

Daily Journal

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MEDIATION

J. Daniel Sharp of Crowell & Moring examines the history of mediation confidentiality and how courts have shaped this concept. **PAGE 5**

BOOK EXCERPT

Mary Hanlon Stone's new book, "invisible girl," explores the life of a poor Boston teen who is abandoned by her abusive mother and taken in by a wealthy Los Angeles family. **PAGE 6**

ARBITRATION

Judge Lawrence Waddington (Ret.) follows arbitration's legislative and legal developments as an alternative to litigation. **PAGE 7**

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SPECIAL COVERAGE: Summer Associates

Law Students Get Creative to Snag Summer Jobs

Dearth of Big Firm Offers Sends Hopefuls Scrambling For Nonprofits, Unpaid Gigs

By Sara Randazzo
Daily Journal Staff Writer

The heyday of easily landing plum, high-paying summer law jobs is over. But that may not be such a bad thing.

That's the message law school career counselors gave to anxious second-year students who, in the face of an economic downturn that crippled many Big Law summer programs, found themselves with shattered allusions and no summer job after the fall on-campus recruiting season.

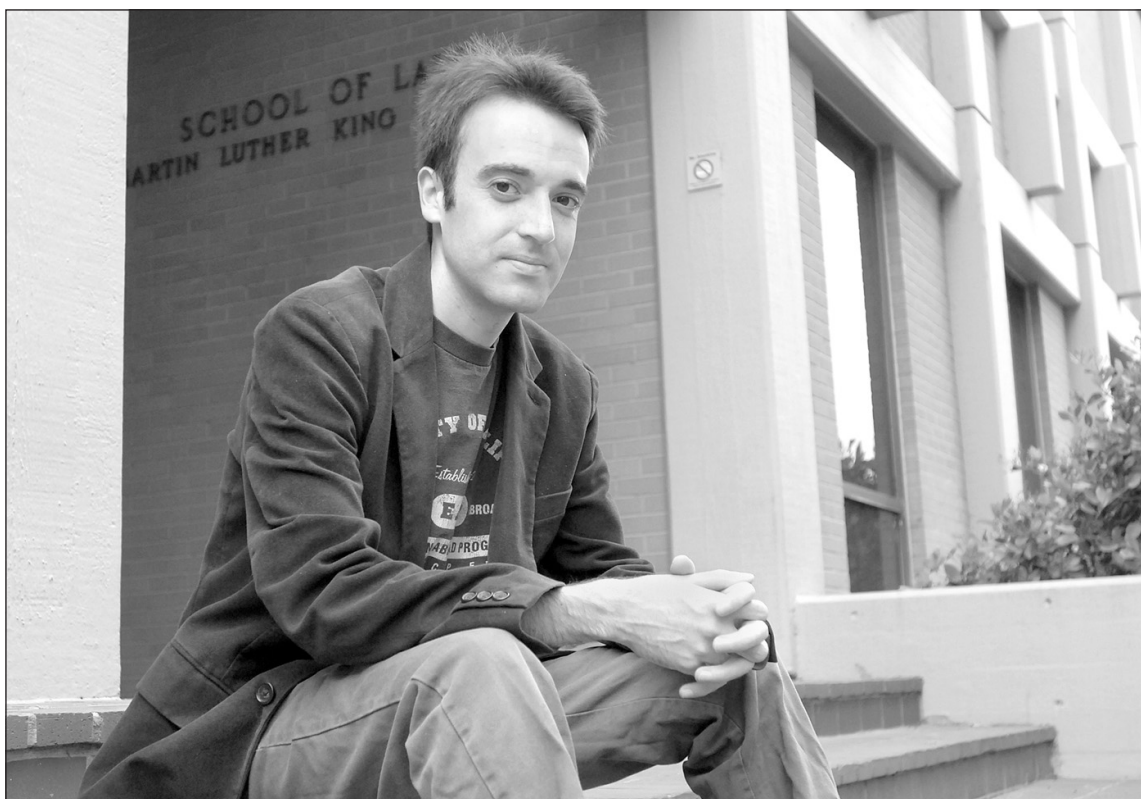
For related coverage of summer associates, please see pages 8 and 9.

"The silver lining in this job market is that it's forcing people to think about what they really want to do," said Sari Zimmerman, director of career services at UC Hastings College of the Law. "[On-campus interviews] and large firm hiring has created such an unrealistic environment. ... All we're asking people to do is move into reality and for students to have a more real-world perspective on what a job search really takes — that it's messy."

Second-year students and career offices confirm that the search for summer employment in 2010 was just that — messy. The fall recruiting season brought fewer employers to campus and fewer jobs offers from those who came. The number of employers fell by at least 30 percent at more than half of law schools in the western U.S., according to the National Association for Law Placement. Among the largest firms of more than 700 lawyers, the median number of offers extended from any given office was 8, down from 30 two years prior.

To make up the difference, students pounded the pavement and found work with government agencies, non-profit organizations, small and mid-size firms, in-house legal departments and pursued more creative avenues. In many cases, the pay is slim to none and there's no guarantee of full-time employment after graduation. But in this economy, any experience is good experience.

"We go out to celebrate when a friend finds a non-paying



S. Todd Rogers / Daily Journal

Daniel Watts is a second-year law student at UC Davis School of Law.

job," said Daniel Watts, a second-year student at UC Davis School of Law. "Because they have something to do."

Like many of his classmates, Watts tried to find a job through on-campus interviews, or OCI, but was unable to land a paid position from the handful of employers with

and hopes to do enough networking over the summer to find a permanent job.

Mireille Butler, assistant dean of career development at Pepperdine University School of Law, said it's been a frustrating year for her students, many of whom still don't have summer work secured. "These are students who have done everything right, who would have a year ago or two years ago every opportunity open to them," Butler said. "It's not possible anymore to think if you did well in law school, something will come my way."

For students worried about paying off massive law school debt, which gets worse each year as annual tuition creeps toward and above \$50,000, being an unpaid intern may not be enough.

Ansel Halliburton, a second-year at UC Davis, expected to get a job in Big Law — and the paycheck to go with it. After an unsuccessful fall recruiting cycle, he found unpaid work in UC Davis' technology transfer office and a paid, part-time gig as a research assistant for a professor. His wife, who lives in San Francisco with their two-year-old son, is working overtime to make up the difference.

Halliburton said he'd like to practice intellectual property law at a firm and thought his years of experience as a computer programmer, paralegal and working at the

See Page 9 — SUMMER

'It's not possible anymore to think if you did well in law school, something will come my way.'

MIREILLE BUTLER
PEPPERDINE LAW SCHOOL

whom he met. So when a friend at Google mentioned that Wikimedia Foundation general counsel Mike Godwin was looking for law clerks, he sent in his resume. An interview later, and Watts got the job. The only trouble? It doesn't pay.

Working in San Francisco with no paycheck isn't ideal, but Watts said he'll be living with a friend's family in town

needs. Forty-eight Democrats voted against Clarence Thomas and 42 votes against Samuel A. Alito Jr., but these are not filibusters.

A filibuster against a Supreme Court nominee, especially one as qualified as Kagan, risks a backlash and a perception of being obstructionist. Perhaps even more important, Republicans risk that President Barack Obama then could pick someone even more liberal. I always have believed that Democrats did not filibuster against Thomas because they feared that President George H.W. Bush would then select U.S. Court of Appeals Judge Edith Jones, who was feared to be even more conservative than Thomas.

Nor is there any issue to rally enough senators against Kagan to launch an effective filibuster. A num-

ber of conservatives, including some senators, have spoken in the press about her lack of prior judicial experience. But many justices throughout American history — such as, Louis Brandeis, William Douglas, Felix Frankfurter, Earl Warren, Hugo Black, Lewis Powell, and William Rehnquist — went on the high court having never before been a judge.

Because there isn't much with which to attack Kagan, there has been a great deal of attention focused on her actions as dean at Harvard Law School in excluding the military from recruiting on campus. In the context of the times and the issue, this is much ado about nothing. Every law school has a policy that an employer must sign an agreement that it will not

See Page 6 — KAGAN

Governor Ups Court Funding, Helping To Avert Layoffs

By Dhyana Levey
and Amy Yarbrough
Daily Journal Staff Writers

SAN FRANCISCO — Hundreds of court employees in San Francisco and Los Angeles county courts may keep their jobs thanks to a budget deal reached late last week.

Gov. Arnold Schwarzenegger's May budget revision restored \$100 million to the judicial branch that was slashed from its budget last year. In addition, state court officials plan to help offset the judicial branch's \$390 million budget gap with \$228 million in fees and money diverted from special funds.

Los Angeles County Superior Court, which faced a \$79 million shortfall this year, has laid off 329 employees and had plans to lay off another 500 in September. San Francisco cancelled plans this week to issue layoff notices to 122 employees, about a fourth of its staff.

Both courts now see a somewhat rosier financial picture.

Los Angeles' Presiding Judge Charles "Tim" McCoy, could not be reached for comment Tuesday, but an e-mail he sent to staff seemed to indicate that while the funding won't solve all the court's financial problems, it would likely obviate the need for the planned layoffs.

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Lawyers Jostle For Position on Toyota In State Court, Too

By Ciaran McEvoy
Daily Journal Staff Writer

If you thought plaintiffs lawyers were done jockeying for position in lawsuits against Toyota, think again.

Days after the structure of the mass federal tort against Toyota Motor Corp. was determined by a federal judge, attorneys have begun a move to consolidate more than 35 similar lawsuits filed in state court.

At least two petitions to the California Judicial Council Coordinated Proceedings related to Toyota lawsuits had been filed by Tuesday.

Similar case consolidation efforts against Toyota are reportedly in the works in Texas, Florida and New York.

Mark P. Robinson Jr. of Robinson, Caggione & Robinson in Newport Beach, supported by several other law firms, has requested the California state court cases be consolidated in Orange County Superior Court.

Robinson is assisting the Orange County District Attorney's Office in its civil lawsuit against Toyota Motor Corp. On Friday, he was named co-lead counsel on the personal injury/wrongful death committee in the Toyota multi-district litigation pending in Santa Ana federal court.

See Page 4 — TOYOTA

GUEST COLUMN

Missed in much of the media commentary about Elena Kagan is that her advantage and disadvantage as a nominee is the same: the lack of a paper trail, says **Erwin Chemerinsky**.

By Erwin Chemerinsky

Much of what has been said about Elena Kagan in the last week misses the main points: she is sure to be confirmed to replace Justice John Paul Stevens and no one can really know where she will be on the ideological spectrum. Nor is the confirmation process likely to provide a clue.

There have been many articles in the press about how she faces a tough confirmation fight and the issues that might be raised to challenge her. Those predictions ignore the simple reality that there are 59 Democratic senators and there is no chance that the Republicans will filibuster against her. There is almost no history of filibusters against Supreme Court nomi-

nees. Forty-eight Democrats voted against Clarence Thomas and 42 votes against Samuel A. Alito Jr., but these are not filibusters.

A filibuster against a Supreme Court nominee, especially one as qualified as Kagan, risks a backlash and a perception of being obstructionist. Perhaps even more important, Republicans risk that President Barack Obama then could pick someone even more liberal. I always have believed that Democrats did not filibuster against Thomas because they feared that President George H.W. Bush would then select U.S. Court of Appeals Judge Edith Jones, who was feared to be even more conservative than Thomas.

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See Page 6 — KAGAN

DAILY APPELLATE REPORT

CIVIL LAW

Employment Law:

Adequate evidence exists for jury to find railroad employed welder because it controlled aspects of work that may have caused his injury. *Schmidt v. Burlington Northern and Santa Fe Railway Co.*, U.S.C.A. 9th, DAR p. 7215

Employment Law: Probation officer's denial of promotion based on merit does not qualify as 'punitive action' entitling officer to administrative appeal. *Guinn v. County of San Bernardino*, C.A. 4th/2, DAR p. 7211

Family Law: Father can be compelled to pay child support to child's

stepfather absent agreement where stepfather's support was not voluntary. *Marriage of Schopfer*, C.A. 3rd, DAR p. 7219

Torts: Officer does not owe duty to injured passenger where officer's failure to assess injury did not alter risk of harm. *Camp v. State of California*, C.A. 2nd/6, DAR p. 7222

CRIMINAL LAW

Criminal Law and Procedure: In applying fines previously imposed after defendant's third parole violation, court does not wrongfully impose separate restitution fines for same conviction. *People v. Cropsey*, C.A. 3rd, DAR p. 7227

Summaries and full texts appear in insert

BRIEFLY

DLA Piper will open a new office in Istanbul, Turkey, on June 1, the firm announced Tuesday. The new office will provide advice on international and foreign law. It will be staffed with six partners from the Turkish firm YükselKarku0131nKüçük Attorney Partnership. Clients will include a mix of Turkey-based and global companies in industries including energy, utilities and infrastructure, said a firm spokesperson. Upon entering the Turkish market, DLA Piper will have 68 offices in 30 countries.

Richmond and Redwood City, the San Francisco Redevelopment Agency and the East Bay Municipal District joined more than a dozen other public agencies around the country and filed complaints in federal court in Manhattan against several major investment and commercial banks including Goldman Sachs. Filed by Burlingame's Cotchett, Pitre & McCarthy, the suits mark an expansion of antitrust litigation alleging the banks illegally

colluded to fix the rate of returns that public agencies received when investing bond funds and other money.

Film producer Joel Silver, whose credits include "Sherlock Holmes" and "The Matrix," has sued Goldman Sachs for \$30 million, accusing the investment bank of failing to honor the terms of an arrangement to provide his production company with financing for several films in exchange for a percentage of the profits. The complaint, filed in Los Angeles Superior Court Monday by Bert Fields of Greenberg Glusker Fields Claman & Machtinger, claims Goldman had agreed in 2007 to lend Dark Castle Entertainment — Silver's horror film production company — \$30 million, but never came through.

Pillsbury Winthrop Shaw Pittman raised associate salaries to pre-recession levels, with starting base pay again at \$160,000 in most markets, a firm spokeswoman confirmed this week.

MORE NEWS



Log Cabin Judge

The Alaskan frontier is the perfect backdrop for Andrew Jay Kleinfeld's libertarian judicial philosophy. **PAGE 2**

Health Care Giants Unite in Cost-Cutting Project

California's largest for-profit health insurer and most powerful physician group are launching a pilot program to curb rising health care costs by paying doctors groups a lump sum to curb rising healthcare costs. **PAGE 3**

Lost in An Unfamiliar World

By Mary Hanlon Stone

When poor Boston teen Stephanie is abandoned by her abusive mother, she is taken in by Annie's wealthy Los Angeles family. Far from her impoverished, unstable world in the Northeast, Stephanie finds herself in an exhilarating and foreign new society in Southern California — but it is a world she doesn't understand and a world where she doesn't belong. Her dark hair and complexion and her Massachusetts accent stick out in the shiny, glittering world of blondes with extravagant, charmed lives and complex social codes.

BOOK EXCERPT

Stephanie lies about her past to keep up with this life and to gain acceptance from this clique of girls. She spins tales about a fabulous existence as the cream of Boston society. Then it all explodes. Stephanie is exposed as an imposter. She is publicly humiliated and driven from the clique.

Outcast and alone, Stephanie finds a surprising friendship in the last place she ever thought she'd look. She finds both a friend and a real mother. She learns that the only way to stop being invisible is to stand up for who she is.

CHAPTER ONE

Gross. It stinks in here. Like somebody's wet dog.

I look up from my nest of coats on the closet floor and smack the flashlight against my hand hard. I hate it when it does this. When the beam of light flickers like it's about to go out. The batteries aren't even that old. I slap it against my leg even harder this time. The flashlight's lucky it can't bruise, no matter how many times I whack it. I wonder what it would be like not to bruise, no matter how many times I get hit.

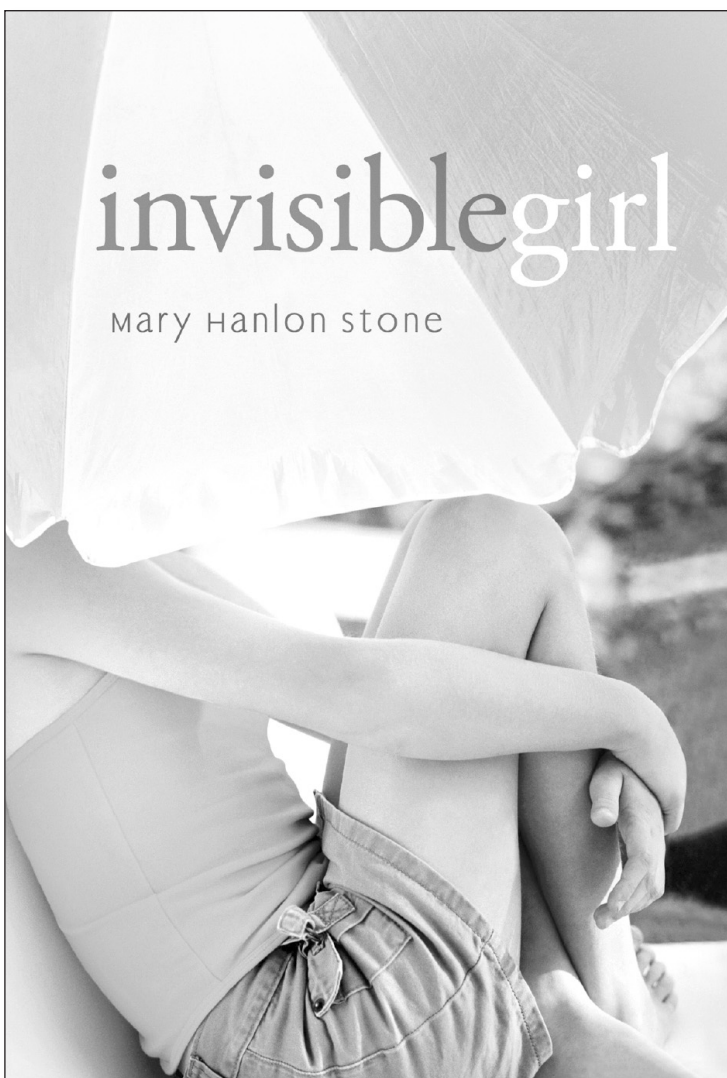
I smack the flashlight one last time and the beam finally steadies. I focus it back on the book in my lap and a drop of water falls on my head. I reach up to touch one of my mother's sweaters. It's soaking wet from the rain that's been pouring down outside for three days. No wonder it stinks in here. I want to open the door and toss out the sweater, but can you imagine what would happen if I were discovered? In here? Like this?

Not that I had a choice. The signs were everywhere. I felt fear rip through my body before my brain even registered "danger." My body works faster than my mind. My heart started pounding, my legs started running and deep inside me, my cells screamed, Noooooooo. Another part of my body reacted too. I wet my pants. I wet as I ran, like I was three instead of fourteen.

But that's how it feels when this happens. Like I'm smaller and younger than I am. Like I'm nothing.

When I was finally safe in the closet, I had to peel off my pants and underwear. I rolled them into a little ball and shoved them behind the fishing stuff. I threw a windbreaker over my naked butt. It's slippery and makes me cold even though it's hot outside and the rain is like steam.

I run my fingers over the edge of my book. At least I have that. I always keep one waiting with the flashlight, behind the fishing poles and tackle box. I used to keep apples in here too, but then one day I came into the closet and found bugs all over them. Bugs with hard backs and short fat legs, the kind that, when I was a little kid, I thought could be the tanks in a bug war.



I point the flashlight at my Nancy Drew mystery. This is the only place I read Nancy Drews. Normally, I'm way too old for them. I mean, I read all forty-seven of them when I was ten, more than four years ago. I just keep a couple handy in the closet for when things get really scary. They help calm my mind when it catches up to my body and starts to think too much about where I'll be hit next. And if I'll have marks that I'll have to hide at school.

In the closet, I read them over and over, even though I know what's going to happen.

I start reading and I forget about my naked butt and the slippery windbreaker. By now the voices have grown loud. I have to bite on my knuckle to help me concentrate. Sometimes, I bite down so hard, it bleeds. I usually don't even notice the blood until they've gone, when I open the closet door and see things smashed.

I have the knuckle of my right pinkie finger in my mouth now. It's the

only one that doesn't have a scab yet. Something smashes against the wall in the kitchen and I squeeze my eyes shut to clear it from my head. I know it was a glass that smashed because it sounded high-pitched, like a woman's scream. When a book is thrown, I hear a dull thud. High heels make sharp, scratching sounds like desperate rats trying to dig into the walls.

I grind into the pinkie knuckle to keep concentrating. In my book, Nancy Drew tries to grab her attacker and a sack is pulled over her head. She tears frantically at the cord around her neck.

I turn the page. Nancy's still struggling. She knows that in a moment she'll black out. She pulls harder on the cord. I put my hands up to my neck to help her.

Something bangs in our kitchen like angry thunder. My head jerks even though I'm trying to read and not hear anything. Footsteps storm into the living room and stop inches away from my sanctuary. Sanctuary is one of my old Warrior Words.

I curl into a ball and slide my dad's raincoat over my head so that I'm in a little tent. I keep the flashlight on my book and read the note to Nancy Drew demanding that she give up the Spider Sapphire case.

Something heavy slams against the closet door, which then flies open. My hand shakes as I turn off the flashlight. I try to frame what's happening as if I'm reading about Nancy. *Someone opened her sanctuary!*

It doesn't work. I can smell the whiskey. My throat pitches forward like I'm going to throw up. I taste vomit in my mouth, but I clench my teeth so that it goes back down.

I shut my eyes into hard slits and wait for my words. Nothing happens yet. The whiskey smell is overwhelming. I push on my tightly shut eyes. Then, there's a trembling in the top of my head and a rumbling as my Warrior Words start to tumble down. They come in to save the day when I'm forced to stop reading the Nancy Drews.

Splendiferous bursts in a brilliant rainbow in the middle of my brain, and I have a second of calm. Then there's a hard yank on the raincoat covering me. My word vanishes. My mother stands in front of me like a beautiful, angry witch. She's wearing a sparkly red dress that's dipped low in front so that you can see half her boobs. She and my dad had been at a late afternoon wedding. Her lips are also red, perfect ruby curves except where they're smeared on one side, making her upper left corner look like someone botched an operation.

"What do you think you're doing in here?" my mother says to me.

Excerpted from "invisible girl," by Mary Hanlon Stone. Copyright 2010 by Mary Stone Hanlon, published by Philomel Books. Used by permission.



Mary Hanlon Stone is a deputy district attorney for Los Angeles County. The majority of her career has consisted of prosecuting sexual assault and domestic violence cases, and working extensively with children and teenage victims and witnesses. She attended the University of Michigan and the University of Michigan Law School. "invisible girl," her debut novel, was inspired by her work with teens.

Kagan Commentary Misses the Point

Continued from page 1

discriminate based on race, gender, religion, or sexual orientation as a condition for being able to interview on campus.

Almost every major law school excluded the military from using its career services facilities because of the military's exclusion of gays and lesbians. This caused Congress to pass the Solomon Amendment, which threatened universities with a loss of all federal funds if their law schools did not allow the military to recruit on campus. The Clinton administration chose not to enforce the Solomon Amendment, but the Bush administration changed course and told universities that they faced cutoff of funds unless they complied.

Harvard's reaction was the same as at all major schools: it complied with the Solomon Amendment, but participated in a lawsuit challenging

it. Dean Kagan released an eloquent statement each year expressing great support for the military, but grave concern over an employer that would not consider some Harvard students solely because of their sexual orientation. It is impossible to read her statement as anti-military. It is so important to understand that her action was the same as deans across the country and was also a reflection of the policy of the faculty whom she led.

What is missed in much of the media commentary about Kagan is that her advantage and her disadvantage as a nominee are exactly the same: the lack of much of a paper trail. She has written or said little on the most controversial issues facing the Court. She has never been a judge, so there are not prior judicial opinions to scrutinize. She has authored a relatively small body of legal scholarship, only five major articles, and none deal with the hot-button issues of our time.

The advantage, then, is that she provides Obama an easy confirmation. Like with Sonia Sotomayor last summer, Obama will need to invest little political capital in getting her confirmed. No arms will need to be twisted, no deals struck.

The disadvantage, though, is that neither Obama nor anyone else, can know where Kagan will be on the ideological spectrum. Everyone expects that she will be somewhat left of center, but will she be as liberal as Stevens or more towards the middle? Might she be significantly more conservative or even more liberal? There is no way to know.

Nor is the confirmation process likely to be at all useful in providing an answer. The day after she was nominated, a *New York Times* editorial and an op-ed from Linda Greenhouse stressed the need for Kagan to answer questions about her views. They pointed to an article written by Kagan about the need for Supreme Court nominees to do so.

It isn't going to happen. Kagan will echo her immediate predecessors, most especially John G. Roberts Jr. Like Roberts, Kagan will show a thorough knowledge of constitutional law and for each question describe what the Supreme Court has done to this point. But then she politely will say that she cannot express views about matters that will come before the Court. When confronted with her earlier law review article, she'll smile and say that as a nominee she now knows that was too simplistic; it is inappropriate for a nominee to express views about matters that might come before her as a justice. She knows, everyone knows, that a Senate with 59 Democrats will not vote against her on this basis.

As a law professor and dean, Kagan said relatively little that is controversial. She did not write op-eds or make many statements to the press. As dean at Harvard Law School, she emphasized ideological



Associated Press

diversity in hiring. The crucial unanswerable question is what someone like that will be as a justice. With life tenure in the ultimate job for a lawyer, will she be emboldened and be a liberal intellectual counterweight to conservatives like Antonin Scalia? Or will she try to be the moderate, consensus builder from the middle?

Some liberals have expressed concern about Kagan. Their wish was that Obama, with 59 Democratic senators, had picked someone who was a more certain liberal. But the reality, of course, is that a successful challenge from the left is not going to happen.

Conservatives may make a lot of noise between now and her confirmation. There will may be 32 Republican votes against Kagan, as there were against Sotomayor. But come Monday, Oct. 4, Kagan will be a justice on the Supreme Court and only then will we begin to get a sense of the ideology of Justice Elena Kagan.



Erwin Chemerinsky is Dean and Distinguished Professor of Law at the University of California, Irvine, School of Law.

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