



Search Top Stories:

Register for Law.com Newswire | Legal Blogs | Newsletters | RSS Feeds

Parsing Alito's Clerk Picks

Tony Mauro
Legal Times
02-21-2006



image: Caroline Fong

Two of Justice Samuel Alito Jr.'s former law clerks stopped in at his chambers earlier this month to congratulate him on winning confirmation.

Alito was so happy to see them, apparently, that he offered them jobs on the spot. He asked Hannah Smith, a Williams & Connolly associate, and Jay Jorgensen, a partner at Sidley Austin, to serve as his law clerks this term. Both, after clerking for Alito, had subsequent high court experience -- Jorgensen clerked for the late Chief Justice William Rehnquist and Smith for Justice Clarence Thomas -- and that was exactly what Alito needed.

Alito's other, more headline-making law clerk hire, Adam Ciongoli, does not have Supreme Court experience. But he is a trusted, high-energy former Alito clerk who could help Alito make his way through official Washington. Out of the blue, Ciongoli got the call, and he too returned to the marble palace on short notice, abandoning a high-flying, to-die-for job as vice president and general counsel of Time Warner Europe.

And there's just a slight pay cut. Ciongoli will earn \$63,335 as a law clerk.

The Ciongoli pick was quickly portrayed as an early signal of Alito's conservative stripes, given that before he went to Time Warner, Ciongoli was counselor to then-Attorney General John Ashcroft and one of the architects of the Bush administration's post-9/11 anti-terror legal strategy.

But Alito's embrace of Ciongoli, even to some liberal Court watchers, may have a less partisan significance. It could mean that Alito, like most other freshman justices, suddenly saw the enormity of his job and realized he needed help -- big time. Help that he could trust and that could decode the high court, whose arcane ways can confound the most nimble minds. Justice David Souter once said of the Court, "Coming here is like walking through a tidal wave," and for Alito, arriving in midterm, the wave was already cresting.

Alito also comes to the Court after a bruising confirmation battle, in which he received more negative Senate votes than any nominee since Thomas, who seemed wounded and bitter for several terms. Ciongoli, Jorgensen and Smith were all vocal advocates during the fight, and their presence in Alito's freshman term may help heal whatever scars remain.

"He's already behind the eight ball in terms of work, so he needed people who know his job and know him and his work habits," says Edward Lazarus, author of "Closed Chambers," a liberal critique of the Court that describes politically charged law clerk rivalries in the 1980s. Despite that perspective, Lazarus is inclined to give Alito a pass on hiring Ciongoli. "One clerkship hire doesn't tell us much. Let's talk in a few years to see how the politics play out."

In the long run, he says, hiring clerks with a single political perspective can lead to polarization and narrows a justice's field of vision. But, as Lazarus notes, Alito had a reputation on the 3rd U.S. Circuit Court of Appeals for hiring a broad range of clerks.

"It's not that he picked these three because of some ideological proclivity or agenda, but that he picked three of his own former clerks whom he knows and trusts," says Cambridge University professor David Garrow. "This is exactly par for the course."

In an unusual arrangement, Smith will clerk until early May, at which point Jorgensen will serve through the end of the term. Ciongoli

Top Stories From Law.com

Legal Technology
Marketing on the Web

In-House Counsel
Small-Town Law Causes Big Box of Trouble for Wal-Mart

Small Firm Business
The Growing Pains of an IP Practice

ADVERTISEMENT

Help Provide Legal Relief for the Gulf Coast

Join Equal Justice Works, Greenberg Traurig, Latham & Watkins, ACC and others. Donate now and be matched dollar for dollar by the JEHT Foundation.

ALM ACC Association of Corporate Counsel EQUAL JUSTICE WORKS

LexisNexis
Martindale-Hubbell[®] Lawyer Locator

Last Name

First Name

Select State/Province

Select a Country

Select Practice Area

[Help](#) | [About Lawyer Locator](#)

will be in the Alito chambers from now until the end of the term. The other two clerks for Alito are previously announced pickups from the chambers of predecessor Justice Sandra Day O'Connor: Alexander Volokh and Benjamin Horwich.

[Ads by Google](#)

Whatever the motivations for Alito's choices, Ciongoli stands out as a rarity. At age 37, he is older than most, though not all, of the high court law clerks of the modern era. He also has a far more political résumé than most clerks, serving as a lawyer for Ashcroft when he was in the Senate, then moving to the Justice Department as counselor when Ashcroft became attorney general. He was at Justice from 2001 to 2003.

In recent histories of the period after the Sept. 11 terrorist attacks, Ciongoli has been portrayed as a key member of the Ashcroft team that pushed hard for the USA Patriot Act and other measures aimed at expanding the Justice Department's ability to investigate and stave off terrorist attacks.

Hogan & Hartson partner H. Christopher Bartolomucci, who was in the White House counsel's office while Ciongoli was at Justice, says Ciongoli was involved in "virtually all of the high-level policy initiatives" of the DOJ. But Bartolomucci, speaking at a Washington Legal Foundation briefing Feb. 16, said the media overplayed the significance of Ciongoli's hiring.

[Advertise on this site](#)

At a Brookings Institution forum that took place before Alito was confirmed last month, Ciongoli said People For the American Way and other groups had "grossly politicized" the confirmation process.

Ciongoli also said that when he clerked for Alito a decade ago, Alito wrote a dissent that critics frequently cited during his confirmation hearings. In the 1996 case *United States v. Rybar*, Alito said that Congress lacked commerce clause authority to ban possession of machine guns.

Now that Ciongoli is working for Alito again, the *Rybar* case has been invoked in the context of two Clean Water Act cases the justices are scheduled to hear today, Alito's first day of oral arguments.

That concerns Elliot Minberg, the legal director of People For the American Way, which opposed Alito. "The same commerce clause issue will be before the Court, and Alito will be hearing advice from the same quarter."

Ciongoli's admiration for Alito runs in the family. Ciongoli's father, Kenneth, as chairman of the National Italian American Foundation, also took an active role in supporting Alito. Last week, President George W. Bush asked him to join the American delegation to the Olympics in Turin, Italy.

Michigan Criminal Defense

Premier DUI Criminal Law Firm -Call Today for a Free Consultation

www.arrestedinmichigan.com