Letter From The President

Despite the threatened disruption from Hurricane Sandy, your Association's 56th Annual Vanderbilt Lecture and annual meeting were held at The Manor as scheduled on November 8, 2012. With some luck, The Manor regained its power in time to host the event. We are grateful that the turnout was much better than one might have expected under the extremely inconvenient circumstances occasioned by Sandy. Chief Justice Stuart Rabner delivered a thoughtful and well-received talk regarding our Supreme Court's recent ruling on eyewitness identification.

During the evening, Stephen H. Roth, Esq. was honored as the third recipient of the Irwin Markowitz Award for outstanding service to your Association over the course of many years. As your President during this past year, I can attest that it is no exaggeration to say that without the dedicated and very able support of Steve, your Association would not function as well and as efficiently as it does. I am sure that Steve joins me in pointing out that he has been supported in this work by his talented and dedicated paralegal, Patty Smith. We should all be grateful for all the hard work they have done to promote the work of the Association. I personally extend my thanks and gratitude for their support during this past year.

In this issue, we continue our recent practice of selecting for recognition distinguished alumni of the Law School. This year, we have selected Judges Leonard Garth and John Gibbons for such recognition. Both have for many, many years rendered extremely valuable public service as federal district and court of appeals judges. Judge Garth continues to serve as a Senior Judge on the Third Circuit well into his 90's. Judge Gibbons has for some years now been at his law firm, where he continues his practice and public service through his enormous pro bono work. We should all be honored to be in the company of such outstanding individuals who are among our greatest alumni.

Mindful of the technological developments of our age, your Association sponsored a CLE-approved program conducted by Professor Andrew Rossner of the Rutgers Institute for Professional Education on the topics of technology and ethics. The program was organized by John Bartlett and was held at the Law Center in New Brunswick on September 27, 2012. I encourage you to read more about this timely and fascinating topic in the ensuing pages.

We continue to sponsor public interest fellows during the summer, as you will see in this issue. This past summer we funded three interns who worked in Newark at the Institute for Social Justice and at City Hall. Our 2012 summer fellows provide reflections on their experience that you may read in this issue.

The occasion of the Vanderbilt Lecture also serves as our annual meeting. All of your existing slate of officers were re-elected to another one-year term. As always, I want to close by reminding you of the importance of the work of the Association and of the desire to have more of you actively participate in our work as officers or trustees. Anyone who wishes to become actively involved should feel free to reach out to any of our officers and trustees and express your particular interest. But in order to do that, you must first join the Association and pay your dues. So join and pay now!

With best wishes for an enjoyable holiday season and a healthy and prosperous New Year. 

Hervé Gouraige ('77)
But, back to the Law School. In the days that I was enrolled as a student and thereafter, when I taught a number of trial advocacy seminars at Harvard for a number of September classes, I was reminded all too well of the rigor of studying, making case abstracts and facing annual examinations. Yet despite the difficulties presented in Constitutional Law (Professor Paul Freund), and the other courses of similar difficulty, these days I no longer think of those difficulties, but rather the ones that have faced me as a Court of Appeals Judge in the Third Circuit, for the last forty some odd years.

This exercise of recollection that Ron Brown has asked me to write has brought back not only memories of my former classmates, and of the professors who taught me, but of my sessions with the study group of which I was a member. I can remember preparing for the inquisitions that I anticipated at the hands of Professors Kaplan, Freund, Fuller, etc. I am happy to say I survived them and in later years was delighted to join with the many leaders of the bench and bar who provided leadership and luster to the Harvard Law School Association of New Jersey.

Judge Leonard I. Garth was appointed by President Nixon to the United States District Court for the District of New Jersey in 1969 and was elevated to the United States Court of Appeals for the Third Circuit in 1973. He has served—and is still serving—as a Senior Judge on that Court since 1986. From 1952 to 1955, Judge Garth was an Associate at Cole, Morrill & Nadell; from 1955 to 1969 he was a Partner at Cole, Berman & Garth. Judge Garth is now 91 years of age and has just completed his 43rd year on the Federal Bench. He is actively engaged as a Senior Judge with the Third Circuit maintaining chambers in North Branford, Connecticut (where he resides), as well as Newark and Philadelphia. Recently the Third Circuit dedicated the Atrium in the Martin Luther King, Jr. Building and United States Courthouse in Newark in Judge Garth’s name.

At his confirmation hearing, Justice Samuel A. Alito, Jr., who was one of Judge Garth’s early law clerks on the Court of Appeals, said Judge Garth “really epitomized open-mindedness and fairness. He read the record in detail in every single case... He insisted on scrupulously following precedents, both the precedents of the Supreme Court and the decisions of his own court, the Third Circuit. He taught all of his law clerks that every case has to be decided on an individual basis, and he really didn’t have much use for any grand theories.”

Born in Brooklyn in 1921, Judge Garth received his bachelor’s degree from Columbia University in 1942, after which he was selected as a Rockefeller Foundation Scholar for post-graduate study with the National Institute of Public Affairs. After service as a lieutenant in the U.S. Army, he entered Harvard Law School and graduated in 1952. He practiced law in New Jersey as a member of the law firm of Cole, Berman & Garth (now Cole, Schotz, Meisel, Forman & Leonard, P.A.) until he was appointed to the District Court bench.

Judge Leonard I. Garth continued on page 16
John J. Gibbons, Esq.¹

John J. Gibbons shared with the editor of The Connector, the following reflections about Harvard Law School:

“When I was a Senior at Holy Cross College I had never met a lawyer. My economics professor heard that I was thinking of applying to a graduate program in economics at a University in Great Britain, and he urged me to apply to law school instead. My father arranged for me to meet the General Counsel of the company he worked for and that attorney insisted that my clear choice among the four that accepted me must be Harvard Law School. Since he was then the first lawyer I had met I followed his advice, enrolling at Harvard in the fall of 1944.

Harvard was quite a change from my undergraduate experiences. Class performance by a student did not count for anything, since one’s grade depended entirely on the one final exam at term end. You got no feedback about your class performance. Harvard Law School was thus a perfect preparation for courtroom solo performances.

At that time, and so far as I know still today, the Law Review offered a position on its editorial board to the five students in each of the four sections that had the highest grade point averages, and to my surprise I was one of the five selected from my section.

Since I was still a Reserve Navy Officer I was not surprised to be assigned the task of writing an anonymous comment on the recently enacted but still not operative Uniform Code of Military Justice. That gave me the opportunity to work with Professor Edmund Morgan, who as a consultant to the U.S. Military had worked on that reform legislation. I was also lucky enough to be enrolled in Morgan’s Evidence Class. His class performance and his critique of my skepticism about reform of military justice convinced me I had made a sound choice in selecting the law as my life work, a choice I have never since regretted. Exposure to Edmund Morgan was the best thing I experienced at Harvard Law School. How fortunate I was!”

John J. Gibbons, former Chief Judge of the Third U.S. Circuit Court of Appeals and a director at Gibbons P.C. has committed his five-decade career to protecting the rule of law in this country, a commitment that had him defending the 660 men incarcerated at the Guantanamo Bay Naval Base.

National Recognition, Local Talent

A nationally recognized attorney, Judge Gibbons is listed among the nation’s leading business lawyers in the Chambers USA Guide to America’s Leading Business Lawyers where he is ranked number one among the state’s commercial litigators, and in The Best Lawyers in America, where he is ranked in the category of First Amendment Law. In 2005, he received the Lifetime Achievement award from The American Lawyer for his outstanding private practice and his dedication and contribution to the public good. He serves on the Editorial Board of The National Law Journal, and was named the 2004 Lawyer of the Year by the New Jersey Law Journal for his dedication to pro bono causes.

Judge Gibbons was born in Newark, and raised in Belleville. After serving in the Navy, he considered studying history in Europe, but instead a professor suggested he attend law school. Upon graduation from Harvard Law School, he returned to Newark to practice law for his current firm (then known as Crummy, Gibbons & O’Neill). In 1970, he was appointed to the Court of Appeals in Philadelphia, where he served for 20 years. He then returned to the firm and now provides valuable trial assistance on cases. He is a member of the National Panel of Distinguished Neutrals of the CPR Institute for Dispute Resolution² and has served as an arbitrator and a mediator in a number of large commercial disputes among major corporations. He has also engaged in litigation involving antitrust, intellectual property law and securities regulation, while also running the firm’s unique pro bono program - the John J. Gibbons Fellowship in Public Interest & Constitutional Law.

John J. Gibbons, Esq. ² continued on next page
John J. Gibbons, Esq., continued from previous page

Giving Back to His Profession and Community

Judge Gibbons founded, and currently is the director of, the John J. Gibbons Fellowship in Public Interest & Constitutional Law. This unique program goes beyond typical pro bono work, with three attorneys on staff at the firm who undertake public interest and constitutional law projects and litigation for a variety of cases, representing public interest organizations, government agencies, private non-profit corporations, courts and individuals. Under Judge Gibbons’ direction, the Fellowship has been involved in the most significant and controversial issues that confront the Federal and State courts today. This representation includes challenging the constitutionality of Megan’s Law; opposing the Attorney General’s decision to close deportation proceedings to the public for detainees arrested in the wake of 9/11; challenging racial profiling on the New Jersey Turnpike; serving as an advocate for inner city students in the landmark Abbott v. Burke school finance litigation; and defending battered and low-income women in cases concerning domestic violence, criminal prosecution for injuries to their unborn fetuses, and denial of welfare to children in families already receiving welfare. The Fellowship has litigated cases resulting in more than 125 reported decisions, including several in the United States Supreme Court in cases that Judge Gibbons argued personally.

Judge Gibbons was a leader in the successful legislative effort to abolish the death penalty in New Jersey, the first state to do so since 1976 when the United States Supreme Court reinstated capital punishment. Judge Gibbons is passionate about challenging the constitutionality and proportionality of the death penalty and is currently active in the death penalty abolition movement in other states.

Judge Gibbons has also shared his commitment to the rule of law with students of Constitutional Law and other subjects at the Seton Hall University School of Law, where he held the Richard J. Hughes Chair in Constitutional Law until June of 1997. He has also taught at Rutgers University Law School, Duke University Law School, and Suffolk University Law School and has authored numerous Law Review articles.

Professional Activities

- Member, 1960-1964, and Chairman, 1963-1964, New Jersey Board of Bar Examiners
- Member, Governor’s Select Committee on Civil Disorders, 1967-1968
- Member, New Jersey Council Against Crime, 1968-1970
- Member, Council of New Jersey Department of Community Affairs, 1968-1970
- Fellow, American Bar Foundation
- Member, Essex County Bar Association
- President, New Jersey State Bar Association, 1967-1968
- Member, American Bar Association

Publications

- “Commentary on the Terror on Trial Symposium,” 28 University of Texas Review of Litigation 297, 2008
- Symposium, Fresh Considerations on Federalism and Separation of Powers: Some Thoughts on Political Structure as Constitutional Law,” 31 Seton Hall Law Review 30, 2000
- “Symposium, Emerging Constitutional Rights: Health Care and Education,” 16 Seton Hall Legislative Journal 36, 1992
- “Governance of Industrial Corporations in an Industrial Democracy,” 31 The Business Lawyer 1393, 1976
- “Remarks at Commencement,” 27 Rutgers Law Review 237, 1974

Correction:

And we’re reaching out to current students with a...
On September 27, 2012 the HLSA-NJ sponsored a reception and Symposium at the Law Center, New Brunswick, New Jersey. The subject of the Symposium was "Attorneys, Technology, and Ethics". Professor Andrew Rossner led the attendees through a stimulating interactive consideration of ethical issues presented by seemingly everyday activities as the following:

- the use of e-mail to communicate with clients,
- the use of mobile applications on smart phones,
- the use of off-site third party services for e-mail or electronic file storage,
- using the Internet,
- maintaining a firm web page, and
- the use of social networks including Facebook, LinkedIn, blogs, and chat rooms.

Using five scenarios involving ethics and technology, participants interacted with one another and Professor Rossner. One scenario involved an internet blog with Facebook pages to Facebook “friends.” In another scenario, Professor Rossner directed the attendees’ attention to Stengart v. Loving Care Agency.

This New Jersey case presented novel questions about the extent to which an employee can expect privacy and confidentiality in personal e-mails with her attorney, which she accessed on a computer belonging to her employer. Marina Stengart used her company-issued laptop to exchange e-mails with her lawyer through her personal, password-protected, web-based e-mail account. She later filed an employment discrimination lawsuit against her employer, Loving Care Agency, Inc. (Loving Care), and others. In anticipation of discovery, Loving Care hired a computer forensic expert to recover all files stored on the laptop including the e-mails, which had been automatically saved on the hard drive. Loving Care’s attorneys reviewed the e-mails and used information culled from them in the course of discovery. In response, Stengart’s lawyer demanded that communications between

CLE PROGRAM

continued on next page
**STEPHEN ROTH RECEIVES THE IRWIN MARKOWITZ ALUMNI SERVICE AWARD**

On November 8, 2012, Stephen Roth became the third recipient of the Irwin S. Markowitz Alumni Service Award “for his decades of exemplary service to HLSA/NJ and the community of Harvard Law School alumni in New Jersey, and with deep appreciation for his work to promote the strength and continuity of the Association”. The first recipient was Albert Cohn. The second recipient was Judge Dave Landau. Gerri Markowitz, who was married to Irwin for 51 years, was present when Mr. Roth was recognized as the recipient of this year’s award.

**CLE PROGRAM continued from previous page**

him and Stengart, which he considered privileged, be identified and returned. Opposing counsel disclosed the documents but maintained that the company had the right to review them. Stengart then sought relief in court.

The trial court ruled that in light of the company’s written policy on electronic communications, Stengart waived the attorney-client privilege by sending e-mails on a company computer. That computer use policy in part stated the following:

- “The company reserves and will exercise the right to review, audit, intercept, access and disclose all matters on the company’s media systems and services at any time, with or without notice.”
- “E-mail and voice mail messages, internet use and communication and computer files are considered part of the company’s business and client records. Such communications are not to be considered private or personal to any individual employee.”
- “Occasional personal use is permitted; however, the system should not be used to solicit for outside business ventures, charitable organizations, or for any political or religious purpose, unless authorized by the Director of Human Resources.”

The Appellate Division reversed and found that Loving Care’s counsel had violated RPC 4.4(b) by reading and using the privileged documents.

The New Jersey Supreme Court held that “under the circumstances, Stengart could reasonably expect that e-mail communications with her lawyer through her personal [password-protected, web-based e-mail] account would remain private, and that sending and receiving them using a company laptop did not eliminate the attorney-client privilege that protected them.”

Chief Justice Rabner observed that the Company policy did not:

1. Provide adequate warning that the company would save on a hard drive, or monitor the contents of, emails sent from a personal account.
2. Make clear whether the use of personal, password-protected, web-based e-mail accounts via company equipment is covered.
3. Provide employees with express notice that messages sent or received on a personal, web-based e-mail account are subject to monitoring if company equipment is used to access the account.

Even if the policy was clear, Chief Justice Rabner warned: “Because of the important public policy concerns underlying the attorney-client privilege, even a more clearly written company manual—that is, a policy that banned all personal computer use and provided unambiguous notice that an employer can retrieve and read an employee’s attorney-client communications, if accessed on a personal, password-protected e-mail account using the company’s computer system—would not be enforceable.”

Professor Rossner noted that in a case by case context based analysis, “courts might treat e-mails transmitted via an employer’s e-mail account differently than they would web-based e-mails sent on the same company computer”; “the location of the company’s computer may also be a relevant consideration”; and “whether employee saved e-mail account password may be a factor.”

He also compared *Fazio v. Temporary Excellence, Inc.*, 2012 N.J. Super. Unpub. LEXIS 216 (App. Div. 2012).” It is true that TEI [company] lacked an e-mail policy. However, unlike the employee in *Stengart*, plaintiff took no steps whatsoever to shield the e-mails from his employer. Instead, he repeatedly sought legal advice about the negotiation for the purchase of TEI using his employer’s own e-mail system on its own computer equipment, and did not password-protect those communications. Under these circumstances, he had no reasonable expectation of privacy.”

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7 The Connector, Fall/Winter 2006 (“Irwin Markowitz was one of the Association’s most active members. As far back as anyone can remember, he was the primary organizer of the Vanderbilt Lecture program, and a sparkling presence at the event itself.”)
GEORGE J. ANDRESAKES, 98, passed away peacefully on Aug. 4, 2012, at Crane's Mill in Caldwell, N.J. George was born and raised in Montclair. After attending Montclair High School, he received a scholarship to Lafayette College in Easton, Pa. He was active in the choir and theater and was captain of the cheerleading squad and a member of the Delta Upsilon fraternity. Upon his graduation in 1936, he attended Harvard Law School, from which he graduated in 1939. In 1942, he married Louise Giblin, also of Montclair. After their first meeting in his father's ice cream parlor, George wrote a note to himself - "Louise - little, but oh my" - which he carried with him always. The couple lived in Upper Montclair, N.J., where they raised five children. George started his own law practice, Connell and Andresakes, in Montclair, and eventually became general counsel for Village Supermarkets. He worked for the company until his retirement, and remained on the board of directors until 2004. He was also a prominent member of New Jersey's Greek community, serving in various positions in AHEPA and eventually rising to the position of district governor. George retired to Mantoloking Shores, N.J., and Marco Island, Fla., where he enjoyed cooking, sailing and spending time with friends and family. He was predeceased by his loving bride, Louise, and his daughter, Katie. He is survived by his daughter, Mary Lou Buerrosse and husband, Jack; son, James Andresakes and wife, Bonnie; daughter, Patricia Ferguson and husband, Keith and son, Michael Andresakes and wife, Diane. He is also survived by seven grandchildren and seven great-grandchildren. In lieu of flowers, the family requests donations be made to the Kathryn J. Andresakes Memorial Scholarship Fund, c/o Providence College, 1 Cunningham Square Providence, R.I. 02918.

DAVID S. BATE, who was born March 15, 1918, in Montclair, N.J., passed away on Oct. 5, 2012. David's family moved to Essex Fells, N.J., in 1923. He attended Essex Fells public schools through 8th grade, Kingsley School, then Montclair Academy, and graduated from Hamilton College in 1939. In August 1940, he joined the Navy and served through 1945, serving on three destroyers in World War II and seeing action in the North Atlantic, Mediterranean and the Pacific. He earned 11 battle stars and his last rank was lieutenant commander. Mr. Bate graduated from Harvard Law School in 1946. After a one year clerkship in Newark, N.J., he joined the firm of Boyd, Dodd, Keer & Booth (now Booth, Bate, Greico and Briody) in Montclair, N.J., working until his retirement in 2010. Serving Essex Fells, N.J., he was borough attorney for 35 years, a member and president of the planning board for 18 years, a member of the volunteer fire company for 15 years and a member and president of the board of education for seven years. He took particular pride in his work with the Juvenile Conference Committee, working with young people with behavior problems. He was the attorney and served on the board of directors of the Florence and John J. Schumann Foundation and the International Foundation. As a lifelong member of St. Peter's Episcopal Church, he served on the vestry and taught in the Sunday School. He was a trustee of Mountainside Hospital and he served on the board of directors of Glen Ridge Savings and Loan, which became the Bank of America. A member of the Essex Fells Country Club and Fell's Brook Club, he also served as head of the West Essex United Way. He is survived by his wife of 70 years, Janet (nee Mallon); his children, Suzanne B. Morris, David S. Bate Jr. and Catherine B. Bull; seven grandchildren and one great-grandchild, also named, David. A third daughter, Nancy B. Bayne, died in 2001. His personal integrity, intelligence, honesty, kindness, hospitality and generosity will be remembered by all who knew him. In lieu of flowers, the family requests that donations be made to St. Peter's Church in Essex Fells or to Hospice of St. Barnabas Health.

DEAN A. GAVER, an attorney whose legal career spanned more than four decades, passed away on July 30, 2012 at the age of 68. Dean was a member of the firm's Real Estate Department, focusing his practice on issues associated with land use, zoning, real estate development and management.

Prior to joining Greenbaum, Rowe, Smith & Davis in 1999, Dean was with the firm of Hannoch, Weisman, Stern & Besser for 30 years. He represented his clients, including property owners, developers, landlords and lenders, in a variety of contested matters, including zoning applications, eminent domain and regulatory proceedings, and project planning for real estate ventures. He had extensive experience in working with state, county and local planning boards, boards of adjustment, governing bodies, utility and environmental authorities. He counseled clients on the regulatory and public policy issues impacting their business interests.

Dean was a member of the firm’s Redevelopment and Land Use Practice Groups. He served as counsel in several New Jersey landmark cases involving exclusionary zoning and related land use matters. He represented the sponsors of the state’s largest waterfront development project throughout

Each of these persons attended or graduated from HLS, practiced or resided in or had some connection with New Jersey.
The Chayes International Public Service Fellowship

In the Driver’s Seat: The Changing Role of General Counsel

‘We’re All in it Together’: Paul Pierce Discusses the Business of Basketball

HLS has several multimedia videos on topics that may be of interest to members of the Association. Below are some of those topics. Just copy the hyperlink into a web browser to view the video.

Celebration of Latino Alumni Latino Leadership: Our Time is Now (video)
San Antonio Mayor Julián Castro graduated from Harvard Law School in 2000 planning to run for city council back home, already inspired by mentors like Henry Cisneros, San Antonio’s first Latino mayor. His experience taught him to take responsibility for helping young Latinos trying to get ahead. “We need to encourage and harness professional development in the next generation,” Castro said, harking back to his address to the Democratic National Convention when he credited his immigrant grandmother’s work in menial jobs that paved the way for his mother to earn a Master’s degree. “We need to continue to answer the emails, write the letters of recommendation, take the time on the phone trying to answer the questions about the next step, and help high school students fill in gaps because their families haven’t had someone who went to college much less law school.” Castro shared his thoughts in a keynote address celebrating Latino alumni at Harvard Law School. The second Celebration of Latino Alumni, held at Harvard Law School from Sept. 27 to 30, drew about 200 alumni and guests to the school to share their experiences and reflect on the path of social change.

The U.S. Supreme Court ruling mandating school desegregation in Brown v. Board of Education in 1954 is considered one of the Court’s landmark decisions. But the implementation of federal law prohibiting state-mandated school desegregation required a subsequent ruling in 1958, in Cooper v. Aaron, in which the Court held that states could not avoid desegregation by legislative action. In October, the Charles Hamilton Houston Institute for Race and Justice sponsored a two-day conference looking back at Cooper v. Aaron and the impact it’s had on law and education over the course of 55 years. The event brought together legal scholars, students, and civil-rights lawyers and featured a moot court proceeding involving U.S. Supreme Court Justice Stephen Breyer and nine appellate judges, to revisit the legal questions raised by Cooper. Another highlight of the conference was a presentation by four members of the “Little Rock Nine,” who, as teenagers, took part in an effort by the NAACP to break the racial barrier at Little Rock Central High School in 1957 and helped to pave the way for Cooper.

The Paper Chase’ at 40 (video)
http://www.law.harvard.edu/news/2012/10/03_paper-chase-40th-anniversary.html

Professor Richard Lazarus ’79 on the Water Basin Project and Water Security Initiative at Harvard
http://www.youtube.com/watch?v=rG3ahA3nn7w&feature=plcp

Clinical Voices: Students Talk About Clinical Education
http://www.youtube.com/playlist?list=PL193993E550004C8D24&feature=plcp

Harvard Law Review
http://us2.campaign-archive2.com/?u=dc0b63e993957d248f7d8073f&cid=200523b8ac&e=e952d65392
CHIEF JUSTICE STUART RABNER, HLS ’85, DELIVERS 2012 VANDERBILT LECTURE

On November 8, 2012, Chief Justice Rabner became at least the fourth consecutive Chief Justice to address the Association’s flagship annual event. His topic was “Eyewitness Identification in the 21st Century”. He focused on the New Jersey Supreme Court’s decision in 

State v. Henderson.

Chief Justice Stuart Rabner was sworn into office on June 29, 2007 after being nominated by Governor Jon S. Corzine and confirmed by the Senate. He is the eighth Chief Justice to lead the New Jersey Supreme Court since the 1947 Constitution.

Born on June 30, 1960, Chief Justice Rabner was raised in Passaic. He graduated summa cum laude from the Woodrow Wilson School of Public and International Affairs at Princeton University in 1982. He graduated cum laude from Harvard Law School in 1985. He was a law clerk to U.S. District Court Judge Dickinson R. Debevoise before joining the U.S. Attorney’s Office in Newark in 1986.

After beginning his career as an Assistant U.S. attorney, Chief Justice Rabner worked in a number of positions including First Assistant U.S. attorney and chief of the terrorism unit. He was chief of the office’s criminal division when he was named chief counsel to Governor Corzine in January 2006. He was named New Jersey Attorney General in September 2006 and served in that position until his nomination to the Court.

Chief Justice Rabner is a member of the Board of Directors of the Conference of Chief Justices. He is also a member of the Board of Directors of the Institute of Judicial Administration at New York University School of Law.

Chief Justice Rabner and his wife, the former Deborah Wiener, have three children.

ABOUT ARTHUR T. VANDERBILT

Arthur T. Vanderbilt (1888-1957) served as the first Chief Justice of New Jersey’s Supreme Court under the State’s 1947 Constitution. His nine years of service on the Court were the culmination of a lifelong advocacy of judicial reform, reflected not only in the revised judicial article of the State Constitution, but in his contributions to the creation of the U.S. Administrative Office of the Courts and the drafting of the Federal Rules of Criminal Procedure. Prior to joining the Court, Vanderbilt maintained a highly successful law practice, taught at New York University School of Law (of which he became Dean in 1943), and served as President of the American Bar Association. As Chief Justice, “Vanderbilt catapulted the New Jersey courts to an unaccustomed position of prominence and respect.” G. Alan Tarr, “Arthur T. Vanderbilt: A Retrospective,” http://camlaw.rutgers.edu/statecon/publications/vandy2.pdf.

“The Vanderbilt lecture is more than an alumni gathering. It was conceived over fifty years ago by our Association as a continuing reminder of the Law School’s inspiration to continue learning, to explore new ideas and revisit sometimes forgotten old ones.”

BECOME A HLSA-NJ TRUSTEE

The activities of the Harvard Law School Association of New Jersey are made possible by its volunteer trustees. The Association is seeking new volunteers to participate in the governance of the association, to be formally elected as trustees at our annual meeting on the same evening as the Vanderbilt Lecture this Fall. Being a Trustee is a great way to stay involved and network with fellow HLS alumni in all walks of life. The current leadership includes law faculty; public, private, and nonprofit-sector attorneys; and sitting and retired judges from all across New Jersey. In addition to our annual meeting, the Vanderbilt Lecture, the full Board of Trustees meets approximately 2-3 other times each year. For more information, e-mail Hervé Gouraige at this email address: hgouraige@illscummis.com
PHOTOS FROM THE 2012 VANDERBILT LECTURE

Welcome

Special Master for State v. Henderson, Former Judge Geoffrey Gaulkin

An unidentified alumnus, Former Judge Harvey Weissbard ('62) and Bruce Shoulson ('64)

Chief Justice Stuart Rabner ('85)

Former Judge David Landau ('53)

Former Chief Justice James R. Zazzali

Ben Kreitzberg and Dorothy Kreitzberg

Geri Markowitz and Moira Crabtree

Former Congressman Herb Klein ('53), Mrs. Herb Klein, and Ben Kreitzberg

Moira Crabtree and David Crabtree ('52)

Patty Smith and her aunt Alice Hroncich

Patty Smith and Gregory Lopez
On The Move

Have news? E-mail jbartlet@post.harvard.edu

The HLSA-NJ secretary is reaching out to current students with a Wells ‘76 hope – it’s part of who we walking the emotional lines of our long history. Of course, other places to draw the line, of course, is a frequent theme in our conversations. Galina V. Starovoitova, a former VLTA President and one of the founders of the lecture series, reflects on the significance of September 11, 2001 as the centenary of the Lecture series. It marked the end of the 20th century and the beginning of a new era for the Baltics and the world. At the end of the 20th century, some of our most respected colleagues were assassinated in St. Petersburg. At the end of the 20th century, John Adler ‘84 was among them.

Stephen F. Herbes ‘01 and ambivalent thinkers. Their ideas, like his, continue to inspire us in the most challenging moments of our time. But we can’t do until you due. If you’ve paid your dues, come out to our September panel and contribute to the law school in the future as we have in past years. Contributions to the law school in the future will fundamentally shape our hope and aim to make generous contributions possible. Our goal is to double our current giving, and our hope is to develop to New Jersey’s legal community. We have already made a modest start. The value of their experience, their commitment, their service to the Association, and their financial support is invaluable. We would like to thank the Association’s long-time supporters, including our past presidents and award winners, for their continued support.

The Association’s dues-paying members. If you haven’t paid your 2007-2008 dues, please do so. Your support is crucial to our ability to continue to provide our members with access to the best legal minds and resources available. The Association is committed to serving our members and the legal community in New Jersey. We are honored to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School.

The value of their experience, their commitment, their service to the Association, and their financial support is invaluable. We would like to thank the Association’s long-time supporters, including our past presidents and award winners, for their continued support. We are committed to serving our members and the legal community in New Jersey. We are honored to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School. We are also excited to announce that we have received funding for our first-year associateship program, which will allow us to support promising students at Harvard Law School.
the land assembly, planning, permitting, construction and operational phases, and most recently was serving as real estate counsel on the proposed development of a major hydroelectric facility.

Broadly acknowledged as a leading real estate attorney in New Jersey, Dean was selected as “Litigation - Land Use & Zoning Lawyer of the Year - Woodbridge” by The Best Lawyers in America in 2012, and was listed in Best Lawyers in the Real Estate Law, Land Use & Zoning Law, Eminent Domain and Condemnation Law, Litigation: Real Estate and Litigation, and Land Use & Zoning categories. He was also accorded Martindale-Hubbell’s highest AV* Preeminent Peer Review Rating.

A lifelong resident of New Jersey, Dean was born in Paterson and raised in Fair Lawn. He resided in Ridgewood before moving to Roseland 10 years ago. He received his undergraduate degree from Yale University, and was active in the Yale Alumni Association. He earned his J.D. degree from Harvard Law School. Dean was a member of the American Bar Association (Land Use, Planning and Zoning Committee), the New Jersey State Bar Association (Land Use Section), and the Essex County Bar Association.

Loving and devoted father of Torrey, Megan and Chad Gaver. Dear brother of Charles “Chip” Gaver and the late James “Jimmy” Gaver. Beloved companion of Linda Magnano. In lieu of flowers, donations in memory of Dean may be made to Alley Cat Allies, 7920 Norfolk Avenue, #600, Bethesda, MD 20814.

MILTON A. MAUSNER, 94, died Thursday, Aug. 30, 2012, at Riverview Medical Center in Red Bank after a brief illness. Milton was born in Carteret, NJ to Max L. and Sally Traub Mausner. He graduated from Red Bank High School, earned his bachelor’s degree from the University of Pennsylvania, and then received his law degree from Harvard Law School, Class of ’41. He entered military service in the U.S. Army in 1941 and served in the Pacific area until 1945 seeing action in New Caledonia and Guadalcanal achieving the rank of Sergeant. Milton was admitted to the New Jersey Bar in 1946; he was employed by and later became a partner with the firm eventually known as Reussile, Mausner, Carotenuto, Barger, Kenny and Steel, LLC. He retired and became of-counsel in 1989. During his lengthy career he practiced in many fields of law including public utility, municipal, probate, corporate, business, and real estate. In the early 1950s, Milton served as Municipal Court Judge in Highlands, NJ. At various times he later served as attorney for Middletown, Little Silver, Shrewsbury, Keyport, Atlantic Township (now Colts Neck), and the Keyport Board of Education. During his legal career Milton participated in the organization of the Borough of New Shrewsbury (now Tinton Falls) when it split from Shrewsbury Township in 1953. He represented the Northeast Monmouth County Regional Sewerage Authority in its formation; and he participated in the establishment of Monmouth Regional High School. He continued to represent those public bodies for many years. He was also a long time member of Monmouth Reform Temple in Tinton Falls, NJ. Milton’s dedicated oversight as trustee of the Booker Foundation contributed to the very significant growth of the medical facilities of Riverview Medical Center in Red Bank and its increased ability to serve the community. In his leisure time through the years Milton was a rare book collector, avid downhill skier, golf enthusiast, world traveler, and electronics & gadget maven.

Milton was predeceased by his parents and all six of his sisters and brothers. Milton is survived by his beloved wife of 61 years, Claire Sandman Mausner; sons, David and wife Gale of Oak Park, IL, and Richard and wife Lori of Holmeland, and grandchildren, Max and his wife Katie, Dvorit, Samuel, Eric, and Amanda.

Donations may be made in Milton’s memory to the Rabbi Sally J. Priesand Endowment Fund for the Future, c/o 332 Hance Ave., Tinton Falls, NJ 07724.

JEROME KAYE (’52), passed away, Wednesday, April 11, 2012.

SEYmour H. SMith, 92, of Colts Neck, an attorney whose career spanned almost 60 years as a Vice President and General Counsel of Loews Theaters in New York, died peacefully in his sleep on Wednesday, July 18, 2012, at Care One in Wall Township. He was a native New Yorker who spent the last two years of his life living in New Jersey near his family. He received a Bachelor of Arts degree from New York University and his law degree from Harvard University. His life spanned the military, social and economic challenges of the 20th century. While at Harvard University, Mr. Smith was among the first U.S. Army draftees for the upcoming World War II effort in 1940. After basic training, he was assigned to Officers’ Candidate School and then to the Signal Corps at Fort Monmouth. Coincidently, Lt. Smith was studying radar at the Massachusetts Institute of Technology when his original Harvard Law School class graduated. He spent most of his World War II service in Iceland watching for German airplanes. He never spoke much about the planes, but he did mention that the Icelandic women were beautiful. Upon returning to civilian life as a reservist, Mr. Smith completed his law school studies. He graduated and passed the New York bar in 1947 and in 1950 was called up for another two years in the Korean War. With his law degree in tow, he was assigned to the Army Judge Advocate’s Office where he served mostly as a defense counsel in criminal cases. After being discharged in 1952, he met and married Edith Polansky of Toms River in 1953. He became a lawyer for the Loews Corporation and was promoted to executive vice-president and general counsel. He was an expert in matters dealing with theater development and real estate acquisitions. He was an avid bridge player who was a member of The Vanderbilt Bridge Club, The Franklin Bridge Center and The Bridge Express located on Long Island, New York. He played bridge all his life but almost every day in his retirement years.

He was predeceased by his wife, Edith, in 2007. He is survived by his brother, Marvin Smith and his wife Carol of Millville; his sister, Carolyne Smith Saltzbart of Colts Neck; nephews, Edward Smith and Philip Saltzbart and his wife, Karen of Colts Neck; nieces, Pamela Spahn and her husband, John Spahn, Boys, MD; Susan Saltzbart Kilsky and her husband Richard Kilsky of London, England, and Sally Saltzbart Minier of Colts Neck; and three grandnieces and two grandnephews. He is sorely missed by his friend and bridge partner, Arthur Samet of Plainview, NY; and his administrative assistant, Judi Olsen of New Milford.

Donations may be made in his memory to the Will Rogers Institute for medical research pertaining to cardio-pulmonary diseases, where Mr. Smith served on the Board of Directors at www.wrinstitute.org.

IN MEMORIAM continued on next page
IN MEMORIAM continued from previous page

ANTHONY J. WIENER10 (’56) (right) with co-author Herman Kahn

“Einstein said he never thought about the future because it comes soon enough. Anthony J. Wiener thought about it deeply and influentially.


But the millennium turned without noiseless helicopters replacing taxis. Artificial moons still do not illuminate huge swathes of the Earth. And are you, too, still waiting for that predicted 13-week vacation?

Mr. Wiener -- who is of no relation to the former congressman with a similar name -- died on June 19 at his home in Closter, N.J., at 81. His wife, the former Deborah Zaidner, said the cause was cardiac arrest.

The book he and Mr. Kahn wrote was “The Year 2000: A Framework for Speculation on the Next Thirty-three Years,” and its publication was a milestone in the futurism fad of the 1960s. The book combined multifarious elements, from the insights of Aristotle to sophisticated statistical analysis, to create what the authors called “a framework for speculation.”

About half of its 100 predictions panned out — not including 150-year life spans or months of hibernation for humans.

But accuracy mattered less than what Mr. Wiener called “reducing the role of thoughtlessness” in making societal choices. Clarification, not prophecy, was the goal.

The American Academy of Arts and Sciences helped finance the study, sponsored by the Hudson Institute, for which both authors worked.

Ken Weinstein, president of the institute, said Tuesday in an interview that the book was remarkable for its sophisticated methodology at a time when advanced computer modeling was still far off. More than simply extrapolating from trends observed in the 1960s, it tried to calculate “the complex and unexpected ways the future was going to be different.”

Anthony Janoff Wiener was born on July 27, 1930, in Newark and grew up in Maplewood, N.J.

He set up a public address system in his high school. He and a friend once took apart a car and then rebuilt it, just to see if they could do it. He graduated from Harvard and Harvard Law School.

His first wife, the former Helga Susanna Gerschenkron, died in 1977. He is survived by a son, Jonathan, and a daughter, Lisa Juckett, from that marriage.

In addition to his wife, survivors include their son, Adam; his sister, Carol Seaver; and three grandchildren from his first marriage.

In 1961, Mr. Wiener was a founding member of the Hudson Institute, a research center known for Mr. Kahn’s investigations of nuclear weapons strategy. Mr. Kahn was outspoken in urging that society grapple with the consequences of nuclear war with “thinking the unthinkable.”

Mr. Wiener consulted on the future with clients as diverse as the Stanford Research Institute, NASA and Shell Oil.

He worked for two years in the Nixon White House on urban policy and was a longtime editor of the journal Technology in Society. He taught for many years at what is now Polytechnic Institute of New York University.

Mr. Wiener died before his grander predictions — like finding life on other planets or settling undersea colonies — could be fulfilled. But his prophecy that fax machines would become office workhorses by 2000 hit the mark, at least until e-mail displaced them.


TRUSTEES & OFFICERS OF THE HLSA-NJ

The Trustees and Officers for 2012-2013 are the same as for 2011-2012. The photo and bio of Trustee Robert J. Lack were inadvertently omitted from the last edition of The Connector and are now presented.

Robert J. Lack ’81, a senior partner at Friedman Kaplan Seiler & Adelman LLP in Newark, was elected to the Board of Trustees in November 2011. Mr. Lack’s practice focuses on complex and multidistrict litigation, securities litigation, accountants’ liability, and commercial litigation. He currently leads his firm’s representation of the trustees for noteholders in the multidistrict Tribune Company Fraudulent Conveyance Litigation in seeking to recover billions of dollars distributed to shareholders in Tribune’s 2007 leveraged buyout. He served as Friedman Kaplan’s Co-Managing Partner from 2006 to 2012. Mr. Lack graduated magna cum laude and Phi Beta Kappa from Princeton University in 1977 and received a master’s degree from Princeton’s Woodrow Wilson School of Public and International Affairs in 1978. He received his law degree magna cum laude in 1981 from Harvard Law School, where he served as Note Editor of the Harvard Law Review. After law school, he clerked for The Honorable Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit and was a litigator at Sullivan & Cromwell. He is admitted in both New Jersey and New York. He was selected for inclusion by Thomson Reuter in the New Jersey edition of Super Lawyers® in 2006, 2007, 2009, and 2010.
SOME ADDITIONAL BACKGROUND ON STATE V. HENDERSON

Note from the Editor. If you read the court’s decision in State v. Henderson, or read the Special Master’s Report, or the Harvard Law Review Case Note, or if you were able to attend this year’s Vanderbilt Lecture, nothing presented below will increase your understanding of this case. If you did not read the foregoing material or attend the Lecture, the information presented below is offered to provide a broader understanding of the “who, what, when, and why” of this case. This information is provided by the editor of The Connector, and was not part of Chief Justice Rabner’s remarks at the Vanderbilt Lecture.

The following facts are from the court’s decision in State v. Henderson11, and from a Case Note in the Harvard Law Review12.

“In the early morning of January 1, 2003, Rodney Harper was shot and killed in an apartment in Camden, New Jersey. James Womble, a friend of Harper’s who had been celebrating the new year by smoking crack cocaine and drinking wine, was in the apartment during the shooting. He overheard the shooting while being held in a ‘small, narrow, dark, hallway’ by the shooter’s armed accomplice. During the police investigation, Womble identified Larry Henderson as the accomplice in a photo lineup, during which the primary investigators interrupted the procedure to encourage Womble to make an identification.”13

“After a grand jury indicted Henderson for first-degree murder, the trial court granted his motion for a Wade hearing to determine the admissibility of the identification. The trial court heard testimony about the identification procedure and then applied the two-part Manson/Madison test. Under this test, ‘a court must first decide whether the procedure in question was in fact impermissibly suggestive. If the court does find the procedure impermissibly suggestive, it must then decide whether the objectionable procedure resulted in a ‘very substantial likelihood of irreparable misidentification’. The trial court, despite noting that the investigators had deviated slightly from approved procedure14, found ‘nothing in this case that was improper, and certainly nothing that was so suggestive as to result in substantial likelihood of misidentification’. ‘Based on Womble’s in-court and out-of-court identifications and testimony about Henderson’s post-arrest statement alone, the jury convicted Henderson of reckless manslaughter, aggravated assault, and related weapons charges. On appeal, the Appellate Division of the Superior Court of New Jersey determined that the identification procedure was ‘impermissibly suggestive’ and remanded the case for a new Wade hearing to determine whether the identification was nonetheless reliable.”

During a pre-trial hearing to determine the admissibility of Womble’s identification of Henderson, Womble testified that he felt “as though Detective Weber was ‘nudging’ him to choose [Henderson’s] photo and that there was pressure for him to make a choice” and that “when he first looked at the photo he recognized.” At trial, Womble also “admitted that he smoked about two bags of crack cocaine each day from the time of the shooting until speaking with police ten days later.”

A unanimous New Jersey Supreme Court “modified the framework for assessing State v. Henderson continued on next page

11 “Womble and Harper were acquaintances who occasionally socialized at the apartment of Womble’s girlfriend, Vivian Williams. On the night of the murder, Womble and Williams brought in the New Year in Williams’ apartment by drinking wine and champagne and smoking crack cocaine. Harper had started the evening with them but left at around 10:15 p.m. Williams also left roughly three hours later, leaving Womble alone in the apartment until Harper rejoined him at 2:00 to 2:30 a.m. Soon after Harper returned, two men forcefully entered the apartment. Womble knew one of them, co-defendant George Clark, who had come to collect $160 from Harper. The other man was a stranger to Womble. While Harper and Clark went to a different room, the stranger pointed a gun at Womble and told him, ‘Don’t move, stay right here, you’re not involved in this.’ He remained with the stranger in a small, narrow, dark hallway. Womble testified that he ‘got a look at’ the stranger, but not “a real good look.” Womble also described the gun pointed at his torso as a dark semiautomatic. Meanwhile, Womble overheard Clark and Harper argue over money in the other room. At one point, Harper said, “do what you got to do,” after which Womble heard a gunshot. Womble then walked into the room, saw Clark holding a handgun, offered to get Clark the $160, and urged him not to shoot Harper again. As Clark left, he warned Womble, “Don’t rat me out, I know where you live.” Harper died from the gunshot wound to his chest on January 10, 2003. Camden County Detective Luis Ruiz and Investigator Randall MacNair were assigned to investigate the homicide, and they interviewed Womble the next day. Initially, Womble told the police that he was in the apartment when he heard two gunshots outside, that he left to look for Harper, and that he found Harper slumped over in his car in a nearby parking lot, where Harper said he had been shot by two men he did not know. The next day, the officers confronted Womble about inconsistencies in his story. Womble claimed that they also threatened to charge him in connection with the murder. Womble then decided to “come clean.” He admitted that he lied at first because he did not want to “rat out” anyone and “didn’t want to get involved” out of fear of retaliation against his elderly father. Womble led the investigators to Clark, who eventually gave a statement about his involvement and identified the person who accompanied him as defendant Larry Henderson.”

12 New Jersey Supreme Court Uses Psychological Research To Update Admissibility Standards For Out-Of-Court Identifications, 125 Harv. L. Rev. 1514 (2012)

13 Id. 1515. (“After Womble hesitated to make an identification to the officer conducting the lineup, the investigators entered the interview room and told Womble ‘to focus, to calm down, to relax,’ and to ‘just do what you have to do, and we’ll be out of here,’ to which Womble responded that he ‘could make [an] identification’. The investigators then left and the identification process started anew. When shown Henderson’s picture, Womble ‘slammed his hand on the table and exclaimed, [that’s the mother [-----] there.”.

eyewitness identification evidence in criminal cases because the then current legal standard did not offer an adequate measure of reliability, did not sufficiently deter inappropriate police conduct, and overstated the jury’s ability to evaluate identification evidence offered by eyewitnesses who honestly believe their testimony is accurate.” Quoting from Berger v. United States, 295 U.S. 78, 88, that “at the core of our criminal justice is the ‘twofold aim…that guilt shall not escape or innocence suffer”, the court observed that “In the context of eyewitness identification evidence, that means that courts must carefully consider identification evidence before it is admitted to weed out unreliable identifications, and that juries must receive thorough instructions tailored to the facts of the case to be able to evaluate the identification evidence they hear.”

As noted in the opinion, there are three major processes or stages involved in memory: acquisition—the period of time that passes between the event and the eventual recollection of a particular piece of information; and retrieval—the stage during which a person recalls stored information.” As noted by the Special Master, “[a]t each of those stages the information ultimately offered as ‘memory’ can be distorted, contaminated and even falsely imagined” and these are important in understanding factors that can impact memory in each of these stages.

As noted by the Court: “To be sure, many questions about memory and psychology of eyewitness identifications remain unanswered. And eyewitness identification research remains probabilistic, meaning that science cannot say whether an identification in an actual case is accurate or not. Instead, science has sought to answer, in the aggregate, which identification procedures and external variables are tied to an increased risk of misidentification.”

The Court also noted: “The factors that both judges and juries will consider are not etched in stone. We expect that the scientific research underlying them will continue to evolve, as it has in the more than thirty years since Manson. For the same reason, police departments are not prevented from improving their practices as we learn more about variables that affect memory. New approaches, though, must be based on reliable scientific evidence that experts generally accept.”

“The changes outlined in this decision are significant because eyewitness identifications bear directly on guilt or innocence. At stake is the very integrity of the criminal justice system and the courts’ ability to conduct fair trials. Ultimately, we believe that the framework described below will both protect the rights of defendants, by minimizing the risk of misidentification, and enable the State to introduce vital evidence.”

15 A detective pre-numbered and shuffled eight photos and showed them one at a time to Womble. Before doing so, the detective read these instructions from a standard form: “In a moment, I will show you a number of photographs one at a time. You may take as much time as you need to look at each one of them. You should not conclude that the person who committed the crime is in the group merely because a group of photographs is being shown to you. The person who committed the crime may or may not be in the group, and the mere display of the photographs is not meant to suggest that our office believes the person who committed the crime is in one of the photographs. You are absolutely not required to choose any of the photographs, and you should feel not obligated to choose any one. The photographs will be shown to you in random order. I am not in any way trying to influence your decision by the order of the pictures presented. Tell me immediately if you recognize the person that committed the crime in one of the photographs. All of the photographs will be shown to you even if you select a photograph. Please keep in mind that hairstyles, beards, and mustaches are easily changed. People gain and lose weight. Also, photographs do not always show the true complexion of a person. It may be lighter or darker than shown in the photograph. If you select a photograph, please do not ask me whether I agree with or support your selection. It is your choice alone that counts. Please do not discuss whether you selected a photograph with any other witness who may be asked to look at these photographs.”

16 http://human-memory.net/ (“The popular image of memory is as a kind of tiny filing cabinet full of individual memory folders in which information is stored away, or perhaps as a neural super-computer of huge capacity and speed. However, in the light of modern biological and psychological knowledge, these metaphors may not be entirely useful and, today, experts believe that memory is in fact far more complex and subtle than that. It seems that our memory is located not in one particular place in the brain, but is instead a brain-wide process. For example, the simple act of riding a bike is actively and seamlessly reconstructed by the brain from many different areas. The memory of how to operate the bike comes from one area, the memory of how to get from here to the end of the block comes from another, the memory of biking safety rules from another, and that nervous feeling when a car veers dangerously close comes from still another. Each element of a memory (sights, sounds, words, emotions) is encoded in the same part of the brain that originally created that fragment (visual cortex, motor cortex, language area, etc.), and recall of a memory effectively reactivates the neural patterns generated during the original encoding. Thus, a better image might be that of a complex web, in which the threads symbolize the various elements of a memory, that join at nodes or intersection points to form a whole rounded memory of a person, object or event. This kind of distributed memory ensures that even if part of the brain is damaged, some parts of an experience may still remain. Neurologists are only beginning to understand how the parts are reassembled into a cohesive whole. Neither is memory a single unitary process but there are different types of memory. Our short term and long-term memories are encoded and stored in different ways and in different parts of the brain, for reasons that we are only beginning to guess at. Years of case studies of patients suffering from accidents and brain-related diseases and other disorders have begun to indicate some of the complexities of the memory processes, and great strides have been made in neuroscience and cognitive psychology, but many of the exact mechanisms involved remain elusive.”)
Judge Leonard I. Garth continued from page 2

During his years of practice, Judge Garth participated in numerous activities of the New Jersey, Federal, American, and Passaic County Bar Associations, and he has served as a member of the adjunct faculties at Seton Hall Law School and Rutgers Law School. In 2010, Rutgers Law School established the Rutgers Law School Leonard I. Garth Scholar. The first Scholar named was Dean Ronald Chen. In 2011, Rutgers also established a lecture series in Judge Garth’s name. He is a life member of the American Law Institute, a Fellow of the American Bar Foundation (New Jersey Section), and a former member of the Financial Disclosure Committee of the United States Judicial Conference. Judge Garth is also a former member of the New Jersey State Board of Bar Examiners; former president of the Passaic County Bar Association; former president and trustee of the Harvard Law School Association of New Jersey; a former member of the Passaic County Bar Association Judicial Screening Committee; a member of the Federal Bar Association; a member of the American Bar Association; a member of the New Jersey Fellows and Appellate Judges Conference; former chair of the Passaic County Ethics Committee; a former member of the New Jersey Bar Association Standing Committee on Judicial Appointments; former chair of the New Jersey State Bar Association Bankruptcy Committee; a former member of the Federal District Court of New Jersey Committee on Revision of Local General and Admiralty Rules; a former member of the Advisory Board of the Law and Society Major of Ramapo College; a former Vanderbilt Lecturer to the Harvard Law School Association of New Jersey; a former Weintrab Lecturer at Rutgers Law School, Newark; a former Lecturer at the Institute for Continuing Legal Education; and a former instructor of Trial Advocacy at Harvard Law School.

In addition to his service on numerous motion panels of the Third Circuit Court of Appeals, Judge Garth has written well over fifteen hundred opinions while performing other Court-connected services.

Judge Garth and his wife, Sarah, have a daughter, Tobie Garth Meisel, who, among other accomplishments, is a graduate of Rutgers Law School. Judge Garth’s son-in-law, Michael Meisel, is a named partner in Cole, Schotz, Meisel, Forman & Leonard, P.A. The Meisels have three children (grandchildren of Judge Garth), and the judge has seven great-grandchildren, six of whom live in Connecticut.

Some of the recent noteworthy rulings that he has made are:

United States v. Ware, Nos. 694 F.3d 527 (3d Cir. 2012) (amendment to crack cocaine sentencing guideline does not apply retroactively to sentences resulting from departure or variance from career offender sentencing range).

In re Enterprise Rent-A-Car Wage & Hour Employment Practices Litigation, 683 F.3d 462 (3d Cir. 2012) (established the Enterprise test to determine whether an employer is a joint employer under the FLSA; holding that the test requires a melding of the tests in Lewis v. Vollmer of America, No. 05–1632, 2008 WL 355607 (W.D. Pa. Feb. 7, 2008), and Bonnette v. California Health & Welfare Agency, 704 F.2d 1465 (9th Cir. 1983), supplemented by consideration of additional economic realities of the work relationship);

Fleisher v. Standard Insurance Co., 679 F.3d 116 (3d Cir. 2012) (dissenting);

Macfarlan v. Ivy Hill SNF, LLC, 675 F.3d 266 (3d Cir. 2012);

Leslie v. Attorney General, 678 F.3d 265 (3d Cir. 2012);

Landsman & Funk PC v. Skinder-Straus Associates, 640 F.3d 72 (3d Cir. 2011) (dissenting);

Baldwin v. University of Pittsburgh Medical Center, 636 F.3d 69 (3d Cir. 2011);

Keystone Redevelopment Partners, LLC v. Decker, 631 F.3d 89 (3d Cir. 2011);

Byers v. Intuit, Inc., 600 F.3d 286 (3d Cir. 2010);

Clausell v. Sherrers, 594 F.3d 191 (3d Cir. 2010);

Rite Aid of Pennsylvania, Inc. v. United Food & Commercial Workers Union, Local 1776, 595 F.3d 128 (3d Cir. 2010);

Jablaga v. Attorney General (No. 06-2866) and Gjerovski v. Attorney General (No. 06-3466), 512 F.3d 80 (3d Cir. 2008);

Santana Gonzalez v. Attorney General, 506 F.3d 274 (3d Cir. 2007);

Pennsylvania Prison Society v. Cortés, 508 F.3d 156 (3d Cir. 2007);

United States v. Coles, 437 F.3d 361 (3d Cir. 2006);

United States v. Pelullo, 399 F.3d 197 (3d Cir. 2005);

IPSCO Steel (Alabama), Inc. v. Blaine Construction Corp., 371 F.3d 150 (3d Cir. 2004);

In re Kensington Intern. Ltd., 368 F.3d 289 (3d Cir. 2004);

In re Kensington Intern. Ltd., 353 F.3d 211 (3d Cir. 2003);

Brown v. Philadelphia Housing Authority, 350 F.3d 338 (3d Cir. 2003);

American Civil Liberties Union v. Ashcroft, 322 F.3d 240 (3d Cir. 2003); aff’d, 542 U.S. 656 (2004);

Federal Home Loan Mortgage Corp. v. Scottsdale Insurance Co., 316 F.3d 431 (3d Cir. 2003);

In re Cendant Corp. PRIDES Litigation, 243 F.3d 722 (3d Cir. 2001).
When the New Jersey Supreme Court remanded the case, it appointed former Judge Geoffrey Gaulkin "to preside at the remand hearing as a Special Master to evaluate the scientific and other evidence about eyewitness identifications." The Special Master was present at the Vanderbilt Lecture and was acknowledged with thanks by the Chief Justice.

The Special Master "presided over a hearing that probed testimony by seven experts and produced more than 2,000 pages of transcript along with hundreds of scientific studies." The Court adopted much of the Special Master’s "extensive and very fine report." Here are six major points from that Report:

1. “The scientific findings can and should be used to assist judges and juries in the difficult task of assessing the reliability of eyewitness identifications.”

2. “The Manson/Madison test does not provide that needed assistance. Designed to make reliability the "linchpin" of judicial examination of eyewitness testimony, Manson/Madison falls well short of attaining that goal, for it neither recognizes nor systematically accommodates the full range of influences shown by science to bear on the reliability of such testimony... The short answer to the Court’s question whether the Manson/Madison test and procedures are “valid and appropriate in light of recent scientific and other evidence” is that they are not.”

3. “Because the reliability of any reported “memory” is subject to so many influences, the researchers commonly recommend that eyewitness identifications be regarded as a form of trace evidence: a fragment collected at the scene of a crime, like a fingerprint or blood smear, whose integrity and reliability need to be monitored and assessed from the point of its recovery to its ultimate presentation at trial.”

4. “The study of eyewitness identification relies in the first instance on precepts drawn from the broader studies of human memory. Those studies, pioneered by Dr. Elizabeth Loftus, demonstrate that eyewitness performance depends on many variables. The central precept is that memory does not function like a videotape, accurately and thoroughly capturing and reproducing a person, scene or event. Memory is, rather, a constructive, dynamic and selective process.”

5. “At each of those stages, the information ultimately offered as “memory” can be distorted, contaminated and even falsely imagined. The witness does not perceive all that a videotape would disclose, but rather “get[s] the gist of things” and constructs a “memory” on “bits of information ... and what seems plausible.” The witness does not encode all the information that a videotape does; memory rapidly and continuously decays; retained memory can be unknowingly contaminated by post-event information; the witness’s retrieval of stored “memory” can be impaired and distorted by a variety of factors, including suggestive interviewing and identification procedures conducted by law enforcement personnel.”

6. “The scientific literature and expert testimony show a broad consensus that the reliability of eyewitness testimony is highly dependent on the police procedures used in conducting lineups. The lineup – live or photographic – appears to be the most commonly used police identification procedure. A lineup is essentially a memory experiment. Police conducting lineups have been likened to scientists in that they test a hypothesis (the suspect is the perpetrator) by conducting an experiment (placing the suspect among a group of fillers) in which the group is presented to one or more persons (eyewitnesses) in order to gather data to test the validity of their hypothesis. Scientific experiments commonly call for double-blind (sometimes called blind) test procedures, a “staple of science.”

Wells characterized double-blind lineup administration as “the single most important characteristic that should apply to eyewitness identification.” Double blind testing requires that the neither the test administrator nor the subject know the “correct” or “desired” answer; the best known example is the testing of new drugs, in which neither the medical administrator nor the patient knows whether the patient received the experimental drug or a placebo.”
Kevin Golembiewski

Kevin had the following thoughts about his experience working primarily with the Mayor’s Chief Policy Advisor.

The first half of this summer, I focused on the New Jersey Medical and Health Sciences Restructuring Act, which reorganized Rutgers University, the University of Medicine and Dentistry New Jersey, and Rowan University. A significant portion of my work involved analyzing the potential impact of the legislation on the city of Newark from a policy perspective. I also performed background legal research on the entities involved in the legislation, analyzed drafts of the legislation, and helped develop fact sheets explaining the mechanics of the final bill.

During the second half of the summer, a fellow intern and I worked on a project involving recycling in Newark. We were given the task of analyzing approaches to recycling taken by different cities across the nation and using such research to develop a proposal to increase Newark’s recycling rate. After contacting cities across the country and analyzing data, we proposed that Newark switch from dual stream to single stream recycling. In my last week, we presented our proposal to several city leaders and continued to work on this project off-site.

In addition to these two larger projects, I drafted several legal and policy briefings and analyzed the likely effects of the Affordable Care Act on Newark to help the city prepare for the Act’s implementation. My work on the Affordable Care Act began during the past spring semester; I wrote a term paper on health care delivery in Newark and focused a large portion of the paper on the Act.

I also had the opportunity to attend meetings throughout the summer in which stakeholders from business, the community, and government brainstormed policy solutions to pressing city problems.

Scott Hugo

Scott worked with the Contracts Department and with the Mayor’s Policy Advisor, City of Newark.

He had the following to say about his summer experience.

When it came to applying for summer jobs, I knew there was only one place I wanted to be – Newark which is in many ways the epicenter of innovative public policy solutions. I wanted to be at the frontlines in the fight to improve the everyday lives of American citizens.

At orientation, I was honored to learn that my supervisors had designated me the leader of my own project. I managed a six-member team of interns, and our task was to update the city code to empower Code Enforcement in their efforts to combat abandoned properties. While the work at City Hall was thrilling and in and of itself, my supervisor was determined that we get a firsthand experience of what the housing crisis meant to Newark. My team piled into a Code Enforcement van and two officers served as our tour guides through the city. I was stunned to see incredible contrasts in areas, separated by only a few blocks. Here, there were immaculately maintained homes. Just a few moments later, we were in the midst of blocks where two-thirds of the lots were either razed and overgrown with weeds or empty husks. My heart went out to the homeowners we saw, struggling to maintain their homes and their pride while the street around them deteriorated. No family, and no child, deserved that.

Working at the Newark Law Department was one of the most fulfilling experiences in my life. Every morning I looked forward to the day at City Hall, knowing that what I did mattered for the citizens of Newark.

I could not have asked for better supervisors. They entrusted me with a remarkable amount of responsibility and granted me incredible access. I learned invaluable lessons about the dynamics of local government. Unfortunately, my time with the department was cut short by back surgery and post-operation nerve issues. Despite it all, my supervisors remained incredibly supportive.

As much as I wish I could have spent the whole summer at the Law Department, I would not trade the limited time that I was fortunate enough to have. I could not have asked for a better internship – challenging, meaningful, and fulfilling. It has reaffirmed my commitment to making a difference in local government.

The Association has my heartfelt gratitude for their support. Between housing at NJIT, travel, and medical costs, I honestly could not have gotten by this summer without the fellowship. Thank you – your generosity is something I will never forget.
ON THEIR SUMMER 2012 WORK EXPERIENCE IN NEW JERSEY

Support to three Harvard Law School Public Interest Fellows.

Jamie worked at the New Jersey Institute for Social Justice and had the following thoughts about that experience.

Challenges, and opportunities, are everywhere when it comes to public interest law in New Jersey. Working for the New Jersey Institute for Social Justice allowed me to get involved with issues that I was aware of, and the experience opened my eyes to problems that I wasn’t even aware of. In particular, I was aware of the disturbingly high incarceration rates in New Jersey, but what I was not aware of was the devastating collateral effects of a criminal conviction. Securing housing and employment becomes a challenge, which in turn increases the likelihood of recidivism. For this reason, the Institute has worked on many initiatives aimed at facilitating successful reentry.

One of the most interesting aspects of my summer was being able to see one of these initiatives, a “Ban the Box” project, through various stages of development. “Ban the Box” is an effort to shield former convicts from being asked to immediately disclose their criminal history during their job application process. Many employers automatically pre-sort applicants into a rejection pile if they check a “yes” box that appears on the job application asking if they have ever been convicted of a crime. The thinking behind the bill is that often times quality applicants would get the job if they simply had the opportunity to go through the full hiring process. Accordingly, the bill shifts the criminal record disclosure to the time of job offer – this way the employer has the chance to learn more about the prospective employee and can better weigh the severity of the crime in light of the potential employee’s positive attributes.

I worked on “whereas” clauses that appear at the front of the bill and are intended to explain and justify the need for such a bill. It was fascinating to be involved in strategic meetings at the Institute and to see not only the meticulousness with which the bill’s language was drafted and edited, but also to see the political concessions that were built into the bill. There was a constant calculus involved in balancing the aggressiveness and potential effectiveness of the bill, with its political viability. I also enjoyed seeing the strategies used to develop support for the bill from key stakeholders. The Institute spoke with businesses like Walmart and Proctor & Gamble that have already implemented such policies internally, and it was able to get them to assuage the fears of business leaders who were concerned that the bill would be bad for business. It was also interesting to learn the procedure by which a bill moves through the Newark City Council – by no means a simple process. I attended a Newark City Council meeting, which at times was quite the shouting match, especially with public testimony being allowed. However, the “Ban the Box” bill, sponsored by Councilman Rice, was unanimously approved for final reading.

I genuinely enjoyed spending the summer pursuing public interest law in New Jersey and am very thankful that the Harvard Law School Association of New Jersey sponsors such a fellowship. It was a great experience getting to meet some of the Association’s board members and hear about the interesting work in which they are involved. This opportunity made me think the fellowship could be improved by creating a closer link between the Association and the sponsored fellows. If Association members volunteered to have a fellow shadow them for a day and fellows shadowed with three different volunteers over the summer, it would provide a great opportunity for us to see the work being done in New Jersey by HLS alumni.
To become an active member of the Harvard Law School Association of New Jersey, simply fill out the form below and return it with a check payable to “Harvard Law School Association of N.J."

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Annual dues for the Association year are $75 for alumni admitted to the bar for six to 49 years. Annual dues are $50 for alumni admitted for fewer than five or more than 50 years and those in the public sector. The annual year for the Association begins on July 1st.

I enclose my check for the 2012-2013 dues to the Harvard Law School Association of New Jersey in the amount of

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