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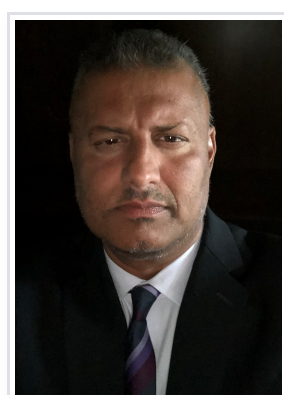
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## Lack of experience is actually quite common

Not until President Dwight Eisenhower was in office did an issue arise over appointing only justices with prior judicial experience. By Aashish Y. Desai



### Aashish Y. Desai

Desai Law Firm PC  
3200 Bristol Street #650  
Costa Mesa , CA 92626

**Phone:** (949) 614-5830

**Fax:** (949) 271-4190

**Email:** [aashish@desai-law.com](mailto:aashish@desai-law.com)

University of Houston Law Center; Houston  
TX

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### Attachments



In response to retired Justice Rick Sims' Dec. 1 article, "Nominee lacks the necessary experience," I offer the following:

Lack of judicial experience actually historically has been quite common. Not until President Dwight Eisenhower was in office did an issue arise over appointing only justices with prior judicial experience. Until then, it was routinely done with some 40 prior Supreme Court justices having zero prior judicial experience.

Justice Elena Kagan would be on that list. William Paterson, who played an important role in drafting the Judiciary Act of 1789 that established the federal courts, would also be on that list. In fact, Justice Antonin Scalia never served one day as a trial judge (read: "the trenches"), and only spent four short years on the U.S. Court of Appeals for the D.C. Circuit before "borking" Judge Robert Bork out of line en route to the U.S. Supreme Court.

I've never served, but it seems that justices at the Supreme Court level do not tell the other justices "what to do" - experience or no experience. While it is helpful that some have the power to persuade others, the persuasion is usually at the intersection of critical writing, biting wit and sharp analysis - not age.

Leondra Kruger seems qualified, having graduated from Harvard and Yale Law School, where she was editor-in-chief of the Yale Law Journal. She argued many cases before the U.S. Supreme Court, no doubt writing and editing superlative briefs in support of her position. She also clerked for a Supreme Court Justice - John Paul Stevens. She taught law at the University of Chicago Law School, leaving to serve as an assistant to the U.S. solicitor general. If her legal acumen is solid (seems to be) and her writing clear (ditto), she would be qualified. Let's be honest, imprecise opinions and broad policy are (intentionally) announced at the Supreme Court level with the trial and appellate courts left to sift through the carnage and extrapolate the details and nuances.

While I agree that it's generally better to have our Supreme Court justices possess at least some experience in the judiciary, it is not mandatory. Trial lawyers tend make bad appellate lawyers, and vice-versa.

If confirmed, Kruger would be the only African-American justice on the California Supreme Court. That is important. Our Supreme Court is well known for cooperation and diplomacy, often reaching unanimous (or near unanimous) opinions on critical "hot potato" issues. Diversity is revered by our court, which often rules - broadly speaking - for employees and consumers. A diverse bench also reflects the diversity of California itself, with no racial group in the majority. These are all positive reasons to appoint Kruger to our excellent, and quite thoughtful, court.

I respectfully dissent from Justice Sims' opinion.

#249782

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