judges with nearly two decades of judicial service each. We well recognize the essential qualifications that a justice of our highest court must have: superior intellectual capacity as well as intimate knowledge and a deep understanding of constitutional law and the driving principles of legal jurisprudence in this country. Solicitor General Kagan has these qualifications in abundance.

Not all judges appointed to our appellate courts have, or need, prior experience as judges. Elena Kagan's rich and varied legal career -- as a private attorney, white house lawyer, professor, dean and as the government's attorney in matters before the Supreme Court -- will provide her with a unique constellation of experiences that will bring fresh ideas to the Court. The depth and breadth of General Kagan's educational and professional experience, coupled with her intellectual aptitude and preparedness will serve her well on the high court. A brilliant and highly regarded lawyer and law professor whose communications skills are renowned, her views will be respected and welcomed if not adopted by her colleagues on the Court.

My interactions with General Kagan occurred largely during the years she served as the Dean of Harvard Law School, 2003-2009, which coincided with my leadership of NAWJ. Among other things, we worked together on an initiative that sought to provide information to law students about women and minority advancement in the country's law firms; I worked on educational programing for The Women's Leadership Summit, that Elena convened at Harvard Law School in 2008; and, as an active alumna of Harvard, I had a number of opportunities to interact with her and to hear her speak.

I learned from these interactions that she comes prepared, has a quick and nimble intellect, humor, and a respect for her audience that commands respect in turn; these attributes are shared by the most successful of my colleagues.

I believe that the presence of women and minorities on a court has an impact on overall decision-making that goes beyond the opinions of the female or minority judges themselves. When judicial colleagues respect each other, they are open to the interchange of new ideas that those from diverse backgrounds can bring. Women judges bring unique experiences that inform their own decisions, but the interchange between male and female colleagues has in my experience profoundly affected the decisions of both the female and male jurists.

That Elena Kagan would be one of three women on the Supreme Court of the United States is significant. In order to benefit from the diversity of background and experience that women bring to the bench, the presence of women cannot be occasional or token. Our courts, and most importantly our nation's highest court, must reflect the diversity of our citizenry. For well over two decades women and men have been graduating from our law schools in nearly equal numbers which likely means that men and women are equally represented in the current pool of attorneys eligible for judicial appointment. With the appointment of Elena Kagan, the Supreme Court would come a step closer to reflecting the broad diversity of those individuals who call America home.

The National Association of Women Judges supports with enthusiasm and without qualification the nomination of Elena Kagan to the Supreme Court of the United States.