

Newsmaker: Elena Kagan

With the recent retirement announcement of United States Supreme Court Justice John Paul Stevens, Elena Kagan is back in the news.

Kagan is the first female Solicitor General of the United States, and she is rumored to be on the short list to fill the vacancy created by Justice Stevens' retirement. Kagan was also rumored to be on the short list last year when Justice David Souter announced his retirement; ultimately, Justice Sonia Sotomayor, a former Newsmaker subject, was selected to fill that vacancy. President Obama is expected to announce his nomination sometime in May. Whether or not he selects Kagan, she is a woman to watch.



Kagan celebrates her 50th birthday this week. She was born on April 28, 1960 in New York City. She is the second of three children born to a Jewish family. Kagan earned a B.A. from Princeton University in 1981, then an M.Phil. from Worcester College, Oxford University in 1983, and a J.D. from Harvard Law School in 1986.

After law school, Kagan served as a law clerk to the Honorable Abner Mikva, Circuit Judge, United States Court of Appeals for the District of Columbia Circuit. She then had the great honor to serve as a law clerk to Supreme Court Justice Thurgood Marshall.

After clerking, Kagan briefly went into private practice with a D.C. law firm, before turning to the world of academia. She started at the University of Chicago Law School in 1991 and earned tenure there in 1995. That year, she left Chicago to serve in the Clinton White House. In 1999 she returned to academia as a visiting professor at Harvard Law School. She was made a Professor of Law in 2001 and then Dean of the Law School in 2003.

Kagan was serving as Harvard Law's Dean in January 2009 when President Obama nominated her to be the 45th Solicitor General of the United States. She was confirmed and assumed the office in March 2009.

The Office of the Solicitor General was created in 1870, and the first man to hold the job was appointed that year by President Grant. Among the former Solicitors General of whom you have heard are: William Howard Taft, who also served as President and later as Chief Justice of the Supreme Court; Robert H. Jackson, who also served as Attorney General, as a Justice of the Supreme Court, and as a prosecutor at the Nuremberg Trials; Thurgood Marshall, a giant of the civil rights movement who also served on the Supreme Court; Robert H. Bork, the man who ultimately fired another former Solicitor General, Archibald Cox, during the so-called Saturday Night Massacre, and then went on to see his own nomination to the Supreme Court defeated; and, Ted Olson, who argued for then-candidate Bush in *Bush v. Gore* and is presently trying to establish federal constitutional rights for gays.

The Solicitor General is responsible for representing the interests of the United States in the Supreme Court and for overseeing litigation pending in the federal appellate courts (*i.e.*, the circuit courts of appeals, like the one on which Kagan clerked).

In addition to the cases where the United States is a party, the United States will often have an interest in a case pending before the Supreme Court because the interpretation of a federal law is at issue. Accordingly, the Supreme Court often asks the Solicitor General for her opinion on whether the Court should hear a particular case. And, once the Court decides to hear a case, the Solicitor General will routinely file a brief setting out the views of the United States on the merits of that case – whether as a party or as an *amicus* (a friend of the Court).

The United States is the one *amicus* routinely granted permission to participate in oral argument before the Court, and so the Solicitor General or her representatives frequently participate in oral argument either as a party or an *amicus*. General Kagan has personally argued six cases before the Supreme Court this term. That's pretty remarkable since her first argument in that Court was just last September.

Interestingly, if President Obama were to nominate Kagan to the Supreme Court, it would not be her first judicial nomination. President Clinton nominated Kagan for a circuit court judgeship in 1999, but she never received a hearing. That judgeship ultimately went to John G. Roberts, Jr., who has since been elevated to Chief Justice of the United States Supreme Court.