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Newsroom

Dean Logan on Replacing Justice Stevens

Dean David A. Logan about choosing a replacement for U.S. Supreme Court Justice John Paul Stevens.

From the April 26, 2010 issue of [Rhode Island Lawyers Weekly](#), an interview with Dean David A. Logan by Noah Schaffer:



Now that U.S. Supreme Court Justice John Paul Stevens has announced he will retire this summer, court watchers are trying to guess who President Barack Obama will pick as Stevens' successor.

Among the names initially mentioned as possible contenders was that of U.S. Sen. Sheldon Whitehouse. But in a statement issued earlier this month, the Rhode Island Democrat said he has no interest in leaving the Senate.

Lawyers Weekly reporter Noah Schaffer recently spoke with Roger Williams University School of Law Dean David A. Logan about who might be tapped for the seat.

***Q.** Sheldon Whitehouse was considered a long-shot contender. Why do you think he pulled his name from consideration?*

A. Sheldon Whitehouse is doing a fantastic job as U.S. senator, and I know that he is enjoying having the opportunity to help shape important public policy in a range of areas. You don't get to do that as much when you're on the U.S. Supreme Court. The cases are not driven by what you want to rule on, but by what litigants are doing that comes up. So a man of action could find a Supreme Court job insufficiently engaging - not intellectually, but in terms of hands-on public policy-making.

***Q.** Would he have been a good pick?*

A. He's certainly very qualified. He's done everything but be a judge. But there are candidates that provide geographic and gender and racial diversity that he doesn't provide, and people who have a lot of judicial experience. Every current member was a sitting judge when they were nominated and confirmed, so the fact that he is lacking that could have been a plus or a minus.

Q. Has the court always been made up so heavily of judges from lower courts?

A. No, that's not the way it was historically. On virtually every prior court there were one or more people who had come directly or indirectly from politics. Hugo Black, who had been a U.S. senator, and Earl Warren, who had been the governor and attorney general of California, are both on anyone's list of the 10 most important judges of the 20th century.

Q. So there are benefits to having a non-judge sit on the nation's highest court?

A. The wisdom that comes from rolling up your sleeves and campaigning and getting legislation done and understanding the strengths and weaknesses of the democratic process are all certainly things that would be good to have on the Supreme Court. The more of your life you've spent as an appellate judge, the less you know about how the world works on the ground. The decision on campaign finance was made by people who had never been on a campaign. Maybe they would have appreciated the significance of what they were doing if they had raised money and campaigned before being on the court.

Q. One of the potential nominees, Solicitor General Elena Kagan, has been criticized because she signed onto an ultimately unsuccessful lawsuit when she was dean of Harvard Law School, challenging the policy of taking away federal funding for law schools that ban military recruiters because of the military's "don't ask, don't tell" policy. What do you make of someone coming under attack for their actions as a law school dean?

A. I think the lawsuit was a plausible argument. The fact that it lost nine to nothing [before the U.S. Supreme Court] doesn't mean that it was unreasonable to sign onto. Deans are asked all the time to sign chain letters that basically put the weight of the institution behind them.

Q. Currently, every judge on the court except for Stevens went to either Yale or Harvard law school. Is there room for a non-Ivy League justice on the U.S. Supreme Court?

A. Great law schools present to students a range of approaches to law, so I don't think potential nominees should be disqualified if they went to Harvard or Yale, but it does look a little odd; the inference is that the pool isn't very deep. The pool is deep. [Potential nominee and Secretary of Homeland Security] Janet Napolitano went to the University of Virginia, and her training was perfectly good for being on the Supreme Court. Some judges will only hire law clerks from two or three schools. There's a snobbishness that pervades the profession.

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