

NLWJC - Kagan

Staff & Office - Box 001- Folder 001

Kagan, Elena - Names

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FolderID:

Folder Title:

Kagan, Elena - Names

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Row:

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Section:

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Koger, Elaine
- mms

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Kagan, Elena
- memo

THE WHITE HOUSE
WASHINGTON

May 20, 1996

Harold Ickes
Deputy Chief of Staff
The White House

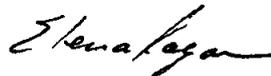
Dear Harold:

Thanks so much for meeting with me on Friday.

I am attaching a copy of my resume, just in case you ever want to remind yourself of my background. One thing I forgot to mention in our discussion is that I worked for then-Chairman Biden during the confirmation hearings of Justice Ginsburg. I believe that Senator Biden has told Jack that he strongly supports my selection.

However this all comes out, I very much appreciate your having taken the time to speak with me. Again, thanks.

Very truly yours,



Elena Kagan

ELENA KAGAN

Home Address:

3133 Connecticut Avenue
Apartment 615
Washington, D.C. 20008
(202) 332-1763

Business Address:

White House Counsel's Office
OEOB 125
Washington, D.C. 20502
(202) 456-7594

EMPLOYMENT:

Associate Counsel to the President
1995-current

Professor, University of Chicago Law School

1994-current

(Assistant Professor, 1991-94)

(On leave, 1995-current)

Courses taught: Constitutional Law (Two courses: First Amendment;
Equal Protection and Due Process); Labor Law; Civil
Procedure

Seminars taught: Rights of Political Participation; Supreme Court
Litigation

Recipient, Graduating Class of 1993 Award for Teaching Excellence

Visiting offers outstanding from Harvard Law School and
Michigan Law School

Special Counsel, Senate Judiciary Committee

June-August 1993

Principal aide for confirmation hearings of Ruth Bader Ginsburg

Litigation Associate, Williams & Connolly

1989-91

Staff Member, Research Unit, Dukakis for President Campaign

July-November 1988

Judicial Clerk, Hon. Thurgood Marshall

Supreme Court of the United States, 1987-88

Judicial Clerk, Hon. Abner J. Mikva

United States Court of Appeals for the D.C. Circuit, 1986-87

EDUCATION:

Harvard Law School

J.D., *magna cum laude*, 1986

Supervising Editor, *Harvard Law Review*

Legal Writing Instructor

Worcester College, Oxford University

M. Phil in Politics, 1983

Princeton University

A.B. in History, *summa cum laude*, 1981

Phi Beta Kappa

Recipient, Daniel M. Sachs Graduating Scholarship for two years
of study at Oxford University

Editorial Chairman, *The Daily Princetonian*

PUBLICATIONS:

As yet untitled contribution to Symposium on Developments in Free Speech Doctrine, *University of California at Davis Law Review* (1996) (forthcoming)

Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Analysis, 63 *University of Chicago Law Review* (1996) (forthcoming).

Confirmation Messes, Old and New (Book Review) 62 *University of Chicago Law Review* 919 (1995).

The Changing Faces of First Amendment Neutrality, 1993 *Supreme Court Review* 29.

Pornography and Hate Speech After *R.A.V. v. St. Paul*, 59 *University of Chicago Law Review* 873 (1993).

A Libel Story (Book Review), 17 *Law & Social Inquiry* 197 (1993).

For Justice Marshall, 71 *Texas Law Review* 1125 (1993).

Note, Certifying Classes and Subclasses in Title VII Suits, 99 *Harvard Law Review* 619 (1986).

PROFESSIONAL ACTIVITIES:

Public Member, Administrative Conference of the United States, 1994-95

Member, Board of Governors, Chicago Council of Lawyers, 1993-95

THE WHITE HOUSE
WASHINGTON, D.C. 20500

DATE: 5-23

TO: Harold

FROM: Staff Secretary

PH 1 - Several very strong
letters from major
constitutional scholars
endorsing Elaine Kazan
for OLC job.
indell

#

Kagan, E. Jenu
- memo

DOJ

THE UNIVERSITY OF CHICAGO
OFFICE OF THE PROVOST
5801 Ellis Avenue
CHICAGO • ILLINOIS 60637-2786

Geoffrey R. Stone, Provost
Harry Kalven, Jr. Distinguished Service Professor of Law

TELEPHONE: (312) 702-8810
FAX: (312) 702-2732

May 20, 1996

President William J. Clinton
The White House
Washington, D.C. 20530

Dear President Clinton:

I recently learned from a colleague that Elena Kagan may be under consideration for appointment as Assistant Attorney General for the Office of Legal Counsel. In the hope that this is true, I am writing to put in my two cents in support of her appointment.

I first met Elena some six years ago when I was Dean of the University of Chicago Law School and she was a young lawyer at Williams & Connolly. I had heard wonderful things about her from a variety of sources, including Ab Mikva, a graduate of Chicago, for whom Elena had clerked. I set about trying to recruit her to join the faculty. In our very first meeting, I saw in Elena all the qualities that Ab and others already had described -- she was a tough, independent, smart lawyer with a clear academic bent. After a year of cultivation, she joined the faculty in the fall of 1991. She has been a great success as a teacher, scholar and colleague.

Elena has focused most of her teaching in the fields of constitutional law, labor law and civil procedure. She is a rigorous, engaging and lively teacher. She demands the best from her students, and they delight in meeting her expectations. She probes, challenges and tests her students' assumptions, and she encourages them to challenge hers. From her very first course, she was regarded by the students as a simply brilliant teacher. Indeed, in only her third year on the faculty she received the Law School's annual award for Excellence in Teaching -- the first and only untenured member of the faculty ever to receive that honor.

President William J. Clinton
May 20, 1996
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Elena has also flourished as a scholar. Most of her research arises out of her interest in freedom of expression. Because this is also my field of study, I am intimately familiar with her work. In her short time on the faculty, she has completed two major articles, as well as several lesser pieces. In her first major work, published in *The Supreme Court Review*, Elena offered a careful, innovative and powerful analysis of the Court's decision in *R.A.V.* (the cross-burning case). In this article, Elena dissected the opinions of the Court and put forth an original and already influential reinterpretation of the central issue presented in the case.

In her second major work, soon to be published in *The University of Chicago Law Review*, Elena sets forth an ambitious and novel understanding of the Court's overall First Amendment jurisprudence. In this article, Elena surveys the entire corpus of First Amendment doctrine and demonstrates that most, if not all, of this doctrine can be explained by the Court's concern with improper governmental motivation -- that is, with its concern that laws regulating speech may consciously or unconsciously be the result of governmental favoritism for or hostility to particular ideas and viewpoints. This is an innovative and provocative thesis which persuasively challenges most of the accepted understandings of existing First Amendment jurisprudence. This article will inform and, indeed, shape academic and legal discourse about freedom of speech for years to come. On the basis of these articles, Elena was promoted last year to the rank of full Professor, with tenure.

It is important to understand that Elena is not one of those all-too-common legal scholars whose primary interest is in abstract theory, divorced from legal doctrine. To the contrary, Elena is a lawyer's scholar. She takes courts, precedents and doctrine seriously. She believes that law matters. She writes in the best tradition of Paul Freund, Harry Kalven and Thomas Emerson. I am confident that, when she returns to the Law School and again turns her energy and curiosity to scholarly research, she will emerge as one of the leading constitutional voices of her generation.

Finally, I should note that Elena is a valued colleague. In only a few short years she has come to be regarded as a central figure in the Law School's decision making structure. As Dean, I sought her advice regularly on a broad range of issues, including faculty appointments, student concerns and institutional policies. She is strikingly forthright, honest and direct. She has wisdom beyond her years, and always offers thoughtful and sensible advice. She listens. She is a person of integrity, independence and commitment to principle. I trust her completely, and I know that every one of my colleagues

President William J. Clinton
May 20, 1996
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-- regardless of seniority or ideology -- shares that trust. It is thus no surprise that, when we speculate about the future, Elena is invariably mentioned as a possible future Dean of the Law School.

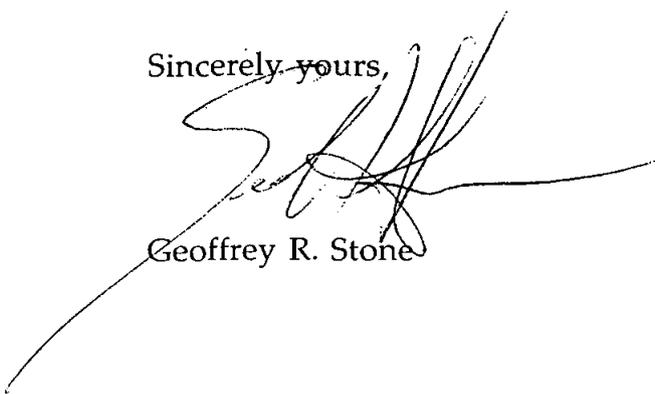
Last year, Ab Mikva -- borrowing back what he first "gave" us -- persuaded Elena to take a leave of absence from the faculty to join him in the office of Counsel to the President. I trust that Elena has performed well in that role, and that her colleagues in that office, as well as others who have worked with her in the past year, will confirm all I have said above.

Although Elena may be on the young side for the position under consideration, she is a truly remarkable person. She is a serious individual who cares deeply about the law, and she has the intellectual and personal skills to fulfill her responsibilities to the very highest degree. Although I would hate to see her remain away from the Law School any longer (I miss her), I am compelled in good conscience to recommend her enthusiastically and without qualification for the position of Assistant Attorney General for the Office of Legal Counsel. She would be a treasure.

If I can be of any further assistance in this matter, please feel free to call or write me at any time.

With warm best wishes.

Sincerely yours,



Geoffrey R. Stone

GRS:cm

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THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO • ILLINOIS 60637-2786

CASS R. SUNSTEIN
KARL N. LLEWELLYN DISTINGUISHED SERVICE PROFESSOR OF JURISPRUDENCE
CO-DIRECTOR, CENTER ON CONSTITUTIONALISM
IN EASTERN EUROPE

TELEPHONE: 312.702.9498
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May 20, 1996

President Bill Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

I have heard that Elena Kagan, a professor at this law school now on leave at the White House, is a candidate for head of the Office of Legal Counsel. I write because I know Elena well and because I think she would be a wonderful choice.

Having worked at OLC in the early 1980s, I have a sense of the Office's functions and needs, and I think that Elena is unusually well-suited to the job. As a lawyer, she is both brilliant and entirely level-headed -- in academia at least, a fairly unusual combination of skills. When she approaches legal issues, she shows a lot of creativity and imagination, but she's also got outstanding judgment, real maturity, and a fine sense of proportion. It's perhaps unnecessary to say that despite her relative youth, she has a wide understanding of many areas of the law. Her work on the first amendment is a nice example; it takes a big step back from the law, organizes it wonderfully, and makes sense of a range of areas not normally grouped together. In fact she has a terrific head start on the questions with which OLC deals, and she's an amazingly fast learner.

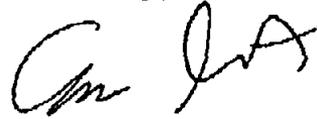
Elena also deals wonderfully with people. She's one of the fairest and most decent people I know, and she is exceptionally well-liked and admired by a wide range of people at the law school -- moderates, conservatives, liberals, and everyone else. As a lawyer she's not at all "political," but she is very well-attuned to people and audiences, and she has a terrific sense what to say and when to say it. In fact she's established herself very quickly as the very best teacher at the law

Page Two

school (I say this with some chagrin). I've also seen her in a range of administrative capacities, and she's an excellent leader. In fact she is widely regarded as a strong candidate to become the next Dean of this law school. From what I've seen, I imagine that she would deal very well with the Congress and with other potentially adversarial bodies. It helps that she has a terrific sense of humor and is extremely reluctant to treat other people as adversaries.

I'm sure that there are a number of excellent choices to head OLC, but as someone who knows Elena and the Office well, I hope you won't mind if I suggest that this would be a terrific match. Very best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read "Cass R. Sunstein". The signature is fluid and cursive, with the first name "Cass" and last name "Sunstein" clearly distinguishable.

Cass R. Sunstein

HARVARD UNIVERSITY
LAW SCHOOL

LAURENCE H. TRIBE
*Ralph S. Tyler, Jr. Professor
of Constitutional Law*



HAUSER HALL 420
CAMBRIDGE, MASSACHUSETTS 02138
(617) 495-4621

May 19, 1996

President William J. Clinton
The White House
Washington, D.C.

Dear Mr. President:

I've heard reports that Walter Dellinger's former position — head of the Office of Legal Counsel at the Department of Justice — might go to any of several people, and I hope you won't mind my imposing on you with my own views on the matter.

If the rumors I've heard are correct, Elena Kagan is not necessarily at the top of the current list to fill the position. Elena is a professor of constitutional law at the University of Chicago Law School who has taken a leave of absence to serve as an associate White House counsel. I had spoken to the Attorney General at an earlier stage of the process to tell her what I thought of Elena, and I hope the rumors I now hear are wrong. I know quite a lot about all of the people being discussed, and I think Elena is the one who clearly stands out as being genuinely capable of filling Walter Dellinger's shoes.

That's a hard task, because obviously Walter is an extraordinary person and has done a splendid job as head of the Office of Legal Counsel. I think the world of how well he's discharged that important duty.

Having known Elena since she was a student of mine quite some time ago and having watched her meteoric rise to tenure and her current position with Jack Quinn at the White House, I have to say that I am an enormous admirer of her intellectual and moral qualities. She is one of the most insightful constitutionalists of her generation. I have seen her work at close range, and her writing is always illuminating and imaginative. She has a degree of wisdom well beyond her years and a degree of judgment and maturity that is quite remarkable. Her views are thoughtful, moderate, and balanced, and she has no private agenda.

I'm sure that her time in the White House Counsel's office has given her valuable experience in the Administration. I have no doubt that she would discharge the challenging duties of the OLC position with extraordinary distinction and would be a truly knowledgeable source of advice on the sort of issues that Walter has handled so well. In

short, I think that the Attorney General couldn't have a better legal advisor.

At Harvard, we've been trying for some time now to persuade Elena to serve as a visiting Professor of Law. I think something has finally been tentatively arranged for 1997. But I hope that it will be delayed by Elena's tenure at the OLC.

Thank you very much for the opportunity to express my views.

Sincerely,

Laurence H. Tribe

Laurence H. Tribe



HARVARD LAW SCHOOL
CAMBRIDGE · MASSACHUSETTS · 02138

MARTHA L. MINOW
Professor of Law

GRISWOLD 407
(617) 495-4276

May 21, 1996

President Bill Clinton
The White House
FAX: (202) 456-2215

Dear President Clinton:

I understand that the Office of Legal Counsel in the Department of Justice will be needing a new director, and I write to give the strongest recommendation for Elena Kagan, who currently serves on your White House counsel staff. On leave from the University of Chicago Law School, Ms. Kagan is one of the most talented lawyers in her generation. She was a student of mine here at the Harvard Law School, and set such a high standard for accomplishment that colleagues and I talk about talented students using her as the benchmark.

What makes her such a stand-out, I believe, is that she combines the kind of precise analytic rigor we expect from top-flight lawyers with a far more rare quality, good judgment. She has a capacity to see the big picture and to keep it in mind while holding on to all the particular details relevant to a problem. She well understands the multiple arenas in which consequences should be anticipated. She works well with a wide range of people and earns respect quickly. At the University of Chicago, she soared to the top of the students' evaluation of teachers within a short time after her arrival and she similarly impressed her colleagues who promptly placed her in positions of responsibility, such as the hiring committee.

Other qualified candidates surely exist, but it would be difficult to find anyone who combines truly unusual analytic prowess with the quite extraordinary qualities of integrity and good sense exhibited by Elena Kagan. I hope you select her to head OLC.

Sincerely,

Martha Minow
Professor of Law