

Kagan shows her zeal during judicial debut

■ Unlike silent Thomas, newest justice quick to query, comment

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WASHINGTON — Justice Elena Kagan threw herself into her new job Monday with an aggressive performance during the Supreme Court's inaugural oral argument of the 2010 term.

During the first hour of her judicial debut, Kagan asked infinitely more questions than Justice Clarence Thomas did during all of last year. If first impressions hold true, the former Harvard Law School dean will be one of the court's most active and engaged members.

"Let's stay with this," Kagan told one attorney before she launched into her first query of the day.

Kagan asked 10 questions during the oral argument in a fairly arcane case involving income deductions and bankruptcy law. This was more than most of her colleagues and far more than Thomas, who kept his habitual silence Monday.

Different styles

Thomas didn't speak during the 70-plus hours of oral argument that made up the 2009 term. He's said that he doesn't find much value in interrupting attorneys. His colleagues never hesitate to do so, and they did so Monday in their characteristic ways.

Justice Antonin Scalia is often pointed and colloquial.

"I'm trying to help you, Mr. Burke," Scalia told one struggling attorney.

Justice Stephen Breyer likes to engage in hypotheticals.

"Suppose you buy a dozen apples each month," Breyer posited.

Chief Justice John Roberts Jr. is blunt.

"Your argument leads to a conclusion that is as absurd as your opponent's," Roberts told one attorney Monday.

While Kagan didn't crack any jokes Monday, she sounded relaxed and threw out a combination of hypothetical questions and fact-based queries. When she wasn't asking questions, she often was leaning forward in her seat.

Kagan sat in the far left chair, reserved by custom for the court's junior justice. The far-right chair, assigned to the second-most-junior justice, now is held by a fellow Obama administration appointee, Justice Sonia Sotomayor.

At 50, Kagan is the youngest member of the current Supreme Court. She could be serving for several decades. The man she replaced, John Paul Stevens, retired at age 90 after serving for about 35 years.

Stevens tilted left in many cases. As a self-described progressive, Kagan is presumed by many to tend in



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the same direction. In some ways, though,

she has already set herself apart from her predecessor.

On Monday, for instance, Kagan joined her eight colleagues in blocking Florida prison inmate Richard H. Geffken and Texas inmate Rickey V. Sabedra from filing more court petitions unless they first pay necessary fees. The justices say that through constant court filings, Geffken and Sabedra have "repeatedly abused" the procedures that govern petitions by the impoverished.

Stevens, by contrast, always differed from his colleagues when they wanted to use the so-called Rule 39.8 sanction to shut down vexatious litigants.

Since Kagan was sworn in Aug. 7, she has participated in the court's closed-door deliberations, which include decisions on what cases to hear. These included an extended conference Sept. 27, whose results were released Monday. The court, for instance, declined to hear a case that involves alleged National Security Agency wiretapping of attorneys for detainees at Guantanamo Bay, Cuba.

Recused in 4 cases

"The Obama administration has never taken a position ... on whether the Bush administration's NSA surveillance program was legal," said Shayana Kadidal, senior managing attorney of the [Center for Constitutional Rights](#) Guantanamo Global Justice Initiative. "Today the Supreme Court let them get away with it."



Kagan hasn't yet written any opinions, though she has announced that she will recuse herself from a number of cases because of her prior work as the Obama administration's solicitor general.

This week, for instance, the court is hearing seven cases. Kagan has recused herself from four of them.