Salute to a general
Dean Kagan becomes U.S. solicitor general

On March 19, 2009, Dean Elena Kagan ’86 was confirmed by the United States Senate as the 45th solicitor general of the United States—and the first woman solicitor general in U.S. history.

President Barack Obama ’91 nominated Kagan in early January, and on Feb. 10 the Senate Judiciary Committee held a hearing to consider her nomination.

In her opening statement to the committee in February, Kagan said, “To have the opportunity to lead the Solicitor General’s Office is the honor of a lifetime. As you know, this is an office with a long and rich tradition, not only of extraordinary legal skill but also of extraordinary professionalism and integrity. That is due, in large measure, to the people who have led it.”

Kagan served in the White House during the Clinton administration, first as associate counsel to the president (1995-96) and then as deputy assistant to the president for domestic policy and deputy director of the Domestic Policy Council (1997-99).

Two more renowned scholars head to HLS
Smith and Lessig join faculty

Henry E. Smith
Professor of Law

In January, Smith, an expert in intellectual property, natural resources, property and taxation, joined the HLS faculty from Yale, where he was the Fred A. Johnston Professor of Property and Environmental Law and a professor in the Program in Cognitive Science.

The co-author of the casebook “Property: Principles and Policies,” Smith has published numerous articles on the law and economics of property, and intellectual property. He serves on the board of advisers for the Journal of

Lawrence Lessig
Professor of Law, Director of Harvard’s Edmond J. Safra Foundation Center for Ethics

Lessig, an expert in constitutional law, contracts and the law of cyberspace, will join the HLS faculty in the fall. He is currently a professor at Stanford Law School, where he founded the Center for Internet & Society. Prior to joining the Stanford faculty in 2000, he was on the faculties of the University of Chicago Law School and HLS.

As director of the Safra Foundation Center, Lessig will expand on its work

Warren overseeing Treasury’s economic bailout plan

In November, Harvard Law School Professor Elizabeth Warren was appointed to a five-member Congressional Oversight Panel to monitor the Treasury’s economic rescue plan. Warren was one of three experts nominated to the bipartisan panel by House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid.

The panel, charged with examining the Treasury Department’s plans for the $700 billion economic bailout package, known as the Troubled Asset Relief Program, has issued five reports on the effectiveness of the regulatory structure now governing the country’s financial system. The panel also submitted a special report on regulatory reform to
Students win $54K verdict for tenant

In November, two HLS students landed a $54,000 verdict against the Bank of New York for cutting off the water and heat of a man it was trying to force out of the home he rented. The landlord had failed to make mortgage payments.

The verdict—which was reached by the 12-person jury in Boston Housing Court after four hours of deliberation—may yet be doubled or tripled under the state’s consumer protection law.

The case was tried by 3Ls David Haller and Eli Schlam of the Harvard Legal Aid Bureau, under the supervision of Verner Moore, and the WilmerHale Legal Services Center, with Eric Levine ’08.

“Students are hopeful that the size of the award will encourage banks to improve treatment of tenants in the properties they acquire through foreclosure and to consider maintaining properties instead of evicting people,” said Haller.

HLS clinics are involved in 50 to 100 similar cases, now pending, he added. Haller co-founded No One Leaves, an organization that advises tenants to remain in foreclosed dwellings until the legal process has been exhausted.

William Allen had lived in his Dorchester apartment for four years. In December 2007, he learned that the owner had lost the property in a bank foreclosure a month earlier. The city turned the water off, cutting off heat to Allen’s home.

After Allen turned to Legal Services, Levine contacted the Bank of New York, which owned the property, to notify them that Allen was living in the apartment. The bank responded by changing the locks and reporting Allen to the police as a squatter.

Allen, who is on Social Security disability, lived without water or heat for four months. Students filed a restraining order with the Boston Housing Court to force the bank to turn on the water. The court ordered the bank to pay for Allen to live in a hotel until the water problem was resolved.

When the bank filed an eviction claim, Allen counterclaimed, alleging that the shut-off of his water and heat amounted to a forced eviction.

The jury returned a verdict of $4,000 in actual damages plus $50,000 for emotional distress.
Professor Anne L. Alstott, a tax and social welfare policy expert, joined the faculty in 2008 as the Manley O. Hudson Professor of Law and director of the Fund for Tax and Fiscal Policy Research. She previously taught at Columbia and then Yale Law School, and earlier worked as an attorney-adviser in the Treasury Department’s Office of the Tax Legislative Counsel. Co-author with Bruce Ackerman ’70 of the 1999 book “The Stakeholder Society,” she is also the author of “No Exit: What Parents Owe Their Children and What Society Owes Parents,” which was published in 2004. She also wrote “Equal Opportunity and Inheritance Taxation,” 121 Harvard Law Review 469 (2007).

In “The Stakeholder Society,” you propose providing every American who graduates from high school a one-time grant of $80,000 upon reaching adulthood to be financed by a 2 percent wealth tax. Has the current economic collapse brought new attention to the problems you were trying to highlight in that book? In the present economic climate, people are looking for new solutions and bigger solutions. For the first time since we wrote “The Stakeholder Society” a decade ago, people in this country are looking for new ways to address the maldistribution of wealth and opportunity that our current institutions have produced.

You wrote about your personal experience dealing with your son’s health in “No Exit.” Did that experience affect how you think about public policy problems and solutions? My son was hospitalized seven weeks in seven months as a 3-year-old, and that experience really immersed me in the world of people who have children with serious illnesses and disabilities. I went without sleep many nights, and when I did sleep, I had a suitcase under my bed, because on any given night if his breathing crisis got bad enough, I knew we would head to the hospital for an indefinite stay. My employer was incredibly gracious and generous about giving me leave time, and colleagues helped by taking on some teaching. But in the middle of those hospital nights, I used to think about what would happen to me and my children if I were someone earning $7 an hour without health insurance and with the kind of job that if I didn’t show up to work, they’d fire me. A family in that circumstance can find themselves evicted, homeless, bankrupt. A chapter of “No Exit” came out of this experience; it proposes special assistance to parents of children with severe chronic illnesses and disabilities. My son is fine now, but at a very human level, I continue to have perhaps a higher degree of empathy, in addition to my academic sympathy, for families with children with very high-care needs.

You’re currently working on an article about improving social insurance for low-income workers. What would be required? My article responds to the common claim in the political realm that the Earned Income Tax Credit “makes work pay.” The EITC, as you recall, was supposed to be the humane side of the 1996 welfare reforms; it was supposed to ensure that working families would not be poor. But a closer look suggests that as a nation we haven’t delivered on that promise. My work suggests that public policy should not only subsidize wages while people are in work—as the EITC does—but should also consider the risks of life that everyone faces and that middle-class people tend to cover through savings. In 2004, 17 percent of Americans had zero or negative wealth. That means that a period of unemployment or underemployment, which is very common among low-income workers, can be catastrophic. And that’s just one example. My article will sketch a holistic approach to improving social insurance for low-income workers across the board—in realms including health insurance, disability and family care, as well as unemployment.
Howell Jackson ’82 is appointed acting dean of Harvard Law School

Upon Elena Kagan’s departure for the Solicitor General’s Office in mid-March, HLS Professor Howell Jackson ’82 became acting dean of Harvard Law School. Jackson, who has been on the HLS faculty since 1989 and served as the school’s vice dean for administration and budget from 2003 to 2006, was appointed by Harvard University President Drew Gilpin Faust to lead the school until a search for Kagan’s replacement is completed.

“Howell Jackson is a first-rate scholar and teacher who has been a core member of the law school’s leadership team in recent years,” said Faust. “Especially at this moment in the life of the law school and the university, we are fortunate to be able to turn to an acting dean who not only is a distinguished academic, but also has deep experience with the school’s administrative and financial matters and a close working knowledge of the ambitious initiatives the school has been pursuing. I’m very grateful to Howell for his readiness to take on this interim role.”

Jackson’s research interests include regulation of financial institutions and financial markets, international finance, Social Security reform and federal budget policy. He is co-editor of “Fiscal Challenges: An Interdisciplinary Approach to Budget Policy” and co-author of “Analytical Methods for Lawyers” and “Regulation of Financial Institutions.”

In January, Jackson testified before the U.S. Senate Committee on Homeland Security and Governmental Affairs. He called for the Federal Reserve Board to become the primary regulator of financial risk, citing the lack of a central regulatory body as a contributing cause of the current economic downturn. He has also served as a consultant to the U.S. Treasury Department, the United Nations Development Programme and the World Bank/International Monetary Fund.

A board assembled to assist in the search for a new dean is made up of Professors William Alford ’77, Anne Alstott, Richard Fallon, Mary Ann Glendon, John Goldberg, Randall Kennedy, Reinier Kraakman, Daryl Levinson, Robert Mnookin ’68, Carol Steiker ’86 and George Triantis.

In those positions she played a key role in the executive branch’s formulation, advocacy, and implementation of law and policy in areas ranging from education to crime to public health.

In 1999, she joined the HLS faculty as a visiting professor, and she was appointed dean in 2003. During her deanship, she oversaw a period of remarkable growth at HLS, including a headline-making reform of the curriculum, an impressive expansion of the faculty, a major initiative to support public service and the design of a new building complex now under construction.

Kagan will be on leave from the faculty during her service as solicitor general. With her confirmation, HLS Professor Howell Jackson ’82 became acting dean of the law school.

After President Obama nominated Kagan to be solicitor general, the Senate Judiciary Committee received many letters in support of her nomination from her colleagues at the law school, alumni, former students and others. The committee also received a letter of endorsement from eight former solicitors general, who served in Democratic and Republican administrations, and others from law school deans, HLS Iraq War veterans, and the National Association of Women Lawyers. Four HLS professors submitted letters, including Charles Fried, who was solicitor general from 1985 to 1989 during the Reagan administration.

HLS SOLICITORS GENERAL: “In the middle of everything that’s legal”

Dean Elena Kagan ’86 made history in March when she became the first woman confirmed as solicitor general of the United States. Supreme Court Justice Thurgood Marshall (for whom Kagan clerked) called the solicitor general’s post— which he held from 1965 to 1967—“maybe the best job” he ever had. As solicitor general, he said, “[y]ou’re in the dead middle of everything that’s legal and you have your two cents to put in.” Kagan, the 45th solicitor general, joins a long line of solicitors general with ties to Harvard Law School. They are as follows:

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<td>Herbert Hoover</td>
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<td>George W. Bush</td>
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<td>Paul Clement</td>
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“LETTERS OF RECOMMENDATION”

Excerpts from 2 of 35 letters commending Kagan

Charles Fried:
“Her skills in legal analysis are first-rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law with a deep understanding of both doctrine and policy. She is superbly qualified to fulfill the role of representing the United States in the Supreme Court.”
HLS alumni and faculty join ranks of new administration

Since his election as the 44th president of the United States, Barack Obama ’91 has been tapping Harvard Law School alumni and faculty members in filling key jobs and judgements. Nominees and appointees include:

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**FACULTY**

DAVID BARRON ’94 Principal deputy assistant attorney general, Office of Legal Counsel, Department of Justice

JODY FREEMAN LL.M. ’91 S.J.D. ’95 Counselor for energy and climate change, White House Office of Energy and Climate Change

ELENA KAGAN ’86 Solicitor general of the United States

JEREMY BASH ’98 Director of policy and projects for the White House Counsel

CASS SUNSTEIN ’78 Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

**ALUMNI**

PREETA BANSAL ’89 General counsel and senior policy adviser, Office of Management and Budget

CHARLES BLANCHARD ’85 Deputy assistant director of policy and projects for the White House Counsel

CASSANDRA BUTTS ’91 Deputy White House counsel

LOUIS CALDERA ’86 (’87) Director, White House Military Office

MICHAEL FROMAN ’91 Deputy assistant to the president and deputy national security adviser for international economic affairs

JOCELYN FYRE ’88 Deputy assistant to the president for domestic policy and director of policy and projects for the first lady

JULIUS GENACHOWSKI ’91 Chairman, Federal Communications Commission

MICHAEL J. GOTTLIEB ’03 Associate counsel, Office of the White House Counsel

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Warren continued from page 1

Congress at the end of January.

In testimony before the Senate Finance Committee on March 31, Warren said the Treasury Department must do more to address the lack of oversight of its economic rescue plan to ensure that taxpayers’ dollars are properly spent. She said a framework of accountability needs to be in place in order to measure the success of the TARP. She blamed the Treasury Department for not cooperating with Congress.

“In a crisis, transparency, accountability and a coherent plan with clearly delineated goals are necessary to maintain the public confidence and the confidence of the capital markets. Sophisticated metrics to measure the success and failure of program initiatives are also critical. Assuring that the TARP reflects these elements underlies all of our oversight efforts,” Warren testified.

In February, Warren told a Senate panel that Treasury had overpaid by $78 billion for TARP-related bank stocks and warrants. She said that the group’s valuation study on the $254 billion in TARP transactions in 2008 found that Treasury received assets worth only about $176 billion.

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Warren helps create Financial Product Safety Commission

IN MARCH, Elizabeth Warren, a leading bankruptcy expert, was on hand as U.S. senators advocated for legislation to create a new government agency, the Financial Product Safety Commission, to help regulate financial products and services and to protect consumers from predatory or deceptive financial practices. Warren conceived of the idea for the commission several years ago, and modeled it after the Consumer Product Safety Commission.

Sens. Richard Durbin (D-IL) and Charles Schumer ’74 (D-NY) in March
Lessig continued from page 1

supporting teaching and research on ethical issues in public and professional life. He will also launch a five-year study of the effects on public institutions of money from sources that may be affected of the effects on public institutions of money from sources that may be affected.

The author of five books, including “Remix” (2008), Lessig has published numerous articles in leading law and technology journals as well as in the popular press. He writes a monthly column for Wired Magazine. In 2006, he was elected a fellow of the American Academy of Arts and Sciences. He is a board member of Creative Commons and the American Academy in Berlin. In 2000 and 2006, he was named to The National Law Journal’s “100 Most Influential Lawyers in America” list.

Lessig holds a J.D. from Yale, an M.A. in philosophy from the University of Cambridge, and a B.A. in economics and a B.S. in management from the University of Pennsylvania.

He clerked for Judge Richard Posner ’62 of the U.S. Court of Appeals for the 7th Circuit and for Associate Justice Antonin Scalia ’60 of the U.S. Supreme Court. *

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in Berlin. He also received a John M. Olin Faculty Fellowship and was a Fulbright Scholar at the University of Oslo in Norway.

He holds an A.B. from Harvard, an A.M. in German and a Ph.D. in linguistics from Stanford, and a J.D. from Yale. Smith also clerked for Judge Ralph K. Winter, U.S. Court of Appeals for the 2nd Circuit. *

THE HARVARD LAW SCHOOL CAREER STUDY—DON’T FORGET TO TAKE THE SURVEY!


LAST FALL, the Program on the Legal Profession launched the Harvard Law School Career Study, a project designed to document and compare the careers of HLS graduates. In an effort to study the legal profession empirically—especially issues relating to gender and work/life balance—questionnaires were sent to 3,000 alumni from the classes of 1975, 1985, 1995 and 2000, as well as some graduates from the 1960s. The study will evaluate patterns of significant investments in work at various stages of legal careers and also whether (and why) personal and professional transition patterns vary between women and men. The study also aims to understand the impact of globalized social and economic relations on legal practice settings, client relationships, and the training and development of lawyers. Individuals who have not yet returned their completed surveys are encouraged to do so as quickly as possible. Detailed findings from the study will be published in the fall of 2009.

MORE INFORMATION CAN BE FOUND AT www.law.harvard.edu/programs/plp/pages/career_study.php, or contact Gabrielle Plickert, research fellow, at careerstudy@law.harvard.edu or 617-496-2522.

GINSBURG TELLS CONFERENCE ATTENDEES: “I wanted the country to see there is a woman on the Supreme Court.”

When Supreme Court Justice Ruth Bader Ginsburg ’56–’58 was a student at HLS, she was one of nine women in a class of more than 500. As the featured speaker at “Gender and the Law: Unintended Consequences, Unsettled Questions,” a conference at the Radcliffe Institute for Advanced Study co-sponsored by HLS, Ginsburg recalled her HLS years.

Ginsburg famously never received an HLS degree, refusing that option after transferring to Columbia her third year to be with her husband, Martin Ginsburg ’58. But, she added, in recent years HLS has repeatedly offered to bestow that honor upon her.

An overflow crowd gathered for the two-day conference. In the opening panel, Ginsburg—the second woman to serve on the nation’s high court—was joined by Linda Greenhouse, former legal reporter for The New York Times; Judge Nancy Gertner of the U.S. District Court in Massachusetts; and Chief Judge Sandra Lynch of the 1st Circuit Court of Appeals, who all recalled early fights for gender equality.

Later panel discussions covered topics ranging from the rights of domestic workers in Egypt to the growth of same-sex public schools in the U.S. Professor Janet Halley led a panel that addressed issues related to economic rights.

Among many experiences in her storied career, Ginsburg was chief litigator for the ACLU women’s rights project, and she argued a number of cases before the U.S. Supreme Court. At that time, “the Supreme Court never saw a gender classification it didn’t like,” she said.

In the 1970s, as the fight for women’s rights gathered momentum, reformers needed to find a legal strategy to challenge such injustices as public school teachers being ousted from their jobs when their pregnancies became apparent.

“The obvious choice was the Equal Protection Clause,” Ginsburg said. But, when the 14th Amendment was passed in 1868, women “weren’t part of the political community at all” and strict constructionists argued that those protections should not apply to women. “It was clear the framers had no idea they were changing any of that, but they planted an idea—the idea of equality,” Ginsburg said.

“Our notion of the Equal Protection Clause is that it evolves over time to fit society as it exists.”

Said Greenhouse: “We are all of us in Justice Ginsburg’s debt, for her career and for being with us today, which most of us didn’t expect.”

Many people had also been surprised that Ginsburg, hospitalized in early February for pancreatic cancer, was present several weeks later at Obama’s State of the Union address. Greenhouse said that Ginsburg, asked why she rallied to attend the address, replied, “I was there because I wanted the country to see there is a woman on the Supreme Court.” *
For 35 years, Robert B. Barnett has been one of the nation's most sought-after lawyers, representing major corporations including General Electric. He is also the world's premier representative of authors, with a star-studded client roster that includes Barack Obama '01 and Tony Blair. And for decades, he's helped Democrats prepare for critical debates, including preparing Hillary Rodham Clinton for all 23 debates in 2008.

Barnett, a partner at Williams & Connolly, is also a mentor to HLS Assistant Clinical Professor Robert Bordone '97, director of the Harvard Negotiation and Mediation Clinical Program. In March, Barnett appeared as a guest lecturer in Bordone's Negotiation Workshop. The audience included two special guests, Jack Welch, the former CEO of General Electric, and his wife, Suzy Welch, co-authors of the international best-seller “Winning.”

Whether litigating a case or sealing a book deal, Barnett is a master at the art of negotiation, having learned from the best: his law partner, the legendary Edward Bennett Williams. “He had the most amazing ability to convince and persuade,” said Barnett.

The biggest challenge of his career, Barnett said, was helping broker the agreement between Obama and Clinton at the end of the 2008 campaign. “I suppose there was nothing more challenging than putting the Clinton and Obama campaigns together, because there was a lot at stake, a lot of strong feelings,” Barnett said. “It worked out fine. [S]he did everything the Obama campaign wanted, and she’s now secretary of state.” Answering a student’s question, Barnett clarified, “Secretary of state was not part of the negotiation.”

Barnett told the students that in any situation, the first negotiation is always with your own client, managing what’s reasonable for them to expect. “The goal of most negotiations is not to get yourself and your client totally pleased but pleased enough. If you can leave the field of play with no enemies, for the client and for yourself, that’s a victory.”

Jack Welch told students, “Bob is the only person I know, as a litigator of all kinds of cases, who … never has an enemy,” adding, “No one on either side of a negotiation has anything but respect for Bob.”

Barnett offered students some other pragmatic advice on the art of negotiation, including:

**KNOW MORE ABOUT YOUR CASE THAN ANYONE.** “Know more even than your own client knows.”

**“TRY TO TREAT YOUR ADVERSARY FAIRLY.** And pride yourself on always treating them the same way you hope they’d treat you.”

**ASSESS YOUR LEVERAGE.** “I try to figure out how important what I’m selling is to the buyer, or what I’m buying is to the seller.”

**PRESENT YOUR BEST STORY FIRST.** “I want to be able to influence the first offer, not just receive it.”

**FOUR INVALUABLE PHRASES:**

1. “Please correct me if I’m wrong” means you’re asserting your position but you’re appearing humble and you’re leaving the other side open to correct you in a way that might inform you or get you something you want.”
2. “I appreciate your offer, but …” shows gratitude and respect but is not obsequious.”
3. “Say, ‘Let me see if I understand,’ then repeat what they said.”
4. “Don’t take a position but say, ‘One solution might be …’ You haven’t offered anything, aren’t stuck with it, and it hasn’t been approved by your client yet. But it furthers the dialogue.”

**DONT BE AFRAID TO SAY, LET ME GET BACK TO YOU.** “A continuance is as good as an acquittal; it just doesn’t last as long, Edward Bennett Williams used to say.”

**ALWAYS BE THE DRAFTER OF THE AGREEMENT.** “Williams used to say, ‘He who drafts, wins.’”

**NEVER LIE.** “It isn’t worth it, it isn’t ethical, it’s grounds for disbarment, in the end, you’ll always get caught.”

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At HLS, a conference on the free market mindset


Close to 200 people attended the daylong event at HLS, bringing together leading scholars in law, economics, social psychology and social cognition to discuss their research on the historical origins, psychological antecedents and policy consequences of the free market mindset.

According to HLS Professor Jon Hanson, director of the school’s Project on Law and Mind Sciences, the conference’s topic was originally intended to be moral psychology, but after the market collapse in October, organizers decided that free market ideology was too important to ignore.

“We did not anticipate the extent to which this topic would be as salient today as it is,” said Hanson.

Hanson said he hoped the conference would be an opportunity to examine the free market mindset in light of where we are, to explore why free markets have been so alluring to economists, scholars and policy-makers, even amidst the current financial turmoil.


In his own talk, titled “Regulation Reactance,” Hanson tested his theory that there are certain policy stereotypes ingrained in American culture. Through the use of advertising clips and snippets of political speeches, he showed that Americans tend to try to establish a freedom to choose when they perceive that their liberty has been inhibited. In politics, this tends to mean that people think markets lead to freedom, and government regulation is coercive.

Hanson and his collaborators (including 3L Mark Yeboah) are currently studying these implicit policy associations and how they might affect policy recommendations.

Later in the spring, edited versions of videos from the conference will be made available on the Project on Law and Mind Sciences Web site (www.lawandmind.com). Hanson is also working with a group of 3Ls on a book, “Ideology, Psychology and Law,” which will include chapters discussing some of the themes from this year’s conference. *
IN A NEW collection, the HLS Library is providing a rare glimpse into the life and mind of the most widely cited U.S. Supreme Court justice in history.

The library’s collection of materials on Justice Oliver Wendell Holmes Jr. LL.B. 1866—including the letters he sent his parents when he was a 23-year-old lieutenant colonel during the Civil War, and the death mask that was made just hours after he died—is now available online as part of a multiyear digitization project.

The first phase of the project, which included the digitizing of manuscript items related to Holmes’ service in the 20th Massachusetts Volunteer Infantry Regiment of the Union Army as well as Holmes’ annotated copy of his seminal work “The Common Law,” was completed this March. The project’s second phase is in development and will include the digitizing of additional manuscript materials and the creation of an interpretive Web presentation.

Funding for the Holmes Digital Collection comes from a generous gift from Norman B. Tomlinson Jr. ’51.