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S. HRG. 111–1044

[ERRATA]
THE NOMINATION OF ELENA KAGAN TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JUNE 28–30, and JULY 1, 2010

Serial No. J–111–98

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[ERRATA]

Delete Elena Kagan, Nominee to be Solicitor General, Department of Justice Questionnaire, pages 379-424 (the Solicitor General questionnaire was inadvertently printed) and insert new Questionnaire.

Delete the Responses of Elena Kagan, Nominee to be Solicitor General, to Questions submitted by Senators Leahy, Hatch, Grassley, Sessions, Cornyn and Coburn; pages 425–458 were inadvertently printed.

Insert the Responses to Questions to Witness, Lilly Ledbetter, submitted by Senator Leahy.

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NOMINEE FOR THE SUPREME COURT

PUBLIC

1. **Name**: State full name (include any former names used).

   Elena Kagan

2. **Position**: State the position for which you have been nominated.

   Associate Justice, United States Supreme Court

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Department of Justice
   Washington, D.C. 20530

4. **Birthplace**: State date and place of birth.

   April 28. 1960. New York, New York.

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Harvard Law School, 1983-86, J.D. *magna cum laude* 1986
   Worcester College, Oxford University, 1981-83, M.Phil. 1983
   Princeton University, 1977-81, A.B. *summa cum laude* 1981

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions, or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   Employment:

   Solicitor General, Department of Justice, Washington, D.C. 20530, 2009-present

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Professor and Dean, Harvard Law School, Cambridge, MA 02138, 1999-present (2003-09 as dean, 2001-present as professor (currently on leave), 1999-2001 as visiting professor)

Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council, Executive Office of the President, Washington, D.C. 20502, 1997-99

Associate Counsel to the President, Executive Office of the President, Washington, D.C. 20502, 1995-96

Professor, University of Chicago Law School, 1111 E. 60th St., Chicago, IL 60637, 1991-97 (1991-94 as assistant professor)

Special Counsel, Senate Judiciary Committee, Summer 1993

Associate, Williams & Connolly, 725 12th St., Washington, DC 20005, 1989-91

Staff member, Dukakis for President Campaign, Boston, MA, 1988

Judicial Clerk, Hon. Thurgood Marshall, U.S. Supreme Court, 1987-88

Judicial Clerk, Hon. Abner Mikva, U.S. Court of Appeals for D.C. Circuit, 1986-87

Research Assistant, Professor Laurence Tribe, Harvard Law School, Cambridge, MA 02138, Summer 1986

Summer Associate, Paul Weiss Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, NY, NY 10019, Summer 1985

Summer Associate, Fried Frank Harris Shriver & Jacobson, One New York Plaza, NY, NY 10004, Summer 1984

Paralegal, Milbank Tweed Hadley & McCloy, 1 Chase Manhattan Plaza, NY, NY 10005, Summer 1983

Board Memberships:

Member, Board of Trustees, Oxford University Press, Inc., 198 Madison Avenue, NY, NY 10016, 2008-09

Member, Advisory Board, American Indian Empowerment Fund, 579 Main St., Oneida, NY 13421, 2008-09

Member, Board of Directors, Equal Justice Works, 2120 L St., NW, Washington, D.C. 20037, 2008-09

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Member, Board of Directors, The Advantage Testing Foundation, 210 E. 86th St., NY, NY 10028, 2007-09

Member, New York State Commission on Higher Education, 2007-08

Member, Board of Advisors, National Constitution Center's Peter Jennings Project for Journalists and the Constitution, 525 Arch St., Philadelphia, PA 19106, 2006-09

Member, Research Advisory Council, Goldman Sachs Global Markets Institute, 85 Broad St., NY, NY 10004, 2005-08

Member, Board of Directors, American Law Deans Association, 2004-09

Member, Board of Trustees, Skadden Fellowship Foundation, 4 Times Square, NY, NY 10036, 2003-09

Member, Board of Directors, Thurgood Marshall Scholarship Fund, 60 E. 42nd St., NY, NY 10165, 2003-05

Member, Litigation Committee, American Association of University Professors, 1133 19th St., NW, Washington, D.C. 20036, 2002-03

Public Member, Administrative Conference of the United States, 1994-95

Member, Board of Governors, Chicago Council of Lawyers, 50 North Lake Shore Drive, Chicago, IL 60611, 1993-95

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number), and type of discharge received, and whether you have registered for selective service.

   None.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Member, American Academy of Arts and Sciences, 2005-

   Honorary Fellow, Worcester College, Oxford University, 2005-

   Recipient, Woman Lawyer of the Year, Women's Bar Association of District of Columbia, 2009

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Recipient, Arabella Babb Mansfield Award, National Association of Women Lawyers, 2008

Recipient, John R. Kramer Outstanding Law School Dean Award, Equal Justice Works, 2008

National Law Journal, Top 50 Most Influential Women Lawyers, 2007

Recipient, 2003 Annual Scholarship Award of the American Bar Association's Section of Administrative Law and Regulatory Practice

Recipient, Class of 1993 University of Chicago Graduating Students' Award for Teaching Excellence

Recipient, Sachs Scholarship, Princeton University, 1981.

Phi Beta Kappa, Princeton University, 1981

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

   As noted above (question 6), I have served on the boards of Equal Justice Works, the Skadden Fellowship Foundation, the National Constitution Center's Peter Jennings Project for Journalists and the Constitution, the American Law Deans' Association, and the Chicago Council of Lawyers.

   I have served as a member of the Boston Bar Association Diversity Task Force.

   I am a member of the American Bar Association.

   In a questionnaire I submitted to the Senate in connection with a judicial nomination in 1999, I listed membership in the U.S. Association of Constitutional Lawyers, ABA Forum on Communications Law, and the Society of American Law Teachers, but I have no current memory of belonging to or participating in these organizations.

10. **Bar and Court Admission**:

    a. List the date(s) you took the examination, the date you passed, and the date you were admitted to the bar of any state for all states where you sat for a bar examination. List any state in which you applied for reciprocal admission without taking the bar examination and the date of such admission or refusal of such admission. List and explain the reason for any lapses in membership.

       I took the New York State Bar examination in the summer of 1986 and passed. I was formally admitted to the New York State Bar on July 19, 1988 (after the

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completion of my clerkships). I was admitted to the District of Columbia Bar without examination on February 17, 1989.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2009

U.S. District Court for the District of Maryland, 1990 (inactive)

U.S. District Court for the District of Columbia, 1990 (inactive)

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, or in which you have participated, since graduation from law school. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications. Describe briefly the nature and objectives of each such organization, the nature of your participation in each such organization, and identify an officer or other person from whom more detailed information may be obtained.

Harvard Law School Alumni Association
Princeton University Alumni Association

In a questionnaire I submitted to the Senate in connection with a judicial nomination in 1999, I listed membership in the National Partnership for Women and Families as a result of charitable contributions. I have no current memory of whether such contributions ever made me a member of this organization.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No

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12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify published materials through searches of publicly available electronic databases, as well as databases kept by Harvard Law School. I have found the following:

"The Role of the Solicitor General" in *The U.S. Supreme Court: Equal Justice Under Law* (eJournal USA/U.S. Department of State 2009)

"Office of the White House Counsel" in Mark Green and Michele Jolin, eds., Change for America: A Progressive Blueprint for the 44th President (Basic Books 2009).

"Foreword" in Daniel Hamilton and Alfred Brophy, eds., Transformations in American Legal History: Essays in Honor of Professor Morton J. Horwitz (Harvard 2009).

Harvard Law Revisited, 11 *The Green Bag* 475 (2008).

In Memoriam: Clark Byse, 121 *Harvard Law Review* 454 (2007).

Richard Posner, The Judge, 120 *Harvard Law Review* 1121 (2007).

In Memoriam: David Westfall, 119 *Harvard Law Review* 947 (2006).

Women and the Legal Profession – A Status Report (Leslie H. Arps Memorial Lecture), 61 The Record 37 (2006).

Chevron's Nondelegation Doctrine, 2001 *Supreme Court Review* 201 (with David J. Barron).

Presidential Administration, 114 *Harvard Law Review* 2245 (2001).

Libel and the First Amendment (Update), Encyclopedia of the American Constitution, Supplement II (2000).

Masson v. New Yorker Magazine, Inc., Encyclopedia of the American Constitution (2000).

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Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine, 63 *University of Chicago Law Review* 413 (1996).

When A Speech Code Is A Speech Code: The Stanford Policy and the Theory of Incidental Restraints, 29 *University of California at Davis Law Review* 957 (1996).

Confirmation Messes, Old and New (Book Review), 62 *University of Chicago Law Review* 919 (1995).

Regulation of Hate Speech and Pornography After *R.A.V.*, 60 *University of Chicago Law Review* 873 (1993). An abbreviated version of this article appears in Laura Lederer and Richard Delgado, eds., The Price We Pay (Hill & Wang 1995).

A Libel Story: *Sullivan* Then and Now (Book Review), 18 *Law and Social Inquiry* 197 (1993).

For Justice Marshall, 71 *Texas Law Review* 1125 (1993).

The Changing Faces of First Amendment Neutrality: *R.A.V. v St. Paul*, *Rust v Sullivan*, and the Problem of Content-Based Underinclusion, 1992 *Supreme Court Review* 29.

Note, Certifying Classes and Subclasses in Title VII Suits, 99 *Harvard Law Review* 619 (1986).

In addition to these more formal publications, during my time as dean, I wrote a "From the Dean" Column in each issue of the Harvard Law Bulletin, which is Harvard Law School's alumni magazine. These columns are as follows: Fall 2008, "Two Campaigns"; Summer 2008, "A Changing Climate of Environment"; Winter 2008, "A Curriculum Without Borders"; Summer 2007, "Con Law Takes Center Stage"; Spring 2007, "Corporate Governance in the new Global Economy"; Fall 2006, "Connecting to Practice"; Summer 2006, "Asian Journeys"; Spring 2006, "View from Chambers"; Fall 2005, "Negotiation, Advanced"; Summer 2005, "Criminal Law in Flux"; Spring 2005, "A Call to Public Service"; Fall 2004, "Law on the Front Lines."

Harvard Law School also issued numerous news releases in which I am quoted, almost all of which I edited, during the years of my deanship. They are as follows:

DATE	TITLE OF RELEASE
12/16/08	Six From HLS Win Prestigious Skadden Fellowships
12/12/08	Lawrence Lessig named professor of law at HLS, director of Harvard's Edmond J. Safra Foundation Center for Ethics

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12/12/08	Lloyd E. Ohlin, expert in criminal justice, 1918-2008
10/23/08	Harvard Law School Celebrates Record-setting Capital Campaign
9/3/08	Henry E. Smith to join HLS faculty in 2009
8/7/08	John Goldberg to join HLS faculty
8/4/08	Kagan is honored for her work to encourage public service
6/11/08	Jonathan Zittrain appointed to tenured faculty position
6/5/08	Highlights from Commencement Exercises
5/13/08	Malone and Jacobs appointed clinical professors of law
5/7/08	Harvard Law Faculty votes for 'open access' to scholarly articles
4/30/08	Palfrey appointed as new head of Harvard Law School Library
4/29/08	Stuntz and Warren elected to American Academy of Arts and Sciences
4/14/08	Ashish Nanda will join HLS faculty as professor of practice
4/9/08	Oliveira Appointed Associate Dean and Dean for Development and Alumni Relations
4/7/08	Three young scholars join HLS faculty as assistant professors
3/20/08	Anne Alstott, expert on tax law and social welfare, will join HLS faculty
3/18/08	Harvard Law School launches new Public Service Initiative
2/19/08	Sunstein to join Harvard Law School faculty
1/24/08	Michael Klarman to join HLS faculty
12/13/07	Six From HLS Win Prestigious Skadden Fellowships
11/13/07	Pakistani chief justice to receive Harvard Law School 'Medal of Freedom'
10/9/07	Clark Byse, celebrated HLS professor of administrative law and contracts: 1912-2007
8/6/07	William Rubenstein joins HLS faculty
7/3/07	Robert E. Keeton, pioneer of insurance law and District Court judge: 1919-2007
6/14/07	Olara Otunnu receives Harvard Law School Association Award
6/11/07	Yochai Benkler joins HLS faculty
6/8/07	Highlights from Harvard Law School's Commencement
6/6/07	Bordone and Cox honored on Class Day
5/23/07	Robert H. Sitkoff joins HLS faculty
5/15/07	Gabriella Blum and James Greiner join HLS faculty
4/4/07	HLS adds five clinical professors
3/26/07	Kathryn Spier to join HLS faculty
3/22/07	Wasserstein Family Gives $25 Million to Harvard Law School for Academic Center
2/22/07	Human Rights Program announces new fellowship opportunity
2/11/07	Dean Elena Kagan praises incoming Harvard President Drew Gilpin Faust
1/16/07	Richard A. Musgrave, noted economist and pioneer in public finance: 1910-2007
1/2/07	Six from HLS win Skadden public interest fellowships
12/7/06	Noah Feldman to join Harvard Law faculty
10/6/06	HLS faculty unanimously approves first-year curricular reform
9/20/06	Webcast: Dean Kagan delivers 'State of the School' address
4/24/06	Fallon selected to join American Academy of Arts and Sciences

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3/1/06	Associate Dean Scott Nichols to Conclude Service
1/18/06	Professor Arthur von Mehren, 1922-2006
12/6/05	HLS students win record number of public service fellowships
11/29/05	Harvard Law School launches new center to investigate intersections of health, technology and law
9/23/05	Webcast of Dean Kagan's 'state of the school' address
9/15/05	Celebration of Black Alumni begins this weekend
9/2/05	Dean Kagan announces hurricane relief efforts
8/30/05	Five new professors join HLS faculty
8/24/05	HLS to hold second Celebration of Black Alumni
6/21/05	Kirkland & Ellis Gift Honored by Renaming Major Harvard Law School Teaching Space
4/13/05	Statement of President Lawrence Summers and Dean Elena Kagan on Laurence Tribe
2/10/05	Renovations to Hemenway Gymnasium slated for summer 2005
1/3/05	Subramanian Joins Tenured Faculty
11/30/04	Statement by Dean Elena Kagan on the Solomon Amendment
10/6/04	Memorial Service for Archibald Cox
9/30/04	Harvard Law School Announces New Professorship Dedicated to Accounting and Statistics
9/23/04	Students and Faculty Connect in First-Year Reading Groups
9/8/04	Three Professors Join Tenured Faculty
8/4/04	Harvard Law School Chooses Architect for Northwest Corner
4/19/04	Ogletree Appointed Director of New Harvard Institute
12/11/03	School Wins Record Number of Skadden Fellowships
11/7/03	HLS Announces Environmental Law Fellowship
10/23/03	Celebrating a Legal Services Partnership
10/18/03	Fisher Named to Hale and Dorr Professorship
10/8/03	Professor Archibald Cox Honored
10/2/03	Vorenberg Fellowship Recipients Announced
7/1/03	Kagan Becomes Dean of Harvard Law School

I wrote two letters to the editors of Harvard publications:

> Letter to the Editor, HLS International Law Program Healthy, Harvard Crimson, Apr. 28, 2003
>
> Letter to the Editor, Student Input for Allston, Harvard Law Record, Mar. 24, 2003

I wrote an introduction to the Harvard Law School Public Service Job Guide. This introduction is provided as an attachment to question 12(i).

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Two April Fool's Day columns in the Harvard Law Record appear under my name, although I had no involvement in writing them. They are attached.

In addition, I wrote numerous news stories and editorials during college while a staff member and then editorial chairman of The Daily Princetonian. They are as follows:

9/13/78	Social life discussed at open house
9/14/78	1978 Football outlooks includes great expectations
9/26/78	Undergrad hours cut at Student Center
10/2/78	Seven journalists come to Princeton to study economics at Wilson School
10/10/78	Citizen groups support investigation f borough, township consolidation
10/18/78	Three borough candidates compete for two seats on Princeton council
11/6/78	Football goes undefeated over break: Humiliates Penn, 21-0
11/8/78	Bradley defeats Bell in Senate contest
11/14/78	N.J. Senate bill hikes drinking age
11/20/78	Undergraduate Life at Princeton: Outlook for Prospect Street: Eating clubs grow in strength
11/29/78	Powerful Yale hands skaters 7-4 loss in game at Ingalls Rink
12/7/78	Woman splashed with beer at club files assault charge with university
12/8/78	AD search yields potential candidates
12/12/78	Committee hearings resume Wednesday despite protests
12/18/78	Arbitrators to resolve unions' grievances
12/19/78	Court gives conditional discharges to three marijuana law offenders
1/17/79	Bicker numbers decline; clubs profess no anxiety
2/3/79	Preyer: Southern gentleman in Congress
2/6/79	'Prince' accepts advertisement by Playboy
2/7/79	Bohens' 'dual careers' move ahead in Washington: Halcyone Bohen: From Dean to Researcher
2/13/79	U-Council approves right to silence in Discipline Committee hearings
2/17/79	Goheen, Blumenthal receive Alumni Day honors: Former president awarded Wilson prize
2/21/79	Frank files complaint of sex bias
3/1/79	University takes conservation steps to deal with energy cost overrun
3/8/79	Bowen to go to Washington today: agenda includes talk with Califano
3/9/79	Kelley: U-Council 'founding father' discusses group's ten year history
3/15/79	Proposed changes in zoning draw criticism from university
3/23/79	Trustees to meet here today to vote South African proxy
4/2/79	Columbia divests itself of stock in three banks
4/3/79	Front, Bowen meet to discuss investment policy
4/6/79	Physicist urges stockpiling of drug
4/10/79	U-Council forms group on South Africa: Body to consider new ways to improve racial situation
4/13/79	Baseball overcomes Manhattan 11-7
4/18/79	Woods advocates total divestiture of university South African stock
4/19/79	Resources committee supports several proxies on South Africa

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4/23/79	Poll indicates one-third have cheated: Results of survey question could be inflated
4/24/79	Honor group poll reportedly says between 15 and 20 percent cheat
4/27/79	New York's rock and roll clubs boom
5/7/79	President releases yearly statement on topics of scholarship, research
5/9/79	Faculty solicits plan to sway S. Africa companies
5/21/79	University bans cooking appliances, vetoing Residence Committee stance
9/18/79	English department forced to take rare staffing action
9/26/79	SECH loses two sexual therapists as university moves to save money
9/28/79	Hungry Tigers seek to upset Rutgers
10/1/79	Scarlet Knights bury football, 38-14
10/4/79	GICC postpones decision on CURL's latest report
10/16/79	Dean Brown tells Cap he would probably bicker again
10/19/79	USG designates committee to help student groups mix
10/22/79	Honors Committee releases long-awaited reports: Report prompts mixed response
10/22/79	People's Front marches to support divestiture
10/22/79	Women's Center stages discussion about tenure for female professors
11/79	The Women's Center: Gaining a new identity amidst controversy
11/7/79	Women's Center organizes education group
11/9/79	Yale, Tigers prepare for clash: Football to confront Bulldogs in battle for Ivy League lead
11/12/79	Football bows to Bulldog jinx, 35-10: Yale captures Ivy League championship
11/14/79	Bowen meets club representatives, discusses CURL recommendations
11/19/79	Iran protest group to demonstrate
11/20/79	McGrath writes two hit musicals for Triangle
11/20/79	USG urges changes in position of chapel dean
11/28/79	GICC decides to speak to university on CURL
2/11/80	Carl Schorske's Viennese masterpiece
11/10/80	Fear and loathing in Brooklyn
1/21/81	The Last Goodbye
2/3/81	Kagan wins Sachs Scholarship
4/8/81	Declaration of the Campaign for a Democratic University
Unknown	Hockey downs Bulldogs, 3-2; Mann turns back 31 Eli shots
Unknown	Karp leads Women's Center with chutzpah, aggressiveness
Unknown	Scarlet Knights nip Basketball
Unknown	Unbeaten tennis drubs Harvard, 8-1: Tigers clinch sixth straight crown
Unknown	USG discusses honor report; appropriates funds for trips

b. Supply four (4) copies of any reports, memoranda, policy statements, minutes, agendas or other materials you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member or in which you have participated as defined in 11a.

11

72963.011

Include reports, memoranda, or policy statements of any advisory board on which you served or working group of any bar association, committee, or conference which produced a report, memorandum, or policy statement, even where you did not contribute to it. If you do not have a copy of a report, memorandum, or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

The Boston Bar Association Diversity Leadership Task Force, on which I served, published a final report and recommendations on November 18, 2008. I am including it as an attachment.

The New York State Commission on Higher Education, on which I served, issued a Final Report of Findings and Recommendations in June 2008. I am including it as an attachment.

The Locational Options Committee of Harvard Law School, which I chaired, issued a report in November 2002. I am attaching that report.

The Task Force on Women Faculty of Harvard University, on which I sat, issued a final report in 2005. I am attaching that report.

The Chicago Council of Lawyers, on whose Board of Governors I served from 1993 to 1995, regularly issues reports on judicial candidates and nominees in Illinois, as well as on other matters of interest to the local legal community. I participated in the Council's evaluation process for candidates for elective judicial office in Illinois, which formed the basis of at least one report of this kind.

The American Law Deans Association, on whose board I used to sit, issues occasional statements and reports about matters of concern to law schools. The principal subject concerns standards for ABA accreditation of schools. All these statements are available at www.americanlawddeans.org.

c. Supply four (4) copies of any testimony, official statements, or other communications including those issued in your capacity as Dean of Harvard Law School relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have tried to identify such statements through searches of publicly available electronic databases. My emails and letters to the Harvard Law School community are provided as attachments to questions 12(h) and 12(i).

I testified before the Senate Judiciary Committee at my confirmation hearing for Solicitor General of the United States on February 10, 2009. A copy of the hearing transcript is attached.

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I joined a letter from Law School Deans, dated February 14, 2007, calling for an increase in the compensation of federal judges.

I joined a Statement of Law Deans, dated January 15, 2007, criticizing the remarks of Deputy Assistant Secretary of Defense Charles Stimson regarding legal representation of detainees at Guantanamo.

I signed a letter with three other law deans to Senator Patrick Leahy, dated November 14, 2005, opposing the Graham Amendment to the Department of Defense authorization bill insofar as it would have stripped the federal courts of jurisdiction to hear habeas petitions brought by detainees at Guantanamo.

I joined a Statement by Law School Deans, dated May 4, 2005, opposing threats of retaliation against federal judges and asserting the importance of an independent judiciary.

On September 10, 2002, I wrote a letter to Senator Patrick Leahy supporting Michael McConnell's nomination to the United States Court of Appeals for the Tenth Circuit. I also joined a group letter to this effect and participated in a Department of Justice Press Availability regarding the nomination.

On June 17, 2002, I provided a brief letter to Senator Paul Sarbanes concluding that a provision of the Public Company Accounting Reform and Investor Act of 2002 ("Sarbanes-Oxley") likely would survive a challenge brought under the Appointments Clause of Article II of the Constitution.

On April 12 and 13, 2001, I joined two group letters to senators supporting Peter Keisler's nomination to the United States Court of Appeals for the Fourth Circuit.

As Deputy Assistant to the President for Domestic Policy, I gave formal press briefings on the following occasions:

5/27/98	Welfare reform (with Secretary Donna Shalala and Eli Segal)
3/9/98	Tobacco legislation (with Chris Jennings)
2/13/98	Tobacco legislation (with General Barry McCaffery)
11/7/97	White House Conference on Hate Crimes (with Maria Echaveste)

Also as Deputy Assistant to the President for Domestic Policy, I briefed lieutenant governors on education and tobacco issues (2/22/99) and women mayors on domestic policy issues generally (1/26/99). I may have done other, similar briefings of this kind that do not appear in my calendar. I do not have notes for these briefings.

d. Supply four (4) copies, transcripts, or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, symposia, panels, continuing legal education

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events, and question-and-answer sessions. Include the date and place where they were delivered and readily available press reports about the speech or talk. For each event you attended after being confirmed as Solicitor General, provide the sponsors, and whether any funding was provided to you by the sponsors or other organizations.

I have tried to identify, through the search of calendars, computer files, and hard files, as well as publicly available electronic databases, all talks I have given of the kind described. I am providing written texts and handwritten notes where I have them. In the many appearances I made as dean, I usually got some material from my staff and then spoke either without any notes or with handwritten notes, which I typically discarded. Many of these events were reported on by university publications or taped by the law school. I am providing copies of any articles I have found on these events (where such articles exist, the list below states "press provided"), and I am providing tapes from Harvard Law School.

DATE	DESCRIPTION	PLACE	COPY/TAPE/ PRESS
5/7/10	Remarks – U.S. Court of Federal Claims Law Day Luncheon	Washington, DC	Text provided.
5/5/10	Moderate Panel – Sixth Circuit Judicial Conference The sponsor of this panel, the Sixth Circuit Judicial Conference, paid for my travel expenses.	Columbus, OH	Notes provided. Press provided.
5/3/10	Remarks – Seventh Circuit Judicial Conference Annual Dinner The sponsor of this panel, the Seventh Circuit Judicial Conference, paid for my travel expenses.	Chicago, IL	Notes provided. Press provided. Video at: c-spanvideo.org /program/293 301-2
4/29/10	Remarks – Georgetown Law Supreme Court Institute Reception Honoring Justice Kennedy The sponsor of this event, the Georgetown Law School Supreme Court Institute, did not provide me with any funding.	Washington, DC	Notes provided. Press provided.
4/29/10	Remarks and Q&A – Third Circuit Judicial Conference The sponsor of this event, the Third Circuit Judicial Conference, paid for my travel expenses.	Hershey, PA	

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	The name and address of the group is: Third Circuit Judicial Conference 601 Market Street Philadelphia, PA 19106 I spoke on the work of the Solicitor General's Office.		
4/14/10	Remarks and Q&A – Supreme Court Seminar at Georgetown Law Center (Prof Vicki Jackson) The sponsor of this event, the Georgetown Law Center, did not provide me with any funding. The name and address of the group is: Georgetown Law Center 600 New Jersey Ave., NW Washington, DC 20001 I discussed the work of the Solicitor General's Office.	Washington, DC	
4/9/10	Remarks – FBI Women's History Month Event The sponsor of this event, the FBI, did not provide me with any funding.	Washington, DC	Text provided.
4/8/10	Remarks and Q&A – Supreme Court Litigation Class at Georgetown Law Center (Prof Don Ayers) The sponsor of this event, the Georgetown Law Center, did not provide me with any funding. The name and address of the group is: Georgetown Law Center 600 New Jersey Ave., NW Washington, DC 20001 I discussed the work of the Solicitor General's Office.	Washington, DC	
3/24/10	Remarks and Q&A – Meeting with West Point Cadets	DOJ	

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	The sponsor of this event, the West Point Military Academy, did not provide me with any funding. I discussed the work of the Solicitor General's Office.		
3/11/10	Remarks and Q&A – Georgetown University Law Center Corporate Counsel Institute The sponsor of this event, the Georgetown Law Center Corporate Counsel Institute, did not provide me with any funding.	Washington, DC	Audiotape available
2/26/10	Remarks and Q&A – Luncheon for Clerks at the D.C. Court of Appeals The sponsor of this event, the D.C. Court of Appeals, did not provide me with any funding. The name and address of the group is: The D.C. Court of Appeals 500 Indiana Ave., NW Washington, DC 20001 I spoke with law clerks about the work of the Solicitor General's Office.	Washington, DC	
2/2/10	Remarks – Civil Division Orientation for New Attorneys The sponsor of this event, the Department of Justice, did not provide me with any funding. I spoke on the work of the Solicitor General's Office.	DOJ	Video provided.
1/28/10	Panelist – "Women Advocates Before the Supreme Court" with Maureen Mahoney, Wendy Williams, moderated by Sandra Day O'Connor The sponsor of this event, the Newseum, did not provide me with any funding.	Newseum, Washington DC	Video at: c-spanvideo.org /program/291 709-1
1/15/09	Remarks – Luncheon for Harvard Law School students The sponsor of this event, Harvard Law School, did not provide me with any funding.	DOJ	

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	I spoke on the work of the Solicitor General's Office.		
12/1/09	Remarks and Q&A – Orientation for new Assistant United States Attorneys The sponsor of this event, the Justice Department, did not provide me with any funding. I gave brief remarks on the work of the Solicitor General's Office.	DOJ	
11/18/09	Remarks – Brown Bag Lunch for OLC Attorneys The sponsor of this event, the Justice Department, did not provide me with any funding. I spoke with Justice Department lawyers about the work of the Solicitor General's Office.	DOJ	
10/27/09	Remarks and Q&A – Luncheon for Clerks at the Supreme Court The sponsor of this event, the Supreme Court, did not provide me with any funding. The name and address of the group is: Supreme Court of the United States One First Street, NE Washington, DC 20543 I spoke with law clerks about the work of the Solicitor General's Office.	Washington, DC	
9/18/09	Remarks – ENRD 100th Anniversary Lecture Series The sponsor of this event, the Justice Department, did not provide me with any funding. I spoke on the work of the Solicitor General's Office, and the relationship between the SG's Office and the Environment and Natural Resources Division.	DOJ	

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9/15/09	Remarks – Coke Appellate Inn of Court The sponsor of this event, the Coke Appellate Inn of Court, did not provide me with any funding. The name and address of the group is: Coke Appellate Inn of Court 1229 King Street, 2nd Floor Alexandria, VA 22314 I spoke on the work of the Solicitor General's Office.	Washington, DC	
9/11/09	Panelist – "Reflections from the Solicitor General's Office" with Charles Fried and John Manning The sponsor of this event, Harvard Law School, paid for my travel expenses. I participated in a panel discussion on the role of the Solicitor General.	HLS	Press Provided
8/31/09	Remarks and Q&A – Orientation for new Assistant United States Attorneys The sponsor of this event, the Justice Department, did not provide me with any funding. I gave brief remarks on the work of the Solicitor General's Office.	DOJ	
8/10/09	Remarks – DOJ Summer Interns Lecture Series The sponsor of this event, the Justice Department, did not provide me with any funding. I spoke with Justice Department interns about the work of the Solicitor General's Office.	DOJ	Video provided.
7/31/09	Swearing-in of new Social Security Administration Administrative Law Judges The sponsor of this event, the Justice Department, did not provide me with any funding.	DOJ	Video provided.

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	I swore in new ALJs.		
7/23/09	Q&A with Chief Judge Kozinski – Ninth Circuit Judicial Conference The sponsor of this event, the Ninth Circuit Judicial Conference, paid my travel expenses.	Monterey, CA	Video at: c-spanvideo.org /program/id/2 10063
7/12/09	Remarks – NYU Institute of Judicial Administration Dinner The sponsor of this event, the New York University Institute of Judicial Administration, paid my travel expenses. The name and address of the group is: NYU Institute of Judicial Administration 40 Washington Square South New York, NY 10012 I spoke on the work of the Solicitor General's Office.	New York, NY	
7/10/09	Remarks – DOJ Orientation for New Attorneys The sponsor of this event, the Justice Department, did not provide me with any funding. I spoke to a class of new Justice Department lawyers.	DOJ	
6/18/09	Remarks – Appellate Chiefs Conference The sponsor of this event, the Justice Department, did not provide me with any funding. I spoke on the work of the Solicitor General's Office.	Videoconferenc e at DOJ to Columbia, SC	
6/3/09	Speech – Harvard Law School Class Day Ceremony The sponsor of this event, Harvard Law School, paid my travel expenses.	HLS	Press provided. Video at: law.harvard.e du/news/2009 /06/04_comm encement.htm l

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6/3/09	Remarks – Captain Promotion Ceremony for Kyle Scherer The sponsor of this event, Harvard Law School, paid my travel expenses. I was asked to participate in the barring ceremony for Captain Kyle Scherer, a Harvard Law School graduate. I gave remarks praising Capt. Scherer and his service.	HLS	Press provided
5/20/09	Keynote Address – Conference on Independent Courts The sponsor of this event, Georgetown Law School, did not provide me with any funding. The name and address of the group is: Georgetown Law Center 600 New Jersey Ave., NW Washington, DC 20001	Georgetown Law School, Washington DC	Notes Provided
5/19/09	Remarks – Women's Bar Association of DC Annual Dinner The sponsor of this event, the Women's Bar Association of D.C., did not provide me with any funding. I gave remarks accepting the Woman Lawyer of the Year Award.	Washington DC	Press provided.
5/6/09	Introduction of Neal Katyal at Asian Pacific Event at Department of Justice The sponsor of this event, the Justice Department, did not provide me with any funding. I gave remarks introducing Deputy Solicitor General Neal Katyal.	Washington DC	Video provided.
5/1/09	Remarks – Annual Georgetown Supreme Court Institute Reception The sponsor of this event, the Georgetown Supreme Court Institute, did not provide me with any funding.	Washington DC	

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1/17/09	Remarks –Celebration Brunch for HLS Alumni in honor of Barack Obama	Washington, DC	
12/5/08	Remarks -- Alumni Lunch I spoke with HLS alumni about the state of the school.	NYC	
12/3/08	Remarks -- Faculty Chair Lecture (Cass Sunstein)	HLS	Tape Provided
11/21/08	Remarks – Globalization of the Legal Profession Conference, sponsored by the American Society of International Law. The name and address of the group is: The American Society of International Law 2223 Massachusetts Ave., NW Washington, DC 20008 I spoke on legal education in the global setting.	MA	Press provided.
11/19/08	Remarks -- HLS Medal of Freedom Award Presentation to Pakistani Chief Justice Iftikhar Chaudhry	HLS	Press Provided Tape Provided
11/18/08	Remarks -- Ames Moot Court Final Round Argument I introduced the participants in the finals of the HLS moot court competition.	HLS	
11/12/08	Welcome -- Islamic Legal Studies Program Workshop I gave brief welcoming remarks to the workshop attendees.	HLS	
11/12/08	Remarks -- Introduced Francis W. Biddle Memorial Lecture given by Ian Ayres	HLS	Tape Provided
11/10/08	Remarks -- Presentation of Gary Bellow Public Service Award	HLS	
10/29/08	Remarks -- Faculty Chair Lecture (Jon Hanson)	HLS	Press Provided Tape Provided
10/25/08	Q&A with Dean -- HLS Alumni Reunions	HLS	Tape Provided
10/24/08	Moderate Panel -- Supreme Insights: Examining the Future of America's Highest Court	HLS	Tape Provided

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10/24/08	Remarks -- HLS Capital Campaign Recognition Luncheon I thanked Harvard Law School donors for their support of the school.	HLS	
10/23/08	Remarks -- HLS Capital Campaign Celebration Dinner I thanked Harvard Law School donors for their support of the school.	HLS	Press Provided
10/17/08	Remarks -- Introduce Sandra Day O'Connor as part of HLS Charles Hamilton Houston Institute Conference	HLS	Press Provided Tape Provided
10/16/08	Remarks -- Equal Justice Works Dinner, acceptance of Dean of the Year Award	Washington, DC	Video available at http://www.youtube.com/watch?v=XrJsh7O8z3s
10/15/08	Remarks -- Dinner Honoring HLS Heyman Fellows I gave brief remarks praising the recipients of the Heyman Fellowship.	Washington, DC	
10/15/08	Remarks -- Alumni Lunch I spoke with HLS alumni about the state of the school.	Washington, DC	
10/14/08	Welcome -- Introduce Supreme Court Moot Court Event I introduced the moot court participants and the case.	HLS	
10/14/08	Remarks -- Faculty Chair Lecture (Yochai Benkler)	HLS	Press Provided Tape Provided
10/7/08	Remarks -- HLS Public Service Initiative Dinner I gave brief remarks on the importance of the HLS Public Service Initiative.	HLS	
10/6/08	Speech -- John W. King Lecture at New Hampshire Supreme Court	Concord, NH	Text Provided

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10/2/08	Remarks -- Introduction to Herbert W. Vaughan Lecture given by Justice Scalia	HLS	Press Provided Tape Provided
10/1/08	Moderate Panel -- The Financial Crisis: Causes and Cures	HLS	Press Provided Tape Provided
9/27/08	Welcome -- Introduce Panel at Harvard University Gay and Lesbian Alumni Event I welcomed the event participants and spoke generally about the event.	Harvard University	
9/26/08	Remarks -- Conference Honoring HLS Professor Morton Horwitz	HLS	Tape Provided
9/23/08	Remarks -- Introduce "The Idea of Justice," a lecture by Amartya Sen	HLS	Press Provided
9/23/08	Remarks -- Program on Negotiation: Great Negotiator Award Presented to Christo and Jeanne Claude	HLS	
9/22/08	Moderate Panel -- Dean's Forum: Inside the Laws and Policies of Televised Presidential Debates	HLS	Tape Provided
9/22/08	Remarks – Introduce Deval Patrick at American Constitution Society event	HLS	Press Provided
9/21/08	Remarks -- HLS Alumni "Celebration 55": Presentation of Alumni Award to Congresswoman Jane Harman	HLS	Tape Provided
9/20/08	Q&A with Ruth Bader Ginsburg -- HLS Alumni "Celebration 55"	HLS	Tape Provided
9/19/08	Welcome and Remarks -- HLS Alumni "Celebration 55: Women's Leadership Summit"	HLS	Tape Provided
9/19/08	Q&A with the Dean -- HLS Alumni "Celebration 55"	HLS	Tape Provided
9/19/08	Remarks -- HLS Alumni Celebration 55: Presentation of Alumni Award to Rita E. Hauser	HLS	Tape Provided
9/17/08	Remarks -- HLS Public Service Orientation	HLS	Tape Provided
9/16/08	Introduction -- Faculty Chair Lecture (Noah Feldman)	HLS	Press Provided Tape Provided
9/15/08	Speech -- HLS State of the School Speech	HLS	Text Provided
9/12/08	Remarks -- Microsoft 10 Years Later Conference	HLS	Tape Provided

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9/11/08	Remarks -- Faculty Comparative Law Conference I welcomed the conference participants and spoke generally about the event.	HLS	
9/9/08	Welcome -- HLS Intellectual Property Law Conference I gave brief remarks welcoming the conference attendees.	Cambridge, MA	Video available at: http://www.hlsipconference.com/materials_bios/
9/9/08	Moderate Panel -- Dean's Forum: The Role of Courts in the War on Terror	HLS	Tape Provided
9/2-10/08	Remarks -- First Year Student Welcome Dinners I spoke to incoming HLS students about the law school.	HLS	
8/29/08	Speech -- Dean's Speech to New 1L and LLM Students	HLS	Text Provided
7/30/08	Remarks -- HLS Charles Hamilton Houston Institute, Thurgood Marshall Celebration I welcomed the event participants and spoke generally about the event.	New York, NY	
6/14/08	Moderate Panel--American Constitution Society -- Celebrating Judge Patricia Wald. The name and address of the group is: American Constitution Society 1333 H Street, NW #11 Washington, DC 20005 I moderated a panel discussion on Judge Wald's career.	Washington, DC	
6/13/08	Moderate Panel--American Constitution Society, "Law & Justice Policies In A New Administration"	Washington, DC	Video at acslaw.org/node/6717
6/5/08	Speech -- HLS Commencement	HLS	Text Provided
6/4/08	Remarks--HLS Graduating Students Class Day	HLS	Tape Provided
5/27/08	Remarks--Retirement Party for Professors Terry Martin and John Mansfield I gave brief remarks praising Profs. Martin and	HLS	

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	Mansfield.		
5/22/08	Welcome--HLS Leadership in Law Firms Conference I gave brief remarks welcoming the conference attendees.	HLS	
5/15/08	Remarks--Berkman Center 10th Anniversary Event I gave brief remarks announcing an expansion of the Berkman's Center's work.	HLS	Press Provided
5/3/08	Q & A with the Dean--Alumni Reunions	HLS	Tape Provided
5/2/08	Remarks--Alumni Lunch	HLS	Tape Provided
5/1/08	Remarks--Standing Committee of Judicial Conference Reception I gave brief remarks welcoming the attendees.	HLS	
4/24/08	Remarks--Harvard University Native American Program Event I welcomed the event participants and spoke generally about the event.	HLS	
4/18/08	Remarks--International Law Journal Conference	HLS	Tape Provided
4/17/08	Remarks--Third Year Student Graduation Dinner I gave remarks congratulating members of the HLS Class of '08.	HLS	
4/15/08	Remarks--HLS Alumni Breakfast I spoke with HLS alumni about the school..	Washington, DC	
4/11/08	Welcome--Carbon Offsets Conference Luncheon I gave brief remarks welcoming the conference attendees.	HLS	
4/4/08	Remarks--Memorial Service for Professor Clark Byse	HLS	Text Provided
4/4/08	Remarks -- Introduce Robert Zoellick	HLS	
4/2/08	Introduction--Faculty Chair Lecture (Carol Steiker)	HLS	Tape Provided
4/2/08	Remarks--Dinner Honoring HLS Kaufman	HLS	

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	Fellows I gave brief remarks praising the recipients of the Kaufman Fellowship.		
3/31/08	Talk to federal judges re legal education I spoke on trends in legal education and innovations at HLS.	HLS	
3/19/08	Moderate Panel sponsored by ACS, Federalist Society on "Post-Partisanship" I moderated a panel discussion on politics.	HLS	
3/18-19/08	Remarks--Ames Moot Court Semi-Final Round Arguments I introduced the participants in the HLS moot court competition semi-finals.	HLS	
3/15/08	Q & A with Dean--HLS Public Interest Reunion	HLS	Press Provided Tape Provided
3/14-15/08	Remarks--Introduce Bryan Stevenson and Bill Weld at HLS Public Interest Reunion	HLS	Tape Provided
3/14/08	Remarks -- Conversation with Jennifer Granholm at Public Interest Reunion	HLS	Press Provided Tape Provided
3/11/08	Remarks -- Introduce Q&A with Justice Kennedy	HLS	Tape Provided
3/10/08	Remarks--Dinner to Celebrate Justice Kennedy's 20th Year on the Supreme Court I introduced Justice Kennedy and offered a tribute to his service on the Supreme Court.	HLS	
3/8/08	Panelist -- "Women and the Law" at the Peter Jennings Project Conference	Philadelphia, PA	Audio available http://feeds.feedburner.com/nccprograms
2/27/08	Introduction--Faculty Chair Lecture (George Triantis)	HLS	Tape Provided
2/22/08	Remarks--HLS Black Law Students Association Spring Conference Alumni Lunch I spoke with HLS alumni and students about developments at the school.	HLS	

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2/20/08	Moderate Panel -- "20 Questions with Anthony Lewis" I moderated a panel discussion featuring Anthony Lewis.	Harvard University	
2/19/08	Panelist-- HLS Democrats "Women in Politics" Panel	HLS	
2/14/08	Remarks--Swearing-in Ceremony for Professor Mary Ann Glendon (U.S. Ambassador to the Vatican) I gave a toast at the swearing-in of Mary Ann Glendon.	HLS	Press provided.
2/4/08	Introduction--Faculty Chair Lecture (John Coates)	HLS	Tape Provided
2/2/08	Panelist--Dean's Panel at Milbank Partner's Meeting. The name and address of the group is: Milbank One Chase Manhattan Plaza New York, NY 10005-1413 I participated in a panel discussion on developments in the legal profession and legal education.	West Palm Beach, FL	
12/3/07	Introduction--Faculty Chair Lecture (Gerry Neuman)	HLS	Tape Provided
11/14/07	Remarks--Ames Moot Court Final Round Argument I introduced the participants in the final round of the HLS moot court competition.	HLS	
11/13/07	Moderate Panel -- Dean's Forum: Dealing with Terrorism: What Congress and the President Should Do	HLS	Tape Provided
11/8/07	Q & A with the Dean-- Alumni Leadership Conference I participated in a question-and-answer session with HLS alumni.	New York, NY	
11/7/07	Remarks--Alumni Dinner I spoke to HLS alumni about the state of the school.	HLS	

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11/3/07	Remarks--Bellow Sacks Conference on Legal Services I gave brief remarks welcoming the conference attendees.	HLS	
10/29/07	Introduction--Faculty Chair Lecture (Mark Tushnet)	HLS	Press Provided Tape Provided
10/28/07	Remarks– Native American Alumni Celebration I gave brief remarks thanking the Oneida Indian Nation for its gift to the law school	HLS	Press provided.
10/27/07	Q & A with the Dean--HLS Alumni Reunion	HLS	Tape Provided
10/26/07	Remarks -- Conversation with Michael Kinsley at Reunion Event	HLS	Tape Provided
10/24/07	Remarks--Dinner Honoring HLS Heyman Fellows I gave brief remarks praising the recipients of the Heyman Fellowship.	Washington, DC	
10/17/07	Speech—Address to Cadets at West Point Academy	West Point Academy	Text Provided
10/4/07	Remarks -- Introduced "Terrorism, Climate Change & Beyond" (panel featuring Cass Sunstein)	HLS	
10/3/07	Remarks--Asian and Pacific American Law Students Association Dinner I have no recollection of my remarks at this event.	HLS	
10/1/07	Remarks--HLS Alumnae Luncheon I spoke with HLS alumnae about the state of the school.	New York, NY	
9/19/07	Remarks--HLS Public Service Orientation	HLS	Press Provided Tape Provided
9/17/07	Speech--HLS State of the School Speech	HLS	Text Provided
9/17/07	Introduction--Faculty Chair Lecture (Janet Halley)	HLS	Tape Provided
9/6/07	Remarks--Unveiling of Charles Hamilton Houston Portrait	HLS	Tape Provided

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9/3-11/07	Remarks--First Year Student Welcome Dinners I spoke with incoming HLS students about the law school.	HLS	
8/31/07	Speech--Dean's Speech for New 1L and LLM Students	HLS	Text Provided
7/28/07	Moderate Panel--ACS National Convention, Congress & Balance of Power Panel	Washington, DC	Video at acslaw.org/Node/5196
7/26/07	Remarks--Leadership in Law Firms Reception I gave brief remarks welcoming the reception attendees.	HLS	
6/14-15/07	Various Remarks and Q&A at HLS Alumni Events I gave remarks at several alumni events over the weekend. Among them, I presented Olara Otunnu with the Harvard Law School Association Award, and I participated in a question-and-answer session.	Washington, DC	Press provided.
6/7/07	Speech -- HLS Commencement	HLS	Text Provided
6/6/07	Remarks -- HLS Graduating Students Class Day Ceremony	HLS	Tape Provided
5/31/07	Remarks -- American Bar Association Law School Development Conference: Soliciting Law Firms. The name and address of the group is: The American Bar Association 321 N. Clark St. Chicago, IL 60654-7598 I spoke about fundraising.	Broomfield, CO	
5/24/07	Remarks -- HLS Program on the Legal Profession Executive Education Program I welcomed the program participants and spoke about the relationship between private practice and academia.	HLS	
5/23/07	Remarks -- HLS Retiring Faculty Reception I gave remarks praising retiring faculty members William Andrews, Arthur Miller, Paul Weiler, and Bernard Wolfman.	HLS	

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5/21/07	Conversation – Massachusetts HLS Alumnae Network reception I led a conversation on women in the legal profession.	Boston, MA	Text provided.
5/5/07	Welcome – American Law and Economics Association Annual Meeting I gave brief remarks welcoming the attendees.	HLS	Press provided. Text provided.
4/28/07	Q&A with Dean -- HLS Alumni Reunion	HLS	Tape Provided
4/26/07	Remarks -- Cox-Richardson-Coleman Public Service Award, received by Patrick Fitzgerald I introduced the award winner.	HLS	Press provided. Audio available at www.law.harvard.edu/media/2007/04/26/alm-rel.rm
4/25/07	Remarks -- Dinner Honoring HLS Kaufman Fellows I gave remarks praising the recipients of the Kaufman Fellowship.	HLS	
4/24/07	Remarks -- Federal Judicial Center Conference on Legal Education I spoke on trends in legal education and innovations at HLS.	HLS	
4/23/07	Remarks -- Program on Negotiation: Great Negotiator Award, received by Bruce Wasserstein	HLS	Tape Provided
4/21/07	Remarks -- Latino Law and Public Policy Conference Breakfast I gave brief remarks welcoming the participants.	HLS	
4/19/07	Remarks -- Supreme Court Advocacy Project Moot Court I introduced the participants and gave a description of the case.	HLS	
4/19/07	Remarks -- Gary Bellow Public Service Award Ceremony I presented the Gary Bellow Public Service	HLS	

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72963.030

	Award.		
4/16/07	Introduction -- Faculty Chair Lecture (Ryan Goodman)	HLS	Tape Provided
4/16/07	Remarks - Harvard Humanities Center Panel on Human Enhancement I gave remarks at a panel discussion of Michael Sandel's book on genetic enhancement.	Harvard University	
4/14/07	Remarks -- HLS Civil Rights & Civil Liberties Law Review Dinner I gave brief remarks honoring several attorneys for their public service work.	HLS	Press provided.
4/13/07	Welcome -- ABA Conference: Children and the Law	HLS	Press Provided Tape Provided
4/13/07	Welcome -- Harvard Law Journal on Law and Gender Conference on Title IX	HLS	Transcript Provided
4/9/07	Remarks -- Introduced John Dewey Lecture in the Philosophy of Law given by Robert George	HLS	Tape Provided
4/7/07	Remarks -- HLS Charles Hamilton Houston Institute 150th Anniversary of Dred Scott Event	HLS	Press Provided Tape Provided
3/20/07	Remarks -- Ames Moot Court Semi-Final Round Arguments I introduced the participants in the semi-final round of the HLS moot court competition.	HLS	
3/19/07	Moderate Panel -- Petrie-Flom Conference on Proper Legal Limits on Human Enhancement I moderated a panel discussion on the legal and ethical limits of bio-engineering.	HLS	Press Provided
3/6/07	Remarks – I introduced Joel Klein, who gave the HLS/Appleseed Inaugural Lecture	HLS	Tape Provided
3/3/07	Remarks – I introduced a panel at the HLS Lambda Conference on Don't Ask Don't Tell	HLS	Press provided. Transcript Provided
2/20/07	Introduction -- Faculty Chair Lecture (Randall Kennedy)	HLS	Press provided.
2/16/07	Remarks -- Women's Law Association Conference Dinner	HLS	

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72963.031

	I welcomed the attendees and spoke generally about the conference.		
2/9/07	Remarks -- HLS Constitutional Law Conference I welcomed the conference attendees and spoke generally about the conference.	HLS	
2/6/07	Introduction -- Faculty Chair Lecture (William Stuntz)	HLS	Press provided.
1/4/07	Panelist -- AALS Plenary Session on Academic Freedom	Washington, DC	Audio at www.aals.org/am2007/thursday/index.html#plenary
12/1/06	Remarks -- HLS American Society for International Law Conference I welcomed the conference attendees and spoke generally about the conference.	HLS	Press Provided
11/30/06	Remarks -- Q&A with Justice Scalia	HLS	Press Provided Tape Provided
11/29/06	Remarks -- Dinner for Justice Scalia I gave remarks discussing Justice Scalia's service on the Supreme Court.	HLS	
11/20/06	Moderate Panel -- Harvard Law Review Supreme Court Forum I moderated a panel discussion about the Supreme Court's prior term.	HLS	
11/14/06	Remarks -- Ames Moot Court Final Round Argument I introduced the participants in the final round of the HLS moot court competition.	HLS	
11/8/06	Introduction of Jeffrey Toobin at HLS Alumni Dinner	New York, NY	
11/7/06	Introduction -- Faculty Chair Lecture (Joseph Singer)	HLS	Tape Provided
11/3/06	Remarks -- Festschrift Dinner Honoring Professor Paul Weiler I gave remarks praising Prof. Paul Weiler.	HLS	

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72963.032

11/1/06	Remarks -- Introduced Francis W. Biddle Memorial Lecture given by Reva Siegel	HLS	Text Provided
10/28/06	Q&A with Dean -- HLS Alumni Reunion	HLS	Tape Provided
10/28/06	Remarks – Introduction of Justice Kennedy at HLS Alumni Reunion Lunch	HLS	Text Provided
10/25/06	Remarks -- Reception Celebrating Establishment of Rite E. Hauser Professorship of Human Rights and Humanitarian Law	HLS	Tape Provided
10/19/06	Remarks -- Program on International Financial Systems Conference I gave brief remarks about the conference and welcomed the attendees.	HLS	
10/18/06	Remarks -- Dinner Honoring HLS Heyman Fellows I gave brief remarks praising the Heyman Fellowship recipients.	Washington, DC	Press provided.
10/3/06	Remarks -- Introduced Oliver Wendell Holmes Lecture given by Bruce Ackerman	HLS	Tape Provided
9/21/06	Remarks -- Introduced Israeli Supreme Court President Aharon Barak	HLS	Press Provided Tape Provided
9/20/06	Speech -- State of School Address	HLS	Press provided Text Provided
9/20/06	Remarks -- Gruber Foundation Dinner honoring Aharon Barak I discussed Aharon Barak's judicial career.	HLS	Press provided
9/19/06	Remarks -- HLS Public Service Orientation	HLS	Press Provided Tape Provided
9/8/06	Introduction -- Faculty Chair Lecture (Einer Elhauge)	HLS	Press Provided Tape Provided
9/7/06	Welcome -- HLS Multi-Jurisdictional Mock Patent Trial I introduced the mock trial and welcomed participants.	HLS	

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72963.033

9/7/06	Remarks -- HLS Petrie Flom Dinner on Law and Bioethics I spoke about the recent activities of the Petrie Flom Program at HLS.	HLS	
9/4-14/06	Remarks -- First Year Student Welcoming Dinners I spoke with incoming HLS students about the law school.	HLS	
9/1/06	Speech -- Dean's Speech to New 1L and LLM Students	HLS	Text Provided
7/18/06	Remarks -- Middlesex Committee of the Women's Bar Association. The name and address of the group is: Middlesex Committee of the Women's Bar Association 27 School Street, Suite 500 Boston, MA 02108 I spoke about issues relating to women in the law.	MA	
6/8/06	Speech -- HLS Commencement	HLS	Text Provided
6/7/06	Remarks -- HLS Alumni Lunch I spoke with HLS alumni about the state of the school.	HLS	
6/7/06	Remarks – Introduced Linda Greenhouse at HLS Graduating Student Class Day	HLS	Press Provided Tape Provided
6/3/06	Panelist -- Princeton Reunion Session on "The Roberts Court: Year One." The name and address of the group is: Princeton University Princeton, NJ 08544 I participated in a panel discussion on the 2005 Term of the Supreme Court.	Princeton, NJ	
5/26/06	Q&A with the Dean -- Harvard Law School Association of Europe	Catania, ITALY	

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72963.034

	I participated in a question-and-answer session with alumni.		
5/22/06	Welcome -- Law Teaching Workshop for HLS Alumni I gave brief remarks welcoming the workshop participants.	HLS	
5/15/06	Remarks -- HLS Faculty Retirement Celebration (Professors Herwitz, Shapiro, Sander) I gave remarks praising retiring HLS faculty.	HLS	
5/12/06	Remarks -- Introduce Paul Clement at Alumni Event at Supreme Court I introduced former Solicitor General Paul Clement.	Washington, DC	
4/29/06	Q&A with the Dean -- HLS Alumni Reunion I participated in a question-and-answer session with alumni.	HLS	
4/28/06	Remarks -- Dinner Honoring Professor Frank Sander I gave remarks discussing Prof. Frank Sander's work.	HLS	
4/27/06	Remarks -- HLS Scholarship Recipient Dinner I gave remarks to alumni and students discussing the importance of contributions for financial aid.	HLS	
4/25/06	Moderate Panel -- Student Panel on Free Expression and Harassment I moderated a student panel on how the law should deal with incidents of harassment.	HLS	
4/24/06	Remarks -- Dinner honoring HLS Kaufman Fellows I gave brief remarks praising recipients of the Kaufman Fellowship.	HLS	
4/21/06	Welcome -- Breakfast for Annual Harvard Latino Law and Policy Conference I gave brief remarks welcoming the conference participants.	HLS	

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72963.035

4/21/06	Welcome -- Faculty Conference on Criminal Procedure I gave brief remarks welcoming the conference participants.	HLS	
4/19/06	Remarks -- Memorial Service for Professor Arthur von Mehren	HLS	Text Provided
4/12/06	Remarks -- Opening of Navajo Supreme Court Session	HLS	Press Provided Tape Provided
4/11/06	Remarks -- HLS Law Firm Pro Bono Fair I gave remarks on the importance of pro bono work.	HLS	
4/11/06	Remarks -- Presentation of Gary Bellow Public Service Award	HLS	
4/8/06	Moderate Panel -- LAMBDA Student Organization Panel on Relationship Between Law Schools and the Military I moderated a panel discussion on the Solomon Amendment.	HLS	
4/5/06	Q & A -- A Conversation with Mark Warner	HLS	Tape Provided
4/4/06	Remarks and Q&A -- Federal Judiciary Conference on Legal Education I spoke to judges about trends in legal education and innovations at HLS.	HLS	
3/25/06	Panelist -- Yale Law Journal Symposium, Session on "Energy in the Executive: The Power of Unitary Leadership" I participated in a panel discussion on the Executive Branch.	New Haven, CT	Video available at: http://www.xanga.com/JuditHEmily/464437473/item.html
3/21-22/06	Remarks -- Ames Moot Court Semi-Final Round Dinner I introduced the participants in the semi-final round of the HLS moot court competition.	HLS	
3/20/06	Welcome -- Harvard Journal on Legislation Symposium, "Middle Class Crunch" I talked generally about the symposium and	HLS	

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72963.036

	welcomed the participants.		
3/20/06	Introduction -- Faculty Chair Lecture (David Rosenberg)	HLS	Tape Provided
3/17/06	Welcome -- HLS Journal of Law and Technology Conference I welcomed attendees to the conference and introduced the keynote speaker, Prof. Jerry Thursby	HLS	Video available at: http://www.law.harvard.edu/media/d/2010/05/17/kagan_joltsymp_2006_03_17.rm
3/17/06	Welcome -- National Democratic Law Students Council Kick-Off Convention I gave brief remarks about the event and welcomed the attendees.	HLS	Press Provided
3/11/06	Welcome – HLS Black Law Students Association Annual Conference I gave brief remarks about the event and welcomed the attendees.	HLS	
3/10/06	Welcome – HLS Climate Policy Conference I gave brief remarks about the event and welcomed the attendees.	HLS	Press provided
3/10/06	Moderate Panel -- Harvard Journal on Law and Gender conference on legal education and gender I moderated a panel discussion among faculty and students on legal education and gender.	HLS	
3/7/06	Welcome -- Speech by Massachusetts Lieutenant Governor Kerry Healey I introduced Gov. Healey.	HLS	
3/4/06	Welcome -- HLS International Law Journal Symposium I spoke generally about the symposium and welcomed the participants.	HLS	
2/25/06	Welcome -- UN Reform and Human Rights Conference	HLS	Press Provided Tape Provided
2/22/06	Introduction -- Faculty Chair Lecture (Martha	HLS	

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72963.037

	Minow)		
2/16/06	Welcome -- HLS Federalist Society and American Constitution Society Sponsored Moot Court I welcomed the moot court participants and gave background about the case.	HLS	
2/11/06	Remarks -- HLS Alumni of the Americas Celebration I spoke with HLS alumni about the state of the school.	Miami, FL	
2/6/06	Remarks -- Memorial Service for Professor David Westfall	HLS	Text Provided
2/5/06	Remarks -- Dinner honoring HLS Skadden Fellows I gave brief remarks praising the recipients of the Skadden Fellowship.	HLS	
1/19/06	Remarks and Q&A -- HLS Alumni Association of Japan I participated in a question-and-answer session with alumni.	Tokyo, JAPAN	
1/15/06	Remarks -- HLS Alumni Association of China I gave brief remarks to HLS alumni on the state of the school.	Beijing, CHINA	
1/11/06	Remarks and Q&A -- HLS Alumni Association of Korea I participated in a question-and-answer session with alumni.	Seoul, KOREA	
12/3/05	Welcome--HLS Disability Law Workshop I spoke generally about the event and welcomed the participants.	HLS	
11/30/05	Remarks--HLS Petrie Flom Center Celebration I spoke about the recent activities of the Petrie Flom Center at HLS.	New York, NY	
11/17/05	Remarks--Ames Moot Court Final Competition I introduced the participants in the final round of the HLS moot court competition.	HLS	
11/16/05	Introduction--Faculty Chair Lecture (Allen	HLS	

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72963.038

	Ferrell)		
11/12/05	Welcome -- ACS Regional Conference I gave remarks welcoming the conference attendees.	HLS	Press Provided
11/9/05	Moderate Panel--Dean's Forum: Executive Power, Detention, and Interrogation	HLS	Tape Provided
11/7/05	Speech--Leslie H. Arps Memorial Lecture on Women and the Law at the Association of the Bar of the City of New York	New York, NY	Text Provided
11/5/05	Welcome--HLS China Symposium I spoke generally about the event and welcomed the participants.	HLS	
11/4/05	Welcome--Panel on Director Liability, sponsored by HLS Corporate Governance Program I welcomed the participants in a panel discussion on corporate executive liability.	HLS	
11/3/05	Remarks--HLS Nuremberg Trials Conference on Pursuing Human Dignity I spoke generally about the event and welcomed the participants.	HLS	
11/2/05	Remarks--Alumni Dinner I spoke with HLS alumni about the state of the school.	New York, NY	
11/1/05	Remarks -- Great Lawyers Forum with Ted Wells I introduced Ted Wells and interviewed him about his career.	HLS	Press Provided
10/26/05	Welcome--Dinner Honoring HLS Heyman Fellows I gave remarks praising the recipients of the Heyman Fellowship.	Washington, DC	
10/22/05	Q & A with the Dean--Alumni Reunion Weekend I participated in a question-and-answer session with HLS alumni.	HLS	
10/19/05	Remarks--HLS Conference on Intellectual Property Law	HLS	

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72963.039

	I spoke generally about the conference and welcomed the attendees.		
10/12/05	Remarks -- LAMBDA Student Event I do not recall the substance of my remarks.	HLS	
10/11/05	Introduction--Faculty Chair Lecture (Howell Jackson)	HLS	
10/8/05	Speech--American Academy of Arts & Sciences Induction Ceremony	HLS	Text Provided
10/5/05	Remarks--Great Lawyers Forum with Newton Minow	HLS	Tape Provided
10/3/05	Moderate Panel--Dean's Forum: The U.S. Supreme Court's 2005 Term	HLS	Tape Provided
10/2/05	Remarks--Alliance of Independent Feminists, Harvard Federalist Society, and Journal of Law & Public Policy Event I do not recall the substance of my remarks.	HLS	
9/29/05	Q & A with Dean--American Constitution Student Society I participated in a question-and-answer session with an HLS student group.	HLS	
9/28/05	Moderate Panel--Anglo-American Legal Exchange Panel (with Justices Breyer and Scalia and British counterparts)	HLS	Press Provided Tape Provided
9/28/05	Remarks--Anglo-American Legal Exchange Dinner I do not recall the substance of my remarks.	HLS	
9/22/05	Speech--State of the School Address	HLS	Text Provided
9/19/05	Remarks--Federalist Society and American Constitution Society Moot Court I welcomed the moot court participants and described the case.	HLS	
9/17/05	Q & A with the Dean-Alumni Leadership Conference & Celebration of Black Alumni I participated in a question-and-answer session with alumni.	HLS	
9/17/05	Remarks-- HLS Celebration of Black Alumni & Alumni Award to Senator Barack Obama	HLS	Press Provided Tape

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72963.040

			Provided
9/16/05	Remarks--HLS Alumni Leadership Conference Dinner I gave brief welcoming remarks to the conference attendees.	HLS	Press provided.
9/15/05	Remarks--HLS Charles Hamilton Houston Institute Event	HLS	Press provided. Tape Provided
9/10/05	Remarks--HLS Black Law Students Association Luncheon I do not recall the substance of my remarks.	HLS	
9/9/05	Welcome-- HLS Public Service Student Orientation I gave remarks on the importance of public service.	HLS	
9/2/05	Speech--Dean's Speech to New 1L and LLM Students I spoke to incoming HLS students about the law school.	HLS	
9/1-14/05	Remarks--First Year Student Welcome Dinners I spoke to incoming HLS students about the law school.	HLS	
7/29/05	Moderate Panel-American Constitution Society-Commander-in-Chief Power in the 21st Century	HLS	Transcript provided
6/22/05	Welcome – Internet Law Program sponsored by the Berkman Center for Internet & Society I gave brief welcoming remarks to open the conference.	HLS	Press provided. Video available at: http://www.law.harvard.edu/media/d/2010/05/17/kagan_intlaw_welcome_2005_06_22.rm
6/9/05	Speech -- HLS Commencement	HLS	Text Provided
6/8/05	Remarks -- HLS Alumni Lunch	HLS	

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72963.041

	I spoke with HLS alumni about the state of the school.		
6/8/05	Remarks -- HLS Graduating Student Class Day I introduced the Class Day speaker, Eliot Spitzer.	HLS	Press provided.
6/1/05	Panelist -- New Realities of Fundraising at American Bar Association Conference. The name and address of the group is: The American Bar Association 321 N. Clark St. Chicago, IL 60654-7598 I participated in a panel discussion on fundraising.	Jackson Hole, WY	
5/18/05	Remarks -- Federal Judicial Center Program at HLS I gave remarks on the state of legal education.	HLS	
4/29/05	Remarks -- HLS Federalist Society & HLS Journal of Law & Public Policy Banquet I do not recall the substance of my remarks.	HLS	
4/28/05	Remarks -- Dinner Honoring HLS Kaufman Fellows I gave brief remarks praising the recipients of the Kaufman Fellowship.	HLS	
4/23/05	Remarks -- 8th Annual Harvard Latino Law and Policy Conference Breakfast I gave brief remarks welcoming the conference participants.	HLS	
4/16/05	Q&A with the Dean -- HLS Reunions	HLS	Tape Provided
4/8/05	Remarks -- In Response to Paper Given by Yale Law School Professor Akhil Amar at Constitutional Law Conference I critiqued a section of Akhil Amar's book The American Constitution: A Biography.	HLS	
4/8/05	Welcome -- HLS Student Conference on Women and War	HLS	

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72963.042

	I spoke about the conference and welcomed attendees.		
4/6-19/05	Remarks -- Third-Year Student Graduation Dinners I congratulated members of the HLS Class of '05.	HLS	
3/24/05	Remarks -- Faculty Conference on Governance by Design I spoke about the conference and welcomed the participants.	HLS	
3/22-23/05	Remarks -- Ames Moot Court Semi-Final Round Arguments I introduced the participants in the semi-final round of the HLS moot court competition.	HLS	
3/19/05	Welcome -- Harvard Civil Rights-Civil Liberties Law Review 40th Anniversary Conference I spoke about the conference and welcomed the attendees.	HLS	
3/16/05	Remarks and Q&A -- HLS Students Law Teaching Colloquium I participated in a question-and-answer session on law teaching.	HLS	
3/12/05	Welcome -- Black Law Students Association Banquet I welcomed the banquet attendees.	Harvard	
3/5/05	Moderate Panel -- International Law Journal Discussion on Professors Detlav Vagts and Henry Steiner I moderated a panel discussion on international law.	HLS	
2/26/05	Remarks -- Federalist Society Symposium Banquet. I do not recall the substance of my remarks.	HLS	
2/16/05	Remarks -- Dinner Honoring HLS Skadden Fellows I gave brief remarks praising the recipients of	Harvard	

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	the Skadden Fellowship.		
2/7/05	Introduction -- Faculty Chair Lecture (Richard Fallon)	HLS	
1/17/05	Panelist -- Free Speech in Wartime: Theoretical and Practical Perspectives. The name and address of the group is: Rutgers Law School 217 North Fifth Street Camden, NJ 08102 I participated in a panel discussion on the First Amendment in times of crisis.	Rutgers Univ. Law School, Camden NJ	
1/10/05	Remarks -- California Alumni Capital Campaign Kickoff I spoke with HLS alumni about the school.	Los Angeles, CA	
1/9/05	Remarks -- Capital Campaign Dinner I introduced Congresswoman Jane Harman	Los Angeles, CA	
1/8/05	Remarks -- West Coast Alumni Capital Campaign Kickoff I spoke with HLS alumni about the school.	San Francisco, CA	
12/10/04	Welcome – Internet & Society Conference I gave brief welcoming remarks	HLS	Video available at: http://www.law.harvard.edu/media/d/2010/05/17/kagan_berkman_welcome_2004_12_09.rm
11/18/04	Remarks -- Ames Moot Court Final Round Argument I introduced the participants in the final round of the HLS moot court competition.	HLS	
11/17/04	Remarks -- Chicago Alumni Capital Campaign Kickoff I spoke with HLS alumni.	Chicago, IL	
11/15/04	Moderate Panel -- Dean's Forum: Perilous Times: Free Speech in Wartime - a Conversation with Geoffrey Stone	HLS	Video available at: http://www.la

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	I moderated a panel discussion on the First Amendment in times of crisis.		w.harvard.edu /media/2004/11/15/dean_geoffstone.mov
11/8/04	Moderate Panel -- Dean's Forum: 9/11 Commission I moderated a panel discussion on the work of the 9/11 Commission.	HLS	Video available at: http://www.law.harvard.edu /media/2004/11/08/dean_911_comm.mov
11/3/04	Remarks -- Radcliffe Women's Faculty Lunch I spoke on the differences between men's and women's experiences at law school.	Harvard	
10/29/04	Moderate Panel -- Comparative Rationalities in European and U.S. Administrative Law I moderated a panel discussion on comparative administrative law.	HLS	
10/28/04	Moderate Panel -- Equal Justice Works Conference, Session on Moral Lawyering. The name and address of the group is: Equal Justice Works 2120 L Street, NW, Suite 450 Washington, DC 20037 I moderated a panel discussion on the legal profession.	Washington DC	
10/27/04	Remarks -- HLS Capital Campaign Kickoff I spoke with HLS alumni about the school.	Washington DC	
10/23/04	Remarks -- Harvard Legal Aid Buearu 90th Anniversary I gave brief remarks at a reception commemorating the 90th anniversary of the Harvard Legal Aid Bureau.	HLS	Press provided.
10/23/04	Q&A with the Dean -- HLS Alumni Reunion I participated in a question-and-answer session with HLS alumni.	HLS	
10/19/04	Remarks -- American Friends of Hebrew University Torch of Learning Award Lunch	NYC	Text Provided

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10/16/04	Remarks -- Human Rights Program 20th Anniversary Reception	HLS	Text Provided
10/15/04	Remarks -- LAMBDA Student Event I discussed my views on the Don't Ask, Don't Tell Policy and the Solomon Amendment.	HLS	Press Provided
10/14/04	Welcome -- Conference on The Past, Present & Future of Jewish Settlements in the West Bank and Gaza	HLS	Tape Provided
10/12/04	Moderate Panel -- Letters to a Young Lawyer Discussion for First-Year HLS Students I moderated a panel discussion on the career paths of young lawyers.	HLS	
10/8/04	Remarks -- Archibald Cox Memorial Service	HLS	Text Provided
10/7/04	Remarks -- Dinner Honoring HLS Heyman Fellows I gave brief remarks praising the recipients of the Heyman Fellowship	Washington DC	
10/5/04	Moderate Panel -- Dean's Forum: U.S. Supreme Court's 2004 Term I moderated a panel discussion on the 2004 Term of the Supreme Court.	HLS	Tape Provided
10/4/04	Remarks -- Presentation of Cox-Richardson-Coleman Public Service Award I gave remarks honoring California State Senator Sheila Kuehl.	HLS	
10/4/04	Moderate Panel -- Women in Elected Office Discussion I moderated a panel discussion on women politicians.	HLS	
10/2/04	Welcome -- Just Democracy Organization Conference I welcomed the conference participants.	HLS	
9/23/04	Remarks -- HLS Program on the Legal Profession Lunch I do not recall the substance of my remarks.	HLS	
9/23/04	Speech -- HLS State of the School Speech I gave the dean's annual speech on the state of	HLS	Press Provided

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	the school.		
9/22/04	Welcome -- Law Firm Pro Bono Fair I gave welcoming remarks on the importance of pro bono work.	HLS	
9/21/04	Remarks -- HLS Public Service Orientation I gave brief remarks on the importance of public service.	HLS	
9/20/04	Remarks -- LLM Student Welcome Dinner I gave remarks welcoming new students.	HLS	
9/6-14/04	Remarks -- First-Year Student Welcoming Dinners I gave remarks welcoming new students.	HLS	
9/3/04	Speech -- Dean's Speech to New 1L and LLM Students I gave remarks welcoming new students.	HLS	
8/5/04	Remarks -- Dinner Celebrating New Faculty Chair (Hieken Professorship of Patent Law) I gave remarks praising the donors of a new chair in patent law.	HLS	
6/15-19/04	Welcome, Remarks -- HLS International Alumni Meeting I gave remarks on the connections between the University of Cambridge and Harvard University.	London, England	Press Provided
6/11/04	Remarks -- National Pre-Law Advisors Lunch I spoke on trends in legal education and innovations at HLS.	HLS	
6/10/04	Speech -- HLS Commencement	HLS	Text Provided
6/9/04	Remarks -- HLS Alumni Lunch I spoke with HLS alumni on the state of the school.	HLS	
6/9/04	Remarks -- HLS Graduating Students Class Day I introduced the class day speakers and presented student awards.	HLS	

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72963.047

6/3/04	Remarks -- Dinner Celebrating New Faculty Chair (Robert C. Clark Professorship) I gave remarks praising the donors of a new faculty chair.	HLS	
5/15/04	Speech -- North American Meeting of Lex Mundi	Boston, MA	Text Provided
5/6/04	Remarks -- Boston Alumni Regional Campaign Kickoff I spoke with HLS alumni about the school.	HLS	
5/4/04	Remarks -- Introduction to Lecture by Jeremy Waldron ("Safety, Security & Public Goods With Structure")	HLS	
4/29/04	Remarks -- Massachusetts Superior Court Judges Lunch. The name and address of the group is: Massachusetts Superior Court Three Pemberton Square Boston, MA 02108 I spoke about trends in legal education.	Dedham, MA	
4/29/04	Remarks -- Dinner Honoring HLS Kaufman Fellows I gave brief remarks praising the recipients of the Kaufman Fellowship.	HLS	
4/24/04	Q&A with the Dean -- HLS Alumni Reunions I participated in a question-and-answer session with HLS alumni.	HLS	
4/23/04	Remarks -- Alumni Lunch	HLS	Tape Provided
4/22/04	Remarks -- HLS Dinner For Donors and Scholarship Recipients I gave brief remarks discussing the importance of support for financial aid.	HLS	
4/21/04	Moderate Panel -- Dean's Forum on Faculty Book (David Kennedy: The Dark Side of Virtue)	HLS	Tape Provided
4/13-17/04	Various Remarks -- Brown v. Board of Education at 50 Conference	HLS	Press Provided Tape

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	I spoke on a panel of Justice Thurgood Marshall's former clerks about the Justice's legacy.		Provided
4/7-26/04	Remarks -- Third-Year Student Graduation Dinners I congratulated the HLS Class of '04.	HLS`	
3/17-18/04	Remarks -- Ames Moot Court Semi-Final Arguments I introduced the participants in the semi-final round of the HLS moot court competition.	HLS	
3/16/04	Remarks -- Cox-Richardson-Coleman Public Service Award (honoring Senator Paul Sarbanes and DOJ Inspector General Glenn Fine) I gave brief remarks honoring the award recipients.	HLS	Press Provided
3/11/04	Moderate Panel -- Dean's Forum on Faculty Book (Charles Fried: Saying What the Law Is: The Constitution in the Supreme Court)	HLS	Tape Provided
3/7/04	Remarks -- HLS Black Law Students Association Brunch I do not recall the substance of my remarks.	HLS	
3/1/04	Remarks -- Talk to Federal Judicial Conference on Legal Education I spoke about trends in legal education and innovations at HLS.	HLS	
2/27/04	Remarks -- HLS Alumni of Florida Dinner I spoke with HLS alumni about the state of the school.	Miami, FL	
2/17/04	Moderate Panel -- Dean's Forum on Gender and the Classroom	HLS	Press Provided Tape Provided
2/14/04	Welcome – Latter-Day Saint Student Association Conference I gave brief remarks welcoming the conference attendees.	HLS	Press provided.
2/11/04	Remarks -- Harvard Alumni of Illinois Lunch	Chicago, IL	

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	I spoke with HLS alumni about the state of the school.		
2/10/04	Remarks -- HLS Alumni of Houston Breakfast I spoke with HLS alumni about the state of the school.	Houston, TX	
2/9/04	Remarks -- HLS Alumni of Dallas Lunch I spoke with HLS alumni about the state of the school.	Dallas, TX	
2/5/04	Moderate Panel -- Dean's Forum on Goodridge v. Dept. of Public Health	HLS	Tape Provided
1/30/04	Remarks -- HLS Alumni of New York Lunch I spoke with HLS alumni about the state of the school.	New York City, NY	
1/23/04	Remarks -- Dinner Honoring HLS Skadden Fellows I gave brief remarks praising the recipients of the Skadden Fellowship.	HLS	
1/22/04	Speech -- NYU New Building Dedication (speech on Dean Roscoe Pound's 1952 Speech "Legal Education in a Unified World")	New York City, NY	Text Provided
1/5/04	Remarks -- HLS Atlanta/Regional Alumni Lunch I spoke with HLS alumni about the state of the school.	Atlanta, GA	
12/8/03	Remarks -- Harvard Alumni of Illinois Lunch I spoke with HLS alumni about the state of the school.	Chicago, IL	
11/15/03	Remarks -- In Response to Paper Given by Professor Bruce Ackerman at Constitutional Law Conference I critiqued a paper by Bruce Ackerman on emergency powers under the Constitution.	HLS	
11/13/03	Remarks -- HLS JD/MBA Reunion Dinner I spoke with HLS alumni about the state of the school.	New York City, NY	
11/12/03	Remarks -- Ames Moot Court Final Round Argument	HLS	

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	I introduced the participants in the final round of the HLS moot court competition.		
11/7/03	Remarks -- Environmental Law Conference I spoke generally about the conference and welcomed participants.	HLS	
11/6/03	Q&A with the Dean -- HLS Alumni of New Jersey I participated in a question-and-answer session with alumni about the school.	New Jersey	
10/30/03	Remarks -- HLS Alumni of Southern California Lunch I spoke with HLS alumni about the state of the school.	Los Angeles, CA	
10/28/03	Remarks -- HLS Alumni of Massachusetts Lunch I spoke with HLS alumni about the state of the school.	Boston. MA	
10/25/03	Q&A with the Dean -- HLS Alumni Reunions I participated in a question-and-answer session with HLS alumni about the school.	HLS	
10/24/03	Remarks -- Hale & Dorr Legal Services Center 10th Anniversary I spoke about the importance of the clinic's work in educating students and providing legal services to the community.	HLS	
10/23/03	Remarks -- HLS Law Teachers' Colloquium for Students I talked to students about pursuing a career in academia.	HLS	
10/20/03	Moderate Panel -- Dean's Forum on the judicial confirmation process	HLS	Tape Provided
10/16/03	Remarks -- HLS Alumni Dinner I spoke with HLS alumni about the state of the school.	New York City, NY	
10/15/03	Introduction -- Faculty Chair Lecture (Terry Fisher)	HLS	Tape Provided
10/14/03	Remarks -- Gary Bellow Public Service Award Reception	HLS	

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	I presented the Gary Bellow Public Service Award.		
10/10/03	Welcome -- LAMBDA Student Conference I gave remarks regarding the Solomon Amendment and *FAIR v. Rumsfeld.*	HLS	Press Provided
10/9/03	Moderate Panel -- Dean's Forum on U.S. Supreme Court's 2003 Term	HLS	Tape Provided
10/8/03	Remarks -- Unveiling of Archibald Cox Portrait	HLS	Press Provided
10/7/03	Introduction – Jerry Wurf Memorial Lecture given by Governor Bill Richardson	HLS	Transcript provided.
10/2/03	Moderate Panel -- Letters to a Young Lawyer Discussion for First-Year HLS Students	HLS	Tape Provided
9/22/03	Remarks - Faculty Book Party (Elizabeth Warren: The Two-Income Trap) I gave remarks on Elizabeth Warren's book.	Washington, DC	
9/20/03	Remarks -- HLS Gay and Lesbian Alumni Reunion I gave brief remarks about the significance of the event.	Cambridge, MA	Press Provided
9/19/03	Remarks -- HLS Alumni Leadership Conference Lunch I spoke on the state of the school.	HLS	
9/17/03	Speech -- HLS State of the School Speech	HLS	Text Provided
9/5/03	Remarks -- Introduce Warren Christopher I introduced Warren Christopher and praised his public service.	HLS	Press Provided
9/2-11/03	Remarks -- First-Year Student Welcome Dinners I welcomed incoming HLS students.	HLS	
8/31/03	Remarks -- ColorLines Conference -- Plenary Session: The Future of Race in the Law I do not recall the substance of my remarks.	HLS	
8/29/03	Speech -- Dean's Speech to New 1L & LLM Students I gave remarks to incoming HLS students about the law school.	HLS	

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8/2/03	Moderate Panel -- American Constitution Society conference (Originalism, Orignal Intent, Original Meaning Panel)	Washington, DC	Transcript Provided
7/24/03	Remarks -- HLS Alumni Reception I spoke with HLS alumni about the state of the law school.	Washington, DC	
6/21/03	Remarks on judicial review to Princeton Alumni	Williamsburg, VA	Notes Provided
5/3/03	Remarks – 50th Anniversary of Women Graduates I gave brief welcoming remarks at an alumni event commemorating 50 years of women graduates at the law school.	HLS	Press provided.
4/30/03	Remarks to bankruptcy judges I spoke on trends in legal education and innovations by HLS.	HLS	
4/8/03	Moderate panel on Second Amendment and gun control sponsored by the Harvard Law School Target Shooting Club.	HLS	Press provided Video available at: http://www.law.harvard.edu/media/d/2010/05/17/kagan_gunctrl_2003-04-08.rm
4/4/03	Dean Acceptance Speech I gave an acceptance speech on the announcement of my appointment as dean.	HLS	Press provided
2/24/03	Remarks on judicial review in administrative and constitutional law at academic conference	University of Minnesota Law School	Notes Provided
2/13/03	Remarks on Presidential Administration article. The name and address of the group is: Florida State Law School 425 W. Jefferson St. Tallahassee, FL 32306-1601 I gave remarks discussing my 2001 law review article *Presidential Administration*.	Florida State Law School	

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1/5/03	Remarks on Presidential Administration article at academic conference (American Association of Law Schools). The name and address of the group is: American Association of Law Schools 1201 Connecticut Ave., NW, Suite 800 Washington, DC 20036 I gave remarks discussing my 2001 law review article *Presidential Administration.*	Washington, DC	
11/11/02	Moderated Harvard Law Review Supreme Court Forum I moderated a panel discussion with Chief Justice Aharon Barak and Prof. Charles Fried on Barak's Harvard Law Review Foreword.	HLS	Press provided. Video available at: http://www.c-spanarchives.org/program/174324-1
10/18/02	Remarks on Congressional Interpretation of Constitution at academic conference. The name and address of the group is: William & Mary College P.O. Box 8795 Williamsburg, VA 23187 I do not recall the substance of my remarks.	Williamsburg, VA	
3/12/02	Moderated Journal of Legislation Panel I moderated a panel discussion on affirmative action in higher education.	HLS	
11/1/01	Remarks at American Bar Association conference I spoke on executive review of regulation	Washington, DC	Notes Provided
10/12/01	Conference Remarks. The name and address is: Duke Law School Science Drive and Towerview Road Durham, NC 27708	Duke Law School, Durham, NC	

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	I critiqued a paper by Professor Chris Schroeder on deliberative democracy		
9/13/01	Remarks -- Yale Law School Legal Theory Workshop. The name and address of the group is: Yale Law School 127 Wall Street New Haven, CT 06511 I spoke on my 2001 law review article *Presidential Administration*	New Haven, CT	
4/21/01	Toastmaster and Introduce Merrick Garland at Harvard Law Review Banquet	Boston, MA	Text Provided
11/17/00	Remarks -- HLS Faculty Workshop on Presidential Administration article	HLS	Notes Provided
10/3/00	Debate with Charles Fried I participated in a debate with Prof. Fried on presidential elections.	Harvard Kennedy School, Cambridge, MA	
4/5/97	Remarks – I spoke on presidential appointment power at a conference, "Presidential Power in the 21st Century" The name and address of the group is: Case Western Law School 11075 East Blvd. Cleveland, OH 44106 I spoke on presidential appointment power.	Case Western Law School, OH	
5/16/96	Remarks to University of Chicago alumni. This event was sponsored by the University of Chicago. I spoke on the work of the White House Counsel's Office.	Washington, DC	
5/9/96	Remarks to Treasury Department Lawyers. The name and address of the group is: Treasury Department 1500 Pennsylvania Ave., NW Washington, DC 20220	Washington, DC	

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	I spoke on the work of the White House Counsel's Office		
2/16/96	Remarks – I spoke on speech codes at a conference, "Developments in Free Speech Doctrine: Charting the Nexus Between Speech and Religion, Abortion, and Equality"	University of California at Davis	Notes Provided
9/21/95	Remarks on Relationship Between First Amendment Doctrine and Technological Change at Libel Lawyers' Conference	McLean, VA	Notes Provided
8/2/95	Remarks on work of White House Counsel's Office to Sidley and Austin summer associates. The name and address of the group is: Sidley & Austin 1501 K St., NW Washington, DC 20005	Washington, DC	
4/28/95	Remarks on constitutionality of speaker-based restrictions at American Bar Association panel on communications law	Washington, DC	Notes Provided
12/3/94	Conference Remarks I spoke on gender and legal education	University of Chicago Law School	
11/5/94	Conference Remarks I spoke on *Shaw v. Reno*.	University of Chicago Law School	
2/10/94	Remarks on First Amendment doctrine at faculty workshop	University of Chicago Law School	Notes Provided
11/15/93	Remarks to law school alumni I spoke on the judicial confirmation process.	Chicago, IL	
10/23/93	Remarks on critical race theory to high school teachers	Chicago, IL	Notes Provided
10/16/93	Remarks on censorship in schools at Chicago Humanities Festival	Chicago, IL	Notes Provided
5/15/93	Conference Remarks I spoke on hate speech.	University of Chicago Law School	
4/23/93	Faculty Workshop. The name and address of the group is: St. Louis University Law School 3700 Lindell Blvd.	St. Louis University Law School	

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	St. Louis, MO 63108 I gave remarks on my First Amendment scholarship.		
3/6/93	Conference Remarks I spoke on hate speech.	University of Chicago Law School	
2/11/93	Remarks on Thurgood Marshall to law school alumni	Chicago, IL	
10/10/92	Moderated panel at academic conference I moderated a panel discussion on the freedom of the press.	University of Chicago Law School	
Fall 1992	Remarks on legal education to law school alumni	University of Chicago Law School	Notes Provided

e. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Where I do not have a video or transcript, I have listed the name and address of the group before which the speech was given in the table above. Several of the speeches were given to Harvard Law School groups. The address for all those groups is:

Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Several of the speeches were given to Justice Department groups. The address for all those groups is:

U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Several of the speeches were given to Chicago Law School groups. The address for all those groups is:

University of Chicago Law School
1111 East 60th St.
Chicago, IL 60637

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f. List all interviews you have given to newspapers, magazines, or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have tried to recall and search for interviews to the best of my ability. I have relied on a search of Nexis to accomplish this task for publications other than those associated with Harvard University. I have separately searched the archives of all Harvard publications. I list below (and provide) all articles I have found in which I am quoted, first from my search of Nexis and next from my search of Harvard publications:

These articles are from general publications:

DATE	PUBLICATION	HEADLINE
12/22/09	National Public Radio	Solicitor General Holds Views Close to Her Chest
10/19/09	Main Justice Blog	Thurgood Marshall Still Watching Over Kagan
5/4/2009	National Law Journal	Kagan: Just Call Her 'The General'
12/7/2008	New York Times	Harvard Lightning Rod Finds Path to Renewal With Obama
6/18/2008	States News Service	Ex-Treasury, Congressional Tax Expert Berman to Head Graduate Tax Program at BU Law School
5/12/2008	National Law Journal	Harvard Law Faculty Articles To Be Free on Net
3/19/2008	Boston Globe	Harvard Law plan good news for public sector/Tuition waiver makes choice more attractive
3/18/2008	New York Times	Harvard Law, Hoping Students Will Consider Public Service, Offers Tuition Break
Autumn 2007	The Journal of Blacks in Higher Education	The Decline in Black Enrollments at the Nation's Highest-Ranked Law Schools
10/31/2007	New York Times	Training Law Students for Real-Life Careers
6/18/07	National Law Journal	More Job Hopping at Schools
1/17/2007	New York Times	At Berkeley Law, a Challenge to Overcome All Barriers
10/7/2006	New York Times	Harvard Law Decides to Steep Students in 21st-Century Issues
March 2006	Student Lawyer Magazine	Restoring Lawyers as Public Servants

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9/18/2005	Boston Globe	Obama urges alumni to help fight poverty/Gives speech at Harvard meeting of black grads
9/10/2005	Boston Globe	Elite Colleges' Welcome Brings Unexpected Boon
8/4/2005	Associated Press	Roberts Puts Harvard Law on Hot Streak
6/14/2004	National Law Journal	Top Law Professors Are a Hot Commodity, and Schools are Scrambling To Keep Them
May 2004	The Metropolitan Corporate Counsel	New England and Boston - Law Schools; Harvard Law School: Progress on Many Fronts
Winter 2004	HCHS Alum Notes	Alum Profile
9/21/03	Boston Globe	Harvard Law Dean's Goal Is Revolution
Summer 2003	Ms. Magazine	Taking the Law in Her Hands
6/15/2003	Boston Globe	Harvard Law School Launches Ambitious Fund-Raising Campaign
1/22/1999	Seattle Post-Intelligencer	State Joins Fight to Keep Tobacco Money From Feds
11/21/1998	The National Journal	Clinton and Tobacco: What Now?
11/12/1998	Newsday (New York)	A Weaker Settlement? New Tobacco Deal Not as Strong on Teen Smoking, Critics Say
10/1/1998	Associated Press	With Fear, Fascination, Lockhart Takes Press Secretary Role
8/15/1998	Los Angeles Times	Court Rules FDA Cannot Regulate Tobacco as Drug; Law: Appeals Panel's Decision Deals Key Blow to Clinton Administration's Fight to Curb Youth Smoking. Judges Say Congress Never Gave the Agency Jurisdiction.
8/15/1998	Newsday (New York)	Big Tobacco's Victory / Appeals Court Bars FDA Regulation
6/23/1998	Philadelphia Inquirer	Clinton to Survey Teen Smoking Habits / The President, Still Hoping for a Tobacco-Control Bill, Said the Data Would Reveal Which Ads Entice Children.
5/18/1998	The New Republic	Wonderwonk
5/9/1998	Star Tribune (Minneapolis, MN)	Cost of National Deal Probably Just Went Up
4/3/1998	St. Petersburg Times (Florida)	As Clinton Returns, Foes Who Smelled Victory Taste Defeat
4/1/1998	New York Times	Heated Hearing Over the Fate of an Agency
3/31/1998	San Antonio Express-News	Tobacco Bill Would Limit Annual Liability at

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	(Texas)	$6.5 Billion
3/22/1998	Newsday (New York)	Tobacco Deal's Hazy Outlook. Working Out Details of the Tobacco Deal
1/30/1998	Los Angeles Times	Cigarette Execs Get Cool Reception at House Hearing; Tobacco: They Express Regret, Push for Ratification of Landmark Settlement. But Deal's Prospects Have Grown Cloudy.
1/29/1998	Los Angeles Times	National Perspective; Legislation; Proposed Tobacco Settlement Isn't Setting Congress on Fire; Some Lawmakers are Beginning to Gravitate Toward a Scaled-Back Alternative to the Sweeping Deal.
1/27/1998	Newsday (New York)	Disclosure of Targeting Teens Could Smother Smoking Deal
11/10/1997	Associated Press	Clinton Opens Hate Crime Conference
8/10/1997	Knight Ridder Washington Bureau	Clinton Wants Business to View Welfare Recipients as Untapped Resources
7/28/1997	Austin American-Statesman (Texas)	Clinton Tells States to Put Welfare to Work for Poor
7/28/1997	Charlotte Observer (North Carolina)	Funds for the Poor Should Go to Poor, Clinton Says
6/5/1997	New York Times	G.O.P. Backing Off a Deal to Restore Aid to Immigrants
8/12/1994	Associated Press	Mikva's Political Skills to be Tested as Clinton's New Counsel
1/16/1994	Chicago Tribune	In His Court; Mikva Brings a Politician's Perspective to the Federal Bench

These articles are from Harvard publications:

DATE	PUBLICATION	HEADLINE
2/27/09	Harvard Crimson	Kagan's Legal Legacy
2/16/09	Harvard Law Record	First Circuit Relocates to HLS
12/18/08	Harvard Gazette	Lawrence Lessig Receives Two Harvard Appointments
11/5/08	Harvard Law School website	Barack Obama '91 Will Be the 44th President of the United States
11/2/08	Harvard Crimson	Harvard Goes to Washington
10/27/08	Harvard Crimson	HLS Looks to Public Sector
10/1/08	Harvard Law Bulletin	Northwest Passage
10/1/08	Harvard Law	A Fundamental Advantage

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	Bulletin	
7/1/08	Harvard Law Bulletin	Startup for an Ailing Planet
5/29/08	Harvard Gazette	Harvard Law School Campaign Surpasses Goal
5/22/08	Harvard Gazette	Affordable Harvard: A Year of Financial Aid Initiatives
5/15/08	Harvard Gazette	Harvard Elevates Study of Technology and Society
5/7/08	Harvard Crimson	Law School Adopts Open Access for Scholarship
4/24/08	Harvard Crimson	HLS Dean Joins Indian Fund Board
4/1/08	Harvard Law Bulletin	Intermission
4/1/08	Harvard Law Today	New Public Service Initiative Launched
4/1/08	Harvard Law Today	Celebration of Public Interest Draws More Than 700
4/1/08	Harvard Law Today	Three Standouts Headed for HLS
4/1/08	Harvard Law Today	Justice Kennedy Swings by for a Visit
4/1/08	Harvard Law Today	Elhauge Book Forum Brings Breyer to HLS
3/19/08	Harvard Crimson	HLS to Cut Tuition for Public Service
2/21/08	Harvard Gazette	Sunstein Joins HLS, Where Eminent Scholar Will Direct New Program
1/31/08	Harvard Law Record	Admin Announces New, Friendlier 3L Paper Requirement
1/1/08	Harvard Law Bulletin	Law Classes Take Flight
1/1/08	Harvard Law Bulletin	A Curriculum of New Realities
1/1/08	Harvard Law Bulletin	At Home in the World
1/1/08	Harvard Law Bulletin	The Ultimate Cafeteria
1/1/08	Harvard Law Bulletin	He was Kingsfield, but also so much more'
11/29/07	Harvard Law Record	Dean Starts Program to Boost Practitioners Into Academia
10/1/07	Harvard Law Today	HLS Makes 11 New Faculty Appointments
5/18/07	Harvard Crimson	HLS to Reduce Library Purchases
5/2/07	Harvard Crimson	In Shift, HUDS Will Hatch Cage-Free Eggs
5/1/07	Harvard Law Today	Wassersteins Give $25 Million for Academic Center
5/1/07	Harvard Law Today	Kathryn Spier to Join HLS Faculty

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4/26/07	Harvard Law Record	Legal Services Center Budget Cut by $200K
4/1/07	Harvard Law Bulletin	Reaching out to Practitioners and Policy-Makers
4/1/07	Harvard Law Bulletin	Diversified Portfolio
3/23/07	Harvard Crimson	Alum Gives $25M to Build Law Center
2/23/07	Harvard Crimson	Law, Politics, and Debate Merge in HLS Journal
2/15/07	Harvard Law Record	HLS Students Apply Their Skills in New Orleans
2/14/07	Harvard Crimson	With Kagan at Helm, Law School Celebrates
2/12/07	Harvard Crimson	Across Campus, Profs Praise Faust
2/1/07	Harvard Law Today	Noah Feldman Joins the Harvard Law Faculty
1/17/07	Harvard Crimson	Kagan Joins Critics of Boycott Proposal
1/1/07	Harvard Magazine	A New Script for One L
12/1/06	Harvard Law Today	Rethinking Langdell
10/13/06	Harvard Law Website	Planning for "Northwest Corner" Complex Moving Forward
10/12/06	Harvard Law Record	Faculty Unanimously Overhauls First-Year Curriculum
10/10/06	Harvard Crimson	Another Feather in Kagan's Cap
10/1/06	Harvard Law Bulletin	Traffic on the Off-Ramp
9/1/06	Harvard Law Today	Strict Construction
9/1/06	Harvard Law Today	Fallon Joins American Academy of Arts and Sciences
9/1/06	Harvard Law Today	Seven New Profs Join HLS Faculty Ranks
6/5/06	Harvard Crimson	Law Review Debates Affirmative Action Policy
6/1/06	Harvard Law Bulletin	Asia 2006
Spring 2006	Harvard Journal of Law and Public Policy	The Conservative Influence of the Federalist Society on the Harvard Law School Student Body
5/24/06	Harvard Crimson	Behind the Scenes, Bok Readies for His Role as Interim President
4/1/06	Harvard Law Bulletin	David Westfall, 1927-2005
4/1/06	Harvard Law Bulletin	Arthur T. von Mehren, 1922-2006
4/1/06	Harvard Law	Spring Ahead

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	Today	
4/1/06	Harvard Law Today	Accepting Their Chairs
4/1/06	Harvard Law Today	Show Me the Money!
3/9/06	Harvard Law Record	Harvard Law Reacts Strongly to Summers Departure
3/6/06	Harvard Crimson	HLS Dean Scott Nichols To Resign After 20 Years
2/22/06	Harvard Crimson	Outside FAS, Support Was Strong for Summers
2/21/06	Harvard Crimson	Report: Summers Set To Resign
2/16/06	Harvard Law Record	First Circuit Relocates to HLS
1/1/06	Harvard Law Today	New Center to Explore Intersections of Health, Technology, and Law
1/1/06	Harvard Law Today	HLS Students and Alumni Win Record Number of Public Service Fellowships
12/9/05	Harvard Crimson	Law Students Snag Fellowships
11/1/05	Harvard Law Today	A Summer Workout
9/30/05	Harvard Law Record	No Excuse Not To Work Out: Hemenway Opens
9/16/05	Harvard Crimson	New Institute Aims To Continue Houston's Work
9/16/05	Harvard Crimson	Law School Adds Five Professors
9/15/05	Harvard Gazette	HLS Adds Five New Professors to its Ranks
9/12/05	Harvard Crimson	Senate To Commence Hearings on Roberts
9/1/05	Harvard Law Today	Five New Professors Join HLS Faculty
9/1/05	Harvard Law Today	Packing the Court
8/25/05	Harvard Gazette	McCrossan Appointed Dean for Administration at HLS
4/29/05	Harvard Crimson	Academy Honors 13 Harvard Faculty
4/1/05	Harvard Law Bulletin	Can Reporters Refuse to Testify?
4/1/05	Harvard Law Bulletin	Sowing the Seeds of Public Service at HLS
2/17/05	Harvard Gazette	FAS, HLS to Renovate Hemenway Gymnasium
2/10/05	Harvard Law Record	Fallon Appointed to Ralph S. Tyler, Jr. Professorship of Constitutional Law
1/24/05	Harvard Crimson	Joint Law and FAS Degree Program Satisfies Students of Two Minds
1/1/05	Harvard Law Today	Subramanian Joins Tenured Faculty
1/1/05	Harvard Law Today	Cox Family Establishes Fund to Assist Students Pursuing Careers in Public Service
12/10/04	Harvard Crimson	Icy Welcome for New Law Prof

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12/8/04	Harvard Crimson	Law School Looks for New Blood
12/1/04	Harvard Crimson	Law Student Forced off Panel
12/1/04	Harvard Crimson	HLS Bans Military
12/1/04	Harvard Law Today	Editors of Indian Law Handbook Convene
12/1/04	Harvard Law Today	Election Round-Up
12/1/04	Harvard Law Today	Big Plans Highlight Dean Elena Kagan's 2L Year
11/23/04	Harvard Law Website	Editors of Indian Law Handbook Convene
11/10/04	Harvard Crimson	Ice Skating Rink to Open in the Square
11/2/04	Harvard Crimson	Kerry May Tap Kagan for Court
9/30/04	Harvard Crimson	Military Recruits at HLS
9/27/04	Harvard Crimson	Prof Admits To Misusing Source
9/25/04	Harvard Law Record	Dean Renovates Hark, Creating Improved Façade for Student Center
9/22/04	Harvard Crimson	Harkness, Law School's Loker, Gets Facelift
9/21/04	Harvard Crimson	Professors Trade Pads
9/16/04	Harvard Gazette	Big Plans Highlight Dean Elena Kagan's 2L Year
9/15/04	Harvard Crimson	Law School Announces New Hires
9/13/04	Harvard Crimson	Ogletree Faces Discipline for Copying Text
9/1/04	Harvard Law Today	Students and Faculty Connect in First-Year Reading Groups
9/1/04	Harvard Law Today	From an Old Building, New Spaces
9/1/04	Harvard Law Today	Three Professors Added to Tenured Faculty Ranks
8/13/04	Harvard Crimson	HLS Undergoes Renovations
7/30/04	Harvard Crimson	Obama Stars at Convention
4/1/04	Harvard Law Bulletin	Corporate Law Professor Convenes Scholars, SEC Officials
4/1/04	Harvard Law Bulletin	Why Harvard Law School Needs Your Money
4/1/04	Harvard Law Bulletin	A New Ballgame
3/11/04	Harvard Law Record	HLS Goes for the Gold
3/1/04	Harvard Magazine	An Icy Amenity
2/19/04	Harvard Law Record	Dean Richardson Steps Down
2/5/04	Harvard Law Record	Great Skate!
2/5/04	Harvard Law	Civil Rights Project Loses Edley, Marches On

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	Record	
2/5/04	Harvard Law Record	Harvard Increases Joint Degree Programs
1/22/04	Harvard Gazette	Lawyers on Ice
1/16/04	Harvard Crimson	Law Students Lace Up Their Skates
1/14/04	Harvard Crimson	Faculty File Brief Against Pentagon
1/1/04	Harvard Law Today	School Wins Record Number of Skadden Fellowships
11/20/03	Harvard Law Record	Kagan Targets "Depressing" Hark
11/20/03	Harvard Law Record	HLS Profs Mull Solomon Suit
11/10/03	Harvard Crimson	Law Review Draws Fire for Gender Gap
11/6/03	Harvard Law Record	Internal Law Review Report Leaked
9/25/03	Harvard Law Record	Law Review's "Enormous Problem"
9/11/03	Harvard Law Record	Meet the Dean
9/11/03	Harvard Law Record	Renovations Greet Returning Students
9/1/03	Harvard Law Today	Ogletree Chosen to Head Brown v. Board Commission
7/17/03	Harvard Gazette	HLS Launches Campaign to Raise $400 Million
7/1/03	Harvard Magazine	At the HLS Helm
6/27/03	Harvard Crimson	Law School Launches $400M Campaign
6/5/03	Harvard Crimson	University Inches Toward Allston Decision
6/5/03	Harvard Crimson	All Quiet on the Cambridge Front
6/5/03	Harvard Crimson	People in the News: Elena Kagan
5/1/03	Harvard Law Today	Elena Kagan Named the Next Dean of Harvard Law School
4/28/03	Harvard Crimson	Letter to the Editor: HLS International Law Program Healthy
4/24/03	Harvard Law Record	Student Input for Allston
4/10/03	Harvard Law Record	Kagan Promises More Faculty, Reevaluation of "Essential Structure"
4/3/03	Harvard Gazette	Elena Kagan Named the Next Dean of Harvard Law School
4/3/03	Harvard Law Record	It's Kagan
3/25/03	Harvard Law Record	HLS Move to Allston Digs Imminent
7/1/02	Harvard Law	Cambridge v. Allston

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	Bulletin	
3/19/02	Harvard Crimson	Two Groups Weigh the Future of Harvard's Allston Land
12/3/01	Harvard Crimson	Pressured, Law Profs Consider Relocation
11/29/01	Harvard Law Record	HLS Zeros in on Allston
10/25/01	Harvard Gazette	Kagan, Coates Are Appointed HLS Professors
10/4/01	Harvard Law Record	Coates, Kagan Reap Benefits of Experience

An April Fool's article in the Harvard Law Record entitled, "Administration Cuts Internet in Classrooms" contains made-up quotes attributed to me. Although I did not give these quotes or provide an interview for this article, I am including it as an attachment.

While Deputy Assistant to the President for Domestic Policy, on March 2, 1999, I participated in an on-line interview on a variety of subjects conducted by MS-NBC. I am providing a transcript of this interview.

While a professor at the University of Chicago, I appeared at least twice on the Mara Tapp show on WBEZ. On February 4, 1993, I discussed Thurgood Marshall, and on December 15, 1994, I participated in a roundtable on the Bill of Rights. I also may have participated in a discussion of the Supreme Court on WGN in Chicago on October 25, 1994. (My calendar contains such an entry, but I do not recall it.) I have been unable to locate transcripts or tapes of these appearances.

g. If, in connection with any public office you have held (see 14b), there were any reports, memoranda, or policy statements prepared or produced with your participation, supply four (4) copies of these materials. Also provide four (4) copies of any resolutions, motions, legislation, nominations, or other matters on which you voted as an elected official, the corresponding votes and minutes, as well as any speeches or statements you made with regard to policy decisions or positions taken. "Participation" includes, but is not limited to, membership in any subcommittee, working group, or other such group, which produced a report, memorandum, or policy statement, even where you did not contribute to it. If any of these materials are not available to you, please give the name of the document, the date of the document, a summary of its subject matter, and where it can be found.

As Deputy Assistant to the President for Domestic Policy and Associate Counsel to the President, I prepared or participated in the preparation of various memoranda to other governmental officials, and I participated in the drafting of some statements made by the President. In my domestic policy role, I also may have participated in the preparation of formal reports or policy statements, particularly any issued by the Domestic Policy Council, but I do not now recall any such documents. Those documents are in the custody of the Clinton Library.

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The publicly-available work that I have produced as Solicitor General is set forth in response to question 15.

I have never held elected office.

h. Supply four (4) copies of all community-wide letters, emails, or other communications that you sent to the Harvard Law School or the Harvard undergraduate community, including to the student body or faculty in your capacity as Dean of the Harvard Law School, including those related to Harvard's antidiscrimination policy and/or its implementation.

Attached are emails I sent to the entire Harvard Law School community or to all faculty and staff. I also sent emails to the faculty only on matters related to the administration of the law school; these emails are confidential.

i. Supply four (4) copies of all letters, pamphlets, website content, articles, or other materials you prepared or supervised in the preparation of, which were distributed to the Harvard Law School community (as defined in 12h) describing the reforms you made in your capacity as Dean of Harvard Law School to the curriculum, community atmosphere, or instructional process.

Attached are the following materials discussing developments at Harvard Law School during my tenure as Dean:

- Letters I sent to admitted and returning students;
- The "Year in Review" sent to alumni (although the question does not request letters to alumni, I am attaching these documents because they describe many of the initiatives I undertook to improve the school);
- Admitted student binders, which the law school began sending in 2007;
- An introduction to the Harvard Law School Public Service Job Guide written by me.

13. **Recusal:** Identify and describe the process that you have followed as Solicitor General in determining whether to recuse yourself from particular matters. Provide a list of any cases, motions, or matters in which you have recused yourself and a list of cases, motions, or matters in which you identified a potential conflict of interest but did not recuse yourself. Identify each such case and, for each, provide the following information:

a. a brief description of the asserted conflict of interest or other ground for recusal;

b. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent, or asserted conflict of interest or to cure any other ground for recusal.

As Solicitor General, I have never been asked to recuse myself from any matter. I recused myself voluntarily from one matter in the Supreme Court: Horne v.

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Flores, docket number 08-0289, in which the United States filed an amicus brief on March 25, 2009. I did so because of the participation of a Harvard Law School clinic in the case.

I also recused myself from participation in three appellate and district court cases:

"In the matter of the application of the New York Times Company to unseal wiretap and search warrant," United States District Court for the Southern District of New York, docket number M-50: I recused because of my personal friendship with an interested party, Eliot Spitzer.

Murray v. Geithner, United States District Court for the Eastern District of Michigan, docket number 08-15147: I recused because of the participation of a Harvard Law School clinic in the case.

Balintulo v. Daimler, United States Court of Appeals for the Second Circuit, docket number 09-2778: I recused because of the participation of a Harvard Law School clinic in the case.

I identified a potential conflict of interest in *United States v. Philip Morris USA, Inc.*, No. 09-978, stemming from my work in the tobacco initiatives of the Clinton Administration and from my participation as a deponent in the case at issue. I consulted with Janice Rogers of the Department Ethics Office and Jerri Dunston of the Professional Responsibility Advisory Office regarding the question of recusal. Both advised me that there was no reason to recuse myself from the case.

c. Explain the procedure you will follow in determining whether to recuse yourself from matters coming before the Court, if confirmed.

If confirmed, I would recuse in all matters for which I was counsel of record. I would also look to the letter and spirit of the Code of Conduct for United States Judges (although it is not formally binding on members of the Supreme Court of the United States), the Ethics Reform Act of 1989, 28 U.S.C. 455, and any other relevant prescriptions. I would also consult with my colleagues in any case where recusal might be advisable.

14. <u>Public Office, Political Activities, and Affiliations</u>:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Solicitor General, March 2009-present, nominated by President Barack Obama and confirmed by Senate

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U.S. Court of Appeals for the D.C. Circuit, nominated in 1999 by President William Clinton; nomination never acted upon.

Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council, 1997-99, appointed by President William Clinton

Associate Counsel to the President, 1995-96, appointed by President William Clinton

Special Counsel, U.S. Senate Judiciary Committee, summer 1993, appointed by Senator Joseph Biden

I have never been a candidate for elective public office.

b. List all memberships and offices held in, and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title, and responsibilities.

Between July and November 1988, I worked as a researcher for the Dukakis for President campaign. I was a junior staffer and do not believe I had an official title. I mostly worked on "defense research" – i.e., preparing responses to attacks on Governor Dukakis's record.

In the fall of 1996, I played a small role in debate preparation for President Clinton during his re-election campaign. I did this work (mostly preparing mock questions and answers) in accordance with the law addressing political activity of White House employees.

c. List all political events for which you were on the host committee, including the date, location, which candidate or organization it benefitted, and how much was raised at the event.

I do not recall any such events, although I cannot say for certain that none exists.

15. Legal Career: Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Hon. Thurgood Marshall, U.S. Supreme Court, 1987-88

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Hon. Abner Mikva, U.S. Court of Appeals for the D.C. Circuit, 1986-87

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

Solicitor General, Department of Justice, Washington, D.C. 20530, March 2009-present

Professor and Dean, Harvard Law School, Cambridge, MA 02138, 1999-2009 (2003-09 as dean, 2001-present as professor (currently on leave), 1999-2001 as visiting professor)

Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council, Executive Office of the President, Washington, D.C. 20502, 1997-99

Associate Counsel to the President, Executive Office of the President, Washington, D.C. 20502, 1995-96

Professor, University of Chicago Law School, 1111 E. 60th St., Chicago, IL 60637, 1991-97 (1991-94 as assistant professor)

Special Counsel, Senate Judiciary Committee, Summer 1993

Associate, Williams & Connolly, 725 12th St., Washington, DC 20005, 1989-91

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

My legal career (following two years of clerking) has had a number of distinct stages. From 1989 to 1991, I served as an associate at Williams &

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Connolly, a Washington, D.C. law firm. I handled a mix of commercial litigation, First Amendment litigation, and criminal matters at the firm. From 1991 to 1995, I was a professor at the University of Chicago; my principal scholarship during that time was in the field of constitutional law. I took one summer off during that period to serve as special counsel to the Senate Judiciary Committee, working on the nomination of Ruth Bader Ginsburg to the U.S. Supreme Court. From 1995 to 1999, I worked at the White House, first in the Counsel's Office and then in the Domestic Policy Council (DPC). In the Counsel's Office, I primarily acted as a lawyer for the White House policy councils and legislative office. In the DPC, I played a role in the formulation, advocacy, and implementation of law and policy in areas ranging from education to crime to public health. Between 1999 and 2003, I again served as a professor, but at Harvard Law School; my scholarship and teaching during these years focused on constitutional and administrative law. Between 2003 and 2009, I served as the dean of Harvard Law School. In this capacity, I oversaw every aspect of the institution, academic and non-academic alike. Beginning in March 2009, I have served as Solicitor General of the United States. In this capacity, I represent the United States in the Supreme Court and oversee all appellate litigation in which the United States is a party.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As Solicitor General, my client is the United States. I have had private clients only during the time I was an associate at Williams & Connolly. Those clients included business entities in civil litigation, press organizations defending themselves in libel and related actions, and white-collar criminal defendants.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My work as Solicitor General is entirely in litigation. I have argued six cases before the Supreme Court this year. The only previous part of my practice that involved litigation was my work as an associate at Williams & Connolly between 1989 and 1991. I appeared in federal district courts and state courts occasionally during that time.

i. Indicate the percentage of your practice in:
   1. federal courts;
   2. state courts of record;
   3. other courts;
   4. administrative agencies.

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My practice as Solicitor General is entirely in federal court, although I frequently represent administrative agencies there. My practice at Williams & Connolly was primarily in federal court, but included some cases in state and local courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings.

My practice as Solicitor General is approximately two-thirds civil and one-third criminal. My practice at Williams & Connolly was approximately the same.

d. List, by case name, all cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment, or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel. For each such case, include the docket number and provide any opinions or filings available to you.

   i. What percentage of these trials were:
      1. jury;
      2. non-jury.

I have never tried a case to verdict or judgment.

e. Describe your practice, if any, before the Supreme Court of the United States, the highest court of any state, or any state or federal courts of appeals, including in your capacity as Solicitor General of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before these courts in connection with your practice. Give a detailed summary of the substance of each case, outlining briefly the factual and legal issues involved, the party or parties whom you represented, the nature of your participation in the litigation, and the final disposition of the case. Also provide the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Oral Arguments

As Solicitor General, I have argued six cases before the Supreme Court. Information regarding the first case is set forth in the "Merits Amicus Briefs" section below; information regarding the other five cases is set forth in the "Merits Briefs" section below. They are:

Robertson v. United States, No. 08-6261 (March 31, 2010)

Holder v. Humanitarian Law Project, Nos. 08-1498 and 08-1547 (Feb. 23, 2010)

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United States v. Comstock, No. 08-1224 (Jan. 12, 2010)

Free Enterprise Fund v. Public Company Accounting Oversight Board, No. 08-861 (Dec. 7, 2009)

Salazar v. Buono, No. 08-472 (Oct. 7, 2009)

Citizens United v. Federal Election Commission (Sept. 9, 2009)

As Solicitor General, I have served as counsel of record on the following briefs filed with the Supreme Court:

Merits Party Briefs

***Dolan* v. *United States*, No. 09-0367**
The question presented is whether a district court's failure to calculate restitution within 90 days after sentencing is per se prejudicial error that requires the restitution award to be vacated. The Office of the Solicitor General represented respondent in this case and took the position that failure to calculate restitution does not necessarily require that the restitution award be vacated. The Court has not yet issued its decision.

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***Monsanto Co.* v. *Geertson Seed Farms*, No. 09-475**
This case arose out of the decision of the Animal and Plant Health Inspection Service (APHIS) to deregulate alfalfa that had been genetically engineered to tolerate glyphosate, the active ingredient in the herbicide Roundup, based on APHIS's determination that the alfalfa did not present a plant pest risk. Petitioner Monsanto owns the intellectual property rights to the subject

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alfalfa and licenses the technology exclusively to co-petitioner Forage Genetics International. After finding that APHIS had not adequately analyzed the environmental impacts of its deregulation action under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., the district court entered, and the court of appeals affirmed, a permanent injunction requiring APHIS to prohibit further planting of Roundup Ready alfalfa pending the agency's completion of an Environmental Impact Statement and final decision regarding deregulation. The questions presented are: (1) whether the court of appeals erred in affirming an overly broad permanent nationwide injunction based upon an incorrect legal standard that presumed irreparable harm; and (2) whether the court of appeals erred in determining that the district court did not abuse its discretion when it declined petitioners' request for an evidentiary hearing on the scope of the permanent injunctive relief. The Office of the Solicitor General represents federal respondents in this case, but filed in support of petitioners. The Office took the position that the district court erred in entering an overly broad injunction based on a presumption that APHIS's NEPA violation constituted irreparable harm, that the court of appeals erred in upholding that injunction, and that the Court should not adopt a rule requiring a district court to hold a full evidentiary hearing with live witnesses and cross-examination in every Administrative Procedure Act case before it may enter an injunction. The Court has not yet issued its decision.

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***Carachuri-Rosendo* v. *Holder*, No. 09-60**
The question presented in this case is whether a second or subsequent state conviction for possession of a controlled substance automatically qualifies as an "aggravated felony" for purposes of 8 U.S.C. 1101(a)(43)(B), or instead qualifies only if the State applied a recidivist enhancement in that second or subsequent conviction. The Office of the Solicitor General represented respondent in this case and took the position that the second or subsequent state conviction automatically qualifies as an "aggravated felony." The Court has not yet issued its decision.

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***Dillon* v. *United States*, No. 09-6338**
The question presented in this case is whether the holding of *United States* v. *Booker*, 543 U.S. 220 (2005), which remedied the constitutional defect in the Sentencing Guidelines by rendering them advisory, applies in a sentence modification proceeding under 18 U.S.C. 3582(c). The Office of the Solicitor General represented respondent in this case and took the position that the holding in Booker does not apply in such a proceeding. The Court has not yet issued its decision.

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***Barber* v. *Thomas*, 09-5201**
The questions presented in this case are (1) whether 18 U.S.C. 3624(b), which provides that a federal prisoner may receive credit toward the service of his sentence for exemplary conduct, requires the Federal Bureau of Prisons to calculate such credit on the basis of the sentence imposed rather than on the basis of the time served; and (2) whether Congress has delegated the interpretation of 18 U.S.C. 3624(b) to the United States Sentencing Commission rather than to the Federal Bureau of Prisons. The Office of the Solicitor General represented respondents in this case and took the position that the calculation of such credit should be based on time served and that Congress delegated the interpretation of the statute to the Federal Bureau of Prisons. The Court has not yet issued its decision.

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JEFFREY B. WALL, Assistant to the Solicitor General
KEVIN R. GINGRAS, Attorney
Department of Justice

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***Kiyemba* v. *Obama*, No. 08-1234**
The question presented in this case is whether a federal court exercising its habeas corpus jurisdiction may order the United States government to bring petitioners into the United States for release, outside of the framework of the federal immigration laws. The Office of the Solicitor General represented respondents in this case and took the position that a federal court may not order that the petitioners be released inside the United States. On February 12, 2010, the Court ordered the parties to file letter briefs addressing the effect of recent offers of resettlement to the petitioners who had not previously received such offers. The Office filed a letter brief addressing this question on February 19, 2010. On March 1, 2010, the Court vacated the judgment and remanded the case to the court of appeals for further proceedings in light of the resettlement offers.

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***New Process Steel LP* v. *National Labor Relations Board*, No. 08-1457**
The question presented in this case is whether Section 3(b) of the National Labor Relations Act, 29 U.S.C. 153(b), authorizes the National Labor Relations Board (NLRB) to act when only two

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of its five positions are filled, if the Board has previously delegated its full powers to a three-member group of the Board that includes the two remaining members. The Office of the Solicitor General represented respondents in this case and took the position that the NLRB may act under those circumstances. The Court has not yet issued its decision.

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***Skilling* v. *United States*, No. 08-1394**
The question presented in this criminal case is (1) whether, to convict petitioner of conspiring to commit wire fraud by depriving his employer and its shareholders of the right to petitioner's honest services under 18 U.S.C. 1343 and 1346, the government was required to prove that petitioner intended to obtain some private gain, and, if not, whether 18 U.S.C. 1346 is unconstitutionally vague; and (2) whether the court of appeals correctly held that petitioner was tried by an impartial jury despite any prejudicial pretrial publicity about the case. The Office of the Solicitor General represented respondent in this case and took the position that the government is not required to prove private gain, that the statute is not unconstitutionally vague, and that the court of appeals correctly held that petitioner was tried by an impartial jury. The Court has not yet issued its decision.

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***Carr* v. *United States*, No. 08-1301**
The questions presented in this case are (1) whether 18 U.S.C. 2250(a), which imposes criminal penalties on certain sex offenders who fail to register or update a registration as required by the Sex Offender Registration and Notification Act (SORNA), applies to petitioner, whose interstate travel occurred after his conviction for a covered sex offense, but before SORNA's enactment; and (2) whether the Ex Post Facto Clause precludes a prosecution under Section 2250(a) of a person whose underlying sex offense and interstate travel predated SORNA's enactment, but whose failure to register occurred substantially after SORNA's requirements became applicable to him. The Office of the Solicitor General represented respondent in this case and took the position that the provision applies to petitioner and that such application does not violate the Ex Post Facto Clause. The Court has not yet issued its decision.

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***Holder* v. *Humanitarian Law Project & Humanitarian Law Project* v. *Holder*, Nos. 08-1498 & 08-1547**

The questions presented in this case are (1) whether 18 U.S.C. 2339B(a)(1), which prohibits the knowing provision of "any . . . service, . . . training, [or] expert advice or assistance," 18 U.S.C. 2339A(b)(1), to a designated foreign terrorist organization, is unconstitutionally vague; and (2) whether the criminal prohibitions in 18 U.S.C. 2399B(a)(1) on the provision of "expert advice or assistance" "derived from scientific [or] technical . . . knowledge" and "personnel" are unconstitutional with respect to speech that furthers only lawful, nonviolent activities of proscribed organizations. The Office of the Solicitor General represented Attorney General Holder in this case and took the position that both provisions are constitutional. The Court has not yet issued its decision.

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***United States* v. *Marcus*, No. 08-1341**

The question presented in this criminal case is whether the court of appeals departed from the Court's interpretation of Federal Rule of Criminal Procedure 52(b) by adopting as the appropriate standard for plain-error review of an asserted ex post facto violation whether "there is any possibility, no matter how unlikely, that the jury could have convicted based exclusively

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on pre-enactment conduct." The Office of the Solicitor General represented petitioner in this case and took the position that the court of appeals' conclusion was not consistent with Federal Rule of Criminal Procedure 52(b). The Court has not yet issued its decision.

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***United States* v. *O'Brien*, No. 08-1569**
The question presented in this case is whether, under 18 U.S.C. 924(c)(1), the sentence enhancement for use of a machine gun during the commission of a criminal offense is an element of the offense that must be charged and proved to a jury beyond a reasonable doubt, or instead is a sentencing factor that may be found by a judge by a preponderance of the evidence. The Office of the Solicitor General represented petitioner in this case and took the position that the enhancement is a sentencing factor that the district court may determine. The Court has not yet issued its decision.

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***Astrue* v. *Ratliff*, No. 08-1322**
The question presented in this case is whether an "award of fees and other expenses" under the Equal Access to Justice Act, 28 U.S.C. 2412(d), is properly paid to the "prevailing party," and not to the prevailing party's attorney, and thus can be used to offset the party's debt to the government. The Office of the Solicitor General represented petitioner in this case and took the position that the text of the Equal Access to Justice Act provides awards to prevailing parties and, for that reason, the government can reduce such awards for debts that the prevailing party may owe the government. The Court has not yet issued its decision.

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***Weyhrauch* v. *United States*, No. 08-1196**
The question presented in this case is whether, to convict a state official for depriving the public of its right to the defendant's honest services through the non-disclosure of material information, in violation of the mail-fraud statute (18 U.S.C. 1341 and 1346), the government must prove that the defendant violated a disclosure duty imposed by state law. The Office of the Solicitor General represented respondent in this case and took the position that the government need not prove that the defendant violated a state-imposed disclosure duty in order to obtain such a conviction. The Court has not yet issued its decision.

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***United States* v. *Milavetz, Gallop, & Milavetz, P.A. & Milavetz, Gallop, & Milavetz, P.A.* v. *United States*, Nos. 08-1119 & 08-1225**
The questions presented in these cases are (1) whether an attorney who provides bankruptcy assistance in return for valuable consideration, and who does not fall into one of the five exceptions, is a "debt relief agency" for purpose of 11 U.S.C. 526; and (2) whether 11 U.S.C. 526(a)(4) violates the First Amendment. The Office of the Solicitor General represented the United States and took the position that such an attorney may be a "debt relief agency" and that 11 U.S.C. 526(a)(4) does not violate the First Amendment. The Court held that such an attorney is a "debt relief agency" for purposes of the statute, and that the statute is constitutional.

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***Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, No. 08-861**
The question presented in this case is whether Title I of the Sarbanes-Oxley Act, 15 U.S.C. 7211-7219, which creates the Public Company Accounting Oversight Board, violates the Appointments Clause of the Constitution and separation-of-powers principles because it does not permit adequate Presidential control over the Board. The Office of the Solicitor General represented the federal respondent in this case and took the position that the provision does not violate the Appointments Clause or separation-of-powers principles. The Court has not yet issued its decision.

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***Black* v. *United States*, No. 08-876**
The questions presented in this case are (1) whether petitioners are entitled to reversal of their mail fraud convictions because the district court did not instruct the jury that, to find them guilty under an honest-services theory, the jury had to find that their fraudulent scheme "reasonably contemplated identifiable economic harm" to their employer; and (2) whether by opposing the government's request for a special verdict that would have required separate findings on property-rights and honest-services mail fraud, petitioners forfeited their claim that their mail fraud convictions must be reversed because the honest-services theory was legally invalid. The Office of the Solicitor General represented respondent in this case and took the position that such an instruction is not required, and even if it is, the petitioners forfeited that argument by opposing the special verdict request. The Court has not yet issued its decision.

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***Bilski* v. *Kappos*, No. 08-964**
The questions presented in this case are (1) whether a "process" must be tied to a particular machine or apparatus, or transform a particular article into a different state or thing ("machine-or-transformation" test), to be eligible for patenting under 35 U.S.C. 101; and (2) whether the "machine-or-transformation" test for patent eligibility contradicts congressional intent that patents protect "method[s] of doing business," 35 U.S.C. 273. The Office of the Solicitor General represented respondent in this case and took the position that a process must involve a particular machine or apparatus, or transform matter or energy into a different state or thing, and that the PTO correctly determined that petitioners' method for hedging is not patent-eligible. The Court has not yet issued its decision.

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***United States* v. *Comstock*, No. 08-1224**
The question presented in this case is whether Congress had the constitutional authority to enact 18 U.S.C. 4248, which authorizes court-ordered civil commitment by the federal government of "sexually dangerous" persons who are already in the custody of the Bureau of Prisons, when the resulting civil commitment will extend beyond the end of a federal prison sentence, and of "sexually dangerous" persons who are in the custody of the Attorney General because they have been found mentally incompetent to stand trial. The Office of the Solicitor General represented petitioner in this case and took the position that Congress had authority to pass the statute. The Court held that the Necessary and Proper Clause grants Congress the authority to enact the statute.

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***Bloate* v. *United States*, No. 08-728**
The question presented in this case is whether time granted at the request of a criminal defendant to prepare pretrial motions qualifies as a "delay resulting from other proceedings concerning the defendant" and is thus excludable from the time within which trial must commence under the Speedy Trial Act of 1974, 18 U.S.C. 3161 *et seq.* The Office of the Solicitor General represented respondent in this case and took the position that such time is excludable. The Court held that such time is not automatically excludable, but may be excluded if the trial court makes certain findings enumerated in the statute.

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***Johnson* v. *United States*, No. 08-6925**
The question presented in this case is whether, under the federal Armed Career Criminal Act, 18 U.S.C. 924(e), a prior state conviction for battery is in all cases a "violent felony." The Office of the Solicitor General represented respondent in this case and took the position that such a conviction is a violent felony, triggering an enhanced penalty under the Act. The Court held that a prior state conviction for battery is not necessarily a "violent felony" for purposes of the Act.

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***Citizens United* v. *FEC*, No. 08-205**
The question presented in this case is whether federal campaign finance laws apply to a critical film about then-Senator Hillary Clinton that was intended to be shown in theaters and on-demand to cable subscribers. The Office of the Solicitor General represents respondent and took the position that campaign finance laws do apply to this film. On June 29, 2009, the Supreme Court set the case for reargument and ordered that the parties file supplemental briefs. The Court ordered the parties, at reargument and in their supplemental briefs, to address whether the Court should "overrule either or both *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and the part of *McConnell* v. *Federal Election Comm'n*, 540 U.S. 93 (2003), which addresses the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 441b." *Austin* and Section 203 involve restrictions on corporations' expenditures for express advocacy and electioneering communications. The Office took the position that the court should not overrule *Austin* or *McConnell*. The Court held that Section 203 violates the First Amendment, overruling *Austin* and the part of *McConnell* upholding the statute.

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***Kucana* v. *Holder*, No. 08-911**
The question presented in this case is whether 8 U.S.C. 1252(a)(2)(B)(ii) removes jurisdiction from federal courts to review rulings on motions to reopen by the Board of Immigration Appeals. The Office of the Solicitor General represented respondent in this case, but we filed a top-side brief. The Office took the position that § 1252(a)(2)(B)(ii) does not bar judicial review of the Board's denial of a motion to reopen. The Court held that the statute does not bar judicial review of the Board's denial of a motion to reopen.

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***NRG Power Marketing* v. *Maine Public Utilities Commission*, No. 08-674**
The question presented in this case is whether the principles set out in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956), apply to the Federal Energy Regulatory Commission's review of wholesale

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electricity rates set by contract when those rates are challenged by a non-contracting party. The Office of the Solicitor General represented the federal respondents, but we filed a top-side brief. The Office took the position that the Federal Energy Regulatory Commission permissibly acted within its discretion when it approved the settlement at issue in this case. The Court upheld the Commission's approval of the settlement.

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***United States* v. *Stevens*, No. 08-769**
The question presented in this case is whether 18 U.S.C. 48 -- which prohibits the knowing creation, sale, or possession of a depiction of a live animal being intentionally maimed, mutilated, tortured, wounded, or killed, with the intention of placing that depiction in interstate or foreign commerce for commercial gain, where the conduct depicted is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, and the depiction lacks serious religious, political, scientific, educational, journalistic, historical, or artistic value -- is facially invalid under the Free Speech Clause of the First Amendment. The Office of the Solicitor General represented petitioner in this case and took the position that the statue is constitutional. The Court held that the statute violates the First Amendment.

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***Salazar* v. *Buono*, No. 08-472**
The questions presented in this case are (1) whether an individual has Article III standing to bring an Establishment Clause suit challenging the display of a religious symbol on government land; and (2) whether an Act of Congress directing that the land be transferred to a private entity is a permissible accommodation. The Office of the Solicitor General represented petitioner in this case and took the position that respondent does not have standing, and even if respondent has standing, the court of appeals erred. The Court reversed the judgment of the court of appeals, with a plurality of the Court concluding that the respondent has standing but that the district court erred when it enjoined the transfer of the land.

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***Cuomo* v. *Clearing House Ass'n*, No. 08-0453**
The question presented in this case is whether measures taken by the New York State Attorney General to enforce state fair lending laws against national banks would subject the banks to "visitorial powers" in contravention of 12 U.S.C. 484. The Office of the Solicitor General represented respondent in this case and took the position that the State's actions would contravene the statute. The Court held that the statute prohibited the State from issuing executive subpoenas to the banks but not from bringing judicial enforcement actions against the banks.

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***Nijhawan* v. *Holder*, No. 08-0495**
The question presented in this case is whether petitioner's conviction for conspiracy to commit mail, bank, and wire fraud qualifies as an aggravated felony under 8 U.S.C. 1101(a)(43)(M)(i),

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the penalty for which is removal from the country, when the amount of loss caused by the fraud was not proved to a jury. The Office of the Solicitor General represented respondent in this case and took the position that petitioner's conviction qualifies as an aggravated felony. The Court upheld the lower court's decision that petitioner's conviction qualifies as an aggravated felony.

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***Coeur Alaska, Inc.* v. *Southeast Alaska Conservation Council*, Nos. 07-984 and 07-990**
The questions presented in this case are: (1) whether the Clean Water Act gives authority to the United States Army Corps of Engineers or to the Environmental Protection Agency to issue a permit for the discharge of mineral waste; and (2) whether, when the Corps issued that permit, it acted in accordance with law. The government's brief in this case, which was filed by my predecessor, argued that the Act gives the Corps the authority to issue such a permit and that the permit issued by the Corps in this case was lawful. After I became Solicitor General, the Court requested that the parties file supplemental briefs addressing the scope of a court's authority to set aside the Corps permit and whether both agencies could issue a permit for the discharge. The Office of the Solicitor General filed a supplemental brief arguing that a court would have the authority to set aside the permits and that the statute does not authorize both the Corps and the EPA to issue a permit for the discharge of mineral waste. The Court held that the Corps was the appropriate agency to issue the permit and that the permit is lawful.

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Merits Amicus Briefs

***Michigan* v. *Bryant*, No. 09-150**
The question presented is whether a shooting victim's statements identifying and describing his assailant and the circumstances of the shooting in response to police officers' initial on-the-scene questioning are "testimonial" within the meaning of *Crawford* v. *Washington*, 541 U.S. 36 (2004). The Office of the Solicitor General filed a brief as *amicus curiae* and took the position that such statements are not testimonial and that their admission in the absence of the shooting victim does not violate the Confrontation Clause. The Court has not yet issued its decision.

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***Robertson* v. *United States ex rel. Watson*, No. 08-6261**
The question presented in this case is whether an action for criminal contempt in a congressionally created court may be brought in the name of a private person, rather than in the name of the United States. The Office filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. At the merits stage, the Office filed a brief in support of respondent. The government took the position that an action for criminal contempt in a congressionally created court must be brought pursuant to the power of the United States, even if it is prosecuted by a private individual. The government argued that the petitioner's conviction nonetheless should be affirmed because the Constitution does not require that a criminal contempt action be prosecuted *in the name of* the United States, and nothing in petitioner's plea agreement barred a contempt proceeding initiated by a private individual. The Court has not yet issued its decision.

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***Hardt* v. *Reliance Standard Life Insurance Co.*, No. 09-448**
The questions presented are (1) whether ERISA Section 502(g)(1) permits courts to award reasonable attorney's fees only to a "prevailing party"; and (2) whether a benefits claimant may be awarded attorney's fees pursuant to ERISA Section 502(g) when a district court finds that the administrator has violated ERISA and orders it to redetermine claimant's entitlement to benefits, after which the administrator grants the benefits sought. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that Section 502(g)(1) does not impose a strict prevailing party requirement and that an ERISA claimant who obtains a court order finding a violation of law requiring a claims administrator to redetermine benefits eligibility, and who is thereafter granted benefits, is eligible for attorney's fees. The Court has not yet issued its decision.

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***Morrison* v. *National Australia Bank, Ltd.*, No. 08-1191**
The questions presented in this case are (1) whether the antifraud provisions of the United States securities laws extend to transnational frauds where (a) the foreign-based parent company conducted substantial business in the United States and (b) claims arose from an accounting fraud perpetrated by American citizens at the parent company's Florida-based subsidiary; and (2) whether subject matter jurisdiction extends to transnational fraud-on-the-market claims. The Office filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office filed a brief as *amicus curiae* in support of respondents and took the position that the court of appeals erred by treating the question as one of subject matter jurisdiction, but the judgment should be

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affirmed because the antifraud provisions of the United States securities laws do not extend to the type of fraud at issue in this case. The Court has not yet issued its decision.

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***City of Ontario, California v. Quon*, No. 08-1332**
The questions presented in this case are (1) whether a government employee has a reasonable expectation of privacy in messages sent through government-issued communications equipment when his employer has notified him that his use of the equipment is subject to monitoring without notice; (2) whether, if those messages are deemed private, a government employer's non-investigative review is unreasonable under the Fourth Amendment because the employer reviewed the messages' content; and (3) whether the sender of the message has a reasonable expectation that the message will remain private once the message is delivered to the recipient. The Office of the Solicitor General filed a brief in support of petitioner and took the position that the government's review of the messages did not violate the Fourth Amendment. The Court has not yet issued its decision.

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***Hamilton* v. *Lanning*, No. 08-998**

Under Section 1325(b)(1)(B) of Title 11 of the United States Code, when a trustee or unsecured creditor objects to the confirmation of a debtor's Chapter 13 plan, the bankruptcy court can confirm that plan if "all of the debtor's projected disposable income to be received" during the plan period "will be applied to make payments to unsecured creditors under the plan." The debtor's "disposable income" is calculated by examining her monthly expenses when the Chapter 13 petition was filed and her average monthly income during the six-month period before the petition was filed. The question presented is whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period. The Office filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of respondents and took the position that the court of appeals was correct in holding that the bankruptcy court may consider such evidence. The Court has not yet issued its decision.

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***Healthcare Service Corp.* v. *Pollitt*, No. 09-38**
The questions presented in this case are (1) whether the Federal Employees Health Benefit Act ("FEHBA"), 5 U.S.C. 8902(m)(1) completely preempts, and therefore makes removable to federal court, a state court lawsuit filed against a government contractor administering health benefits; and (2) whether the federal officer removal statute, 28 U.S.C. 1442(a)(1), which authorizes federal removal jurisdiction over state court suits brought against persons acting under color of federal office, encompasses a suit against a government contractor administering a FEHBA plan. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondents and took the position that FEHBA does not completely preempt such a suit and that the federal officer removal statute does not apply. The Court has not yet issued its decision.

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***Samantar* v. *Yousuf*, No. 08-1555**
The questions presented in this case are (1) whether a foreign state's immunity from suit under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. 1604, extends to an individual acting in his official capacity on behalf of a foreign state; and (2) whether an individual who is no longer an official of a foreign state at the time suit is filed retains immunity for acts taken in the individual's former capacity as an official acting on behalf of a foreign state. The Office of the Solicitor General filed a brief as *amicus curiae* in support of the respondent and took the position that immunity of foreign government officials from suit is governed not by the FSIA but by common law principles of immunity articulated by the Executive Branch, and that even if the Court were to hold that the FSIA applies, former officials generally retain immunity, either under the FSIA itself or under common law principles. The Court has not yet issued its decision.

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***Kawasaki Kisen Kaisha Ltd.* v. *Regal-Beloit Corp.* & *Union Pacific Railroad Co.* v. *Regal-Beloit Corp.*, Nos. 08-1553 & 08-1554**

The question presented in this case is whether the Carmack Amendment to the Interstate Commerce Act of 1887, which governs certain rail and motor transportation by common carriers within the United States, 49 U.S.C. 11706, 1407, applies to the inland rail leg of an intermodal shipment from overseas when the shipment was made under a "through" bill of lading issued by an ocean carrier that extended the Carriage of Goods by Sea Act, 46 U.S.C. 30701. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the Carmack Amendment does not apply to import carriage from non-adjacent foreign countries; that Carmack applies to "rail carriers" only, and not to ocean carriers; and that if Carmack were to apply to the shipment at issue, the rail carrier cannot be relieved of all Carmack obligations by executing a contract under 49 U.S.C. 10709, but that the rail carrier met its Carmack obligations by offering the shipper the option of Carmack-compliant terms. The Court has not yet issued its decision.

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***Berghuis* v. *Thompkins*, No. 08-1470**
The questions presented in this case are (1) whether the *Miranda* rule prohibits an officer from attempting to noncoercively persuade a suspect to cooperate when the officer informs the suspect of his rights, the suspect acknowledges that he understands them, and the suspect does not invoke them but does not waive them; and (2) whether the Sixth Circuit erred in granting habeas relief with respect to an ineffective assistance of counsel claim when substantial evidence of petitioner's guilt allowed a state court to reasonably reject the claim. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and with respect to the first question, the Office took the position that the *Miranda* rule does not prohibit such conduct. The Office took no position on the second question. The Court has not yet issued its decision.

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***Hui* v. *Castaneda*, No. 08-1529**
The question presented in this case is whether 42 U.S.C. 233(a), which provides that a suit against the United States under the Federal Tort Claims Act is exclusive of any other action against a commissioned officer or employee of the Public Health Service for injury resulting from the performance of medical functions, bars a suit against such an officer or employee based on *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief

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is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioners and took the position that Section 233(a) bars such suits. The Court held that the statute bars suits against PHS officers for harms arising out of constitutional violations committed while acting within the scope of their office.

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***Lewis* v. *City of Chicago*, No. 08-974**
The question presented in this case is whether, where an employer adopts an employment practice that discriminates against African Americans in violation of Title VII's disparate impact provision, a plaintiff must file an EEOC charge within 300 days after the announcement of the practice, or whether the plaintiff may file the charge within 300 days after the employer's use of the discriminatory practice. The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioners and took the position that the plaintiff may file the charge within 300 days of the employer's use of the discriminatory practice. The Court has not yet issued its decision.

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***Conkright* v. *Frommert*, No. 08-810**
The question presented is whether the court of appeals applied the correct standards of review when it concluded that the administrator of an ERISA plan whose denial of benefits violated ERISA was not entitled to deference regarding its opinion on how to remedy the violation, and that the district court's choice of remedy should therefore be reviewed for abuse of discretion.

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The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that the court of appeals applied the correct standards of review. The Court held that the court of appeals should have applied a deferential standard of review.

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***Briscoe* v. *Virginia*, No. 07-11191**
The question presented in this case is whether a state statute that authorizes the prosecution to introduce a certificate of a forensic laboratory analysis without presenting the live testimony of the analyst who prepared the certificate, on condition that the prosecution produce the analyst and permit the defendant to call the analyst for cross-examination on the defendant's timely request, complies with the Confrontation Clause of the Sixth Amendment. The Office of the Solicitor General filed a brief as *amicus curiae* and took the position that the statute complies with the Confrontation Clause. The Court vacated the judgment and remanded the case to the Virginia Supreme Court for further proceedings in light of *Melendez-Diaz v. Massachusetts*, 552 U.S. ___ (2009).

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***Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, No. 08-304**
The question presented in this case is whether an audit and investigation performed by a State or its political subdivision constitutes an "administrative . . . report . . . audit, or investigation" within the meaning of the public disclosure jurisdictional bar of the False Claims Act, 31 U.S.C. 3730(e)(4)(A). The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that such audits and investigations do not qualify as administrative reports, audits or investigations under the Act. The Court held that the statute encompasses audits and investigations performed by a State or its political subdivision.

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***Merck & Co., Inc.* v. *Reynolds*, No. 08-905**
The questions presented in this case are (1) whether the statute of limitations applicable to federal securities fraud claims begins to run when the plaintiff is on "inquiry notice" of a possible claim, and (2) whether a plaintiff is on "inquiry notice" when he has reason to suspect that the

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defendant has made a false statement, or only when the victim has no reason to suspect the defendant acted with the scienter necessary to establish a violation of the securities laws. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the positions (1) that the statute of limitations does not begin to run upon "inquiry notice" of a potential claim but instead when a plaintiff acting with reasonable diligence would discover the facts constituting the violation, and (2) that "inquiry notice," which would cause a reasonable investor to undertake further inquiry, does not occur until the investor has reason to suspect that the defendant acted with scienter. The Court held that a cause of action accrues when a reasonably diligent plaintiff would have discovered the facts constituting the violation, including the fact of scienter.

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***Stop the Beach Renourishment, Inc.* v. *Florida Dep't of Environmental Protection*, No. 08-1151**

The question presented in this case is whether Florida's legislation to restore storm-eroded beaches, which would modify private-property boundary lines, constitutes a judicial taking or violates the due process clause. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that the Florida Supreme Court did not take property of petitioners' members without just compensation. The Court has not yet issued its decision.

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***American Needle, Inc.* v. *Nat'l Football League*, No. 08-661**
The questions presented in this case are (1) whether the NFL and its member teams are a single entity that is exempt from rule of reason claims under Section 1 of the Sherman Act, 15 U.S.C. 1; and (2) whether an agreement of NFL teams among themselves and with Reebok International, pursuant to which teams agreed not to compete with each other in the licensing and sale of consumer headwear and clothing decorated with teams' respective logos and trademarks, and not to permit any licenses to be granted to Reebok's competitors for a period of 10 years, is subject to a rule of reason claim under Section 1 of the Sherman Act. The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the court of appeals did not undertake the appropriate inquiry into whether the NFL, the teams, and NFLP functioned as a single entity with respect to the challenged restraints and the case should be remanded for further consideration. The Court has not yet issued its decision.

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***Jerman* v. *Carlisle*, No. 08-1200**

The question presented in this case is whether a debt collector's legal error qualifies for the bona fide error defense under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that a debt collector's legal error does not qualify for the bona fide error defense. The Court held that the bona fide error defense does not apply to a debt collector's mistaken interpretation of the legal requirements of the Act.

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***Abbott* v. *Abbott*, No. 08-645**
The question presented in this case is whether a *ne exeat* clause confers a "right of custody" within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction. The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that a *ne exeat* clause does confer a right of custody under the Hague Convention. The Court held a parent does have a right of custody under the Convention by reason of the parent's *ne exeat* right.

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***United Student Aid Funds, Inc.* v. *Espinosa*, No. 08-1134**

The question presented in this case is whether a debtor may obtain a discharge of a student loan debt in a Chapter 13 bankruptcy plan rather than through an adversary proceeding. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the bankruptcy court's discharge order did not discharge respondent's student loan debt because the court did not find, pursuant to the procedures specified in the Bankruptcy Rules, that failure to do so would create undue hardship for the debtor and his dependents. The Court held that the bankruptcy court's order discharging the debt was not a void judgment.

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***Florida* v. *Powell*, No. 08-1175**
The question presented in this case is whether *Miranda* warnings to a suspect in police custody must include an explicit assurance that the individual may have a lawyer in the room during police questioning. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that pre-interrogation warnings that advise the suspect that he has a "right to talk to a lawyer before answering any of our questions" and a "right to use" that right "at any time you want during this interview" comply with the requirement under *Miranda* that the suspect be informed of the right to the presence of counsel during questioning. The Court held that the warnings satisfied *Miranda*.

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***Mac's Shell Serv.* v. *Shell Oil Prods. Co. & Shell Oil Prods. Co.* v. *Mac's Shell Serv.*, Nos. 08-240 & 08-372**

The question presented in this consolidated case is whether, and under what circumstances, a service station operator may bring suit against an oil refiner or distributor for "constructive termination" or "constructive non-renewal" under the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.* The Office previously filed a brief at the certiorari stage at the invitation of the Court; that brief is described in the "Briefs Filed at the Invitation of the Court" section below. On the merits, the Office of the Solicitor General filed a brief as *amicus curiae* in support of Shell Oil and took the position that a station operator may not claim "constructive termination" when it continues to operate the franchise and may not claim "constructive non-renewal" when it signs and operates under a renewed franchise agreement. The Court held that a franchisee cannot recover for constructive termination under the statute if the franchisor's allegedly wrongful conduct did not compel the franchisee to abandon the franchise. The Court also held that a franchisee who signs and operates under a renewal agreement with a franchisor may not maintain a claim for constructive non-renewal.

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***Padilla* v. *Kentucky*, No. 08-651**
The question presented in this case is whether the Sixth Amendment requires a criminal defense attorney to advise a non-citizen client that pleading guilty to an aggravated felony will trigger mandatory, automatic deportation, and if so, whether the failure to so advise the client amounts to ineffective assistance of counsel warranting that the guilty plea be set aside. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that a claim of ineffective assistance of counsel may be based on incompetent advice about the immigration consequences of a plea, but not on the simple failure to provide any advice at all, and that the defendant must establish prejudice. The Court held that constitutionally competent counsel would have advised petitioner that his conviction subjected him to automatic deportation, and remanded for a determination whether petitioner suffered prejudice.

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***Pottawattamie County* v. *McGhee*, No. 08-1065**
The question presented in this case is whether a prosecutor can be held liable under Section 1983 for a wrongful conviction and incarceration stemming from the prosecutor's procurement of false testimony during the investigation of a crime and the subsequent use of that testimony at trial. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioners and took the position that prosecutors are not liable for such actions. The case was dismissed under Supreme Court Rule 46.

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***Schwab* v. *Reilly*, No. 08-538**
The question presented in this case is whether a Chapter 7 trustee is required by Federal Rule of Bankruptcy 4003(b) or this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), to object to a debtor's claimed exemption when the debtor is entitled to an exemption in the amount claimed, but the debtor incorrectly lists the market value of the property as equal to the amount of the exemption. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that a Chapter 7 trustee is not required to object in such a situation. The Court has not yet issued its decision.

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***State of Alabama* v. *State of North Carolina*, Orig. 132**
This is an original action about the disposal of low-level radioactive waste. The questions presented are (1) whether sovereign immunity principles require the dismissal of the Southeast Low-Level Radioactive Waste Management Commission (Commission) as a plaintiff in this action and (2) whether the Southeast Low-Level Radioactive Waste Management Compact (Compact) authorizes the Commission to impose monetary sanctions against North Carolina in response to North Carolina's alleged breach of its obligations under the Compact. The Office of the Solicitor General filed a brief as *amicus curiae* and took the position that the Commission should not be dismissed from this action and that the Compact does not authorize the Commission to impose monetary sanctions. The Court has not yet issued its decision.

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***Mohawk Indus.* v. *Carpenter*, No. 08-678**
The question presented in this case is whether a party may immediately appeal, as a collateral order, an order to disclose materials said to be covered by the attorney-client privilege. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that discovery orders do not satisfy the traditional requirements of the collateral order doctrine. The Court held that orders to disclose material alleged to be protected by the attorney-client privilege do not qualify for immediate appeal under the collateral order doctrine.

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***Perdue* v. *Kenny A.*, No. 08-970**
The question presented in this case is whether an attorney's fee award under a federal fee-shifting statute can be enhanced beyond the lodestar calculation based on quality of performance and results obtained. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the fee award cannot be enhanced. The Court held that a fee award may be enhanced beyond the lodestar calculation based on superior performance, but only in extraordinary circumstances.

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***Jones* v. *Harris Assoc.*, No. 08-586**

The question presented in this case is whether a security holder's claim that a mutual fund's investment adviser breached its fiduciary duty by charging an excessive fee -- more than twice the fee it charged to clients with which it was not affiliated -- is cognizable under Section 36(b) of the Investment Company Act of 1940, 15 U.S.C. 80a-35(b), even if the security holder does not show that the adviser misled the mutual fund directors who approved the fee. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that such a claim is cognizable under Section 36(b) and that the case should be remanded for a determination whether petitioners have provided sufficient evidence of material facts to survive summary judgment. The Court held that, to face liability under Section 36(b), an investment adviser must charge a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining.

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***Reed Elsevier Inc.* v. *Muchnick*, No. 08-103**
The question presented in this case is whether 17 U.S.C. 411(a) restricts the subject matter jurisdiction of the federal courts over copyright infringement actions. The Office of the Solicitor General filed a brief as *amicus curiae* in support of vacatur and remand. The Office took the position that Section 411(a), which requires copyright owners, before instituting an infringement action, to have registered their copyright with the Copyright Office or have been refused registration, is not jurisdictional. Rather, the registration requirement is a mandatory prerequisite to suit that may be enforced *sua sponte* by district courts prior to judgment. The Court held that Section 411(a)'s registration requirement is a precondition to filing a claim that does not restrict a federal court's subject-matter jurisdiction.

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***Alvarez* v. *Smith*, No. 08-351**
The question presented in this case is whether local law enforcement agencies may seize personal property and then retain custody of the property indefinitely, without judicial or administrative review of the lawfulness of the continued detention of the property. The Office of

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the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the forfeiture procedure does not facially violate the Due Process Clause merely because it does not offer a preliminary probable cause hearing at an early stage. The Court held that the case was moot because the underlying property disputes had all been resolved.

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***McDaniel* v. *Brown*, No. 08-559**
The question presented in this case is whether a federal habeas court, when considering a sufficiency-of-the-evidence claim pursuant to *Jackson* v. *Virginia*, 443 U.S. 307 (1979), may expand the record or consider non-record evidence to determine the reliability of testimony and evidence given at trial. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioners and took the position that, in evaluating the sufficiency of the trial evidence under *Jackson*, claims of evidentiary insufficiency must be evaluated only on the evidence adduced at trial and not on post-trial submissions that were not before the jury. The Court reversed the court of appeals' decision granting habeas relief to respondent.

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***Maryland* v. *Shatzer*, No. 08-680**
The question presented is whether *Edwards* v. *Arizona*, 451 U.S. 477 (1981), requires the suppression of voluntary statements that respondent made after receiving *Miranda* warnings because, two-and-a-half years earlier, respondent, who was incarcerated on a separate crime and

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was later released back to the general prison population, had invoked his Fifth Amendment right to counsel when a different law enforcement official sought to question him about the same offense. The Office of the Solicitor General filed a brief as *amicus curiae* in support of petitioner and took the position that the Fifth Amendment does not require suppression of respondent's warned and voluntary statements. The Court held that the Fifth Amendment did not require suppression of respondent's statements.

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***Forest Grove School District* v. *T.A.*, No. 08-305**
The question presented is whether parents of a student who has never previously received special education services from a school district may be eligible under the Individuals with Disabilities

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Education Act, 20 U.S.C. 1400 *et seq.*, for reimbursement of private school tuition. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent and took the position that such parents are entitled to reimbursement. The Court held that the IDEA authorizes reimbursement for private special-education services when a public school fails to provide a free appropriate public education and the private-school placement is appropriate, regardless of whether the child previously received special-education services through the public school.

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***United States ex rel Eisenstein* v. *City of New York*, No. 08-660**
The question presented is whether the 30-day time limit in Fed. R. App. P. 4(a)(1)(A) for filing a notice of appeal, or the 60-day time limit in Rule 4(a)(1)(B), applies to a qui tam action under the False Claims Act. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondents and took the position that the 30-day time limit applies because the United States is not a party for purposes of this appeal. The Court held that the 30-day time limit applies.

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***Montejo v. Louisiana*, No. 07-1529**
The question presented is whether petitioner's statements in response to police questioning after the court ordered appointment of counsel at a preliminary hearing were admissible under the Sixth Amendment. The Office of the Solicitor General did not file a brief at the merits stage initially. The Court then requested supplemental briefing on whether *Michigan v. Jackson*, 475 U.S. 625 (1986), should be overruled. In *Jackson*, the Court held that a defendant's waiver of his right to counsel under the Sixth Amendment is presumed invalid if the police initiate interrogation after he has asserted the right at an arraignment or similar proceeding. The Office of the Solicitor General filed a brief as *amicus curiae* in support of respondent arguing that the Sixth Amendment should not prevent a criminal defendant from waiving his right to counsel and answering questions from police following assertion of the right at arraignment. The Court overruled *Jackson*.

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Petitions for Certiorari

***FCC* v. *AT&T, Inc.* No. 09-1279**
Exemption 7(C) of the Freedom of Information Act, 5 U.S.C. 552, exempts from mandatory disclosure records or information compiled for law enforcement purposes where the disclosure of such records or information could reasonably be expected to constitute an unwarranted invasion of "personal privacy." 5 U.S.C. 552(b)(7)(C). The question presented in this case is whether Exemption 7(C)'s protection for "personal privacy" protects the "privacy" of corporate entities. The court of appeals held that this personal privacy protection applies to corporate entities. The Office of the Solicitor General took the position that only individuals and not corporations have "personal privacy" under the FOIA. The Court has not yet acted on the petition.

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***United States* v. *Philip Morris USA, Inc.*, No. 09-978**
Under 18 U.S.C. 1964(a), a district court has jurisdiction to issue "appropriate orders" to "prevent and restrain" violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq*. Respondents were found liable for decades-long RICO violations that entailed a multi-faceted scheme to defraud the American public for the purpose of addicting smokers, deceiving actual and prospective smokers about the health effects and addictive properties of respondents' products, and thereby obtaining revenue from the sale of cigarettes. The question presented is whether 18 U.S.C. 1964(a) categorically bars a district court from ordering disgorgement of ill-gotten gains as well as other equitable relief, such as smoking-cessation and public-education remedies, designed to redress the continuing consequences of RICO violations. The court of appeals held that the statute empowers a district court only to grant forward-looking remedies aimed at future violations, and that disgorgement is not such a remedy. The Office took the position that the statute does not bar disgorgement and other equitable relief to address the continuing consequences of RICO violations. The Court has not yet acted on the petition.

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***United States* v. *Juvenile Male*, No. 09-940**
On **February 9, 2010**, the Office of the Solicitor General filed a petition for certiorari in this case. The question presented is whether application of the registration and notification provisions of the Sex Offender Registration and Notification Act (SORNA) to a juvenile who was adjudicated delinquent under the Federal Juvenile Delinquency Act before SORNA's enactment violates the Ex Post Facto Clause of the Constitution. The court of appeals held that such an application of the statute violates the Ex Post Facto Clause. The Office took the position that (1) the Ninth Circuit erred in holding that application of SORNA to such a juvenile violates the Ex Post Facto Clause; (2) that plenary review would be warranted; and (3) that the Court may nonetheless wish to grant the petition, vacate the judgment, and remand for further proceedings on whether the case is moot because the juvenile's sentencing conditions expired prior to the Ninth Circuit's decision. The Court has not yet acted on the petition.

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***United States v. Tohono O'odham Nation*, No. 09-0846**
The question presented is whether 28 U.S.C. 1500 deprives the Court of Federal Claims of jurisdiction over a plaintiff's breach-of-trust claims if the plaintiff has a lawsuit pending in district court seeking related, though not the "same," relief. The court of appeals held that the statute applies only if the plaintiff's suit arises from the same operative facts and seeks the same relief as a claim pending in another court. The Office took the position that Section 1500 does deprive the Court of Federal Claims of jurisdiction in this case. The Court granted the petition.

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***United States* v. *Smith*, No. 09-549**
The question presented in *Smith* is whether the Inmate Accident Compensation Act, 18 U.S.C. 4126(c), which the Supreme Court has found provides the "exclusive" remedy for a federal prisoner suffering a work-related injury, see *United States* v. *Demko*, 385 U.S. 149, 152, 154 (1966), bars a suit against individual government employees based on *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The court of appeals held that the statute does not preclude a *Bivens* remedy against a prison official who allegedly violates the Eighth Amendment in the context of an inmate work assignment. The Office of the Solicitor General filed a petition asking the Supreme Court to hold the case pending the decision in *Hui v. Castaneda*, which was pending before the Court and in which the Office of the Solicitor General filed a brief as *amicus curiae*. The Court denied the petition.

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***National Aeronautics and Space Administration* v. *Nelson*, No. 09-530**
The questions presented are (1) whether the government violates a federal contract employee's constitutional right to informational privacy when it asks whether the employee has received counseling or treatment for illegal drug use that has occurred within the past year, and the employee's response is used only for employment purposes and is protected under the Privacy Act, 5 U.S.C. 552a; and (2) whether the government violates a federal contract employee's constitutional right to informational privacy when it asks the employee's designated references for any adverse information that may have a bearing on the employee's suitability for employment at a federal facility, the reference's response is used only for employment purposes, and the information obtained is protected under the Privacy Act, 5 U.S.C. 552a. The court of appeals held that collection of this information violates a constitutional right to information privacy. The Office took the position that the federal contract employee's constitutional right to information privacy is not violated in either instance. The Court granted the petition.

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***United States* v. *Williams*, 09-466**
The question presented is whether 18 U.S.C 924(c), which sets forth mandatory consecutive sentences for committing certain weapons offenses during and in relation to "any crime of violence or drug trafficking crime," prohibits imposition of such a sentence if the defendant is also subject to a greater mandatory minimum sentence on a different count of conviction. The court of appeals held that the statute does prohibit such a sentence. The Office took the position that the mandatory consecutive sentences in Section 924(c) apply regardless of whether the defendant is subject to a higher mandatory minimum sentence for another count of conviction. The Court has not yet acted on the petition.

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***National Labor Relations Board* v. *Laurel Bay Healthcare of Lake Lanier*, No. 09-377**
The question presented is whether Section 3(b) of the National Labor Relations Act, 29 U.S.C. 153(b), authorizes the National Labor Relations Board to act when only two of its five positions are filled, if the Board has previously delegated its full powers to a three-member group of the Board that includes the two remaining members. The court of appeals held that the Board is not authorized to act under these circumstances. The Office took the position that Section 3(b) authorizes the Board to act in this situation. The Court has not acted on the petition.

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***United States* v. *Bowden*, No. 09-244**
The question presented is whether 21 U.S.C. 851(a), which requires the government to file and serve, before trial or the entry of a guilty plea, an information containing the prior convictions on which the government intends to rely in seeking an enhanced sentence, limits the court's jurisdiction to impose the enhanced sentence. The court of appeals held that the requirement is jurisdictional. The Office took the position that errors in the notice do not divest the court of jurisdiction to impose an enhanced sentence, such that a defendant who fails to raise the claimed deficiency in the district court must meet the plain-error standard of review. The Court denied the petition.

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***Dep't of Defense* v. *ACLU*, No. 09-160**
The questions presented are (1) whether photographs of detainees in military investigatory records are exempt from mandatory disclosure under Freedom of Information Act Exemption 7(F) because their release could reasonably be expected to endanger the lives or physical safety of U.S. personnel overseas; and (2) whether photographs of detainees in military investigatory records are exempt from mandatory disclosure under Freedom of Information Act Exemption 7(C) because their release with redactions could reasonably be expected to constitute an unwarranted invasion of personal privacy. The court of appeals held that the photographs are not exempt from disclosure. The Office took the position that the FOIA exemptions apply. The

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Court granted the petition, vacated the judgment, and remanded the case for further consideration in light of Section 565 of the Department of Homeland Security Appropriations Act of 2010 and the certification by the Secretary of Defense pursuant to that provision.

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***United States Dep't of Interior* v. *Kerr-McGee Oil & Gas Corp.*, No. 09-54**
The question presented is whether the 1995 statute governing the bidding for oil and gas leases on certain tracts of submerged lands in the Gulf of Mexico between 1996 and 2000 allowed the Department of the Interior to include a lease term that would suspend relief from royalties at times when the price of gas or oil exceeds a threshold specified in the lease. The court of appeals held that the leases were invalid under the Royalty Relief Act. The Office took the position that the lease term was valid, and it noted that if the court of appeals' decision is allowed to stand, it will likely result in the loss of at least $20 billion in federal revenue. The Court denied the petition.

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***United States* v. *O'Brien*, No. 08-1569 & 09-597**
The question presented is whether, under 18 U.S.C. 924(c)(1), the sentence enhancement for use of a machine gun during the commission of a criminal offense is an element of the offense that must be charged and proved to a jury beyond a reasonable doubt, or instead is a sentencing factor that may be found by a judge by a preponderance of the evidence. The court of appeals held that the enhancement is an element of the offense. The Office took the position that the enhancement is a sentencing factor that the district court may determine. The Office filed a second petition in this case after the lower court entered an amended judgment to ensure that the Court had the operative judgment before it. The Court granted the petition.

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***Holder* v. *Humanitarian Law Project*, No. 08-1498**
The question presented is whether 18 U.S.C. 2339B(a)(1), which prohibits the knowing provision of "any . . . service, . . . training, [or] expert advice or assistance," 18 U.S.C. 2339A(b)(1), to a designated foreign terrorist organization, is unconstitutionally vague. The court of appeals held the provision unconstitutional. The Office took the position that the provision is not unconstitutionally vague. The Court granted the petition.

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***United States* v. *Marcus*, 08-1341**
The question presented is whether the court of appeals departed from the Court's interpretation of Federal Rule of Criminal Procedure 52(b) by adopting as the appropriate standard for plain-error review of an asserted ex post facto violation whether "there is any possibility, no matter how unlikely, that the jury could have convicted based exclusively on pre-enactment conduct." The Office took the position that the court of appeals' conclusion was not consistent with Federal

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Rule of Criminal Procedure 52(b) and that the Court should grant, vacate, and remand in light of its recent decision in *Puckett* v. *United States*, 129 S. Ct. 1423 (2009). The Court granted the petition.

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***Astrue* v. *Wilson* & *Astrue* v. *Ratliff*, Nos. 08-1335 & 08-1322**
The question presented is whether an "award of fees and other expenses" under the Equal Access to Justice Act, 28 U.S.C. 2412(d), is properly paid to the "prevailing party," and not to the prevailing party's attorney, and thus can be used to offset the party's debt to the government. The court of appeals held that EAJA awards may not be offset against a party's debt to the government. The Office took the position that the text of the Equal Access to Justice Act provides awards to prevailing parties and, for that reason, the government can reduce such awards for debts that the prevailing party may owe the government. The Court granted the petition.

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***United States* v. *Comstock*, No. 08-1224**
The question presented is whether Congress had the constitutional authority to enact 18 U.S.C. 4248, which authorized court-ordered civil commitment by the federal government of "sexually dangerous" person who are already in the custody of the Bureau of Prisons, when the resulting civil commitment will extend beyond the end of a federal prison sentence, and of "sexually dangerous" persons who are in the custody of the Attorney General because they have been found mentally incompetent to stand trial. The court of appeals held the statute exceeds Congress's authority. The Office took the position that Congress had authority to enact this law under the Necessary and Proper Clause. The Court granted the petition.

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***United States v. Milavetz Gallop & Milavetz, P.A.* No. 08-1225,**
The questions presented are whether 11 U.S.C. 526(a)(4) -- which provides that bankruptcy professionals who qualify as "debt relief agencies" and who are hired by consumer debtors for bankruptcy services may not advise those debtors "to incur more debt in contemplation of" filing

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a bankruptcy petition -- precludes only advice to incur more debt with a purpose to abuse the bankruptcy system, and whether 11 U.S.C. 526(a)(4) is facially overbroad under the First Amendment. The court of appeals held that the statute prohibits debt relief agencies from advising clients to incur any additional debt when the client is contemplating bankruptcy, and that the statute as so construed violates the First Amendment. The Office took the position that 11 U.S.C. 526(a)(4) should be construed so as only to apply to advice to incur more debt with a purpose to abuse the bankruptcy system, and therefore, the statute would not be facially overbroad. The Court granted the petition.

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***Williamson* v. *Mazda Motor of American, Inc.*, No. 08-1314**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae*. The questions presented are (1) whether a federal minimum safety standard allowing vehicle manufacturers to install either lap-only or lap/shoulder seatbelts in certain seating positions impliedly preempts a state common-law claim alleging that the manufacturer should have installed lap/shoulder belts in one of those seating positions; (2) whether, under *Wyeth v. Levine*, 77 U.S.L.W. 4165 (U.S. 2009), those federal safety standards impliedly preempt a state tort suit alleging that the manufacturer should have warned consumers of the known dangers of lap-only seatbelts installed in one of its vehicles. The Office took the position that the federal safety standard does not preempt state law and urged the court to grant certiorari as to that question. The Office took the position that the Court does not have jurisdiction to consider the second question presented because the state appellate court's disposition of that question rested on the adequate and independent state-law ground of waiver. The Court has not yet acted on the petition.

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***Sossamon* v. *Texas* & *Cardinal* v. *Metrish*, Nos. No. 08-1438 & 09-109**
At the invitation of the Supreme Court, the Office of the Solicitor General filed briefs at the petition stage as *amicus curiae*. Both cases present the question whether an individual may sue a State or a state official in her official capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Sossomon v. Texas* also presents the question whether state officials are subject to suit in their individual capacities for damages for violations of RLUIPA. The Office of the Solicitor General took the position that official-capacity suits are allowed because a State that receives federal funds for its correctional institutions waives its Eleventh Amendment immunity against damages actions under RLUIPA. Although the Office of the Solicitor General agreed with the *Sossomon* petitioner that state officials are also subject to such suits in their individual capacities, it took the position that the issue does not warrant the Supreme Court's review. The Office therefore recommended that the petition for writ of certiorari in *Cardinal v. Metrish* be granted and that the petition in *Sossamon v. Texas* be held for disposition of the Cardinal case, or else granted only with respect to the issue of official-capacity suits. The Court has not yet acted on the petition.

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***Costco Wholesale Corp.* v. *Omega SA*, No. 08-1423**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae*. Section 602(a)(1) of Title 17 of the United States Code generally prohibits the "[i]mportation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States." Under 17 U.S.C. 109(a), however, "the owner of a particular copy of phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." In *Quality King Distributors, Inc.* v. *L'anza Research International, Inc.*, 523 U.S. 135 (1998), the Supreme Court held that, where Section 109(a) applies, it provides an exception to the general ban on the unauthorized importation into the United States of copies of copyrighted works. The question presented in this case is whether a copy made outside of the United States by the owner of the United States copyright is "lawfully made under [Title 17]" and is therefore covered by section 109(a)'s exception to the general ban on unauthorized importation. The Office took the position that a copy is "lawfully made under [Title 17]" when it is made within the United States, and not simply by the owner of a U.S. copyright, and recommended that the petition for writ of certiorari be denied. The Court granted the petition.

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***Staub* v. *Proctor Hospital*, No. 09-400**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae*. The question presented is whether an employer may be held liable under the Uniformed Services Employment and Reemployment Rights Act based on the unlawful intent of officials who cause or influence but do not make an adverse employment decision. The Office took the position that an employer may be liable when its anti-military animus is a motivating factor for an adverse employment action and recommends that the petition for a writ of certiorari be granted. The Court granted the petition.

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***American Home Products Corp.* v. *Ferrari*, No. 08-1120**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* in this case. The question presented is whether the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 *et seq.*, preempts state-law design-defect claims against vaccine manufacturers. The Office took the position that the Act preempts such claims, but because of mootness concerns, the case should be held and the Court should instead grant certiorari in *Bruesewitz* v. *Wyeth, Inc.*, petition for cert. pending, No. 09-152, which presents the same question The Court has not yet acted on the petition.

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***Missouri Gas Energy* v. *Schmidt*, No. 08-1458**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* in this case. The questions presented are (1) whether the Due Process Clause or the dormant Commerce Clause prohibits a State from imposing an ad valorem tax on natural gas stored in the State but connected to an interstate pipeline system for out-of-state transport; and (2) whether the Due Process Clause or the dormant Commerce Clause prohibits a State from using the particular formula applied in this case for allocating ownership of stored natural gas among various shippers for purposes of assessing an ad valorem tax. The Office took the position that the petition for certiorari should be denied because there is no conflict of authority on the questions presented and the decision below rejecting the Due Process Clause and dormant Commerce Clause challenges was correct. The Court denied the petition.

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***Robertson* v. *United States ex rel. Watson*, No. 08-6261**

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At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* in support of respondents in this case. The question presented is whether an action for criminal contempt in a congressionally created court may be brought in the name of a private person, rather than in the name of the United States. The Office took the position that the court of appeals' decision does not conflict with any decision of the Supreme Court or another court of appeals and that this case is an inappropriate vehicle to address the question presented. The Court granted the petition

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***Morrison* v. *National Australia Bank, Ltd.*, No. 08-1191**

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At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* in this case. The questions presented are (1) whether the antifraud provisions of the United States securities laws extend to transnational frauds where (a) the foreign-based parent company conducted substantial business in the United States and (b) claims arose from an accounting fraud perpetrated by American citizens at the parent company's Florida-based subsidiary; and (2) whether subject matter jurisdiction extends to transnational fraud-on-the-market claims. The Office of the Solicitor General took the position that the court of appeals erred by treating the question as one of subject matter jurisdiction, but the petition should be denied because the antifraud provisions of the United States securities laws do not extend to the type of fraud at issue in this case. The Court granted the petition.

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***Hamilton* v. *Lanning*, No. 08-998**

At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* in this case. Under Section 1325(b)(1)(B) of Title 11 of the United States Code, when a trustee or unsecured creditor objects to the confirmation of a debtor's Chapter 13 plan, the bankruptcy court can confirm that plan if "all of the debtor's projected disposable income to be received" during the plan period "will be applied to make payments to unsecured creditors under the plan." The debtor's "disposable income" is calculated by examining her monthly expenses when the Chapter 13 petition was filed and her average monthly income during the six-month period before the petition was filed. The question presented is whether, in calculating the debtor's "projected disposable income" during the plan period, the bankruptcy court may consider evidence suggesting that the debtor's income or expenses during that period are likely to be different from her income or expenses during the pre-filing period. The Office of the Solicitor General took the position that the court of appeals was correct in holding that the bankruptcy court may consider such evidence, but that the petition should be granted to resolve the circuit split. The Court granted the petition.

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***Patton* v. *Harris*, No. 08-7683**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. 28 U.S.C. 1915(b)(1) provides that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." The question presented is whether, a prisoner who files a notice of appeal and an application to proceed in forma pauperis, remains liable for the appellate filing fee if his application is denied and his appeal is dismissed for failure to timely pay the filing fees. The Office took the position that the lower court was correct in ordering the prisoner to pay the filing fees and recommended that the Court deny certiorari. The Court denied the petition.

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***Lewis* v. *City of Chicago*, No. 08-974**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting petitioners in this case. The question presented is whether, where an employer adopts an employment practice that discriminates against African Americans in violation of Title VII's disparate impact provision, a plaintiff must file an EEOC charge within 300 days after the announcement of the practice, or whether the plaintiff may file the charge within 300 days after the employer's use of the discriminatory practice. The Office took the position that the plaintiff may file the charge within 300 days of the employer's use of the discriminatory practice and recommended that the Court grant certiorari. The Court granted the petition.

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***Hui* v. *Castaneda* & *Henneford* v. *Castaneda*, Nos. 08-1529 & 08-1547**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting petitioners in these cases. The question presented is whether 42 U.S.C. 233(a), which provides that a suit against the United States under the Federal Tort Claims Act is exclusive of any other action against a commissioned officer or employee of the Public Health Service for injury resulting from the performance of medical functions, bars a suit against such an officer or employee based on *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Office recommended that the Court grant certiorari. The Court granted the petition.

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***Cable News Network, Inc.* v. *CSC Holdings, Inc.*, No. 08-0448**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. A copyright holder has the exclusive rights "to reproduce the copyrighted work in copies" and, in the case of audiovisual works and other specified classes of works, "to perform the copyrighted work publicly." 17 U.S.C. 106(1) and 106(4). Respondents intend to offer a remote-storage digital video recorder (RS-DVR) service that would allow subscribers to record television programs when they air and watch the programs at a later time. The questions presented are as follows: (1) whether

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respondents would directly infringe petitioners' reproduction rights when the RS-DVR system makes copies of programs and stores those copies on computer hard drivers located at facilities owned by respondents, (2) whether respondents would directly infringe petitioners' reproduction rights when the RS-DVR system, as part of its normal operations, temporarily stores in transient data buffers small portions of all programs that respondents broadcast, and (3) whether respondents would directly infringe petitioners' public-performance rights when the RS-DVR system transmits previously recorded programs to a subscriber at the subscriber's request. The Office of the Solicitor General took the position that certiorari should be denied because the decision presented no conflict with decisions of other courts, this case is a poor vehicle to address the questions presented, and the court of appeals reasonably and narrowly resolved the issues presented to it. The Court denied the petition.

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***Vos* v. *Barg*., No. 08-603**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. The question presented is whether, under 42 U.S.C. 1396p(b)(4)(B), a State that seeks to recover correctly paid Medicaid

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benefits is limited to recovering the value of assets in which the recipient had a legal interest at the time of her death. The Office of the Solicitor General took the position that certiorari should be denied because the Minnesota Supreme Court correctly held that the State was limited to recovering the value of assets in which the recipient had a legal interest at the time of her death, and while this decision came to a different result than a North Dakota Supreme Court decision, those results may be based on state law. The Court denied the petition.

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***Federal Insurance Co.* v. *Kingdom of Saudi Arabia*, No. 08-640**

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At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. The questions presented are (1) whether the immunity from suit of foreign governmental officials for acts within their official capacity is governed by the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. 1330, 1602 *et seq.*, or by principles of immunity recognized by the Executive Branch in the exercise of its authority over foreign affairs; (2) whether tort claims may be asserted against a foreign state under FSIA's tort exception, 28 U.S.C. 1605(a)(5), where the foreign state's asserted liability is based on donations to charitable institutions outside the United States that were allegedly diverted to a terrorist group that committed acts of terrorism within the United States; and (3) whether courts in the United States may, consistent with the Due Process Clause, exercise personal jurisdiction over civil claims against foreign nationals on the ground that those individuals made donations abroad to charitable institutions that foreseeably diverted some of those funds to a group that intended to commit terrorist attacks against the United States. The Office of the Solicitor General took the position that certiorari should be denied because the Saudi Princes are immune from suit for their official acts that form the basis of petitioners' suit, the court of appeals correctly held that petitioners' claims do not satisfy the domestic tort exception, and the court of appeals' personal jurisdiction holding does not warrant the Court's review as the scope of its holding is unclear and does not conflict with decisions of other courts. The Court denied the petition.

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***American Bankers Association* v. *Brown*, No. 08-730**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. The question presented is whether the federal Fair Credit Reporting Act preempts the California Information Privacy Act to the extent state law restricts the exchange among affiliated financial institutions of information on consumers. The Office of the Solicitor General took the position that certiorari should be denied because, although the court of appeals erred, the decision presented no conflict with decisions of other courts. The Court denied the petition.

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***Abbott* v. *Abbott*, No. 08-645**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting petitioners in this case. The question presented is whether a *ne exeat* order, which prohibits either parent from removing a child from the country without the other parent's consent, confers a "right of custody" within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction, thus allowing a parent to seek to have a child who was removed to another country in violation of the *ne exeat* order returned to his or her country of habitual residence. The Office of the Solicitor General took the position that certiorari should be granted because the court of appeals erred in holding that *ne exeat* right is not a right of custody, there is disagreement among the circuits as to whether a *ne exeat* right is a custody right, this is an important question that merits the Court's review, and this case is a suitable vehicle for addressing the question. The Court granted the petition.

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***Level 3 Communications, LLC* v. *City of St. Louis & Sprint Telephone PCS, L.P.* v. *County of San Diego*, Nos. 08-626 & 08-759**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting petitioners in these cases. The questions presented are (1) whether 47 U.S.C. 253(a), which provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service," preempts only those state and local requirements that have an actual effect on the ability to provide service, as opposed to those that might have such an effect in the future, and (2) whether 47 U.S.C. 253(c), which provides that "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation * * * for use of public rights-of-way," preempts regulations not otherwise preempted by 47 U.S.C. 253(a). The Office of the Solicitor General took the position that certiorari should be denied because the courts of appeals' decisions were correct and any possible conflict among the circuits did not warrant the Court's review at this time. The Court denied the petition.

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***American Needle, Inc.* v. *NFL*, No. 08-661**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. For several decades, the National Football League (NFL) and its member teams have collectively licensed their trademarks and logos to manufacturers through a common licensing agent, National Football League Properties (NFLP). Until 2001, NFLP granted headwear licenses to several vendors. In 2001, however, NFLP entered into an exclusive headwear licensing contract with one company, following ratification by the teams. The question presented in this case is as follows: Whether NFLP, the NFL, and the teams functioned as a "single entity" when granting the company an exclusive headwear license and therefore could not violate Section 1 of the Sherman Act, 15 U.S.C. 1, which requires proof of collective action involving "*separate* entities," *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984). The Office of the Solicitor General took the position that certiorari should be denied because the decision presented no conflict with decisions of other courts, even though the court of appeal's reasoning was problematic. The Court granted the petition.

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***Frommert* v. *Conkright, Conkright* v. *Frommert & Pietrowski* v. *Conkright,* Nos. 08-803, 08-810 & 08-826**

At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in these cases. The questions presented are (1) whether the court of appeals applied the correct standard of review when it concluded that (a) the administrator of an ERISA plan whose denial of benefits violated ERISA was not entitled to deference regarding its opinion on how to remedy the violation and (b) the district court's choice of remedy should be reviewed for abuse of discretion; and (2) whether the court of appeals applied correct legal principles in holding that employees who signed general releases knowingly and voluntarily waived their claims under ERISA. The Office of the Solicitor General took the position that certiorari should be denied because the court of appeals correctly held that it did not have to defer to the administrator of an ERISA plan in such circumstances and the waiver question is a fact-bound issue that does not merit the Court's review. The Court denied the petition in 08-803 and 08-826, and granted the petition in 08-810.

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***Fin-Ag, Inc.* v. *Pipestone Livestock Auction Market,* No. 08-576**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondents in this case. The question presented is whether a buyer of farm products in the ordinary course of business is entitled to the protections of the Food Security Act of 1985, 7 U.S.C. 1631(d), and thus to take purchased property free of a security interest created by the seller, where the creditor fails to include the debtor-seller's "doing business as" name on its financing statement, as required under state law. The Office of the Solicitor General took the position that certiorari should be denied because the decision turned on state law, presented no conflict with decisions of other courts, and did not involve issues of exceptional importance. The Court denied the petition.

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***Graham County Soil & Water Conservation District* v. *United States ex rel. Wilson*, No. 08-304**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting petitioner in this case. The False Claims Act (FCA) provides that no court has jurisdiction over a *qui tam* action "based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media" unless the relator "is an original source of the information." 31 U.S.C. 3730(e)(4)(A). The question presented is whether a state or local government report or audit qualifies as a "congressional, administrative, or Government Accounting Office report * * * [or] audit" within the meaning of the FCA. The Office of the Solicitor General recommended that certiorari be granted to resolve the circuit conflict on this issue. The Court granted the petition.

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***Mac's Shell Service* v. *Shell Oil & Shell Oil* v. *Mac's Shell Service*, Nos. 08-240 & 08-372**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* recommending that certiorari be granted. The question presented is whether, and under what circumstances, a service station operator may bring suit against an oil refiner or distributor for "constructive termination" or "constructive non-renewal" under the Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq*. The Office of the Solicitor General took the position that a station operator may not claim "constructive termination" when it continues to operate the franchise and may not claim "constructive non-renewal" when it signs and operates under a renewed franchise agreement. The Court granted the petition.

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08-0372 Shell Oil Products, Inc. v. Mac's Shell Service, Inc.
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***Trainer Wortham Co. v. Betz*, No. 07-1489**
At the invitation of the Supreme Court, the Office of the Solicitor General filed a brief at the petition stage as *amicus curiae* supporting respondent in this case. The federal statute of limitations for private securities-fraud claims provides that a plaintiff must file suit within two years after "the discovery of the facts constituting the violation." 28 U.S.C. 1658(b). The lower courts have uniformly construed the term "discovery" in that provision to refer to actual or constructive discovery. The questions presented are (1) whether a potential plaintiff is on "inquiry notice" regarding a claim of securities fraud when he has reason to suspect that the defendant has made a false statement, even if the victim has no reason to suspect that the defendant made the misstatement with the scienter necessary to constitute a violation of the securities laws; and (2) whether an investor who has been placed on "inquiry notice" may reasonably delay further investigation of the defendant's possible fraud on the basis of assurances by the defendant. The Office of the Solicitor General took the position that the petition should be denied with respect to both questions because the court of appeals articulated the correct legal standards and any fact-specific errors do not warrant the Court's review. The Court granted the petition, vacated the judgment, and remanded for further consideration in light of *Merck & Co. v. Reynolds*, 559 U.S. ___ (2010).

Attorneys for Petitioners:

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Miscellaneous Filings

Although the question does not call for them, I am providing as attachments the following miscellaneous filings by the Office of the Solicitor General:

Case #	Case	File Date	Description
08-1457	New Process Steel Co. v. National Labor Relations Board	4/26/2010	Letter brief addressing new developments related to case
08-1457	New Process Steel Co. v. National Labor Relations Board	3/29/2010	Letter re: outside developments related to case

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08-304	Graham County Soil & Water Conservation District v. United States ex rel. Wilson	3/26/2010	Letter re: outside developments related to case
22-0001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	3/22/2010	Opposition to motion to reopen
09-8367	Welton v. United States	3/17/2010	Letter re: outside developments related to case
22-0001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	2/25/2010	Memorandum in opp to renewed motion for preliminary injunction
09-8548	Brown v. United States	2/25/2010	Memorandum in opposition to motion to seal
09-0513	Perkins v. Department of Veterans Affairs	2/23/2010	Letter re: outside developments related to case
08-1234	Kiyemba v. Obama	2/19/2010	Letter re: outside developments related to case
08-1234	Kiyemba v. Obama	2/5/2010	Letter re: outside developments related to case
22-0001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	1/19/2010	Letter re: outside developments related to case
08-1224	United States v. Comstock	1/8/2010	Letter re: outside developments related to case
22-0001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	1/8/2010	Corrected memorandum in opposition to motion for prelimimary injunction
22-001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	1/8/2010	Letter re: corrected memorandum in opposition to motion for preliminary injunction
22-001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	1/6/2010	Letter re: correction
22-0132	Alabama v. North Carolina	1/5/2010	Letter re: Assistant Solicitor General's Rule 7 violation
22-0001	Wisconsin v. Illinois; 22-0002 Michigan v. Illinois; 22-0003 New York v. Illinois	1/5/2010	Memorandum in oppposition to motion for preliminary injunction
09A0484	Chekkouri v. Obama (under seal)	12/4/2009	Letter re: outside developments related to case
08-0304	Graham County Soil & Water Conservation District v. United States ex rel Wilson	12/1/2009	Letter re: post-argument clarification
08-7757	Watts v. United States	11/25/2009	Supplemental memorandum
09A0484	Chekkouri v. Obama (under seal)	11/25/2009	Opposition to motion to unseal; Opposition to motion for stay

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09-0098	Scurlark v. United States	11/5/2009	Letter re: outside developments related to case
09-160	Department of Defense v. American Civil Liberties Union	10/29/2009	Letter re: outside developments related to case
09A0324	Fulks v. United States	10/14/2009	Response to application for stay
09-160	Department of Defense v. American Civil Liberties Union	10/8/2009	Letter re: outside developments related to case
08-1234	Kiyemba v. Obama	9/29/2009	Letter re: outside developments related to case
08-1234	Kiyemba v. Obama	9/23/2009	Letter re: outside developments related to case
09A0244	Gathungu v. Holder	9/21/2009	Response to application for stay
08-1453	Rollins v. United States	9/18/2009	Letter with corrected copies of brief originally filed 9/16
08-1427	Brockman v. United States	8/31/2009	Letter re: outside developments related to case
08-1322	Astrue v. Ratliff	8/24/2009	Letter re: outside developments related to case
08-1335	Astrue v. Wilson	8/24/2009	Letter re: outside developments related to case
08-1498	Holder v. Humanitarian Law Project (and 09-09 HLP v. Holder)	8/20/2009	Letter re: Assistant Solicitor General's Rule 7 violation
08-1513	Center for Auto Safety v. Chrysler	8/14/2009	Letter expressing no objection to dismissal
08-11105	Barriteau v. Holder (09A121)	8/7/2009	Response to application for stay
09A0061	Gonzalez-Mira v. Holder	7/23/2009	Letter re: outside developments related to stay application
08-1384	O'Bryan v. Holy See	7/10/2009	Letter waiving right to respond to cert petition
08-1196	Weyrauch v. United States	7/2/2009	Response to motion to modify the questions presented
08-1234	Kiyemba v. Obama	6/25/2009	Letter re: outside developments related to case
08-1234	Kiyemba v. Obama	6/11/2009	Letter re: outside developments related to case
08A1096	Indiana State Police Pension Trust v. Chrysler	6/9/2009	Supplemental memorandum in opposition to application for stay
08A1096	Indiana State Police Pension Trust v. Chrysler	6/8/2009	Memorandum in opposition to application for stay
08-769	United States v. Stevens	6/8/2009	Letter proposing to lodge material with Clerk relevant to case
08-876	Black v. United States	6/5/2009	Memorandum in opposition to bail

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08A0899	Diaby v. Holder	4/24/2009	Response to application for stay
08-5411	Woods v. United States	4/15/2009	Letter re: outside developments related to case
08A863	United States v. Comstock	4/3/2009	Application for stay
08A0793	Williams v. Holder	3/30/2009	Sur-reply in opposition to application for stay
08A0794	Department of Health and Human Services v. Alley	3/23/2009	Response to application for stay

During my tenure as Solicitor General, the Office has filed approximately 700 responses to petitions for certiorari. Given that these responses run to more than 10,000 pages, I understand that the White House Counsel's Office and Committee staff have agreed that I may provide them to the Committee in electronic form only. They are attached to this questionnaire, with a table to identify the cases.

f. Supply four (4) copies of any briefs submitted to the Supreme Court of the United States on your behalf as a party or amicus. Summarize your reason for interest or involvement in each brief.

While dean of Harvard Law School, I joined an amicus brief in the Supreme Court (as well as in the Third Circuit) with many of my faculty colleagues in support of respondent Forum for Academic and Institutional Rights, Inc. (FAIR) in an action against Secretary Rumsfeld challenging the Solomon Amendment, which governs universities' treatment of military recruiters. I did not participate in the drafting of this brief. Whereas the main brief in the case presented a constitutional argument, the amicus brief presented a statutory argument – that the Amendment did not require universities to exempt the military from generally applicable anti-discrimination rules governing employers. The Supreme Court unanimously rejected all claims, constitutional and statutory alike in *Rumsfeld v. FAIR*, 547 U.S. 47 (2006).

g. Identify all cases from the date of your confirmation (March 19, 2009) to the present in which the Office of the Solicitor General issued decisions on requests for leave to file a petition for certiorari or an opposition to certiorari, to file a petition for rehearing en banc in the Federal Courts of Appeals, decisions to settle or otherwise not to proceed on a matter in litigation or on appeal in the Courts of Appeals or the Supreme Court, or to join as amicus in litigation to which the United States was not a party. For each case, identify the name of the case, the court and docket number (and where available, citation), and, to the extent such information can be provided consistent with applicable claims of privilege or confidentiality, the identity of the Executive Branch agency or department, if any, recommending that the Office appeal, seek certiorari or file an amicus brief in that particular matter.

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The attached spreadsheet lists all recommendations acted upon by the Office of the Solicitor General from March 19, 2009, to May 14, 2010. This spreadsheet includes decisions by the Office of the Solicitor General to authorize an appeal from a district court decision to the federal court of appeals, even though the question does not appear to call for such decisions. The "Action Taken By" column lists the senior lawyer in the Office who approved the final decision and the "Division" column lists the Justice Department division from which the case arose. The information that has been redacted from the spreadsheet is the recommendation from the Justice Department division. That information is privileged and confidential.

16. Litigation: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As Solicitor General, I have served as counsel of record in the cases listed in response to Question 16. The following ten cases are representative of my litigation experience as an associate at Williams & Connolly between 1989 and 1991. Please note that these matters occurred some time ago. I have tried to update addresses and telephone numbers to the extent possible.

(a) Federal Realty Investment Trust v. Pacific Insurance Co., No. R-88-3658. We represented a real estate investment trust in an action against an insurer for the costs of defense associated with a prior litigation. I began work on the case in the middle of the litigation; I did some late discovery and drafted most of the pre-trial motions. On the eve of trial, Judge Norman Ramsey of the U.S. District Court for the District of Maryland ruled in favor of our position on the appropriate standard for allocating defense costs between covered and uncovered parties and claims (760 F. Supp. 533 (1991)). This ruling immediately produced a settlement favorable to our client.

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(b) In re Seatrain Lines, Inc., Nos. 81 B 10311, 81 B 10916, 81 B 11059, 81 B 12345, 81 B 12525, 81 B 11845, 81 B 11004, 81 B 11512. We represented Seatrain Lines, Inc., a debtor in bankruptcy, in U.S. Bankruptcy Court in the Southern District of New York (Judge Burton Lifland presiding) in connection with an application by Chase Manhattan Bank and Milbank, Tweed, Hadley & McCloy for legal fees associated with the bankruptcy case. In response to the filing of the fee application, our client counterclaimed against Chase for the recovery of the costs of preserving and disposing of certain properties subject to Chase's security interest. I handled some of the discovery and drafted most of the pleadings. When the court denied Chase's motion to strike our counterclaim (and a subsequent motion for reconsideration), the parties settled on terms favorable to our client.

Co-Counsel: Kevin T. Baine
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(c) Toyota of Florence, Inc. v. Lynch, Nos. 4-89-594-15, 4-89-595-15. We represented Southeast Toyota Distributors, Inc. in a suit brought by one of its franchisees alleging fraud, intentional interference with contract, violations of RICO, and a host of other claims. I drafted numerous pleadings in the case, including an opposition to the plaintiff's motion to remand (granted by Judge Hamilton of the U.S. District Court for South Carolina at 713 F. Supp. 898 (1989)), as well as motions to dismiss and discovery motions (ruled on by Judge Edwin Cottingham of the Court of Common Pleas for Darlington County). I also handled some of the discovery. I left the firm prior to trial. Ultimately, a verdict for the plaintiff was dismissed on appeal.

Co-Counsel: Robert B. Barnett
Williams & Connolly

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(d) Byrd v. Randi, No. MJG-89-636. We represented defendant Montcalm Publishing Corp. in a libel action arising from an allegation that the plaintiff was in prison for child molestation. The case presented issues relating to the "libel-proof plaintiff" doctrine, the definition of a "limited purpose public figure," and the actual malice standard. I did most of the discovery, drafted our summary judgment motion and other pleadings, and argued the summary judgment motion before the district court. After initially denying the motion, Judge Marvin Garbis of the U.S. District Court for the District of Maryland dismissed the case a few months later on a motion for reconsideration.

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(410) 841-5421

Opposing Counsel: Donald J. Katz
Last Known – Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, MD 21093

(e) In Re Application of News World Communications, Inc., Nos. 89-3160, 89-212. We represented the Washington Post and WRC-TV in this effort to compel release to the public of unredacted transcripts of audiotapes to be received in evidence at a criminal trial. I argued motions before Judge Charles Richey of the U.S. District Court for the District of Columbia to compel release of the transcripts and to prevent redaction. Judge Richey granted both motions, with the latter reported at 17 Media L. Rep. 1001 (1989). The Court of Appeals for the D. C. Circuit, with Judges Wald, Silberman, and Sentelle hearing argument, denied a motion to stay this order (17 Media L. Rep. 1004 (1989)).

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Now – Drinker Biddle & Reath
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Opposing Counsel: Elise Haldane
1900 L Street, N.W.
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(f) J. Odell Anders v. Newsweek, Inc., No. 90-715. We represented Newsweek, Inc. on appeal from a jury verdict in its favor in a libel action filed in the Southern District of Mississippi. The case raised questions about the actual malice standard, as well as numerous evidentiary issues. I drafted the appellate brief urging affirmance. The U.S.

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Court of Appeals for the Fifth Circuit held in our favor by unpublished opinion (judgment reported at 949 F.2d 1159 (1991)).

Co-Counsel: Kevin T. Baine
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Washington, DC 20005
(202) 434-5010

Opposing Counsel: John E. Mulhearn, Jr.
Mulhearn & Mulhearn
202 South Wall Street
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Natchez, MS 39120
(601) 442-4808

(g) Luke Records, Inc. v. Nick Navarro, No. 90-5508. We filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit on behalf of the Recording Industry Association of America and numerous record companies, challenging the decision of the district court that a musical recording was obscene under the standard set forth by the Supreme Court in Miller v. California. I drafted the brief in the case, which stressed the difficulty of holding music obscene under prevailing constitutional law. Judge Lively, joined by Judges Anderson and Roney, reversed the district court's decision (960 F.2d 134 (1992)).

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Bruce Rogow
Nova Southeastern University Law Center
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Opposing Counsel: John W. Jolly, Jr.
Then – Skelding, Labasky, Corry, Hauser, Jolly, Metz & Daws
Now – Jolly & Peterson

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(850) 422-0282

(h) Bagbey v. National Enquirer, No. CV 89-2177. We represented the National Enquirer in this libel action brought by a person mistakenly identified in the publication as being Jimmy Swaggert's father. I drafted all pleadings and did all discovery in the case, which began in Louisiana state court but which we removed to the U.S. District Court for the Western District of Louisiana (Judge F.A. Little, Jr.). We eventually settled the case on terms favorable to our client.

Co-Counsel: Richard S. Hoffman
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Now – Executive Vice President for Mergers, Acquisitions & Business Development
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(301) 380-3000

Patrick Caffery
Then – Caffery, Oubre, Dugas & Campbell
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New Iberia, LA 70560-3862
(337) 364-1816

Opposing Counsel: Eugene P. Cicardo, Sr.
P.O. Box 11635
Alexandria, LA 71309
(318) 445-2097

(i) Chuang v. United States, No. 89-1309. We represented Joseph Chuang, a former bank president, on his appeal from a criminal conviction for numerous counts of bank fraud. The principle issues in the case concerned the propriety of two warrantless searches of the bank, one by the Office of the Comptroller of the Currency and one by the FDIC. I drafted most sections of the brief, which argued among other matters (1) that the statute authorizing the OCC's search failed to provide a constitutionally adequate substitute for a warrant, as required by the Supreme Court, and (2) that the FDIC's search was invalid because it went beyond the bank premises into Chuang's law firm offices. The Second Circuit affirmed the conviction, with Judge Timbers writing and Judges Newman and Altimari joining (897 F.2d 646 (1990)).

Co-Counsel: Robert S. Litt
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Now – Office of the Director of National Intelligence
Washington, DC 20511

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Bruce S. Oliver
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Now - Associate General Counsel
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McLean, VA 22102
(703) 903-2600

Opposing Counsel: Herve Gouraige
Then – Latham & Watkins
Now – Epstein Becker & Green
Two Gateway Center
12th Floor
Newark, NJ 07102-5003
(973) 639-8536

(j) United States v. Jarrett Woods, We represented the former head of the Western Savings Association, a failed savings and loan, in both a grand jury investigation and a number of civil suits brought against him. The Federal Home Loan Bank Board had declared the S&L insolvent and placed it in receivership after discovering various suspect real estate loans. In addition to trying to keep the civil suits at bay, we tracked the grand jury investigation of Woods closely for more than a year – interviewing each of the many people brought before the grand jury – before Woods became unable to afford the representation. Woods was subsequently indicted and convicted of numerous counts of bank fraud.

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Jeffrey Kindler
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17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I currently serve as Solicitor General of the United States. In that capacity, I am the principal advocate for the United States in the Supreme Court, and make a wide variety of decisions concerning the appellate litigation of the United States.

For almost six years, I served as the dean of Harvard Law School. That job had a very significant academic component: as dean, I led efforts to expand and enhance the faculty and to reform and modernize the curriculum. The job also had a very significant managerial component: Harvard Law School has a $180 million operating budget, over 500 employees, and almost 1 million square feet of physical space. Finally, the job included significant outreach to and interaction with key parts of the profession, including judges, government officials, private attorneys, and public interest lawyers.

Significant parts of my career have been devoted to scholarship and teaching. Between 1999 and 2003, I principally focused on administrative and associated constitutional law questions. My major work during this period concerned the relationship between the President and the administrative agencies. Between 1991 and 1995, I wrote primarily about issues of free expression. My major work at this time proposed a theory of the First Amendment focused on the nature of governmental motives underlying speech restrictions.

My work in the White House, both in the Counsel's Office and the Domestic Policy Council, centered on the development and implementation of law and policy in areas ranging from education to crime to welfare to public health. Among other matters, I led the Clinton Administration's inter-agency effort to analyze all legal and regulatory aspects of the Attorney Generals' tobacco settlement and then participated actively in the development and congressional consideration of tobacco legislation. I also worked on legislative or executive action involving constitutional issues, including the separation of powers, governmental privileges, freedom of expression, and church-state relations.

I have never performed lobbying activities for any client or organization.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, compensation received, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Administrative Law – numerous times at Harvard; most recent syllabus attached.

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Constitutional Law – numerous times at Harvard and University of Chicago; most recent syllabus attached

Civil Procedure – numerous times at Harvard and University of Chicago; most recent syllabus attached

Labor Law – three times at University of Chicago; most recent syllabus attached

Presidential Lawmaking (seminar) – once at Harvard; syllabus attached

The President and the Law (seminar) – once at Harvard; syllabus attached

Law of Political Process (seminar) – once at University of Chicago; no syllabus found; dealt with issues of election law such as districting and campaign finance.

19. **Deferred Income/ Future Benefits**: List the sources, amounts, and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts, and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    None. I am currently a faculty member on leave from Harvard Law School. If nominated and confirmed, I would give up my faculty appointment.

20. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    None.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    I have provided financial disclosure reports for my years of government service through 2008. I have not yet filed a financial disclosure report for 2009 and 2010. I expect to do so in the next week, and I will provide the Committee with a copy.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    Please see attached.

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23. Potential Conflicts of Interest:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts of interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise. Specifically, explain how you will resolve any conflicts that may arise by virtue of your service as Solicitor General of the United States.

The principal conflicts of interest that I would encounter arise from my service as Solicitor General. I would be recused in all matters for which I was counsel of record. I would handle recusal questions in all other matters involving my service as Solicitor General consistent with the procedure set forth in my answer to question 13(c). The only other potential conflicts of interest of which I am aware would arise from litigation involving Harvard University. I would handle recusal questions in these cases in the same way.

b. Explain how you will resolve any potential conflict of interest that may arise, including the procedure you will follow in determining these areas of concern.

I would resolve any potential conflicts of interest in accordance with the procedure set forth in my answer to question 13(c).

24. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As noted in my answer to question 6, I have served on the boards of numerous non-profit organizations, including several specifically devoted to ensuring the availability of legal services for indigent persons. As dean of Harvard Law School, I did not engage in any individual representation of clients, but I promoted public service and pro bono work in a variety of ways, including by enhancing resources for the school's loan forgiveness program and its summer public interest funding program in order to increase the number of students engaged in public interest work, especially on behalf of indigent persons, during law school and after graduation.

25. Selection Process:

a. Describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). List all interviews or communications you had with anyone in the Executive Office of the President, Justice Department, or outside organizations or individuals at the behest of anyone in the Executive Office of the President or Justice Department regarding this nomination, the dates

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of such interviews or communications, and all persons present or participating in such interviews or communications. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I was contacted by Bob Bauer, White House Counsel, and Susan Davies, Deputy White House Counsel, on March 5, 2010, to inform me that the President wished to consider me for a possible Supreme Court vacancy. Between that date and the day of my nomination, I had frequent contact with Mr. Bauer and Ms. Davies. On April 7, 2010, Ron Klain, Chief of Staff to the Vice President, contacted me about meeting with the Vice President. Also that day, I met with David Axelrod, Senior Advisor to the President; Cynthia Hogan, Counsel to the Vice President; and Lisa Brown, Staff Secretary to the President. On April 13, 2010, I met with Ms. Davies and Danielle Gray, an Associate White House Counsel. On April 15, 2010, I met with Amy Sabrin of Skadden Arps, as well as Leslie Abrams, Robyn Carr, and Maya Florence of that firm; Ms. Davies also attended this meeting. I met again with Ms. Sabrin and Ms. Carr on April 28, 2010. I met with Vice President Biden on April 27, 2010, and was interviewed by President Obama on April 30, 2010. I met with Valerie Jarrett on May 6, 2010. President Obama informed me on May 9, 2010 that he wished to nominate me to the Supreme Court. During this period, I also had numerous other communications with the White House staff members listed above, or groups of them, as well as with Daniel Meltzer, Principal Deputy White House Counsel; Julia Kazaks of Skadden Arps; and Attorney General Eric Holder.

b. Has anyone involved in the process of selecting you for this nomination (including, but not limited to anyone in the Executive Office of the President, the Justice Department, or the Senate and its staff) ever discussed with you any currently pending or specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully. Identify each communication you had prior to the announcement of your nomination with anyone in the Executive Office of the President, the Justice Department, or the Senate or its staff referring or relating to your views on any case, issue, or subject that could come before the Supreme Court of the United States, state who was present or participated in such communication, and describe briefly what transpired.

No.

c. Did you make any representations to any individuals or interest groups as to how you might rule as a Justice, if confirmed? If you know of any such representations made by the White House or individuals acting on behalf of the White House, please describe them, and if any materials memorializing those communications are available to you, please provide four (4) copies.

No.

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FINANCIAL STATEMENT
NET WORTH – As of January 1, 2010

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$739,783	Notes payable to banks-secured	
U.S. Government securities-add schedule A	$198,532	Notes payable to banks-unsecured	
Listed securities-add schedule		Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned-add schedule		Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property			
Cash value-life insurance			
Other assets itemize:			
Retirement funds – from employment and inherited IRAs	$824,204		
		Total liabilities	0
		Net Worth	$1,762,519
Total Assets		Total liabilities and net worth	$1,762,519
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No

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On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

Schedule A: Securities are money market fund held at Vanguard ($40,024) and mutual funds held at Vanguard ($113,848) and Franklin Templeton Investments ($44,660).

AFFIDAVIT

I, ELENA KAGAN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 18, 2010
(DATE)

Elena Kagan
(NAME)

Aleesha Hardin
(NOTARY)

Aleesha D. Hardin
Notary Public, District of Columbia
My Commission Expires 2/28/2015

Questions and Answers

Written Questions of Chairman Patrick Leahy

for Witness Lilly Ledbetter

Hearing of Elena Kagan, Nominee to be Associate Justice of the U.S. Supreme Court

Question:

After you concluded your testimony before Judiciary Committee, Ed Whelan testified and made a crude allegation. Mr. Whelan declared that you "had waited more than five years after [you] learned of the discrimination to file [your] EEOC charge." Another witness invited to testify by the Ranking Member, Mr. Robert Alt, testified that your case has been "been singled out for special condemnation" to tell the "story of a conservative activist, pro corporatist Roberts Court" but he cautioned that "it's just a story, and a fictional one at that."

For the record, please respond to these charges, specifically, the allegation that you "waited more than five years after" having learned of the discrimination against you to file your suit and whether your story is "a fictional one."

Response:

Thank you for your letter giving me the chance to respond to some allegations that were made against me by two of the witnesses who testified after me at the hearings on Elena Kagan's nomination to the Supreme Court. I thought the hearings were supposed to be about Solicitor General Kagan's qualifications for the Court. If I'd known that Professor Alt and Mr. Wheelan were going to use the hearings to attack me personally, I would have stayed around so they could do it to my face. I appreciate the chance to set the record straight.

Both gentlemen said that I conceded in my deposition that I knew about the violation of my legal rights five years before I complained to the EEOC. That's a very misleading statement. It is true, as I've testified in Congress before, that for some time I had suspected that I was getting paid less than the men. I knew, for example, that my pay was below the midpoint in the salary range. But in a part of the deposition that maybe the witnesses didn't read, I also explained that when I told my manager I thought I was getting paid less than my peers, he told me I was being misled by the men exaggerating their pay. The truth is, I didn't have any solid evidence, only suspicions. But that's no basis for bringing a claim of discrimination right away.

Instead of running to the EEOC without any hard evidence, I did what I think most people would do (and what most employers would want their workers to do)—I asked my bosses what I could do to get my pay up. It was only when that didn't work, and when I finally got that anonymous note in my mailbox showing me exactly how enormous the difference in pay was, that I had enough evidence that I thought I was justified in going to EEOC.

It's also worth pointing out that at the trial, Goodyear never asked me about when I first knew of the discrimination. Had they done that, I could have explained things more fully and let the jury decide. But Goodyear didn't ask about it because under its theory, it didn't matter. Under Goodyear's theory, even if I had filed my charge five years earlier—like Professor Alt and Mr. Whelan apparently think I should have—it still would have been about ten years too late. Goodyear argued that I was supposed to file the charge 180 days after each pay decision was made. The Supreme Court agreed with them, and these witnesses seem to think the Court got it right. So I don't know why they are talking about what I knew years and years after the deadline supposedly passed.

Now Mr. Whelan says that the Supreme Court's decision isn't so bad because it left open the possibility that a "discovery rule" might apply to make their nonsensical rule a little more reasonable. But from what I understand, it is not at all clear that the Court would have recognized that kind of rule in the future. As you know, I'm not a lawyer. But I'm told that the question came up in another case, *National Railroad Passenger Corporation* v. *Morgan*. And in that case, Justices Kennedy and Scalia specifically refused to sign on to a part of an opinion written by Justice O'Connor that recognized a discovery rule for the Title VII. I also understand that in another case, *TRW* v. *Andrews*, Justice Scalia and Justice Thomas called the discovery rule "a bad wine of recent vintage." So that's three of the five Justices in

the majority in my case who don't seem anxious to apply a discovery rule in cases like mine.

Finally, I'm not sure that this "discovery rule" would be much better anyway. As I understand it, the lower courts that have applied a discovery rule to Title VII claims say that the time starts running from when you first discover what the employer did—for example, laying someone off, denying a promotion, or in my case, denying a pay raise—not from the time you discover that the reason for the action was illegal discrimination. That's no help at all. I obviously knew right away when I was denied a raise. The problem is knowing that the decision is based on illegal discrimination. And figuring that out takes time. You can't just assume the first time you get a small raise, or are told what your starting salary is, that you're being discriminated against. But when you keep getting smaller raises, and figure out how exactly much less you are getting paid than others, the evidence starts to add up. That's what the Supreme Court didn't understand. And telling me that it's all right because someday the Court might adopt this useless discovery rule doesn't make it any better.

Sincerely, Lilly Ledbetter