



TO THE BAG

FROM DELAWARE TO TAPPAN LAKE

To the *Bag*:

Bern, Kansas has never seemed so far away. The town in the Sunflower State was the geographic center of the U.S. Supreme Court (Zuraw & James, *The Supreme Court and the Westward Movement*, 11 GREEN BAG 2D 341 (2008)) a scant twenty years ago. The hub has been in an eastward retreat, now turned into a rout by the replacement of Chicago's Justice Stevens with Justice Kagan, born in New York City and working until recently in Cambridge, Massachusetts. As measured by residences at the time of appointment, the center has lurched from the heart of Ohio, where it stood after the investiture of Justice Sotomayor (James, *From Pulaskiville to Delaware*, 12 GREEN BAG 2D 377 (2009)), to the shimmering surface of Tappan Lake, Ohio, close to the Pennsylvania line (lat. 40° 21' N, long. 81° 11' W).

As is also true for serious scholarship, some judgment calls are needed for this calculation. Brief residences in Washington, D.C. were ignored for those who spent the rest of their career elsewhere before ascending to a federal judgeship, as for Solicitor General Kagan this year and for Assistant Attorney General Rehnquist in 1972.

The geographic Zelig of the present Court (see ZELIG (Orion Pictures 1983)) is Justice Scalia, here deemed resident in Illinois at the time of his appointment to the D.C. Circuit. When the *New York Times* parses the “distinct New York traits [carried] to Washington” by four jurists, we are told that “Scalia is so Queens” (James Barron, *A New York Bloc on the Supreme Court*, N.Y. TIMES (May 12,

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2010) (quoting biographer Joan Biskupic)). When a state loses an original jurisdiction decision and he demurs, the boy who left Trenton at age six is branded a New Jerseyan (*N.J. Justices Dissent in River Case*, A.B.A.J. (April 1, 2008) (available at abajournal.com)). When the Chicago School of legal and economic thought is mentioned, the former professor becomes, like Augie March, a son of the Windy City (Peter Slevin, *Uncommon Ground*, WASH. POST (Oct. 6, 2008) (“Hyde Park . . . is anchored by the University of Chicago, an incubator for some of the nation’s most influential conservatives,” including Justice Scalia)). And we have been reminded that “in 1967, the State of Virginia became [the] home” of the Charlottesville professor and Nixon and Ford Administration official (*Nomination of Judge Antonin Scalia: Hearings Before the Senate Comm. on the Judiciary*, 99th Cong. 3 (1987) (statement of Sen. John Warner)).

Geography as a factor in nominations has receded in importance as considerations of temperament, ideology, sex, race, religion, education, and career path have risen. Citizens in Los Angeles may feel that they have less in common with a nominee from nearby Manhattan Beach than they do with one from Manhattan. It may be some time before the Court again reflects the continental distribution of the American people. Bern, we hardly knew ye.

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JUSTICE SCALIA NODDED

To the Bag:

In reading Joan Biskupic’s biography of Antonin Scalia,¹ I was shocked to see a quotation from the justice’s memorial to Edward Levi. Justice Scalia was describing the scene at his home when, with distinguished guests assembled, the key to the liquor cabinet was nowhere to be found: “I will never forget the image of the Attorney

¹ Joan Biskupic, *American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia* (2009).