

ELENA KAGAN CONFIRMS HER VACUITY AND FARCE

Yesterday's Judiciary Committee consideration of Obama Solicitor General nominee Elena Kagan proved that confirmation hearings are not totally useless. We knew that the selection to be the nation's lead advocate to the Supreme Court had never in fact appeared before the Supreme Court, had shockingly little experience in front of significant courts of any kind, thought Bush apologist and cover artist Jack Goldsmith was a boffo hire to make at Harvard Law, thought the same of the Constitutionally malleable shill Cass Sunstein, and thinks it is just fine to detain people indefinitely without due process as "enemy combatants".

That is what we knew; yesterday we learned something new about Kagan before the SJC. She was for honest and open answers to Senator's questions at confirmation hearings before she was against it. This oh so shocking revelation is documented courtesy of the Washington Post:

She once wrote that nominees should answer questions from senators.

And in no uncertain terms, either. Reviewing Stephen Carter's book "The Confirmation Mess" for the University of Chicago Law Review in 1995, Kagan opined that "when the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce."

She thought that executive branch nominees, "for whom 'independence' is no virtue," really deserved to be grilled.

Those statements apparently are no longer operative.

...

Kagan, the dean of the Harvard Law

School, told the lawmakers she had endeavored to answer their questions but acknowledged: "I am . . . less convinced than I was in 1995 that substantive discussions of legal issues and views, in the context of nomination hearings, provide the great public benefits I [previously] suggested."

Isn't that convenient. And a good thing to know about a woman roundly considered to be at the very top of Obama's list of choices for future appointment to the Supreme Court. Now Kagan ducked and dodged on the ground that, as a nominee to be the Administration's advocate, her opinions were not germane:

"I do not think it comports with the responsibilities and role of the solicitor general for me to say whether I view particular decisions as wrongly decided or whether I agree with criticisms of those decisions," she repeatedly said.

There is some merit to that position on the surface, but the problem I have is we have no ability whatsoever to gauge Kagan's ability to dissect and understand difficult legal issues and relate the same on her feet in an adversarial setting. You know, the kind of skills she might be expected to need to serve as the Solicitor General for instance. This is especially disturbing in a nominee that is essentially a complete cipher with regard to to appellate and adversarial courtroom experience.

I wonder if she will be so honest about her refusal to be honest if up for confirmation to the Supremes? Bet on it. I guess we should just be thrilled that she is getting a hearing, for that is a process that has proved maddeningly slow, to the point of wondering if there is intentional delay, for David Ogden and Dawn Johnsen. On a positive note, word is that David Kris was voted out of SJC by voice vote Thursday

and is up for the same at SSCI on Tuesday March 10th.