SOUNDSCAPE HISTORY AND ENVIRONMENTAL LAW IN THE SUPREME COURT

BY

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Today's technology unleashes new, digitized information resources with immense scale and speed. This Article examines one such resource—the archive of audio recorded proceedings of the United States Supreme Court—appraising, for the first time, its value to those who study and practice environmental law. From hundreds of hours of audio across six decades, a history of environmental litigation sounds forth, imparting rich lessons on advocacy, judicial reasoning, and the role of the Court in environmental law's development. The Article organizes itself in three major parts, furnishing insights on: oral advocacy in the environmental docket; the voices from the bench; and the audience for prospective engagement with any selection or subset of recordings. Serving partly as a listener's guide, the Article defines the reach of environmental litigation in the audio archive and demonstrates its unique value as a tool for learning and the professional betterment of environmental law scholars and practitioners.

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I. INTRODUCTION

"Two Voices are there; one is of the sea,
One of the mountains; each a mighty Voice . . ."
—William Wordsworth[1]

This Article reflects on the history of environmental litigation before the Supreme Court of the United States as preserved in sixty years of audio-recorded proceedings. At the start of the October 1955 term,[2] the Court installed its first sound recording system.[3] Since then, twenty-four Justices have retired their robes,[4] eighteen Solicitors General have hung up their morning coats,[5] and untold numbers have played audience to the Court's agency, or not, in the profound social, legal, and technological changes of past decades. All the while, the Court's audio reels and successor recording devices have, by their accretive workings, deposited a rich archive spanning many thousands of hours.[6]

Only in the last several years have the Court's sound recordings of oral arguments and opinion announcements become available, accessible, and highly portable for public listening convenience.[7] Thus, their contents and

1 WILLIAM WORDSWORTH, *Thought of a Briton on the Subjugation of Switzerland*, *in* SELECTED POEMS 265 (John O. Hayden ed., Penguin Books 1994) (1807).

2 The Court's annual terms begin on the first Monday in October. *See* 28 U.S.C. § 2 (2012).

3 Oyez, IIT Chicago-Kent College of Law (Oyez), *About Oyez*, http://oyez.org/about (last visited Nov. 21, 2015) [hereinafter *About Oyez*].

4 Supreme Court of the United States, *Members of the Supreme Court of the United States*, http://www.supremecourt.gov/about/members_text.aspx (last visited Nov. 21, 2015).

5 The U.S. Dept. of Justice, *Solicitors General 1870–Present*, http://www.justice.gov/osg/historical-bios (last visited Nov. 21, 2015).

6 Today, the tapes and master reels that are available to the public are in an official repository at the National Archives Motion Picture and Sound Branch at College Park, Maryland. *About Oyez*, *supra* note 3.

7 Argument audio hosted on the Supreme Court's website presently begins with the October 2010 Term. Supreme Court of the United States, *Argument Audio*, http://www.supremecourt.gov/oral_arguments/argument_audio.aspx (last visited Nov. 21, 2015). Meanwhile, the Oyez website, first known as the "Oyez Project" website, now digitally catalogs all available recordings back to 1955. *See About Oyez*, *supra* note 3. Contrast these resources with the limitations of the first portable music player for the digital MP3 format, introduced in 1997, a device that lacked the storage capacity for even one hour-long argument session. *See* Willie D. Jones, *MP3: Compress Me a Song* in *Next to Best Technologies of 2000–2010*, IEEE SPECTRUM, Jan. 2011, http://spectrum.ieee.org/at-work/innovation/nexttothebest-technologies-of-20002010 (last visited Nov. 21, 2015).

significance as a resource to the legal profession have been little studied.[8] While some commentators have extolled the richness of the Supreme Court audio recordings as unique instructive tools for the study of constitutional decision making,[9] this Article is the first to appraise the archive's value for a specialized practice area: environmental law.

Approximately five hundred hours of the Court's sound recordings are the heritage of today's environmental lawyer.[10] As the primary data set for this Article, Appendix B compiles the list of available oral argument recordings for more than three hundred Supreme Court cases where environmental protection or natural resource concerns were at stake.[11] Corresponding opinion announcement recordings are additionally available for a great majority of cases since the late 1970s.[12] The definitional scope of this compiled case list borrows from and builds on earlier studies by Professor Richard Lazarus on Supreme Court decisional history in environmental cases; it is, moreover, notably expansive and comprehensive of those cases that "raise legal issues for which the environmental setting would seem wholly incidental to the resolution of the precise legal issue

8 *See, e.g.*, Paul R. Baier, *Beyond Black Ink: From Langdell to the Oyez Project—The Voice of the Past*, 55 LOY. L. REV. 277, 286 (2009) (arguing that the Oyez Project may be a "doctrinal tool of extraordinary vitality" in classrooms regardless of subject). *See generally* Stephen A. Higginson, *Constitutional Advocacy Explains Constitutional Outcomes*, 60 FLA. L. REV. 857 (2008) (citing tapes available through the Oyez Project to illustrate examples of effective advocacy). Moreover, apparently no works have taken stock of increasingly available audio recordings from lower appellate courts. At the time of this writing, only Second, Tenth, and Eleventh Circuit Courts of Appeals are not posting oral argument recordings online. In the fall of 2013, the D.C. Circuit began posting its arguments online, a noteworthy development for a major hub of environmental litigation. *See, e.g.*, 42 U.S.C. § 7607(b) (2012) (conferring exclusive jurisdiction to the D.C. Circuit over various rules promulgated under the Clean Air Act); *see also* Eric M. Fraser, et al., *The Jurisdiction of the D.C. Circuit*, 23 CORNELL J.L. & PUB. POL'Y 131, 149 (2013) (identifying the prominence of the D.C. Circuit in U.S. Code Title 42, The Public Health and Welfare).

9 *See, e.g.*, Higginson, *supra* note 8, at 861 (arguing that constitutional decision making can be better understood through "advocacy moments" at oral argument); Baier, *supra* note 8, at 286 ("I teach constitutional law. It is in this field, preeminently, that the Oyez Project is a miracle.").

10 Significantly, the argument recordings are more extensive than any presently compiled transcripts database. The collections of transcripts available through Westlaw, LexisNexis, and physically at the Supreme Court's own library only begin in 1990, 1979, and 1968, respectively. Supreme Court of the United States, *Transcripts and Recordings of Oral Arguments*, http://www.supremecourt.gov/oral_arguments/availabilityoforalargumenttranscripts.aspx (last visited Nov. 21, 2015). The Oyez website has developed many new transcripts to serve as multimedia aids for audio recording playback. *See About Oyez*, *supra* note 3.

11 *See infra* Appendix B.

12 *See generally* Oyez, *Cases*, https://www.oyez.org/cases (last visited Nov. 21, 2015). At this point, the readership may wonder whether the author listened to every single recording. Several cases before 1970 are confessedly beyond even this aficionado's breaking point. *Arizona v. California*, a landmark ruling over water rights, issued only after being "orally argued twice, the first time about 16 hours, the second, over six." 373 U.S. 546, 551 (1963) (subsequent history omitted). Those behemoth recordings from the first argument session—and several other characteristically long arguments from the surrounding time period—were only added to the Oyez website after listening research for this Article concluded. *See* Oyez, *Arizona v. California*, https://www.oyez.org/cases/1961/8%20ORIG (last visited Nov. 21, 2015).

before the Court."[13] Appendix B also labels, using keyword tags, the identity of these settings under the rubric of the environmental burdens, risks, or amenities at issue in each case.[14]

Of course, the bounds and relief of the Court's environmental docket are not susceptible to perfect mapping. From the sound recordings themselves, newly appointed Justice Scalia once remarked "To-mae-to, tom-mat-to. You call them amenities, I call them environmental impacts. . . . [T]o try to sever environmental laws from land use laws seems to me very artificial."[15] As Justice Scalia identifies, some niceties of taxonomy impede understanding as much as they illuminate it;[16] the cases are accordingly compiled and classed with a broad lens for the general usefulness of readers and potential listeners, with a necessary dose of editorial judgment.[17]

While these audio recordings—primary sources that are largely but not entirely coextensive with the Court's vast written decisional history[18]—can

13 Richard J. Lazarus, *Environmental Law and the Supreme Court: Three Years Later*, 19 PACE ENVTL. L. REV. 653, 656 (2002) [hereinafter Lazarus, *Environmental Law and the Supreme Court*]; *see also* Richard J. Lazarus, *Restoring What's Environmental about Environmental Law in the Supreme Court*, 47 UCLA L. REV. 703, 704, 708 n.4 (1999) [hereinafter Lazarus, *Restoring What's Environmental about Environmental Law*] (explaining that the Court's original actions, including interstate boundary and water allocation disputes, contribute to a larger data set).

14 *See infra* Appendix B.

15 Oral Argument at 12:43, Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572 (1987) (No. 85-1200), https://www.oyez.org/cases/1986/85-1200 (last visited Nov. 21, 2015).

16 Professor Todd Aagard observes that environmental law, usefully defined, should be neither overinclusive nor underinclusive. *See* Todd S. Aagard, *Environmental Law as a Legal Field: An Inquiry in Legal Taxonomy*, 95 CORNELL L. REV. 221, 263 (2010). He proposes that environmental law "encompasses laws that reflect a consideration of human impacts on the natural environment." *Id.* In subtle contrast, cases in Appendix B were identified as having environmental values at stake. For example, a Supreme Court case that concerns attorney's fees in a Clean Water Act suit could impact the incentive structure for future litigation over water pollution. Although Appendix B has a smattering of fringe cases, it probably exaggerates to deem it overinclusive. As one of few examples, I include *New Orleans Pub. Serv. v. City Council*, 491 U.S. 350 (1989), in the Appendix with deference to Professor Lazarus having identified it as an environmental case; however, I have difficulty identifying it as anything more than a utility ratemaking case.

17 Professor Lazarus's studies, based on a narrower study period, ranged across some 240 cases. Appendix B, chronologically organized by argument date, is largely comprehensive of that data set and others, with the addition of cases that are both newer and substantially older. *See also* Michael C. Blumm & Sherry L. Bosse, *Justice Kennedy and the Environment: Property, States' Rights, and a Persistent Search for Nexus*, 82 WASH. L. REV. 667, 730–36 (2007) (listing 80 environmental decisions from 1989–2007); Jeffrey G. Miller, *The Supreme Court's Water Pollution Jurisprudence: Is the Court All Wet?*, 24 VA. ENVTL. L.J. 125, 175–78 (2005) (listing 75 environmental decisions from 1973–2004).

18 The ordinary course is for a case to be argued and decided on the merits, but the merits may not be reached—even when briefed and argued—when the Court finds a lack of jurisdiction. *See, e.g.*, Lujan v. Defenders of Wildlife, 504 U.S. 555, 558 (1992) ("The preliminary issue, and the only one we reach, is whether respondents . . . have standing."). Other docket anomalies make clear that the Court does not write a decision for every oral argument, or hold arguments for every written decision. *See, e.g.*, Fri v. Sierra Club, 412 U.S. 541, 542 (1973) (orally argued, but no written opinion due to affirmance by an equally divided Court); *see also* Strycker's Bay Neighborhood Counsel v. Karlen, 444 U.S. 223 (1980) (decided by summary

collectively lend themselves to observations on the broad history of environmental litigation at the Supreme Court, this tack gives little prospect for a manageable focus of inquiry. Accordingly, this Article aims to examine only those distinctive features of the "soundscape" for what they may uniquely teach to students, scholars, and practitioners of environmental law. Taking these listeners as the audience, how should we appraise the audio recordings? Are they, in the end, something more than a kind of casebook supplement?

In taking up these questions, one organizing principle for this Article is elemental to the Court's setting while in public session. Consider that oral argument recordings are chiefly the interplay of two sets of voices: those of the Justices and those of the advocates. Yet a third presence is the unvoiced "audience," a grouping that fairly encompasses the parties to the dispute and, more abstractly, past and present day Court followers, including present day audio recording listeners. This Article thus proceeds in three major parts: Part I, the advocates; Part II, the Supreme Court Justices; and Part III, the audience.

As an accompaniment to each of these parts, this Article takes on several crosscutting themes. Part I engages the concept of "environmental lawyering" alongside its examination of advocates and advocacy through history. Part II studies the Justices as *dramatis personæ* in the Court's environmental docket, but goes further to reflect on how the Court, institutionally and through its work, intersects with "environmental history." Part III draws focus on the audience as prospective listeners. Since that audience would expectedly overlap with the readership of this Article—namely, academics and practitioners in the field—"environmental law" is the crosscutting theme.

Sound recordings are one avenue among many for practitioners to study major cases, but they also convey sophisticated advocacy lessons that are not as perfectly captured by transcripts. The Supreme Court Historical Society even offers a list of "the most significant oral arguments heard by the Supreme Court from 1955 until 1993."[19] The driving inquiry then is whether scholars and practitioners in the environmental field can specially profit from immersive, selective engagement with the sound recordings of the Court's environmental docket, as may be assumed for certain landmark constitutional cases.[20] Ultimately, the value of the environmental docket recordings is real but the degree of value is necessarily idiosyncratic to any individual listener's investment and foundation for listening. Interested

disposition—i.e., without oral arguments). In this respect, the sound recordings can provide an otherwise missing angle on environmental litigation before the Court.

19 *See* The Supreme Court Historical Soc'y, *Significant Oral Arguments 1955–1993*, http://supremecourthistory.org/history_oral_decisions.html (last visited Nov. 21, 2015) [hereinafter *Significant Oral Arguments*].

20 The answer to this has implications for whether future scholarship might beneficially examine the audio trove for insights on other discrete disciplines, such as patents or energy regulation, or other aspects of social history like civil rights.

readers may take this Article as a listener's guide for exploratory courses of their own making.

II. ORAL ADVOCACY IN ENVIRONMENTAL CASES

Center stage at oral arguments is a matter of perspective, but the Court's "familiar curved bench"—introduced by Chief Justice Burger in 1971[21]—suggests the focal point should fall on the advocate's podium, making it an inviting place to begin. This Part reflects on the advocates who have earned the "quill"[22] and argued environmental cases before the highest court in the land.

As should be expected upon examination of any substantial cross-section of the Court's docket over time, the oral arguments for the Court's numerous environmental cases validate general insights on how oral argument procedures, advocate demographics, and the Court's docket composition have changed through time. Still, there are several historic notes of unique interest and special relevance to environmental practitioners. As might also be expected across hundreds of hours of arguments, soaring advocacy skills along with occasional blunders permeate the soundscape.[23] Environmental lawyers should benefit from listening for those distinctive moments that illustrate the peculiar challenges of environmental lawyering. Notably, oral advocacy effectiveness has long been the hallmark of the advocates of the Office of the Solicitor General, an advantage that draws from that office's service as the Court's "quintessential repeat player."[24] The question of oral advocacy greatness is discussed with special reference to their legacy.

A. Historic and Demographic Notes

While certain traditions endure at the Supreme Court, the role of the advocate at oral arguments has changed markedly with time. Before 1970, oral arguments were languid affairs, often lasting three or more hours.[25]

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21 2014 YEAR-END REPORT ON THE FEDERAL JUDICIARY 2–3 (2014), *available at* http://www.supremecourt.gov/publicinfo/year-end/2014year-endreport.pdf.

22 In keeping with longstanding tradition, quill pens are left at counsel table as gifts and souvenirs to the Court's oral advocates. *See* The Supreme Court Historical Soc'y, *How the Court Works: Oral Argument*, http://supremecourthistory.org/htcw_oralargument.html (last visited Nov. 21, 2015).

23 *See Significant Oral Arguments*, *supra* note 19; *infra* Part II.B. For an example of a famous misstep from a famous, non-environmental case, see Ryan A. Malphurs, *"People Did Sometimes Stick Things in my Underwear": The Function of Laughter at the U.S. Supreme Court,* COMMC'N L. REV., no. 2, 2010, at 48 (describing a failed attempt at a joke during oral arguments for *Roe v. Wade*, 410 U.S. 113 (1973)).

24 *See, e.g.*, Margaret Meriwether Cordray & Richard Cordray, *The Solicitor General's Changing Role in Supreme Court Litigation*, 51 B.C. L. REV. 1323, 1337 (2010).

25 A convention for one and a half hours per side began in 1911, less than the two hours per side that were allotted in 1849, and far less than the Court's earliest days where the Court had no written briefs and lawyers were known to argue a single case for two or three days.

Since 1970, the Court has conventionally limited oral arguments to 30 minutes per side.[26] Adding to these time pressures, the intensity of questioning from the bench has increased in recent decades to a point where the concept of a "hot bench" has effectively lost the meaning and application it may have once had.[27] Today's arguments often have maximally active colloquies and even a harried tempo that only heightens the spectacle for Court watchers.[28] These differences would be plain to anyone comparing an oral argument recording from 1975 to an argument forty years forward.

Shifts in customs and courtesies have been subtler. Arguments prior to the 1980s almost always began with a stock opening phrase: "this case is here on writ of certiorari from [lower court],"[29] but this practice is now long abandoned.[30] As yet another example, in the early decades of recordings, advocates would refer to their opponents as their "friends" on the other side—a custom now undergoing a renaissance in the Roberts Court.[31]

Whatever the time period, advocates display a common call to present their cases in a dignified fashion.[32] One of the more rewarding, if not ennobling, aspects of listening to oral arguments through time is hearing the great continuity of generations of lawyers seeking to fulfill their duties to the client and the Court. In the oral advocacy context, not all advocates can answer with candor in the most forthright and skillful way, but one

LAWRENCE S. WRIGHTSMAN, ORAL ARGUMENTS BEFORE THE SUPREME COURT: AN EMPIRICAL APPROACH 17 (2008). Justice Frankfurter's volunteered admission during arguments in *United States v. Republic Steel Corp.* that he had not read "either of the briefs" would be unthinkable today. Oral Argument at 46:43, United States v. Republic Steel Corp., 362 U.S. 482 (1960) (No. 56), https://www.oyez.org/cases/1959/56 (last visited Nov. 21, 2015).

26 SUP. CT. R. 44, 398 U.S. 1058 (1970).

27 *See* Stephen M. Shapiro, *Oral Argument in the Supreme Court of the United States*, 33 CATH. U. L. REV. 529, 544 (1984).

28 *Id.* at 547–48.

29 *See, e.g.*, Oral Argument at 01:14–01:23, United States v. Rand, 389 U.S. 121 (1967) (No. 54), https://www.oyez.org/cases/1967/54 (last visited Nov. 21, 2015) (beginning oral argument with "This case is here on writ of certiorari from . . ."); Oral Argument at 00:31–00:36, Puyallup Tribe v. Wash. Dep't of Fame, 391 U.S. 392 (1968) (No. 247), https://www.oyez.org/cases/1967/247 (last visited Nov. 21, 2015) (same). The cases in Appendix B were almost entirely brought on certiorari from courts of appeals. A substantial number are from the Court's original docket. *See* 28 U.S.C. § 1251 (2012) (Original Jurisdiction). Cases on certiorari from the highest courts of states or on direct appeal from federal district courts are rare outliers. *See* Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861 (1974) (appeal from the state of Colorado); Duke v. Carolina Envtl. Study Grp., Inc., 438 U.S. 59 (1978) (direct appeal from district court under 28 U.S.C. § 1252, a basis for jurisdiction that was repealed in 1988).

30 *See* U.S. Courts, *Supreme Court Procedures: Oral Arguments*, http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1 (last visited Nov. 21, 2015) (instructing attorneys to begin their arguments by stating "Mr. Chief Justice, and may it please the Court . . . .").

31 *See* Jacob Gershman, *The Supreme Court Has Gotten A Lot "Friendlier" Under Roberts*, WALL ST. J., July 16, 2014, http://blogs.wsj.com/law/2014/07/16/the-supreme-court-has-gotten-a-lot-friendlier-under-roberts/ (last visted Nov. 21, 2015). Of similar note, following Justice O'Connor's ascendance to the bench as the first female Justice, the Justices ceased referring to each other as "brother" and "brethren."

32 Shapiro, *supra* note 27, at 532.

perceives they are almost universally pulled by the gravity of this core professional duty.

Any reflection on advocacy history invites some examination of the demographics of the advocates before the Court. What can be said of the diversity of advocates in the Court's environmental cases is also largely true of the complete docket.

Running through the cases listed in Appendix B, women's voices would not be heard until April 1978 when Patricia Wald argued as an amicus in *Penn Central Transportation Co. v. New York City*,[33] and Sara Sun Beale, the next day, argued the cause in *Andrus v. Charlestone Stone Products*.[34] Notably, the already-experienced Harriet Shapiro—the first woman hired by the Office of the Solicitor General[35]—argued a case of her own the next year.[36] Despite these milestones, it remains somewhat remarkable even as a contemporary matter when two female advocates are heard to argue in a single case.[37]

The historic record is decidedly bleaker concerning underrepresentation of racial minorities in the counsel ranks. Of course, numbers counting with sound recordings is largely futile, as neither the name nor the voice of an advocate can necessarily convey anything of an advocate's racial identity. As one example, Harlon Dalton argued two environmental cases for the Office of the Solicitor General in the 1980s;[38] however, it perhaps takes outside biographical knowledge to identify him as African American.[39] African American lawyers have rarely argued cases before the Supreme Court, not in any semblance of what is proportionate to societal diversity, and this observation for the entirety of the Court's docket—except, perhaps, civil rights casework—holds true without dispute for the environmental cases.[40] Additionally, although more than thirty

33 438 U.S. 104, 106 (1978) (leading case on regulatory takings).

34 436 U.S. 604, 605 (1978) (argument on the scope of a mining claim under federal legislation).

35 For more on the history of women as advocates, including Harriet Shapiro, see generally Clare Cushman, *Woman Advocates Before the Supreme Court*, 26 J. SUP. CT. HIST. 67 (2002); Mary Clark, *Women as Supreme Court Advocates, 1879–1979*, 30 J. SUP. CT. HIST. 47 (2005).

36 Andrus v. Allard, 444 U.S. 51 (1979) (argument on prohibitions against the sale of eagle feathers).

37 The highest profile case may be *Burlington Northern & Santa Fe Railroad Co. v. United States*, 556 U.S. 599 (2009), where Kathleen Sullivan and Maureen Mahoney, both veteran advocates, argued for separate petitioners.

38 *See* United States v. Clarke, 445 U.S. 253 (1980) (concerning the manner by which Indian lands may be condemned for a public purpose); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981) (concerning solid waste disposal).

39 Harlon Dalton is today a prominent law professor at Yale Law School. *Yale Law School Faculty*, http://www.law.yale.edu/faculty/HDalton.htm (last visited Nov. 21, 2015).

40 Mark Sherman, *Black Lawyers Rare at Supreme Court*, USA TODAY, Oct. 28, 2007, http://usatoday30.usatoday.com/news/washington/2007-10-28-3842117658_x.htm (last visited Nov. 21, 2015). This article quotes Robert Harris, an African American, who argued in the environmental case of *Pacific Gas & Electric Co. v. Public Utility Commission*, 475 U.S. 1 (1986). Solicitor General Wade McCree, also an African American, argued two cases included in Appendix B. As far as the author is aware, it has been decades since an African American voice has been heard from the lectern in any environmental case argued before the Court. As for the

environmental cases in Appendix B have crossover significance with Federal Indian Law, Native American attorneys argued scant few of them.[41] Despite past milestones and several historic notes of interest,[42] there is no discernible trend toward increased diversity at the podium in environmental cases or the Court's larger docket.[43]

A final topic of likely interest is the follow-on notoriety of many individuals who argued environmental cases. Their ranks include a future Senator,[44] a future governor,[45] and a future Secretary of State.[46] Listeners would also hear two future Supreme Court Justices[47] and multiple future

Justices, Thurgood Marshall enlivened many recordings during his tenure, and the famously silent Clarence Thomas has announced several opinions, including the opinion announcement in *Department of Transportation. v. Public Citizen*, 541 U.S. 752 (2004).

41 *See* Diane Schmidt, *"The First 13" Brings Together Indian Law Pioneers*, NAVAJO TIMES, Apr. 5, 2012, http://navajotimes.com/politics/2012/0412/040512law.php#.VgykJOnin8E (last visited Nov. 21, 2015) (stating that thirteen Native American advocates argued Indian law cases at the Supreme Court between 1980 and 2001). Of the thirteen advocates identified in this article, only three argued Indian law cases concerning environmental issues: Jeanne Whiteing, Blackfeet (who argued *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 795 (1985)); Marilyn Miles, Kickapoo ancestry (who argued *Lyng v. Northwest Indian Cemetery Prot. Ass'n,* 485 U.S. 439 (1988)); and Heather Kendall-Miller, Athabascan (who argued *Alaska v. Native Village of Venetie Tribal Government,* 522 U.S. 520 (1998)). *Id.*

42 Notably, Shiro Kashiwa, of Japanese ancestry, served as Assistant Attorney of the Land and Natural Resources Division at the Department of Justice. He argued in an eminent domain case not here classifiable as an environmental case. *See* United States v. Reynolds, 397 U.S. 14 (1970); U.S. Dep't of Justice, *History*, http://www.justice.gov/enrd/history-3 (last visited Nov. 21, 2015). However, Hawaii Attorney General Bert Kobayashi, also of Japanese ancestry, argued briefly in *Hawaii v. Gordon*, 373 U.S. 57 (1963).

43 Remarkably, today's bench better reflects societal diversity than does its pool of oral advocates. In October Term 2013, when the bench composition was only 33% female, female advocates only made 16% of total appearances for arguments. *See* Kedar Bhatia, *Introducing the State Pack for October Term 2013 and an Update on the Docket*, SCOTUSBLOG, Mar. 17, 2014, http://www.scotusblog.com/2014/03/introducing-the-stat-pack-for-october-term-2013-and-an-update-on-the-docket/ (last visited Nov. 21, 2015). Trends point to an increasingly specialized and insular private Supreme Court Bar, a phenomenon that has already been the subject of substantial scholarship. *See* Richard J. Lazarus, *Docket Capture at the High Court*, 119 YALE L.J. ONLINE 89, 90 (2009), *available at* http://yalelawjournal.org/forum/docket-capture-at-the-high-court [hereinafter Lazarus, *Docket Capture*]; *see also* John G. Roberts, Jr., *Oral Advocacy and the Re-Emergence of a Supreme Court Bar*, 30 J. SUP. CT. HIST. 68, 75–76 (2005); Thomas G. Hungar & Nikesh Jindal, *Observations on the Rise of the Appellate Litigator*, 29 REV. LITIG. 511, 512–13 (2010); Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar*, 96 GEO. L.J. 1487, 1497–98, 1501 (2008) [hereinafter Lazarus, *Advocacy Matters*].

44 John Kyl, later a United States Senator of Arizona, argued for the state in *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 547 (1983).

45 Christine Gregoire, later the Governor of Washington state, argued for the respondent in *PUD No. 1 v. Washington Department of Ecology*, 511 U.S. 700, 702 (1994).

46 Warren Christopher, later Secretary of State during the Clinton administration, argued for the petitioner in *Summa Corp. v. California ex. rel. State Lands Commission*, 466 U.S. 198, 199 (1984).

47 John Roberts argued for the United States in multiple cases, including *Lujan v. National Wildlife Foundation*, 497 U.S. 871, 874 (1990). Samuel Alito argued for the United States in *Chemical Manufacturers Ass'n v. Natural Resources Defense Council* (*NRDC*), 470 U.S. 116, 117 (1985).

appointees to the federal courts of appeals.[48] Of course, several current and future law professors have argued cases of their own.[49] In those environmental cases where the United States argues as a party or an amicus, the advocate frequently steps to the podium already having the stature of a political office.[50] A Solicitor General, or a person acting in the position, has argued at least thirty-six cases.[51] An Assistant Attorney General has argued eleven cases.[52] An Associate Attorney General has argued a single case.[53] Finally, as it happens, no Attorney General has argued an environmental case since Griffin Bell brought a snail darter "encased in a small flask"[54] to the podium in the seminal case of *Tennessee Valley Authority v. Hill* (*TVA v. Hill*).[55]

48 These advocates included the future Judge Easterbrook of the 7th Circuit and Judge Boggs of the 6th Circuit, and at least four future judges of the D.C. Circuit: Judges Bork, Wald, Randolph, and Roberts. *See infra* Appendix B. Ken Starr, arguing as Solicitor General, had previously served on the D.C. Circuit.

49 To name several: Professor Laurence Tribe argued in *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 192 (1983) and *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 231 (1984). Professor Zygmunt Plater argued the famous case of *Tennessee Valley Authority v. Hill* (*TVA v. Hill*), 437 U.S. 153, 155 (1978). In and out of government, Professor Richard Lazarus has argued multiple cases. Professor Peter Strauss argued superbly in several cases in the early 1970s.

50 Appearances by political office holders are also not uncommon in cases where a State is a party. *See, e.g.*, *PUD No. 1*, 511 U.S. at 792 (argued by the Attorney General for the State of Washington).

51 *See infra* Appendix B.

52 *See infra* Appendix B. This run of advocates captures some of the history of the Environment and Natural Resources Division of the United States Department of Justice, which has been organized under a variety of names in past decades. The Environmental and Natural Resources Division, assumed its organizational name in 1990, but traces back to the Public Lands Division, beginning in 1909; the Lands Division, beginning 1933; and the Land and Natural Resources Division, beginning 1965. *See* Richard J. Lazarus, *One Hundred Years of the Environment and Natural Resources Division*, 41 ENVTL. L. REP. 10,986 (2011). Assistant Attorney Generals (AAGs) from the division who argued include Kent Frizell (1972–1973), Peter Taft (1975–1977), James Moorman (1977–1981), F. Henry Habicht II (1983–1987), Lois Schiffer (1993–2001), and Thomas Sansonetti (2001–2005). *Id.* at 10,992–94. Ramsey Clark, a former AAG of the Lands Division and former Attorney General, argued after leaving government service in *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973), fighting for government information on underground nuclear testing.

53 *See* Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 223 (1986) (argued by Associate Attorney General Arnold Burns).

54 Opinion Announcement at 0:18, TVA v. Hill, 437 U.S. 153 https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015).

55 437 U.S. 153 (1978). And at that moment, a Justice—perhaps Justice John Paul Stevens—drew a laugh by asking, "Is it alive?" Oral Argument at 5:28, *TVA v. Hill*, 437 U.S. 153 (No. 76-1701), https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015). In several cases, mainly in the 1970s, advocates can be heard to use and explain demonstrative exhibits such as maps. The snail darter exhibit was singular enough that Chief Justice Burger recalled it during his opinion announcement.

B. Advocacy Lessons and Environmental Lawyering

As is natural to an adversarial system where advocacy matters, each argument session presents opportunities for lessons learned. Even as the Court generally hears from seasoned, exceptional attorneys, the advocates make occasional mistakes, and those moments can be instructive. Some of these mistakes are generic, such as errors of form that might as easily be found in any large sampling of the Court's sound recordings.[56] Errors in content, or substantive errors, are often more interesting and can betray the advocate's level of immersion in environmental legal practice.[57]

Starting with mistakes of a generic nature, David Frederick—incidentally an advocate in at least two environmental cases, among many others—organizes advocacy mistakes into five categories: 1) speaking style errors; 2) substantive errors; 3) errors in citing materials; 4) errors in interacting with Justices; and 5) decorum errors.[58] Under close scrutiny, the environmental case recordings are rife with subtle examples of all these species of errors. A few of the more striking examples are illustrative and warrant quick mention. *Bonelli Cattle Co. v. Arizona*[59] stands out as an exceptionally tedious argument; after ten minutes one of the Justices remarked, "I assume you're going to tell us what the issue is in this case and what it is about."[60] Another argument, one presented for *Colorado v. New Mexico*,[61] began roughly when the advocate quoted heavily from an unsigned editorial, thereby prompting Justice Marshall's rebuke: "I personally find it kind of amazing that you cite it to us. You can't even give us any authority for it at all."[62] But of all the Justices, Chief Justice Rehnquist sounded particularly harsh with advocates, something the transcripts scarcely capture.[63] In *Alaska v. Native Village of Venetie Tribal Government*,[64] he abruptly chided respondent's counsel, "You don't ask questions of the Court."[65] Even a Deputy Solicitor General who argued more than a hundred

56 *See infra* note 66 and accompanying text (providing an example of an attorney being chastised by Chief Justice Rehnquist for interrupting a question from the bench).

57 *See, e.g.*, *infra* note 73 and accompanying text.

58 WRIGHTSMAN, *supra* note 25, at 47–48. For additional practice pointer resources see Shapiro, *supra* note 27.

59 414 U.S. 313 (1973), *overruled by* Oregon *ex rel.* State Land Bd. v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977).

60 Oral Argument at 10:20, *Bonelli Cattle Co.*, 414 U.S. 313 (No. 72-397), https://www.oyez.org/cases/1973/72-397 (last visited Nov. 21, 2015).

61 459 U.S. 176 (1982).

62 Oral Argument at 2:33, *Colorado*, 459 U.S. 176 (No. 80 Orig.), https://www.oyez.org/cases/1982/80%20ORIG (last visited Nov. 21, 2015).

63 As compared to other Chief Justices, Rehnquist was especially curt in informing the advocate that his or her time had expired. Examples abound, but the final seconds of the arguments in *Phillips Petroleum Co. v. Mississippi* are typical. Oral Argument at 56:00, Phillips Petroleum Co. v. Mississippi, 484 U.S. 469 (1988) (No. 86-870), https://www.oyez.org/cases/1987/86-870 (last visited Nov. 21, 2015).

64 522 U.S. 520 (1998).

65 Oral Argument at 52:25, *Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520 (No. 19-1577), https://www.oyez.org/cases/1997/96-1577 (last visited Nov. 21, 2015).

cases received what the media reported as a "dressing down" from the Chief Justice who snapped, "when a Justice is asking you a question, I suggest you remain quiet until he finishes, if that isn't too much trouble."[66] Being audience to uncomfortable moments with an impatient Justice is nevertheless edifying. A gruff manner on the bench, such as Justice Rehnquist's, often gives occasion for lawyer listeners to reflect on better advocacy practices.

However, anecdotes such as these can as easily be gleaned from any substantial sampling of recordings from the Court. What about these advocates' facility with environmental law, specifically? Not infrequently, advocates before the Supreme Court, like the Justices themselves, are generalists or appellate specialists, not necessarily day-to-day practitioners in the discrete practice area at issue in a case.[67] Skillful environmental lawyering reflects an advocate's studied appreciation of the human impacts and resources at issue in the case, as well as some degree of sophistication in understanding the nuances and history of the area of environmental or natural resources law under review.[68] While it can be true that some advocates, particularly trial lawyers less practiced in appellate argument, may have difficulty deviating from their own factual pattern,[69] environmental lawyers are more likely attuned to the future implications of a decision, i.e., the consideration of human impacts on the environment.

So-called "substantive errors" are intriguing precisely because shortcomings in environmental lawyering, both big and small, come to light. Several vignettes are illustrative. In the rearguments for *Arizona v. California*,[70] one counsel flubbed the invocation of a famous, ecologically-minded Justice Holmes quote. Holmes's aphorism, found in his *New Jersey v. New York*[71] decision, was: "A river is more than an amenity, it is a treasure."[72] However, the advocate mangled it like so: "[C]an we believe . . . that the Congress intended to store up this great body of water, this great treasure in the West, which is practically, as has been said, 'an amenity and *not a treasure*'?"[73]

66 *Rehnquist Dresses Down Attorney*, CJ ONLINE, Nov. 1, 2000, http://cjonline.com/stories/110100/new_rehnquist.shtml#.VhMf1dZH1pm (last visited Nov. 21, 2015); Oral Argument at 29:38, Solid Waste Agency of N. Cook Cty. v. Army Corps of Eng'rs, 531 U.S. 159 (2001) (No. 99-1178), https://www.oyez.org/cases/2000/99-1178 (last visited Nov. 21, 2015).

67 WRIGHTSMAN, *supra* note 25, at 65.

68 *See* Kenneth A. Manaster, *The Many Paths of Environmental Practice: A Response to Professor Bonine*, 28 PACE ENVTL. L. REV. 238, 262 (2010) (arguing that skilled environmental lawyers need to understand the "fundamental environmental protection imperatives at hand," in addition to the intricacies of the law) .

69 WRIGHTSMAN, *supra* note 25, at 62.

70 373 U.S. 546 (1963).

71 283 U.S. 336 (1931).

72 *Id.* at 342.

73 Oral Re-Argument of November 14, Part 1 at 7:47, *Arizona*, 373 U.S. 546 (No. 8 Orig.), https://www.oyez.org/cases/1961/8%20ORIG (last visited Nov. 21, 2015) (emphasis added). Justice William O. Douglas, famously biased toward environmental protection, may not have been amused. He was a particular fan of this line, having cited it in the majority opinion in *United States v. Republic Steel Corp.*, 362 U.S. 482, 491 (1960), and several later decisions.

One of the more remarkable instances of slippage appears—and, amazingly reappears—in cases dealing with the National Environmental Policy Act (NEPA).[74] In *Aberdeen & Rockfish Railroad Co. v. Students Challenging Regulatory Agency Procedures* (*SCRAP*),[75] two advocates mistakenly call it the National Environmental *Protection* Act.[76] Counsel for the United States again repeats this mistake in *Andrus v. Sierra Club*,[77] and yet another counsel does it, in passing, in *United States v. Alaska*.[78]

An advocate need not be a full-time practitioner of environmental law to capably or even excellently argue an environmental case. Solicitor General Seth Waxman argued splendidly in *Whitman v. American Trucking Associations, Inc.*,[79] defending the so-called "eight-hour" National Ambient Air Quality Standard (NAAQS) for ozone that was promulgated under Clean Air Act[80] regulatory authority.[81] However, he stumbled briefly after Justice Stevens asked, "Which eight hours of the day is it[?]"[82] Waxman momentarily protested that he was "not even in the realm of being a scientist," but seconds later had deftly recovered with a precise answer—presumably then armed with a discreet, quick-fired note from a colleague at counsel's table.[83] While advocates can only hope to emulate Waxman's refined argument style, this moment does contrast with those instances where an advocate displays outstanding mastery of the minutest factual nuances in a case. *Nevada v. United States*[84] has an entertaining exchange that begins when a Justice states: "Counsel, I am curious about one thing which is totally irrelevant. Is the lake freshwater?"[85] Impressively, the advocate recites the salinity in parts

74 National Environmental Policy Act of 1969, 42 U.S.C. §§4321–4370h (2012).

75 422 U.S. 289 (1975).

76 Oral Argument at 5:23, 23:14, *SCRAP*, 422 U.S. 289 (No. 73-1966), https://www.oyez.org/cases/1974/73-1966 (last visited Nov. 21, 2015).

77 442 U.S. 347 (1979). Oral Argument at 3:04, *Andrus*, 442 U.S. 347 (No. 78-625), https://www.oyez.org/cases/1978/78-625 (last visited Nov. 21, 2015).

78 503 U.S. 569 (1992). Oral Argument at 28:47, *Alaska*, 503 U.S. 569 (No. 118 Orig.), https://www.oyez.org/cases/1991/118%20ORIG (last visited Nov. 21, 2015). Justice Rehnquist makes the same error in one of his opinion announcements. *See* Opinion Announcement at 01:29, Metro. Edison v. People Against Nuclear Energy, 460 U.S. 766 (1983) (No. 81-2399), https://www.oyez.org/cases/1982/81-2399 (last visited Nov. 21, 2015). In fairness, this error appears to be a universal cognitive glitch that pervades even the written decisions of courts of appeals and dozens of law review articles. Along the same lines, Justice Thomas in his opinion announcement for *Department of Transportation v. Public Citizen*, errs when he states that an "environmental impact assessment" is an "EIS," giving unintended ironic effect to his quip that followed: "By the way there will be a quiz on all of the acronyms after this." Opinion Announcement at 2:15, Dep't of Transp. v. Pub. Citizen, 541 U.S. 752 (2004) (No. 03-358), https://www.oyez.org/cases/2003/03-358 (last visited Nov. 21, 2015).

79 531 U.S. 457, 459 (2001).

80 42 U.S.C. §§ 7401–7671q (2012).

81 Oral Argument at 59:39, *Whitman*, 531 U.S. 457 (No. 99-1257), https://www.oyez.org/cases/2000/99-1257 (last visited Nov. 21, 2015).

82 *Id.* at 32:59.

83 *Id.* at 34:00.

84 463 U.S. 110 (1983).

85 Oral Argument at 26:54, *Nevada*, 463 U.S. 110 (No. 81-2245), https://oyez.org/cases/1982.81-2245 (last visited Nov. 21, 2015).

per million of the lake; the ocean, for comparison; and the river that fed the lake.[86]

Yet presenting esoteric environmental facts, especially when unsolicited, is not always effective or successful. In the water rights dispute *Kansas v. Colorado*,[87] an advocate attempted to use the volume of the courtroom to portray the amount of water at issue in the case, employing the phrase, "3,300 volumes of this courtroom."[88] One of the Justices, apparently confused by the metrics of the conversion from acre-feet (the conventional unit) elicited laughter upon asking, "when you talk about the courtroom, are you assuming it's full to the ceiling, or just a foot?"[89] Thus, while this advocate's over-hopeful appeal to the Court's environmental imagination fell somewhat flat, it is notable that few advocates even make such an effort. Because of this hesitancy, advocates may be prime enablers of the Supreme Court's enduring shortcomings in recognizing the "environmental dimension of environmental law."[90]

Richard Lazarus has proposed that "more effective advocacy," through savvy case selection and narrative framing that better "tap[s] into the Justices' own backgrounds" could yield more sophisticated opinions better grounded in the unique features of environmental law.[91] This may be so, although it presents a challenge for advocates who are rightly conscious of the dilemma that arguing with too much passion or rhetoric can itself constitute an error (i.e., a speaking style error under David Frederick's categories).[92] If Professor Lazarus is correct that the Supreme Court's general attitude toward environmental law has been marked over past decades by apathy with tinctures of skepticism and hostility, then some fault should sit with the advocates who themselves would sooner argue the precise legal issue up for decision while not expounding on the governance and resource impacts that are its essential setting.

Even where the United States is a party and appears before the Court as the ostensible steward of a law for environmental protection, only rarely does the advocate commit preciously allotted argument time to address what may be at stake.[93] In this regard, the government's argument in *Environmental Protection Agency v. Brown*[94] is exceptional:

86 *Id.* at 27:00.

87 514 U.S. 673 (1995).

88 Oral Argument at 3:22, *Kansas*, 514 U.S. 673 (No. 105 Orig.), https://www.oyez.org/cases/1994/105%20ORIG (last visited Nov. 21, 2015).

89 *Id.* at 3:32.

90 Lazarus, *Restoring What's Environmental about Environmental Law*, *supra* note 13, at 707.

91 *See id.* at 768.

92 *See* WRIGHTSMAN, *supra* note 25, at 47–48.

93 *See* Lazarus, *Restoring What's Environmental about Environmental Law*, *supra* note 13, at 737–38, 740 (giving examples of cases with the United States as a party in which the advocates argued environmental issues only incidental to main arguments).

94 431 U.S. 99 (1977).

> I'd like to talk a little bit more about . . . air pollution, a topic that this Court referred to in Washington versus General Motors as one of the most notorious types of public nuisance in modern experience. The chief culprit, or one of the chief culprits, is the automobile, spewing vast amounts of assorted poisons into the air and accounting for by weight, by tonnage, nearly half of all air pollution in the country. Because of incomplete combustion and evaporation, the internal combustion engine produces carbon monoxide and unburned hydrocarbons. Because of high temperatures, it oxidizes nitrogen in the air. In the presence of sunlight, several of these pollutants react in complex ways, producing photochemical oxidants, or what is commonly called smog. The result is thousands of deaths yearly, millions of days of illness and billions of dollars in health costs and property damage throughout the United States. One more fact, and I think this is very important to our case, air pollution travels, it moves. It does not respect State boundaries.[95]

Here is a striking case of environmental lawyering at the Court—striking not only because this counts as atypical, impassioned advocacy from the Office of the Solicitor General, but also because even advocates for environmental organizations cautiously avoid risking their argument time on the logic and rhetoric of the environmental stakes in the case.[96]

C. Advocacy Greatness

For Supreme Court watchers, this is an age of celebrity status for the Justices and advocates.[97] Amidst the much-hyped emergence of a private Supreme Court bar having outsized representation in matters before the Court,[98] the question of advocacy greatness could take on aspects of a parlor game.[99] But however much the tempo of arguments has quickened in recent years, the intellect and abilities of advocates in previous decades were no less formidable, particularly for those advocates advantaged with some

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95 Oral Argument at 3:00, *Brown*, 431 U.S. 99 (No. 75-909), http://www.oyez.org/cases/1976/75-909 (last visited Nov. 21, 2015).

96 Not that there is room to try otherwise. As a contemporary matter there is minimal leeway for extended and uninterrupted statements such as this one. But the point that advocates may consciously minimize emphasis on the environmental stakes of a case extends even to written advocacy. *See, e.g.*, JONATHAN Z. CANNON, ENVIRONMENT IN THE BALANCE: THE GREEN MOVEMENT AND THE SUPREME COURT 61–62 (2015) [hereinafter ENVIRONMENT IN THE BALANCE] (noting that petitioners concertedly sought to "disguise" *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), "as an ordinary administrative and statutory matter" (citing Lisa Heinzerling, *Climate Change in the Supreme Court*, 38 ENVTL. L. 1, 6 (2008)).

97 Richard L. Hasen, *Celebrity Justice: Supreme Court Edition* (University of California, Irvine School of Law Legal Studies Research Paper Series, No. 2015-61, 2015) (on file with Law Library, University of California, Irvine School of Law).

98 *See* Lazarus, *Advocacy Matters*, *supra* note 43, at 1490; Lazarus, *Docket Capture*, *supra* note 43, at 89–90.

99 *See, e.g.*, Kedar S. Bhatia, *Top Supreme Court Advocates of the Twenty-First Century*, 1 J. LEGAL METRICS 561, 570–74 (2012) (ranking advocates by number of total arguments, by most single-term appearances, and appearances during greatest number of terms).

familiarity with the Court.[100] Listen to Sierra Club's advocate in *Fri v. Sierra Club*[101] or the citizen group's advocate in *Citizens to Preserve Overton Park v. Volpe*,[102] and it should not be surprising to separately learn that the first was a former Deputy Solicitor General while the second was, at the time, a recent Supreme Court clerk. In both cases, the advocates argued with the kind of poise and well-calibrated speaking style that is characteristic of special or veteran knowledge of the Court. There are, of course, limitations in attempting to measure advocacy quality through mere audio recordings. Recordings cannot disclose a speaker's reliance on notes, much less his or her physical presence, and the unseen advocate may be guilty, as Justice Rehnquist once observed, of a manner of argument typified as a "written brief with gestures."[103] Cases where the advocate faces unremitting questions, as is common today, are script disrupting and thereby less conducive to this possibility.[104]

For an unbroken history of exemplary advocacy, listeners can profitably focus on those cases argued by the Office of the Solicitor General.[105] Advocates from that office deserve special study for at least two reasons. First, for decades, attorneys from that office were "[t]he only significant, ongoing concentration of Supreme Court expertise."[106] As such, they are consistently strong advocates. Second, as an historic matter, there is something educative in the position the United States takes, or once took, regardless of whether the government prevails.[107] Under traditional ideals, the Justices expect the Office of the Solicitor General to "take a long view" and present positions that reflect a "higher loyalty to the law."[108] Thus, to the extent anyone can learn about substantive law by listening to only one side in a courtroom, it does well to focus on the side that is especially protective

100 *See, e.g.*, Press Release, U.S. Dep't of Justice, Deputy Solicitor General, Lawrence Wallace, to Retire From the Justice Department after 35 Years of Service (Nov. 1, 2002) (noting the accomplishments of former Solicitor General Lawrence Wallace in arguing 157 cases before the Supreme Court since the 1970s). Quality of representation was more inconsistent, however, in past decades. Justice Burger was notably critical of past advocacy on behalf of state and local governments, but today the Justices have fewer complaints. *See* WRIGHTSMAN, *supra* note 25, at 20. *See also* Bryan A. Garner, *Interview with Justice Stevens*, SCRIBES J. LEGAL WRITING 41, 45 (2010).

101 412 U.S. 541 (1973).

102 401 U.S. 402 (1971), *abrogated by* Califano v. Sanders, 430 U.S. 99 (1977).

103 *See* WRIGHTSMAN, *supra* note 25, at 20.

104 Justices consider a conversational dialogue an ideal oral argument, even though advocates may arrive with a prepared outline of topics; this naturally disrupts the flow of an organized argument. *Id.* at 44.

105 As an aid, Appendix B lists the advocates for each merits case or amicus position argued on behalf of the United States. For more on the Solicitor's General's office and how its sphere of litigation influence has shifted through time, see Cordray & Cordray, *supra* note 24.

106 Lazarus, *Advocacy Matters*, *supra* note 43, at 1492.

107 *Id.* at 1496–97.

108 LINCOLN CAPLAN, THE TENTH JUSTICE: THE SOLICITOR GENERAL AND THE RULE OF LAW 7 (1987).

of its credibility, even wanting to be seen as apolitical and worthy of the Solicitor General's occasional nickname, the "Tenth Justice."[109]

When a Solicitor General personally argues a case, it may signal that case's importance to the Justices or otherwise acknowledge the case's perceived importance within the Executive Branch.[110] Solicitors General, or persons acting in that position, have argued no fewer than thirty-five environmental cases.[111] However, the Office's expertise in arguing environmental cases has been concentrated in several career attorneys. In more than one third of over 220 environmental cases in which the United States participated in oral arguments, one of four attorneys handled the arguments: Edwin Kneedler (26 and counting), Louis Claiborne (20), Jeffrey Minear (19 and counting), Lawrence Wallace (17).[112] Several of these appearances were distinctly shorter amicus curiae arguments.[113] These attorneys have argued a variety of other cases as well, but whatever the time or topic, they consistently displayed the poise that comes with repeat appearances at the lectern. Moreover, by their immersion in the work of the Court, they are better oriented to the precedents and concerns of the Justices and may detect "cross-currents between otherwise seemingly unrelated cases that would be largely invisible to those who focus on just one case at a time."[114] In short, they are outstanding advocates.

While listeners can locate many fine advocates worthy of study and even emulation, one of the more noteworthy advocates to appear in the environmental docket is the "legendary" Louis Claiborne, a long-serving Deputy Solicitor General still remembered and much admired for his writing, his eloquence, and his wit.[115] Claiborne's cases dealt, in his own words, "with the land and the sea and the air."[116] In his time, he became the world's leading expert on original jurisdiction.[117] As any listener can discern,

109 *Id.* at 1. Solicitor General Rex Lee went on to private practice in the 1980s, and he is sometimes credited for inspiring the development of Supreme Court practice groups in large law firms. Lazarus, *Advocacy Matters*, *supra* note 43, at 1503. Several other government attorneys listed in Appendix B went on to argue for other clients in later cases, including cases against the United States. It can be interesting to follow the longitudinal changes in styles for advocates after their departure from the Office of the Solicitor General. *See infra* Appendix B.

110 Lazarus, *Advocacy Matters*, *supra* note 43, at 1545 n.237 ("The Court cares deeply about the views of the Solicitor General not just because of advocacy expertise but also because of substantive expertise related to the impact of possible rulings on the national government and the general public.").

111 *See infra* Appendix B (listing the environmental and natural resources cases argued by Solicitors General, or acting Solicitors General, before the Supreme Court).

112 *See infra* Appendix B.

113 *See infra* Appendix B. In contrast to the norm, the Court rarely denies requests by the Solicitor General to participate in oral argument as amicus curiae. Lazarus, *Advocacy Matters*, *supra* note 43, at 1494.

114 Lazarus, *Advocacy Matters*, *supra* note 43, at 1497.

115 Lazarus, *supra* note 52, at 10,991.

116 CAPLAN, *supra* note 108, at 163.

117 *Id.* at 164. Claiborne's original jurisdiction cases were principally submerged lands ownership disputes, though he also argued boundary and water rights cases from the Court's unique original docket. *See* Vincent L. McKusick, *Discretionary Gatekeeping: The Supreme Court's Management of its Original Jurisdiction Docket Since 1961*, 45 ME. L. REV. 185, 186

Claiborne's style is unique[118] and practically inimitable, but his composure, forthrightness, and fast-thinking, but calmly presented, elocution are models of excellence for any advocate.[119] When these traits combine with a thorough understanding of the environmental context of a dispute—legally, factually, historically—the Court is witness to environmental lawyering at its finest.

III. VOICES FROM THE BENCH IN ENVIRONMENTAL CASES

One of the cardinal rules of communication is "know your audience," and skillful Supreme Court advocates are attuned to Court precedent and the foibles and biases of the Justices who will decide the case.[120] Consistent with this rule, scholars and practitioners of environmental law have an inveterate, sustained fascination with how the Justices resolve environmental and natural resource disputes. Scholarship flourishes on: the Supreme Court's jurisprudence in various environmental law subspecialty and focus areas;[121] the Court's environmental decision-making trends under the tenures of particular Chief Justices;[122] and the stances of individual

(1993) (highlighting original jurisdiction cases involving water rights and ownership of submerged lands); *see also* Robert D. Cheren, *Environmental Controversies "Between Two or More States,"* 31 PACE ENVTL. L. REV. 105, 106 (2014) ("The state controversy jurisdiction is so far most frequently used to resolve disputes over territory and interstate waters.").

118 Claiborne can be heard to sound perfectly natural and authentic, for example, with locutions such as, "I'm grateful to the Chief Justice for having focused my attention on that question." Oral Argument at 37:06, Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49 (1987) (No. 86-473), https://www.oyez.org/cases/1987/86-473/ (last visited Nov. 21, 2015).

119 *See generally* John Briscoe, *A Life of Law and Letters: Louis F. Claiborne, 1927–1999*, 23 SUP. CT. HIST. Q. 8, 8–14 (2002); *see also* Richard J. Lazarus, *Judging Environmental Law*, 18 TUL. ENVTL. L.J. 201, 202–04 (2004); Richard J. Lazarus, *A Farewell to the "Claiborne Style,"* ENVTL. FORUM, November/December 1999, at 8.

120 *See* James vanR. Springer, *Some Suggestions on Preparing Briefs on the Merits in the Supreme Court of the United States*, 33 CATH. U. L. REV. 593, 601 (1984) (discussing the feasibility of using presumed biases of individual Justices and the importance of being consistent with the Court's majority decisions when strategizing for a favorable decision).

121 *See, e.g.*, James R. May, *Not at All: Environmental Sustainability in the Supreme Court*, 10 SUSTAINABLE DEV. L. & POL'Y 20 (2009) (recognizing that the importance of sustainability has grown exponentially); Miller, *supra* note 17 (describing statistics that reflect the resolution of conflicts between environmental values and other social or legal values); J.B. Ruhl, *The Endangered Species Act's Fall from Grace in the Supreme Court*, 36 HARV. ENVTL. L. REV. 487 (2012) (discussing the Endangered Species Act's "fall from grace," and the implications for the Court's environmental jurisprudence); Robert W. Adler, *The Supreme Court and Ecosystems: Environmental Science in Environmental Law*, 27 VT. L. REV. 249 (2003) (using extrinsic principles of environmental science to interpret national environmental policy); Dean B. Suagee, *The Supreme Court's "Whack-a-Mole" Game Theory in Federal Indian Law, a Theory that Has No Place in the Realm of Environmental Law*, GREAT PLAINS NAT. RESOURCES J., Fall 2002, at 90 (discussing the lack of doctrinal coherence in Court decisions concerning federal Indian law); Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 GEO. L.J. 1507 (2012) [hereinafter Lazarus, *National Environmental Policy Act*] (exploring cases arising under NEPA to suggest a nuanced story of the government's "perfect record").

122 *See, e.g.*, Mark Latham, *The Rehnquist Court and the Pollution Control Cases: Anti-Environmental and Pro-Business?*, 10 U. PA. J. CONST. L. 133 (2007); Robert V. Percival,

Justices in environmental cases.[123] Scholars even plumb the publicly released official papers of retired and deceased Justices for additional behind-the-scenes insights on environmental law.[124] Turning to the sound recordings of the Supreme Court is much the same research stripe and presents historic source material that is no less rich.[125] The Court's open proceedings provide windows into the minds and personalities of the Justices, and the audio recordings recreate much of the scene.[126] This Part takes in those acoustics, tuning to the voices of the Justices in the environmental docket.

This Part proceeds in three sections. First, for readers' amusement, it notes those instances in environmental cases that capture the humor and personality of the Justices. Second, it discusses the Court's substantive engagement with environmental law—i.e., how the sound recordings convey signs of comprehension and curiosity from the bench. Finally, it examines the Court's role and its own sense of place as an actor in environmental history.

A. Personality and Humor of the Justices in Environmental Cases

"This is a case about garbage," Chief Justice Roberts intoned, with a short pause for effect, as he began his opinion announcement in *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*.[127] Consistent with Justice Roberts's personality, the line was dryly

Environmental Implications of the Rehnquist Court's New Federalism, NAT. RESOURCES & ENV'T. Summer 2002, at 3; Stephen M. Johnson, *The Roberts Court and the Environment*, 37 B.C. ENVTL. AFF. L. REV. 317 (2010). Works also traverse the most ambitious timeframes. *See, e.g.*, MICHAEL ALLAN WOLF, THE SUPREME COURT AND THE ENVIRONMENT: THE RELUCTANT PROTECTOR 3–4 (2012) (considering environmental decisions from the 1970s through the twenty-first century); *see generally* Jonathan Cannon, *Environmentalism and the Supreme Court: A Cultural Analysis*, 33 ECOLOGY L.Q. 363, 364 (2006) [hereinafter *A Cultural Analysis*] (considering "the Court's major environmental decisions of the last three decades in light of beliefs and values commonly associated with 'environmentalism'"); *see also* ENVIRONMENT IN THE BALANCE, *supra* note 96, at 46–50 (analyzing changing perspectives on environmentalism through the lens of Supreme Court decisions).

123 *See, e.g.*, William Funk, *Justice Breyer and Environmental Law*, 8 ADMIN. L. J. AM. U. 735 (1995); Michael C. Blumm & Sherry L. Bosse, *Justice Kennedy and the Environment: Property, States' Rights, and a Persistent Search for Nexus*, 82 WASH. L. REV. 667 (2007); Tyson R. Smith, *Shades of Green: Justice O'Connor and the Environment*, 18 J. ENVTL. L. & LITIG. 365 (2003); Michael A. Perino, *Justice Scalia: Standing, Environmental Law and the Supreme Court*, 15 B.C. ENVTL. AFF. L. REV. 135 (1987); Kenneth A. Manaster, *Justice Stevens, Judicial Power, and the Varieties of Environmental Litigation*, 74 FORDHAM L. REV. 1963 (2006).

124 *See, e.g.*, Robert V. Percival, *Environmental Law in the Supreme Court: Highlights from the Marshall Papers*, 23 ENVTL. L. REP. 10606 (1993); *see also* Robert V. Percival, *Environmental Law in the Supreme Court: Highlights from the Blackmun Papers*, 35 ENVTL. L. REP. 10,637 (2005) [hereinafter *Blackmun Papers*]; Richard Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 GEO. L.J. 1507, 1511 (2012) (analyzing the Court's NEPA jurisprudence by considering "the personal papers of former Justices").

125 *See* discussion *infra* Parts III.A–B.

126 *See* WRIGHTSMAN, *supra* note 25, at ix–x.

127 Opinion Announcement at 00:13, *United Haulers Ass'n v. Oneida-Herkimer*, 550 U.S. 330 (2007) (No. 05-1345), https://www.oyez.org/cases/2006/05-1345 (last visited Nov. 21, 2015).

humorous and light, calculated perhaps more for his own amusement than to elicit laughter from the audience to the session. The line was also separately scripted or extemporized, because it does not appear in the written decision. This moment exemplifies what is different about the sound recordings, and how any given moment can capture some of the life and personality of the Court's open proceedings.

The passions, frustrations, and quirks of the Justices are frequently on display in ways that are not accessible from the Court's purely written record of opinions, concurrences, and dissents.[128] Several unique features of the soundscape help demonstrate this point: oral dissents, "hot mic" moments, and the use of hypotheticals in questioning advocates.

Oral dissents—and oral concurrences, for that matter—are particularly interesting because of their rarity.[129] When a Justice opts to read a dissent or concurrence from the bench, it reflects how sharply that Justice disputes the opinion of the Court and how unwilling he or she is to let that opinion announcement stand on its own.[130] The Court's environmental docket has several such dissents, nearly all of which are preserved in the audio archives: Justice Powell in *TVA v. Hill*;[131] Justice Stevens in *Dolan v. City of Tigard*;[132] Justice O'Connor in *City of Boerne v. Flores*;[133] Justice Stevens in *Rapanos v. United States*;[134] and Justice Scalia in *Environmental Protection*

128 *See, e.g.*, Christopher W. Schmidt & Carolyn Shapiro, *Oral Dissenting on the Supreme Court*, 19 WM. & MARY BILL OF RTS. J. 75, 78 (2010).

129 For more on this phenomenon, see *id.* at 110–12; Jill Duffy & Elizabeth Lambert, *Dissents from the Bench: A Compilation of Oral Dissents by U.S. Supreme Court Justices*, 102 LAW LIBR. J. 7, 8 (2010); Timothy R. Johnson et al., *Hear Me Roar: What Provokes Supreme Court Justices to Dissent from the Bench?*, 93 MINN. L. REV. 1560, 1581 (2009).

130 *See* Johnson et al., *supra* note 129, at 1581.

131 Here, the oral dissent deviates from the written dissent, beginning with Justice Powell's prescient remark that he was dissenting in the "famous snail darter case." Oral Dissent of Justice Powell, Opinion Announcement at 4:53, *TVA v. Hill*, 437 U.S. 153 (1978) (No. 76-1701), https://www.oyez.org/cases/1977/76-1701(last visited Nov. 21, 2015). Interestingly, while the written dissent employs parade-of-horribles rhetoric by arguing a "water spider or amoeba" may stop future projects, *TVA*, 437 U.S. at 203–04 (Powell, J., dissenting), the oral dissent goes with the snappier "water spider or *cockroach*." Oral Dissent of Justice Powell, Opinion Announcement at 11:57, *TVA v. Hill*, 437 U.S. 153 (No. 76-1701), https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015). Decades later, the case is often hailed as the "best-known case in environmental law." *See, e.g.*, Daniel A. Farber, *A Tale of Two Cases*, 20 VA. ENVTL. L. J. 33, 34 (2001).

132 512 U.S. 374 (1994); Oral Dissent of Justice Stevens, Opinion Announcement at 2:09, *Dolan*, 512 U.S. 374 (No. 93-518), https://www.oyez.org/cases/1993/93-518 (last visited Nov. 21, 2015).

133 521 U.S. 507 (1997). While this case dealt with historic preservation, *id.* at 519–20, Justice O'Conner's dissent, written and oral, purely focuses on Free Exercise Clause concerns. *Id.* at 544–45; Oral Dissent of Justice O'Connor, Opinion Announcement at 4:39, *City of Boerne*, 521 U.S. 507 (No. 95-2074), http://www.oyez.org/cases/1996/95-2074 (last visited Nov. 21, 2015).

134 547 U.S. 715 (2006). Deviating from his written dissent, Stevens remarks parenthetically that *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is "an opinion, by the way, that I am rather proud of." Oral Dissent of Justice Stevens, Opinion Announcement at 22:00, *Rapanos*, 547 U.S. 715 (No. 04-1034), http://www.oyez.org/cases/2005/04-1034 (last visited Nov. 21, 2015).

Agency v. EME Homer City Generation.[135] The *Rapanos* case also featured an important oral concurrence of Justice Kennedy, which announced a test for the jurisdictional reach of the Clean Water Act,[136] augmenting and serving as a counterpoint for the narrower test given by Justice Scalia's four-vote plurality opinion.[137]

Unguarded "hot mic" moments are rarer still, and much like what is known of the note-passing practices of the Justices at oral arguments, these occasions help show that the Justices are ordinary human beings.[138] For example, just prior to arguments in *Hodel v. Indiana*,[139] Chief Justice Burger is heard to mutter, "I don't give a damn about Indiana."[140] The timing and context explains it: the Court had immediately prior to this heard the more interesting and vital constitutional arguments in the related case of *Hodel v. Virginia Surface Mining & Reclamation Ass'n*.[141] As another example, before arguments in *Hawaii Housing Authority v. Midkiff*,[142] one of the Justices whispers, "The stakes are big in this one," followed by an audible, "oh, boy!"[143] This was again presumably Chief Justice Burger in a sidebar with one of the senior associate Justices seated next to him, Brennan or White.[144] Most amusingly, in *Andrus v. Charlestone Stone Products*,[145] several Justices spend over a minute chuckling over a portion of the government's just-received reply brief.[146] That reply brief had cited a law review article by Dean Frank Trelease—a respected authority on water law—who posited that one possible explanation for the lower court decision was that "the court

135 134 S. Ct. 1584 (2014). Justice Scalia prefaces his dissent by remarking, "These are not cases of earth shaking importance." Oral Dissent of Justice Scalia, Opinion Announcement Part 2, at 00:10, *EME Homer City*, 134 S. Ct. 1584 (No. 12-1182), https://www.oyez.org/cases/2013/12-1182 (last visited Nov. 21, 2015). Regrettably, it seems only one environmental case with an oral dissent has not been archived: Justices Douglas and Blackmun each orally dissented in *Sierra Club v. Morton*, 405 U.S. 727 (1972).

136 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387 (2012).

137 *See* Oral Concurrence of Justice Kennedy, Opinion Announcement at 12:40, *Rapanos*, 547 U.S. 715 (No. 04-1034) http://www.oyez.org/cases/2005/04-1034 (last visited Nov. 21, 2015) ("[T]he regulation can be sustained if there is a significant nexus with the waters that are navigable in the usual sense. . . . The limits the plurality would impose, in my view, give insufficient deference to Congress's purposes of enacting the Clean Water Act.").

138 *See Blackmun Papers*, *supra* note 124, at 10640 (revealing, for example, that in the Court's first NEPA case, Justice Brennan passed a note to Justice Blackman that read, "NEPA uber alles").

139 452 U.S. 314 (1981).

140 Oral Argument at 00:49, *Hodel*, 452 U.S. 314 (No. 80-231), https://www.oyez.org/cases/1980/80-231 (last visited Nov. 21, 2015).

141 452 U.S. 264, 264 (1981).

142 467 U.S. 229 (1984).

143 Oral Argument at 00:20, *Hawaii Housing Authority*, 467 U.S. 229 (No. 83-141), https://www.oyez.org/cases/1983/83-141 (last visited Nov. 21, 2015).

144 *See* Supreme Court of the United States, *The Court and Its Traditions*, http://www.supremecourt.gov/about/traditions.aspx (last visited Nov. 21, 2015) (describing seating arrangements for Justices on the bench).

145 436 U.S. 604 (1978).

146 Oral Argument at 00:40, *Charlestone Stone Prods.*, 436 U.S. 604 (No. 77-380), https://www.oyez.org/cases/1977/77-380 (last visited Nov. 21, 2015).

collectively went stark raving mad."[147] The lower court was reversed by a 9–0 vote.[148]

Justices also show their personalities in their formulation of hypothetical questions. To take one example, in arguments for *Department of Transportation v. Public Citizen*,[149] Justice Scalia contrives one of the more outlandish hypotheticals in the environmental docket. He posits the case of a "mad millionaire" who threatens to unleash smoke throughout the nation,[150] which Justice Breyer then modifies to his own characteristically quirky ends.[151] Then, in *Duke Power Co. v. Carolina Environmental Study Group*,[152] Justice Rehnquist offers a tauntingly difficult hypothetical:

> Supposing that a doctor's office is located across the street from your client's house and your client thinks it is in violation of the zoning laws. Can he come into a federal court and claim that the state's malpractice limitation law is unconstitutional on the grounds that if the malpractice limitation law did not exist, the doctor would never have opened up a practice because he could not afford to do it?[153]

This was, suffice to say, a tough argument, made tougher by the case being heard directly from a district court ruling.[154]

Moments of levity are refreshing counterpoints to such tense moments, and the Court's sound recordings feature several instances that overtly relate to environmental aspects of a case. These moments show the Court's lighter side,[155] and scholars and practitioners should find at least some of them amusing:

147 Reply Brief for the Petitioner at 3–4, *Charlestone Stone Products*, 436 U.S. 604 (No. 77-380), 1978 WL 207059.

148 *Charlestone Stone Products*, 436 U.S. at 604.

149 541 U.S. 752 (2004).

150 Oral Argument at 28:47, *Public Citizen*, 541 U.S. 752 (No. 03-358), https://www.oyez.org/cases/2003/03-358 (last visited Nov. 21, 2015).

151 Justice Breyer's hypothetical of cow and sheep states in *Environmental Protection Agency v. EME Homer City Generation,* 134 S. Ct. 1584 (2014), is yet another example. Oral Argument at 1:04:21, *EME Homer City Generation*, 134 S. Ct. 1584 (No. 12-1182), https://www.oyez.org/cases/2013/12-1182 (last visited Nov. 21, 2015) ("The cow men and the sheep men are in different States. They're not friends."). Even as this overgrazing hypothetical overtly borrows from Garret Hardin's celebrated *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968), the details have sufficiently changed to make it inscrutable for an off the cuff response. This kind of homage contrasts with Justice Scalia's less kind reference to the snail darter in another case that concerned "cooling water intake structures" for large powerplants. During arguments, Justice Scalia asserted that the respondent was "just talking about [protection for] the snail darter," thus conjuring images of that fish squated against an intake screen. Oral Argument at 54:57, Entergy Corp. v. Riverkeeper, Inc., 556 U.S. 208 (2009) (No. 07-588), https://www.oyez.org/cases/2008/07-588 (last visited Nov. 21, 2015).

152 438 U.S. 59 (1978).

153 Oral Argument at 1:15:52, *Duke Power Co.*, 438 U.S. 59 (No. 77-262), https://www.oyez.org/cases/1977/77-262 (last visited Nov. 21, 2015).

154 The jurisdiction pathway under 28 U.S.C. § 1252 (1976), which provided for direct appeals after judicial invalidation of an Act of Congress, has since been repealed.

155 The topic of humor at the Supreme Court draws occasional media interest and less occasional scholarly treatment. *See* Malphurs, *supra* note 23.

- Justice Marshall on the claim that land use restrictions on billboards reduce driver distractions: "Well, why don't you ban women walking down the street?"[156]
- Justice Scalia on selecting just the right animal for Endangered Species Act[157] hypotheticals: "Can't we pick an uglier example than the koala bear? . . . We pick the cutest, handsomest little critter."[158]
- Justice Breyer realizing that his use of the word "take" must yield to its statutory context in an Endangered Species Act case: "[T]he answer to what I take is your argument . . . strike the word 'take.' What I assume to be your argument . . . ."[159]
- Justice Scalia on waste disposal: "I must say, the spectacle of all States and municipalities wrestling for control over garbage is really quite wonderful."[160]
- Justice Kennedy on waste disposal: "[C]ivilization has advanced to the point where garbage is valuable."[161]
- Justice White on waste disposal: "What do they mean by sanitary waste disposals? . . . Do you think that's an oxymoron or something?"[162]
- Justice Rehnquist on Indian law: "[I]t seems to me the fact that you do not now make any due process claim . . . makes the notice question pretty low on the totem pole. Perhaps this is the wrong case to say that."[163]
- Justice Roberts on counsel's argument that certain Clean Air Act regulations were clear on their face: "That's an audacious statement."[164]
- Justice Powell thinking of his fisherman colleague upon hearing counsel describe the finest trout stream in the Southeast: "You have Justice Stewart's vote already."[165]

156 Oral Argument at 59:39, Metromedia Inc. v. San Diego, 453 U.S. 490 (1981) (No. 80-195), https://www.oyez.org/cases/1980/80-195 (last visited Nov. 21, 2015).

157 Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (2012).

158 Oral Argument at 55:49, Babbit v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687 (1995) (No. 94-859), https://www.oyez.org/cases/1994/94-859 (last visited Nov. 21, 2015).

159 *Id.* at 40:48.

160 Oral Argument at 24:28, C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1993) (No. 92-1402), https://www.oyez.org/cases/1993/92-1402 (last visited Nov. 21, 2015).

161 *Id.* at 42:57.

162 Oral Argument at 46:28, Chem. Waste Mgmt. v. Hunt, 504 U.S. 334 (1992) (No. 91-471), https://www.oyez.org/cases/1991/91-471 (last visited Nov. 21, 2015).

163 Oral Argument at 47:17, Hodel v. Irving, 481 U.S. 704 (1986) (No. 85-637), https://www.oyez.org/cases/1986/85-637 (last visited Nov. 21, 2015). The case concerned the land rights of the Sioux nation. While Rehnquist's quip is tasteless, it is noteworthy that laughter can be heard in the courtroom. One scholar, on the basis of Rehnquist's written opinions, deems him one of the most "Indianophobic justices ever to sit on the U.S. Supreme Court." *See* ROBERT WILLIAMS, JR., LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA 118 (2005).

164 Oral Argument at 5:22, Envtl. Def. v. Duke Energy Corp., 549 U.S. 561 (2006) (No. 05-848), https://www.oyez.org/cases/2006/05-848 (last visited Nov. 21, 2015).

- Justice Breyer on the environmental impacts of military activities: "[W]hen I think of the armed forces preparing an environmental impact statement, I think, the whole point of the armed forces is to hurt the environment."[166]
- Justice Rehnquist on the costs of special masters in interstate water disputes: "I believe the Pecos master is an engineer. He's not a lawyer. . . . He's also the cheapest master we've ever had."[167]

These examples are nothing close to exhaustive, and laughter more often punctuates arguments in ways that do not relate to the substance of what is under review. But all of these moments enliven the Court's open proceedings and draw focus on the human element of environmental law at the Supreme Court.

B. Thinking Like Environmental Lawyers?

Listening to sound recordings of the Court's environmental docket, it is plain that the Justices have extraordinary intelligence and, at times, even more exceptional curiosity. During oral arguments for *Aberdeen & Rockfish R. Co. v. SCRAP*, Justice Stewart marveled over several terms for recycled commodities—such as noils, rovings, and cullets—remarking that they were words he had "never heard in [his] life."[168] Similarly, in the oral arguments for *Japan Whaling Ass'n v. American Cetacean Society*,[169] Justice Blackmun, admittedly "not an expert in whales," was curious about Minke whales and how their population figures were known.[170] Although this impression is anecdotal, the sound recordings for the fishing and hunting cases point to the possibility that several Justices have a keen, perhaps even sporting interest in the recreational background facts.[171]

165 Oral Argument at 1:01:53, *TVA v. Hill*, 437 U.S. 153 (1978) (No. 76-1701), https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015). Justice Powell earlier in the same argument identified himself as a "bass fisherman." *Id.* at 48:52.

166 Oral Argument at 47:33, Winter v. Natural Res. Def. Counsel, 555 U.S. 7 (2008) (No. 07-1239), https://www.oyez.org/cases/2008/07-1239 (last visited Nov. 21, 2015).

167 Oral Argument at 16:21, Kansas v. Colorado, 543 U.S. 105 (2004) (No. 105 Orig.), https://www.oyez.org/cases/2004/105_orig (last visited Nov. 21, 2015).

168 Oral Argument at 26:47, Aberdeen & Rockfish R.R. Co. v. SCRAP, 422 U.S. 289 (1975) (No. 73-1966), https://www.oyez.org/cases/1974/73-1966 (last visited Nov. 21, 2015). "And they [are] moved on the nation's railroads every day Mr. Justice," responded Deputy Solicitor General Randolph. *Id.* at 26:48.

169 478 U.S. 221 (1986).

170 Oral Argument at 5:30, *Japan Whaling Ass'n.*, 478 U.S. 221 (No. 85-954), https://www.oyez.org/cases/1985/85-954 (last visited Nov. 21, 2015).

171 Justice Stewart, for example, cited his "personal experience" in game hunting when asking about the extravagant costs that people from outside Montana expect to pay on hunting trips. Oral Argument at 41:32, Baldwin v. Fish & Game Comm'n of Mont., 436 U.S. 371 (1978) (No. 76-1150), https://www.oyez.org/cases/1977/76-1150 (last visited Nov. 21, 2015). Similarly, in announcing the opinion for *North Dakota v. United States*, 460 U.S. 300 (1983), Justice Blackmun began, "[T]his case . . . presents rather a *refreshing* subject matter because it concerns the wild fowl that fly our Midwest flyways, that is ducks and geese." Opinion Announcement at 00:08, *North Dakota*, 460 U.S. 300 (No. 81-773), https://www.oyez.org/cases/

However, the Justices also make occasional substantive errors that show limits in their understanding of environmental facts and law.[172] Richard Lazarus identifies Justice Rehnquist as having "shape[d] the Court's NEPA precedent more than any other member of the Court,"[173] and yet when announcing his decision for *Metropolitan Edison Co. v. People Against Nuclear Energy*,[174] he errantly calls the statute the "National Environmental Protection Act."[175] Recently, Justice Kennedy during the oral arguments for *Environmental Protection Agency v. EME Homer City*, asked a question about "the NAAQ," mistakenly thinking the "s" in the acronym for "National Ambient Air Quality Standards" made it plural.[176] Perhaps most impressively, during oral arguments in *Nevada v. United States*, after counsel noted that a particular fish species at Pyramid Lake, the cui-ui, was in jeopardy of extinction, Justice Marshall asked, "[I]s that information any more reliable than information we got that the *snake doddle* was about to go?"[177] It seems, at least in Justice Marshall's memory, the famous "snail darter" was out-survived by the "snake doddle"[178]—although his unfriendliness toward the famous fish of *TVA v. Hill* was alive and well in *Nevada v. United States*.[179]

Justice Rehnquist presents an interesting study in environmental literacy. On the one hand, in oral arguments for *Illinois v. Kentucky*,[180] he appears profoundly confused about how dams work to impound water: "[I]f

1982/81-773 (last visited Nov. 21, 2015) (emphasis added). *See also supra* note 128 and accompanying text.

172 *See, e.g.*, Oral Argument at 24:08, Massachusetts v. U.S. Envtl. Prot. Agency, 547 U.S. 497 (2007) (No. 05-1120), https://www.oyez.org/cases/2006/05-1120 (last visited Nov. 21, 2015). Justice Scalia mistakenly employed the terms "stratosphere" and "stratospheric pollutant" to describe the workings of greenhouse gases. *Id.* The likely and most charitable explanation for this failing was that Justice Scalia borrowed the word "stratosphere" from arguments on the distinctive status of stratospheric ozone pollution that was addressed by special legislation; he likely did not appreciate the stratosphere's definitional exclusion of the troposphere, only its distinctiveness and remoteness from the realm of local air pollution.

173 Lazarus, *National Environmental Policy Act*, *supra* note at 121, at 1586.

174 460 U.S. 766 (1983). This is not the first NEPA decision Justice Rehnquist authored. *See* Lazarus, *National Environmental Policy Act*, *supra* note 135, at 1580 (explaining that Justice Rehnquist authored *Vermont Yankee Nuclear Power Corp v. Natural Resources Defense Council, Inc.* in 1978).

175 Opinion Announcement at 01:29, *Metro. Edison Co.*, 460 U.S. 766 (No. 81-2399), https://www.oyez.org/cases/1982/81-2399 (last visited Nov. 21, 2015).

176 Oral Argument at 09:36, *EME Homer City*, 134 S. Ct. 1584 (2014) (No. 12-1182), https://www.oyez.org/cases/2013/12-1182 (last visited Nov. 21, 2015).

177 Oral Argument at 31:11, Nevada v. United States, 463 U.S. 110 (1983) (No. 81-2245), https://www.oyez.org/cases/1982/81-2245 (last visited Nov. 21, 2015) (emphasis added).

178 Justice Marshall, while not a dissenter in *TVA v. Hill*, 437 U.S. 153 (1978), antagonized Respondent's counsel during oral arguments. Oral Argument at 43:58, *TVA*, 437 U.S. 153 (No. 76-1701), https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015). Zygmunt Plater's book vividly recreates the argument and his time at the lectern with a reconstructed interior monologue. ZYGMUNT PLATER, THE SNAIL DARTER AND THE DAM: HOW PORK-BARREL ENDANGERED A LITTLE FISH AND KILLED A RIVER 243–45 (2013).

179 Oral Argument at 43:58, *TVA*, 437 U.S. 153 (No. 76-1701), https://www.oyez.org/cases/1977/76-1701 (last visited Nov. 21, 2015); Oral Argument at 31:11, *Nevada*, 463 U.S. 110 (No. 81-2245), https://www.oyez.org/cases/1982/81-2245 (last visited Nov. 21, 2015).

180 500 U.S. 380 (1991).

it's deeper above the dams, one would think it would be shallower below the dams, because the same amount of rainfall is falling on that watershed as fell in 1792. . . . [If the river is] wider on both sides in some places, it seems logical it must be narrower on both sides in other places."[181] On the other hand, Justice Rehnquist is to some extent unfairly maligned as the author of the opinion in *United States v. New Mexico*.[182] That decision denied the claim of the United States to reserved water rights for use in the Gila National Forest, and Justice Powell wrote a celebrated dissent[183] that criticized the Court for envisioning national forests as "still, silent, lifeless places."[184] To Justice Powell and his fellow dissenters, "forests consist of the birds, animals, and fish—the wildlife—that inhabit them, as well as the trees, flowers, shrubs, and grasses."[185] According to a conventional assessment of the written opinions, Justice Rehnquist's position represents a failure to understand ecosystem needs.[186] It has gone unnoticed, however, that Justice Rehnquist asked the most ecologically sophisticated question at oral arguments, namely whether the respondent would concede the right to water should differ "with respect to phreatophytes within a National Forest."[187] The answer to the question of phreatophytes—plants that survive by having their roots in touch with moisture—may have had a largely unacknowledged impact on Justice Rehnquist's thinking about the case.[188] Counsel persuasively explained that the "high mountain forest," primarily made of ponderosa pines, did not have a big phreatophyte population dependent on stream flow.[189] This moment also illustrates how the Court's written decisional history does not necessarily concretize all the reasoning in a case or make use of all relevant facts. While authored opinions may reflect a Justice's chosen, impressionistic brush strokes, the Court's sound recordings can often, as here, give a more vivid, photorealistic picture of a case.

181 Oral Argument at 33:10, *Illinois*, 500 U.S. 380 (No. 106 Orig.), https://www.oyez.org/cases/1990/106_orig (last visited Nov. 21, 2015).

182 438 U.S. 696 (1978).

183 *See, e.g.*, *A Cultural Analysis*, *supra* note 122, at 399 ("The dissent stands as among the most eloquent renderings of the ecological world view by a Supreme Court justice.").

184 *New Mexico*, 438 U.S. at 719 (Powell, J., dissenting).

185 *Id.*

186 *See* Lazarus, *Restoring What's Environmental about Environmental Law*, *supra* note 13, at 716–17 (listing the *New Mexico* opinion as a representative example of why Justice Rehnquist has a reputation of being unsympathetic to environmental protection concerns).

187 Oral Argument at 10:33, *New Mexico*, 438 U.S. 696 (No. 77–510), https://www.oyez.org/cases/1977/77-510 (last visited Nov. 21, 2015).

188 One commentator concludes Justice Powell was "informed by prevailing scientific understandings of the inherent connections between the various components of forest ecosystems." Robert W. Adler, *The Supreme Court and Ecosystems: Environmental Science in Environmental Law*, 27 VT. L. REV. 249, 328 (2003). Justice Rehnquist was arguably no less informed.

189 Oral Argument at 10:17, *New Mexico*, 438 U.S. 696 (No. 77–510), https://www.oyez.org/cases/1977/77-510 (last visited Nov. 21, 2015).

C. The Justices and Environmental History

Environmental history, broadly conceived, is the "history of the role and place of nature in human life."[190] The Supreme Court and its bar are assuredly actors in environmental history, but there are many different perspectives for considering the Court or its jurisprudence through the lens of environmental history. In the early development of this history subdiscipline, its scholars tended to produce political history concentrating on environmental politics.[191] As easily as this could also be done for the Supreme Court's case history, not all cases of historic importance from the angle of environmental politics have environmental interests at stake.[192] Since the 1980s, environmental history has become a more florid, complex garden of ideas: variously applying scientific detective work to reconstruct past environments; studying the interwoven relationships between societal modes of production and dynamic, often human-impacted environmental settings; and studying ideas and cultural assumptions about "nature."[193] Aspects of the Court's environmental docket touch on all these areas. An original action may be an ownership dispute occasioned by the meanderings of a river and the more or less unstoppable forces of fluvial geomorphology.[194] Likewise, disputes over pollution control and environmental contamination may work their way to the Court with a distinct geographic and temporal setting.[195] But, in another sense, the Court's environmental cases are flashes of society-wide efforts to define and regulate environmental impacts, burdens, and amenities. Practitioners, advantaged by their experience, may see these disputes to have underlying fact patterns that are neither unique nor isolated.

As should also be expected, the Court's environmental docket, and its corresponding soundscape, memorializes and traverses legal conflicts based on geologic changes and societal changes in subsistence, production, and consumption. For example, we hear the Court engage outmoded polluting technology,[196] outmoded means of pollution surveillance,[197] and globally

190 Mart A. Stewart, *Environmental History: Profile of a Developing Field*, 31 HIST. TCHR. 351, 352 (1998) (emphasis omitted).

191 *Id.*

192 For example, the case of *Morrison v. Olson*, 487 U.S. 654 (1988), was part of an explosive interbranch dispute regarding oversight hearings into the Environmental Protection Agency's Superfund program. The case was momentous, even as a matter of the Agency's history, but the case was not about Superfund administration as much as the battle for oversight into its administration.

193 *See* Stewart, *supra* note 190, at 353–54.

194 *See*, *e.g.*, Louisiana v. Mississippi, 516 U.S. 22 (1995) (deciding a boundary dispute between Louisiana and Mississippi stemming from changes in a river channel).

195 *See*, *e.g.*, Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot., 474 U.S. 494 (1985) (considering whether filing for bankruptcy allowed a business to abandon property in contravention of New York and New Jersey environmental laws, thereby threatening public health and safety).

196 Oral Argument at 2:09, Huron Portland Cement Co. v. Detroit, 362 U.S. 482 (1960) (No. 86), https://www.oyez.org/cases/1959/86 (last visited Nov. 21, 2015) (concerning pollution

notorious incidents of environmental contamination.[198] By examining the changing composition of the environmental docket, one may even discern past areas of special interest and scrutiny from the Court that have now passed into memory.[199] These broader observations would do little to cabin the subject of the Court's role as an actor and percipient witness in United States environmental history; they implicate questions of historical materialism that are continental, if not global, in scale.

In contrast, the Court's encounters with ideas of nature are susceptible to narrower and more productive inquiry. As a matter of institutional function, the Court does not passively hear disputes and instead actively seeks to answer questions of law based on the record and arguments before it.[200] In this capacity, the Court's ideology of nature is present, though its salience is not often acknowledged.

The oral arguments in three older cases give special insights into the Court's environmental worldview.[201] All three of them evince older, outmoded ecological understandings and tend to throw into question whether viewpoints on nature embodied in the Court's decisions—and underlying deliberations—are reliable.

As a first example, *United States v. Republic Steel Corp.* was a landmark case for holding that the deposit of industrial waste created a forbidden obstruction to the navigable capacity of a river under the Rivers and Harbors Act of 1899.[202] Surprisingly, during oral arguments, counsel for respondent argued what was then an already antiquated theory: that running

controls for the now-antiquated scotch marine boiler, a type of engine that once predominated when ships were propelled by steam).

197 *Air Pollution Variance Board v. Western Alfalfa* discusses the Ringelmann Smoke Chart, one of the first tools for smoke abatement. *See* Oral Argument at 10:17, *Air Pollution Variance Bd.*, 416 U.S. 861 (No, 73–690), https://www.oyez.org/cases/1973/73-690 (last visited Nov. 21, 2015).

198 During oral arguments in the water pollution case, *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493 (1971), counsel invokes the example of mercury poisoning in Minamata Bay, Japan. Oral Argument at 10:41, *Wyandotte Chems. Corp.* 401 U.S. 493 (No. 41 Orig.), https://www.oyez.org/cases/1970/41%20ORIG (last visited Nov. 21, 2015).

199 *See* Sheldon L. Trubatch, *How, Why, and When the U.S. Supreme Court Supports Nuclear Power*, 3 ARIZ. J. ENVTL. L. & POL'Y 1, 9–10 (2012) (analyzing early Supreme Court decisions regarding the environmental impacts of nuclear power). Excepting several waste cases, it has been more than 30 years since the Court showed any active interest in nuclear energy cases. It has also been more than 20 years since the Court has heard a case that dealt with hunting and fishing rights.

200 *See generally* Neil D. McFeeley & Richard J. Ault, *Supreme Court Oral Argument: An Exploratory Analysis*, 20 JURIMETRICS J. 52, 53 (1979) (discussing oral arguments before the Supreme Court and the probing questions from the Justices). Not to mention that in original jurisdiction cases, the Court makes findings of fact, usually by taking evidence and considering recommendations from an appointed special master.

201 United States v. Republic Steel Corp., 362 U.S. 482 (1960); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S 402 (1971), *abrogated by* Califano v. Sanders, 430 U.S. 99 (1977); City of Phila. v. New Jersey, 437 U.S. 617 (1978).

202 *Republic Steel Corp.*, 362 U.S. at 489–90.

water purifies streams.[203] Counsel stated, "It is true that if you discharge putrescible material into flowing water, it will oxidize that material so that it will no longer be putrescible, noxious."[204] Such rotting material, he continued in his explanation, does not disappear, but the "bad odors and so forth, will have disappeared" and such material will have "been purified from the standpoint of public health."[205] Counsel presents an apparent variant of a nineteenth century hypothesis, once predominant even among engineers, that has long stayed lodged in the imagination of laypersons; however, bacterial research during the 1880s and 1890s refuted the theory.[206] Indeed, it had already been decades since the Supreme Court had considered evidence, however attenuated, that bacillus of typhoid might survive a multi-day, 300-plus-mile downriver trip from Chicago to St. Louis.[207] Strikingly, for this case noted as a model of environmental legal innovation, the Court was audience to particularly retrograde environmental argumentation.[208] The claim that running water purifies streams is more suited to a bygone era when limits on the diluting power of waterways were less apparent and contaminant detection methods were less sensitive.[209]

Oral arguments in *Citizens to Preserve Overton Park*—a famous administrative law case on the clash between highway developers and park preservationists—provide another example.[210] During arguments, a Justice asks the Solicitor General to explain the meaning of the term "climax forest," noting it was used in the petitioner's brief.[211] The Solicitor General had no understanding of its meaning.[212] This term invokes an older, value-laden principle of ecology that was already passing out of favor in scientific circles.[213] The ecologist Frederic Clements had earlier pioneered a concept of plant succession whereby a biotic community reaches a stable state known as a "climax."[214] However, by the mid-twentieth century, the concept was

203 Oral Argument at 1:14:26, *Republic Steep Corp.*, 362 U.S. 482 (No. 56), https://www.oyez.org/cases/1959/56 (last visited Nov. 21, 2015). Amazingly, this scientific assertion was offered to reject and clarify a point made earlier, that "sewage in the light disappears." *Id.* at 1:14:16.

204 *Id.* at 1:14:26.

205 *Id.* at 1:15:13.

206 JOEL A. TARR, THE SEARCH FOR THE ULTIMATE SINK: URBAN POLLUTION IN HISTORICAL PERSPECTIVE 154 (Jeffrey K. Stine & William McGucken eds., 1996).

207 *See* Missouri v. Illinois, 200 U.S. 496, 523 (1906).

208 *See generally* Oral Argument, Part 1 at 1:14:26, *Republic Steep Corp.*, 362 U.S. 482 (No. 56), https://www.oyez.org/cases/1959/56 (last visited Nov. 21, 2015) (arguing outdated scientific theory).

209 *See generally Does Running Water Purify Itself?*, PAC. RURAL PRESS (San Francisco), Nov. 9, 1878, at 295, *available at* http://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=PRP18781109.2.20.1 (discussing the fallacy of running water purifying itself).

210 *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 404–05 (1971).

211 Oral Argument, Part 2, at 32:09, *Citizens to Preserve Overton Park*, 401 U.S. 402 (No. 1066), https://www.oyez.org/cases/1970/1066 (last visited Nov. 21, 2015).

212 *Id.* at 32:37.

213 WILLIAM CRONON, CHANGES IN THE LAND: INDIANS, COLONISTS, AND THE ECOLOGY OF NEW ENGLAND 10–11 (1st rev. ed. 2003).

214 *See, e.g.*, DONALD WORSTER, NATURE'S ECONOMY: A HISTORY OF ECOLOGICAL IDEAS 205–11 (2d ed. 1994).

already criticized as "too monolithic and too teleological."[215] As environmental historian William Cronon writes, even putting aside human influence, "[t]here has been no timeless wilderness in a state of perfect changelessness, no climax forest in permanent stasis."[216] Whether the inquiring Justice was able to locate a definition of climax forest before voting on the case at the Justices' Conference is not known, but it remains remarkable that in a case concerning the protection of "natural beauty" in Overton Park, the petitioners employed terminology of plant ecology to describe its features.[217] That chosen term perhaps meant to evoke ideals of natural equilibrium and the absence of human interference, but this message was lost on the Justices. That Justice Marshall's opinion for the Court says nothing of a climax forest at Overton Park is just as well, considering the scientific moorings of the concept were already long criticized.[218]

The 1976 oral arguments for *Philadelphia v. New Jersey* (*New Jersey I*),[219] an early decision in a line of cases over waste disposal and the "dormant" Commerce Clause, provide a final example.[220] During those arguments, as counsel for the respondent asserted, "A landfill is valuable for its intended purpose, which is the disposal of waste," a Justice questioned, "Is it not also to fill in land?"[221] This Justice's question echoed back to some of the original, prevailing views of postwar sanitary landfills as the new alternative to open dumps and a way to fill in mosquito-ridden wetlands.[222] However, since at least the 1960s, applied experience with landfills brought greater scientific information on the serious environmental risks, if not harm, occasioned through leachate and landfill gas.[223] Questioning during arguments also alluded to the construction of the New York Giants' stadium at a landfill site, prompting counsel to explain that the underlying waste gave no stable foundation for the construction.[224] Tellingly, these same misconceptions from the bench persisted in the 1978 oral arguments in *Philadelphia v. New Jersey* (*New Jersey II*).[225] There again, as the Justices were fixated on abstract imaginings of how garbage transfers constituted

215 CRONON, *supra* note 213, at 11.

216 *Id.*

217 *See Citizens to Preserve Overton Park*, 401 U.S. 402, 404 (1971); Oral Argument, Part 2, at 32:09, *Citizens to Preserve Overton Park*, 401 U.S. 402 (No. 1066), https://www.oyez.org/cases/1970/1066 (last visited Nov. 21, 2015).

218 *See Citizens to Preserve Overton Park*, 401 U.S. at 406 (describing the forest only in acreage).

219 430 U.S. 141 (1977).

220 *Id.* at 141–42.

221 Oral Argument at 49:54, *New Jersey I*, 430 U.S. 141 (No. 75-1150), https://www.oyez.org/cases/1976/75-1150 (last visited Nov. 21, 2015).

222 *See, e.g.*, TARR, *supra* note 206, at 347 (explaining that in the postwar era, sanitary landfills looked to fill and eliminate marshes that would otherwise harbor pests such as mosquitoes and rats).

223 *Id.* at 28.

224 Oral Argument at 52:16, *New Jersey I*, 430 U.S. 141 (No. 75-1150), https://www.oyez.org/cases/1976/75-1150 (last visited Nov. 21, 2015). "[G]arbage is not good for land reclamation unless you are talking about a light use such as a golf course." *Id.* at 53:07.

225 437 U.S. 617 (1978).

commerce, Justice Stewart posited, "What if a person has land that he wants filled? It is to his advantage to have it filled."[226] Accordingly, in these cases concerning restrictions on interstate commerce, at least one voice from the bench—indeed, the subsequent opinion author—had difficulty conceptualizing the very externalities and environmental burdens that motivated the waste import prohibitions under dispute.

These evident gaps in understanding and misconceptions from counsel and the bench do not necessarily make their way into the Court's written decisions. Biography may shape and subtly inform the biases of individual Justices,[227] but this is only part of what can form their cultural conceptions of nature. They may be subject to imperfect conceptions of environmental science and idiosyncratic shortcomings in environmental literacy. These views, in turn, may shape the Court's jurisprudence in unseen ways.

Ultimately, the Court would do better to have an understanding of environmental history, including the history reflected in the arc of its own cases. As one scholar has observed with respect to the Court's Clean Water Act cases, the Court's jurisprudence suffers from an evident lack of interest in citing prior Clean Water Act opinions, even when older cases may be legally relevant to the issues at hand.[228] Going further, the Court's environmental jurisprudence is impaired wherever the Court cannot grasp the dimensions—scientific, historic, legal—of its own involvement in an environmental problem.[229]

IV. AUDIENCE

The meanings of the words "advocacy" and "advocate" are enriched by a quick study of their Latin-based etymology. They are the noun forms of the

226 Oral Argument at 6:25, *New Jersey II*, 437 U.S. 617 (No. 77-404), https://www.oyez.org/cases/1977/77-404 (last visited Nov. 21, 2015).

227 It has become cliché for commentators to speculate on how the Justices' recreational pursuits—e.g., hunting, fishing and hiking—or the geography of their upbringing has influenced their views. *See, e.g.*, Tyson R. Smith, *Shades of Green: Justice O'Connor and the Environment*, 18 J. ENVTL. L. LITIG. 365, 366 (2003) (asserting that Justice O'Connor's judicial decisions "reflect her personal experiences growing up in the American West"). There is room for more complex profiling. For example, did Justice Alito having once argued a Clean Water Act case before the Court in any way influence his service as the opinion writer for *National Ass'n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644 (2007), twenty-five years later?

228 Miller, *supra* note 17, at 140.

229 Consider Justice Scalia's role in the Court's trilogy of climate change cases. In writing the opinion in *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427 (2014), he scarcely cited the Court's decision in *American Electric Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011). During arguments for that earlier decision, Justice Scalia had pressed counsel with lightly mocking questions on "[c]ow by cow" nuisance suits. Oral Argument at 56:19, *Am. Elec. Power Co.*, 131 S. Ct. 2527 (No. 10-174), https://www.oyez.org/cases/2010/10-174 (last visited Nov. 21, 2015). Perhaps fixated on the same bovine theme, in the seminal case of *Massachusetts v. United States Environmental Protection Agency*, the dissenting Justice Scalia posited that the Court was making everything—"from Frisbees to flatulence"—qualify as an air pollutant under the Clean Air Act. 549 U.S. 497, 558 (2007). Even as the Court in granting certiorari seems to acknowledge the blockbuster aspects to each of these cases individually, the Court skirts any self-awareness of their collective significance.

verb "to call," containing—as is evident at a glance—a root that also relates to "voice" (*voc*).[230] By its meaning, however, the advocate is the recipient of the calling (i.e., one called to the aid of the client).[231] The advocate honors this voice in any dispute brought before a court.[232] Accordingly, while a microphone recording at the Supreme Court can only be expected to capture the functionary speakers, the voices of the represented parties are no less present in the courtroom. Part of the drama and nobility of judicial proceedings inheres in this fact that the parties are, in effect, audience to their own voices.[233]

The metaphor extends further and has special application when it comes to environmental law. Consider whether unvoiced, but exceptional nature can itself petition a court for relief. Consider the last of a living species, the oldest of the bristlecone pines, the tallest redwood, or—inasmuch as nature subsumes all—the plight of unborn future generations of humanity. However environmental law parses their fates, nature in all its aspects is at least a silent witness to the Court's environmental docket.

This mini-disquisition harks back, of course, to Justice Douglas's famous written dissent in *Sierra Club v. Morton*,[234] which posited that the ecological community, inarticulate or inanimate as it may be, should have legitimate spokesmen in those people who "know its values and wonders."[235] This dissent is recalled as a "classic" that is "venerated in the environmentalist canon."[236] Poignantly, Justice Douglas' oral dissent on this same message does not sound forth from the archives, if it was ever recorded. In some way, listening to the sound recordings of the Court's environmental docket is an exercise in listening for Douglas' ideal—that voice of the beneficiaries of environmental wonders, that voice of the inanimate object that Justice Douglas had implored "should not be stilled."[237] More clearly, the environmental docket sound recordings are waypoints in environmental law, each case inviting the listener's reflection on whether the

230 *Advocacy, Advocate*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986).

231 *Id.*

232 *Id.*

233 Borrowing from the environmental law docket, one of the more vivid examples may be taken from the landmark takings and historic preservation case of *Penn Central Transportation Co. v. New York City*. 438 U.S. 104 (1978). Jackie Kennedy Onassis, an outspoken advocate for the railroad station's preservation, was present. As petitioner's counsel recalls it, she "marched into the spectator section of the Court with an entourage just before the argument started," causing "quite a stir." She "was probably the strongest argument presented in favor of the city." *See Legends in the Law: Daniel M. Gribbon*, WASH. LAW., 1998 http://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/legend-gribbon.cfm (last visited Nov. 21, 2015).

234 405 U.S. 727 (1972) (Douglas, J., dissenting).

235 *Id.* at 752. Legally distinct, but following a similar strand of thought, the "public trust doctrine" has much of its persuasive appeal in the point that future generations are stakeholders in problems of irrevocable environmental degradation. *See, e.g.*, Nat'l Audubon Soc'y v. Superior Court of Alpine Cty., 658 P.2d 709, 724 (Cal. 1983) (citing public trust as "an affirmation of the duty of the state to protect the people's common heritage").

236 *See A Cultural Analysis*, *supra* note 122, at 429–30.

237 *Sierra Club*, 405 U.S. at 749–50.

law and the people who labor at its meaning are conscientiously working for harmony or disharmony in the relationship between society and environmental resources.

This Part reflects on the value of the sound recordings to the study of environmental law. The Court's overall significance to environmental law is the subject of some debate, and there are some corresponding limits to the usefulness of the sound recordings, particularly in the failure to teach much "black letter" environmental law, past or present.[238] Many cases, however, have standout historic or legal significance, and the Court's sound recordings often help engage those cases in greater depth. Accordingly, this Part concludes by suggesting a few avenues that readers and listeners might gainfully explore.

A. The Critical Ear

While oral argument sound recordings are experientially rich, much of their content and format aligns with the merits briefs.[239] Similarly, the opinion announcement recordings customarily offer mere summaries of a case's outcome.[240] Only the Court's written decisions have primacy in expressing the law of the case.[241] Reading the Court's opinions is thereby economical and instructive in ways that studying of briefs, transcripts, or audio recordings can never approach. On the other hand, all of these types of extra-decisional resources impart concrete lessons on environmental litigation, including lessons that need not hinge on a case's outcome or significance.[242] Moot court participants often use fictional fact patterns and precedent, yet they engage in fruitful learning exercises.[243] Thus, the obscure oral arguments from a largely irrelevant case may, in a sense, be more edifying and worthwhile than the written opinion.

Insofar as the sound recordings might be examined for what they teach of environmental law's substance, they share flaws that have also been ascribed to the Court's written decisional history. Professor Dan Farber, reflecting on the Supreme Court's "basic irrelevance" to environmental law, once observed that the environmental docket has markings of "hyperactive passivity," aside from an array of significant decisions rendered in the 1970s.[244] He concluded that the Court "has often chosen to hear cases

238 Daniel A. Farber, *Is the Supreme Court Irrelevant? Reflections on the Judicial Role in Environmental Law*, 81 MINN L. REV. 547, 547–48, 569 (1997) (arguing that Supreme Court jurisprudence has essentially been irrelevant to the development of environmental law).

239 *See* SUP. CT. R. 28 ("Oral argument should emphasize and clarify the written arguments in the briefs on the merits.").

240 *See* Tony Mauro, *Opinion Announcements*, 88 CHI.-KENT L. REV. 477, 483 (2012) ("[O]pinion announcements by their very nature are already selective summaries.").

241 *See id.* (discussing the fact that Justices do not want opinion announcements to be viewed as an official part of the opinion).

242 *See* Shapiro, *supra* note 27, at 533 (discussing the value of listening to the Court's oral argument recordings in preparing for oral arguments).

243 *See Moot Court,* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1971).

244 *See* Farber, *supra* note 238, at 547–50.

involving insignificant issues or peculiar facts, which therefore have little precedential value."[245] In the nearly twenty years since Professor Farber made these observations, the Court has added significantly to its corpus of environmental decisions. However, many of his points remain valid, including the observation that the Court, by its institutional importance, "cannot avoid issuing significant opinions from time to time."[246] In recent years, the Court has opted to hear a greater number of cases in vital areas of environmental law, even as it still generally resolves the merits, where necessary, on narrow and technical grounds.

While many of the cases in Appendix B may be of specialized interest, concededly few have broad or enduring legal significance to be of general interest. Indeed, some of them stand only as obscure artifacts of environmental legal history. Moreover, neither the soundscape nor the Court's written decisions can be trusted to capture the entirety of a dispute's history or its final resolution. The Court's docket can only be engaged with cautious appreciation for case aftermaths. Clean Air Act cases such as *Hancock v. Train*,[247] *Adamo Wrecking Co. v. United States*,[248] and *General Motors Corp. v. United States*,[249] for example, were each legislatively overruled.[250] Similarly, *Environmental Protection Agency v. California State Water Resources Control Board*[251] was legislatively overruled by the 1977 Amendments to the Clean Water Act.[252] The snail darter's saga continued after *TVA v. Hill* with legislative amendments to the Endangered Species Act and other travails.[253] Examples are legion.[254] From administrative law cases made obsolete by subsequent rulemakings,[255] to an environmental case holding that was overturned by a subsequent decision of the Court in a non-

245 *See id.* at 569 ("[T]he Court has either stayed on the sidelines or participated ineffectually in the making of environmental law.").

246 *See id.* at 550.

247 426 U.S. 167 (1976).

248 434 U.S. 275 (1978).

249 496 U.S. 530 (1990).

250 These cases were overruled by Clean Air Act Section 116, 42 U.S.C. § 7416 (2012); Section 112(d)(2)(D), 42 U.S.C. § 7412(d)(2)(D) (2012); and Section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B) (2012), respectively.

251 426 U.S. 200 (1976).

252 Clean Water Act Section 313, 33 U.S.C. § 1323 (2012).

253 *See* Zygmunt Plater, *Classic Lessons from a Little Fish in a Pork Barrel—Featuring the Notorious Story of the Endangered Snail Darter and TVA's Last Dam*, 32 UTAH ENVTL. L. REV. 211, 230–31 (2012).

254 *See, e.g.*, ENVIRONMENT IN THE BALANCE, *supra* note 96, at 100–08 (relating that political efforts following the decision in *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988)—a dispute over road construction through a natural, to some sacred, setting—resulted in Congressional expansion of an existing wilderness area, terminating further road construction).

255 In a way of thinking, *Massachusetts v. United States Environmental Protection Agency*, 549 U.S. 497 (2007), was administratively superseded by the agency's greenhouse gas endangerment finding. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

environmental case,[256] the environmental docket, sound recordings included, cannot reliably teach environmental law's substance so much as it teaches its flux and dynamism.

B. The Greatest Oral Arguments in Environmental Law

The best oral arguments are also characteristically dynamic. All else being equal, with limited listening time, it would be logical and most rewarding to focus on: 1) arguments where particularly skillful advocates face challenging questions and other pressures from the bench (i.e., skills display cases)[257]; 2) arguments followed by opinions of enduring significance, where hearing the arguments would enrich one's reading of the opinion and overall understanding of the case (i.e., canonical cases)[258]; and 3) multiple arguments with common areas of focus, as defined by the listener's playlist of interest. Scholars and practitioners in specialty areas—and aspirants to specialization—might listen to cases organized by procedural footing, such as citizen suit cases; by environmental statute, such as NEPA cases; or even by burden or amenity designations, such as air pollution cases.[259]

Two already mentioned, overarching trends in the environmental docket are relevant here. First, the 1970s had a greater concentration of leading, historically interesting cases.[260] Second, oral arguments in recent years have become a greater spectacle, and recordings of those arguments may better convey contemporary advocacy pressures and lessons.[261]

Identifying those cases of particular legal or historic significance could also be its own parlor game were it not for several past studies to measure the consensus of practitioners and scholars. In 2009, Professors James

256 In *Seminole Tribe v. Florida*, 517 U.S. 44 (1996), not an environmental case, the Supreme Court overturned its holding in *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989), a contaminated site case.

257 *See Significant Oral Arguments*, *supra* note 19 (providing examples of oral arguments made by skillful advocates).

258 For example, Professor Jonathan Cannon's *Environment in the Balance* presents an appendix of thirty selected cases, including widely known cases and others having, in his judgment, "particular cultural as well as legal significance" that "might deserve canonical status." ENVIRONMENT IN THE BALANCE, *supra* note 96, at 47, 301–02.

259 On this point, it bears noting that not all "air pollution" cases have been decided under the Clean Air Act. *See, e.g.*, Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861 (1974) (involving Colorado state pollution control laws, decided on Fourth and Fourteenth Amendment grounds); Huron Portland Cement Co v. Detroit, 362 U.S. 440 (1960) (concerning a violation of Detroit's Smoke Abatement Code).

260 James Salzman & J.B. Ruhl, *Who's Number One?*, ENVTL. FORUM, November/December 2009, at 36, 41 [hereinafter *Number One*] (surveying the "greatest hits" in environmental jurisprudence, and identifying a significant number of important cases from the 1970s).

261 *Compare* Oral Argument, Massachusetts v. U.S. Envtl. Prot. Agency, 547 U.S. 497 (2007) (No. 05-1120), https://www.oyez.org/cases/2006/05-1120 (last visited Nov. 21, 2015) (providing a modern example of oral arguments in which the Justices are active from the start and ask a lot of questions), *with* Oral Argument, Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861 (1974) (No. 73-690), https://www.oyez.org/cases/1973/73-690 (last visited Nov. 21, 2015) (typifying earlier oral arguments in which the Justices asked fewer questions and gave the advocates more time to speak).

Salzman and J.B. Ruhl polled academics and practitioners for their views on the "most important" cases in environmental jurisprudence, including but not limited to the case law of the Supreme Court.[262] This followed an earlier study Professor Salzman conducted in 2001.[263] Comparing the results of the two studies, Salzman and Ruhl found that, while validating certain mainstays, there is a small bias toward recent cases of prominence.[264] The leading cases consensus includes golden age classics such as *TVA v. Hill* and *Sierra Club v. Morton*, and administrative law classics such as *Chevron, U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, and *Citizens to Preserve Overton Park v. Volpe*.[265] Two newer cases, *Rapanos v. U.S. Army Corps of Engineers* and *Massachusetts v. Environmental Protection Agency*, have measurably attained blockbuster status across all demographics and practice fields.[266] Of course, at the margins, biodiversity conservation lawyers and land use lawyers might characteristically think higher of cases in their own specialty areas. Beyond this, it can be rewarding to not follow the crowd.[267] While status as a leading case may correlate with the interestingness of oral arguments and their perceived value, this correlation is not perfect.[268]

For example, *Chevron*, despite its unquestioned status as a seminal case, did not make the Supreme Court Historical Society Ad Hoc Committee's list of "Significant Oral Arguments" from 1955–1993.[269] Of 160 cases selected by the Committee from the Burger Court era, nine are environmental cases.[270] Of 121 cases that the committee selected from the

262 James Salzman & J.B. Ruhl, *New Kids on the Block—A Survey of Practitioner Views on Important Cases in Environmental and Natural Resources Law*, 25 NAT. RESOURCES & ENV'T 45 (2010) [hereinafter *New Kids on the Block*].

263 Salzman, *supra* note 260, at 36.

264 Salzman, *supra* note 262, at 45 (identifying *Massachusetts*, 547 U.S. 497 (2007), *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), and *Rapanos v. United States*, 547 U.S. 715 (2006), as the most significant cases in environmental law).

265 *Salzman*, *supra* note 262, at 45. By some measures, *Chevron*—at its roots, a Clean Air Act case—may be the Court's most important case of the last fifty years. *See* Frank B. Cross and James F. Spriggs II, *The Most Important (and Best) Supreme Court Opinions and Justices*, 60 EMORY L. J. 407, 432 (2010) (indicating that *Chevron* is the only case since 1967 in the list of "Top 25 Cases by Supreme Court Citation Numbers").

266 *New Kids on the Block*, *supra* note 262, at 45.

267 *Cf.* William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: The Who's*, 39 WASHBURN L.J. 1, 3–5, 10 (1999). Professor Rodgers points to several "creative moments" in environmental law that intersect with litigation at the highest Court, such as *Silkwood v. Kerr McGee Corp.*, 464 U.S. 238 (1984), and *United States v. SCRAP*, 412 U.S. 669 (1973). *Id.*

268 *See id.* at 3 (exploring examples of interesting risk-taking strategies in oral arguments).

269 *Significant Oral Arguments*, *supra* note 19.

270 Supreme Court Historical Society, *Significant Oral Arguments 1955–1993: The Burger Court*, http://supremecourthistory.org/history_oral_decisions_burger.html (last visited Nov. 21, 2015) (listing *Sierra Club v. Morton*, 405 U.S. 727 (1972), *United States v. SCRAP*, 412 U.S. 669 (1973), *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), *Philadelphia v. New Jersey*, 437 U.S. 617 (1978), *TVA v. Hill*, 437 U.S. 153 (1978), *Central Hudson Gas & Electric Co. v. Public Service Commission of New York*, 447 U.S. 557 (1980), *Metromedia Inc. v. City of San Diego*, 453 U.S. 490 (1981), *Silkwood v. Kerr McGee*, 464 U.S. 238 (1983), and *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984)).

first seven years of the Rehnquist Court, six are environmental cases.[271] These cases were picked as "important cases, but also examples of effective appellate advocacy," and these selection rates suggest that every year or two an environmental case is worthy of this degree of acclaim.[272] Now, with additional decades added to the docket and the digital proliferation of the Court's audio recordings, any person can make a playlist, listen, and form his or her own appraisal.[273] If one's interests lie in hearing arguments by the current leading lights of the Supreme Court Bar, one need not search far to hear them arguing environmental cases.[274]

V. CONCLUSION

As compared to Supreme Court transcripts, the Court's sound recordings are superior historical source materials. They are experientially rich, uniquely immersive, and allow listeners to experience the drama of the Court's open proceedings. They are also information rich. Many of the touchstones of effective advocacy—timing, tone, and smoothness of delivery—are inevitably lost in transcription.

Echoing back to 1955, this trove of archival materials also captures the institution's historic engagement, though law, with the physical and social dimensions of the nation outside its marble confines. The subset of recordings that reverberate from the Court's environmental docket are no less an opportunity to be audience to the dramatic action between Justices and advocates. While they are not particularly or perfectly instructive on environmental law's substance, they give resounding lessons on the practice and history of environmental litigation. Collectively, these recordings give voice to the dynamics, the limitations, and, ultimately, the humanity of the Court when hearing disputes over earth resources and human impacts.

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271 Supreme Court Historical Society, *Significant Oral Arguments 1955–1993: The Rehnquist Court*, http://supremecourthistory.org/history_oral_decisions_rehnquist.html (last visited Nov. 21, 2015) (listing *First Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987), *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470 (1987), *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and *New York v. United States*, 505 U.S. 144 (1992)).

272 *Id.*

273 *See, e.g.*, Oyez, *About Oyez*, http://oyez.org/about (last visited Nov. 21, 2015) (making it known that Oyez is available to the public and hosts all of the court's audio recordings since October 1955).

274 In a ranking of advocates who argued the most before the Supreme Court from 2000–2012, the first nine attorneys—and many ranked thereafter—have argued environmental cases. *See, e.g.*, Bhatia, *supra* note 99, at 570–72.

APPENDIX A.

A Chronology of Key Participants

Term and Chief Justice[275]		Associate Justices[276]	Solicitor General[277]	ENRD AAG[278]
1955	Warren (Oct. '53, replacing Vinson—deceased Sept. '53)	Clark, Burton, Frankfurter, Douglas, Black, Minton (end Oct. '56), Reed (end Feb. '57), Harlan (start Mar. '55), Brennan (start Oct. '56), Whittaker (start Mar. '57)		Perry W. Morton ('53–'61)
1956			J. Lee Rankin (Aug. '56–Jan. '61)	
1957				
1958		Stewart (Oct. '58, replacing Burton—retired, Oct. '58), Whittaker, Harlan, Clark, Frankfurter, Douglas, Brennan, Black		
1959				
1960				
1961			Archibald Cox (Jan. '61–July '65)	
1962		Goldberg (Oct. '62, replacing Frankfurter), White (Apr. '62, replacing Whittaker—retired, Mar. '62), Harlan, Clark, Stewart, Douglas, Brennan, Black		Ramsey Clark ('61–'65)
1963				
1964				
1965		Fortas (Oct. '65, replacing Goldberg—resigned July '65), White, Harlan, Clark, Stewart, Douglas, Brennan, Black	Thurgood Marshall (Aug. '65–Aug. '67)	Edwin Weisl, Jr. ('65–'67)
1966				
1967		Marshall (Oct. '67, replacing Clark— retired June '67), Fortas, White, Harlan, Stewart, Douglas, Brennan, Black	Erwin Griswold (Oct. '67–June '73)	Clyde Martz ('67–'69)
1968				
1969	Burger (June '69, replacing Warren—retired June '69)	Black, Douglas, Harlan, Brennan, Stewart, White, Marshall, vacant (Fortas—resigned May '69)		Shiro Kashiwa ('69–'72)
1970		Blackmun (June '70, filling Fortas vacancy), Black, Douglas, Harlan, Brennan, Stewart, White, Marshall		

275 *Members of the Supreme Court of the United States*, *supra* note 4.

276 *Id. See also* THE OXFORD GUIDE TO UNITED STATES SUPREME COURT DECISIONS 384–94 (Kermit L. Hall ed., 1999) (appendices pinpointing the succession of Justices through 1994).

277 Office of the Solicitor General, *Solicitors General 1870–Present*, http://www.justice.gov/osg/aboutosg/osghistlist.php (last visited Nov. 21, 2015).

278 Environmental and Natural Resources Division Assistant Attorney Genereral. *ENRD Assistant Attorneys General: Then and Now*, http://www.justice.gov/enrd/2987.htm (last visited Nov. 21, 2015). This information field imposes several approximations due to regular vacancies and delays in Senate confirmations.

Term and Chief Justice		Associate Justices	Solicitor General	ENRD AAG
1971		Rehnquist (Jan. '72, replacing Harlan—retired Sept. '71), Powell (Jan. '72, replacing Black—retired Sept. '71), Douglas, Brennan, Stewart, White, Marshall, Blackmun		
1972				Kent Frizell ('72–'73)
1973			Robert Bork (June '73–Jan. '77)	Wallace Johnson ('73–'75)
1974				
1975		Stevens (Dec. '75, replacing Douglas—retired Nov. '75), Rehnquist, Powell, Brennan, Stewart, White, Marshall, Blackmun		Peter Taft ('75–'77)
1976				
1977			Wade McCree (Mar. '77–Aug. '81)	James Moorman ('77–'81)
1978				
1979				
1980				
1981		O'Connor (Sept. '81, replacing Stewart—retired June '81), Rehnquist, Powell, Brennan, Stevens, White, Marshall, Blackmun	Rex Lee (Aug. '81–June '85)	Carol Dinkins ('81–'83)
1982				
1983				F. Henry "Hank" Habicht, II ('83–'87)
1984				
1985			Charles Fried (Oct. '85–Jan. '89)	
1986	Rehnquist (elevated Sept. '86, replacing Burger—retired Sept. '86)	Scalia (Sept. '86, succeeding to Associate Justice position vacated by Rehnquist), O'Connor, Powell, Blackmun, Stevens, White, Brennan, Marshall		
1987		Kennedy (Feb. '88, succeeding Powell—retired June '87), O'Connor, Scalia, Blackmun, Stevens, White, Brennan, Marshall		
1988				Roger Marzulla ('88–'89)
1989			Kenneth Starr (May '89–Jan. '93)	Richard B. Stewart ('89–'91)
1990		Souter (Oct. '90, succeeding Brennan—retired July '90), O'Connor, Scalia, Blackmun, Stevens, White, Kennedy, Marshall		
1991		Thomas (Oct. '91, succeeding Marshall—retired Oct. '91), O'Connor, Scalia, Blackmun, Stevens, White, Kennedy, Souter		
1992				Vacant ('92)

Term and Chief Justice		Associate Justices	Solicitor General	ENRD AAG
1993		Ginsburg (Aug. '93, succeeding White—retired June '93), O'Connor, Scalia, Blackmun, Stevens, Thomas, Kennedy, Souter	Drew Days, III (May '93–July '96)	Lois Schiffer ('93–'01)
1994		Breyer (Aug. '94, succeeding Blackmun—retired Aug. '94), O'Connor, Scalia, Thomas, Stevens, Ginsburg, Kennedy, Souter		
1995				
1996			Walter Dellinger, III, acting (Aug. '96–Oct. '97)	
1997			Seth Waxman (Nov. '97–Jan. '01)	
1998				
1999				
2000			Barbara Underwood, acting (Jan.–June '01)	
2001			Theodore Olson (June '01–July '04)	Thomas L. Sansonetti ('01–'05)
2002				
2003				
2004			Paul Clement (acting June '04–June '05; June '05–June '08)	
2005	Roberts (Sept. '05, replacing Rehnquist—deceased Sept. '05)	Alito (Jan. '06, replacing O'Connor—retired Jan. '06), Thomas, Scalia, Breyer, Ginsburg, Souter, Kennedy, Stevens		Sue Ellen Wooldridge ('05–'07)
2006				
2007				Ronald Tenpas ('07—'09)
2008			Gregory Garre (acting June '08–Oct. '08; Oct. '08–Jan. '09)	
2009		Sotomayor (Aug. '09, succeeding Souter—retired June '09),Thomas, Scalia, Breyer, Ginsburg, Alito, Kennedy, Stevens	Elena Kagan (March '09–Aug. '10)	Ignacia S. Moreno ('09–'13)

Term and Chief Justice		Associate Justices	Solicitor General	ENRD AAG
2010		Kagan (Aug. '10, succeeding Stevens—retired June '10), Thomas, Scalia, Breyer, Ginsburg, Alito, Kennedy, Sotomayor	Neal Katyal, acting (May '10–June '11)	
2011			Donald Verrilli, Jr. (June '11–present)	
2012				
2013				
2014				John Cruden ('14–present)
2015				

APPENDIX B.

A Table of Oral Arguments in Environmental and Natural Resource Cases Before the U.S. Supreme Court, 1955–2015

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
	(* Argued multiple days/reargued) (^ Original Action)	Amicus curiae cases in *italics*	(‡ Indian Law) (§ Interstate Dispute)
12/6/1956	United States v. Howard, 352 U.S. 212 (1957)	Leonard Sand	Fisheries
1/23/1957	United States v. Union Pac. R.R. Co., 353 U.S. 112 (1957)	SG J. Lee Rankin	Mineral Rights
12/7/1959	Fed. Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99 (1960)	SG J. Lee Rankin	‡Land Rights; Hydro Power
1/12/1960	United States v. Republic Steel Corp., 362 U.S. 482 (1960)	SG J. Lee Rankin	Water Pollution
2/29/1960	Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960)		Air Pollution
11/10/1960	United States v. Va. Elec. Co., 365 U.S. 624 (1961)	Perry Morton, ENRD AAG	Taking Riparian Land
11/15/1961	Fed. Power Comm'n v. Transcon. Gas Corp., 365 U.S. 1 (1961)	SG J. Lee Rankin	Air Pollution
12/10/1962	Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963)	Roger Marquis	Mineral Rights
1/7/1963	Dugan v. Rank, 372 U.S. 609 (1963)	SG Archibald Cox	Water Rights
1/8/1963	Arizona v. California, 373 U.S. 546 (1963)*^	SG Archibald Cox	Water Rights
2/25/1963	Boesche v. Udall, 373 U.S. 472 (1963)	SG Archibald Cox	Public Lands
4/15/1963	Hawaii v. Gordon, 373 U.S. 57 (1963)^	Wayne Barnett	Hawaiian Lands
11/16/1965	Louisiana v. Mississippi, 384 U.S. 24 (1966)^		§River Boundary
1/25/1966	United States v. Standard Oil Corp., 384 U.S. 224 (1966)	Nathan Lewin	Water Pollution
4/11/1967	Udall v. Fed. Power Comm'n, 387 U.S. 428 (1967)*	Louis Claiborne	Dam Construction

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
10/16/1967	Wyandotte Transp. Co. v. United States, 389 U.S. 191 (1967)*	Alan S. Rosenthal	Water Pollution
10/18/1967	United States v. Rands, 389 U.S. 121 (1967)	Robert S. Rifkind	Taking Riparian Land
1/15/1968	Peoria Tribe v. United States, 390 U.S. 468 (1968)	Robert S. Rifkind	‡Land Rights
1/22/1968	Menominee Tribe v. United States, 391 U.S. 404 (1968)*	Louis Claiborne	‡Hunting & Fishing Rights
3/25/1968	Puyallup Tribe v. Dep't of Game of Wash., 391 U.S. 392 (1968)*	*John S. Martin, Jr.*	‡Fishing Rights
3/28/1968	United States v. Coleman, 390 U.S. 599 (1968)	Frank J. Berry	Mineral Rights
10/22/1969	Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970)*	*Louis Claiborne*	‡Riverbed Ownership
1/19/1970	Arkansas v. Tennessee, 397 U.S. 88 (1970)^		§River Boundary
10/22/1970	Hickel v. Oil Shale Corp., 400 U.S. 48 (1970)*	Peter L. Strauss	Minerals Rights
1/11/1971	Citizens to Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402 (1972)	SG Erwin Griswold	Freeway Construction
1/18/1971	Ohio v. Wyandotte Chems. Corp., 401 U.S. 493 (1973)^	*Peter Strauss*	Water Pollution
3/1/1971	United States v. S. Ute Tribe or Band of Indians, 402 U.S. 159 (1971)	Lawrence Wallace	‡Land Ownership
3/2/1971	United States v. Dist. Court of Eagle Cty., 401 U.S. 520 (1971)	Walter Kiechel, Jr., ENRD AAG	Water Rights
3/2/1971	United States v. Dist. Court of Water Div. No. 5, 401 U.S. 527 (1971)	Walter Kiechel, Jr., ENRD AAG	Water Rights
4/26/1971	United States v. Int'l Minerals & Chem. Corp., 402 U.S. 558 (1971)	John F. Dienelt	Hazmat-Transport
4/26/1971	Utah v. United States, 403 U.S. 9 (1971)^	Peter Strauss	Submerged Lands Ownership

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
11/17/1971	Sierra Club v. Morton, 405 U.S. 727 (1972)	SG Erwin Griswold	Conservation from Development
2/28/1972	Washington v. Gen. Motors Corp., 406 U.S. 109 (1972)*^		Air Pollution
2/29/1972	Illinois v. Milwaukee, 406 U.S. 91 (1972)^		Water Pollution
3/29/1972	Nebraska v. Iowa, 406 U.S. 117 (1972)^		§River Boundary
10/18/1972	Almota Farmers Elevator & Warehouse Co. v. United States, 409 U.S. 470 (1973)	Kent Frizzell, ENRD AAG	Eminent Domain
10/18/1972	United States v. Fuller, 409 U.S. 488 (1973)	Harry Sachse	Public Lands
11/9/1972	U.S. Envtl. Prot. Agency v. Mink, 410 U.S. 73 (1973)	Roger Cramton, OLC AAG	Nuclear Materials
11/14/1972	Askew v. Am. Waterways Operators, Inc., 411 U.S. 325 (1973)		Oil Spills
12/11/1972	Texas v. Louisiana, 410 U.S. 702 (1973)^		§Water Boundary
1/8/1973	Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973)		Water Rights
1/8/1973	Associated Enters., Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973)		Water Rights
1/10/1973	Ohio v. Kentucky, 410 U.S. 641 (1973)^		§River Boundary
1/15/1973	United States v. Little Lake Misere Land Co., 412 U.S. 580 (1973)*	Wm. Bradford Reynolds	Mineral Rights
2/20/1973	Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973)	*Daniel Friedman*	Aircraft Noise Control
2/28/1973	United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973)	SG Erwin Griswold	Recycling of Materials

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
3/27/1973	United States v. Pa. Indus. Chem. Corp., 411 U.S. 655 (1973)	Wm. Bradford Reynolds	Water Pollution
3/27/1973	Mattz v. Arnett, 412 U.S. 481 (1973)*	*Harry Sachse*	‡Fishing Rights
4/18/1973	Fri v. Sierra Club, 412 U.S. 541 (1973)	Lawrence Wallace	Air Pollution
10/10/1973	Dep't of Game v. Puyallup Tribe, 414 U.S. 44 (1973)	Harry Sachse	‡Fishing Rights
10/15/1973	Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973)		Riverbed Ownership
12/5/1973	Mississippi v. Arkansas, 415 U.S. 289 (1974)^		§River Boundary
2/19/1974	Vill. of Belle Terre v. Boraas, 416 U.S. 1 (1974)*		Land Use Restriction
4/25/1974	Air Pollution Variance Bd. v. W. Alfalfa Corp., 416 U.S. 861 (1974)	*Edmund Kitch*	Air Pollution
11/12/1974	Train v. Campaign Clean Water, Inc., 420 U.S. 136 (1975)	SG Robert Bork	Water Pollution
11/12/1974	Train v. New York, 420 U.S. 35 (1975)	SG Robert Bork	Water Pollution
12/16/1974	Antoine v. Washington, 420 U.S. 194 (1975)		‡Hunting Rights
12/17/1974	Utah v. United States, 420 U.S. 304 (1975)^	Danny J. Boggs	Submerged Lands Ownership
1/13/1975	Chemehuevi Tribe of Indians v. Fed. Power Comm'n, 420 U.S. 395 (1975)	Lawrence Wallace	Power Plant Water Consumption
1/15/1975	Train v. Natural Res. Def. Council (NRDC), 421 U.S. 60 (1975)	Gerald P. Norton	Air Pollution
1/22/1975	Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975)		Pipeline Construction
2/24/1975	United States v. Maine, 420 U.S. 515 (1975) *^	SG Robert Bork	Submerged Lands Ownership
2/24/1975	United States v. Louisiana, 420 U.S. 529 (1975)^	Louis Claiborne	Submerged Lands Ownership

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
2/25/1975	United States v. Florida, 420 U.S. 531 (1975)^	Keith Jones	Submerged Lands Ownership
3/26/1975	Aberdeen & Rockfish R.R. Co. v. SCRAP, 422 U.S. 289 (1975)	A. Raymond Randolph	Recycling of Materials
4/16/1975	United States v. Alaska, 422 U.S. 184 (1975)	A. Raymond Randolph	Submerged Lands Ownership
10/14/1975	Alamo Land & Cattle Co. v. Arizona, 424 U.S. 295 (1976)*		Granted Lands Ownership
12/9/1975	Train v. Colo. Pub. Interest Research Grp., 426 U.S. 1 (1976)	A. Raymond Randolph	Nuclear Materials; Water Pollution
1/13/1976	Hancock v. Train, 426 U.S. 167 (1976)	SG (acting) Daniel Friedman	Air Pollution
1/13/1976	U.S. Envtl. Prot. Agency v. Cal. *ex rel.* State Water Res. Control Bd., 426 U.S. 200 (1976)	SG (acting) Daniel Friedman	Water Pollution
1/19/1976	Texas v. Louisiana, 426 U.S. 465 (1976)^	John Rupp	§Marine Boundary
1/12/1976	Cappaert v. United States, 426 U.S. 128 (1976)	A. Raymond Randolph	Species Protection; Water Rights
1/21/1976	Union Elec. Co. v. U.S. Envtl. Prot. Agency, 427 U.S. 246 (1976)	Peter R. Taft, ENRD AAG	Air Pollution
3/23/1976	Kleppe v. New Mexico, 426 U.S. 529 (1976)	A. Raymond Randolph	Species Protection; Public Lands
3/29/1976	N. Cheyenne Tribe v. Hollowbreast , 425 U.S. 649 (1976)		‡Mineral Rights
4/19/1976	New Hampshire v. Maine, 426 U.S. 363 (1976)^		§Marine Boundary
4/27/1976	Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla., 426 U.S. 776 (1976)	Howard Shapiro	Impacts of Development
4/28/1976	Kleppe v. Sierra Club, 427 U.S. 390 (1976)	A. Raymond Randolph	Impacts of Minerals Extraction

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
10/4/1976	Oregon *ex rel.* State Land Bd. v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977)		Riverbed Ownership
11/3/1976	Philadelphia v. New Jersey, 430 U.S. 141 (1977)		Waste Disposal
12/8/1976	E.I. duPont de Nemours & Co. v. Train, 430 U.S. 112 (1977)	Daniel M. Friedman	Water Pollution
1/12/1977	U.S. Envtl. Prot. Agency v. Brown, 431 U.S. 99 (1977)	A. Raymond Randolph	Air Pollution
1/17/1977	Douglas v. Seacoast Prods., Inc., 431 U.S. 265 (1977)		Fishing Rights
10/5/1977	Baldwin v. Fish & Game Comm'n of Mont., 436 U.S. 371 (1978)		Hunting Rights
10/11/1977	Adamo Wrecking Co. v. United States, 434 U.S. 275 (1978)	Frank Easterbrook	Air Pollution
10/31/1977	Ray v. Atl. Richfield Co., 435 U.S. 151 (1978)		Oil Spills
3/20/1978	Duke Power Co. v. Carolina Envtl. Study Grp., Inc., 438 U.S. 59 (1978)	SG Wade McCree	Nuclear Energy
3/27/1978	Philadelphia v. New Jersey, 437 U.S. 617 (1978)		Waste Disposal
3/28/1978	California v. United States, 438 U.S. 645 (1978)	Stephen Barnett	Water Rights
4/17/1978	Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978)	Patricia Wald	Historic Preservation
4/18/1978	Andrus v. Charlestone Stone Prods. Co., 436 U.S. 604 (1978)	Sara Sun Beale	Mineral Rights
4/18/1978	Tenn. Valley Auth. v. Hill, 437 U.S. 153 (1978)	Griffin Bell, Attorney General	Species Protection
4/18/1978	Andrus v. Sierra Club, 442 U.S. 347 (1979)	John M. Harmon, OLC AAG	Public Lands Mgmt.
4/24/78	United States v. New Mexico, 438 U.S. 696 (1978)*	James Moorman, ENRD AAG	Water Rights

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
11/28/1978	Vt. Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978)	Lawrence Wallace	Nuclear Energy
12/4/1978	Lake Country Estates v. Tahoe Reg'l Planning Agency, 440 U.S. 391 (1979)		Land Use Restriction
1/9/1979	Hughes v. Oklahoma, 441 U.S. 322 (1979)		Species Protection
1/15/1979	Leo Sheep Co. v. United States, 440 U.S. 668 (1979)	Sara Sun Beale	Granted Lands Ownership
2/28/1979	Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658 (1979)	Louis Claiborne	‡Fishing Rights
3/21/1979	Wilson v. Omaha Indian Tribe, 442 U.S. 653 (1979)	Sara Sun Beale	‡River Boundary
10/1/1979	Vaughn v. Vermilion Corp., 444 U.S. 206 (1979)		Public Rights to Waterways
10/1/1979	Andrus v. Allard, 444 U.S. 51 (1979)	Harriet Shapiro	Species Protection
10/10/1979	Indus. Union Dep't v. Am. Petroleum Inst., 448 U.S. 607 (1980)	William Alsup	Workplace Toxics
10/1/1979	Kaiser Aetna v. United States, 444 U.S. 164 (1979)	Kathryn Oberly	Public Rights to Waterways
12/3/1979	Ohio v. Kentucky, 444 U.S. 335 (1980)^		§River Boundary
12/3/1979	United States v. Mitchell, 445 U.S. 535 (1980)	Louis Claiborne	‡Land Mgmt.
12/5/1979	Costle v. Pac. Legal Found., 445 U.S. 198 (1980)	William Alsup	Water Pollution
12/5/1979	Andrus v. Utah, 446 U.S. 500 (1980)	Peter Buscemi	Public Lands Ownership
1/15/1980	United States v. Clarke, 445 U.S. 253 (1980)*	Harlon Dalton	‡Rights to Land
1/15/1980	Andrus v. Shell Oil Co., 446 U.S. 657 (1980)	Lawrence Wallace	Mineral Rights
1/16/1980	Harrison v. PPG Indus., Inc., 446 U.S. 578 (1980)	Maryann Walsh	Air Pollution
2/25/1980	Andrus v. Idaho, 445 U.S. 715 (1980)	Stuart A. Smith	Public Lands Ownership
2/26/1980	United States v. Ward, 448 U.S. 242 (1980)	Edwin Kneedler	Water Pollution

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
3/17/1980	United States v. California, 447 U.S. 1 (1980)^	Stephen Shapiro	Submerged Lands Ownership
3/17/1980	Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557 (1980)		Electricity Consumption
3/18/1980	United States v. Louisiana, 446 U.S. 253 (1980)^	Louis Claiborne	Submerged Lands Ownership
3/24/1980	United States v. Sioux Nation of Indians, 448 U.S. 371 (1980)	Louis Claiborne	‡Rights to Land
3/25/1980	Bryant v. Yellen, 447 U.S. 352 (1980)	SG Wade McCree	Water Rights
4/14/1980	California v. Nevada, 447 U.S. 125 (1980)^		§Boundary
4/15/1980	Agins v. Tiburon, 447 U.S. 255 (1980)		Land Use Restriction
10/7/1980	U.S. Envtl. Prot. Agency v. Nat'l Crushed Stone Ass'n, 449 U.S. 64 (1980)	Andrew Levander	Water Pollution
11/3/1980	Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1980)	*Harlon Dalton*	Recycling of Materials
12/1/1980	San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621 (1981)		Land Use Restriction
12/2/1980	Milwaukee v. Illinois, 451 U.S. 304 (1981)	*Andrew Levander*	Water Pollution
12/3/1980	Montana v. United States, 450 U.S. 544 (1981)	Louis Claiborne	‡Fishing Rights
1/13/1981	Watt v. Alaska, 451 U.S. 259 (1981)	Louis Claiborne	Alaska
1/21/1981	California v. Sierra Club, 451 U.S. 287 (1981)	Elinor H. Stillman	Water Project Construction
2/23/1981	Hodel v. Va. Surface Mining & Reclamation Ass'n, 452 U.S. 264 (1981)	Buscemi, Peter	Coal Mining
2/23/1981	Hodel v. Indiana, 452 U.S. 314 (1981)	Buscemi, Peter	Coal Mining

Date of Argument	Case	Arguing Cause for the U.S.	Environmental Amenity, Risk, or Burden at Issue
2/24/1981	Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n, 453 U.S. 1 (1981)	Alan Horowitz	Water Pollution; Fishery Protection
2/25/1981	Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981)		Land Use Restriction
3/30/1981	Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981)		Coal Mining
10/5/1981	Watt v. Energy Action Educ. Found., 454 U.S. 151 (1981)	Louis Claiborne	Offshore Oil and Gas Leasing
10/6/1981	Texaco, Inc. v. Short, 454 U.S. 516 (1982)		Mineral Rights
10/7/1981	Zobel v. Williams, 457 U.S. 55 (1982)		Alaska
10/13/1981	Weinberger v. Catholic Action of Haw./Peace Educ. Project, 454 U.S. 139 (1981)	SG Rex Lee	Nuclear Materials
1/19/1982	Fed. Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742 (1982)	SG Rex Lee	Energy Conservation
2/23/1982	Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982)	Elinor H. Stillman	Water Pollution
3/29/1982	California *ex rel.* State Lands Comm'n v. United States, 457 U.S. 273 (1982)^	Louis Claiborne	Submerged Lands Ownership
3/30/1982	Sporhase v. Nebraska *ex rel.* Douglas, 458 U.S. 941 (1982)		Water Rights
10/4/1982	Colorado v. New Mexico, 459 U.S. 176 (1982)^		§Water Rights
11/2/1982	North Dakota v. United States, 460 U.S. 300 (1983)	Barbara Etkind	Wetlands Protection
12/8/1982	Arizona v. California, 460 U.S. 605 (1983)	Louis Claiborne	§Water Rights
1/17/1983	Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190 (1983)	Louis Claiborne	Nuclear Materials
1/17/1983	Watt v. W. Nuclear, Inc., 462 U.S. 36 (1983)	John H. Garvey	Mineral Rights

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2/23/1983	Block v. North Dakota *ex rel.* Bd. of Univ. & Sch. Lands, 461 U.S. 273 (1983)	Louis Claiborne	Riverbed Ownership
3/1/1983	Metro. Edison Co. v. People Against Nuclear Energy, 460 U.S. 766 (1983)	Paul Bator	Nuclear Energy
3/1/1983	United States v. Mitchell, 463 U.S. 206 (1983)	Joshua I. Schwartz	‡Lands Mgmt.
3/23/1983	Idaho *ex rel.* Evans v. Oregon, 462 U.S. 1017 (1983)^		§Fishing Rights
3/23/1983	Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983)	Louis Claiborne	‡Water Rights
3/30/1983	Texas v. New Mexico, 462 U.S. 554 (1983)^		§Water Rights
4/19/1983	Balt. Gas & Elec. Co. v. NRDC, 462 U.S. 87 (1983)	David A. Strauss	Nuclear Materials
4/27/1983	Nevada v. United States, 463 U.S. 110 (1983)	Edwin Kneedler	‡Water Rights
10/4/1983	Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984)	*John H. Garvey*	Nuclear Materials
11/1/1983	Sec'y of the Interior v. California, 464 U.S. 312 (1984)	SG Rex Lee	Offshore Oil and Gas Leasing
1/9/1984	Colorado v. New Mexico, 467 U.S. 310 (1984)		§Water Rights
1/16/1984	Louisiana v. Mississippi, 466 U.S. 96 (1984)^		§River Boundary
2/22/1984	Kirby Forest Indus., Inc. v. United States, 467 U.S. 1 (1984)	Harriet Shapiro	Public Lands
2/27/1984	Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)	Lawrence Wallace	Pesticides
2/29/1984	Summa Corp. v. California *ex. rel.* State Lands Comm'n, 466 U.S. 198 (1984)	*Louis Claiborne*	Tidelands Conservation
2/29/1984	Chevron, U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)	Paul Bator	Air Pollution
3/26/1984	Escondido Mut. Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765 (1984)	Elliot Schulder	‡Water Rights

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3/26/1984	Haw. Hous. Auth. v. Midkiff, 467 U.S. 229 (1984)		Land Use Restriction; Hawaii
10/10/1984	Ohio v. Kovacs, 469 U.S. 274 (1985)	*Kathryn Oberly*	Contaminated Site
11/6/1984	United States v. Locke, 471 U.S. 84 (1985)	Carolyn Corwin	Mineral Rights
11/16/1984	Chem. Mfrs. Ass'n v. NRDC, 470 U.S. 116 (1985)	Samuel Alito	Water Pollution
11/26/1984	United States v. Maine, 469 U.S. 504 (1985)^	Louis Claiborne	§Marine Boundary
11/26/1984	United States v. Louisiana, 470 U.S. 93 (1985)^	Louis Claiborne	Submerged Lands Ownership
1/15/1985	Montana v. Blackfeet Tribe of Indians, 471 U.S. 759 (1985)	*Edwin Kneedler*	‡Minerals Ownership
2/19/1985	Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S.172 (1985)	*Edwin Kneedler*	Land Use Restriction
2/27/1985	Or. Dep't of Fish & Wildlife v. Klamath Indian Tribe, 473 U.S. 753 (1985)		‡Hunting & Fishing Rights
3/26/1985	Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568 (1985)	Lawrence Wallace	Pesticides
10/8/1985	Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n, 475 U.S. 1 (1986)		Electric Utilities
10/16/1985	United States v. Riverside Bayview Homes, Inc., 474 U.S. 121 (1985)	Kathryn Oberly	Wetlands Protection
10/16/1985	Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot., 474 U.S. 494 (1986)		Contaminated Site
12/9/1985	Exxon Corp. v. Hunt, 475 U.S. 355 (1986)		Contaminated Site
12/10/1985	Dow Chem. Co. v. United States, 476 U.S. 227 (1986)	Alan Horowitz	Air Pollution

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12/12/1985	United States v. Maine, 475 U.S. 89 (1986)^	Louis Claiborne	Marine Boundary
12/12/1985	South Carolina v. Catawba Indian Tribe, Inc., 476 U.S. 498 (1986)		‡Land Ownership
2/24/1986	Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986)		Coastal Authority
3/3/1986	Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 478 U.S. 546 (1986)	Kathryn Oberly	Air Pollution
3/24/1986	Maine v. Taylor, 477 U.S. 131 (1986)	Jerrold Ganzfried	Species Protection; Fisheries
3/26/1986	MacDonald, Sommer & Frates v. Cnty. of Yolo, 477 U.S. 340 (1986)		Land Use Restriction
4/21/1986	United States v. James, 478 U.S. 597 (1986)	Andrew Pincus	Flood Control
4/22/1986	United States v. Mottaz, 476 U.S. 834 (1986)	Edwin Kneedler	‡Land Ownership
4/30/1986	Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221 (1986)	Arnold Burns, Assoc. Atty. Gen.	Species Protection
10/3/1986	Pennsylvania v. Del. Valley Citizens' Council for Clean Air, 483 U.S. 711 (1987)*	Donald Ayer	Air Pollution
10/6/1986	Hodel v. Irving, 481 U.S. 704 (1987)	Edwin Kneedler	‡Land Ownership
10/10/1986	Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987)		Coal Mining
11/4/1986	Int'l Paper Co. v. Ouellette, 479 U.S. 481 (1986)	*Lawrence Wallace*	Water Pollution
12/2/1986	Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572 (1987)	*Jeffrey Minear*	Mining; Public Lands
1/12/1987	Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531 (1987)	F. Henry Habicht II, AAG ENRD	Alaska
1/14/1987	First English Evangelical Lutheran Church v. Cnty. of L.A., 482 U.S. 304 (1987)		Land Use Restriction

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1/20/1987	Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370 (1987)	Paul Larkin	Contaminated Site
1/21/1987	Tull v. United States, 481 U.S. 412 (1987)	Lawrence Wallace	Wetlands Protection
2/23/1987	United States v. Cherokee Nation, 480 U.S. 700 (1987)	Jeffrey Minear	‡Riverbed Interests
3/23/1987	Utah Div. of State Lands v. United States, 482 U.S. 193 (1987)	Edwin Kneedler	Submerged Lands Ownership
3/30/1987	Nollan v. Cal. Coastal Comm'n, 483 U.S. 825 (1987)		Beachfronts
4/29/1987	Texas v. New Mexico, 482 U.S. 124 (1987)^		§Water Rights
10/5/1987	Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49 (1987)		Water Pollution
11/3/1987	ETSI Pipeline Project v. Missouri, 484 U.S. 495 (1988)	Jeffrey Minear	Water Rights
11/9/1987	Phillips Petroleum Co. v. Mississippi, 484 U.S. 469 (1988)		Submerged Lands Ownership
11/30/1987	Lyng v. Nw. Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988)	Andrew Pincus	Public Lands Mgmt.
1/11/1988	United States v. Louisiana,^ 485 U.S. 88 (1988)	Jeffrey Minear	Submerged Lands Ownership
10/31/1988	Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989)		Contaminated Site
11/30/1988	Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989)		‡Natural Resource Taxation
1/9/1989	Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989)	SG Charles Fried	Public Lands Mgmt.
1/9/1989	Marsh v. Or. Nat. Res. Council, 490 U.S. 360 (1989)	SG Charles Fried	Dam Construction
1/10/1989	Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation, 492 U.S. 408 (1989)		‡Lands Mgmt.

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4/25/1989	New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350 (1989)	*Richard Lazarus*	Utility Ratemaking
10/4/1989	Hallstrom v. Tillamook Cnty., 493 U.S. 20 (1989)	*Brian Martin*	Waste Disposal
1/8/1990	Georgia v. South Carolina, 497 U.S. 376 (1990)^		Marine Boundary
3/20/1990	California v. Fed. Power Comm'n, 495 U.S. 490 (1990)	Stephen Nightingale	Species Protection
3/21/1990	Gen. Motors Corp. v. United States, 496 U.S. 530 (1990)	Lawrence Wallace	Air Pollution
4/16/1990	Lujan v. Nat'l Wildlife Found. 497 U.S. 871 (1990)	SG (acting) John G. Roberts, Jr.	Public Lands Mgmt.
3/18/1991	Illinois v. Kentucky, 500 U.S. 380 (1991)^		§River Boundary
4/16/1991	Oklahoma v. New Mexico, 501 U.S. 221 (1991)^		§Water Rights
4/24/1991	Wis. Pub. Intervenor v. Mortier, 501 U.S. 597 (1991)	*Lawrence Wallace*	Pesticides
11/4/1991	Wyoming v. Oklahoma, 502 U.S. 437 (1992)^		Coal Mining
12/2/1991	Robertson v. Seattle Audubon Soc'y, 503 U.S. 429 (1992)	SG Kenneth Starr	Species Protection
12/3/1991	U.S. Dep't of Energy v. Ohio, 503 U.S. 607 (1992)	James Feldman	Water Pollution; Waste Disposal
12/3/1991	Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992)	Edwin Kneedler	Species Protection
12/11/1991	Arkansas v. Oklahoma, 503 U.S. 91 (1992)	Lawrence Wallace	Water Pollution
1/22/1992	Yee v. Escondido, 503 U.S. 519 (1992)		Land Use Restriction
2/24/1992	United States v. Alaska, 503 U.S. 569 (1992)^	Jeffrey Minear	Marine Boundary
3/2/1992	Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992)		Beachfronts
3/23/1992	Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88 (1992)	*William K. Kelley*	Occupational Safety; Haz. Waste

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3/30/1992	Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Natural Res., 504 U.S. 353 (1992)		Waste Disposal
3/30/1992	New York v. United States, 505 U.S. 144 (1992)	Lawrence Wallace	Radioactive Waste
4/21/1992	Chem. Waste Mgmt., Inc. v. Hunt, 504 U.S. 334 (1992)	*Edwin Kneedler*	Waste Disposal
4/21/1992	Burlington v. Dague, 505 U.S. 557 (1992)	*Richard Seamon*	Waste Disposal
11/9/1992	Mississippi v. Louisiana, 506 U.S. 73 (1992)		§River Boundary
1/13/1993	Nebraska v. Wyoming, 507 U.S. 584 (1993)^	Jeffrey Minear	§Water Rights
3/2/1993	South Dakota v. Bourland, 508 U.S. 679 (1993)	*James Feldman*	‡ Hunting & Fishing Regulation
12/7/1993	C&A Carbone, Inc. v. Town of Clarkston, 511 U.S. 383 (1993)		Waste Disposal
1/18/1994	Or. Waste Sys., Inc. v. Or. Dep't of Envtl. Quality, 511 U.S. 93 (1994)		Waste Disposal
1/19/1994	Chicago v. Envtl. Def. Fund (EDF), 511 U.S. 328 (1994)	*Jeffrey Minear*	Waste Disposal
2/23/1994	PUD No. 1 of Jefferson Cnty. v. Wash. Dep't of Ecology, 511 U.S. 700 (1994)	*Lawrence Wallace*	Fish Habitat
2/23/1994	Ladue v. Gilleo, 512 U.S. 43 (1994)	*Paul Bender*	Land Use Restriction
3/23/1994	Dolan v. Tigard, 512 U.S. 374 (1994)	*Edwin Kneedler*	Land Use Restriction
3/29/1994	Key Tronic Corp. v. United States, 511 U.S. 809 (1994)	Lawrence Wallace	Contaminated Site
10/12/1994	Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527 (1995)		Admiralty Jurisdiction
3/21/1995	Kansas v. Colorado, 514 U.S. 673 (1995)^	Jeffrey Minear	§Water Rights
3/21/1995	Nebraska v. Wyoming, 515 U.S. 1 (1995)^	Jeffrey Minear	§Water Rights

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4/17/1995	Babbitt v. Sweet Home Chapter of Communities for a Great Or., 515 U.S. 687 (1995)	Edwin Kneedler	Species Protection
10/3/1995	Louisiana v. Mississippi, 516 U.S. 22 (1995)		§River Boundary
1/10/1996	Meghrig v. KFC W., Inc., 516 U.S. 479 (1996)	Jeffrey Minear	Contaminated Site
11/13/1996	Bennett v. Spear, 520 U.S. 154 (1997)	Edwin Kneedler	Species Protection
12/2/1996	Babbitt v. Youpee, 519 U.S. 234 (1997)	James Feldman	‡Lands Mgmt.
2/18/1997	Amchem Prods., Inc. v. Windsor, 521 U.S. 591 (1997)		Toxic Torts
2/19/1997	Boerne v. Flores, 521 U.S. 507 (1997)	SG (acting) Walter Dellinger	Historic Preservation
2/24/1997	United States v. Alaska, 521 U.S. 1 (1997)^	Jeffrey Minear	Submerged Lands Ownership
2/26/1997	Suitum v. Tahoe Reg'l Planning Agency, 520 U.S. 725 (1997)	*Lawrence Wallace*	Land Use Restriction
10/6/1997	Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1997)	*Irving Gornstein*	Public Information
10/16/1997	Idaho v. Coeur d'Alene Tribe, 521 U.S. 261 (1997)		‡Submerged Lands Ownership
12/8/1997	South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998)	*Barbara McDowell*	‡Land Rights; Waste Disposal
12/10/1997	Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520 (1998)		‡Land Rights; Alaska
1/12/1998	New Jersey v. New York, 523 U.S. 767 (1998)^	*Jeffrey Minear*	§Land Rights
2/25/1998	Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998)	Malcolm Stewart	Public Lands Mgmt.
3/4/1998	E. Enters v. Apfel, 524 U.S. 498 (1998)	Edwin Kneedler	Coal Industry
3/24/1998	United States v. Bestfoods, 524 U.S. 51 (1998)	Lois Schiffer, ENRD AAG	Contaminated Site

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4/27/1998	United States v. Beggerly, 524 U.S. 38 (1998)	Paul R.Q. Wolfson	Public Lands
10/7/1998	Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1998)	Edwin Kneedler	Land Use Restriction
4/19/1999	Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865 (1999)	Jeffrey Minear	‡Mineral Rights
10/12/1999	Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167 (2000)	*Jeffrey Minear*	Water Pollution
12/7/1999	United States v. Locke, 529 U.S. 89 (2000)	David Frederick	Oil Spills
3/1/2000	Pub. Lands Council v. Babbitt, 529 U.S. 728 (2000)	Edwin Kneedler	Public Lands Mgmt.
10/31/2000	Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159 (2001)	Lawrence Wallace	Wetlands Protection
11/7/2000	Whitman v. Am. Trucking Ass'ns, Inc., 531 U.S. 457 (2001)	SG Seth Waxman	Air Pollution
10/30/2000	Cent. Green Co. v. United States, 531 U.S. 425 (2001)	David Frederick	Flood Control
2/26/2001	Palazzolo v. Rhode Island, 533 U.S. 606 (2001)	Malcolm Stewart	Wetlands Protection
4/23/2001	Idaho v. United States, 533 U.S. 262 (2001)	David Frederick	‡Submerged Lands Ownership
1/7/2002	Tahoe Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 202 (2002)	*SG Theodore Olson*	Land Use Restriction
12/10/2002	Borden Ranch P'ship v. U.S. Army Corps of Eng'rs, 537 U.S. 99 (2002)	Jeffrey Minear	Wetlands Protection
10/8/2003	Alaska Dep't of Envtl. Conservation v. U.S. Envtl. Prot. Agency, 540 U.S. 461 (2004)	Thomas Hungar	Air Pollution
1/14/2004	Engine Mfg. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246 (2004)	SG Theodore Olson	Air Pollution

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1/14/2004	S. Fla. Water Mgmt. v. Miccosukee Tribe, 541 U.S. 95 (2004)	Jeffrey Minear	Water Pollution
1/20/2004	BedRoc Ltd., LLC v. United States, 541 U.S. 176 (2004)	Thomas Sansonetti, ENRD AAG	Mineral Rights
3/29/2004	Norton v. S. Utah Wilderness Alliance, 542 U.S. 55 (2004)	Edwin Kneedler	Public Lands Mgmt.
4/21/2004	U.S. Dep't of Transp. v. Pub. Citizen, 541 U.S. 752 (2004)	Edwin Kneedler	Air Pollution
4/27/2004	Cheney v. U.S. Dist. Ct. D.C., 542 U.S. 367 (2004)	SG Theodore Olson	Energy Policy
10/6/2004	Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157 (2004)	Jeffrey Minear	Contaminated Site
1/10/2005	Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005)	*Lisa Blatt*	Pesticides
1/10/2005	Alaska v. United States, 545 U.S. 75 (2005)^	Jeffrey Minear	Submerged Lands Ownership
2/22/2005	Lingle v. Chevron, 544 U.S. 528 (2005)	*Edwin Kneedler*	Energy Markets
2/22/2005	Kelo v. New London, 545 U.S. 469 (2005)		Redevelopment
2/21/2006	S.D. Warren Co. v. Maine Bd. of Envtl. Prot., 547 U.S. 370 (2006)	*Jeffrey Minear*	Water Pollution
2/21/2006	Rapanos v. U.S. Army Corps of Eng'rs, 547 U.S. 715 (2006)	SG Paul Clement	Wetlands Protection
11/1/2006	Envtl. Def. v. Duke Energy Corp., 549 U.S. 561 (2007)	Thomas Hungar	Air Pollution
11/29/2006	Massachusetts v. U.S. Envtl. Prot. Agency, 549 U.S. 497 (2007)	Gregory Garre	Climate Change
1/8/2007	United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Agency, 550 U.S. 330 (2007)		Waste Disposal
4/17/2007	Nat'l Ass'n of Home Builders, et al. v. Defs. of Wildlife, 551 U.S. 664 (2007)	Edwin Kneedler	Water Pollution; Species Protection

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4/23/2007	United States v. Atl. Research Corp., 551 U.S. 128 (2007)	Thomas Hungar	Contaminated Site
11/6/2007	John R. Sand & Gravel Co. v. United States, 552 U.S. 130 (2008)	Malcolm Stewart	Contaminated Site
11/27/2007	New Jersey v. Delaware, 552 U.S. 597 (2008)^		§Submerged Lands Regulatory Jurisdiction
10/8/2008	Summers v. Earth Island Inst., 555 U.S. 488 (2009)	Edwin Kneedler	Public Lands Mgmt.
10/8/2008	Winter v. NRDC, 555 U.S. 7 (2008)	SG (acting) Gregory Garre	Marine Species Protection
12/1/2008	Kansas v. Colorado, 556 U.S. 98 (2009)^		§Water Rights
1/12/2009	Coeur Alaska, Inc. v. Se. Alaska Conservation Council, 557 U.S. 261 (2009)	SG Gregory Garre	Water Pollution
2/23/2009	United States v. Navajo Nation, 556 U.S. 287 (2009)	SG (acting) Edwin Kneedler	‡Mineral Rights
2/24/2009	Burlington N. v. United States, 556 U.S. 559 (2009)	Malcolm Stewart	Contaminated Site
2/25/2009	Hawaii v. Office of Hawaiian Affairs, 556 U.S.163 (2009)	*William M. Jay*	Public Trust-Hawaii
10/13/2009	South Carolina v. North Carolina, 558 U.S. 256 (2010)^	*Eric Miller*	Water Rights
12/2/2009	Entergy Corp. v. Riverkeeper, 556 U.S. 208 (2009)	Daryl Joseffer	Species Protection
12/2/2009	Stop the Beach Renourishment Inc. v. Fla. Dep't of Envtl. Prot., 560 U.S. 702 (2010)	*Edwin Kneedler*	Coastal Erosion
1/11/2010	Alabama v. North Carolina, 560 U.S. 330 (2010)^	*Edwin Kneedler*	Waste Disposal
4/27/2010	Monsanto v. Geertson Seed Farms, 561 U.S. 139 (2010)	Malcolm Stewart	Genetically Modified Organisms

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1/10/2011	Montana v. Wyoming, 563 U.S. 368 (2011)^	*William M. Jay*	Water Rights
4/19/2011	Am. Elec. Power Co. v. Connecticut, 131 S. Ct. 2527 (2011)	SG (acting) Neal Katyal	Climate Change
12/7/2011	PPL Mont. v. Montana, 132 S. Ct. 1215 (2012)	*Edwin Kneedler*	Submerged Lands Ownership
1/9/2012	Sackett v. U.S. Envtl. Prot. Agency, 132 S. Ct. 1367 (2012)	Malcolm Stewart	Wetlands Protection
3/19/2012	S. Union Co. v. United States, 132 S. Ct. 2344 (2012)	Michael Dreeben	Waste Disposal
10/3/2012	Ark. Game & Fish Comm'n v. United States, 133 S. Ct. 511 (2012)	Edwin Kneedler	Flood Control
12/3/2012	Decker v. Nw. Envtl. Def. Ctr., 133 S. Ct. 1326 (2013)	*Malcolm Stewart*	Water Pollution
12/4/2012	L.A. Cnty. Flood Control Dist. v. NRDC, 133 S. Ct. 710 (2013)	*Pratik Shah*	Water Pollution
1/15/2013	Koontz v. St. Johns River Water Mgmt., 133 S. Ct. 2586 (2013)	*Edwin Kneedler*	Wetlands Protection
4/16/2013	Am. Trucking v. Los Angeles, 133 S. Ct. 2096 (2013)	*John Bash*	Air Pollution
4/23/2013	Tarrant Reg'l Water Dist. v. Herrmann, 133 S. Ct. 2120 (2013)	*Ann O'Connell*	Water Rights
12/10/2013	U.S. Envtl. Prot. Agency v. EME Homer City Generation, 134 S. Ct. 1584 (2014)	Malcolm Stewart	Air Pollution
2/24/2014	Util. Air Regulatory Grp. v. U.S. Envtl. Prot. Agency, 134 S. Ct. 2427 (2014)	SG Donald Verilli, Jr.	Climate Change
4/23/2014	CTS Corp. v. Waldburger, 134 S. Ct. 2175 (2014)	*Joseph Palmore*	Contaminated Site
10/14/2014	Kansas v. Nebraska, 135 S. Ct. 1042 (2015)	*Ann O'Connell*	§Water Rights
11/5/2014	Yates v. United States, 135 S. Ct. 1074 (2015)	Roman Martinez	Fishery Protection
3/25/2015	Michigan v. U.S. Envtl. Prot. Agency, 135 S. Ct. 2699(2015)	SG Donald Verilli, Jr.	Air Pollution