


# ELENA KAGAN WILL BE THE MOST UNQUALIFIED JUSTICE IN HISTORY

NBC News is reporting Elena Kagan is Barack Obama's nominee to replace the liberal lion, Justice John Paul Stevens. Kagan is a remarkably  poor choice. The stunning lack of curiosity and involvement in the important legal issues of her age, not to mention the law itself, and remarkable absence of compelling written work and record on the part of Elena Kagan has been previously covered.

I have previously explained the total lack of any experience – ever – of *any* kind – on Kagan's part in the court system of the United States. Kagan has never set foot as an attorney of record into a trial courtroom in the United States, not even a small claims justice court; nor for that matter, any appellate court save for the literally handful of spoon fed cases she suddenly worked on as Solicitor General. Kagan has never been a judge in *any* courtroom, of *any* court, in the United States. Quite frankly, there is not even any evidence Elena Kagan has sat as a judge for a law school moot court exercise. I have had paralegals and secretaries with better experience than this. Does a nominee for the Supreme Court have to be Gerry Spence, Pat Fitzgerald or David Boies? No, but it would be nice if they had the passion, curiosity and commitment to their profession to go to court at least once. Never has there been a United States Supreme Court Justice with such a complete lack of involvement in the court system. Never.

Duke Law Professor Guy-Uriel Charles has damningly demonstrated a Kagan record of lily white hiring, and corresponding shunning of people of color, at Harvard Law under her guidance that, if considered under the seminal *Batson* standard of prejudice, would have netted Kagan a sanction from the court and a potential misconduct referral to the appropriate bar

authority.

Curiously, and very notably, the only pushback by an Obama Administration, who has consistently gone beyond the call of duty in protecting and bucking up a patently poor nominee in Elena Kagan, has been on the racial hiring component exposed by Professor Charles. Here are the "talking points" memo the Obama Administration sent around to its acolytes and stenographic mouthpieces in the press and internet ether to counter the substantive criticism of Elena Kagan.

Notice anything missing in the official Obama White House talking points? I do. They are solely focused on the racial exclusion charge (and here is the response eating their lunch on that). Did you see what is NOT responded to, or addressed, in any way, shape or form by the White House? If you guessed "Elena Kagan's complete lack of any record whatsoever of participation or accomplishment in the legal process of the United States", take a bow, you are correct.

It is simply mind boggling Barack Obama and his coterie of supposedly enlightened, informed and experienced advisors would contemplate, much less fight tooth and nail for, an inexperienced and unqualified, incurious, and unmotivated in the US legal process, cipher like Elena Kagan. They may be harsh words, but they are the absolute truth.

One of the most laughable memes floated by Kagan's inner circle of friends and sycophants is that she is some sort of wondrous uniter who could single handedly suave Anthony Kennedy to her side like some kind of SCOTUS Svengali. First off, this is the biggest pile of bull manure I have ever experienced; not to mention Kennedy is not so young anymore and may not be around so long. Oh, also, there is less than zero evidence the wet behind the ears rookie on the Supreme bench ever does squat along the lines people are suggesting as far as "persuasion" they glibly think Kagan can pull

off.

The narrative being pitched about Kagan is the most contrived I have ever heard on a Supreme Court nominee. She has little record of legal accomplishment in any area actually in the active legal profession (although she apparently is very good at schmoozing monied corporations and benefactors of the Ivy League elite). None. She had never even set foot into a courtroom on behalf of a client, much less as a judge on a case in controversy, prior to being named Solicitor General. Her resume of written work is about the equivalent of an aggressive law school student on the top of their school's law review; maybe less.

Kagan's record as Solicitor General is shaky, at best; she wrote a weak amicus brief in *Mohawk Industries*, was unfocused on her oral argument of *Citizens United*, stepped in deep manure during the oral argument in *Holder v. HLP* when she said the material support criminal charge should be applied to attorneys representing disadvantaged clients, and no less than the Supreme Court themselves, in an 8-1 decision in *US v. Stevens*, basically declared her briefing and argument in said case to be laughably ill conceived, wrongheaded and misguided. Kagan herself admits she is so inexperienced she is like a deer in headlights before the Supreme Court. This is the woman who is going to be the great liberal persuader? Please; what a patently absurd contention.

Elena Kagan would be the most unqualified nominee in the history of the Supreme Court; she makes Harriet Miers look like William O. Douglas. Don't believe me? Take a look at Miers' curriculum vitae and slate of authored works; then think about the emptiness of Kagan's written work and nature of her service. Both are clearly accomplished women, but it is hard to see how Kagan is superior to Miers, and Miers was flamed universally across the political spectrum as being an absurd nominee. How can Elena Kagan now be seen as superior?

On another front, what happened to the famous Obama demand for a nominee with “empathy” and a connection to the experiences and plight of the common American? Elena Kagan is a daughter of privilege from Manhattan who has spent her career in the rarified air of the cloistered elite, never even deigning to represent or work with the common citizen. Where did Kagan acquire her capacity for “empathy”? The University of Chicago faculty lounge? Perhaps teas and galas for the individual and corporate monied benefactors of Harvard? What happened to this criteria we have relentlessly been told was foremost in the mind of President Obama?

In the space of 48 hours, we have now been presented with a Democratic Administration coming out in favor of perverting and undermining *Miranda*, siding with the Federalist Society wet dream of breaking up the 9th Circuit and now the appointment of a blank slate unqualified Supreme Court nominee whose main credentials are that she has worked with Barack Obama and is in favor of unitary executive powers. To say the news on the legal and Constitutional front is depressing and demoralizing would be the understatement of the still young decade.