

The Christian Science Monitor - CSMonitor.com



## Elena Kagan not a judge? Well, at least she went to law school.

Critics say Supreme Court nominee Elena Kagan might not be qualified, since she's never been a judge. But historically, most Supreme Court justices never graduated from law school.



Robert C. Grier (fourth from left), an ancestor of the Decoder and a Supreme Court justice from 1846 to 1870, is one of the 64 Supreme Court justices who did not go to law school. Supreme Court nominee Elena Kagan went to Harvard, though she has never served as a judge.  
(Newscom)

---

By Peter Grier, Staff writer  
posted May 11, 2010 at 3:54 pm EDT

Washington

Supreme Court nominee Elena Kagan has never been a judge, and some people think that's a problem. "Her record is thin, there's no doubt about that," said Sen. Jeff Sessions (R) of Alabama, ranking minority member on the Senate Judiciary Committee, in a Monday broadcast interview.

Well, at least she graduated from law school. (Harvard Law, 1986, if you want the specifics.) That makes her more credentialed than most of the 111 people who have served as US Supreme Court justices. A majority of them – 64 – never earned a law degree.

Yes, you read that right. More high court judges have not been JDs, than have. They never took first year Contracts. They never struggled with Constitutional

Law I, only to be inspired by a curmudgeon of a professor with an eye for talent.

### **IN PICTURES: Justices with no prior judicial experience**

No, they learned law the old fashioned way – on their own.

Let's start from the top – it will be less confusing that way. While 64 Supreme Court justices did not go to law school, all Supreme Court justices in US history have been lawyers. Of a sort.

That apparent paradox can be explained by the fact that for much of the nation's history the most common path to lawyering was simply to read law books, often while working in a practicing attorney's office.

For instance, John Jay, the nation's first chief justice, read law in a New York law office following his 1764 graduation from college. He was admitted to the bar in 1768.

Decoder's ancestor Robert C. Grier read law while teaching school in the early 19th century. He passed the bar in 1817. Appointed an associate Supreme Court justice in 1846, he served on the high court for 24 years. (Served badly, we might add – historians rate him among the worst Supreme Court justices ever.)

This practice persisted well into the 20th century. The last justice without a law school degree was Stanley F. Reed, who was appointed to the Supreme Court by FDR in 1938, and served until 1957. Reed studied law at the University of Virginia and Columbia but never graduated. He learned law working at a small firm in Maysville, Ky., from 1910 to 1917.

Of course, there is nothing in the Constitution that says you have to be a lawyer to be on the Supreme Court. And some experts argue the US would be better off with some non-lawyers on the nation's highest bench.

After all, many of the Supreme Court's most important decisions involve matters of moral or political importance, not fine points of law. Think "Brown v. Board of Education", or "Bush v. Gore."

"Once we recognize that the Supreme Court is America's authoritative faculty of political theorists and not a mere court of law, then we can readily see that the necessity for formal legal training is no greater for Supreme Court justices than for officers of the other branches of government," wrote George Washington University law professor Arthur Miller and his associate Jeffrey Bowman in a 1986 Vanderbilt Law Review article, "Break the Monopoly of Lawyers on the Supreme Court."

Wow. Maybe we need a mix of professions on the high bench. Lawyers. Engineers. Teachers. Journalists.

Those jobs are for life, right? Hmm....

### **IN PICTURES: Justices with no prior judicial experience**

**Related:**

- Supreme Court confirmations, as Elena Kagan saw them
- The Monitor's View: Elena Kagan as Supreme Court consensus builder?
- Kagan's road from solicitor general to Supreme Court: not too rocky?

**© The Christian Science Monitor. All Rights Reserved. Terms under which this service is provided to you. Privacy Policy.**