



## Kagan's Distorted Judicial Philosophy

- **Believes judges can use the bench to promote a preferred social agenda**  
“As men and as participants in American life, judges will have opinions, prejudices, values. Perhaps most important, judges will have goals. And because this is so, judges will often try to mold and steer the law in order to promote certain ethical values and achieve certain social ends. Such activity is not necessarily wrong or invalid. The law, after all, is a human instrument — an instrument designed to meet men’s needs.”<sup>1</sup>
- **Is willing to support an unconstitutional law for political gain**  
“The Office of Legal Counsel of the Justice Department similarly believes that both the Daschle and the Feinstein amendments, properly read, violate *Roe* because they countenance tradeoffs involving women’s health. ... We recommend you endorse the Daschle amendment in order to sustain your credibility on HR 1122 and prevent Congress from overriding your veto.”<sup>2</sup>
- **Believes judges should not be held accountable**  
“[I]t is irresponsible and harmful to our constitutional system and to the value of a judiciary that is independent, in fact and appearance, when prominent individuals and members of Congress state or imply that judges may be impeached or otherwise punished because of their rulings.”<sup>3</sup>
- **Laments the end of socialism in America**  
“In our own times, a coherent socialist movement is nowhere to be found in the United States. Americans are more likely to speak of a golden past than of a golden future, of capitalism’s glories than of socialism’s greatness.”<sup>4</sup>  
  
“[T]he [Socialist Party] exhausted itself forever and further reduced labor radicalism in New York to the position of marginality and insignificance from which it never recovered. The story is a sad but also chastening one for those who, more than a half a century after socialism’s decline, still wish to change America.”<sup>5</sup>

---

<sup>1</sup> Elena Kagan, *The Development and Erosion of the American Exclusionary Rule: A Study in Judicial Method* (Apr. 20, 1983), p. 120 (M.Phil. in Politics thesis, Oxford University).

<sup>2</sup> Memorandum from Elena Kagan and Bruce Reed to President Bill Clinton (May 13, 1997).

<sup>3</sup> Statement of Law School Deans, *Opposing Threats of Retaliation Against Federal Judges* (May 4, 2005).

<sup>4</sup> Elena Kagan, *To the Final Conflict: Socialism in New York City, 1900-1933*, p. 127 (1981).

<sup>5</sup> *Id.* at 129-30.