SCOTUSblog Briefing Paper

Elena Kagan – Qualifications

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I. Summary and Our Take

An important issue in any Supreme Court nomination is the candidate's objective qualification for the position. In our view, Elena Kagan is certainly qualified to serve as an Associate Justice.

Some controversy has arisen on this question with respect to Elena Kagan. Critics note that she has no prior judicial experience. Although that has been true of many great justices through history – Chief Justice William Rehnquist, most recently – critics contend that Kagan is uniquely lacking in relevant experience because she has not previously served as a private attorney and has spent little time as an advocate at all.

Conversely, Kagan's supporters applaud her experience and qualifications. They note that many have advocated nominating a Justice who has not spent a career in the "judicial monastery." And they point to her experience as Solicitor General, Dean of the Harvard Law School, an attorney and advisor in the Clinton Administration, an attorney in the judicial confirmation process, and an academic.

We find both the criticism and praise of Kagan's qualifications significantly overstated. As to her critics, prior judicial service certainly is not a prerequisite to a Supreme Court appointment. And serving as an advocate for a litigant is not, in our view, a distinguishing characteristic that better prepares an attorney to serve as a Justice on the Court, which is a position that is heavily dependent on the individual not taking an advocacy position.

The further criticism that Kagan is a partisan or political operative seems very misguided. In a roughly twenty-five year career, she chose to serve in a policy-oriented position for only roughly one year. Her roles in political campaigns were minor. Instead, she has gravitated in precisely the opposite direction -- to academia, a deanship, and the Solicitor General -- all of which place considerable value on objectivity. Her advocacy of the Clinton Administration's interests in that single year was entirely consistent with her role. Certainly, John Roberts advocacy of the Reagan Administration's legal agenda in internal memorandum while he served in the Justice Department was at least as strong, yet no conservative accused him of undue partisanship.

Conversely, as to her supporters, Kagan's prior experience hardly sets her apart as specially qualified to serve as a Justice. An individual who has previously served as a judge will generally have a demonstrated ability (or not) to serve as a neutral arbiter between parties, and will have an easier time transitioning to the role of a Justice. Those who favor an appointment of an individual who has not been a career judge were principally advocating the appointment of a candidate with extensive experience in governing – perhaps a former governor (like Earl Warren) or legislator (like Sandra Day O'Connor). Kagan did serve as an important domestic

policy advisor, which exposed her political issues, but her service in that role was relatively short-lived. Her time as Solicitor General was similarly brief.

All that said in response to both her critics and proponents, it does seem clear to us that Elena Kagan is easily qualified to serve as a Supreme Court Justice. Here we distinguish between her experience and her qualities as an individual and a lawyer.

In terms of experience, the fact that Kagan has not served either as a judge or a senior policymaking or legislative official are relevant points. On the other hand, her experience as a dean of Harvard Law School, Solicitor General, and domestic policy official in the Clinton Administration are certainly relevant. That experience compares very favorably with, for example, William Rehnquist, who was a practicing attorney and then the head of the Office of Legal Counsel. Equally important is *how* the individual performs in each position, and Kagan's performance has been admirable; the extensive praise of her tenure as dean is illustrative.

In terms of individual qualities, we regard the core characteristics of a Justice as (in no particular order) fidelity to the law, objectivity, intelligence, and work ethic. On these points, we are not aware of any substantial basis for criticizing Kagan. Conservatives may object to what they perceive as Kagan's methodology for interpreting the Constitution – a criticism that we expect they would raise with respect to almost any Democratic nominee, just as President Bush's nominees were subject to attacks from the opposite direction. But on the essential point of whether Kagan respects the law and regards it, as opposed to her personal preferences, as controlling, the available evidence (including her academic writings) certainly supports the conclusion that she does. Kagan's objectivity and ability to work with others – illustrated again through her time as dean – are well known and respected, and her intelligence and work ethic are beyond question.

II. The Relevant Source Materials

A. Academic source materials:

a) Bibliography (via Harvard Law School)

b) "Presidential Administration," *Harvard Law Review* (2001). Full text: Lexis, Westlaw.
   - "I think the most important development in the last two decades in administrative process, and a development that also has important implications for administrative substance . . . is the presidentialization of administration — the emergence of enhanced methods of presidential control over the regulatory state" (2383).
   - "The judiciary can play a role in controlling administrative government in either of two ways: directly, by engaging in substantive review of agency decisions, or indirectly, by supporting, through various rules of procedure and process, other institutions and groups that can influence agency policymaking. The history of

administrative law doubtless provides many examples of the former approach. The current law, however, leans far in the latter direction" (2269).
- "The President . . . confronts a typical principal-agent dilemma: how to ensure against slippage between the behavior the principal desires from the agent and the behavior the principal actually receives, given the agent's own norms, interests, and informational advantages. In a world of extraordinary administrative complexity and near-incalculable presidential responsibilities, no President can hope (even with the assistance of close aides) to monitor the agencies so closely as to substitute all his preferences for those of the bureaucracy. And superimposed on this constraint lies another: the President, even in theory and even as to executive branch agencies, is not the single, indisputable principal" (2273).
- "All models of administration must address two core issues: how to make administration accountable to the public and how to make administration efficient or otherwise effective" (2331).

c) "Chevron Nondelegation Doctrine," *Supreme Court Review* (2001).
- "An internal agency nondelegation doctrine should determine the rigor of judicial review of an agency's interpretive decisions – or, otherwise stated, should define the sphere in which courts defer to these decisions under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*. The idea here is not to prohibit congressional delegates from giving authority to lower-level agency officials to fill in gaps and resolve ambiguities in legislation. Such a bar would be, if not impossible, at the least unwelcome. The idea, instead, is to distinguish among exercises of this authority based on the identity of the final agency decision maker and then to reward, through more deferential judicial review, interpretations offered by more responsible officials" (201).

d) "When A Speech Code Is A Speech Code: The Stanford Policy and the Theory of Incidental Restraints," *University of California at Davis Law Review* (1996).
- "This Comment on Grey's article [*How to Write a Speech Code Without Really Trying: Reflections on the Stanford Experience*, 29 U.C. Davis L. Rev. 891 (1996)] addresses the scope of the First Amendment's doctrine of incidental restraints, which I think Grey misdescribes. It considers both the rationale and the need for that doctrine, which I think Grey underacknowledges. And finally it notes some practical political effects of the doctrine, which I wish Grey, in his capacity as drafter of the Stanford Policy, had more fully recognized. What is perhaps most disturbing about the Stanford experience is not that the University adopted, yes, a speech code, but that in doing so, it did little to foster, and perhaps much to undermine, its own (and Grey's own) goal of equality" (958).
- "To evaluate [Grey's claim that the Policy concerned all discriminatory harassment, not just speech as such], it is necessary to take a step backward and ask what underlies the Court's distinction between direct and incidental restraints on expression. The distinction makes no sense if what matters, under First Amendment doctrine, is the effects of a law on a speaker's expressive opportunities. The Stanford student who wishes to engage in race-based invective

will "suffer" no more from a direct restriction on hate speech than from a generally applicable anti-discrimination regulation that covers all the speech affected by the direct restriction, but conduct in addition. The distinction likewise makes no sense if what matters is the effects of a law on an audience's ability to hear and consider a range of viewpoints" (959).

e) "Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine," *University of Chicago Law Review* (1996).
   - "I argue, notwithstanding the Court's protestations in *O'Brien*, that First Amendment law, as developed by the Supreme Court over the past several decades, has as its primary, though unstated, object the discovery of improper governmental motives. The doctrine comprises a series of tools to flush out illicit motives and to invalidate actions infected with them. Or, to put the point another way, the application of First Amendment law is best understood and most readily explained as a kind of motive-hunting" (414).
   - "Courts, of course, rarely construct law in so deliberate a fashion [as creating "a distinction between speech regulations that are content neutral and those that are content based]; at least, the current Supreme Court—fractured, clerk-driven, and uninterested in theoretical issues as it is—rarely does so. The self-conscious rationalization and unification of bodies of law is not something to expect from the modern judiciary. So I do not mean to stake a claim that individual Justices, much less the Court as a whole, have set out intentionally to create a doctrinal structure that detects illicit motive by indirect means" (415).

f) "Confirmation Messes, Old and New," *University of Chicago Law Review* (book review) (1995).
   - "Subsequent hearings [following the Bork hearings] have presented to the public a vapid and hollow charade, in which repetition of platitudes has replaced discussion of viewpoints and personal anecdotes have supplanted legal analysis" (941).
   - "When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public" (920).
   - "[T]he Senate's consideration of a nominee, and particularly the Senate's confirmation hearings, ought to focus on substantive issues; the Senate ought to view the hearings as an opportunity to gain knowledge and promote public understanding of what the nominee believes the Court should do and how she would affect its conduct. Like other kinds of legislative fact-finding, this inquiry serves both to educate members of the Senate and public and to enhance their ability to make reasoned choices. Open exploration of the nominee's substantive views, that is, enables senators and their constitutuents [sic] to engage in a focused discussion of constitutional values, to ascertain the values held by the nominee, and to evaluate whether the nominee possesses the values that the

Supreme Court most urgently requires. These are the issues of greatest consequence surrounding any Supreme Court nomination (not the objective qualifications or personal morality of the nominee); and the process used in the Senate to serve the intertwined aims of education and evaluation ought to reflect what most greatly matters" (935).

g) 1993. "Regulation of Hate Speech and Pornography After *R.A.V.*," *University of Chicago Law Review* (1993).
   - "I do not take it as a given that all governmental efforts to regulate [hate speech and pornography] accord with the Constitution. What is more (and perhaps what is more important), the Supreme Court does not, and will not in the foreseeable future, take this latter proposition as a given either" (873).
   - "[The Court's decision in *R.A.V. v. City of St. Paul*] demands a change in the nature of the debate on pornography and hate speech regulation. It does so for principled reasons – because it raises important and valid questions about which approaches to the regulation of hate speech and pornography properly should succeed in the courts. And it does so for purely pragmatic reasons – because it makes clear that certain approaches almost surely will not succeed" (873).

h) "The Changing Faces of First Amendment Neutrality: R.A.V. v. St. Paul, Rust v. Sullivan, and the Problem of Content-Based Underinclusion," *The Supreme Court Review* (1992).
   - With regard to *R.A.V.* and *Rust v. Sullivan*: "[J]ust underneath the surface, the cases have a similar structure, implicate an identical question, and fall within a single (though generally unrecognized) category of First Amendment cases" (29).
   - "First, both cases involve speech of a particularly controversial – many believe deeply harmful – kind . . . . Next, in each case the government responded to this controversy by engaging in a form of content discrimination, disfavoring certain substantive messages as compared to others. Both cases thus raise general questions of First Amendment neutrality: whether, when, and how the government may tip the scales for (or against) certain messages – or, stated otherwise, to what extent the government is required, with respect to the content of speech, to play a neutral role" (31).

B. White House qualifications:

From 1995 until 1999, Kagan served as Associate White House Counsel and then as Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council in the Clinton Administration. Several of the memoranda she authored or co-authored during that time have become publicly available:

a) October 31, 1996 Memorandum for Leon Panetta from Elena Kagan and Colleagues on Possible Q&A on President's Campaign Finance Reform Announcement [re: McCain-Feingold]

- "The President believes that Congress should and must make passage of McCain-Feingold a priority" (2).
- "Under the current system, both parties have accepted foreign and non-citizen contributions. The system is broken, and needs to be fixed. The voting public must have confidence that the process is fair and works for them. That is why we agree with Senators McCain and Feingold that real, bipartisan campaign finance reform must include effective limitations on non-citizen contributions. If you are not a U.S. citizen, you can't contribute" (2).
- "It is unfortunately true that almost any meaningful campaign finance reform proposal raises constitutional issues and will provoke legal challenge. This is inevitable in light of the Supreme Court's view – which we believe to be mistaken in many cases – that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems. We think that even on this view, the Court should approve this measure because of the compelling governmental interests at stake. But we also think the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment always entails a right to throw money at the political system" (4).

b) February 27, 1997 Memorandum for Sylvia Mathews from Bruce Reed and Elena Kagan re: Ideas
   - "We are currently looking into securing the commitment of the Department of Defense to give students in its schools our proposed 4th and 8th grade tests. (We believe it would be preferable for DOD to volunteer to give these tests than for the President to order the Department to do so)" (2).
   - "We are currently putting together a package of proposals to facilitate the federal government's hiring of welfare recipients. We think that this package will include an executive order establishing a separate hiring track for welfare recipients and providing nonfinancial incentives to federal agencies to make use of this new hiring authority" (2-3).
   - "[W]e have prepared (1) an Executive Order strengthening protections for human subjects of secret research; and (2) legislation expanding compensation for Cold War-era uranium miners" (3).

c) March 20, 1997 Memorandum for Erskine Bowles and Sylvia Mathews from Bruce Reed and Elena Kagan re: Race Commission/Council
   - Rejecting two pending proposals for a race commission or council in favor of a third, which "makes the President central to a second-term effort on racial issues, at the same time as it combines intellectual rigor with an action orientation" (2) and includes:
     - "A major multi-day conference on racial issues to take place at the White House" (2)
     - "A series of 'town-halls' led by the President on race-related issues" (2)
     - "Policy announcements to precede, accompany, and follow the conference and town halls" (2)

d) May 13, 1997 Memorandum for the President from Elena Kagan and Bruce Reed on partial-birth abortion ban
   - "We recommend that you endorse the Daschle amendment [banning all abortions of viable fetuses except when the physical health of the mother was at risk] in order to sustain your credibility on HR 1122 [a stricter Republican ban] and prevent Congress from overriding your veto."

e) May 29, 1997 Memo from Elena Kagan and Jack Gibbons to the President re: Cloning Policy Options
   - "We recommend: (1) that you support domestic legislation banning human cloning, and that you announce specific legislation at the top of your June 10th press conference; and (2) that the U.S. support the gist of France's proposed cloning paragraph while insisting on critical modifications" (2).

f) Draft Letter from the President to Senators Daschle and Feinstein in Support of the Daschle Amendment (by Elena Kagan and Bruce Reed)
   - "As you know, I have long opposed late-term abortions, and I continue to do so except where necessary to save the life of a woman or prevent serious harm to her health" (2).

g) July 15, 1997 Memorandum for the President from Bruce Reed and Elena Kagan re: Race Initiative Policy Process

h) November 11, 1997 Memorandum for the President from Bruce Reed and Elena Kagan re: Race Policy Initiatives
   - "We believe the central focus of the race initiative should be a race-neutral opportunity agenda that reflects . . . common values and aspirations. . . . [T]he best hope for improving race relations and reducing racial disparities over the long term is a set of policies that expand opportunity across race lines and, in doing so, force the recognition of shared interests" (1).

i) November 13, 1997 Memorandum for the President from Elena Kagan and Charles F.C. Ruff on the Importation of Modified Semiautomatic Assault Type Rifles (Redraft of Presidential directive)
   - "The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action" (2).
   - "My Administration is committed to enforcing the statutory restrictions on importation of firearms that do not meet the sporting purposes test. It is necessary that we ensure that the statute [the Gun Control Act of 1968] is being correctly applied and that the current use of these modified weapons is consistent with the statute's criteria for importability" (2).
   - "The existence of outstanding permits for nearly 600,000 modified assault-type rifles threatens to defeat the purpose of the expedited review unless, as in 1989, the Department temporarily suspends such permits. . . . The public health and

safety require that the only firearms allowed into the United States are those that meet the criteria of the statute" (2).

j) December 16, 1997 Memorandum for Sylvia Mathews from Bruce Reed and Elena Kagan re: Timing of Race Initiative Policy Ideas

k) March 19, 1998 Memorandum for the President from Bruce Reed and Elena Kagan re: INS Structural Reform
   - "[W]e recommend that the Administration (1) reject the CIR [Commission on Immigration Reform] proposal to dismantle the INS [Immigration and Naturalization Service], but (2) fundamentally restructure the INS to respond to problems that the CIR rightly identified. The principal feature of this restructuring plan would be a clear separation of enforcement and service operations within the INS. All participants in the review process concur with this recommendation, and we propose submitting our plan to Congress in response to the April 1 deadline" (1).

l) March 30, 1998 Memorandum for DPC/NEC Principals from Elena Kagan and Sally Katzen re: Background on H-1B Visa Issues

m) September 21, 1998 Memorandum for the Chief of Staff from Bruce Reed and Elena Kagan re: Tobacco Update

n) June 16, 1998 Memo to the President on Medicare Coverage of Abortions (Kagan was one of the advisors contributing to the memo)
   - "All of your advisers agree (i) that we should offer the [Catholic Health Association] a new administrative option that lets Catholic plans participate in Medicare without covering abortions; and (ii) that we should broaden the 1991 [Health Care Financing Administration] directive to track [the Hyde Amendment, which states that Medicare covers abortions only where the mother's life is endangered] and permit funding in case of rape/incest" (1).

o) September 16, 1998 Memo from Bruce Reed and Elena Kagan to the Chief of Staff re: DPC October Event Ideas

C. Lawyering Qualifications

From 2009 until the present, Kagan has worked as Solicitor General of the United States, arguing cases before the Supreme Court on behalf of the federal government. The cases she has argued as Solicitor General are the only ones she has ever argued in any court during the course of her career. Transcripts to those oral arguments follow, as well as links to the opinions in the decided cases argued by Kagan:

a. *Citizens United v. FEC*: Transcript, Audio Recording, Opinion

b. *Salazar v. Buono*: Transcript, Opinion

c. *Free Enterprise Fund v. PCAOB*: Transcript

d. *United States v. Comstock*: Transcript, Opinion

e. *Holder v. Humanitarian Law Project*: Transcript, Opinion

f. *Robertson v. United States ex rel. Watson*: Transcript, Opinion

D. Supreme Court Clerkship

During the 1987 Supreme Court Term, Kagan clerked for Justice Thurgood Marshall. On June 3, CBS News released five of the legal memos she wrote for the Justice during her clerkship:

a. Memo on *Lanzaro v. Monmouth County Correctional Institutional Inmates*, No. 87-1431 (prisoners' right to elective abortions)

b. Memo on *Citizens for Better Education v. Goose County School Dist.*, No. 86-2061 (race-conscious rezoning plans)

c. Memo on *Miner v. New York Dep't of Correctional Services*, No. 07-6947 (legality of marriage on death row)

d. Memo on *Sandidge v. United States*, No. 87-5293 (gun rights)

e. Memo on *Pughsley v. O'Leary*, No. 86-6968 (ineffective assistance)

III. Statements by Supporters and Opponents

Opponents:

- American Center for Law and Justice: "The fact that Elena Kagan has no previous judicial experience underscores the importance of closely examining her judicial philosophy – will she abide by the Constitution, or will she take an activist view? With the Senate's constitutional role of providing 'advice and consent' regarding nominees, we call on the Senate Judiciary Committee to provide full and thorough hearings and ask the tough questions about Kagan's past and how she views the role of Justices, the Constitution, and the rule of law. While no nominee should express legal opinions concerning specific issues, the American people deserve to know whether this nominee – which could serve for many decades – embraces the philosophy of judicial activism."

- Americans for Limited Government: "Elena Kagan is an unknown quantity with nothing in her record to recommend her to the highest court in the land. She's never been a

judge, and devoid of any examples, Senators will be hard-pressed to determine exactly what her judicial philosophy is."

- Judicial Crisis Network: "Obama wants to pack the court with reliable liberal votes to rubber-stamp an agenda that he knows the American people would not accept. What better way than to appoint a loyalist from his own Department of Justice with a thin public record to advance his leftist legacy through the Court."

- National Organization for Marriage: "While we have no quarrel with Elena Kagan's personal character, or with her intellectual brilliance, or technical qualifications, we have a problem with her legal views which are radically out of step with the views of the majority of the American people."

- Senator Mitch McConnell:
  - (via Bloomberg): "[A] lifetime position on the Supreme Court does not lend itself to on-the-job training. . . . [If a nominee doesn't have judicial experience], they should have substantial litigation experience. Ms. Kagan has neither."
  - (via the New York Times): "[Memos Kagan wrote on campaign finance during the Clinton Administration] reveal a woman whose approach to the law was as a political advocate — the very opposite of what the American people expect in a judge."

Presumably neutral or undecided:

- Bazelon Center for Mental Health Law: "We appreciate Elena Kagan's demonstrated ability to bring together people from all sides of the political spectrum to reach consensus on the challenges we face and we look forward to learning more about her views on disability rights issues during the confirmation process."

- Center for Reproductive Rights: "We applaud her groundbreaking career history as the first female dean of Harvard Law School and first woman to serve as U.S. Solicitor General. However, her public record reveals very little about her judicial philosophy or her views on the constitutional protections in *Roe*."

- Justice Antonin Scalia (via ABC): "When I first came to the Supreme Court, three of my colleagues had never been a federal judge, William Rehnquist came to the Bench from the Office of Legal Counsel. Byron White was Deputy Attorney General. And Lewis Powell who was a private lawyer in Richmond and had been president of the American Bar Association. Currently, there is nobody on the Court who has not served as a judge -- indeed, as a federal judge -- all nine of us. . . I am happy to see that this latest nominee is not a federal judge – and not a judge at all."

- Senator Olympia Snowe (via Boston Globe): Kagan "certainly has the qualifications, and certainly has, I think, the balance in her approach - at least so far - but I'd like to wait and see."

Supporters:

- Alliance for Justice: "Along with her sterling academic and professional qualifications, she will bring to the Court a respect for core constitutional values and a willingness to stand up for the rights of ordinary Americans."

- Coalition for Constitutional Values: "The President has nominated someone who is extremely well-qualified and who understands the lives of ordinary Americans. The daughter of a housing lawyer and school teacher, and herself a committed educator and public servant, Elena Kagan understands the effects of the courts' decisions on ordinary people."

- National Partnership for Women & Families: "She has a proud history of public service, a fair and thoughtful approach to legal issues, a record of extraordinary accomplishment, and a history of working effectively with people who hold diverse political and legal views."

- National Women's Law Center: "Today, President Obama has nominated an exceptionally qualified woman to replace Justice John Paul Stevens on the U.S. Supreme Court."

- Planned Parenthood: "Elena Kagan is an accomplished and experienced lawyer and legal scholar who has been a trailblazer throughout her career. . . . It is clear that Americans want a Supreme Court justice who has a deep understanding of the law, an appreciation of the impact of the court's decisions on everyday Americans, and a commitment to the rule of law and protecting our individual liberties. We are confident that Kagan will bring the dedication and commitment that have marked her career with her to the highest court in the land."

- People for the American Way: "Elena Kagan is a bright and clearly qualified nominee."

- Valerie Jarrett, Senior Advisor to President Obama, on Kagan's lack of experience as a judge:
  - "I think that's a good thing."
  - "She's had a wide range of experiences."
  - "Elena Kagan is nationally recognized as an expert lawyer, not only in constitutional administrative law but she was obviously the dean of Harvard Law School and Right now, Solicitor General representing the United States of America and all the American people – the most important job as a lawyer in our country."

- Senator Chris Dodd: "Throughout her diverse and outstanding career, Solicitor General Kagan has demonstrated her profound knowledge of the legal system and a lasting commitment to the rule of law."

- Jeffrey Toobin (via the New Yorker): "[O]n the Court, Kagan will have to do something she's not done before. Show her hand. Develop a clear ideology. Make tough votes. I have little doubt she's up to the job, but am less clear on how she'll do it."

- Walter Dellinger, acting Solicitor General under Bill Clinton
  - Via Washington Post: "She is a first-rate legal scholar, but she brings much more than that. … She knows government, and she knows how to run institutions."
  - Via NPR:
    - "The ranks of those who have not been judges before include some of our most illustrious Supreme Court justices. … I think, in fact, if you compare the justices who have not been judges, they stand out as a more distinguished group in their work on the Supreme Court than those who had previously been judges."
    - "People who have been judges for a long time develop very narrow technical skills, which are quite suitable for lower court positions. … But cases come to the Supreme Court precisely because there is no clear legal answer, and justices have to use judgment and all the tools of a Supreme Court justice to come up with a sense of the history and structure of the Constitution and what makes a workable legal rule."

  - Justice Sandra Day O'Connor (via ABC) [Asked whether it matters whether Supreme Court nominees have judicial experience]: "I don't think it does. We've had at least a third of the Justices over time were never a judge. I think it's fine, just fine … she seems to be very well-qualified, academically."

  - Miguel Estrada: "Elena would … bring to the Court a wealth of experience at the highest levels of our government and of academia. … Elena Kagan is an impeccably qualified nominee."

Members of the Senate Judiciary:

- Senator Arlen Specter: "There is no doubt that Elena Kagan has exemplary academic and professional credentials. … I applaud the President for nominating someone who has a varied and diverse background outside the circuit court of appeals."

- Senator Herb Kohl: "Elena Kagan appears to be a well-qualified choice."

- Senator Dianne Feinstein: "Solicitor General Elena Kagan has a strong track record as one of the nation's top legal scholars, and as a leader with a special skill for bringing people together."

- Senator Sheldon Whitehouse: "Solicitor General Kagan has a reputation for great intellect, legal expertise, and an ability to bridge ideological divides."

- Senator Al Franken: "Elena Kagan is a brilliant and superbly qualified nominee. As the former Dean of Harvard Law School and first woman to be Solicitor General of the

United States, she will bring a diverse background of impressive experiences to the bench. She has a record of bringing together people with a wide range of viewpoints. And importantly, Kagan is a nominee from outside the 'judicial monastery'—that is one of her greatest strengths as a nominee."

- Senator Charles Schumer (via NY Daily News): "The fact that she has so much practical experience, on a Court where it is missing, should be considered an asset. She has a long record as a consensus builder and is the kind of person who can bridge the 5-4 splits that have become so routine on this court."

- Senator Dick Durbin: "Elena Kagan has extraordinary academic credentials, a long and impressive resume and has been a trailblazer both as the first woman Solicitor General and the first woman Dean of Harvard Law School."

- Senator Ben Cardin: "I continue to be very impressed with Ms. Kagan's background, her experience, her commitment and her passion for the Constitution."

- Senator Ted Kaufman: "In nominating Elena Kagan to the Supreme Court, President Obama has selected someone with impeccable credentials and a record of excellence and integrity. Equally important, Ms. Kagan's experience at the White House, in the Senate, as a law school dean, and as Solicitor General will serve her well on the Court."

- Senator Patrick Leahy: "Her historic accomplishments and the way she has conducted herself in these positions has earned her a place at the top of the legal profession. … The Senate has adequate time to thoroughly review Ms. Kagan's impressive qualifications and academic writings, as well as her court filings and oral arguments while she has served the nation as Solicitor General, and consider her nomination this summer."

- Senator Amy Klobuchar: "Solicitor General Kagan is extremely intelligent, and she would bring a wide variety of legal experience to the bench – she's spent time in government, in private practice, as a professor, and as the first woman dean of her law school. … Over the years, she has developed a reputation as a person who brings people together despite their ideological differences. She has shown herself to be a true leader. Like former Chief Justice Rehnquist, she comes to the court with experiences different than those of a judge. I think it is healthy for the Court to have at least one Justice from outside of what has been termed the 'judicial monastery.'"

- Senator Russ Feingold: "I welcome President Obama's decision to nominate someone to be the first Supreme Court justice from outside the judiciary since former Chief Justice William Rehnquist and Justice Lewis Powell."

- Senator Jeff Sessions:
  - (via his own website): "Ms. Kagan's lack of judicial experience and short time as Solicitor General, arguing just six cases before the Court, is troubling. The public expects Supreme Court nominees to possess a mastery of the law, a sound judicial philosophy, and a demonstrated dedication to the impartial application of the law

and the Constitution. With no judicial opinions to consider, it will be especially important that other aspects of her record exhibit these characteristics."
    - (via the New York Times): Kagan "has less legal experience than any judge in the last 50 years . . . most of her work has been political work."

- Senator Orrin Hatch: "Judicial qualifications go beyond legal experience; any Supreme Court nominee should have an impressive resume. The more important qualification is judicial philosophy and a nominee's understanding of the power and proper role of a Justice in our system of government."

- Senator Jon Kyl:
    - "It's important for us to have a good understanding of her background that we didn't delve into so much at her confirmation for Solicitor General."
    - "There are two key things that all lead to a central point, the first is the relative lack of experience; I'm not suggesting that anyone has to have been a judge to serve as a justice, although that's a good experiential basis for it."
    - "What does she really believe? She has written very little, she has taken very few policy positions and the one policy position that she took in favor of gay rights when she was dean of the Harvard Law School directly contrary to congressional law, the so called Solomon amendment, troubled many."

- Senator Lindsey Graham: "Solicitor General Kagan has a strong academic background in the law. I have been generally pleased with her job performance as Solicitor General, particularly regarding legal issues related to the War on Terror."

- Senator John Cornyn:
    - (via his own website): "There is no doubt that Ms. Kagan possesses a first-rate intellect, but she is a surprising choice from a president who has emphasized the importance of understanding 'how the world works and how ordinary people live.' Ms. Kagan has spent her entire professional career in Harvard Square, Hyde Park, and the DC Beltway. These are not places where one learns 'how ordinary people live.' Ms. Kagan is likewise a surprising choice because she lacks judicial experience. Most Americans believe that prior judicial experience is a necessary credential for a Supreme Court Justice."
    - (via the New York Times): "She's had two years at a major law firm where she never tried a case to a jury verdict or judgment. . . . Obviously the job of political adviser is very different than that of a judge — a judge can't take sides."

IV. News Sources:

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