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How Merrick Garland Could Help Heal America

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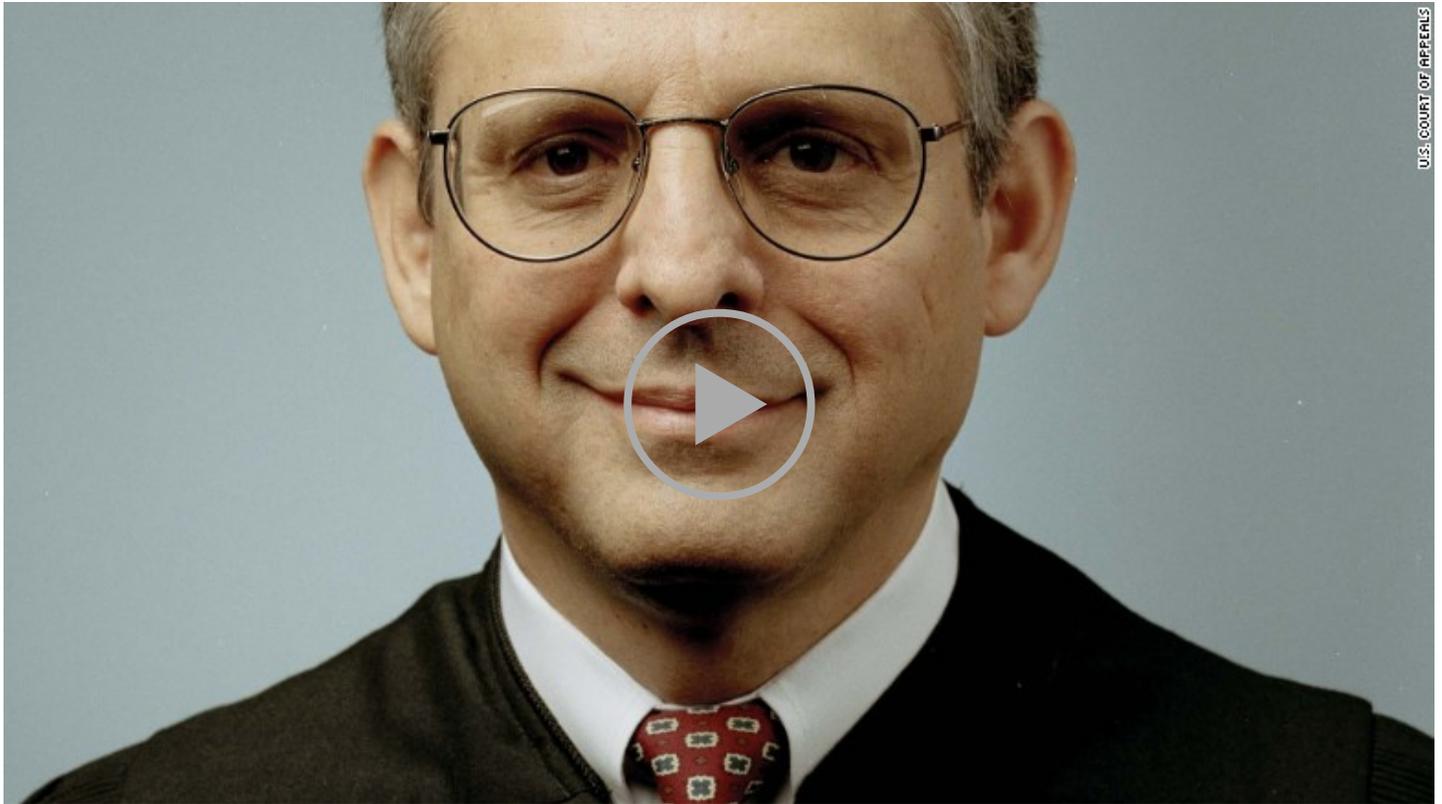
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How Merrick Garland could help heal America

By **Jeffrey Bellin**

🕒 Updated 8:38 AM ET, Fri March 18, 2016



Who is Merrick Garland? 01:00

Story highlights

Jeffrey Bellin: Merrick Garland nomination surprisingly non-partisan; he's highly regarded unifier, has long drawn praise from right, left

He says toxic environment notwithstanding, his confirmation poses little risk for either party and holds great promise for the nation

Editor's Note: Jeffrey Bellin is a professor at William & Mary Law School and a former law clerk to Merrick Garland. The opinions expressed in this commentary are his.

(CNN) — Wednesday's nomination of Merrick Garland to the Supreme Court was shockingly nonpartisan. Nominees are supposed to energize the President's political base. Garland, an open-minded moderate, won't. Nominees are supposed to be young. The 63-year-old Garland isn't. (Sorry, Judge.)

That's why, three days ago, Sen. Orrin Hatch, R-Utah, basically dared President Obama to pick Garland. Hatch assumed the President would go with someone younger and more liberal. [For Obama, Hatch said](#), "This appointment is about the election."

Hatch's skepticism is understandable. Everything is "about the election" these days. But Garland's nomination reminds us that it doesn't have to be that way. The nomination doesn't do much for the Democrats this election cycle. His confirmation might actually upset "the base."



The judge's attributes are decidedly apolitical. He is "a fine man" (as Hatch noted) with a brilliant judicial record; a former prosecutor who took the lead on some of the most important cases in recent memory.

Jeffrey Bellin



10 photos: Today's Supreme Court

The justices of the U.S. Supreme Court sit for their official photograph on October 8, 2010, at the Court. Front row, from left: Clarence Thomas, Antonin Scalia, Chief Justice John G. Roberts, Anthony Kennedy and Ruth Bader Ginsburg. Back row, from left: Sonia Sotomayor, Stephen Breyer, Sarah and Elena Kagan. Scalia was found dead on February 13 at a Texas ranch he was visiting.

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Whatever his motives, the President selected a nominee who is not only among the nation's most brilliant legal minds, but someone who Republicans and Democrats agree is uniquely well qualified, a "consensus" choice. This is a judge who other judges look to for guidance; someone whose opinions persuade those with whom he disagrees. As Chief Justice (John) Roberts said at his own confirmation hearings, "any time Judge Garland disagrees, you know you're in a difficult area."



That's why Garland, who has written hundreds of opinions, has written only a handful of dissents. Generally people agree with him because he gets it right. Those who don't agree often change their minds. That's the kind of justice the Supreme Court needs -- and the country, too.

The formula is simple. For Garland, every case is resolved through an exhaustive review of the record and a careful study of the controlling law. As one of Garland's former law clerks (and someone who worked with him more recently as "special counsel"), let me emphasize the words "exhaustive" and "careful."

Related Article: Supreme Court pick: Sure, Merrick Garland is qualified, but this is politics

I use these words because the English language does not possess stronger words to express the solemn diligence you will find in the judge's chambers, well

into the night and stretching into weekends as well.



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That said, Garland does not write scorched-earth dissents highlighting flaws he uncovers in colleagues'

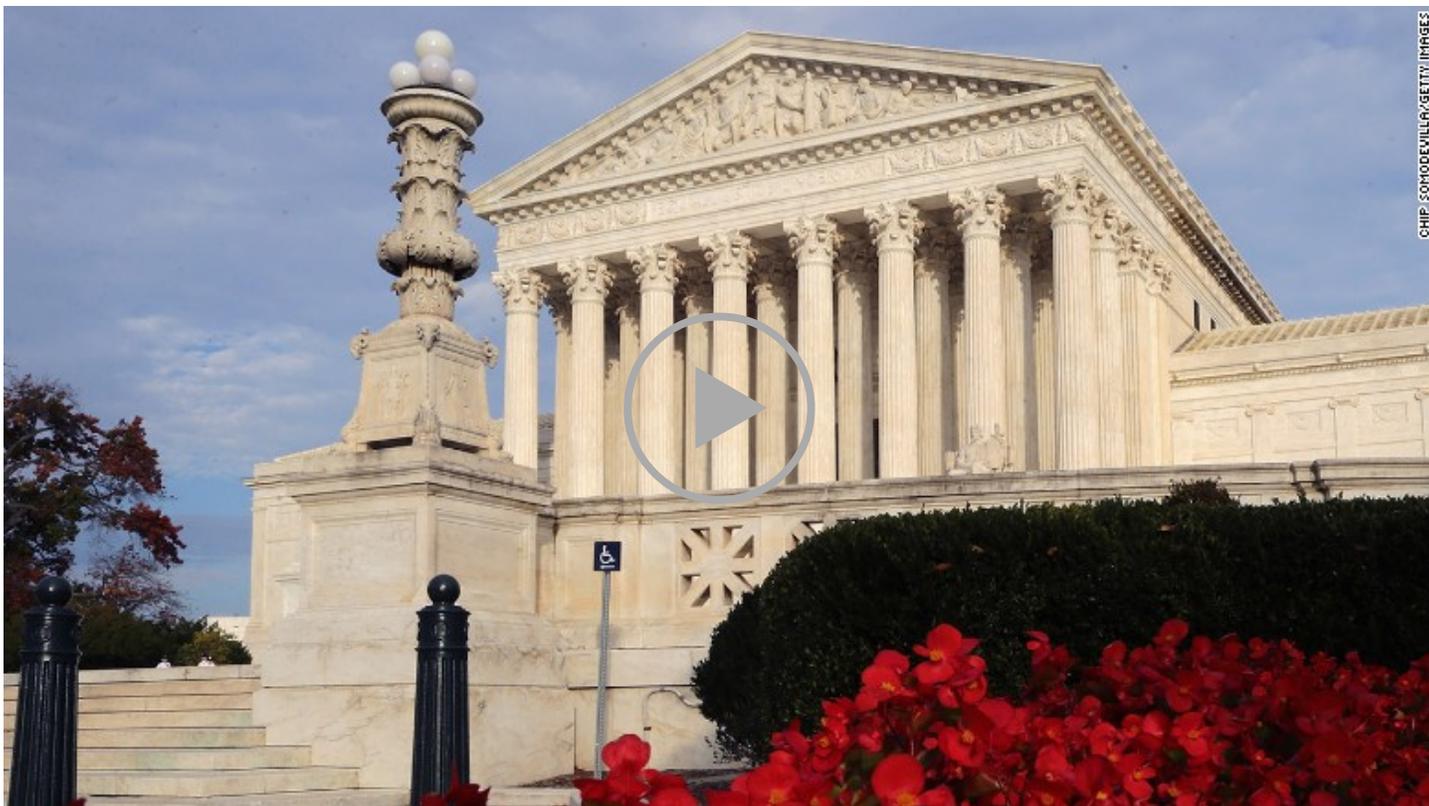
opinions. He works behind the scenes to find common ground. When called upon to do so, he will explain to other judges why the record, the facts and the law support his view. If they don't agree, he will listen. The resulting opinions are carefully crafted to find consensus, reflecting the reality, not the rhetoric, of "rule of law."



The most telltale sign of Garland's influence is not blazing rhetoric; it is that a diverse group of judges will agree on the resolution of an otherwise polarizing case.

There is value in consensus, especially on the Supreme Court. Perhaps the court's greatest moment was its 1954 ruling that schools segregated by race were unconstitutional. While the country was divided, the court's opinion was unanimous, 9-0. The country and the court need more decisions like Brown and fewer divisive decisions like the 5-4 Bush v. Gore.

Related Article: Merrick Garland, Obama's Supreme Court pick, gives GOP a headache



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At the moment, Senate Republicans object to holding hearings on Garland's nomination because we are in a polarizing election year and, as Alaska Republican Sen. Lisa Murkowski put it, "an increasingly toxic political environment." To the contrary. The toxic environment is precisely why we need Garland on the Supreme Court. And we need the Senate to confirm this "consensus nominee" (Hatch's words again) for the same reason.

The truth is that the nomination worked out well for Senate Republicans. They thought the President would pick a nominee to score political points. So they pledged not to confirm anyone until after the election. But Obama surprised. Garland's confirmation poses little risk for either party and holds great promise for the nation. Merrick Garland can help bring the Supreme Court together, pushing at least one of the three branches of government out of the political muck.

In an ideal world, the Senate, too, could use this nomination to start to heal a country afflicted with that "toxic political environment." Failing that, Senate Republicans can realize that Garland is as good a nominee as they are likely to see. They should declare victory and schedule a vote.

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