

Egghead Alert [Versus the Intellectual Elitelore of Judges Nominated for the U.S. Supreme Court and Who Seek to Survive Often Hostile U.S. Senate Judiciary Committee] Confirmation Hearings

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U.S. Supreme Court Justices are the “Elitist of the [Dangerous] Elite” Susan Jacoby (2008)

Intellect is felt to be a form of distinction that defies egalitarianism.” Richard Hofstadter (1962)

If you had the impression during the Senate Judiciary Committee hearings that **Elena Kagan** was speaking slowly, e-nun-ciat-ing clearly, choosing words of few syllables and punctuating each simple phrase with a sweetly, self-consciously ingratiating smile, you probably were on to something.

According to Nina Totenberg of NPR, teaching Kagan to soften her law-professorial tone and to correct for “a streak of what even her friends admit can sound like arrogance” was a key part of the intensive coaching that went into preparing her for the hearings. **Supreme Court** nominees generally have a tendency to act like “the smartest kids in the room,” she noted; Justice **Stephen Breyer**, she said, claimed that the best advice he was given while preparing for his confirmation was from the political consultant Michael Berman: don’t risk intellectually outshining the senators.

“All the people who get onto the Supreme Court are people of high intelligence,” Berman, now the president of the Duberstein Group lobbying firm in Washington, told me. “They really know more about the law and cases than anyone else in the room, and people on the dais are judging them.” Often the nominees are “trying to prove themselves. Often it comes across as you saying you’re better than we are.”

Any hint of an I’m-better-than-you sentiment, especially if that sense of superiority is based on intellect or fancy speech or having attended an Ivy League school, can go over very badly in America today, where “elite” has

¹ Adapted from <http://www.nytimes.com/2010/07/11/magazine/11fob-wwln-t.html>

gone from being a word of admiration to one of insult.

A tendency toward anti-intellectualism isn't new in our country, of course; in his 1962 classic, "Anti-Intellectualism in American Life," Richard Hofstadter wrote of our culture's longtime devaluation of the head in favor of the heart and a historic tendency to prefer people and phenomena — educational approaches, types of religious experience — motivated by passion or gut rather than intellect or reason.

"Intellect is pitted against feeling, on the ground that it is somehow inconsistent with warm emotion," Richard Hofstadter wrote. **"It is pitted against character, because it is widely believed that intellect stands for mere cleverness, which transmutes easily into the sly or the diabolical. It is pitted against practicality, since theory is held to be opposed to practice, and the 'purely' theoretical mind is so much disesteemed. It is pitted against democracy, since intellect is felt to be a form of distinction that defies egalitarianism."**

Hofstadter added, "Intellect has been dissevered from its coordinate place among the human virtues and assigned the position of a special kind of vice."

That Americans prefer politicians who can "relate" to those who aim more purely to inspire has been true for some time. But for a Supreme Court justice to have to play the popularity game — to need, particularly, to dumb herself down in order to try to take her place among our country's most powerful legal minds — is rather new, and striking. In this way, times have very much changed, notes [Susan Jacoby](#), author of the 2008 book "The Age of American Unreason."

The Supreme Court, [Jacoby] says, was specifically conceived as an elite institution, a body removed from the "mob," and meant to keep the dangerous forces of excessive democracy in check.

"The Supreme Court was created to be a barrier against 'mobocracy' — a reflection of the fear by the more-conservative founders that too much mob democracy could be a threat," she says.

"The first justices were considered the best-educated men in the country, the elitest of the elite. Having to show you weren't the smartest person in the room would have been the last thing anyone

nominated for the Supreme Court would have had to do.”

Berman recalls having given his tone-down-the-smarts advice to Supreme Court nominees dating to [David Souter](#). But somehow, looking back, I find it hard to recall a nominee for whom being an Ivy League law graduate — as all the sitting justices now are — was such a big liability. In part, this may be in Kagan’s case a sign of how successful the right has been in its longstanding efforts to channel an anti-intellectual tradition — a tradition that has been much inflamed since the “arrogant” [Barack Obama](#) (Columbia, [Harvard](#), [University of Chicago](#)) moved to center stage — for its own political ends. “It’s been the signature accomplishment of the conservative intellectual elite to slap the labels ‘elite’ and ‘intellectual’ just on liberal intellectuals,” Jacoby says. “When the words ‘intellectual’ or ‘elite’ are invoked, they mean ‘liberal,’ and they’re code words for ‘this person is not one of the people.’ ”

**5% of respondents
say that INTELLIGENCE is the most
IMPORTANT quality in
a presidential candidate.**

Source: Gallup, April 2007

It’s particularly odd that Kagan needed so assiduously to insulate herself against the perception of eggheadedness, given that some legal scholars charged, when her nomination was announced by Obama this spring, that she wasn’t intellectual enough: that she was, in fact, a politically clever thinker rather than a deep one — a highly practical mind not truly inclined to abstract academic endeavor. But none of that really mattered. As an Upper West Sider (that is, a liberal Jew) and as a woman— a middle-aged woman whose whole being repudiates the “Cougar Town” ideal that’s so in vogue— Kagan was particularly able to push all the buttons that scream “not one of the people.”

In Hofstadter’s terms of heart versus head, she registers as pure brain. She has produced no signs of a significant other, has no children, had no story of past relationships to soften her self-sufficient image, as [Sonia Sotomayor](#) more safely did. In her opening statement to the Judiciary Committee, she spoke of her parents and grandparents, but it was her professional work with students — “the joy of my life” — that she spoke of with greatest rapture.

In the weeks leading up to her confirmation hearings, Kagan's way of sitting — legs uncrossed — was taken to convey an unwillingness to mirror other women's body language, a deficit in her capacity for human connection. She was deemed to be emotionally "withholding." All this suggested that she lacked "warm emotion," that her absence of defining relationships was perhaps even a sign of "vice," to borrow some terms from Hofstadter.

In the end, of course, as in any triumphant revenge-of-the-nerds teen drama, none of this mattered. Kagan triumphed — and she did it by beating the popular crowd at its own game. She made the senators laugh. That Chinese restaurant quip, her reflection that televising Supreme Court deliberations would require her to get her hair done more often — nothing could have been more folksy. Nor could there have been a surer sign of her true intellect.