

## Q & A: E. J. Dionne

Michael Sean Winters | Jul. 15, 2010 Distinctly Catholic

This week, we are asking a variety of experts about the nomination of Elena Kagan to the Supreme Court. We have already heard from Ben Wittes of the Brookings Institute, Rick Garnett from Notre Dame Law School, and Mark Silk from Trinity College. Today, we hear from Washington Post columnist E. J. Dionne.

**The question:** What is the best reason to vote to confirm, or to not confirm, Elena Kagan?

**E. J. Dionne:**

I've been an Elena Kagan fan for a long time, as I have noted in my column and on the Washington Post's blog. But she gave me a new reason to like her during her Senate Judiciary Committee hearings. It was both important and useful that she rejected Chief Justice John Roberts's notion that judges are mere "umpires."

When asked about Roberts's conception of judges as umpires, Kagan didn't evade or go along. The umpire metaphor, she said, has "its limits" because it wrongly suggests that judging "is a kind of robotic enterprise" and that "everything is clear-cut." In hard cases, she said, "there are frequently clashes of constitutional values," which is why "not every case is decided 9-0." This echoed recently retired Justice David Souter's

Commencement Address at Harvard this year, a speech everyone should read and ponder.

Indeed, the umpire metaphor is dangerously and maybe even intentionally misleading, as I've argued in the column, implying that there is one and only one "correct" answer to the difficult questions that come before the Supreme Court. If this were true, we would not be having the very political struggle over the court that has engulfed us for three decades or more -- and, indeed, during much of our history.

And you had to love this tribute to American religious pluralism. During the hearings, Sen. Lindsey Graham asked Kagan: "Where were you on Christmas Day?"

"Like all Jews," Kagan responded, "I was probably in a Chinese restaurant."

"I could almost see this one coming," Leahy replied.

I wish we could get to watch the coming interplay at the Court's conferences between Kagan and Justice Antonin Scalia. Maybe they can take their act on the road -- or to Saturday Night Live, or Colbert.

**Tomorrow's Interviewee: Tony Yang, of the University of California at Riverside**

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