

Jan. 6, 2014

Hon. Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
437 Russell Senate Building  
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 24, 2013, to be a United States Circuit Judge for the First Circuit. Incorporating the additional information below, and the additional information I sent to the Committee in my letter of October 31, 2013, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question #12(c)

- I have supplied minutes where available of meetings of the Massachusetts Board of Higher Education and its committees that I have attended since I sent the questionnaire to the Committee on October 17, 2013.

Question #12(d)

- Oct. 23, 2013: Presenter, Harvard University Electronic Communications Policy Task Force Open Forum, Harvard University, Cambridge, MA. I discussed the issues the task force will be considering. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard University, Massachusetts Hall, Cambridge, MA 02138.
- Nov. 5, 2013: Presenter, Harvard University Faculty of Arts and Sciences Faculty Meeting, Harvard University, Cambridge, MA. I discussed the issues the Harvard University Electronic Communications Policy Task Force will be considering. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard University, Massachusetts Hall, Cambridge, MA 02138.

Question #24

- My wife is no longer employed by the Harvard Kennedy School of Government.

I also am forwarding an updated Net Worth Statement and Financial Disclosure Report as required in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

A handwritten signature in black ink, appearing to read 'DJB', with a long horizontal stroke extending to the right.

David J. Barron

cc: Hon. Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

**Massachusetts Board of Higher Education  
Task Force on For-Profit Institution Oversight and Online Learning**

One Ashburton Place, Room 1401, Boston, MA  
November 4, 2013 Meeting Minutes

The meeting of the Task Force on For-Profit Institution Oversight and Online Learning was held on Monday, November 4, 2013, in the DHE Conference Room, 14<sup>th</sup> floor of One Ashburton Place, Boston, Massachusetts.

**Task Force Members Present:**

Chair, David Barron; Fernando Reimers, BHE Member; C. Bernard Fulp, BHE Member; Carlos Santiago, Senior Deputy Commissioner; Constantia Papanikolaou, General Counsel; Shelley Tinkham, Assistant Commissioner for Academic, P-16 and Veterans Policy.

**Others Present:**

Jonathan Keller, Associate Commissioner; Benjamin Meshoulam, AAG and Policy Advisor; Michael Mizzoni, DHE Legislative Liaison; Eric Rice, Harvard Research Assistant; Elena Quiroz, DHE Executive Assistant; Jeanne L. Holmes-Kireilis, Member of the Public

**CALL TO ORDER**

Task Force Chair David Barron called the meeting to order at 10:10 a.m.

**I. Welcome**

On a motion duly moved and seconded, the minutes of September 4, 2013 Task Force meeting minutes were unanimously approved.

**II. Exploring a Statewide Policy on Online Education for Public Higher Education Institutions**

**A. Status Update**

Task Force Chair Barron stated that Task Force Member Colin Diver was unable to attend the meeting, but had met with several representatives of public higher education institutions regarding their online programs. He also stated that the order of items on the agenda would be rearranged and that the Task Force would first discuss updates on the State Authorization Reciprocity Agreement (SARA) and then the Board of Higher Education's (BHE) jurisdictional authority.

**III. Update on State Authorization Reciprocity Agreement (SARA)**

Task Force Chair Barron began the discussion on SARA by stating that if Massachusetts joined SARA, it would significantly change the current regulations and would influence the jurisdictional discussion. However, if Massachusetts did not join any time soon, there would be a period of

uncertainty. Senior Deputy Commissioner Carlos Santiago said that he had a conversation with the New England Board of Higher Education (NEBHE), during which he shared the Department's concerns which primarily focus on the proposed definition of physical presence, implementation and ensuring that minimum quality standards are met. He expressed concerns that despite this and other similar communications to NEBHE from the Department, the agreement remains unchanged.

General Counsel Constantia Papanikolaou summarized SARA, stating that if an institution is approved in a host state, other states that join SARA agree to accept the home state's approval of that institution. The host state is responsible for consumer complaints and the Attorney General's Office would be responsible for handling those complaints. She added that she believes reciprocity is the answer to the larger jurisdictional problems presented by institutions offering programs outside of their home state, however, SARA is not evolved enough to sufficiently assure minimal quality concerns, and to address enforcement and consumer protection concerns. She added that SARA, as currently drafted, would also impact institutions whose charters are dated prior to 1943. Assistant Commissioner Tinkham said that there would have to be an entity to oversee those institutions and Task Force Chair Barron added that the BHE does not have the authority to affect the participation of pre-1943 institutions.

Assistant Attorney General (AAG) Benjamin Meshoulam asked who in Massachusetts would advocate for this passing, and General Counsel Papanikolaou replied that NEBHE and members of the Association of Independent Colleges and Universities in Massachusetts (AICUM) because they would like to freely operate in other states. AAG Meshoulam then asked if there were any like-minded states with a strong consumer protection background and Assistant Commissioner Tinkham responded that Connecticut is opposed to SARA for the same reasons Massachusetts is, and Rhode Island may be as well. General Counsel Papanikolaou stated that Senator Michael Moore wanted a recommendation on how to address SARA and was told that DHE staff had some reservations.

Assistant Commissioner Tinkham said she was concerned that AICUM institutions were not completely aware of the repercussions of Massachusetts joining SARA, since they did not currently consider out-of-state institutions as competitors, but they in reality, they are. Task Force Chair Barron summarized the Task Force's concerns regarding SARA:

1. Online versus physical presence;
2. What happens to the exempt institutions? Do not gain the benefits, but are not burdened in any way;
3. It effectively stops the BHE from approving out-of-state programs operating in state. It would assign responsibility to the home state, regardless of what quality standards they have.
4. It creates a third layer of oversight, in addition to accreditation and state authorization, locating the supervision of SARA in a new entity (NEBHE).

Board Member Fernando Reimers asked if NEBHE had the institutional capacity to handle the new responsibilities that come with SARA. General Counsel Papanikolaou stated that she did not know, but NEBHE will have the authority to charge fees.

Task Force Chair Barron summarized the options:

1. default to the current situation, where Massachusetts does not regulate out-of-state programs and/or institutions at all;

2. adopt SARA, which has very limited minimal standards; or
3. design a public oversight system that would be appropriate for the out-of-state institutions.

Chair Barron stated that the Task Force has made progress on what that third option would look like and would have to change the regulations. He thought it was a good investment of time to take another stab at expressing concerns about and proposed revisions to SARA. General Counsel Papanikolaou said that the DHE has not told the framers what Massachusetts' minimal quality standards are and suggested that they should present a document that outlined what they thought the online minimum standards should be. Task Force Chair Barron said it would be almost derelict for the Board to have no quality control. He suggested talking to Commissioner Freeland about the progress that Task Force has made and what their concerns are. It was suggested that Commissioner Freeland send a formal letter to NEBHE highlighting the Task Force's concerns. Board Member C. Bernard Fulp asked if anything would be done if the concerns were not met. Task Force Chair Barron said absent of the concerns being met, Massachusetts and the BHE would not participate in SARA.

The discussion then turned to what regulatory system would be in place if Massachusetts did not join SARA. The most minimal step, Task Force Chair Barron said, was to have out-of-state institutions register. Another choice was to have a disclosure requirement on the institutions' websites. The third option was to conduct program approvals for out-of-state institutions that would ensure quality control of a more substantive kind. He said the first two options do not require institutions to stop operating in the state, even if they do not meet minimum quality standards.

Board Member Reimers suggested creating a strategy to inform Massachusetts consumers. He stated that there was a responsibility to protect the public. There was a brief discussion about the requirements of the United States Department of Education (USDOE) and it was decided that Assistant Commissioner Tinkham would present to the Task Force current disclosure requirements with Associate Commissioner Jonathan Keller.

#### **IV. BHE Jurisdictional Authority**

##### **A. Online Education Jurisdictional Authority**

##### **i. Review Options for Draft Regulations; Feedback on Maryland Model**

General Counsel Papanikolaou summarized Maryland's approach to out-of-state, online program oversight, which included a registration requirement. She thanked DHE Legislative Liaison Michael Mizzoni for preparing the materials that had been distributed to the Task Force. The Task Force reviewed and discussed the document that outlined the Maryland model.

Task Force Chair Barron stated that there were three issues Massachusetts' current system does not address that can be solved by the Maryland approach:

1. Identify what out-of-state actors are operating within Massachusetts;
2. Police, deter, and control risky institutions;
3. Strengthen the AGO's capacity to enforce consumer protection laws.

General Counsel Papanikolaou said there might be some capacity issues and it needs to be determined what additional work the Department would have to take on in order to properly

adopt this approach. Task Force Chair Barron said it would be useful to ask Maryland how this model has worked out for them.

The Task Force continued discussing the Code of Maryland Regulations and Task Force Chair Barron asked DHE Legislative Liaison Michael Mizzoni to research whether or not Maryland revoked an out-of-state institution's right to operate if it violated the existing codes and for Task Force Members to think about how to include a feasible disclosure requirement in addition to the registration requirement.

#### B. Proposed Revisions to DHE's "2001 Interpretation"

The Task Force then began to examine a document that illustrated how the changes of the 2001 Interpretation of 610 CMR would affect AICUM institutions. General Counsel Papanikolaou said AICUM was rigorously pursuing statutory amendment which would exempt their member institutions from the BHE's jurisdictional authority. She told the Task Force that the DHE would like to come up with an administrative solution and presented the proposed changes to amend the 2001 interpretation to AICUM.

Assistant Commissioner Tinkham stated that one issue with the 2001 Interpretation was that there was no accurate way to track the degrees added by institutions, and this was an opportunity to address that problem, as well as to devise an administrative solution to AICUM's expressed concerns. General Counsel Papanikolaou added that the Academic Affairs Committee also expressed the desire to have more time to discuss substantive issues and this would allow for that.

General Counsel Papanikolaou said that before the next Task Force meeting, Task Force members should think about what state approval means, what it should mean, and what value it adds to the program. She asked Task Force members to note that the federal government's position is that accreditation is not enough and to consider whether the state was going to look at the individual program or the institution.

The meeting was adjourned at 12:19 p.m.

#### **List of Documents Used**

Breakdown of Program Approval and Changes by AICUM Institution  
Jurisdiction Memorandum, 04/08/2013, Constantia Papanikolaou  
Maryland Approach to Distance Education Memorandum, 09/04/2013  
Memorandum regarding SARA Feedback, 10/28/2013, Shelley Tinkham  
November 4, 2013 Task Force Minutes

## **BOARD OF HIGHER EDUCATION**

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October 29, 2013  
9 a.m.

Mount Wachusett Community College  
444 Green Street  
North Cafeteria, First Floor  
Gardner, Massachusetts

### **Minutes**

A meeting of the Board of Higher Education (BHE) was held at Mount Wachusett Community College (MWCC) in Gardner, Massachusetts.

The following Board members were present:

Charles F. Desmond, Chair  
Louis Ricciardi, Vice Chair  
David Barron  
C. Bernard Fulp  
Nancy Hoffman  
Matthew Malone, Secretary of Education  
Kathy Matson  
Fernando Reimers  
Tina Sbrega  
Henry Thomas  
Paul Toner

The following Board members were absent:

Dani Monroe  
Keith Peden

#### **I. CALL TO ORDER**

Chair Charles Desmond called the meeting to order at 9:03 a.m. and invited Mount Wachusett Community College President Asquino to offer remarks.

#### **II. WELCOME**

Dr. Daniel M. Asquino, President, Mount Wachusett Community College

President Daniel Asquino began by welcoming the Board of Higher Education and attendees to MWCC. He commented that Board Members Tina Sbrega and Kathy Matson were from Mount Wachusett College. He then presented on the five pillars of MWCC: academic excellence access and success, civic learning and engagement, workforce training, partnerships with K-12, and sustainability and efficiency.

MWCC believes in the Vision Project and stated that the key is to partner and make sure there is collaboration. Chair Desmond saluted President Aquino's energy and thanked him for hosting the Board meeting. He said that having the meeting at MWCC has

allowed Board members to gain a deeper understanding of what is occurring at the community colleges.

### **III. ACCEPTANCE OF MINUTES**

Chair Desmond then brought forth a motion to accept the minutes of the June 18, 2013, BHE meeting. The motion was seconded and the minutes were approved unanimously by all Board members present.

### **IV. CHAIRMAN'S REMARKS**

Chair Desmond thanked everyone for their help in the North Shore Community College presidential search. Dr. Patricia Gentile's nomination was approved by the Board during the BHE's October 22<sup>nd</sup> Special Meeting. He to thanked Board Member Paul Toner and Dr. Saeyun Lee, Designee for Secretary Malone, for participating in the interview process. Chair Desmond added that there was currently another presidential search underway at Framingham State University. He said Board members should have already received a memorandum with the interview schedule and stressed the importance of active BHE participation in the interview process.

Chair Desmond then invited BHE members to two events, the Vision Project Forum at the Boston Foundation on November 5<sup>th</sup> and the Statewide Trustees Conference at the University of Massachusetts Medical School in Worcester on November 7<sup>th</sup>. He continued his remarks and spoke about new grants, particularly the STEM Starter Academy, the Performance Incentive Fund, Commonwealth Dual Enrollment Program and others. He said FY14 was a great budgetary year with over \$13 million in new initiatives. Chair Desmond stated that it was an exciting time for institutions to have additional resources.

### **V. COMMISSIONER'S REMARKS**

Commissioner Richard Freeland thanked Chair Desmond and President Asquino, adding it was great to be back on a campus. He commented on MWCC sustainability and thought it was great they were running on 100% renewable energy. He also recognized Bill Hart and Vincent Pedone, Executive Officers for the Community College Council of Presidents and State University Council of Presidents, respectively.

Commissioner Freeland said it was the season of conferences over the past couple of months and mentioned some of the meetings that had recently taken place. He also spoke of the first enrollment reports, which Jonathan Keller had cautioned were preliminary. He stated the enrollment numbers were about level and that shows the continued strength of public higher education with an overall 22% increase over the past 10 years. Commissioner Freeland predicted that the state will see a decline in the number of graduates in some high need fields. He mentioned that the Vision Project Conference on October 18<sup>th</sup> had 450 people in attendance and said Special Assistant Anne Perkins and Senior Deputy Commissioner for Academic Affairs Carlos Santiago did a great job organizing it with the advice of the Steering Committee. He also shared details about a regional forum that connected educators and employers with LEAP, and a meeting with the eight state partners at a Multi-State Collaborative Event. Finally, he stated that on November 7<sup>th</sup> there would be a Statewide Trustees Conference organized by the new Director of the Office of Trustee Relations Jen Perkins. He commented that Governor Deval Patrick would open the meeting. He also congratulated Events and Executive Meetings Manager Stacy Bougie for doing a terrific job organizing all of these events.



Commissioner Freeland briefly referenced the situation at Westfield State University, which he said has been very much on everyone's minds and in the media. He briefly summarized the actions the Department and the BHE's Executive Committee had taken in seeking answers from both the local Board and the President to the finding in the pending O'Connor and Drew reports. He added he hoped that the situation would come to a fair and reasonable resolution.

He continued his remarks by turning to the new process of evaluating presidents, which under the new guidelines includes evaluating light of statewide priorities, as approved by the BHE. Commissioner Freeland also introduced Dr. Jorge Perez from Kennesaw State University in Georgia who is an American Council on Education Fellow with the Department of Higher Education.

Commissioner Freeland also mentioned that Deputy Commissioner for Administration and Finance Sean Nelson was working on a system-wide strategic planning process that covered several issues, including efficiency goals. Finally, a discussion with State University Presidents has been initiated regarding a State University budget formula.

## **VI. SECRETARY OF EDUCATION'S REMARKS**

List of Documents Submitted by the Secretary of Education:  
*None submitted.*

Before Secretary Mathew Malone began his remarks, Chair Desmond asked Board members to introduce themselves. He then introduced Secretary Malone, stating that he has been a strong advocate for public higher education. Secretary Malone thanked the Chair and Commissioner Freeland, who he said has led the Department with integrity and honor. He also thanked President Asquino for hosting the Board meeting at MWCC. He said MWCC was doing great work, especially with work on early college/high school dual enrollment, as well as the Veterans Center. He also congratulated North Shore Community College for hiring Dr. Patricia Gentile.

Secretary Malone continued, saying he was excited for the work of the Vision Project. The Executive Office of Education organized a one-day Back to Fall Tour and he took his niece and her friend to visit Massachusetts College of Liberal Arts, University of Massachusetts Amherst and Worcester State University.

## **VII. REPORTS FROM PRESIDENTS**

### **A. Community College Presidents' Report – Berkshire Community College President Ellen Kennedy**

List of Documents Submitted by President Kennedy:  
*None submitted.*

The Board was informed that President Ira Rubenzahl from Springfield Technical Community College was unable to attend the meeting and President Ellen Kennedy would offer remarks on behalf of the community colleges.

President Kennedy initiated her remarks by discussing the importance of collaboration and spoke of the partnership between Berkshire Community College (BCC) and MCLA. She attended the October 18<sup>th</sup> Vision Project Conference and was inspired by keynote

speaker President Freeman Hrabowski, III, of the University of Maryland Baltimore County. She continued her comments, remarking on all of the important work including that on Developmental Math and the Massachusetts Articulated System of Transfer. President Kennedy also spoke on the FY15 budget, deferred maintenance, health insurance, the Department of Labor Trade Adjustment Assistance Community College and Career Training Grant, Massachusetts Institute of Technology collaborative effort with the Community Colleges in creating an online learning program, MA Partnership for Collaboration and Efficiencies, and the STEM Starter Academy. She added that she looked forward to welcoming Dr. Gentile on January 7<sup>th</sup> when she starts as President at North Shore Community College.

**B. State University Presidents' Report – Massachusetts College of Liberal Arts  
President Mary Grant**

*List of Documents Submitted by President Grant:*

*None submitted.*

Before President Grant began her report, Commissioner Freeland shared that the rule regarding MassHealth had changed and would be effective January 1<sup>st</sup>. He applauded the work that Nate Mackinnon did to make that happen and indicated that Anne Perkins would be soon forwarding additional information in this regard.

President Grant started her remarks by stating that MCLA had been named one of the top ten public liberal arts colleges in the country and the school was about to go through its ten year accreditation cycle. She thanked everyone for their work on the FY14 budget, which was the first major increase she had seen in her 12 years as President. She applauded the BHE for continuing to support public higher education institutions and thanked Commissioner Freeland for organizing the Vision Project Conference. President Grant also thanked the members of the Task Force on Transforming Developmental Math Education.

President Grant mentioned that this year marks the 175<sup>th</sup> anniversary of the Commonwealth's State Universities and what began as the need to address one set of circumstances has evolved. She added that 90% of those who graduate from State Universities stay in Massachusetts.

**VIII. REPORT FROM STUDENT ADVISORY COUNCIL**

*List of Documents Submitted by Ms. Matson:*

*None submitted.*

Board member Kathy Matson welcomed everyone to Mount Wachusett Community College, where she was currently a student, and stated that the Student Advisory Council has met twice this semester and has major concerns in regard to student debt, retention and completion rates. She said the Council still needed to elect segmental advisors and encouraged better attendance. Board Member Matson said that the Council also discussed the Vision Project and would like to embrace and would be happy to help advance any areas. She shared that the next meeting would be on November 21<sup>st</sup>.

At this point during the meeting, Secretary Malone excused himself, and his designee, Dr. Saeyun Lee, Policy Director of the Executive Office of Education, took his place.

## IX. MOTIONS

### A. Academic Affairs

#### List of Documents Used:

*AAC Motions 14-01, 14-02 and 14-04 through 14-10*

Academic Affairs Committee (AAC) Chair Hoffman said the Committee continues to work on revamping its procedure to allow for substantive conversations about both the program applications and issues related to academic policy. She said that there were some concerns expressed at the AAC meeting about the University of Massachusetts Boston's proposal to offer the Master of Arts in Global Inclusion and Social Development, and for that reason, the University of Massachusetts Boston motion was pulled out of the consent agenda. However, the issues have been addressed in a memorandum to the Committee and is now before the full BHE for consideration today. She also said that there was not enough time to discuss the AICUM legislation or the Community College housing criteria. Committee Chair Hoffman then brought forth the following motions on a consent agenda and provided time for discussion.

Vice Chair Louis Ricciardi mentioned Salve Regina University's program, which had been operating in Massachusetts without having been approved. He asked how often this happens and Commissioner Freeland responded that this is an issue, in that the Department is not able to monitor programs that do not come to the Board. Committee Chair Hoffman shared with Board members that Assistant Commissioner Shelley Tinkham said at the AAC meeting that there were a number of programs that did not know there were supposed to seek approval. Assistant Commissioner Tinkham added that the reason the Board is seeing more out-of-state institutions seeking program approvals was because of new federal requirements.

The following motion was moved, seconded and passed unanimously.

### **AAC 14-10 CONSENT AGENDA**

**MOVED:** The Board of Higher Education approves the following motions on a consent agenda:

- |           |   |
|-----------|---|
| AAC 14-01 | Fitchburg State University<br>Bachelor of Science in Chemistry  |
| AAC 14-02 | Springfield Technical Community College<br>Associate in Science in Health Information Technology  |
| AAC 14-04 | University of Massachusetts Boston<br>Doctor of Education in Higher Education<br>Doctor of Philosophy in Higher Education                                     |
| AAC 14-05 | Bay Path College<br>Master of Fine Arts in Creative Non-Fiction Writing   |
| AAC 14-06 | College of Saint Rose<br>Master of Science in Education: Leadership and Administration;<br>Certificate of Advanced Study, School Building Leader; Certificate |

of Advanced Study, School District Study

AAC 14-07	Saint Joseph's College of Maine Bachelor of Science in Nursing; Master of Science in Nursing; Master of Science in Education
AAC 14-08	Salve Regina University Bachelor of Science in Nursing
AAC 14-09	University of North Carolina at Chapel Hill Master of Public Administration
AAC 14-10	University of Southern California Master of Education

**Authority:** Article III, Section 6, By-Laws

**Contact:** Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P-16 and Veterans Policy

Committee Chair Hoffman then brought forth the motion to approve the application of the University of Massachusetts Boston to offer the Master of Arts and Doctor of Philosophy in Global Inclusion and Social Development. Board Member Henry Thomas seconded the motion. Board Member Fernando Reimers thanked Senior Deputy Commissioner for Academic Affairs for his memorandum and said it clarified the concerns of the Committee.

The following motion was passed unanimously.

**AAC 14-03** University of Massachusetts Boston  
Master of Arts in Global Inclusion and Social Development;  
Doctor of Philosophy in Global inclusion and Social Development

**Authority:** Massachusetts General Laws Chapter 15A, Section 9(b)

**Contact:** Carlos Santiago, Ph.D., Senior Deputy Commissioner for Academic Affairs

Committee Chair Hoffman then turned the discussion to the Report from the Commissioner's Task Force on Transforming Developmental Math Education. She said the Academic Affairs Committee was deeply appreciative of the work of the Task Force. It was very critical work, she stated, and would make sure that students can move forward quickly. She continued, saying the rates of students requiring remediation were too high. Unfortunately, the Committee was not able to finish the discussion, but was able to recommend approval of the recommendations, particularly with regard to the USE of GPAs. Committee Chair Hoffman explained that it allowed institutions to use GPA as a method of placing students and was a revision of the 1998 Common Assessment Policy. In December, the Academic Affairs Committee would vote on the rest of the Task Force's recommendations, including the creation of multiple pathways. Committee Chair Hoffman added that there was an increasing amount of research that showed statistics and quantitative reasoning are both also appropriate pathways.

Board Member Paul Toner said some of the union presidents had expressed concerns over the implications of approving the Task Force's recommendations. He said that although there were some math professors involved in the Task Force, math faculty members were worried that students would not be sufficiently prepared to take college-level courses without having first taken remedial courses. After further discussion, Board Member Thomas said that there was a dichotomy between Board Member Toner's point and that which was being voted on.

Chair Desmond recognized a member of the public who wished to offer comments on the topic; Richard Bisk, Professor of Mathematics at Worcester State University, shared his concerns with the Board and said that he did not support the Task Force's recommendations. He did not believe that high school GPA would be a placement method and Commissioner Freeland thanked him for attending the Board meeting and sharing his opinion. He added that the Department would like to pilot the new approach because Developmental Math education in Massachusetts was an issue that needed to be addressed, and he thought an experimental roll out was the appropriate way to move forward.

After further discussion, the following motion was moved, seconded and passed unanimously.

**AAC 14-12** Receipt of the Report from Commissioner's Task Force on Transforming Developmental Math Education

**Authority:** Massachusetts General Laws Chapter 15A, Section 6 and 9

**Contact:** Carlos Santiago, Ph.D., Senior Deputy Commissioner for Academic Affairs

## **B. Fiscal Affairs and Administrative Policy**

### List of Documents Used:

*FAAP Motions 14-01 through 14-20*

Fiscal Affairs and Administrative Policy (FAAP) Committee Chair C. Bernard Fulp began the presentation of FAAP motions by bringing forth a motion to Endorse the Berry Dunn Report on the State University and Community College IT Collaboration and Efficiency Project. It was seconded. He said that by accepting the Berry Dunn Report's recommendations, it would free up much needed assets.

The following motion passed unanimously:

**FAAP 14-01** Endorsement of the Berry Dunn Report on the State University and Community College IT Collaboration and Efficiency Project

**Authority:** Massachusetts General Laws Chapter 15A, 9

**Contact:** Sean Nelson, Deputy Commissioner for Administration and Finance

Committee Chair Fulp brought forth FAAP consent agenda motion 14-15 and shared with the Board that there were 13 construction projects that range from new residence

halls, to parking lots to increase infrastructure improvements on our campuses. The following motion was seconded and passed unanimously:

**FAAP 14-15      CONSENT AGENDA**

**MOVED:**      The Board of Higher Education approves the following motion on a consent agenda:

- FAAP 14-02      Approval of MSCBA New Residence Hall Project, Salem State University
- FAAP 14-03      Approval of MSCBA Weir Surface Parking Project, Salem State University
- FAAP 14-04      Approval of MSCBA Public Safety Relocation Project, Salem State University
- FAAP 14-05      Approval of MSCBA One-Stop Student Interface Center Renovation, Salem State University
- FAAP 14-06      Approval of MSCBA Mainstage Theater Project, Salem State University
- FAAP 14-07      Approval of MSCBA New Student Housing Capacity and Renewal and Adaption Project, Massachusetts Maritime Academy
- FAAP 14-08      Approval of MSCBA Mess Deck Expansion, Massachusetts Maritime Academy
- FAAP 14-09      Approval of MSCBA Woodward Hall Renewal and Adaption Project, Bridgewater State University
- FAAP 14-10      Approval of MSCBA Flagg Townhouses Fire Protection Project, Massachusetts College Of Liberal Arts
- FAAP 14-11      Approval of MSCBA Aubuchon Hall New Capacity and Renewal/Adaption Project, Fitchburg State University
- FAAP 14-12      Approval of MSCBA Renovation of Hammond Campus Center Library Project, Fitchburg State University
- FAAP 14-13      Approval of MSCBA Maple Street Athletic Fields Project, Framingham State University
- FAAP 14-14      Approval of MSCBA Parking Improvements Project, Framingham State University

Authority:      Massachusetts General Laws Chapter 15A, Section 6

Contact:      Sean P. Nelson, Deputy Commissioner for Administration & Finance

Committee Chair Fulp then brought forth four MSCBA motions, also on a consent agenda. The following motion was moved, seconded and passed unanimously.

**FAAP 14-21**

**MOVED:**

**CONSENT AGENDA**

The Board of Higher Education approves the following motions on a consent agenda:

- FAAP 14-16     Approval of MSCBA Center For Design + Media Supplemental Funding, Massachusetts College of Art And Design
- FAAP 14-17     Approval of MSCBA Haley Academic Center Supplemental Funding, Mount Wachusett Community College
- FAAP 14-18     Approval of Delegation of Authority to the Commissioner to Amend the Contract for Financial Assistance, Management and Services Between the Massachusetts State College Building Authority and the Commonwealth, for the State Universities
- FAAP 14-19     Approval of Delegation of Authority to the Commissioner to Approve the Contract for Financial Assistance, Management and Services Between the Massachusetts State College Building Authority and the Commonwealth, for the Community Colleges

Authority:            Massachusetts General Laws Chapter 15A, Section 6

Contact:             Sean P. Nelson, Deputy Commissioner for Administration & Finance  
Fiscal and Administrative Policy

Committee Chair Fulp brought a motion for Approval of Criteria for Evaluating Student Housing Projects on Community College Campuses. It was seconded. He said that after substantial discussion FAAP Committee members believe they should move forward. There was not enough time, he explained, to vote on the same motion during the AAC meeting and AAC members were invited to join the FAAP Committee meeting. FAAP Committee members voted on this motion and it was passed unanimously.

Board Member Thomas called for a point of information, and asked whether the Board had already voted to allow Community Colleges to have residence halls. Commissioner Freeland replied that the motion to allow Community Colleges to present housing projects to the Board was voted on and passed by AAC and the Board in June. This motion was to approve the criteria that those projects would be evaluated on. Dr. Lee thanked the Department for making the revisions that were discussed during the FAAP meeting.

The following motion passed, with one abstention; Board Member Thomas abstained.

**FAAP 14-20**     Approval of Criteria for Evaluating Student Housing Projects on  
Community College Campuses

**Authority:** Massachusetts General Laws Chapter 15A, Section 9; Sections 121 and 122 of Chapter 68 of the Acts of 2011

**Contact:** Carlos Santiago, Ph.D., Senior Deputy Commissioner for Academic Affairs and Sean Nelson, Deputy Commissioner for Administration and Finance

## **X. PRESENTATION**

### **A. FY15 Budget**

Sean Nelson, Deputy Commissioner of Administration and Finance

List of Documents Used:

*FY15 Budget Development PowerPoint*

Commissioner Freeland stated that in December, Deputy Commissioner of Administration and Finance Nelson would present the FY15 budget proposal and that today's discussion was intended to inform that vote. Deputy Commissioner Nelson began his presentation by stating that the Department wanted to continue the momentum it gained in FY14. He shared that the budget was separated into different "buckets:" financial aid, DHE administration and strategic initiatives, workforce development, Commonwealth commitments, State Universities and Community Colleges.

The BHE members asked questions that ranged from financial aid topics, to the use of PIF grants to scale up initiatives that were moving the Vision Project goals forward. Deputy Commissioner Nelson summarized his presentation and stated that the recommended top priorities were the Massachusetts State Scholarship, learning outcomes assessment, Commonwealth Dual Enrollment, and funding formulas for the community colleges and state universities. Commissioner Freeland told Board Members that the proposed FY15 budget would be circulated before the next Board meeting.

### **B. Civic Education Update**

List of Documents Used:

*Draft Report from the Study Group on Civic Learning and Engagement:*

*Preparing Citizens*

*Summary of Recommendations from Study Group on Civic Learning and Engagement*

*Update from Study Group on Civic Learning and Engagement PowerPoint*

#### Presentors

Daniel M. Asquino, President, Mount Wachusett Community College  
Carlos Santiago, Senior Deputy Commissioner for Academic Affairs, Department of Higher Education

Shelley Tinkham, Assistant Commissioner for Academic, P-16, and Veterans Policy, Department of Higher Education

John Reiff, Director, Civic Engagement and Service Learning, University of Massachusetts Amherst

Senior Deputy Commissioner Santiago introduced President Asquino, Assistant Commissioner Tinkham, and Director John Reiff to the Board. A brief video on civic education was then played. President Asquino spoke about the reason why the study group was created and thanked Senator Michael Moore for his work. Assistant Commissioner Tinkham then went over the recommendations found in the report, and



summarized in the board materials.

Commissioner Freeland noted that special attention should be paid to the rubrics. After some discussion, Board Member Barron shared that as that draft is finalized he would think carefully about how the outcomes are phrased to ensure that students are not being measured against a value set. The BHE members thanked the study group for their terrific work.

### **C. Vision Project Report and Conference**

Richard M. Freeland, Commissioner, Department of Higher Education

In the interest of time, Commissioner Freeland spoke briefly about the Vision Project Report and Conference. He told the Board that Associate Commissioner for External Affairs Katy Abel and Director of Publications and New Media Sarah Mealey wrote *Within Our Sights: Inside Campus Efforts to Achieve National Leadership in Public Higher Education* and did a wonderful job. He said the report showed that Massachusetts had a lot of work to do in order to become a national leader, but the stories from the campuses gives the state a reason to claim that national leadership is within our sights.

## **XI. MOTIONS**

### **C. Board of Higher Education**

Chair Desmond brought forth a motion to approve Commissioner Freeland's FY2013 Performance Evaluation. It was seconded. Chair Desmond explained the process used by the Executive Committee in preparing the Commissioner's evaluation. He added that the Department of Elementary and Secondary Education and the Department of Early Education and Care had similar processes where the Executive Committee evaluated their respective Commissioners and that those evaluations were voted on by their respective Boards. Chair Desmond said that Board appreciates the good work of the Commissioner.

The following motion was passed unanimously.

**BHE 14-02**      Commissioner's FY2013 Performance Evaluation  
**Authority:**      Massachusetts General Laws Chapter 15A, Section 9(b)  
**Contact:**        Constantia T. Papanikolaou, General Counsel

## **XII. OTHER BUSINESS**

There was no other business.

## **XIII. PUBLIC PARTICIPATION**

There were no requests from the public to participate.

## **XIV. ADJOURNMENT**

The meeting was adjourned at 12:30 p.m.

Respectfully submitted,  
Richard M. Freeland, Ph.D.  
Commissioner of the Department and  
Secretary to the Board

## **BOARD OF HIGHER EDUCATION**

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October 22, 2013  
12:00 p.m.

Department of Higher Education  
1 Ashburton Place, Room 1401  
Boston, Massachusetts

### **Special Meeting Minutes**

A special meeting of the Board of Higher Education (BHE) was held on Tuesday, October 22, 2013, in the DHE Conference Room, 14<sup>th</sup> floor of One Ashburton Place, Boston, Massachusetts.

The following Board members were present:

Charles Desmond, Chair  
David Barron  
C. Bernard Fulp  
Nancy Hoffman  
Saeyun Lee, Designee for Secretary Malone  
Kathy Matson  
Fernando Reimers  
Henry Thomas  
Paul Toner

The following Board members were absent:

Louis Ricciardi, Vice Chair  
Matthew Malone, Secretary of Education  
Dani Monroe  
Keith Peden  
Tina Sbrega

The following North Shore Community College Board of Trustees members were present:

Richard Yagjian, Chair  
Martha Farmer  
James Ridley  
Steven Seeche

#### **I. CALL TO ORDER**

The meeting was called to order at 12:18 p.m.

#### **II. MOTION**

##### **A. Board of Higher Education**

BHE 14-01 North Shore Community College Presidential Appointment

Chair Charles Desmond opened the meeting by welcoming North Community College (NSCC) Trustees and administrators. He stated that the purpose of the meeting was to consider and vote on the NSCC trustees' presidential nominee Dr. Patricia Gentile. He then asked members of the BHE and representatives from NSCC to introduce themselves. He continued by giving a brief overview of the process for selecting a president. Chair Desmond said that the BHE had the ultimate statutory authority to approve the recommendations of the local Boards

for presidents. Pursuant to the new BHE guidelines, BHE members had the opportunity to interview semi-finalists; he thanked BHE members Saeyun Lee and Paul Toner for participating in the interviews. He noted that he also participated in the interviews and that Commissioner Richard Freeland interviewed all of the semi-finalists. Chair Desmond said that NSCC Chair Richard Yagjian led the search and asked him to tell those present more about the process.

NSCC Chair Yagjian said that the search for a new president began in January after Dr. Wayne Burton announced he would retire. After soliciting proposals from different search consultant firms, they chose RH Perry and Associates from Washington, DC in March. The initial pool consisted of 73 candidates and, all but five, met the minimum requirements. The search committee spent several weeks reviewing the 68 candidates, and narrow the pool down to 18 through that process. Of those 18, one withdrew and the committee did further analysis on the background reviews of the remaining 17 candidates. There were then 13 semi-finalists who were asked to come to Boston and interview with the search committee. This took two and a half days and the committee asked each applicant the same series of questions within a 90 minute sessions. The committee was virtually unanimous regarding the top five candidates selected as finalists. Chair Yagjian said it was an extraordinary process and experience. He mentioned that General Counsel Constantia Papanikolaou represented the Department of Higher Education and thanked her for all of her assistance.

He continued, saying that the five finalists spent one day visiting the Lynn campus and another at the Danvers campus, and concluded their stay with another round of interviews with the trustees. NSCC Chair Yagjian stated that it was a grueling process to become the president of a community college and that he gives all of the candidates tremendous credit for all of the work they had to do to prepare for it. He said the presidential nominee they bring forth to the Board rose to the top and the NSCC Board was very active in the process and were all strong supporters of the nomination. When the NSCC Board went to vote, the meeting room was at capacity and the attendees appeared to be happy with the choice. NSCC Chair Yagjian shared that in addition to consulting with the search committee, he spoke with roughly 25 to 30 members of the campus community to elicit their opinions and thoughts because he wanted to have a good sense of the feeling of the community at large.

Chair Desmond then asked NSCC Chair Yagjian why he thought Dr. Gentile was the best candidate. He responded by saying that one of the things that struck him was her business background and degree from The Wharton School. NSCC is foremost an educational institution, but he also sees it as a business and the leader needs to be able to lead. Dr. Gentile can see the college in its entirety he said and possessed all the qualities necessary to lead. He also admired her perseverance and determination and shared in this regard when the 13 candidates came to Boston, Dr. Gentile was the first on the agenda at 7:30 a.m. Her flight had been cancelled from New Jersey and the committee offered to reschedule her interview. However, she did not accept that and instead rented a car and drove all night to make it Boston in time for her 7:30 a.m. interview. Dr. Gentile arrived at the hotel at 4:00 a.m. and to NSCC Chair Yagjian it showed her determination and that was a characteristic of someone who could lead North Shore Community College. He added NSCC needs a president that can go into the community and meet with private industry in order to gain their support and also have the ability to work with the Department of Higher Education and political delegations. NSCC Chair Yagjian thinks she has the qualities to do that. He commented that the pool contained exceptional candidates, including two out of

the five final candidates were sitting presidents. However, Dr. Gentile's potential is unlimited and she has the capability to take the institution a higher level.

Dr. Gentile thanked NSCC Chair Yagjian and the NSCC Board for their faith in her and she said she looked forward to leading the institution in partnership with them. She went on to say she was struck by the Commonwealth's commitment to community colleges and student success. That was instrumental to her in knowing that she wanted to come NSCC. NSCC is a polished gem and should be proud of what it has achieved in the past and what is going to be accomplished. She said that she was very excited to be called and told that she was chosen as a NSCC presidential finalist, especially knowing there were sitting presidents in the pool. Dr. Gentile stated the choosing her was riskier than choosing a sitting president, but that choice says something about NSCC and where they want to go. Higher education is a major catalyst that helps lift Americans out of poverty and that is why she is committed to higher education as a whole. She referenced the tremendous work that has gone into the Vision Project and agreed that successful higher education is the key to a competitive nation. Higher education institutions need to supply the country with leaders and smart individuals. The institutions, she said, that are doing this work are the community colleges. Higher education has a huge return of investment when students successfully complete their goals – not just for the students, but for the community and state. Dr. Gentile added that she is very excited and eager to work with NSCC, the BHE and the Department to help students, the Community and the Commonwealth to attain those goals.

North Shore Community College Board members were then given the opportunity to make remarks. Trustee Martha Farmer said that Dr. Gentile was articulate and smart, both of which made a difference. She notices that Dr. Gentile was a first generation college student who went to the University of Pennsylvania and graduated *magna cum laude*. She described Dr. Gentile as a risk taker who has raised four sons, two of which were adopted at adolescents. That was a personal characteristic, which demonstrated a commitment to kids. That giving, generous nature, along with being articulate, brilliant, and being good at fundraising was an awfully attractive package, she said. Trustee Farmer also said that Dr. Gentile had broad experience outside of the community college sector, having previously run a non-profit. That capacity to bring people together made her stand out of a group of extremely qualified candidates.

NSCC Board Member James Ridley said he had the opportunity to interview Dr. Gentile and the students she interacted with during her campus visit. He said she was so genuine with the students and that was very important for an educator, which is why he voted for her.

NSCC Board Member Steven Seeche stated that he was on the Board for six months and supported the decision to nominate Dr. Gentile with great delight. He also thanked NSCC Board Chair Yagjian for organizing the process. He added that Dr. Gentile has presence and potential, desire, commitment and humanity. North Shore Community College has made great progress and they are ready to go to the next level. He said that Dr. Gentile was the best candidate to move the college forward and improve the lives of the students.

Chair Desmond stated that he would now turn to the BHE members and that they should feel free to ask any questions or make any comments. Board Member C. Bernard Fulp Spent asked what kind energy and transformative processes did Dr. Gentile seek to bring to NSCC as the Commonwealth strives to have the best higher education system in the country.

Dr. Gentile shared that Atlantic Cape Community College (ACCC), where she is currently Dean, is an Achieving the Dream institution. AACC has been challenged with the Atlantic City industry. It has also dealt with students who needed English as a Second Language instruction and like every good community college there was a need to step up their game. Dr. Gentile sees similarities in the student populations being served by NSCC and a need for the college to also up their game. The Vision Project has a lot of goals and benchmarks to help ensure more students get to their personal goals and that NSCC was giving them an opportunity to improve their lives and community. Board Member Fulp said that with the possibility of a casino being built in Boston, it was helpful to have a president leading the institution who was familiar with that industry.

Board Member Fernando Reimers stated that over the next 15 to 20 years jobs that exist now would not exist then. How do we prepare students for the needs of industry of the future, not today? He asked Dr. Gentile how could NSCC be an engine of social development. Dr. Gentile spoke about the culinary work and the casino industry impact at ACCC and the commitment sustainability that cuts across curriculum. She said it was definitely a challenge to prepare students to understand where these industries are going. She said higher education administrators have to be close to the industry and listen to employers to see where they are going, not just in STEM, but liberal arts as well. Community colleges are a part of the community. It is important to have employers engaged in what you do and to build those relationships, especially with local community-based organizations. Dr. Gentile said it was the job of the president to engage and invite the community.

Board Member Henry Thomas noted that those BHE members who attended the Academic Affairs Committee meeting had just participated in a discussion around student success. He asked Dr. Gentile what kind of strategies she would use to facilitate student completion. Dr. Gentile responded by first stating that there were many people working the developmental education and that she believed it would be solved. She said that the focus should be on how to scale existing strategies up. Dr. Gentile added that another strategy for ensuring student completion revolved around intrusive advising and having a student support service network. The number one reason why students drop out is financial and she said they had to look at financial aid and funding streams to help students stay and meet their financial obligations. She continued, stating that most community colleges students have one or two jobs and have child care needs, and the research shows that when students work over 21 hours a week, their academic performance suffers. Dr. Gentile said that it is necessary to reduce a student's financial obligation so that they can stay in school and engage in activities and support services offered. Students are asking themselves "How am I going to pay my rent and my tuition?" If the Commonwealth is really going to address the needs of low-income students, then they need to pay attention that that area.

Board Member David Barron asked if there were any models that were providing that type of financial aid and creating a shift in life in the community college sector. Dr. Gentile answered there was no specific model because people think community colleges are affordable, they have not really paid attention to financial aid in the sector. She said there was a need to help students who were not eligible for the Pell grant. She added that changes on the federal level about financial aid have affected community colleges and there were plenty of difficulties. Higher education leaders need to think about incentives to work hard, build institutional resources, and increase endowment, scholarships and financial

aid.

Dr. Gentile shared that she was an adjunct instructor at ACCC while studying at The Wharton School. She also worked with a conservationist company. However, she enjoyed being in the classroom. After working in Washington, DC, she returned to South Jersey and called the President of ACCC and asked if there was something she could help with. She was asked to coordinate the efforts that sprouted from a New Jersey Department of Labor grant. Students involved in the program were considered to be in transition and upon completion, they were thankful to be given the opportunity to move back to productive citizenry. Dr. Gentile fell in love with the mission and she said advocacy has always been in her heart. Community colleges are a way for individuals to transform their lives and it was a transformational business.

Chair Desmond thanked Dr. Gentile for answering the Board members' questions. He also took time to recognize and thank Interim President Janice Forsstrom, who he said had been terrific, handled the situation elegantly and kept NSCC moving in the right direction.

The following motion was brought forth and seconded. There was no further discussion. The motion passed unanimously.

**BHE 14-01      NORTH SHORE COMMUNITY COLLEGE PRESIDENTIAL  
APPOINTMENT**

**MOVED:**      The Board of Higher Education hereby approves the October 7, 2013 recommendation of the North Shore Community College Board of Trustees recommending Patricia A. Gentile as President of North Shore Community College. Such appointment is effective January 1, 2014, is subject to the successful completion of a State Police background check and is subject to and in accordance with the attached terms and conditions of appointment.

**Authority:**      Massachusetts General Laws Chapter 15A, Sections 9(q) and 21

**Contact:**      Constantia T. Papanikolaou, General Counsel

**III. OTHER BUSINESS**

There was no other business.

**IV. ADJOURNMENT**

The meeting was adjourned at 1:05 p.m.

**Massachusetts Board of Higher Education  
Academic Affairs Committee Meeting Minutes**

The October 22, 2013 meeting of the Academic Affairs Committee (AAC) was held in the Department of Higher Education Conference Room, One Ashburton Place, Boston, Massachusetts.

**Committee Members Present:** Committee Chair, Nancy Hoffman; BHE Chairman, Charles Desmond; BHE Vice Chair, Louis Ricciardi; Board Members David Barron, Fernando Miguel Reimers, Henry Thomas and Secretary of Education designee, Saeyun Lee

**Department Staff Present:** Commissioner Richard M. Freeland; Winnie Hagan; Constantia Papanikolaou; Anne Perkins; Carlos Santiago; Shelley Tinkham; and Elena Quiroz

**I. CALL TO ORDER**

Committee Chair Nancy Hoffman called the meeting to order at 9:33 a.m. and announced Vice Chair Louis Ricciardi will be joining the meeting remotely for the purpose of listening in only, and will not be voting.

**II. ACCEPTANCE OF MINUTES**

A motion was made and seconded to approve the Minutes of the June 11, 2013 Academic Affairs Committee meeting. The motion was unanimously approved.

**III. COMMITTEE CHAIR'S REMARKS**

Committee Chair Hoffman stated that there were many motions on the agenda regarding the approval of academic programs, in part because of all the work the Department of Higher Education (DHE) staff had done over the summer, while the BHE was not in session. She also mentioned that the Board of Higher Education (BHE) program approval process had been altered to recognize the amount of effort DHE staff put into creating reports and ensuring the programs meet Massachusetts standards. The new process consists of a brief presentation by a DHE staff member, followed by a few minutes for questions and discussions.

**IV. COMMISSIONER'S REMARKS**

Commissioner Richard Freeland stated that he would offer comments on each agenda item, as discussed.

**V. MOTIONS**

List of Documents Used

*AAC Meeting PowerPoint, October 22; AAC Motions 14-01 through 14-12*

**A. AAC 14-01                      Fitchburg State University  
   Bachelor of Science in Chemistry**

Fitchburg State University was represented by Provost Robin Bowen, Dr. Margaret Hoey and Dr. Meledath Govindan. DHE Director for Educator Policy Winnie Hagan stated that the

proposed Bachelor of Science in Chemistry was part of the institution's strategic plan to modernize and improve all life sciences at Fitchburg State University.

Committee Chair Hoffman said she was pleased that there was a growing demand for chemists and chemistry teachers. BHE Vice Chair, Louis Ricciardi, commended President Robert Antonucci on a great job at Fitchburg State University connecting the aforementioned program and the institution's strategic plan. He then asked how many students were on the track to be chemists and how many to be chemistry teachers. Dr. Govindan responded that she could not predict the exact number, but the majority of students would be in the non-teaching track.

The following motions to approve the program were made, seconded and unanimously approved as follows:

**AAC 14-01      APPLICATION OF FITCHBURG STATE UNIVERSITY TO AWARD THE BACHELOR OF SCIENCE IN CHEMISTRY**

**MOVED:**      The Board of Higher Education hereby approves the application of **Fitchburg State University** to award the **Bachelor of Science in Chemistry**.

Upon graduating the first class for these programs, the University shall submit to the Board a status report addressing its success in reaching program goals as stated in the application and in the areas of enrollment, curriculum, faculty resources, and program effectiveness.

**Authority:**      Massachusetts General Laws c. 15, § 9(b).

**Contact:**      Winnie Hagan, Acting Director for Educator Policy

**B. AAC 14-02      Springfield Technical Community College  
Associate in Science in Health Information Technology**

Springfield Technical Community College (STCC) was represented by Dean Matthew Gravel and Professors Louise Corcoran and Tracey McKethan. Director Hagan stated that proposed program was designed to be responsive to Massachusetts' need for a technically skilled workforce to support the needs of an evolving health care industry.

Committee Chair Hoffman stated that the STCC proposal responded nicely to workforce needs. Dr. Saeyun Lee, Secretary of Education Designee, asked for more information about the clinical aspect of the program. She was told there were two professional practice experiences and that students will be placed in a health care setting and that would give them the hands-on experience of all aspects of the degree. There was some discussion about a possible link to high school programs and other topics.

The following motion to approve the program were made, seconded and unanimously approved as follows:

**AAC 14-02      APPLICATION OF SPRINGFIELD TECHNICAL COMMUNITY COLLEGE TO AWARD THE ASSOCIATE IN SCIENCE IN HEALTH INFORMATION TECHNOLOGY**



**MOVED:** The Board of Higher Education hereby approves the application of **Springfield Technical Community College** to award the **Associate in Science in Health Information Technology**.

Upon graduating the first class for these programs, the College shall submit to the Board a status report addressing its success in reaching program goals as stated in the application and in the areas of enrollment, curriculum, faculty resources, and program effectiveness.

**Authority:** Massachusetts General Laws c. 15, § 9(b).

**Contact:** Winnie Hagan, Acting Director for Educator Policy

**C. AAC 14-03      University of Massachusetts Boston  
Master of Arts in Global Inclusion and Social Development;  
Doctor of Philosophy in Global Inclusion and Social  
Development**

The University of Massachusetts Boston (UMass Boston) was represented by Dean William Kiernan, Provost Winston Langley, Vice Provost Zong-Guo Xia, Special Assistant to the Provost Joan Liem, and Associate Vice President Robert Gamache. DHE Director for Educator Policy Winnie Hagan said that the proposed graduate programs in Global Inclusion and Social Development will be central to UMass Boston's new School for Global Inclusion and Social Development. The proposed Master of Arts and Doctoral program are designed to be trans-disciplinary. Program curricula will integrate with those of the John W. McCormack Graduate School of Policy and Global Studies, the College of Nursing and Health Sciences, the College of Education and Human Development, the College of Public and Community Service, and the College of Management.

The external reviewers found the proposal to provide “excellent grounding in global inclusion, social development, leadership, cultural competency, systems exchange and ethics.” They suggested integrating disability more fully into curriculum. The institution agreed to do so.

Committee Chair Hoffman stated that she found the title confusing and that the general focus of the program lacked clarity. Board Member Reimers added that he found a lack of intellectual coherence. He said that it is important to include populations of need, but that he did not see a strong enough emphasis on the law, which is one of the most powerful levers. He asked about the international sites selected for the program, as well, and asked what the strategy was for picking the locations, which were Turkey, Saudi Arabia, and Japan.

Provost Winston Langley spoke briefly to the issue of clarity of the purpose, but suggested that the confusion may be due to the fact that this is an innovative program. He added that he finds that it is the case that public institutions in particular have been committed to diversity. People are generally now emulating nature itself in affirming the importance of diversity in everything they do. While the University itself sees this as an essential area of focus, one of the things that has been noticed is that this effort for diversity brings forth the people who have at one point have been marginalized. In seeking to advance the cause of marginalized groups, he continued, others tend to feel left out and sometimes resentment develops, then undermining the goal that diversity seeks. One of the things that ought to be done is to create an area of study that focuses on full inclusion of everyone, and that would have disability as its central focus. The disabled are drawn from every area of life. In addition, we will be focusing on an area that has not been focused on that much before. This program seeks to bridge many

collegiate and disciplinary areas. That may create a sense of lack of coherence. He suggested that if the program is thought of in terms of inclusion, it would be easier to understand. Provost Langley added that the international sites mentioned in the proposal were not an exhaustive list. The University also works with Children's Hospital, which allows the program to have projects in over 45 countries.

Dean William Kiernan added that the program builds off of "life course" theory and looks at wellness in sociology. With persons of disabilities, it is necessary to look at wellness in terms of economic status. There are also courses that examine the heart of the law, looking at the implementation and regulation aspect.

Dean Kiernan then turned to the question of where do the graduates go? Massachusetts has 41,000 Non-Governmental Organizations (NGOs). These students are meant to work at these NGOs. He added that the Institute for Community and Inclusion has been around for 52 years and has presence in all 50 states.

Board Member Barron asked if there was a comparable program in the United States. The response was that there were very few similar programs. Most are public health and health related and do not look at the wellness and economic development aspect, which takes the study a step further.

Committee Chair Hoffman then asked if it would be possible to prepare a memo that lays out more clearly how the program is intellectually coherent and how it sits as a new discipline. She said it was an exciting area, but it is more important to see where it is positioned intellectually and at the university.

Board Chair Desmond asked Senior Deputy Commissioner Carlos Santiago what he thought of the program and he said that he thought it was new and innovative. DHE Director for Educator Policy Winnie Hagan added that external reviewers were quite positive.

A question was raised regarding whether to table the motion for the December BHE meeting. After some discussion, Board Chair Desmond decided that the motion should be pulled out of today's consent agenda, that UMass Boston should submit a supplementary information responding to the AAC members' concerns, and that the proposal, along with the supplementary memorandum, will be considered by the full BHE meeting on October 29<sup>th</sup>. He stated that he believed in and is comfortable with the proposal, but that he understands his colleagues' concerns.

Committee Chair Hoffman reviewed the items that the Committee would like to be addressed by UMass Boston in their supplementary submission, including:

- Clarity of the development of a new field and where it sits in the interdisciplinary field;
- Domestic versus international focus; and
- Proposed target enrollment of students and the work that they can do when they complete program.

Board Member Thomas said that construct was unique and that should not be a reason penalize UMass Boston for that. He stated the he would like to see a stronger nexus between the intent and operational implications as it relates to the academic study. Dr. Lee observed that a lot of effort has gone into this proposal, and she appreciated the amount of work the institution put into it.

It was moved and seconded to lay AAC 14-03 on the table until the October 29<sup>th</sup> BHE meeting, after Committee members receive the supplementary memorandum clarifying the specific points raised earlier in the conversation. The motion passed unanimously.

**D. AAC 14-04                      University of Massachusetts Boston  
Doctor of Education in Higher Education; Doctor of  
Philosophy in Higher Education**

UMass Boston was represented by Dean Felicia Wilczenski, Associate Professor Jay Dee, Vice Provost Zong-Guo Xia, Special Assistant to the Provost Joan Liem, and Associate Vice President Robert Gamache. DHE Director Hagan shared that the proposed Higher Education doctoral program includes the integration of a new Ph.D. program added to the existing and reconfigured Ed.D program in Higher Education.

Board Member Reimers said this was an excellent program that would move the University in a good direction. He applauded the coherency, integrity and clarity of the design. Committee Chair Hoffman asked if there was a difference between the dissertations for the Doctor of Education in Higher Education and the Doctor of Philosophy in Higher Education. UMass Boston representatives responded that the difference would be that the latter would look at theoretical contributions to the field while the former would relate to practice-based issues.

The following motion to approve the programs was made, seconded, and unanimously approved as follows:

**AAC 14-04                      APPLICATION OF UNIVERSITY OF MASSACHUSETTS BOSTON TO  
AWARD THE DOCTOR OF EDUCATION IN HIGHER EDUCATION AND  
DOCTOR OF PHILOSOPHY IN HIGHER EDUCATION**

**MOVED:**                      The Board of Higher Education hereby approves the application of the **University of Massachusetts Boston** to award the **Doctor of Education in Higher Education** and the **Doctor of Philosophy in Higher Education**.

Upon graduating the first class for these programs, the University shall submit to the Board a status report addressing its success in reaching program goals as stated in the application and in the areas of enrollment, curriculum, faculty resources, and program effectiveness.

**Authority:**                      Massachusetts General Laws c. 15, § 9(b).

**Contact:**                      Winnie Hagan, Acting Director for Educator Policy

**E. AAC 14-05                      Bay Path College  
Master of Fine Arts in Creative Non-Fiction Writing**

Bay Path College was represented by Provost Melissa Morris-Olson and President Carol A. Leary. Assistant Commissioner Shelley Tinkham briefly summarized the proposal. She stated that there was no residency requirement for this Master of Fine Arts and that there were only three similar programs in the country.

Committee Chair Hoffman noted that the minimal quality standards for private institutions were different than for public institutions.

The following motion to approve the program was made, seconded, and unanimously approved as follows:

**AAC 14-05      APPLICATION OF BAY PATH COLLEGE TO AWARD MASTER OF FINE ARTS IN CREATIVE NON-FICTION WRITING**

**MOVED:**      The Board hereby approves the application of **Bay Path College** to award the **Master of Fine Arts in Creative Non-Fiction Writing**.

**Authority:**      Massachusetts General Laws c. 69, § 30 *et seq.*

**Contact:**      Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**F. AAC 14-06      College of Saint Rose  
Master of Science in Education: Leadership and Administration; Certificate of Advanced Study, School Building Leader; Certificate of Advanced Study, School District Leadership**

The College of Saint Rose was represented by Vice President for Academic Affairs Bonita Pogge and Mr. Charles Verga. Assistant Commissioner Tinkham said that the program applications were for online programs, and the institution did not have a brick and mortar site in the Massachusetts. She summarized the programs and added that these programs are designed to prepare students for administrative roles in schools and are delivered online, with the exception of a required field internship.

Dr. Lee asked if the institution had a relationship with the Department of Elementary and Secondary Education. Vice President Pogge said no, but that they referred students to the proper resources to learn how to get licensed in Massachusetts.

The following motion to approve the programs was made, seconded, and unanimously approved as follows:

**AAC 14-06      APPLICATION OF THE COLLEGE OF SAINT ROSE TO AWARD THE MASTER OF SCIENCE IN EDUCATION: LEADERSHIP AND ADMINISTRATION; CERTIFICATE OF ADVANCED STUDENT, SCHOOL BUILDING LEADER; CERTIFICATE OF ADVANCED STUDY, SCHOOL DISTRICT LEADERSHIP**

**MOVED:**      The Board hereby approves the application of **College of Saint Rose** to award the **Master of Science in Education: Leadership and Administration; Certificate of Advanced Study, School Building Leader; Certificate of Advanced Study, School District Leadership**.

**Authority:**      Massachusetts General Laws c. 69, § 30 *et seq.*

**Contact:**      Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**G. AAC 14-07      Saint Joseph's College of Maine  
Bachelor of Science in Nursing; Master of Science in Nursing; Master of Science in Education**

Saint Joseph's College of Maine was represented by Interim Dean Lynne Robinson, Interim Director Joyce Murphy, Director Margaret Hourigan, and Program Director Susan Nelson. Assistant Commissioner Tinkham explained that out-of-state institutions that wished to offer internships in Massachusetts would fall under the category of "doing business" in the Commonwealth, and therefore must seek approval from the BHE to do so.

Board Member Thomas asked if there was any impact on the institution's business model if the student did not get the practicum location of their choice. He was told, no it did not. They have been successful so far in placing students in one of their two practicum location choices.

The following motion to approve the programs was then made, seconded, and unanimously approved as follows:

**AAC 14-07      APPLICATION OF SAINT JOSEPH'S COLLEGE OF MAINE TO AWARD THE BACHELOR OF SCIENCE IN NURSING; MASTER OF SCIENCE IN NURSING; MASTER OF SCIENCE IN EDUCATION**

**MOVED:**      The Board hereby approves the application of **Saint Joseph's College of Maine** to award the **Bachelor of Science in Nursing; Master of Science in Nursing; Master of Science in Education**.

**Authority:**      Massachusetts General Laws c. 69, § 30 et seq., c. 15A, § 6

**Contact:**      Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**H. AAC 14-08      Salve Regina University  
Bachelor of Science in Nursing**

Salve Regina University was represented by Dean Traci Warrington. Assistant Commissioner Tinkham stated that Salve Regina is located in Newport, Rhode Island and summarized the program. Dr. Lee asked if students were enrolled in the program prior to approval. Assistant Commissioner Tinkham said yes, but the institution was not aware that it needed BHE approval. Assistant Commissioner Tinkham noted that she has seen an influx of applications from wholly online programs due to changes in federal requirements. When this institution became aware that it needed to be approved in Massachusetts, it immediately submitted an application wishing to preserve its long-standing clinical relationships. Board Member Reimers said that these types of program approvals made it evident that the work the Task Force on Online Learning and For-Profit institutions was important.

The following motion to approve the program was then made, seconded, and unanimously approved as follows:

**AAC 14-08      APPLICATION OF SALVE REGINA UNIVERSITY TO AWARD THE BACHELOR OF SCIENCE IN NURSING**

**MOVED:**      The Board hereby approves the application of **Salve Regina University** to award the **Bachelor of Science in Nursing**.

**Authority:**      Massachusetts General Laws c. 69, § 30 et seq., c. 15A, § 6

**Contact:** Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**I. AAC 14-09      University of North Carolina at Chapel Hill  
Master of Public Administration**

The University of North Carolina at Chapel Hill was represented by Associate Dean Todd Nicolet and Vanessa Pacheco-Bell. Assistant Commissioner Tinkham stated that The University of North Carolina Chapel Hill requests authority to offer the Master of Public Administration. This 44 credit program will be delivered online with the exception of a required externship to take place in Massachusetts. Board Member Reimers asked if the school was offering online programs in other states and was told that they were. There was a brief discussion of the jurisdictional issues, and it was noted that the Task Force on Online Learning and For Profit Institutions is looking into the larger jurisdictional issues and will be presenting recommendations.

The following motion to approve the program was then made, seconded, and unanimously approved as follows:

**AAC 14-09      APPLICATION OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL TO AWARD THE MASTER OF PUBLIC ADMINISTRATION**

**MOVED:** The Board hereby approves the application of the **University of North Carolina at Chapel Hill** to award the **Master of Public Administration**.

**Authority:** Massachusetts General Laws c. 69, § 30 et seq., c. 15A, § 6

**Contact:** Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**J. AAC 14-10      University of Southern California  
Master of Education**

The University of Southern California was represented by Executive Director Erika Klein and Regional Vice President Monica Latowicki. Assistant Commissioner Tinkham briefly summarized the program and said that the University of Southern California has requested the authority to offer the Master of Education. This program is delivered online with the exception of capstones, which may take place in Massachusetts. Dr. Lee asked about the process for identifying mentors, and a representative from the institution shared that the candidates were already coming in with field placement, which is part of the application process. She stated that the institution would also enter into Memoranda of Understanding, if needed, with local districts

The following motion to approve the program was then made, seconded, and unanimously approved:

**AAC 14-10      APPLICATION OF THE UNIVERSITY OF SOUTHERN CALIFORNIA TO AWARD THE MASTER OF EDUCATION**

**MOVED:** The Board hereby approves the application of the **University of Southern California** to award the **Master of Education**.

**Authority:** Massachusetts General Laws c. 69, § 30 et seq., c. 15A, § 6

**Contact:** Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P16 and Veterans Policy

**K. AAC 14-11      Approval of Academic Affairs Committee Motions 14-01, 14-02 and 14-04 through 14-10 on a Consent Agenda**

The motion was verbally amended to reflect the fact that AAC 14-03 would be addressed separately at the October 29<sup>th</sup> Board of Higher Education meeting.

The following motion was brought forth, seconded and unanimously approved:

**AAC 14-11**

**CONSENT AGENDA**

**MOVED:**

The Board of Higher Education approves the following motions to be placed on a consent agenda:

AAC 14-01

**Fitchburg State University**

Bachelor of Science in Chemistry

AAC 14-02

**Springfield Technical Community College**

Associate in Science in Health Information Technology

AAC 14-04

**University of Massachusetts Boston**

Doctor of Education in Higher Education;  
Doctor of Philosophy in Higher Education

AAC 14-05

**Bay Path College**

Master of Fine Arts in Creative Non-Fiction Writing

AAC 14-06

**College of Saint Rose**

Master of Science in Education: Leadership and Administration; Certificate of Advanced Study, School Building Leader; Certificate of Advanced Study, School District Leadership

AAC 14-07

**Saint Joseph's College of Maine**

Bachelor of Science in Nursing; Master of Science in Nursing; Master of Science in Education

AAC 14-08

**Salve Regina University**

Bachelor of Science in Nursing

AAC 14-09

**University of North Carolina at Chapel Hill**

Master of Public Administration

AAC 14-10

**University of Southern California**

Master of Education

**Authority:** Article III, Section 6, By-Laws

**Contact:** Shelley Tinkham, Ph.D., Assistant Commissioner for Academic, P-16 and Veterans Policy

**L. AAC 14-12                      Approval of the Task Force on Transforming Developmental Math Education Recommendations**

*List of Documents Used:*

*Final Report from the Task Force on Transforming Developmental Math Education  
AAC Meeting PowerPoint; October 22; AAC Motions 14-01 through 14-12*

Senior Deputy Commissioner Carlos Santiago began by recognizing the Task Force on Transforming Developmental Math Education members in attendance: Maura Mast, William Heineman, Amparo Fernandez-Folch, Greg Sethares, Frances Feinerman, Roben Bowen, and Rebecca Metcalf. He noted that Dr. Lee was also a member of the Task Force.

Senior Deputy Commissioner Santiago then reviewed the charge of the Task Force, which, in summary, was to review the existing literature and conduct research, create recommendations on the structure of developmental math structure and content, and review the 1998 Board of Higher Education Common Assessment Policy.

He then stated that the data shows that roughly 11,000 incoming community college students required developmental math education and that of those students, only about 2,000 completed a college level math course within two years. For the State Universities, around 1,500 students enrolled in a developmental math course, but only 879 of those who completed the developmental math course went on to complete a college level math course. Senior Deputy Commissioner Santiago added that most of these students are under-represented minorities and that those losses were unacceptable.

Senior Deputy Commissioner Santiago continued the presentation and shared that the Task Force learned that the longer it takes a student to take a credit bearing course, the less likely it is that they will succeed. Also, students have to pay for remedial courses, even though those classes do not count towards their graduation. Therefore, acceleration of this experience has proven to be effective in ensuring that students who need remediation enter into a credit bearing course. He continued, saying that as far as course sequencing is concerned, many of the campuses are already doing this work using their internal budgets and Performance Incentive Fund grants. Senior Deputy Commissioner Santiago told Board Members that the Department had solicited feedback from the campuses and the majority of it was positive, although there were some concerns about not using Accuplacer.

Senior Deputy Commissioner Santiago then described the different recommendations in detail, which can be found in the Final Report of the Task Force on Transforming Developmental Math Education. Board Member Barron asked if campuses would be allowed to continue using Accuplacer if they wished, and was told that institutions would not be allowed to use solely Accuplacer, and that the Department wanted the schools to have pilots on grade point averages (GPAs).

Dr. Lee turned the discussion to the work of the Partnership for Assessment of Readiness for College and Careers. Vice President Heineman said there were a few years before the Common Core State Standards would be finalized and that the Task Force was trying to cover this interim period by moving beyond just Accuplacer, which is clearly not an effective placement tool.

She then steered the conversation towards the question of the need of multiple pathways. Dr. Mast said that these recommendations rethink how the institutions support students taking math



courses. The Task Force wants to support students on new ways of success in the new pathways. Vice President Heineman added that it was a multi-layered problem and each recommendation addresses those layers.

Board Member Reimers asked if there was any evidence to support these recommendations. Senior Deputy Commissioner Santiago responded that yes, there was. He recently spoke with Superintendent Christopher Steinhauser of Long Beach, California, where they use GPA as a placement tool and also test their students in eleventh grade and begin remediation in the twelfth. He added the City University of New York also uses a GPA-based system.

Commissioner Richard Freeland said that what the motion was trying to accomplish was to approve a period of experimentation and give the campuses some flexibility. The Department would then share the results of the pilot programs with the BHE. Board Member Thomas added that there was clearly a breakdown in PK-12 with respect to readiness. He said he does not think the pilot was a good idea because the strategy itself was flawed.

Committee Chair Hoffman introduced the idea of voting on removing Accuplacer as the only placement method since there was substantial research that shows it is not the best indicator for student success. Dr. Lee and other Task Force members expressed concerned over disentangling the issues and separating the recommendations.

Board Member Barron asked what the Board could do to facilitate the campuses getting the high school data. Dr. Lee answered that there was already progress being made to get high school data to colleges.

Board Member Thomas then commended the Task Force for the work they did. The problem, however, he opined, is that PK-12 is not doing its job in preparing its kids to be college ready, particularly, if they have aspirations to go to a math related field.

It was then decided the Committee could not accept the report and move forward with all of its findings at this juncture. After some discussion, it was decided that the Committee would accept the first recommendation to allow for the use of GPA as a placement tool, and would continue the discussion at next month's meeting.

The motion was verbally amended to reflect the changes discussed by Committee members.

The following motion was brought forth, seconded and unanimously approved:

**AAC 14-12      APPROVAL OF THE TASK FORCE ON TRANSFORMING DEVELOPMENTAL MATH EDUCATION RECOMMENDATION**

**MOVED:**      The Board of Higher Education has received the final report of the Commissioner's Task Force on Transforming Developmental Math Education and thanks the members of the Task Force for their diligent and excellent work.

The Board hereby revises the 1998 Common Assessment policy by authorizing new criteria for placement in developmental education and college-level courses, consistent with Recommendation 1 of the Report. The implementation date of these changes will be extended to Fall 2015.

Academic year 2014-2015 will serve as a time to pilot these new criteria, allowing institutions to either replace their current placement standards with the new recommendations or to introduce pilot projects in conjunction with current placement standards. During 2014-2015, the BHE and DHE authorize campuses to allow for limited variations in the GPA placement standard as part of the pilot projects. Campuses will report results to DHE, and the BHE will review the results of these initiatives and modify policies as necessary prior to full implementation in Fall 2015.

The Board will be reviewing additional recommendations in the Report for action at the December 10, 2013 Board meeting.

**Authority:** Massachusetts General Laws C. 15A, §6 and 9  
**Contact:** Carlos Santiago, Ph.D., Senior Deputy Commissioner for Academic Affairs

Chair Desmond then said that at the Board Retreat, he understood that Committee members wanted to be able to have lengthy discussions, such as the one on developmental math education, during Committee meetings. However, he cautioned Committee members to aim to strike an appropriate balance, as DHE staff do a lot of work to prepare the staff report and program presentations, and heavily questioning each institution directly about each application sends the wrong signals. Committee Chair Hoffman agreed and said that an alternative needs to be found.

Chair Desmond then noted that due to time constraints the AAC Committee will not be able to consider AAC14-13/ FAAP 14-20 regarding Community College residence halls, but noted that this same motion is on the Fiscal Affairs and Administrative Policy (FAAP) agenda for later today, so if any AAC members, or members of the public were interested in that topic they should attend today's FAAP meeting.

## **VI. Discussion Items**

Noting time considerations, Committee Chair Hoffman stated that they would have to carry over the AICUM discussion until next time.

## **VII. Other Business**

None

## **VIII. Adjournment**

There being no further business, the meeting was adjourned at 12:10 p.m.

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## Second Email Privacy Policy Task Force Meeting Draws Few Attendees

By SAMUEL Y. WEINSTOCK, CRIMSON STAFF WRITER

7 hours ago

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The second of two open meetings for the University's electronic communication policy task force drew few attendees and fewer comments for the task force's leader, Harvard Law School professor David J. Barron '89.

A dozen people attended the forum, which was held in the Science Center on Wednesday afternoon.

Barron, who led the meeting, spent the majority of the time explaining the task force's genesis, purpose, and method, before taking largely logistical questions from the audience. After several were asked and answered, Barron ended what was supposed to be a one-hour meeting around 15 minutes early, when no one in the room had anything else to say.

The content of Barron's comments mirrored those from the [first task force forum](#), which took place at the Medical School in Harvard's Longwood Campus on Oct. 9. That event drew more than twice as many attendees as Wednesday's.

The task force, a group of 14 professors and administrators from across the University, was commissioned by University President Drew G. Faust in May, with Barron, a former Crimson president, at its helm. Its creation followed national media scrutiny of Harvard's email privacy policies after the Boston Globe reported that [administrators searched the email accounts of resident deans last fall](#) in relation to the Government 1310 cheating scandal.

The task force expects to submit recommendations to Faust [by the end of January](#).

In explaining the task force's goal, Barron noted that that it concerned not only email, but any



GEORGE J LOK

Harvard Law School professor David J. Barron '89, chair of the electronic communications policy task force, discusses challenges surrounding Harvard's current electronic communications policy at an open forum in the Science Center on Wednesday.

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electronic communication that administrators could potentially access—a hard question to answer, he said, for any large organization.

“The main issue is... what kind of rules should there be to regulate when such access, if ever, can be attained,” he said.

He listed three examples of instances where such access would likely be appropriate: legal impetus in the case of a subpoena, the preservation of cybersecurity in the event of a data breach or compromised system, and the retrieval of information necessary for the functioning of an office if its owner leaves or becomes disabled in some way.

He added that a University is unique in that contains “really almost every type of imaginable human interaction,” which complicates the creation of policies governing access to electronic communication.

Responding to a question about the individuals who would facilitate access to communications, Barron commended Harvard’s information technology staff, saying that they were partly the reason that there are not controversies about email privacy all the time.

“I think in many instances the task force has been quite impressed by the way things are operating,” Barron said. “We have a very professional IT staff.”

In his explanation of the task force’s work, Barron said that the open forums were only one piece of the group’s outreach efforts.


He pointed to an [online discussion board](#) where members of the Harvard community can post suggestions. That website only showed one comment early Thursday morning.

—Staff writer Samuel Y. Weinstock can be reached at [weinstock@thecrimson.com](mailto:weinstock@thecrimson.com). Follow him on Twitter [@syweinstock](#).


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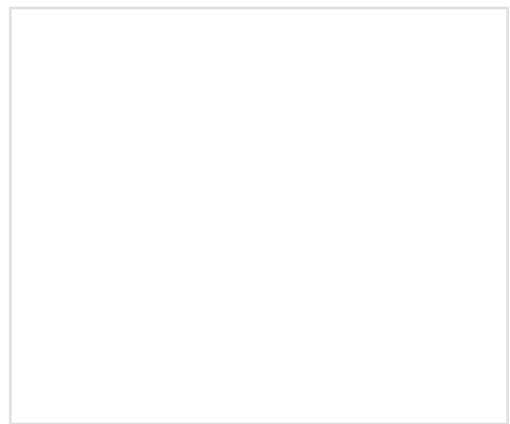
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# Faculty Hear From SEAS Deans, Faculty Council, and Professors of Religion at Monthly Meeting

By MATTHEW Q. CLARIDA and NICHOLAS P. FANDOS, CONTRIBUTING WRITERS

13 hours ago

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Two deans from the School of Engineering and Applied Sciences laid out priorities and concerns on behalf of colleagues involved in the planning process for the school's eventual move to Allston at the monthly meeting of the Faculty of Arts and Sciences Tuesday afternoon.

The deans, Steven C. Wofsy and Robert D. Howe, called on University and FAS administration to ensure that Allston will become a thriving neighborhood where SEAS faculty and students can still collaborate productively with the University's liberal arts core.

Their comments reiterated a number of sentiments that have been expressed by SEAS faculty in recent months. The deans also proposed new ideas such as reimagining the use of classroom space in Allston to optimize digital learning.

"Allston must be part of the overall Harvard campus and Allston must be as central as the Cambridge campus is," Howe said.

He added that the University must be careful to keep the new SEAS campus connected with other key departments and disciplines.

"At present we distinguish our program...in that our students are embedded in the liberal arts," Howe said. "If we create an engineering ghetto over in Allston, our students won't have an opportunity for that interaction, and it will be very detrimental for them and our overall engineering program."

Howe also said that members of the SEAS faculty have participated in two retreats to discuss the move to Allston since it was first announced by administrators in February.



"Originally people thought that the idea of moving across the river was going to represent a threat to that way of thinking," Wofsy said. "I believe that now we are coming around to the view that it can actually be an incredible opportunity."

After the presentation by Wofsy and Howe, various professors rose to share their thoughts on the plans for relocation. Diana Sorensen, divisional dean of the arts and humanities, said that she hopes her department will be consulted as the University refines its plan for Allston.

"We believe that the vision that has just been outlined for Allston, which we celebrate, will be deeply enlivened with the presence of the arts, all the art forms, our collections, and, in general, humanistic work," Sorensen said. "So I just want to say, we are ready to join the conversation."

## IN THE KNOW

The rest of the Tuesday's meeting featured a diverse array of business, in spite of sparse attendance.

In an attempt to pursue greater transparency on behalf of the Faculty Council—which sets the agenda for Faculty Meetings and is FAS's only elected, representative body—Docket Committee member Timothy J. Colton, chair of the government department, spoke on projects being considered by the Council this year. These include discussions of potential changes to the Q guide, retirement plans for new faculty members, the rising purchase price of scholarly journals for the Harvard University Library, changing federal Title IX regulations, and the future of the Division of Continuing Education.

Faculty also heard a report from biological oceanography professor James J. McCarthy on the Harvard Museums of Science and Culture, as well as an update from Harvard Law School professor David J. Barron '89 on the electronic communications task force **he leads**. Barron's commentary garnered some feedback from faculty members, who proposed looking at existing privacy standards for other modes of communication as a model for an electronic policy.

More substantive discussion was given to a report by a working group within the Committee on the Study of Religion at Harvard. Chinese history professor Michael J. Puett explained that the report calls for the creation of a Council on Religion, which will enable the Committee to develop and evaluate four-year standard curricular plans.

Comparative religion and Indian studies professor Diana L. Eck, a member of the Committee, also pointed out that the new report will allow for the merger of the Divinity School and FAS doctoral programs into a single religion Ph.D. program.

The last Faculty Meeting of the semester is slated for Dec. 3.

—Staff writer Matthew Q. Clarida can be reached at [matthewclarida@thecrimson.com](mailto:matthewclarida@thecrimson.com). Follow him on Twitter **@MattClarida**.

—Staff writer Nicholas P. Fandos can be reached at [nicholas.fandos@thecrimson.com](mailto:nicholas.fandos@thecrimson.com). Follow him on Twitter [@npfandos](https://twitter.com/npfandos).

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

David Jeremiah Barron

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

Circuit Judge for the United States Court of Appeals for the First Circuit

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.

Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138

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

1967; Washington, D.C.

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.

1991 – 1994, Harvard Law School; J.D. (*magna cum laude*), 1994

1985 – 1989, Harvard College; B.A. (*magna cum laude* with highest distinction in history), 1989

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.

1999 – present  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138



Chair of the Electronic Communications Policy Task Force (2013 – present)  
Honorable S. William Green Professor of Public of Public Law (2011 – present)  
Professor (2004 – 2011)  
Assistant Professor (1999 – 2004)

1996 – 1999, 2009 – 2010  
Office of Legal Counsel, United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington DC 20530  
Consultant (July 2010 – December 2010)  
Acting Assistant Attorney General (2009 – 2010)  
Principal Deputy Assistant Attorney General (2009 – 2010)  
Attorney Advisor (1996 – 1999)

1995 – 1996  
Associate Justice John Paul Stevens  
Supreme Court of the United States  
One First Street, NE  
Washington, DC 20543  
Law Clerk

1994 – 1995  
The Hon. Stephen Reinhardt  
United States Court of Appeal for the Ninth Circuit  
United States Courthouse  
312 North Spring Street, Suite 1747  
Los Angeles, CA 90012  
Law Clerk

July – August 1993  
N.A.A.C.P. Legal Defense and Educational Fund, Inc.  
1444 I Street, NW, # 1000  
Washington, DC 20005  
Summer Legal Intern

June – July 1993  
Covington & Burling, LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
Summer Associate

January – May 1993  
Harvard University  
1563 Massachusetts Avenue  
Cambridge, MA 02138  
Teaching Fellow for Professor Morton Horwitz

Summer 1992  
Ferguson, Stein and Watt (now, Ferguson, Chambers, and Sumter PA)  
741 Kenilworth Ave.  
Suite 300  
Charlotte, NC 28204  
Summer Legal Intern

January – May 1992  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138  
First-Year Lawyering Instructor

1989 – 1991  
The News and Observer  
215 South McDowell Street  
P.O. Box 191  
Raleigh, NC 27602  
Reporter (1989 – 1991)  
Summer Intern (1989)

Other affiliations (uncompensated):

2013 – present  
Massachusetts State College Building Authority  
253 Summer Street #3  
Boston, MA 02210  
Board Member

2012 – present  
Massachusetts Board of Higher Education  
Massachusetts Department of Higher Education  
One Ashburton Place Room 1401  
Boston, MA 02108  
Board Member (2012 – present)  
Chair, Task Force on For-Profit Institution Oversight and Online Learning (2012 – present)

2008 – present  
Rappaport Center for Law and Public Service at Suffolk University Law School  
Suffolk University Law School  
120 Tremont Street, Suite 110  
Boston, MA 02108  
Member, Advisory Board

1989 – present  
The Harvard Crimson Graduate Board  
The Harvard Crimson  
14 Plympton St.  
Cambridge, MA 02138  
Member, Graduate Board

2007 – 2009  
Harvard Law and Policy Review, Official Journal of the American Constitution Society  
Harvard Law School  
Cambridge, MA 02138  
Member, Board of Advisors

Approximately 2007  
American Society for Law and Policy, Harvard Law School Student Chapter  
Harvard Law School  
Cambridge, MA 02138  
Faculty Advisor

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. I did timely register for the selective service.

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.

Scholar-in-Residence, Columbia Law School (January 2012)

The Office of the Secretary of Defense Medal for Exceptional Public Service (November 2010)

National Intelligence Exceptional Achievement Medal, from the Acting Director of National Intelligence (July 2009)

Mark DeWolfe Howe Fellowship (1994)

Harvard Law Review Articles Editor (1993 – 1994)

Harvard Law Review Editor (1992 – 1993)

Walter Spearman Award, North Carolina Press Association (1991)

President, The Harvard Crimson (1987 – 1988)

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.

Association of American Law Schools

Chair, Section on State and Local Government Law (2000)

American Bar Association

American Society of International Law

Roundtable of Experts on International Law and National Security (2011 – present)

Executive Session for: State Court Leaders in the 21st Century, Harvard Kennedy School of Government

Steering Committee (2008)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1996

There has been no lapse in membership.

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

New York, Third Appellate Division, 1996

There have been no lapses in membership.

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, since graduation from law school. 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.

American Constitution Society for Law and Policy, Harvard Law School Student Chapter (approximately 2007)  
Faculty Advisor

Botanic Garden Children's Center (2006)  
By-Laws Review Committee

The Harvard Crimson Graduate Board (1989 – present)

Harvard Journal of Real Estate (2012 – present)  
Member, Faculty Advisory Board

Harvard Law and Policy Review, Official Journal of the American Constitution Society (2007 – 2009)  
Member, Board of Advisors

Harvard Kennedy School of Government/Harvard Law School Joint Degree Program (2010 – present)  
Co-Faculty Director

Harvard University Center for the Environment (2010 – present)  
Faculty Associate

Harvard Urban Law Association, Local Government Law Forum, Harvard Law School (2000 – 2008, 2010 – present)  
Faculty Advisor

Neiman Foundation (2002)  
Fellows Selection Committee

Rappaport Center for Law and Public Service at Suffolk University Law School (2008)  
Member, Advisory Board

Real Estate Academic Initiative, Harvard University  
Core Faculty member

South Asia Institute, Harvard University  
Member, Steering Committee

- 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, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate 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.

To the best of my knowledge, none of the listed organizations currently discriminate 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.

**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.

*In Defense of Big Waiver*, 113 Colum. L. Rev. 265 (March 2013) (with Todd D. Rakoff). Copy supplied.

*Keith and the Good City*, 45 U.C. Davis L. Rev. 1945 (June 2012). Copy supplied.

*Judicial Independence and the State Court Funding Crisis*, 100 Kent. L. J. 755 (2011-2012). Copy supplied.

*Local Government Law* (West 2010) (5th ed., 4th ed., 3rd ed.) (with Gerald Frug and Richard Ford). Hard copy of fifth edition supplied.

*Teacher's Manual to Local Government Law* (West 2010) (5th ed., 4th ed., 3rd ed.) (with Gerald Frug and Richard Ford). Hard copy of fifth edition supplied.

*Foreword: Blue State Federalism at the Crossroads*, 3 Harv. L. & Policy Rev. 1 (2009). Copy supplied.

*The Dirty Dozen's Dirty Secret: The Conservative Legal Movement's Legitimacy Crisis – Part II*, ACSblog, August 12, 2008. Copy supplied.

*The Dirty Dozen's Dirty Little Secret: The Conservative Legal Movement's Legitimacy Crisis – Part I*, ACSblog, August 11, 2008. Copy supplied.

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"Geertz Serious! Campus Critic," The Harvard Crimson, Oct. 26, 1987. Copy supplied.

"A Friendly Artist Makes Cambridge His Gallery: Slice of Life," The Harvard Crimson, Oct. 21, 1987. Copy supplied.

"The Affluent Classroom: Business School Critic," The Harvard Crimson, Oct. 19, 1987. Copy supplied.

"A Question of Right and Wrong: Roaming the Real World," The Harvard Crimson, Oct. 14, 1987. Copy supplied.

"Up With People: Campus Critic," The Harvard Crimson, Sept. 30, 1987. Copy supplied.

"College Secures VIPs Records," The Harvard Crimson, Sept. 26, 1987. Copy supplied.

"A New Course in History: Campus Critic," The Harvard Crimson, Sept. 23, 1987. Copy supplied.

"A New Era in Education Begins at Medical School," The Harvard Crimson, Aug. 21, 1987. Copy supplied.

"The Left's Adoption of States' Rights," The Harvard Crimson, Aug. 7, 1987. Copy supplied.

"Profs Say Hearings Helpful," The Harvard Crimson, Aug. 4, 1987. Copy supplied.

"Beanball," The Harvard Crimson, Aug. 4, 1987. Copy supplied.

"La Bamba: Cinema Veritas," The Harvard Crimson, July 31, 1987. Copy supplied.

"Colleagues Set Up Fund For Hit-and-Run Victim," The Harvard Crimson, July 21, 1987. Copy supplied.

"About Those Telegrams," The Harvard Crimson, July 21, 1987. Copy supplied.

"Crimebusters Galore," The Harvard Crimson, July 17, 1987. Copy supplied.

"B-School Tenures Its Fourth Woman Ever: School Adds Finance Specialist to Senior Faculty," The Harvard Crimson, July 7, 1987. Copy supplied.

"Racism Red Herring in Goetz Verdict," The Harvard Crimson, June 28, 1987. Copy supplied.

"Will Departmental In-fighting Affect Educational Quality? Departments in Trouble," The Harvard Crimson, June 11, 1987. Copy supplied.

"The Marshall Plan: Then and Now: 40 Years Ago," The Harvard Crimson, June 11, 1987. Copy supplied.

"NAS Rejects Huntington For Second Straight Year," The Harvard Crimson, Apr. 29, 1987. Copy supplied.

"Lee Takes War College's Offer; History Prof to Teach Officers," The Harvard Crimson, Apr. 11, 1987. Copy supplied.

"Making the Final Break: Campus Critic," The Harvard Crimson, Mar. 27, 1987. Copy supplied.

"CAPITOL IDEAS: The Health of the Presidency," The Harvard Crimson, Mar. 24, 1987. Copy supplied.

"Medievalist Takes Tenured Post: Visiting British Scholar Joins English Department," The Harvard Crimson, Mar. 20, 1987. Copy supplied.

"Princeton Eyes Skocpol; Final Offer Still Pending," The Harvard Crimson, Mar. 3, 1987. Copy supplied.

"The March of Racism: The Forsyth Saga," The Harvard Crimson, Feb. 5, 1987. Copy supplied.

"What Other Colleges Require: St. John's Great Books Program and U. of Chicago's Core," The Harvard Crimson, Nov. 10, 1986. Copy supplied.

"Literacy Expert Calls for Federal Aid to Help Grass Roots Reading Groups," The Harvard Crimson, Nov. 6, 1986. Copy supplied.

"Politics of Frustration: Brass Tacks," The Harvard Crimson, Oct. 25, 1986. Copy supplied.

"An Unimpressive Showing: Taking Note," The Harvard Crimson, Oct. 18, 1986. Copy supplied.

"Soviet Official Responds to Foreign Policy Attack," The Harvard Crimson, Oct. 2, 1986. Copy supplied.

"An Unhappy Birthday," The Harvard Crimson, Sept. 30, 1986. Copy supplied.

"Not a Precedent: Hill Spill," The Harvard Crimson, Apr. 16, 1986. Copy supplied.

"Playing the Lottery: Number 457," The Harvard Crimson, Mar. 8, 1986. Copy supplied.

"CUE Delays Submitting Buffer Idea to Fac. Vote," The Harvard Crimson, Mar. 7, 1986. Copy supplied.

"A Different Sort of Pre-Professionalism," The Harvard Crimson, Mar. 7, 1986. Copy supplied.

"Crisis After Cruse: Taking Note," The Harvard Crimson, Mar. 1, 1986. Copy supplied.

"Where Has All the Unity Gone? Brass Tacks," The Harvard Crimson, Feb. 22, 1986. Copy supplied.

"No Way to Treat a Hero: Taking Note," The Harvard Crimson, Feb. 12, 1986. Copy supplied.

"Brandeis Students Build Shanty: Protest School's South Africa-Linked Stock," The Harvard Crimson, Feb. 7, 1986. Copy supplied.

"Remembering to Forget: Taking Note," The Harvard Crimson, Feb. 6, 1986. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. 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.

I am a member of the Massachusetts Board of Higher Education. In that role, I assisted in the review of *Time to Lead: The Need for Excellence in Higher Education, A Report to the People of Massachusetts* from the Massachusetts Department of Higher Education (September 2012). Copy supplied.

Executive Summary, *Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities*, Boston Foundation, Policy Brief (Feb. 2007) (with Gerald Frug). Copy supplied.

*Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities*, Boston Foundation, Policy Brief (Feb. 2007) (with Gerald Frug). Copy supplied.

I was a participant in a forum convened in July 2006 in Washington, D.C. by the Urban Land Institute (ULI) that issued a ULI Current Issues Report entitled, *Eminent Domain: An Important Tool for Community Revitalization* (2007). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications 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.

Published Opinions of the Office of Legal Counsel:

Memorandum for Attorneys of the Office, *Best Practices for OLC Legal Advice and Written Opinions*, July 16, 2010. Copy supplied.

Memorandum Opinion for the Chairman, Administrative Conference of the United States, *Applicability of the Emoluments Clause to Nongovernmental Members of ACUS*, June 3, 2010. Copy supplied.

Memorandum Opinion for the Acting Deputy Attorney General, *Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex*, Apr. 27, 2010. Copy supplied.

Memorandum Opinion for the Attorney General, *The Attorney General's Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Counsel for Purposes of Capital Conviction Review Proceedings*, Dec. 16, 2009. Copy supplied.

Memorandum Opinion for the Counsel to the President, *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize*, Dec. 7, 2009. Copy supplied.

Memorandum Opinion for the Deputy General Counsel, Department of Housing and Urban Development, *Applicability of Section 163 of Division B of Public Law 111-68 to Payments in Satisfaction of Pre-Existing Contractual Obligations*, Oct. 23, 2009. Copy supplied.

Memorandum Opinion for the Principal Deputy Counsel to the President, *Removability of the Federal Coordinator for Alaska Natural Gas Transportation Projects*, Oct. 23, 2009. Copy supplied.

Letter Opinion for the Assistant Secretary for Financial Institutions, U.S. Department of Treasury, *Constitutionality of Mandatory Registration of Credit Rating Agencies*, Oct. 22, 2009. Copy supplied.

Memorandum Opinion for an Associate Deputy Attorney General, *Legality of Intrusion-Detection System to Protect Unclassified Computer Networks in the Executive Branch*, Aug. 14, 2009. Copy supplied.

Memorandum for the Attorney General, *Withdrawal of Office of Legal Counsel Opinion*, June 11, 2009. Copy supplied.

Memorandum Opinion for the Acting Legal Adviser, Department of State, *Constitutionality of Section 7054 of the Fiscal Year 2009 Foreign Appropriations Act*, June 1, 2009. Copy supplied.

Memorandum Opinion for the Attorney General, *Validity of Statutory Rollbacks As a Means of Complying with the Ineligibility Clause*, May 20, 2009. Copy supplied.

Memorandum for the Attorney General, *Withdrawal of Office of Legal Counsel CIA Interrogation Opinions*, Apr. 15, 2009. Copy supplied.

Legislative Testimony:

Joint Statement to the Senate, Committee on the Judiciary, Subcommittee on the Constitution, "Restoring the Rule of Law," Hearing, Sept. 16, 2008. Copy supplied.

Testimony by Speakerphone to the Vermont Senate Committee on Economic Development, Housing and General Affairs, "Regularly Scheduled Hearing of Committee," Feb. 26, 2008. My testimony concerned a pending bill, S.362, The Withdrawal of Vermont National Guard Military Forces from Iraq and the Federal Deployment of the National Guard. Video supplied.

Testimony to the Senate, Committee on the Judiciary, "Exercising Congress's Constitutional Power to End a War." Hearing, Jan. 30, 2007. Copy of testimony, written statement, and questions for the record supplied.

Letters:

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Stuart Delery to be Assistant Attorney General, Civil Division, United States Department of Justice (May 13, 2013). Copy supplied.

Joint Letter from Former Law Clerks to Congressional Leaders in Support of the Confirmation of Paul Watford to be Circuit Judge, U.S. Court of Appeals for the Ninth Circuit (May 15, 2012). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Virginia Seitz to be Assistant Attorney General, Office of Legal Counsel (Mar. 15, 2011). Copy supplied.

Letter from Constitutional Scholars to United States Senators Concerning Statement of Administration Policy ("SAP") on H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007, (July 2007). Copy supplied.

Letter from Constitutional Law Scholars to Congressional Leaders Concerning Constitutionality of Statutory Limitations on Troop Increase in Iraq, (Jan. 17, 2007.) Copy supplied.

Letter from Members of University Faculties in Law, International Relations, Diplomacy, and Public Policy to Members of the U.S. House of Representatives and the U.S. Senate Concerning Congressional Oversight of Reports of Abuse of Detainees in Iraq, (June 16, 2004.) Copy supplied.

Letter from Law Professors to Senators Frist and Daschle Concerning Constitutionality of the Filibuster, (May 16, 2003.) Copy supplied.

State Board Proceedings:

Since April 2013, I have served as a board member of the Massachusetts State College Building Authority. In that capacity, I have participated in meetings of the Board and its committees. Minutes supplied where available.

Since March 2012, I have served as a board member of the Massachusetts Board of Higher Education. In that capacity, I have participated in meetings of the Board and its committees. Minutes supplied where available.

- 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, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. 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.

The following list reflects my best efforts to identify the speeches or talks or remarks that I have delivered. To compile the list, I consulted my own files and internet sources. There may, however, have been speeches or talks or remarks that I have been unable to recall, or identify, and I have occasionally spoken at informal events for which I did not retain any record.

October 9, 2013: Presenter, Harvard University Electronic Communications Policy Task Force Open Forum, Harvard University, Cambridge, MA. I discussed the questions that the task force will be considering. I have no notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 18, 2013: Remarks, Harvard Law School Office of Public Interest Advising Public Service Orientation, Harvard Law School, Cambridge, MA. I have given a number of these speeches annually since 2000, except when I was on a leave of absence. Representative notes from 2011 and representative video from 2010 supplied.

July 30, 2013: Moderator, "Separation of Powers in the 21st Century: The Rules of Engagement," Annual Meeting, Conference of Chief Justices and Conference of State Court Administrators. Burlington, VT. As best I can recall, I discussed the challenges of the role of the chief justice of a state supreme court. I have no notes, transcript, or recording. The address of the sponsoring organization is Conference of Chief Justices, c/o Association and Conference Services, 300 Newport Avenue, Williamsburg, VA 23185.

July 30, 2013: Presenter, "Judicial Independence and the State Court Funding Crisis," National Center for State Courts, Burlington, VT. Video available at: <http://vimeo.com/76525810>.

May 20, 2013: Interviewer, "John Paul Stevens in Conversation," Kennedy Library Forum. Boston, MA. Video available at: <http://www.youtube.com/watch?v=XhNm0luwYfo>.

May 9, 2013: Panelist, "Bridging Theory and Practice: Real Estate and the Built Environment at the University," Harvard Real Estate Academic Initiative, International Advisory Board Meeting, Harvard University, Cambridge, MA. As best I can recall, my remarks discussed the Gateway Cities course described in response to question 19. I have no notes, transcript, or recording. The address of the sponsoring organization is the Harvard Real Estate Academic Initiative, Seven Sumner Road, Room 303, Cambridge, MA 02138.

May 3, 2013: Panelist, "The Administrative Process: 75th Anniversary Conference," "Delegation -- Positive and Negative," Harvard Law School, Cambridge, MA. As best I can recall, my remarks were based on my

article, "In Defense of Big Waiver," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 16, 2013: Panelist, "Resilience + Sustainability," at Harvard Real Estate Academic Initiative Conference on Resilience, Adaptability, and Sustainability of the Built Environment, Harvard University, Cambridge, MA. As best I can recall, I discussed governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is the Harvard Real Estate Academic Initiative, Seven Sumner Road, Room 303, Cambridge, MA 02138.

April 12, 2013: Presenter, Boston College Law School Faculty Workshop. I discussed my article, *In Defense of Big Waiver*. I have no notes, transcript, or recording, but a copy of the article on which the presentation was based has been supplied in response to 12a. The address of the sponsoring organization is Boston College Law School, 885 Centre Street, Newton, MA 02459.

April 9, 2013: Presenter, Morning Prayers at Harvard Memorial Church, Harvard University, Cambridge, MA. Audio available at:  
<https://soundcloud.com/harvard/david-barron-tuesday-april-9>.

April 5, 2013, Moderator, Panel entitled "Problem; Is There a Lack of Intellectual Diversity in Law School Faculties," Harvard Federalist Society Conference on "Intellectual Diversity and the Legal Academy," Harvard Law School, Cambridge, MA. Video available at:  
<http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/>.

March 27, 2013: Panelist, "To EIP or not to EIP," Office of Public Interest Advising, Harvard Law School. Cambridge, MA. Video available at:  
[http://www.law.harvard.edu/media/2013/03/27\\_opia.mov](http://www.law.harvard.edu/media/2013/03/27_opia.mov).

March 9, 2013: Panelist, "New Ideas in Urban Planning and Disaster Response in an Era of Global Climate Change," Harvard Leadership Conference at Harvard University, Cambridge, MA. As best I can recall, I discussed the governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript, or recording. The sponsoring organization is the Harvard Graduate Council, Harvard University, 1350 Massachusetts Avenue, Cambridge, MA 02138.

March 5, 2013: Moderator, "Preparing Massachusetts for Climate Change: Do State and Local Governments Have a Role and What are They Doing?," Rappaport Center for Law and Public Policy, Suffolk University Law School, Boston, MA. Video available at:  
[mms://media2.law.suffolk.edu/OnDemand/Rappaport\\_PreparingMassForClimateChange\\_030513.mp3](mms://media2.law.suffolk.edu/OnDemand/Rappaport_PreparingMassForClimateChange_030513.mp3).



March 2, 2013: Panelist, "Crime and Urban Development in Cities," Harvard Black Law Students Association Spring Conference, Harvard Law School, Cambridge, MA. As best I can recall, I discussed the limits states place on city powers. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138

February 28, 2013: Moderator, "What is Urban Law," 40th Urban Law Journal Symposium, Fordham Law School, New York, NY. Video available at: <http://vimeo.com/62187086>.

January 8, 2013: Presenter, University of Chicago Law School Public Law Workshop, Chicago, IL. I discussed my article, *In Defense of Big Waiver*. I have no notes, transcript or recording, but a copy of the article on which my talk was based has been supplied in response to 12a. The sponsoring organization is the University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637.

December 3, 2012: Presenter, Harvard Environmental Law Society, Harvard University, Cambridge, MA. I discussed the governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript or recording, but press coverage is supplied. The sponsoring organization is the Harvard Environmental Law Society, Harvard Law School, Wasserstein Hall, Cambridge, MA 02138.

November 18, 2012: Interviewer, "Obama and the Supreme Court," Interview with Jeffrey Toobin, John F. Kennedy Library Forum, John F. Kennedy Library. Boston, MA. Transcript supplied.

November 16, 2012: Panelist, "Separation of Powers," Federalist Society National Lawyers Convention. Washington, D.C. Video available at: <http://www.youtube.com/watch?v=xnNntEnNZB0>.

November 5, 2012: Presenter, Harvard Law Society of Illinois, Chicago, IL. As best I can recall, I discussed my experience as the Acting Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 31, 2012: Introduction, Law and Government Program of Study, Kickoff Event Featuring Solicitor General Donald Verrilli, Jr., Harvard Law School, Cambridge, MA. Video available at: [http://www.law.harvard.edu/news/2012/11/06\\_solicitor-general-verrilli-greatest-legal-job.html](http://www.law.harvard.edu/news/2012/11/06_solicitor-general-verrilli-greatest-legal-job.html).

September 28, 2012: Presenter, American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, I discussed my experience as the Acting Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

June 1, 2012: Commenter, Harvard, Stanford, and Yale Law School Junior Faculty Forum, "Constitutional Law I & II," Harvard Law School, Cambridge, MA 02138. As best I can recall, I discussed two papers by junior faculty on constitutional law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

May 20, 2012: Interviewer, "Conversation with Retired Justice John Paul Stevens," Harvard Law School, Cambridge, MA. Video available at: <http://www.law.harvard.edu/news/spotlight/constitutional-law/hls-celebrates-justice-john-paul-stevens.html>.

May 18, 2012: Remarks on behalf of the Massachusetts Board of Higher Education, Roxbury Community College Commencement, Boston, MA. I have no notes, transcript or recording. As best I can recall, my remarks extended congratulations to the graduates on behalf of the Massachusetts Board of Higher Education. The address of the sponsoring organization is Roxbury Community College, 1234 Columbus Avenue, Roxbury Crossing, MA 02120.

March 28, 2012: Panelist, "To EIP or not to EIP," Office of Public Interest Advising. Harvard Law School. Cambridge, MA. Video available at: [http://www.law.harvard.edu/media/2012/03/28\\_opia.mov](http://www.law.harvard.edu/media/2012/03/28_opia.mov).

March 5, 2012: Panelist, "*The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions* by Jay Wexler, Professor of Law," Boston University School of Law, Boston, MA. As best I can recall, my remarks discussed the book that was the subject of this symposium. I have no notes, transcript, or recording. The address of the sponsoring organization is Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

March 2, 2012: Panelist, "The Rule of Law and the Administrative State," at the Federalist Society National Student Symposium, "Bureaucracy Unbound: Can Limited Government and the Administrative State Co-Exist?," Stanford Law School, Stanford, CA. Video available at: <http://www.youtube.com/watch?v=t3njQn0ls9c>.

September 27, 2011: "The Constitution and National Security," Boston University Law School talk sponsored by the National Security Law Society, The Federalist Society, The American Constitution Society, and the Office of Student Affairs,

Boston University School of Law, Boston, MA. As best I can recall, my remarks discussed legal developments concerning counterterrorism since the Supreme Court's decision in *Boumediene v. Bush*, 553 U.S. 723 (2008). I have no notes, transcript, or recording. The address of the sponsoring organization is the Office of Student Affairs, Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

September 27, 2011: Panelist, "The Case for Local Constitutional Enforcement," Harvard Civil Rights-Civil Liberties Law Review, Harvard Law School, Cambridge, MA. Video available at:  
[http://www.law.harvard.edu/news/spotlight/constitutional-law/18\\_kathleen-morris-local-constitutional-law-crcl.html](http://www.law.harvard.edu/news/spotlight/constitutional-law/18_kathleen-morris-local-constitutional-law-crcl.html).

September 23, 2011: Panelist, "Court Funding: Autonomy, Access, and Accountability," Kentucky Law Journal, American Bar Association, National Center for State Courts Symposium on Court Funding. As best I can recall, my remarks addressed threats to judicial independence posed by limited state court funding. I have no notes, transcript or recording. The address of the sponsoring organization is the Kentucky Law Journal, University of Kentucky College of Law, Lexington, KY 40506.

September 17, 2011: Moderator, "The Presidency in the Post-9/11 World," Conference on "Law, Security & Liberty After 9/11: Looking to the Future," Harvard Law School-Brookings Project on Law and Security, Harvard Law School, Cambridge, MA. Video available at:  
[http://www.law.harvard.edu/media/2011/09/17\\_blum3.mov](http://www.law.harvard.edu/media/2011/09/17_blum3.mov).

June 6, 2011: Presenter, "What We Talk About When We Talk About Integration: Three Distinctions That Matter for Europe and the United States," John F. Kennedy Lecture, TiasNimbas Business School, Tilburg University, Tilburg, Netherlands. As best I can recall, my remarks discussed the current federalism debate, including the debate over the Affordable Care Act, in the United States and its relationship to debates over subsidiarity in the European Union. I have no notes, transcript, or recording. The address of the sponsoring organization is TiasNimbas Business School, Tilburg University, Postbus 90153, 5000 LE Tilburg, The Netherlands.

March 29, 2011: Panelist, "To EIP or not to EIP," Office of Public Interest Advising, Harvard Law School. Cambridge, MA. Video available at:  
[http://www.law.harvard.edu/media/2011/03/29\\_opia\\_1.mov](http://www.law.harvard.edu/media/2011/03/29_opia_1.mov).

November 11, 2010: Panelist, "The Executive in Crisis: Constitutional Capabilities," at Stanford Law School conference, "The Constitution in the Financial Crisis," Stanford Law School, Stanford, CA. Video supplied.

November 9, 2010: Presenter, "Views From Washington: The First 18 Months of the Obama Administration," Harvard Law School, Cambridge, MA. As best I can recall, I described some of the legal issues the administration confronted in the first 18 months. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 29, 2010: Panelist, "Symposium on Federalism, Preemption and State Law," the Uniform Law Commission and George Washington University Law School, Washington, D.C. As best I can recall, I discussed the law of preemption generally. I have no notes, transcript, or recording. The address of the sponsoring organization is Uniform Law Commission, 111 North Wabash Avenue, Suite 1010, Chicago, IL 60602.

October 7, 2010: Panelist, Forum on *Laws, Outlaws and Terrorists* by Professors Philip Heymann and Gabriella Blum, Harvard Law School, Cambridge, MA. Video supplied.

October 2010: Keynote, "Views from Washington: The First 18 Months," Langdell Dinner for Harvard Law School, New York, NY. Notes supplied.

April 26, 2009: Panelist, "Boston Bound: A Comparison of Boston's Legal Powers With Those of Six Other Major American Cities," Rappaport Institute for Greater Boston, Harvard University, Cambridge, MA 02138. As best I can recall, I discussed the report "Boston Bound," which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

October 24, 2008: Panelist, "Supreme Insights: Examining the Future of America's Highest Court," Harvard Law School, Cambridge, MA. Video supplied.

September 26, 2008: Panelist, "War Powers in Historical Perspective," Conference in Honor of Professor Morton, Harvard Law School, Cambridge, MA. Video supplied.

September 24, 2008: Panelist, "The 2008 Election: What is at Stake for the Judiciary," Federalist Society and the American Constitution Society chapters at the University of Pennsylvania Law School, Philadelphia, PA. As best as I can recall, my remarks addressed the potential for changes on the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the sponsoring organizations is University of Pennsylvania Law School, 3501 Sansom Street, Philadelphia, PA 19104.

July 31, 2008: Panelist, "A Debate on Cato's 'The Dirty Dozen': The Worst Supreme Court Cases in the Modern Era?," Cato Institute and the American Constitution Society, Cato Institute, Washington, D.C. Video supplied.

June 3, 2008: Participant, Governor Deval L. Patrick's Listening Tour, Fitchburg State University, Fitchburg, MA. As best I can recall, my remarks discussed restrictions on home rule in Massachusetts. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is Fitchburg State University, 160 Pearl Street, Fitchburg, MA 01420.

May 7, 2008: Participant, Mayors Roundtable, at the U.S.-Arab Economic Forum in Washington, D.C. with mayors from cities in the United States and Arab countries concerning the powers of cities in different countries. As best as I can recall, my remarks focused on home rule in the United States and how states limit city powers. I have no notes, transcript or recording. The address of the sponsoring organization is American Middle East Economic Affairs Committee, 12740 West Warren Avenue, Suite 300, Dearborn, MI 48126.

May 2008: Presenter, Conference on "The Role of State Court Leaders in Supporting Public Policy For Chief Justices and State Court Administrators," National Center for State Courts, Philadelphia, PA. Notes supplied.

April 10, 2008: Panelist, "Takings and Environmental Regulation: When Is Compensation Warranted?," The Harvard Law School Federalist Society, Harvard Law School, Cambridge, MA. Video supplied.

Spring 2008: Presenter, "Commander-in-Chief at the Lowest Ebb," Duke Law School Faculty Workshop, Durham, NC. As best I can recall, my remarks were based on the Harvard Law Review articles on the commander in chief power, copies of which have been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke University School of Law, 201 Science Dr., Durham, NC 27708.

January 18, 2008: Presenter, "City Structures," Emory Law School faculty colloquium, Emory Law School, Atlanta, GA. As best I can recall, my remarks were based on *City Bound: How States Stifle Urban Innovation*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Emory University School of Law, Gambrell Hall, 1301 Clifton Road, Atlanta, GA 30322.

January 3, 2008: Panelist, "Cooperative or Clashing Federalism," Association of American Law Schools Annual Convention, New York, NY. As best as I can recall, my remarks focused on local government law and immigration. I have no notes, transcript, or recording. The address of the sponsoring organization is the Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

November 29, 2007: Panelist, "The Mukasey Hearings Reconsidered," Harvard Law School, Cambridge, MA. Recording available at: <https://www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=455>.

November 3, 2007: Presentation, "Substantive Fault Lines in Constitutional War Powers," Harvard Law School Colloquium on the Commander in Chief Power, Harvard Law School, Cambridge, MA. Notes supplied.

October 25, 2007: Presenter, "George Washington University Law Review's Annual Review of Administrative Law," George Washington University Law School, National Press Club, Washington, D.C. Notes supplied.

October 12, 2007: Presenter, George Washington Law School Symposium, "Access to the Media – 1967 to 2007 and Beyond," Washington, D.C. As best as I can recall, my remarks were introductory in nature and focused on my father, Professor Jerome A. Barron, who was being celebrated in this symposium. I have no notes, recording, or transcript. The address of the sponsoring organization is George Washington University Law School, 2000 H Street, NW, Washington, D.C. 20052.

September 11, 2007: Introductory Remarks, Speech by Hon. Stephen Reinhardt, Harvard Law School American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. As best as I can recall, my remarks were introductory in nature. I have no notes, recording, or transcript. The address of the sponsoring organization is Harvard Law School American Constitution Society for Law and Policy, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Debate on Adrian Vermeule, "Terror in the Balance: Security Liberty, and the Courts," sponsored by the Harvard Federalist Society and the National Security & Law Society, Harvard Law School, Cambridge, MA. As best I can recall, my remarks focused on the arguments contained in Professor Vermeule's book of the same title as the debate. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Federalist Society, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Lecture on American Administrative Law, Harvard Law School European Law Research Center, J&A Garrigues, S.L. Barcelona, Spain. As best as I can recall, my remarks provided a general introduction to American administrative law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Lecture on American Federalism, Harvard Law School European Law Research Center, J&A Garrigues, S.L. Seville, Spain. As best as I can recall, my remarks provided a general introduction to American federalism. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

August 2007: Panelist, "Reversing the Alito Effect: Mobilizing for 2008 to Take Back the Supreme Court," YearlyKos, Chicago, IL. As best as I can recall, my remarks focused on legal issues likely to come before the Supreme Court of the United States in upcoming years. I have no notes, transcript, or recording. The sponsoring organization, Yearlykos, is no longer in operation.

July 2007: Panelist, "Civil Liberties and Human Rights in the War on Terror," Harvard University Weatherhead Center for International Affairs, "Democracy in Contemporary Global Politics: Global Governance, Foreign Policies, Domestic Politics," Talloires, France. As best as I can recall, my remarks focused on recent court cases concerning law-of-war detention and military commissions. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard University Weatherhead Center for International Affairs, 1737 Cambridge Street, Cambridge, MA 02138.

April 26, 2007: Panelist, "Boston Bound: A Comparison of the Legal Powers of Boston with Those of Six Other Major American Cities," The Boston Foundation, Boston, MA. As best as I can recall, my remarks concerned the report I co-authored, *Boston Bound*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Boston Foundation, 75 Arlington Street, Boston, MA 02116.

April 24, 2007: Panelist, Northwestern University Law School Conference on Originalism, Northwestern University Law School, Chicago, IL. As best I can recall, my remarks discussed originalism and textualism and the relationship between the two. I have no notes, transcript, or recording. The address of the sponsoring organization is Northwestern University Law School, 375 East Chicago Avenue, Chicago, IL 60611.

March 16, 2007: Panelist, "How Can Congress Stop the War -- And Should It Be Able To?," Harvard Law School Chapter of the American Constitution Society and the Harvard Law and Policy Review, Harvard Law School, Cambridge, MA. As best I can recall, my remarks focused on the history and practice of congressional efforts to limit the president's war powers. I have no notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

March 14, 2007: Panelist, "Harvard Law School Discussion of U.S. Attorney Firings," Harvard Law School, Cambridge, MA. Recording available at: [http://wilkins.law.harvard.edu/podcasts/AudioBerkman/2007\\_03\\_14\\_heyman\\_u\\_sattorneyfir.mp3](http://wilkins.law.harvard.edu/podcasts/AudioBerkman/2007_03_14_heyman_u_sattorneyfir.mp3).

Spring 2007: Presenter, Harvard Law School Colloquium on Constitutional Law, Harvard Law School, Cambridge, MA. I discussed a draft of my Harvard Law Review articles on the commander-in-chief power, copies of which were supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 23, 2007: Introductory Remarks, Event Launching the Harvard Law and Policy Review, Harvard Law School, Cambridge, MA. As best I can recall, my remarks were introductory in nature. I have no notes, transcript, or recording. The address of the sponsoring organization is The Harvard Law and Policy Review, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 2007: Moderator, Panel at the UCLA Law Review Symposium, "Constitutional 'Niches': The Role of Institutional Context in Constitutional Law," UCLA Law School, Los Angeles, CA. As best I can recall, my remarks consisted of comments and questions about the other papers presented on the panel. I have no notes, transcript, or recording. The address of the sponsoring organization is the UCLA Law Review, UCLA School of Law, 71 Dodd Hall, Los Angeles, CA 90095.

January 6, 2007: Panelist, Conference on "International Workshop on the Legalization of Central-Local Relations," sponsored by The China Law Center at Yale Law School and The Constitutional and Administrative Law Center at Peking University, Beijing, China. As best I can recall, my remarks provide a general introduction to the various aspects of central-local relations under American law. I have no notes, transcript or recording. The address of the sponsoring organization is The China Law Center, Yale Law School, P.O. Box 208215, New Haven, CT 06520.

Winter 2007: Participant, "Liberties and Communities," The Constitution in 2020 Conference, American Constitution Society for Law and Policy, Yale Law School, New Haven, CT. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Yale Law School, 127 Wall Street, New Haven, CT 06520.

December 12, 2006: Moderator, "The Unitary Executive: Approaches, Politics, and Current Implications," Harvard Law School Chapter of American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. I have no notes, transcript, or recording, and I do not recall the substance of my



remarks I made in my role as moderator. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

November 15, 2006: Panelist, "Signing Statements," Frank J. Murray American Inn of Court, Boston, MA. As best I can recall, my remarks concerned the historical and legal basis for the use of signing statements. I have no notes, transcript, or recording. The Frank J. Murray Inn of Court has no physical address.

November 2, 2006: Panelist, "Progressive Constitutionalism," Sponsored by Harvard Law School American Constitution Society of Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, my remarks were based on *What's Wrong With Conservative Constitutionalism: Two Styles of Progressive Critique and the Choice They Present*, a copy of which is supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 28, 2006: Presenter, "International Local Government Law," Yale Legal Theory Workshop, New Haven, CT. As best I can recall, my remarks were based on my article, *International Local Government Law*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Yale Law School, 127 Wall Street, New Haven, CT 06511.

August 2006: Presenter, Sun Valley Writer's Conference. Sun Valley, Idaho. As best I can recall, my remarks discussed the history of efforts by Congress to limit the powers of the Commander in Chief. I have no notes, transcript, or recording. The address of the sponsoring organization is Sun Valley Writer's Conference, P.O. Box 957, Ketchum, ID 83340.

August 2006: Presenter, Sun Valley Writer's Conference, Sun Valley, Idaho. As best I can recall, my remarks discussed the Supreme Court's *Kelo v. City of New London* decision on eminent domain. I have no notes, transcript, or recording. The address of the sponsoring organization is Sun Valley Writer's Conference, P.O. Box 957, Ketchum, ID 83340.

June 20, 2006, Panelist, "Eminent Domain One Year After *Kelo*, Implications for Community Development," National City Network, Harvard University's Government Innovators Network and KnowledgePlex, Washington, D.C. Video supplied.

April 24, 2006: Panelist, "Lawyers (Can) Have Families Too: Balancing the Demands of Career and Family," Harvard Law School Association for Law and Family Matters and the Harvard Law School Couples Association, Harvard Law

School, Cambridge, MA. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 10, 2006: Presenter, Comments on Gerald Frug's article, "The City As a Legal Concept." Harvard Law School, Cambridge, MA. As best I can recall, my remarks described the arguments of Professor Frug's article and how the field of local government law has changed in the decades that followed its publication. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 2006: Presenter, Boston University School of Law Faculty Workshop, Boston University School of Law, Boston, MA. As best I can recall, the paper I presented was "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no notes, recording, or transcript. The address of the sponsoring organization is Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

April 2006: Presenter, Conference entitled, "Reinventing Older Communities: People, Places, Markets," Federal Reserve Bank of Philadelphia, Philadelphia, PA. As best I can recall, I discussed the Supreme Court's decision in *Kelo v. City of New London*. I have no notes, transcript, or recording. The address of the sponsoring organization is Ten North Independence, Mall W, Philadelphia, PA 19106.

March 31, 2006: Interviewer, Conversation with the Hon. Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit, Ninth Annual Liman Colloquium, Yale Law School, New Haven, CT. I do not recall the substance of my remarks, but the event was an interview about Judge Reinhardt's career. I have no notes, transcript, or recording. The address of the sponsoring organization is The Arthur Liman Public Interest Program, Yale Law School, 127 Wall Street, New Haven, CT 06511.

March 31, 2006: Panelist, "Organizing and Reorganizing: The Challenges for Immigrants and Labor," Ninth Annual Liman Colloquium, Yale Law School, New Haven, CT. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is The Arthur Liman Public Interest Program, Yale Law School, 127 Wall Street, New Haven, CT 06511.

March 17, 2006: Presenter, "Why (and When) Cities Have a Stake in Enforcing the Constitution," George Washington University Law School Faculty Colloquium, Washington, D.C. As best as I can recall, my presentation was based on my article "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no

notes, transcript, or recording. The address of the sponsoring organization is The George Washington University Law School, 2000 H St., NW, Washington, D.C. 20052.

March 3, 2006: Presenter, "International Local Government Law," University of Texas School of Law Faculty Workshop, Austin, TX. As best as I can recall, my presentation was based on my article, *International Local Government Law*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is University of Texas School of Law, 727 East Dean Keeton Street, Austin, TX 78705.

March 2006: Panelist, Yale Law Journal Symposium on Executive Power. As best I can recall, the paper I presented was "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no notes, recording, or transcript. I have no notes, transcript, or recording. The address of the sponsorship organization is Yale Law School, 127 Wall Street, New Haven, CT 06511.

2006: Panelist, "The Scholarship of Laurence Tribe," Tulsa Law Review, College of Law, Tulsa University, Tulsa, OK. As best I can recall, my remarks were based on my article, "The Promise of Tribe's City," which has been provided in response to 12a. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is College of Law, Tulsa University, 3120 East Fourth Place, Tulsa, OK 74104.

November 2005: Panelist, "Working to Ensure the Fundamental Principles of Equality and Justice," American Constitution Society for Law and Policy, Northeast Regional Student Leadership Conference, Harvard Law School, Cambridge, MA. I do not recall the substance of my remarks. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsorship organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 3, 2005: Panelist, Dean's Forum, Discussion of the Supreme Court's upcoming term, Harvard Law School, Cambridge, MA. Video available at: [http://www.law.harvard.edu/media/2005/10/03\\_do.mov](http://www.law.harvard.edu/media/2005/10/03_do.mov).

October 1, 2005: Panelist, "The Jurisprudence of Justice Stevens," Fordham Law School, New York, NY. As best I can recall, my remarks discussed Justice Stevens's view of federalism. I have no notes, transcript, or recording. The address of the sponsoring organization is Fordham Law School, 140 West 62nd Street, New York, NY 10023

July 30, 2005: Moderator, Can Federalism Be Progressive, 2005 American Constitution Society National Convention, American Constitution Society, Washington, D.C. Transcript supplied.

April 2, 2005: Panelist, "Privatizing the Constitution," Indiana University Maurer School of Law Conference, "The Rehnquist Legacy," Bloomington, IN. Video supplied.

Spring 2005: Panelist, "Defensive Localism: A View of the Field from the Field," Conference sponsored by the Journal of Law and Politics entitled, "Democracy in Action?: The Law and Politics of Local Government," University of Virginia School of Law, Charlottesville, VA. As best I can recall, my remarks were based on "Defensive Localism: A View of the Field From the Field," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Journal of Law and Politics, University of Virginia School of Law, 580 Massie Road, Charlottesville, VA 22903.

2004 or 2005: Panelist, "International Local Government Law," Conference sponsored by the Harvard Law School Institute for Global Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, my remarks addressed how international law treats cities. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 17, 2004: Panelist, Roundtable on the Commander-in-Chief Power, Executive Power and Interrogation, Detention and the Powers of the Executive – a Series of Roundtables Sponsored by the Program on Public Law at Duke Law School, Durham, NC. Video supplied.

September 2004: Panelist, "Dispelling the Myth of Home Rule: Local Power in Greater Boston," Boston Foundation Forum, Rappaport Institute for Greater Boston Training Session for Municipal Officials, Cambridge, MA. As best I can recall, my remarks were based on *Dispelling the Myth of Home Rule*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

September 2004: Remarks, Orientation Dinner for First-Year Students, Harvard Law School, Cambridge, MA. Notes supplied.

August 2004: Presenter, "Gay Marriage in America: A Constitutional View," Sun Valley Writer's Conference, Sun Valley, ID. Notes supplied.

July 2004: "Home Rule Then and Now," Massachusetts Appellate Judges Conference. Weston, MA. Notes Supplied.

June 20, 2004: Panelist, "Gay Marriage, Federalism, and Amending the Constitution," American Constitution Society's Annual Conference, Washington, D.C. Video supplied.

May 2004: Presenter, "Separation of Powers and the War on Terror: A Look at the Current Cases," Harvard Law School Association of Mexico, Mexico City, Mexico. As best as I can recall, my remarks discussed recent court cases concerning law-of-war detention. I have no notes, transcript, or recording. There is no physical address for this organization.

March 2004: Presenter, "Dispelling the Myth of Home Rule: Local Power in Greater Boston," Boston Foundation Forum, Boston, MA. As best as I can recall, my remarks were based on "Dispelling the Myth of Home Rule," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Boston Foundation, 75 Arlington Street, Boston, MA 02116.

February 5, 2004: Panelist, Dean's Forum, Harvard Law School, Cambridge, MA. Video supplied.

November 14, 2003: Commentator, "Localism in 20th Century American Society," American Society for Legal History Annual Meeting, Washington, D.C. Notes supplied.

October 25, 2003: Panelist, "How Should Progressives Think About the Constitution," Georgetown University Law Center, Washington, D.C. I have no notes, transcript or recording, but, as best I can recall, my remarks were based on an earlier version of *What's Wrong With Conservative Constitutionalism: Two Styles of Progressive Critique and the Choice They Present*, a copy of which has been supplied in response to 12a. The address of the sponsoring organization is Georgetown Law School, 600 New Jersey Avenue, NW, Washington, D.C. 20001.

April 26, 2003: Introductory remarks for speech by Attorney General Janet Reno, sponsored by the Harvard Law School American Constitution Society, Harvard Law School, Cambridge, MA. As best as I can recall, my remarks were introductory in nature. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 2003: Panelist, "Local Government Law and the 2000 Census," Association of American Law Schools Annual Convention, Washington, D.C. As best as I can recall, my remarks addressed local government law and findings from the recent census. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

Winter 2002: Presenter, "The Home Rule Project," Board Meeting of the Rappaport Institute for Greater Boston, Kennedy School of Government, Cambridge, MA. As best I can recall, my remarks described a course I co-taught at Harvard Law School on home rule. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

Fall 2002: Presenter, "Reclaiming Home Rule," University of Virginia School of Law Faculty Workshop, Charlottesville, VA. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is University of Virginia School of Law, 580 Massie Road, Charlottesville, VA 22903.

Fall 2002: Presenter, "Rethinking Home Rule," Stanford Law School, Colloquium on Distributive Justice, Stanford, CA. As best as I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

Summer 2002: Presenter, "The Home Rule Project," Harvard Law School Summer Faculty Workshop, Harvard Law School, Cambridge, MA. As best I recall, my remarks described a course I co-taught at Harvard Law School on home rule. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Spring 2002: Presenter, "Rethinking Home Rule," Georgetown University Law School, Colloquium on Constitutional Theory, Washington, D.C. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Georgetown Law School, 600 New Jersey Avenue, NW, Washington, D.C. 20001.

January 2002: Panelist, "The Use of Intellectual Property in My First Year Property Class," Association of American Law Schools Annual Convention, New Orleans, LA. As best I can recall, I discussed cases involving the misappropriation doctrine and the copyrighting of factual compilations. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

November 8, 2001: Panelist, "Rethinking Home Rule," American Society for Legal History Annual Meeting, Chicago, IL. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes,

transcript, or recording. The address of the sponsoring organization is American Society for Legal History, 4301 Friedmann Hall, Western Michigan University, Kalamazoo, MI 49008.

Summer 2001: Presenter, "Inclusionary Localism and the Doctrine of Home Rule," Harvard Law School, Summer Faculty Workshop, Cambridge, MA. As best I can recall, my remarks addressed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2000: Panelist, "A Localist Critique of the New Federalism," Duke Program in Public Law Conference, "The Constitution in Exile," Durham, NC. As best I can recall, my remarks were based on views similar to those in my article, "A Localist Critique of the New Federalism," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke Program in Public Law, Duke University School of Law, 210 Science Drive, P.O. Box 90362, Durham, NC 27708.

May 10, 2000: Presenter, "Local Government Law in a World of Limited Growth," Tucson, AZ. Metropolitan Housing Commission Conference. Tucson, AZ. Notes supplied.

March 2000: Introductory remarks to speech by Hon. Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit, Harvard Civil Rights-Civil Liberties Law Review "Conference 2000," Harvard Law School, Cambridge, MA. As best I can recall, my remarks were introductory in nature. I have no notes, transcript or recording. The address of the sponsoring organization is Harvard Civil Rights-Civil Liberties Law Review, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 2000: Moderator, "The City in the 21st Century," State and Local Government Section, Association of American Law Schools' Annual Conference, Atlanta, GA. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

Fall 1999: Panelist, "Constitutionalism in the Shadow of Doctrine: The President's Nonenforcement Power," Duke Program in Public Law, Conference on "The Constitution Under Clinton," Durham, NC. As best I recall, my remarks were based on an early version of my article, "Constitutionalism in the Shadow of Doctrine," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke Program in Public Law, Duke University School of Law, 210 Science Drive, P.O. Box 90362, Durham, NC 27708.

- e. 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.

Through on-line database searches, and a review of my own files, I have found records of the following instances in which I have been quoted from an interview in a publication, as well as records of the following radio and television broadcasts I appeared on as a law professor. In addition to the materials I have listed below, I also believe I was interviewed for an article in *The New England Monthly* published in the spring of 1989 on the election of the president of The Harvard Crimson, but I have not been able to locate the article. I believe I may have appeared on additional radio and television broadcasts including one on NPR concerning the litigation concerning the disclosure of materials from the Energy Task Force chaired by Vice President Richard Cheney and other ones on MSNBC during the litigation over *Bush v. Gore*, as well as a radio broadcast concerning the Supreme Court's decision in that case, but I have no notes and records in my calendar identifying them, and I have not been able to find them through on-line searches:

Nicholas P. Fandos and Samuel Y. Weinstock, "At Longwood Forum, Email Privacy Policy Task Force Details Challenges Ahead," *The Harvard Crimson*, Oct. 10, 2013. Copy supplied in response to 12d.

Steven S. Lee, "UC Leaders Present Student Opinion Survey to Email Privacy Policy Task Force," *The Harvard Crimson*, Oct. 9, 2013. Copy supplied.

"Barron Task Force Launches Consultation Forums," *Harvard Gazette*, Oct. 7, 2013. Copy Supplied.

"Where Law and Public Policy Meet: The HLS/HKS Connection," *Spotlight at Harvard Law School*, Summer 2013. Copy supplied.

"Lawyers as Advisers," *Harvard Law Bulletin*, Summer 2013. Copy supplied.

Colleen Walsh, "Q&A with David Barron," *Harvard Gazette*, May 7, 2013. Copy supplied.

Dev A. Patel, "Once Home to Kagan and Warren, HLS Faculty Still Only 20 Percent Female," *The Harvard Crimson*, May 6, 2013. Copy supplied.

Nicholas P. Fandos and Samuel Y. Weinstock, "With President's Charge, Email Policy Group Meets for the First Time," *The Harvard Crimson*, May 6, 2013. Copy supplied.



Nate Rawlings, "Was Boston Actually on Lockdown?," Time.com, Apr. 19, 2013. Copy supplied.

Quinn D. Hatoff, "Harvard Profs Tapped to Join Mass. Board of Higher Ed," The Harvard Crimson, Mar. 7, 2012. Copy supplied.

"Governor Patrick Appoints Two New Members to the Board of Higher Education," Mass.gov, Mar. 5, 2012. Copy supplied.

Elaine McArdle, "Stories from the West Wing," Harvard Law Bulletin, Winter 2011. Copy supplied.

Corydon Ireland, "Rising Seas, Imperiled Cities," Environment@Harvard, Vol. 3, Issue 2, 2011. Copy supplied.

Farah Stockman, "Harvard Scholar Ends Justice Job Quickly," The Boston Globe, Nov. 29, 2010. Copy supplied.

Jonathan M. Hansen, "Guantanamo: An American History" (2011). Phone interview, Oct. 13, 2010. Relevant pages from book supplied.

Charlie Savage, "Key Job Changing Hands at Justice," The Caucus Blog, June 24, 2010. Copy supplied.

Charlie Savage, "White House Deputy Counsel Resigns," The Caucus Blog, May 7, 2010. Copy supplied.

"The Power of City Hall is a Myth Sometimes, Say Barron and Frug – and They Explain Why," Harvard Law School Webpage, Spotlight – Faculty Research, Fall 2008. Copy supplied.

"Impeachment," Here and Now, NPR, June 23, 2008. As best I can recall, I discussed the case against the impeachment of President George W. Bush. Audio available at <http://www.hereandnow.org/2008/06/23/show-rundown-for-6232008>.

Michael Gardner, "New Twist to Old Issue of 'Taking' of Property," Copley News Services, May 4, 2008. Copy supplied.

Charlie Savage, "Bush Asserts Authority to Bypass Defense Act," The Boston Globe, Jan. 30, 2008. Copy supplied.

Kris Hudson, "Rising Use of 'Impact' Fees Rankles New-Home Buyers," The Wall Street Journal, Nov. 21, 2007. Copy supplied.

"Mukasey Confirmation for Attorney General to Start," NPR, Oct. 17, 2007. Transcript supplied.

Francesca Jarosz, "Before You Grab That Property," GP/Solo, Law Trends and News, Sept. 2007. Copy supplied.

"Presidential Secrecy," On Point with Tom Ashbrook, WBUR, Sept. 2007. Audio available at: <http://www.onpointradio.org/2007/09/presidential-secrecy>.

"Justice Department Investigators Stay the Course," NPR, Aug. 28, 2007. Transcript supplied.

"Attorney General Has a Second Date With Congress," NPR, July 23, 2007. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=12185245>.

Dan Froomkin, "Bush's Middle Eastern Folly," Washington Post, July 17, 2007. Copy supplied.

Charlie Savage, "In Iraq Bills, A Vietnam Echo," The Boston Globe, July 16, 2007. Copy supplied.

Ian Master, "Background Briefing," July 1, 2007. Audio available at <http://ianmasters.com/content/2007-program-archive>.

Robb London, "Battlegrounds," Harvard Law Bulletin (Summer 2007). Copy supplied.

Kevin Zhou, "Sitkoff to Join HLS Faculty," The Harvard Crimson, May 25, 2007. Copy supplied.

"Hill Panel to Question Justice Aide Goodling," Morning Edition, NPR, May 23, 2007. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=10344647>.

"Despite Furor, Gonzales Likely to Stick Around," Morning Edition, NPR, May 10, 2007. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=10101946>.

Paula Zahn Show, "Will Iraq War Hamper Recovery Efforts," CNN, May 7, 2007. Transcript supplied.

Susan Milligan, "Impasse May Quickly Lead to Military Cuts, Bush Says," The Boston Globe, Apr. 4, 2007. Copy supplied.

Joan Biskupic, "Another Guantanamo Challenge for Justices; Court Could Review Ruling Limiting Rights of Prisoners," USA Today, Mar. 30, 2007. Copy supplied.

“Gonzales Remains, Despite Resignation Rumors,” NPR, All Things Considered, Mar. 30, 2007. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=9248755>.

“Republican Senator Urges Gonzales to Resign,” Morning Edition, NPR, Mar. 15, 2007. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=8922944>.

On February 14, 2007, I appeared on NECN in Boston for an interview concerning the report that I co-authored entitled, *Boston Bound*, a copy of which is supplied in response to 12a. I have not been able to locate a link to the broadcast or a videotape of it or a transcript of it.

Robb London, “HLS Constitutional law scholars tackle separation of powers in war-time,” Harvard Law School Webpage, Spotlight – Terrorism & National Security, January 2007. Copy supplied.

Paras D. Bhayani, “‘Beautiful Brainiac’ to Join HLS,” The Harvard Crimson, Dec. 8, 2006. Copy supplied.

Terry Pristin, “Voters Back Limits on Eminent Domain,” The New York Times, Nov. 15, 2006. Copy supplied.

“John Yoo’s War,” On Point With Tom Ashbrook, WBUR, Oct. 12, 2006. Audio available at: <http://www.onpointradio.org/2006/10/john-yoos-war>.

Linda Greenhouse, “His Hipness, John G. Roberts,” The New York Times, July 9, 2006. Copy supplied.

Joan Biskupic, “Court’s Rationale Could Affect Other Issues,” USA Today, June 29, 2006. Copy supplied.

“Private Property and Eminent Domain,” The Kojo Namdi Show, WAMU, June 22, 2006. Audio available at: <http://thekojonnamdishow.org/shows/2006-06-22/private-property-and-eminant-domain>.

On May 25, 2006, I appeared on an ABC News show in a segment entitled, “Wal-Mart Invasion; People of Hercules, California Versus Wal-Mart.” Transcript supplied.

Travis Loller, “Domain Bill’s Tough Talk Has Holes,” The Tennessean, May 12, 2006. Copy supplied.

Joan Biskupic, “Five Justices to Watch As the Roberts Court Evolves,” USA Today, May 11, 2006. Copy supplied.

Tom Brune, "Ruling Sought on Bush Wiretapping," *Newsday*, Mar. 30, 2006. Copy supplied.

Paras D. Bhayani, "Roberts Rejects His Profs' Brief," *The Harvard Crimson*, Mar. 7, 2006. Copy supplied.

Emily Bazelon, "Legalize it? Should the Law Make Room for Warrantless Wiretapping?," *The Boston Globe*, Feb. 19, 2006. Copy supplied.

"Judgment Days for Samuel Alito," *On Point*, WBUR, Jan. 10, 2006. Audio available at: <http://onpoint.wbur.org/2006/01/10/judgement-days-for-samuel-alito>.

Chris Arnold, "Limits on Eminent Domain May Go Too Far, Experts Warn," *All Things Considered*, NPR, Nov. 25, 2005. Transcript supplied.

Peter Schworm, "Law Community Cites Rehnquist's Courage, Commitment," *The Boston Globe*, Sept. 5, 2005. Copy supplied.

"Weighing the Impact of the Eminent Domain Ruling," NPR, July 1, 2005. Audio available at: <http://www.npr.org/templates/story/story.php?storyId=4725974>.

Gail Gibson, "High Court Upholds Eminent Domain," *Baltimore Sun*, June 24, 2005. Copy supplied.

"Supreme Court Backs Seizure of Property for Private Development," *Reporter's Notebook*, *To the Point*, June 23, 2005. Video available at: [http://www.kcrw.com/news/programs/tp/tp050623can\\_the\\_democrats\\_wi](http://www.kcrw.com/news/programs/tp/tp050623can_the_democrats_wi).

Javier C. Hernandez, "Alumnus Announces Governor Bid," *The Harvard Crimson*, Apr. 15, 2005. Copy supplied.

"Ask the Professor: Not-So-Eminent Domain," *Harvard Law Bulletin*, Spring 2005. Copy supplied.

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Michael M. Grynbaum and Jessica R. Rubin-Wills, "City Council Will Not Speed Gay Marriage," The Harvard Crimson, Nov. 25, 2003. Copy supplied.

Matt Viser, "Tired of Driving, Ready To Walk," The Boston Globe, Oct. 26, 2003. Copy supplied.

Matt McDonald, "Driving 'Spares' Out of Town Owners Challenge Limits on Old Autos They Keep for Parts," The Boston Globe, Aug. 28, 2003. Copy supplied.

Bob Montgomery, "Watershed Trail May Be Test Case," Greenville News (S.C.), Dec. 23, 2002. Copy supplied.

Anthony Flint, "Growing Issue in Campaign; Romney O'Brien Outline Steps to Control Sprawl, Traffic Jams in Suburbs," The Boston Globe, Sept. 22, 2002. Copy supplied.

Anthony Flint, "Sept. 11 Pushes Firms to Suburbs," The Boston Globe, Aug. 18, 2002. Copy supplied.

Jeanne Sahadi, "Making Sense of Estate Tax Cuts," CNN Money, July 13, 2002. Copy supplied.

Scott W. Helman, "Mass.-Only Discount Not Legal, Some Say," The Boston Globe, July 3, 2002. Copy supplied.

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"The Next Generation," Harvard Law School, Nov. 2001. Copy supplied.  
"Was Florida Court's Decision Right? Experts on the Constitution Sound Off," Investor's Business Daily, Nov. 24, 2000. Copy supplied.

"After 31 Years, Sorrento Supervises Last Closeout at the Crime," The Harvard Crimson, Sept. 18, 1998. Copy supplied.

Barbara E. Martinez, "Full-Time Employees Give 14 Plympton a Sense of Continuity, History," The Harvard Crimson, Jan. 24, 1998. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? \_\_\_\_\_

- i. Of these, approximately what percent were:

jury trials: \_\_\_\_\_ %  
bench trials: \_\_\_\_\_ % [total 100%]

civil proceedings: \_\_\_\_\_ %  
criminal proceedings: \_\_\_\_\_ % [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
  - h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
  - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. 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.

15. **Public Office, Political Activities and Affiliations:**

- 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.

2009 – 2010

Principal Deputy Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. On January 20, 2009, I was appointed by the Attorney General. I became the Acting Assistant Attorney General for the Office

of Legal Counsel on January 20, 2009 by operation of law, pursuant to the Vacancies Reform Act.

March 2012 – present  
Member, Massachusetts Board of Higher Education  
(Appointed by Governor)

April 2013 – present  
Member, Massachusetts School Construction Building Authority  
(Appointed by Governor)

I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed 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.

From November 2008 to January 2009, I served on the President-Elect's Transition Team as a member of the Department of Justice Agency Review Team.

From September 2008 to November 2008, I did volunteer work as part of an informal group for the Obama-Biden presidential campaign that analyzed potential election law issues in anticipation of the November 2008 presidential election.

From October 2007 to May 2008, I did volunteer work as part of an informal group advising the Hillary Clinton presidential campaign on legal policy matters.

In 2005 through 2006, I served as a member of the finance committee for Deval Patrick's campaign for Governor of Massachusetts. I served as the host or co-host of a number of fundraisers in connection with that volunteer position.

In October 2004, I did volunteer work as part of the Research, Analysis and Writing team for the Kerry-Edwards presidential campaign. I analyzed potential election law issues in anticipation of the November 2004 presidential election.

In June 2002, I served as a Delegate to the Massachusetts Democratic Party Convention.

**16. 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;

From 1995 to 1996, I served as law clerk to Justice John Paul Stevens for the Supreme Court of the United States.

From 1994 to 1995, I served as law clerk to the Hon. Judge Stephen Reinhardt, Circuit Judge for the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced alone. I have received compensation for providing legal consultation on occasion while serving as a law professor at Harvard Law School. In 2003 or 2004, I provided a few hours of consultancy services to Professor Richard Fallon in connection with memoranda he was preparing on constitutional issues relating to the Fuller Austin Settlement Trust and proposed legislation that would have taken money from existing trusts for asbestos-related illness. In February 2002, I provided consultancy services on a constitutional matter to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority. In 2001, I provided consultancy services to Professor Richard Fallon in connection with his preparation for oral argument on behalf of the appellee in *Starlight Sugar v. Soto*, 253 F.3d 137 (1st Cir. 2001). The case concerned issues of qualified immunity. In 2001, I provided compensated consultancy services to One Page, Inc., concerning copyright and other intellectual property issues. I also served as a counsel on two amicus briefs in the Supreme Court of the United States, which I have listed below.

- 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.

1996 – 1999, 2009 – 2010

Office of Legal Counsel, United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington DC 20530

Consultant (July 2010 – December 2010)

Acting Assistant Attorney General (2009 – 2010) (on leave from Harvard Law School)

Principal Deputy Assistant Attorney General (2009 – 2010) (on leave from Harvard Law School)

Attorney Advisor (1996 – 1999)

1999 – present  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138  
Honorable S. William Green Professor of Public of Public Law (2011 – present)  
Professor (2004 – 2011)  
Assistant Professor (1999 – 2004)

- 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.

I have not served in such a position.

b. Describe:

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

After clerking, I served as an Attorney Advisor in the Office of Legal Counsel, United States Department of Justice, from 1996 to 1999. In that role, I worked on a wide variety of legal matters concerning federal law, drafting memoranda for the office and providing advice on litigation about which the office was consulted.

From 1999 through the fall of 2008, I was a law professor, in which I did occasional legal consulting and served as counsel on two amicus briefs in the Supreme Court of the United States, each of which is listed below.

Beginning in January 20, 2009, I became the Acting Assistant Attorney General for the Office of Legal Counsel. I continued to serve as a consultant to that Office after departing until December 2010. I then returned to law teaching at Harvard Law School.

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

While engaged in the practice of law at the Department of Justice, I viewed my client as the United States. I served as a counsel on two Supreme Court amicus briefs representing members of Congress, and I served on the President Elect's Transition Team as a member of the Department of Justice Agency Review Team. My other work has been as a consultant on both litigation and non-litigation related matters.

- 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.

The majority of my legal career has been spent teaching. In that capacity, I have served as a counsel on two amicus briefs and signed on to three other amicus briefs. Of those briefs, one concerned a state court matter. While serving in the Office of Legal Counsel, I was not counsel for the United States in any litigation, but in my role as an Attorney Advisor and as the Acting Assistant Attorney General I was frequently asked to advise upon matters in litigation. My involvement in these matters exclusively concerned issues arising in the federal courts, at all levels, including the Supreme Court of the United States.

- i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 99% |
| 2. state courts of record:  | 1%  |
| 3. other courts:            | 0%  |
| 4. administrative agencies: | 0%  |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 90% |
| 2. criminal proceedings: | 10% |

- d. State the number of 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.

I have not tried any cases.

- i. What percentage of these trials were:

- |              |      |
|--------------|------|
| 1. jury:     | ___% |
| 2. non-jury: | ___% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

*Randall v. Sorrell*, Brief for Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, and Representative Martin Meehan As Amici Curiae in support of respondents, 2006 WL 325180.

*Wisconsin Right to Life v. Federal Election Commission*, Brief of Amici Curiae Senator John McCain, Representative Chris Shays, and Representative Martin Meehan in support of Appellee, 2005 WL 3543096.

*Rumsfeld v. F.A.I.R.*, Brief of Amici Curiae Professor William Alford, et al., in support of Respondents, 2005 WL 2367595.

17. **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.

1. *Wisconsin Right to Life, Inc. v. Federal Election Commission*, 546 U.S. 410 (2006). I was a counsel for Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in support of appellee. The brief argued that section 441b of the Bipartisan Campaign Reform Act of 2002, which required the use of segregated political action committee funds to pay for certain advertisements in advance of a federal election, could be constitutionally applied to three advertisements run by Wisconsin Right to Life, Inc. The Supreme Court in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 546 U.S. 410 (2006) (per curiam), reversed the lower court and held that an as applied challenge could be brought.

Co-counsel:

Grant A. Davis-Denny  
Bradley S. Phillips  
Munger, Tolles & Olson LLP  
355 South Grand Avenue  
35th Floor  
Los Angeles, CA 90071  
(213) 683-9100

Randolph D. Moss  
Seth P. Waxman  
Wilmer Hale LLP  
2445 M Street, NW  
Washington, D.C. 20037  
(202) 663-6000

Roger M. Witten  
Wilmer Hale LLP  
399 Park Avenue  
New York, NY 10022  
(212) 230-8800

Fred Wertheimer  
Democracy 21  
2000 Massachusetts Ave., NW  
Washington, DC 20036  
(202) 355-9600

Donald J. Simon  
Sonosky, Chambers, Sachse, Endreson & Perry, LLC  
1425 K Street, N.W.  
Suite 600  
Washington, DC 20005  
(202) 682-0240

Alan Morrison  
George Washington University Law School  
2000 H Street, NW  
Washington, D.C. 20052  
(202) 994-5157

Trevor Potter  
Paul Ryan  
Campaign Legal Center  
215 E Street, NW  
Washington, D.C. 20002  
(202) 736-2200

Charles G. Curtis, Jr.  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, D.C. 20004  
(202) 942-6462

David L. Anstaett  
Perkins Coie, LLP  
1 East Main Street  
Madison, WI 53703  
(608) 663-5408

Scott L. Nelson  
Public Citizen Litigation Group  
1600 20th Street, NW  
Washington, D.C. 20009  
(202) 588-1000

Counsel for appellant:

James Bopp Jr.  
The Bopp Law Firm  
One South Sixth Street  
Terre Haute, IN 47807  
(812) 232-2434

Counsel for appellee:

Paul Clement (formerly Acting Solicitor General)  
1919 M Street, NW, Suite 470  
Washington, D.C. 20036  
(202) 234-0090

2. *Randall v. Sorrell*, 548 U.S. 230 (2006). I was a counsel in this case for Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in support of respondents. The case concerned whether the court of appeals correctly upheld Vermont's campaign contribution limits under applicable First Amendment standards and whether the court of appeals had properly remanded to the district court the issue of whether Vermont's expenditure limits were constitutional. The brief argued that the contribution limits should be upheld and that the court of appeals' remand should be affirmed, thereby staying the Supreme Court's hand pending further development of the issue by the lower courts. The Supreme Court in *Randall v. Sorrell* held that both the expenditure limits and the contribution limits were unconstitutional and remanded the case for further proceedings.

Co-counsel:

Randolph D. Moss  
Seth Waxman  
Wilmer Hale LLP  
2445 M Street, NW  
Washington, D.C. 20037  
(202) 663-6000

Roger M. Witten  
Wilmer Hale LLP  
2445 M Street, NW  
Washington, D.C. 20037  
(202) 663-6000

Grant A. Davis-Denny  
Bradley S. Phillips  
Munger, Tolles & Olson LLP  
355 South Grand Avenue  
35th Floor  
Los Angeles, CA 90071  
(213) 683-9100

Donald J. Simon  
Sonosky, Chambers, Sachse, Endreson & Perry, LLC  
1425 K Street, NW  
Suite 600  
Washington, D.C. 20005  
(202) 682-0240

Alan Morrison  
George Washington University Law School  
2000 H Street, NW  
Washington, D.C. 20052  
(202) 994-5157

J. Gerald Herbert  
Trevor Potter  
Paul Ryan  
Campaign Legal Center  
215 E Street, NW  
Washington, D.C. 20036  
(202) 736-2200

Charles G. Curtis, Jr.  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, D.C. 20004  
(202) 942-6462

Fred Wertheimer  
Democracy 21  
2000 Massachusetts Avenue, NW  
Washington, D.C. 20036  
(202) 355-9600

Scott L. Nelson  
Public Citizen Litigation Group  
1600 20th Street, NW  
Washington, D.C. 20009  
(202) 588-1000

Counsel for petitioners:

Mitchell L. Pearl  
Langrock Sperry & Wool, LLP  
P.O. Drawer 351  
Middlebury, VT 05753  
(802) 388-6356

James Bopp Jr.  
The Bopp Law Firm  
One South Sixth Street  
Terre Haute, IN 47807  
(812) 232-2434

Counsel for respondents:

Judge Timothy B. Tomasi (formerly at the Vermont Office of Attorney General)  
Superior Court of Vermont  
P.O. Box 570  
Hyde Park, VT 05655  
(802) 888-3887

3. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). In 2005, as a law professor, I joined an amicus brief in the Supreme Court 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 also participated in the drafting of this brief. 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).

Co-counsel:

Walter Dellinger  
O'Melveny and Myers, LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
(202) 383-5300

Pamela Harris  
Georgetown Law School  
600 New Jersey Avenue, NW  
Washington, D.C. 20001  
(202) 662-9000



Toby Heytens  
University of Virginia School of Law  
580 Massie Road  
Charlottesville, VA 22903  
(434) 924-3229

Nicole Saharsky  
Office of the Solicitor General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
(202) 514-2203

Counsel for petitioners:

Paul Clement (formerly Acting Solicitor General)  
1919 M Street, NW, Suite 470  
Washington, D.C. 20036  
(202) 234-0090

Counsel for respondents:

E. Joshua Rosenkranz  
Orrick, Herrington & Sutcliffe LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5380

4. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 390 F. 3d. 219 (3d. Cir. 2004). In 2004, as a law professor, I joined an amicus brief in the United States Court of Appeals for 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 also participated in the drafting of this brief. 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. A divided panel of the Third Circuit concluded that plaintiffs had shown a significant likelihood of success on the merits of their First Amendment challenge and reversed and remanded to the district court to enter a preliminary injunction against enforcement of the Solomon Amendment.

Co-counsel:

Walter Dellinger  
O'Melveny and Myers, LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
(202) 383-5300

Pamela Harris  
Georgetown Law School  
600 New Jersey Avenue, NW  
Washington, D.C. 20001  
(202) 662-9000

Toby Heytens  
University of Virginia School of Law  
580 Massie Road  
Charlottesville, VA 22903-1738  
(434) 924-3229

Nicole Saharsky  
Office of the Solicitor General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
(202) 514-2203

Counsel for appellant:  
E. Joshua Rosenkranz  
Orrick, Herrington & Sutcliffe LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5380

Counsel for appellee:  
Peter D. Keisler (then Assistant Attorney General)  
Sidley Austin LLP  
1501 K Street, NW  
Washington, D.C. 20005  
(202) 736-8027

5. *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P. 3d 1149 (2005).  
In 2005, as a law professor, I joined an amicus brief in the Court of Appeals of the State of New Mexico with other scholars of local government law and the New Mexico Municipal League in support of the City of Santa Fe in defense of its living wage ordinance. I also participated in the drafting of the brief. The amicus brief explained why the ordinance constituted a valid exercise of the city's state law home rule powers and why it was not preempted. The Court of Appeals upheld the ordinance as a valid exercise of local home rule authority in *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P. 3d 1149 (2005).

Co-counsel:  
Richard Briffault  
Columbia Law School  
435 West 116th Street

New York, New York 10025  
(212) 854-2638

Maureen Sanders  
Duff Westbrook  
Sanders and Westbrook, P.C.  
102 Granite Avenue, NW  
Albuquerque, New Mexico 87102  
(505) 243-2243

Counsel for appellant:  
Paul K. Sonn  
National Employment Law Project  
75 Maiden Lane, Suite 601  
New York, NY 10038  
(212) 285-3025

Counsel for appellee:  
Kathrin Kinzer-Ellington  
Ellington & Ellington LLC  
1322 Paseo De Peralta  
Santa Fe, NM 87501  
(505) 986-0677

18. **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.)

Upon completing my clerkships, I served as an Attorney Advisor in the Office of Legal Counsel for three years. As an Attorney Advisor in the Office of Legal Counsel from 1996 to 1999, I was involved in a wide range of legal activities pertaining to all aspects of the Office's work. In that capacity, I provided advice and drafted opinions concerning a number of matters of constitutional, statutory and regulatory interpretation. I also advised on a wide range of litigation. The work I performed in my role as an Attorney Advisor for the Office was confidential and/or classified.

The majority of my legal career has been spent in law teaching. I have served as an assistant professor of law and as professor of law at Harvard Law School since 1999, with a leave of absence from January 2009 through July 2010. I am presently the Honorable S. William Green Professor of Public Law at Harvard Law School, where I have taught a number of courses, including a number with a clinical component. During my time as a professor, I have engaged in occasional consulting work and litigation,

including advising on a constitutional issue for the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority and assisting in preparation for an oral argument in the United States Court of Appeals for the First Circuit in the case of *Starlight Sugar v. Soto*, 253 F.3d 137 (1st Cir. 2001). I also advised Senators Edward Kennedy and Charles Schumer on constitutional issues during the confirmation hearings on the nominations of Samuel Alito and John Roberts to be associate justices of the Supreme Court of the United States.

After serving on the President Elect's Transition Team as a member of the Department of Justice Agency Review Team in 2009, I returned to the Office of Legal Counsel as the Principal Deputy Assistant Attorney General and Acting Assistant Attorney General, and I served as a consultant to the Office after leaving in July 2010, providing occasional advice through December of that year. As the Acting Assistant Attorney General for the Office of Legal Counsel, I was responsible for all operations of the Office, both legal and administrative. I provided confidential legal advice on a wide range of federal litigation concerning constitutional and statutory matters at all levels of the federal court system, including the Supreme Court. In carrying out these duties and functions, I participated in a wide range of legal activities concerning matters of regulatory, statutory, constitutional, and international law interpretation in both the domestic and national security areas. I also advised on a wide range of litigation. A number of memoranda that I signed in my tenure have been made public on the Office's website, and they are listed above in answer to question 12c. Other legal work I did in that capacity is confidential and/or classified.

I have not performed any lobbying activities.

19. **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, 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.

I taught Administrative Law in Spring 2000, Spring 2001, Fall 2002, Spring 2005, and Spring 2007, at Harvard Law School. The course covered basic federal administrative law. Representative syllabus supplied.

In Spring 2005 and Spring 2007, I offered a clinical component to the Administrative Law course in which a limited number of students received placements in the law offices of federal agencies in Massachusetts. No syllabus available.

I co-taught the course, Gateway Cities Field Study, with Ann Forsyth and Nicolas Retsinas, in Spring 2012, at Harvard Law School. The course placed students from Harvard Law School, Harvard Business School, and the Harvard Graduate School of Design in interdisciplinary teams and assigned them to various gateway cities in Massachusetts to advise on redevelopment challenges facing them. Syllabus supplied.

I co-taught a yearlong combined seminar and clinical, Green Cities: New York, with Gerald Frug, in 2009, 2010, and 2011, at Harvard Law School. The course examined New York City's efforts to implement PlaNYC and placed students in the Corporation Counsel's Office of the City of New York through a distance clinical. I taught the combined seminar and clinical by myself in 2012. Representative syllabus supplied.

I co-taught a year-long field study, Home Rule in Massachusetts, with Gerald Frug, in 2001, at Harvard Law School. The course examined home rule in Massachusetts. I have been unable to locate the syllabus.

I have been the faculty supervisor for a number of independent clinical offerings at Harvard Law School in which individual students have been placed in law offices in Massachusetts and across the country. No syllabi available.

I co-taught a seminar, International Local Government Law, with Gerald Frug, in Spring 2005, at Harvard Law School. The course examined the role international law plays in determining the power of cities. Syllabus supplied.

I taught a first-year reading group, Lawyering for the President, in 2010, 2011, 2012 and 2013, at Harvard Law School. The first-year reading group examined the role of executive branch lawyers. Representative syllabus supplied.

I co-taught a reading group, Lawyering for the President, with Jack Goldsmith, in Fall 2005, and I taught on my own a substantially similar version of this course as a reading group in Spring 2008 and as a seminar in Fall 2010 and Spring 2012, at Harvard Law School. The course examined the role of executive branch lawyers. Representative syllabus supplied.

I taught Legislation and Regulation in Spring 2008, Fall 2011, and Fall 2012, at Harvard Law School. The course covered basic statutory interpretation and administrative law. Representative syllabus supplied.

I taught Local Government Law in Spring 2001, Fall 2003, Spring 2007, Fall 2008, and Fall 2010, at Harvard Law School. The course is a survey of state and local government law. Representative syllabus supplied.

In Fall 2003, Spring 2004, Spring 2007, Fall 2008, and Winter 2009, I offered a clinical component to the Local Government Law course in which a limited number of students received clinical placements in the law offices of state and municipal governments and agencies in Massachusetts. No syllabus available.

I co-taught a first-year reading group, Social Capital and Cities, with Archon Fung, at Harvard Law School for a number of years before going on leave in 2008. The first-year reading group examined the importance of social capital to cities and suburbs and how local government law can create or undermine social capital. Representative syllabus supplied.

I taught Property in Fall 1999, Fall 2000, Spring 2002, Spring 2003, Spring 2004, Fall 2004, Fall 2005, and Fall 2006, at Harvard Law School. The course covered basic property law. Representative syllabus supplied.

I co-taught a seminar, Public Problems: Advice, Strategy, Analysis, with Archon Fung, in Fall 2012 and Spring 2013, at Harvard Law School. The course is required of all students enrolled in the joint J.D./M.P.P. program between Harvard Law School and Harvard Kennedy School. The course introduced students to case studies of public problems that raise issues of law and policy. Representative syllabus supplied.

I co-taught a seminar, Thinking About Cities, with Gerald Frug, in Fall 2002 and Spring 2003, at Harvard Law School. The seminar brought in guest speakers from practice and academia to discuss urban theories and issues. I have been unable to locate the syllabus.

I co-taught a seminar, Urban Responses to Sea Level Rise with Gerald Frug, Daniel Schrag, Jerrold Kayden, and Charles Waldheim, in Spring 2012, at Harvard Law School. The course examined the responses of cities to rising sea levels and the legal issues raised by those responses. Syllabus supplied.

20. **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.

21. **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.

No, except for the possibility of law teaching.

22. **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).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **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.

The main conflicts of interest that I would confront would arise from my service at the Office of Legal Counsel. The only other significant source of potential conflicts of interest arising from my professional work would arise from my affiliation with Harvard Law School and with the Massachusetts Board of Higher Education and the Massachusetts State College Building Authority. In addition, my wife is employed by the Harvard Kennedy School of Government and is a candidate for Governor of Massachusetts. My wife and I also have financial holdings listed in my Net Worth Statement. I would handle all matters concerning recusal by consulting the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges. In close cases, I also would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise.

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

In order to avoid any potential conflict of interest, I would consult the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges. Based on such sources, I would compile a comprehensive list of matters, clients or other persons so that I could readily identify potential conflicts of interest, and in close cases, I also would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise.

25. **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.

Since April 2013, I have served without compensation on the Massachusetts State College Building Authority, which is charged with financing, designing, constructing, and overseeing the management of revenue-funded facilities for the nine state universities. Since March 2012, I have served without compensation on the Massachusetts Board of Higher Education, which provides an oversight role on behalf of the state's universities and community colleges and focuses on efforts to increase access to quality public higher education throughout the Commonwealth.

Since 2008, I have served on the advisory board of the Rappaport Center for Law and Public Service at Suffolk University Law School, which is devoted to promoting emerging leaders who are committed to public service and pro bono work.

Throughout my time in teaching, I have been a faculty supervisor for student clinical work for the disadvantaged both in conjunction with my course on Local Government Law, including clinical placements concerning community economic development, and as part of independent clinical projects. I have also promoted public interest and pro bono work as a faculty member through committee service, individual advising, and through appearances at public interest advising events.

**26. Selection Process:**

- a. Please 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). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In the fall of 2010, I was contacted by an official from the White House Counsel's Office, inquiring whether I would be interested in being considered to serve as a Federal Circuit judge should a vacancy arise. I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice since that time. Although my contact was limited from late 2011 through early 2013, when a vacancy arose on the United States Court of Appeals for the First Circuit this summer, an official from the White House Counsel's Office inquired whether I was still interested, and I have been in more frequent contact since then. On August 27, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 24, 2013, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee 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.

No.



AFFIDAVIT

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

Sept. 30, 2013

(DATE)

David J Barron

(NAME)

Chloe V Bush

(NOTARY)



**CHLOE VICTORIA BUSH**

**Notary Public**

**Commonwealth of Massachusetts**

**My Commission Expires**

**November 21, 2019**