Conversations With...

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The Honorable Dick Thornburgh
Maureen E. Mahoney
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The Issue:
Supreme Court
Jurisprudence & Practice

The United States Supreme Court grants review to less than one percent of the petitions filed each year. Despite these overwhelming odds and the smallest docket in modern history, participants in America's free enterprise system have much to gain from seeking *certiorari* to the Supreme Court. As the October 2006 term reflected, the Roberts Court is increasingly receptive to the concerns of businesses and grasps the impact regulation and litigation have on innovation, job creation, and shareholder returns on investment.

In this edition of Washington Legal Foundation's CONVERSATIONS WITH, former Pennsylvania Governor and Attorney General of the United States **Dick Thornburgh** leads a discussion on key developments from the October 2006 Supreme Court term and cases to watch for in the October 2007 term. Joining Governor Thornburgh in this discussion are two of America's leading Supreme Court and appellate advocates, **Maureen E. Mahoney** of Latham & Watkins LLP and **Thomas C. Goldstein** of Akin Gump Strauss Hauer & Feld LLP and creator of the acclaimed Internet site SCOTUSblog.com. Ms. Mahoney and Mr. Goldstein also share their insights on *cert* petition strategies, managing *amicus* briefs, and the evolution of Supreme Court practice.

Governor Thornburgh: Before we get into specifics about the October 2006 Supreme Court term and what to watch in the upcoming term, let's talk a bit about the Court in general. Maureen, you clerked for the late Chief Justice Rehnquist. What differences and similarities have you seen thus far in Chief Justice Roberts' approach to the position compared to his predecessor?

Maureen Mahoney: There have not been any dramatic changes in the way the Court conducts its business and there are certainly some strong similarities between the two men. As expected, Chief Justice Roberts has demonstrated the collegiality, wit and unassuming brilliance that made Chief Justice Rehnquist such a beloved figure at the Court. There are some observable differences, however. Chief Justice Roberts is inclined to ask

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advocates a series of challenging questions while the former Chief was often content with just a few zingers. Chief Justice Roberts has also been more accessible to the public and the press; he seems more willing to be the face of the federal judiciary.

" I truly wish the Court would use the available space on its docket to engage in more error correction on important issues."

Maureen E. Mahoney

Governor Thornburgh: Tom, how does the docket of the Roberts Court, over the past two years, compare with the later years of the Rehnquist Court? Are there marked differences in the types of cases that are being reviewed?

Tom Goldstein: The one really pronounced difference we've seen so far is that the Roberts Court is clearly more interested in issues important to business. For instance, in the most recent Term, 40% of the cases heard by the Court were "business cases," and next Term is shaping up to be even more important to the business community, with 48% of the cases slated for argument starting this fall falling into that category. By contrast, in the later Rehnquist years, typically only 30-35% of the docket was devoted to these types of cases.

Governor Thornburgh: One trend that has certainly continued is the so-called shrinking docket. The Court was down to the fewest opinions issued in the modern era this past year, correct? Tom, is this by design?

Mr. Goldstein: The numbers are stark. The Court produced only 66 opinions after oral argument this year, which is the first time that number has dipped below 70 in the modern history of the Court. And the docket continues to shrink, as the Court has even fewer cases that will be argued this fall than it did even at this time last summer.

I don't think there is any conscious effort by the Court to take fewer cases. Rather, they have strict criteria for granting cases, and they believe only a very limited number of cases meet the standard; indeed, fewer than ever. Now, whether one thinks there truly are only 70 or so cases a year that deserve to be granted (and, as someone who argues cases before the Court, I admit to being slightly biased on this question), there's no doubt that the Justices are doing what they believe is best for the institution and the country.

Governor Thornburgh: Maureen, what are your thoughts on this matter? How is federal and constitutional law impacted by the Court accepting so few cases for review?

Ms. Mahoney: It really means that errors in federal jurisprudence can often persist for years on end. I truly wish the Court would use the available space on its docket to engage in more error correction on important issues. It can often take a decade or more for a mature conflict to develop. If the error is pretty plain at the outset, and the issue is important, why not just fix it? When the law takes a wrong turn, and the Court sits back and waits, there can be very adverse consequences to the public in the interim.

Governor Thornburgh: Many commentators have remarked that since John Roberts assumed the Chief Justice position, the Court is more interested in free enterprise issues. Tom, why the greater interest in "business" cases?

Mr. Goldstein: As I mentioned, the trend

is clear - the proportion of business cases now is some 10% higher now than it was under Chief Justice Rehnquist. Assuming that number holds (and we don't know if it will), it probably results to some extent from the particular recognition of the Chief Justice and Justice Alito, and the growing recognition by the rest of the Court, of the business community's need for certainty. It wasn't too long ago that the Chief Justice was regularly arguing before the Court on these issues

Governor Thornburgh: Are there any examples of cases that you think stand out as the type of business case that previously would have been passed over in the *cert* pool?

Mr. Goldstein: One case that does jump out is *Klein & Co. Futures v. Board of Trade of New York City*, which will be argued this fall. That case, which deals with an issue important in the commodities futures arena, did not present the Court with a division among the federal courts that needed to be resolved. The Rehnquist Court rarely, if ever, took any cases from the business community without a circuit split, so the current Court's agreeing to hear this case is more evidence of the increased awareness of the issues important in the business community.

Governor Thornburgh: Do you get the sense from your clients that due to the shrinking docket and the costs of continued appeals, businesses are reluctant to press a case all the way to the Supreme Court?

Ms. Mahoney: I have not actually found that to be the case. The cost of a petition for *certiorari* in many business cases is quite small relative to the overall costs of the litigation. If I advise a client that there is a realistic chance of *certiorari*, they almost always want to proceed.

Mr. Goldstein: Litigation costs are always extremely burdensome, no matter what the forum. The low odds of *cert* have always been a factor, but the fact that statistically now .98% of petitions get granted rather than 1.02% doesn't really affect clients' calculus. More important is probably the fact that business has done well on the merits in the Court recently, which will create greater confidence in the institution for those clients.

Governor Thornburgh: Maureen, what can businesses and their counsel who are seeking Supreme Court review learn from this term and other recent Court terms?

Ms. Mahoney: Businesses that lose important patent law issues in the Federal Circuit should give serious consideration to seeking Supreme Court review, especially if the United States is likely to agree with them on the merits. The Court has definitely shown a heightened interest in patent law and has generally sided with the views of the Solicitor General. In most business cases, however, a conflict in the circuits is still an essential ingredient of a successful petition for *certiorari*. I nevertheless think that the Court has taken some business cases over the last few terms where the conflicts were not sharply defined. So that counsels in favor of a close look at the potential for *certiorari* in cases with high stakes.

Governor Thornburgh: Tom, more generally speaking, what factors does this Court consider when weighing whether or

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not to accept a case for review?

Mr. Goldstein: More important than anything else is whether there is a "circuit split" — i.e., a clear conflict between federal courts of appeals (or perhaps state supreme courts) on the question. Roughly 80% of the cases the Court hears involve a split. But the Justices are also willing to hear cases where no split exists, mostly to weigh in on an issue of great national import. The recent cases involving challenges to the legal framework at Guantanamo Bay, abortion, school desesegration, and campaign finance were not taken to resolve circuit splits. On these and other important issues, it is almost foreordained the Court will have the final word.

Governor Thornburgh: As most Court watchers know, your chances of convincing the Court to review your case increase if the Solicitor General of the United States supports your petition. Maureen, what can businesses do to focus the Solicitor General's attention on a case?

Ms. Mahoney: With rare exceptions, the Solicitor General will not file an *amicus* brief in support of a petition for *certiorari* unless the Court requests the views of the SG. So the very best strategy is to get the United States to file an *amicus* brief at the earliest possible stage of the case — even before the approval of the Solicitor General is required. That way, in the event the business loses on appeal, it can at least file a petition for *certiorari* representing that the United States supported its position below. When the U.S. has not participated in proceedings below, but has advanced similar positions in other cases, the petitioner should include that information in the petition for *certiorari* in order to increase the chances that the Court will request the views of the SG. If the Court does call for the SG's views, then the business needs to marshal its resources to persuade the interested executive branch officials and the SG that the petitioner is right on the merits and that the case warrants review. Enlisting *amici* to contact the SG's office and other interested agencies can also be very useful.

Governor Thornburgh: Tom, what do the statistics reflect over the past few terms with regards to the Solicitor General's involvement? How often does the Court heed the federal government's views?

Mr. Goldstein: Definitive statistics are hard to come by, because the Solicitor General's position in a case can often be quite different from even the party it's technically supporting; still, it's unequivocally true that the Court sides with the Solicitor General much more often than not. To give you a rough idea of the SG's success rate, in 15 of the most important decisions over the previous three terms in which the Solicitor General's office either filed the case or submitted an *amicus* brief, the Solicitor General's record was 11-5. To be sure, those figures only represent a small portion of the government's case-load before the Court, and do not capture occasions when the Court supports the judgment urged by the Solicitor General but not its legal rationale. Overall, though, given the choice, most advocates would probably be thrilled to have the government to weigh in on its side, even if it means sacrificing a 10-minute share of their oral argument.

Governor Thornburgh: How important are *amicus* briefs? What sort of strategy do you normally employ for clients regarding supporting *amicus*?

Mr. Goldstein: *Amici* are very important. At the *cert* stage, they are an important part of the difficult but critical effort to separate your case from the pack of roughly 7000 petitions before the Justices. At the merits stage, they bring different perspectives to the case, including hopefully from respected experts in the field. From the earliest point in the case, I am thinking about who can be brought in as *amici* and who can write the brief. One of the great difficulties in this context is identifying parties that are willing to invest the time and money to submit a brief.

Governor Thornburgh: Maureen, how do you approach *amicus* briefs? Is your strategy different at the *cert* stage than at the merits stage, and if so, how?

Ms. Mahoney: *Amicus* support, as Tom said, is generally most critical at the *cert* stage but that is when it is difficult to generate interest. Groups are often very reluctant to devote resources to a case when the odds of review are so small. But that is when a group's support is likely to have the greatest impact. I accordingly spend a substantial amount of time at the *cert* stage trying to identify potential allies and to inform them about the merits of a petition. An effective *amicus* brief at the *cert* stage does not have to be elaborate; it just needs to persuade the Court that the issue resolved by the court of appeals has national importance. At the merits stage, the emphasis of the petitioner's *amicus* briefs has to be on why the court of appeals erred — not on why the issue is important.

Governor Thornburgh: Let's delve into the 2006 term. Tom, you remarked at Washington Legal Foundation's briefing this past June that this is Justice Anthony Kennedy's Court. Could you elaborate on that?

Mr. Goldstein: Well, it's actually quite difficult to overstate Justice Kennedy's impact on the direction of the Supreme Court. This is a Justice who was in dissent only twice this entire Term; that's the fewest times a Justice has cast a dissenting vote in a single Term in 40 years. Justice Kennedy was an utterly unprecedented 24-for-24 in cases decided 5-4. Those numbers are simply remarkable, and they don't lie: it's as simple as saying that as he goes, so goes the Court. That was true for many of the big cases this term: abortion, school desegregation, campaign finance, the death penalty, the list goes on — and there's no reason to expect any change going forward, whether we're considering the upcoming Guantanamo detainee case or any other difficult, divisive issue.

Governor Thornburgh: Maureen, how do you address a situation like this as an advocate, when, as before with Justice O'Connor and now with Justice Kennedy, one Justice could control the close cases?

Ms. Mahoney: For starters, it is not always obvious in advance which cases will actually be controlled by Justice Kennedy. Chief Justice Roberts and Justice Alito do not have long enough track records for us to predict their votes with confidence in many cases. So an advocate would be foolish to focus on Justice Kennedy to the exclusion of other justices. We have to

craft arguments that will appeal to at least five justices. That said, I do pay special attention to the decisions Justice Kennedy has written on related issues when I think the case may be close. It is obviously quite difficult to win a close case without his vote.

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Governor Thornburgh: Many commentators have dwelled on the number of 5-4 cases this past term, but in terms of the free enterprise cases, that wasn't the case. Are these just not close cases, Tom, or is it something else?

Mr. Goldstein: The breadth of the victories of the business community in those cases is genuinely striking. The lack of divisiveness owes in large part to the fact that the questions weren't ideologically divisive. The left on the current Court - unlike perhaps Justices Brennan, Marshall, and Douglas — doesn't reflexively support individuals and plaintiffs against large institutions. That said, even some business cases were decided by five-vote majorities this past term, like *Phillip Morris USA v. Williams, Wachovia v. Watters*, and *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* Indeed, some may forget that the result in *Leegin* — in which the five conservative justices overruled a 75-year-old precedent holding vertical minimum price agreements per se illegal — led Justice Breyer to read a dissent from the bench (an event overshadowed by his subsequent oral dissent in the school assignment cases).

Governor Thornburgh: One area where the outcomes were not close was intellectual property. Each of you argued a patent-oriented case this term. Why the sudden increased interest in IP issues? What do their outcomes tell us about the Court's view on IP?

Mr. Goldstein: Well, I think the Court has come to realize what an important part of the new economy intellectual property is; decisions in patent cases can literally make or break entire companies and even industries. And in making that realization, they also saw in the Federal Circuit — the single court that handles all the patent appeals in the country — a court that had largely been left alone by the Supreme Court to develop its own jurisprudence. So, with an increased amount of attention on patent law and its exploding importance, I think they want to weigh in on the most important issues in this area, and make sure that the tests the Federal Circuit developed have not become too rigid, but rather that they can be slightly more flexible in order to keep encouraging the innovation that our modern economy thrives on. But while there has been increased interest by the Supreme Court, I don't think they have done anything to radically alter this area of the law; there's certainly no agenda to slap the Federal Circuit back into line.

Ms. Mahoney: Patent protection rewards innovation but it also impedes competition. It is a delicate balance. The Supreme Court appears to believe that the Federal Circuit has not struck the right balance and has generally been too protective of intellectual property owners. The Court is intervening with greater frequency to correct course in an area of law that has become central to our economic growth.

Governor Thornburgh: A number of decisions this term related to litigants'

ability to bring and keep litigation in court, issues of standing and procedural standards. Which cases involved this theme, and is the Court, as one commentator put it, "closing the courthouse doors?"

Ms. Mahoney: It is probably a bit more apt to say that the Court narrowed the scope of the damage remedies available in a number of areas than to say that it closed the courthouse doors. For the most part, these decisions were just part and parcel of the Court's adherence to strict statutory interpretation. Where Congress had not expressed a clear intention to establish a particular remedy, the Court refused to recognize it. We saw this principle at play in *Tellabs, Rockwell, Geico, and Ledbetter*. But we also saw the Court restrict damage remedies in a number of areas that are not controlled by statutory language, such as the Court's rejection of per se antitrust liability in *Leegin Products*, its reversal of the punitive damage award in *Williams*, and its shift on Rule 8 pleading standards in *Twombly*. Two notable exceptions to this pattern, however, were the Court's decisions in *Medimmune*, which reversed the Federal Circuit's reliance on Article III to bar declaratory judgment suits by patent licensees, and its decision to recognize standing to challenge EPA's refusal to regulate greenhouse gases in *Massachusetts v. EPA*.

Governor Thornburgh: Tom, any thoughts on that?

Mr. Goldstein: My leading example of this phenomenon is a relatively little-watched case called *Bowles v. Russell*. A District Court gave a convicted murderer 17 days to file a federal appeal, when the Federal Rule of Appellate Procedure in question only permitted 14 days. The prisoner's lawyer filed the appeal 16 days later, only to see the Sixth Circuit subsequently dismiss it for exceeding the statutory deadline. The Supreme Court ultimately upheld the dismissal by a 5-4 margin, on grounds that statutory time limits for filing a notice of appeal are jurisdictional. The decision takes a very hard line on complying with statutes governing the jurisdiction of the courts.

Governor Thornburgh: The Court also delved further into a topic which is near the top of many businesses' lists of litigation concerns — litigation driven more by lawyers than injured plaintiffs. Maureen, you argued two cases touching upon that theme, *GEICO v Edo* and *Rockwell v. United States*. Is this a Court that understands the burdens litigation places on businesses?

Ms. Mahoney: It does understand those burdens and that is one reason why the Court will refuse to recognize a remedy that Congress did not explicitly create. This is an approach that really started to take hold when then-Justice Rehnquist wrote the decision in *Blue Chip Stamps* refusing to expand the implied remedies for Rule 10b-5 violations. *Rockwell* and *GEICO* followed in that tradition and imposed substantial limits on damage remedies for qui tam relators and for allegations of reckless violations. I think the standards of proof imposed for recklessness in *GEICO*/*Safeco* will permit businesses to secure pretrial dismissals in a broad range of cases. The opinion this Term that most clearly voiced the concerns about burdensome litigation,

however, is probably *Twombly*. And it is noteworthy that it was written by Justice Souter, demonstrating that these concerns are shared by a broad majority of the Court.

"This Court understands the burdens litigation places on businesses."

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Governor Thornburgh: *Twombly* is also often included in a discussion of the Court's increased interest in antitrust cases. Tom, what did the Court have to say on antitrust this term?

Mr. Goldstein: Overall, it was a great term for defendants in antitrust cases. In addition to *Twombly* and *Leegin* (which I mentioned earlier), defendants prevailed with strong majorities in *Weyerhaeuser v. Ross-Simmons Hardwood Lumber* and *Credit Suisse Securities v. Billing*. In *Weyerhaeuser*, the Court unanimously found the same heightened standard applicable to predatory pricing cases also applies in predatory pricing cases. In *Credit Suisse*, the Court ruled 7-1 that securities laws grant Wall Street investment firms implied antitrust immunity.

Governor Thornburgh: Will this course correction on antitrust continue?

Mr. Goldstein: I think so. A solid majority of the Court seems committed to incorporating modern economic understanding of competition into the jurisprudence of the antitrust laws. They have a very weak view of *stare decisis* in this context, taking the view that Congress has left the Court the flexibility to implement the broad language of the Sherman Act in whatever way best accomplishes the statute's goals.

Governor Thornburgh: The *Philip Morris v. Williams* punitive damages case was touted as the big case for business coming into the October 2006 term, but it wasn't much of a blockbuster in the end, was it? Was the outcome indicative of this "incremental" approach Chief Justice Roberts has publicly advocated for the Court?

Ms. Mahoney: It was not a blockbuster but it was nonetheless a very important decision. Recall that we did not know going into this Term whether Chief Justice Roberts and Justice Alito would be willing to recognize Due Process limits on punitive damages. If they had joined with Justices Scalia, Thomas, and Ginsburg, this critical form of protection for business could have been eviscerated. I am still optimistic that the decision will produce some real gains for defendants by requiring jury instructions that will guide and ultimately limit the size of punitive damage awards.

Governor Thornburgh: Of the free enterprise-oriented cases, which one or two do you think will have the most impact on the market system and the conduct of business over time?

Mr. Goldstein: I expect *Twombly* will be the most important to litigants if the Court is serious about forcing plaintiffs to put some meat on the bones of their complaints. But in terms of how business operates — outside the courts — none of the cases is a blockbuster. The one to look to is the coming Term's *Stoneridge* case on secondary liability under the securities laws.

Governor Thornburgh: Jumping back to antitrust for a moment, the Court overturned a decades-old precedent on the final day of the term in the *Leegin* case. How does that outcome play into this

Court's approach to respecting precedent, known to us lawyers as *stare decisis*?

Mr. Goldstein: I don't know that we can the Court as a whole takes a unified approach to respecting precedent, or that any individual case has an impact on the principles of *stare decisis*. In *Leegin*, the Justices in the majority concluded that the Court should not uphold a more than 75-year-old rule that economists had since almost unanimously concluded did not make sense. As I mentioned earlier, I think that the Justices take a special approach to *stare decisi*s in the context of the antitrust laws.

Governor Thornburgh: Which members of this Court are most faithful to long-held precedents, and which are more willing to overturn past Court opinions?

Mr. Goldstein: On the first part of the question, it depends which precedent you're talking about. On cases decided during the Warren Court era, it is probably fair to say the liberal Justices are more inclined to respect *stare decisis*. At the same time, the conservative Justices presumably are more willing to uphold the federalism cases decided during the Rehnquist years. None is profoundly wedded to precedent that he or she finds completely flawed. On the second part of the question, there is no doubt that Justice Thomas is most willing to overturn precedent. He famously has written that the Court should reconsider its entire post-1937 Commerce Clause jurisprudence. On one of the Court's final decision days, he advocated overturning three separate precedents (*McConnell v. FEC, Tinker v. Des Moines* and *Flast v. Cohen*).

Governor Thornburgh: Looking forward into the October 2007 term, a case involving securities fraud liability for third parties such as accountants and bankers, *Stoneridge Investments,* has gotten a lot of attention. What is at stake in that case?

Ms. Mahoney: Once again, the Court has to grapple with the scope of securities fraud remedies. Securities fraud litigation obviously represents one of the most threatening forms of litigation that businesses confront. The exposure can be crippling and the defense costs are enormous. The Supreme Court refused to recognize liability for aiding and abetting securities fraud in *Central Bank*, and *Stoneridge Investments* presents the Court with another opportunity to determine when liability can be imposed on firms that do not issue fraudulent statements.

Governor Thornburgh: The Court is also returning again to the issue of federal preemption of state tort suits with *Riegel v. Medtronic*. Tom, what are your thoughts on that case? Why is it important to businesses?

Mr. Goldstein: Preemption is a profoundly important doctrine. The national and international business community has a tremendous concern with the prospect of not only operating under fifty diverse state legal regimes but juries second guessing the judgments of expert regulators. On the other hand, it isn't always clear that Congress intended to displace state law.

Governor Thornburgh: Are there any other business cases to watch on the fall docket so far?

Mr. Goldstein: One more I would mention is *Kentucky v. Davis*, which deals with whether or not it's constitutional for states to exempt their municipal bonds

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from taxation, while taxing the bonds from other states, which is common practice in most states. If the Supreme Court shuffles things up in this area of the law, it could have a huge impact on the way municipal bonds are traded and valued.

Ms. Mahoney: I am very interested in the Title VII case involving the relevance of other alleged acts of discrimination. *Sprint/United Management v. Mendelson.* If the Court restricts the admission of this kind of evidence in cases involving individual claims of disparate treatment, then discovery could be less burdensome, summary judgment may be granted more frequently for lack of evidence, and the prospect of a jury trial may be less threatening.

Governor Thornburgh: After initially rejecting the petition, the Court has on reconsideration added a terrorism-oriented case to its 2007 docket, *Al Odah v. United States.* Is that a very rare occurrence, to get the Court to reverse itself on a petition?

Mr. Goldstein: Well, our research indicates that this is the first such reversal in 60 years, since 1947. In the intervening time period, the Court denied thousands upon thousands of rehearing petitions seeking to have plenary review granted without once reversing itself. So, this development was — to put it mildly — remarkable. That case will certainly be one of the most closely-watched next Term.

Governor Thornburgh: Maureen, what are some notable changes you've seen over the years in the way that Supreme Court advocacy is practiced? Are law schools paying more attention to teaching Supreme Court-level appellate advocacy?

Ms. Mahoney: The players have certainly changed. When I clerked for the Supreme Court in 1979-80, we saw very few Supreme Court advocates beyond the Solicitor General's office. Now there are more than a dozen advocates in private practice with substantial Supreme Court experience. Clients have begun to recognize their value and are much more likely to bring in specialized counsel to take the lead at the Supreme Court stage of a case. The actual arguments have also changed. Once upon a time, Justices listened more and spoke less. Now most arguments are dominated by questions and advocates' answers will often be interrupted midstream. I vastly prefer this approach. The questions are what give advocates a fighting chance to persuade skeptics. The changes in oral argument have also engendered changes in the style of preparation. When I started in private practice, moot courts were relatively uncommon. Now most experienced advocates do multiple moot courts to get practice answering the broadest range of potential questions. As for law schools, I do think there has been more focus on Supreme Court advocacy. Even though very few students will ever have the opportunity to argue a case before the Court, the same skills are essential to effective advocacy in any court.

Governor Thornburgh: Tom, you've been involved in Supreme Court clinics at law schools. How have your experiences been with that?

Mr. Goldstein: Absolutely terrific. The clinics I work with at both Stanford and

incredible work, mostly because of the high caliber of students we've been lucky enough to attract. Working with the students is incredibly rewarding, and has produced some really high quality work. The students are all really talented, but also inexperienced, so the professors and other lawyers I work with need to be very hands-on; our briefs and petitions go through many, many revisions. Ultimately, though, they've been a huge success, both in terms of the outcome of the cases at the Supreme Court and as learning experiences.

Governor Thornburgh: It's been interesting over my legal career to see how much more coverage the Supreme Court gets, and how sophisticated it has become. Tom, your SCOTUSblog has really led us into a new way of reporting on and analyzing the Court. What do you think the future holds for coverage of the Court? Will technologies like the Internet enhance the public's understanding of its work and rulings?

Mr. Goldstein: Thanks very much. At the end of this last Term, we were able to produce the first ever "LiveBlog" of a Supreme Court decision announcement — in other words, we figured out a system to deliver updates about what was going on at the Court essentially in real time, despite the ban on electronic devices in the Court room. We are also expanding our ability to collect briefs and write substantively about every single case that comes before the Court, and sites like Oyez have similarly used technology to great effect to bring a lot of great information to people for free. We are also branching out with the creation of a new "Wiki" — essentially, an on-line encyclopedia that will have two parts: (i) helpful information on the Court's procedures; and (ii) a discussion of all the pending merits cases. But while we try our best to cover the Court as comprehensively as possible, we've essentially reached the limits of what we can do in terms of covering arguments and decisions given the Court's ban on audio and video equipment in the courtroom itself. The next step is really up to the Court itself.

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BIOGRAPHIES

The Honorable Dick Thornburgh is a former Attorney General of the United States, Governor of Pennsylvania, and Under-Secretary-General of the United Nations. He is currently Counsel to the law firm Kirkpatrick & Lockhart Preston Gates & Ellis LLP, and Chairman of Washington Legal Foundation's Legal Policy Advisory Board.

Maureen E. Mahoney is a partner in the Washington, D.C. office of Latham & Watkins LLP, and leads the firm's Appellate and Constitutional Practice Groups. Ms. Mahoney originally joined the firm in 1980, but left in 1991 to accept an appointment as a United States Deputy Solicitor General. Recently named one of the 50 Most Influential Women Lawyers in America by The National Law Journal, Ms. Mahoney was recognized for her "stellar career in high court advocacy." During the 2006 Term of the Supreme Court, she argued four cases.

Thomas C. Goldstein is the head of the Supreme Court practice at the law firm Akin Gump Strauss Hauer & Feld LLP. In addition to practicing law, Mr. Goldstein teaches Supreme Court litigation at both Stanford Law School and Harvard Law School. Since 2003 he has been principally responsible for SCOTUSblog, which is devoted to coverage of the Court and is widely recognized as one of the nation's leading legal blogs. During the 2006 Term, Mr. Goldstein argued on behalf of the respondent in *KSR v. Teleflex*.

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