

Lawyer

Spring 2024

A Publication of the Mercer County Bar Association

Volume 43, Issue 2

Inside This Issue

Member Recognition..... 6

Law Day 2024 10

24th Annual Bench Bar Luncheon
& Professionalism Award 12

Ayesha K. Hamilton, Esq..... 20

Diversity, Inclusion, Equity ... 24

World Elder Abuse Awareness
Day 26

Tips for Appellate
Advocates 30

Some Trenton Mobsters. 42

Upcoming Events

YLC Axe Throwing
July 24, 2024

WLC Happy Hour
July 31, 2024

From the President’s Desk...

June has so many occasions to recognize. It is the month of graduations, weddings and Father’s Day, the observance of Juneteenth and celebration of PRIDE! It also means that I am half-way through my term as President.

Our Officers, Trustees, Committee Chairs and staff have shown such dedication to our members, and as of this printing have provided **10.5 CLE credits**, including 3.5 in Ethics, so far! Our Xtreme CLE plans are underway for Oct. 16th and 17th, with up to 25 classes for you to choose from. New topics and presenters are always welcome, so if there is something you would like to see, or present, let us know.

In observance of Juneteenth, Lloyd Freeman, Esq., Chief Diversity & Inclusion Officer at Buchanan Ingersoll & Rooney, presented “Where Are We Now in the Aftermath of the Overturning of Affirmative Action,” hosted by the Social Justice & Diversity Committees. We also partnered with Salvation & Social Justice to sponsor an Ex-



Jennifer Zoschak, Esq.

pungement Clinic which helped 173 community members! On what was probably the hottest day of the year, hitting at least 95 degrees, we joined the Bayard Rustin Center for Social Justice (BRCSJ) for the annual Princeton PRIDE celebration. I’m glad we got to be a part of this amazing, colorful, love-filled event!

A special thanks and welcome to the new Chair of MCBA’s Real Estate Section, Kevin Moore, Esq. Kevin has re-energized this committee and the section is hosting its in-person lunchtime seminar at Revere Restaurant on June 27th from 12:00 to 2:00, where Conor Hennessey, Esq., will discuss the new changes to the Real Estate broker-

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Winter 2024

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age commission.

Congratulations to the many members of our Bar and Community who have been recognized recently for their hard work and efforts! Rob Bratman (Stark & Stark) and Jennifer Downing Mathis (MCPO 1st Assistant Prosecutor) were each honored recipients of the Professional Lawyer of the Year for 2023 at the recent NJSBA Professionalism Luncheon at Forsgate Country Club. Rob received the award on behalf of the Mercer County Bar Association and Jenn received the award on behalf of the Association of Black Women Lawyers. It was my privilege to share this event with you both. Craig Hubert (Szaferman) is not the only one of our members to be elected to an officer position of the NJSBA. While Craig was sworn in as the NJSBA Secretary, Chris Jackson (Buchanan) is the new Chair of the Young Lawyer's Division of the State Bar. Michael Paglione (Szaferman) is Chair of Judicial and Prosecutorial Appointments Committee for 2024-2025, Ayesha K. Hamilton (Hamilton Law) is Vice Chair of the Women in the Profession Section of NJSBA, and Neethi Vasudevan (Ulrichsen, Rosen & Freed) is a Director of the 2024-2025 APALA-NJ Board.

Upcoming events and dates: The Young Lawyer's Committee is partnering with APALA-NJ to host an Axe Throwing Event at Stumpy's on July 24th sponsored by Smolin Accountants and Northwestern Mutual, and the Women Lawyer's Committee is hosting a Happy Hour at Brick House Tavern on July 31st sponsored by Renzi Legal Resources. Thanks to our Committees and Sponsors and I hope you can join us for these fun events!

Opening Ceremonies will be held at the Criminal Courthouse on September 3rd as we gather to remember those friends and members we have lost in the last year. The annual Judges & Law Clerks Dinner will be held on September 26th to provide our members with an opportunity to welcome the new class of Law Clerks to Mercer County. That evening will include the presentation of the Rising Leader Award to Christian Fisher and of the Harry O'Malley Award to Jeffrey Posta. Please join us to celebrate these award recipients.

The Golf Outing has been rescheduled to October 10th and XCLE will be held (virtually) on October 16th and 17th. In November we will sponsor Casino Night and I hope that you will all join us for an exciting and fun evening which will

include our Silent Auction as well as presentation of the Community Partners Award to the Bayard Rustin Center for Social Justice of Princeton, and of the Michael J. Nizolek Award to Michael G. Donohue, III., managing shareholder at Stark & Stark.

Finally, at our June Trustee's meeting the Board approved a Resolution opposing proposed legislation which would transfer the authority to appoint Appellate Court judges from the Chief Justice of the Supreme Court to the Senate and Governor. The authority to elevate trial judges to the Appellate Court has rested with the Chief Justice since the New Jersey Constitution of 1947. Our Appellate Court is intentionally comprised of a seasoned, diverse panel of judges who have first-hand experience from the trial level, giving them the unique insight and knowledge needed to hear thousands of cases each year. The MCBA joins the New Jersey State Bar and several local county Bar Associations in support of our current system of Appellate Court appointments. Our Appellate Court has never suffered the vacancies seen at the trial level, and the MCBA opposes any proposed legislation to amend our Constitution to a politicized method which would undermine the judicial independence we currently enjoy.

Keep an eye on the Weekly Update for more CLEs and social events to come, and remember that there is always space on our committees and sections. We'd love for you to join us!

*** NEW to Mercer County Bar Association! ***

We welcome the following new members...

Trevor J. Cooper, Esq., *Stevens & Lee, P.C.*

Anthony J. Destribats, Esq.,

Destribats Campbell Staub & Schroth, LLC

Derek M. Freed, Esq., *Ulrichsen Rosen & Freed, LLC*

Zachary Kafoglis, Esq.

Benjamin V. Klein, Esq., *New Jersey Division on Civil Rights*

Jonathan E. Mayer, Esq., *Stevens & Lee, P.C.*

Diane Mullin, *Settlement Officer, Title Evolution*

Sania Rashid, *Villanova Law Student*

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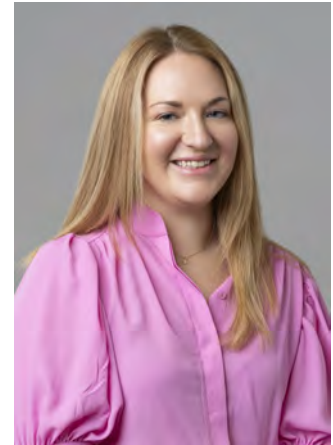
New Attorney Announcements



James Evans, Esq.
(Hamilton Office)



John Lowenberg, Esq.
(Hamilton Office)



Courtney Martin, Esq.
(Hamilton Office)

Special Recognition



United Way
of Greater Mercer County

2024 Community Quarterback Award:

Recognizes an individual who has shown true leadership, dedication, and passion for helping the community.

- *Denise Mariani, Esq.*, Civil Trial Attorney at Stark & Stark.

STARK & STARK

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Stark & Stark attorneys will fight to recover all that victims of nursing home abuse deserve.

Stark & Stark's Nursing Home Litigation Team helps protect the legal rights of victims of nursing home abuse and neglect. We will aggressively investigate potential claims and prosecute them with all of our resources.

Attorneys Denise A. Mariani, Jonathan F. Lauri, James T. Evans, Michael C. Ksiazek, Jeffrey A. Krawitz, and Catherine Foley advocate for the rights of those that have been injured or killed due to the negligence of others.

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~ MEMBER RECOGNITIONS ~

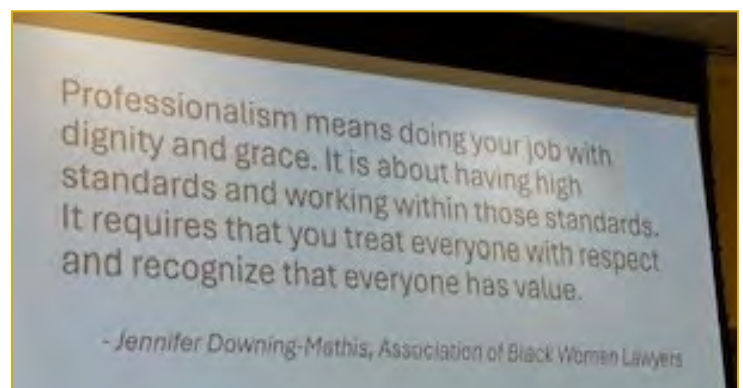
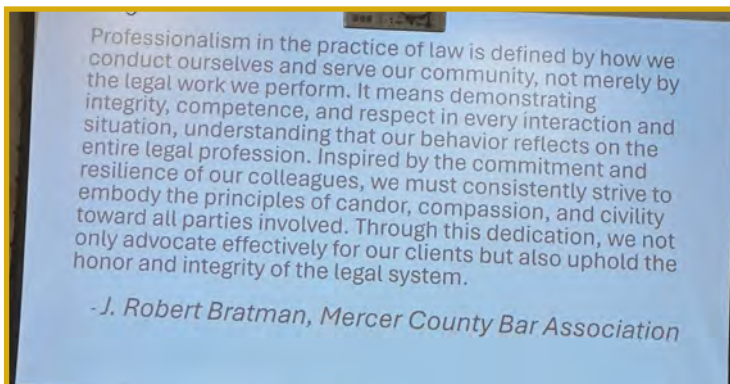
On June 11th, the New Jersey State Bar Association held their awards luncheon to recognize the Professionalism Award winners from each of the State’s county and affinity bars. Two MCBA members were honored as award recipients this year to whom retired New Jersey Supreme Court Associate Justice Barry T. Albin presented the awards.

J. Robert Bratman, Esq., *Stark & Stark*

- 2023-2024 Professional Lawyer of the Year Award from the Mercer County Bar Association

Jennifer Downing-Mathis, *First Assistant Prosecutor*

- 2023-2024 Professional Lawyer of the Year Award from the Association of Black Womens Lawyers of New Jersey







~ **MEMBER RECOGNITIONS (CONT.)** ~

Christopher L. Jackson, Esq., *Buchanan*

Congratulations to Christopher Jackson for receiving the NJSBA Young Lawyers Division Service to the Bar Award. Chris was presented this award at the NJSBA Convention and is the current President-Elect for the YLD Section of the NJSBA.

Neethi Vasudevan, Esq., *Ulrichsen Rosen & Greed LLC*

Congratulations to Neethi Vasudevan for being appointed as a Director on the 2024-2025 APALA Executive Board

Reasons your peers are members of the Mercer County Bar Association—and why you should join, too!

“I think it is important to be a Mercer County Bar Association member because of the relationships you form and the community you join. The Mercer County Bar Association provides a safe space for legal professionals to convene and speak candidly and honestly on the nature of the law across all specialties. Also, the Mercer County Bar Association organizes a host of interesting and groundbreaking CLE’s and other events that may be of interest for an attorney looking to grow his or her knowledge or portfolio. The Mercer County Bar Association gives lawyers access to important legal information and updates in the law that may not be available otherwise.

As a Mercer County Bar Association member and current committee chair, I am grateful and take pride in being able to lead the community and teach the community what the legal profession is all about. Also, I am thankful for all my fellow lawyers and judges who I’ve been fortunate to learn from, practice alongside, and grow a relationship with, both personally and professionally. It cannot be understated the impact of strong professional connections and the ability to brainstorm and work alongside some of the best legal minds in the profession on a daily basis.” *Christian Fisher, Esq.*

“I do not recall if I was counseled or ordered to join the Mercer Bar by the late and great Honorable Neil H. Shuster when clerking for him in 1990. Looking back on 34 years of practice since then, the Judge’s imparted wisdom has led to some of my greatest professional and personal relationships and accomplishments.

For New Jersey lawyers practicing in Mercer County courthouses, the Mercer County Bar Association remains the best way to network with your colleagues, adversaries and the judges who will be deciding your cases. You can also take advantage of the many opportunities to attend or teach CLEs, or grow into bar leadership, as I was fortunate to do with the MCBA and now the NJSBA.

For professional advancement and with the added benefit of enjoying my time with people who have become great friends, I remain thankful to and a member of the MCBA.”

Craig J. Hubert, Esq.

LAW DAY 2024

*Submitted by: Christian E. Fisher
Assistant Mercer County Prosecutor*



On May 3, 2024, in commemoration of Law Day, members of the Mercer County Bar Association visited Ms. Rose Chiavuzzo's *Student Voices in Action* class at Ewing High School to share their stories of becoming attorneys and to collaborate with the students in a mock trial workshop.

The program was coordinated by Christian E. Fisher, Assistant Mercer County Prosecutor and Public Education Chair of the Mercer County Bar Association, and Ms. Chiavuzzo, Ewing High School Social Studies teacher. The program focused on a mock trial case designed by Ms. Chiavuzzo and executed by her students. Students worked as teams, as attorneys and witnesses, to plan direct examinations in the courtroom. The volunteers, who included prosecutors, civil attorneys, and judges, worked to help students revise their questions, understand rules of evidence, establish foundation through witness testimony, and learn courtroom presentation and procedure.

Student Voices in Action is an elective course focused on civic outcomes at Ewing High School. In its third year, the course provides students with substantial training on the Constitution, democratic citizenship, lawmaking, litigation, conflict resolution, public interest engagement, and how to make community change through activism and local government. Students are empowered to pursue topics and ideas of their own interest. For more information on the course or how you can participate as a volunteer, please contact Mr. Brock Mislán, District Supervisor of Humanities, at (609) 538-9800 x2152 or bmislán@ewingboe.org.

A special thank you to all the volunteers: Mercer Vicinage Assignment Judge Robert Lougy, Marianne Mele, Esq., Tracy Thompson, Esq., Heather Hadley, Esq., Evan Lide, Esq., John Lowenberg, Esq., and Matthew Orsini, Esq.

Law Day is a federally recognized day, founded in 1958 by Congress and President Dwight D. Eisenhower, to acknowledge the importance of law and the legal system in the United States. At schools around the country on or about May 1, students and legal professionals work together to celebrate the day and to deepen students' legal skills.

Law Day 2024

The 2024 Law Day theme "Voices of Democracy" recognizes that in democracies, the people rule. For nearly 250 years, Americans have expressed their political views and wishes by speaking their minds and voting in elections. In 2024, the United States will hold its 60th presidential election, and Americans will address fundamental questions about democracy and the rule of law.

Mercer County Bar Association
*24th Annual Bench Bar Ethics Luncheon &
Hon. Neil H Shuster Professionalism Award*
May 8, 2024
The Stone Terrace

On May 8, 2024, the MCBA hosted the 24th Annual Bench Bar Ethics Luncheon at The Stone Terrace. MCBA was proud to award Ayesha Hamilton, Esq. the newly named Hon. Neil H. Shuster Professionalism Award.

Thank you to our moderator and panelists including, Ryan Moriarty, Hon. Ron Hedges, Johanna Barba Jones, Jessica Lewis Kelly, Esq. and Stephanie Wilson, Esq., for putting on a well received and informative program on Generative Artificial Intelligence (GEN AI).



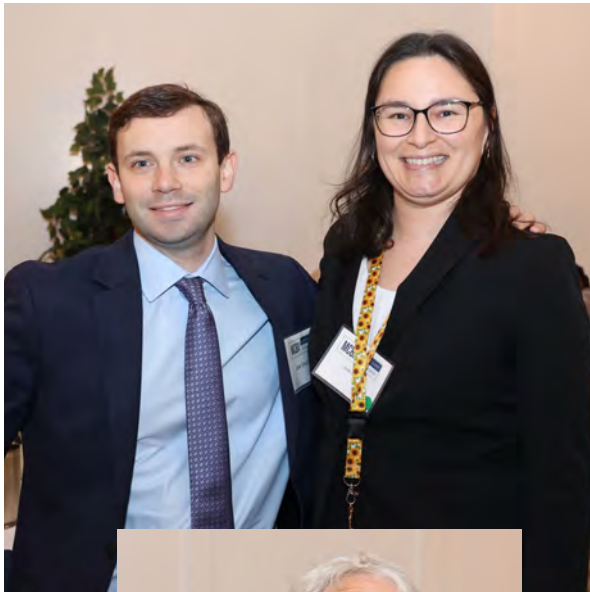














Ayesha K. Hamilton, Esq.

Submitted by: Jennifer Zoschak, Esq.

On May 8, 2024, I was honored to present the First Annual Neil H. Shuster Professionalism Award to **Ayesha K. Hamilton, Esq.** of the Hamilton Law Firm. Ayesha focuses her busy practice in employment law and is licensed in New Jersey, New York and Pennsylvania.

Ayesha has always stood out to me as someone to be admired and who holds herself to very high standards. I am not sure how it is that Ayesha has more hours in her day than the rest of us do, but she gets so much accomplished and does it all well. Not only does Ayesha have a thriving practice, she dedicates herself to serving her community through numerous national, state, county and affinity Bar Associations. In 2020, Ayesha was appointed as our county's representative on the State Bar's Judicial and Prosecutorial Appointments Committee (JPAC), vetting judicial and prosecutorial candidates for the NJ Governor's office – a position which requires a tremendous amount of time and dedication. Aye-

sha is a vocal advocate for solo/small firm practitioners and their businesses in our profession. She and her firm are the recipients of several honors.



Even with all of those accomplishments, awards and accolades, what impresses me most about Ayesha is her ability and willingness to reach out to others and to give of her time. Ayesha

has so often answered the call to develop and present a seminar, sponsor an event or fill a leadership role, and more importantly, she makes the time to mentor younger colleagues and to advise and guide them when needed. Ayesha knows how valuable that can be to someone just starting in the profession, and she is willing to share her experiences and provide her guidance and ideas. In today's busy world, it is rare to find someone who not only personifies integrity and responsibility to our profession, but who does so with humility, good humor and a sense of giving back.



When I think of Judge Shuster, I remember his laughter and broad, genuine smile and the sense of feeling welcomed that surrounded him. His tremendous legal acumen and diligent work-ethic are admirable traits, but they are traits shared by a lot of our colleagues. A lot of lawyers and judges are smart and dedicated and work hard. But what set Judge Shuster apart was his ability to make others feel included, recognized and respected regardless of their station in life or how many years of practice they had accomplished, and it was his capacity to see the unique value in each of us that makes having his name on this award so meaningful.

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Young Lawyers Committee
invites you to
AXE Throwing

Experience The Throwdown

STUMPY'S HATCHET HOUSE

Date: July 24, 2024 ~ Time: 6:00–8:00
745 Alexander Rd, Princeton NJ
Admission ~ \$15

Sponsorship Opportunities

Prize Sponsor ~ \$250

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Bullseye Sponsor ~ \$500

signage, 2 tickets, 2-minute speaker opportunity, recognition on social media

Thank you to our Sponsors!



Diversity, Inclusion, and Community Engagement

Submitted by: Judge Sherry L. Wilson

On May 30, 2024, the Mercer Vicinage Committee on Diversity, Inclusion, and Community Engagement (DI&CE) held its first in-person meeting since the end of Superior Court Judge Janetta

Marbrey's distinguished term of service as chair. The meeting was an opportunity for veteran committee members and newcomers to meet recently appointed co-chairs Superior Court Judge Sherry L. Wilson and Trial Court Administrator Richelle A. Coleman.

The DI&CE Committee, formerly the Committee on Minority Concerns, took its name in 2019 when the Committee's role expanded. The DI&CE Committee currently is charged with assessing the availability of court services and resources for all, especially self-represented litigants; working with the practice divisions and non-Judiciary partners to help improve court protocols; and facilitating community outreach in such areas as court access, job recruitment, and

criminal justice and municipal court reform.

Judge Wilson and Ms. Coleman are committed to increasing the participation of key stakeholders on the committee. At the May meeting, they were pleased to welcome leaders from a cross-section of the community who each provide a unique perspective and expertise, including Mercer County Bar Association (MCBA) President Jennifer Zoschak and Treasurer Jennifer Downing-Mathis.

In an ever-evolving landscape, the importance of diversity, inclusion, and community engagement cannot be overstated. DI&CE Committee members are excited about the Committee's initiatives that are aimed at fostering a more inclusive, equitable, and socially responsible judiciary. While the Committee will invite Mercer County residents to participate in well-established in-house events, such as Court Night, its commitment extends well beyond the walls of the courthouse. The Committee will con-

tinue to partner with government, faith-based, civic, and community-based organizations to support programs that give the public access to various services and useful information. The Committee also will make recommendations for the establishment or modification of existing policies and practices that encourage the recruitment, retention, and advancement of diverse talent within the judiciary.

The DI&CE Committee extends a sincere thank you to MCBA for consistently supporting its goals. By working together, we can create a judiciary that not only excels in professional excellence but also stands as a beacon of inclusivity and community engagement.



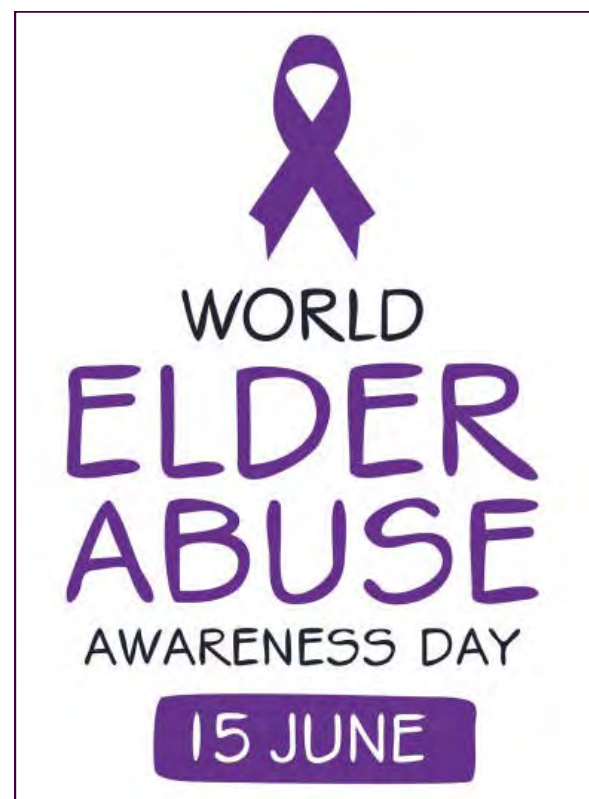
Stark & Stark Supports World Elder Abuse Awareness Day

Submitted by: Stark & Stark

“World Elder Abuse Awareness Day” was held on June 15th, and now is an important time to shed light on the often-hidden issue of elder abuse, which sadly occurs in various forms within nursing homes. From physical neglect to financial exploitation, these vulnerable individuals can face numerous threats to their safety and well-being. For families with loved ones in nursing homes, this day serves as a crucial reminder to remain vigilant and proactive in ensuring their relatives receive the care and respect they deserve.

World Elder Abuse Awareness Day was established in 2006 by the International Network for the Prevention of Elder Abuse and the World Health Organization at the United Nations. Stark & Stark’s work in our Nursing Home Litigation Group puts a huge spotlight on the disturbing extent of elder abuse and neglect in medical facilities, but there are also vulnerable seniors right in our community who are in need. The Friday before World Elder Abuse Awareness Day, the employees at Stark

& Stark wore the color purple, which is the color associated with elder abuse awareness, to show support for ending elder abuse, neglect, and exploitation. Denise Mariani, Esq., the Chair of the firm’s Nursing Home Litigation Group, also organized a donation drive for “Cathedral Square Senior Housing,” an affordable senior community in Trenton, NJ.



With a legal team dedicated to serving victims of nursing home abuse and neglect, Stark & Stark understands that these cases are often complex and sensitive, requiring a deep understanding of both legal nuances and the unique challenges faced by elderly residents. We approach each case with a dedication to seeking justice for those who have suffered due to inadequate care, negligence, or abuse in nursing facilities.

From a legal perspective, families should familiarize themselves with their rights and the legal remedies available in cases of elder abuse. Seeking counsel from experienced attorneys who specialize in nursing home litigation can provide guidance on navigating complex legal processes and pursuing justice on behalf of their loved ones. Attorneys can assist in gathering evidence, evaluating the nursing home's compliance with regulations, and advocating for compensation and improved care standards.

Ultimately, World Elder Abuse Awareness Day serves as a call to action for families, caregivers, and the community at large to unite in protecting our elderly population. By raising awareness, advocating for better care standards, and taking proactive steps to prevent and address elder abuse, we can strive to create safer environments for our aging loved ones in nursing homes. Together, we can ensure that every elder receives the respect, dignity, and quality care they



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WOMEN LAWYERS COMMITTEE INVITES YOU TO

Happy Hour

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WEDNESDAY, JULY 31, 2024
5:30 P.M. TO 7:30 P.M.

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Tips for Appellate Advocates

Submitted by: Michael E. Ostrer, J.A.D.

(retired and temporarily assigned on recall)

In an oft-quoted article on appellate practice, John W. Davis compared judges to fish. On the subject of how to catch one – a fish, that is – Davis wrote, “If the fish himself could be induced to give his views on the most effective methods of approach,” that would be preferable to “a fisherman’s weary discourse on fly-casting, the shape and color of the fly, the size of the tackle, the length of the line, the merit of different rod makers and all the other tiresome stuff that fisherman talk about.”¹ So, Davis suggested modestly – after all, he argued 149 times before the United States Supreme Court² – that his insights on appellate practice were second-best to insights from a judge “who is in his judicial person the target.”³

I am not so sure. As an appellate judge, I learned a great many lessons about appellate practice from the fine, experienced advocates who appeared before me. And, to extend Davis’s analogy just a bit further, there are plenty of fish in the sea. And what may lure one may repel another.

With that caveat, I offer some tips on appellate practice.

To start, consider carefully should your client appeal at all.

Appellate courts have often stated, one way or another, that “[a] litigant is entitled to a fair trial, not a perfect one.”⁴ It’s not something a disappointed client may want to hear. But experienced appellate advocates are mindful that

not every trial error merits an appeal. And even if there are meritorious issues for appeal, an advocate should consider, in consultation with the client, the risks and benefits of proceeding with an appeal. An unfavorable but non-precedential trial court result could lead to an unfavorable precedential appellate court result. An appeal could prompt a cross-appeal that, if successful, would make a bad result worse. And “success” on appeal may not end the litigation but kick off a new round with a remand and a new trial. A client should understand that an appeal often brings with

it unwelcome delay – currently, the time between filing and disposition in the Appellate Division is over a year. It also brings uncertainty, expense, distraction and sometimes unwelcome publicity.

Clients should understand that usually an appeal is not a “do over” – it’s usually an uphill climb because, among other reasons, the standard of review (more about that later) tilts the field against the appellant. The Appellate Division, in its last full term, reversed in just seventeen percent of civil appeals and eleven percent of criminal appeals. And getting to the court before final judgment is no easy feat either; the court granted just twenty-two percent of civil motions for leave to appeal. Mainly because of double-jeopardy concerns, criminal motions for leave to appeal fare better, with a forty-seven percent success rate. But that success just gets the movant before the court on an interlocutory basis.

Consider carefully whether this is the case for you.

Appellate advocates must confront the risk of the so-called “positional conflict.” “A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s re-

sponsibilities to another client”⁵ Usually that does not bar an attorney from taking “inconsistent legal positions in different courts at different times. . . . If the rule were otherwise law firms would have to specialize in a single side of legal issues.”⁶ But the same conceivably may not apply when an appeal may establish a precedent that disfavors another client. “[A] conflict is presented when there is a substantial risk that a lawyer’s action in Case A will materially and adversely affect another of the lawyer’s clients in Case B.”⁷

The issue is not an easy one. As a comment to the ABA Model Rules observes, “The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest.”⁸ But a conflict exists “if there is a significant risk that a lawyer’s action on behalf of one client will materially limit the lawyer’s effectiveness in representing another client in a different case, for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client.”⁹ The comment identifies several factors attorneys should consider, including the nature of the issue and the relationship with the client.¹⁰

Consider settlement.

Even after filing a notice of appeal, a satisfactory settlement may be possible. The Civil Appeals Settlement Program (CASP) offers litigants an opportunity, with the help of retired judges, to resolve appeals before incurring the costs of briefing and transcript preparation. As its title indicates, criminal cases are not eligible. But the program is not limited to cases arising from the Civil Part. Subject to a list of ineligible case types, the program also encompasses Family Part matters and agency

appeals. The assigned retired judge ultimately determines the suitability of the appeal for a settlement conference. Of those cases conferenced, roughly forty percent result in settlement, withdrawal or dismissal. To learn more about the CASP program, an article by retired Appellate Division Judges Lihotz and Espinosa is a good resource.¹¹

Even after a case proceeds to briefing and is submitted to the court for decision, parties may find it worthwhile to explore settlement. However, counsel must timely advise the court “of a settlement or serious settlement discussions so that scarce judicial resources are not needlessly wasted” deciding settled cases.¹²

Winnnow your issues.

“Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.”¹³

That takes work and skill. To winnow issues, the advocate must master the record, identify the legal issues, and assess the strength of the arguments after considering the standard of review (again, more on that later). The skilled winnower will recognize that generally, the court will prefer to decide a case on narrow rather than broad grounds. Consistent with that preference is the principle of constitutional avoidance.¹⁴

The skilled winnower also knows that less is more. Generally, appellate judges want to read shorter, more pointed briefs. They must work through a pile of briefs for each calendar. Weak arguments have a way of diluting or obscuring the strong ones. The late Third Circuit Judge Ruggero J. Aldisert opined that the lawyer who confined his appeal to just three issues was “primo,” but the one who included seven

I suspect most experienced appellate advocates can point to an appeal in which they prevailed on an argument that someone else urged them to winnow out. But it's likely best to consider those tales a testament to the advocates' good judgment, and not an excuse to write a "kitchen-sink" brief.

Respondents are not restricted to the issues the appellant has selected. "[A]ppeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion."¹⁶ An appellate court is free to affirm a trial court's order for a reason that the trial court did not adopt.¹⁷ Especially if a respondent's counsel detects some weakness in the trial court's reasoning that led to a judgment in its favor, the respondent may offer an alternative basis for affirming.

Be mindful of the standard of review.

The experienced appellate advocate is ever mindful of the standard of review. When the standard of review is de novo, the appellant gets a second bite at the apple. That includes issues of statutory construction,¹⁸ contract interpretation,¹⁹ or a decision on summary judgment.²⁰ But if the standard of review is deferential – as it is with fact-finding²¹ – the appellant faces a greater challenge. Appellate judges are not free to substitute their judgment for the trial court's.

The appellate advocate must also determine if the issue was preserved at the trial level. That's why some say effective appellate practice begins in the trial court. If the issue is not preserved, the appellant must vault the "high bar" of the plain error standard.²² That's not an easy task; and may lead an advocate to winnow out that issue and choose one that was preserved.

Standards of review affect what the advocate will argue. A skilled advocate will choose issues based not just on their inherent strength, but the appellate court's freedom to address them. The standard of review also affects how the advocate will argue. The more deferential standard of review, the more the advocate must demonstrate the wrongness of the trial court's or agency's determination.

Often, one standard of review is nestled within another. Skilled advocates will seek out the favorable standard of review and present their argument under that umbrella. For example, while appellate courts will deferentially review evidentiary determinations under an abuse of discretion standard, they will review de novo whether the court applied the correct evidentiary standard.²³ Likewise, appellate courts will ordinarily review an indictment dismissal for an abuse of discretion but will review the decision de novo if it rested on a "purely legal question."²⁴

Some judges like to see a discussion of the standard of review up front in a brief's argument section, to orient the court. Others prefer to see the main substantive point up front, with the standard of review woven into the argument. But one way or the other, the advocate must know and apply the standard of review. Any attorney who appears before an appellate court for oral argument should be prepared to address the question, "So, counsel, what is our standard review?"

And, even better, in arguing the standard of review, the advocate should know why the particular standard of review applies. In fashioning standards of review, courts have looked to institutional considerations – such as preserving judicial resources, promoting uniformity and finality, and protecting trial court legitimacy; they have also assessed the decision-maker's capabilities and considered who is better situated to make the call.²⁵

The Appellate Division website has a comprehensive memorandum on the standards of review.²⁶

Write a strong preliminary statement.

There are many things I could say about brief-writing. But in this limited space, I will confine myself to one subject: preliminary statements. Court Rules permit but do not require a preliminary statement of three pages or less “providing a concise overview of the case” with no footnotes and “to the extent practicable” no citations.²⁷ Though the preliminary statement is optional, the appellate advocate who foregoes writing a preliminary statement misses a valuable opportunity to orient and persuade the judicial reader.

The Appellate Division judge must read a pile of briefs for each calendar. The appellate advocate should know that when the judge first starts to read, the judge is usually most receptive. The judge wants to know what the case is about; what is the issue; how does the advocate resolve it; and what does the advocate want the court to do. For the appellant, the preliminary statement is the first chance – aside from the table of contents – to orient the court to the appellant’s point of view. If the brief writer does not grab the court’s attention, or if the brief writer is unclear, the judge may decide to start with the respondent’s brief instead.

For respondents, the preliminary statement is the advocate’s first chance to turn the court around. After reading a persuasive appellant’s brief, the judge may be thinking, so, respondent, what’s your answer to all that? The respondent’s attorney needs to provide it.

A good preliminary statement does several things. It orients the court. It creates a frame to put the picture in. So, when the judge reads the procedural history

and facts, the judge can put those in the frame supplied. A good preliminary statement conveys the advocate's theme and answers the question, why should the court care and want to find for you? It also identifies the issues and summarizes the advocate's theory for resolving the issues. Lists are helpful. For example, the brief writer may say: "There are three reasons why the court should reverse." And then provide them concisely.

A good preliminary statement may identify the "flashpoint" – stating what the case is about, and what it is not about. For example, "Plaintiff does not ask this court to second-guess a trial judge's weighing of the facts; it asks the court to correct a trial judge's overlooking facts so critical they could have changed the result." Or, "Defendant doesn't ask the court to second-guess an agency's discretionary exercise of delegated authority; it asks the court to correct a decision that exceeded that authority." You get the idea.

An effective preliminary statement may get to the heart in the very first sentence, beginning, "This case is about . . ." or "This appeal raises the question . . . The answer is no, because (1) . . . (2) . . . and (3)." Or the advocate may provide some essential background – but keep it short – and then dive in. The effective preliminary statement does not waste the opening sentence on "throat-clearing" – such as, "this is an appeal from a decision of the Department of Labor." The judge can tell that from the brief's cover.

A good preliminary statement does not overpromise (by previewing points that are barely mentioned in the argument section), nor does it underpromise (by omitting mention of prominent points in the argument section).

Here's one way to test your preliminary statement. Pretend the reader knows nothing about that case. After reading just those pages, the reader should know enough to understand what the case is about and why the court should rule in your favor.

Conclusion

Of course, even the most skilled appellate advocates do not always achieve a favorable result – even after they have winnowed out the weak arguments and presented the strong; ably applied the standards of review; and written a crisp and compelling preliminary statement followed by logical and well-supported arguments. Sometimes, the facts or the law simply go the other way. But even in defeat, those advocates earn something important: the appreciation of the court.

¹ John W. Davis, The Argument of an Appeal, 3 Journal of App. Practice & Process 745 (2001).

² See [Top Supreme Court Advocates | Oyez](#), last visited June 14, 2024.

³ John W. Davis, at 745.

⁴ See, e.g., D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 18 (App. Div. 2008).

⁵ RPC 1.7.

⁶ Restatement (Third) of the Law Governing Lawyers, § 128, cmt. f (Am. Law Inst. 2024).

⁷ Ibid.

⁸ 10 ABA Model Rules of Professional Conduct and Code of Judicial Conduct 1.7, cmt. 24 (2023).

⁹ Ibid.

⁹ Ibid.

¹¹ Marie E. Lihotz and Marianne Espinosa, It's Not too Late to Settle: Meet CASP, 226 N.J.L.J. 608 (March 9, 2020).

¹² Sessner v. Merck Sharp & Dohme Corp., 435 N.J. Super. 347, 348 (App. Div. 2014).

¹³ Jones v. Barnes, 463 U.S. 745, 751-52 (1983).

¹⁴ See Randolph Town Ctr., L.P. v. County of Morris, 186 N.J. 78, 80 (2006) (“Courts should not reach a constitutional question unless its resolution is imperative to the disposition of litigation.”).

¹⁵ Ruggero J. Aldisert, Winning on Appeal, Nat’l Inst. of Trial Advocacy, at 131 (2d ed. 2003).

¹⁶ Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)).

¹⁷ State v. Heisler, 422 N.J. Super 399, 416 (App. Div. 2012)

¹⁸ See, e.g., Kennedy v. Weichert Co., 257 N.J. 290 (2024).

¹⁹ See, e.g., Kieffer v. Best Buy, 205 N.J. 213, 222 (2011).

²⁰ See, e.g., Townsend v. Pierre, 221 N.J. 36, 59 (2015).

²¹ See, e.g., State v. Johnson, 42 N.J. 146, 161-63 (1964).

²² See State v. Santamaria, 236 N.J. 390, 404 (2019); R. 2:10-2.

²³ See, e.g., State v. Trinidad, 241 N.J. 425, 448 (2020).

²⁴ State v. Twiggs, 233 N.J. 513, 532 (2018).

²⁵ See McLane v. E.E.O.C., 581 U.S. 72, 79-82 (2017) (discussing policy underlying standard of review); State v. S.S., 229 N.J. 360, 379-81 (2017) (discussing trial court’s capabilities as reason for deferential standard of review).

²⁶ See [appellatestandards.pdf \(njcourts.gov\)](https://www.njcourts.gov/appellatestandards.pdf), last visited June 14, 2024.

²⁷ R. 2:6-2(a)(7).



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Some Trenton Mobsters (Part 1)

Submitted by: Franklin L. Flacks, Esq.

Al Capone, Vito Genovese, Lucky Luciano, Bugsy Siegel, Meyer Lansky — not from Trenton, NJ. However, Trenton has a rich and entertaining history of mobsters, all of its own!

According to Scott M. Deitche, in his book, *Garden State Gangland*, organized crime begins in these few cities around the state, when new immigration groups arose at the turn of the 20th century, and they fell victim to extortion groups and police indifference.

One of the earliest groups, although not official or organized, according to Deitche, was “Black Hand.” This moniker referred to the practice of placing a print of a black hand on a letter to the family of a victim of kidnapping or extortion. Essentially, “Pay or your family member will suffer the consequences!” It was loosely affiliated groups of criminals looking for a quick payday and loosely connected to Italy’s Mafia.

As early as 1907, Leo and Pedro Salamander owned a liquor distribution business on Cummings Avenue in

Trenton. On February 10, 1921, they were driving a delivery truck carrying 25 barrels of liquor through Kingston, NJ, when Pedro claimed they were hijacked, and Leo was murdered.

Apparently, the hijackers fled and then crashed their car. One of the hijackers was found dead in the car from a bullet wound received during the hijacking (Source - Frank Walsh). Later investigation revealed that the hijackers were operating out of Newark, with connections to the Italian Mafia in New York. In fact, the famous Mafia financier, Meyer Lansky, bailed them out.

The first known street gang in Trenton was the South Trenton River Rats, formed early in the 1960s. It was described as a loose conglomeration of people with a common cause of disrupting commerce along the busy wharf areas of the Delaware River bordering Trenton.

In the late 1950s and into the 60s, Trenton High School had a student population of approximately 3000, which was predominantly white but

consisted of a mixture of Italians, Jews, Irish, Poles, Russians and Czechs, and there were also Blacks and Hispanics. Each group had gang representation. Some of the groups' names were the Progressive Clicks, Aladdin Gaylords, Jolly Jesters, and the South Trenton Stars.

By the late 1920s and into the 30s, Trenton was awash with illegal booze, distilleries, and police corruption. On September 22, 1930, in the middle of the prohibition era, an illegal distillery was operating in an abandoned factory on Prospect and Frazier Streets. When police arrived, a man called Cooper told police they had the OK to operate. The police were then offered \$10,000 to go away.

What the police didn't know was that the fix was in. The 11 men arrested were immediately set free, without being booked or fingerprinted. Even

the rum-running trucks were returned.

The police chief at that time was William Walter. A further investigation revealed that for up to \$500 a week, Walter would go easy on the gangsters that ran the booze and "numbers" rackets. John Arbiter, an ex-boxer, controlled Trenton's bootlegging. Harry "Mugsy" Rednor ran "numbers" operations in every Trenton ward. Jeff Taylor, dapper but vicious, ran the protection rackets.

In 1927, federal agents tried to inspect a suspected beer warehouse on the corner of Broad and Market Streets. Chief Walter had them arrested. On October 24, 1932, a truck filled with whiskey was ambushed on what is now Route 206. From the shadows emerged two Chambersburg hoodlums, Michael "Daylight" Tramantona and Ponzi Camarata, who killed the



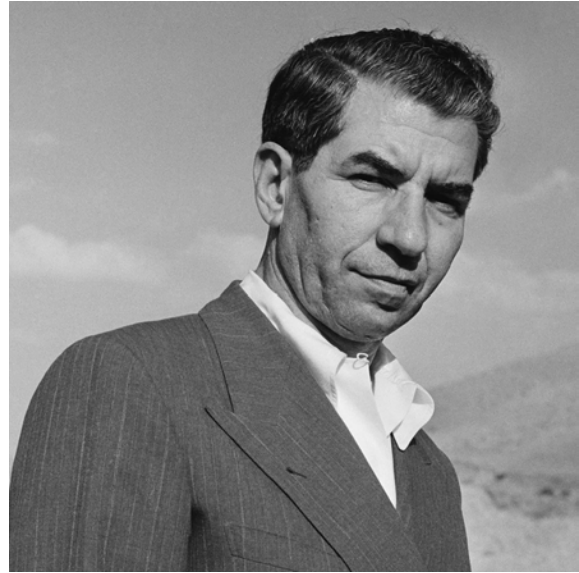
driver and removed the body. However, before they could get any further, Burlington County police arrived.

Interestingly, that evening, John Arbiter visited the homes of several police officers. Chief Walter then had the robbers released. It was also revealed that it was not unusual for police to tip off illegal speakeasies and gambling venues before a raid.

In December 1933, prohibition was repealed. Taylor and Rednor were now on trial for throwing a bomb into an East State Street laundry. Taylor fingered Chief Walter, who allowed him to operate with impunity.

Rednor was now operating a North Clinton Avenue bar and betting parlor, allowed by Walter. Rednor also testified before a grand jury about Walter. In 1935, Walter was indicted and ultimately convicted of misconduct in office.

According to Philip Leonetti (Nicky Scarfo's nephew) in his book, *Mafia Prince*, there was little to no connection between the various crime groups operating in the United States. The inaugural summit of a newly organized syndicate — to be known as La Cosa Nostra, comprised of some 50 gangland bosses from around the US



Lucky Luciano

— took place in Atlantic City in 1929 at the Ritz Hotel. It cemented the modern structure of organized crime and gained mythical status in Mafia lore. Now the Italians, Irish, and Jews could work together to control the rackets. Lucky Luciano emerged by 1931, after a further meeting in Chicago, as the “Godfather” and 26 American Mob families were formed in major cities throughout America.

In the Post-World War Two era, the New Jersey underworld was a mix of existing based mafiosi, coupled with the presence of New York crime figures who fled into Essex and Bergen Counties, fleeing increased law enforcement attention.

In 1959, Angelo Bruno, born Angelo Annaloro, succeeded Joseph Ida as boss of the Philadelphia crime family.

The Philadelphia crime family enjoyed its most peaceful and prosperous time under the longtime Mafia Don, Angelo Bruno, also referred to as "The Gentle Don."

Bruno was born in Sicily and came to the US as a child. Bruno was a close associate of the New York Gambino crime family crime boss, Carlo Gambino. Living with Bruno was a cousin



Angelo Bruno

of Trenton mobster, John Simone. Bruno owned an extermination company, called Atlas Extermination Co., as a front for a legitimate business.

Bruno refused his mob family involvement in narcotics trafficking, preferring more traditional mob operations, such as bookmaking and loan sharking. He did allow other Philadelphia gangs to distribute drugs in Philadelphia. This arrangement apparently angered some Bruno family

members who wanted a share of the drug profits.

On June 2, 1977, the Bruno Family hit the jackpot. Gambling was legalized in New Jersey and the Philadelphia mob was positioned to control Atlantic City. For more than 10 years earlier, Atlantic City's primary underworld figure was Nicky Scarfo of Philadelphia.

At this point Scarfo's reputation as a killer was well known. Bruno reached out to Scarfo to kill someone and Scarfo obliged. Scarfo's nephew, Phil Leonetti, did the killing. Scarfo was now ingratiated to the Philly mob leaders. Things were looking up for Scarfo, but by the late 1970s, Bruno was losing control of his mob.

In 1976, Carlo Gambino, Bruno's benefactor, died of a heart attack. Bruno's power was now beginning to wane. Bruno began having problems with his underboss, Phil "Chicken Man" Testa. Scarfo sided with Testa in the dispute. On March 21, 1980, Bruno was killed by a shotgun blast to the head as he sat in his car in front of his house in Philadelphia. The killing was ordered by Bruno's consigliere, Antonio Caponigro. Two weeks later, Caponigro's nude and battered body was found in the trunk of a car in the Bronx.

The murder of Bruno set off four years of a bloody mob war in Philadelphia, resulting in at least 20 murders, including Phil Testa and his son, Salvatore Testa.

Simone Rizzo Decavalcante, also known as “Sam the Plumber”, was born in 1912 in North Jersey. By the 1950s he and his family were living at 167 Cleveland Avenue in Trenton. Later, after making money from crime, he bought a large home in Princeton. He listed his legitimate employment as a partner in a plumbing business, thus the nickname “Sam the Plumber”.

Decavalcante maintained close friendships with the top mobsters of the era, including Carlo Gambino, Genovese powers, Angelo “Gyp” DeCarlo and Anthony “Little Pussy” Russo, as well



“Sam the Plumber” DeCavalcante

as Joseph “Bayonne Joe” Zicarelli of the Bonanna crew. As such, Decavalcante was allowed to operate autonomously in Mercer County.

Decavalcante and his operatives began to control various labor unions, which gave him control and dominion over major construction projects and other business entities, resulting in millions of dollars from extortion payments. He was also involved in sideline rackets, such as cigarette smuggling, pornography, truck hijacking and cargo thefts. He also allowed his group to dabble in the narcotics trade.

Throughout the 1960s, federal law enforcement was using wiretaps of suspected mob members, including DeCavalcante. Doing so, in 1968, the Feds got wind of a mob meeting to take place in Miami. Participants were to include Carl “Pappy” Ippolito and John Simone, both of Trenton. Law enforcement was interested in finding links between organized crime and politicians, according to Scott M. Deitche in *Garden State Gangland*.

On December 11, 1968, Assistant Attorney General, William J Brennan III revealed that three members of the New Jersey legislature were entirely too comfortable with organized crime. Brennan was directing a Mercer

County grand jury investigating organized crime and corruption in local government.

The day after Christmas, the Evening Times of Newark printed the names of Brennan's three politicians alleged to be too comfortable with organized crime. On the list were Mercer County assemblyman, Republican John Selecky of East Windsor, and Democrat David Friedland of Hudson County. Also named was Sido Ridolfi, Mercer County's prominent Democratic State Senator, who represented Trenton since 1954. All denied wrongdoing of anything illegal and none were ever criminally charged.

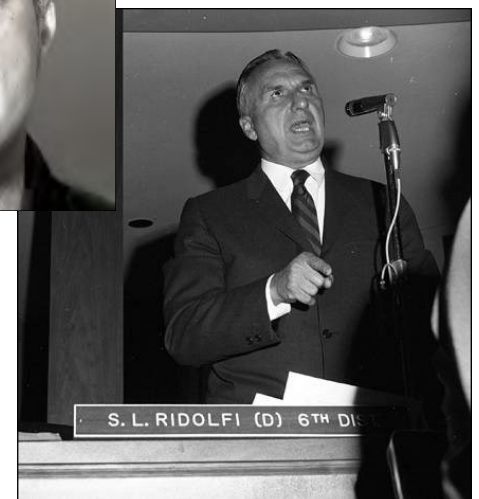
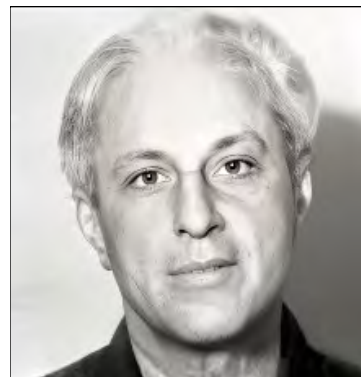
Ridolfi had helped John Simone, a/k/a Johnny Keyes, in the purchase of a Lawrence Township home. Simone was a cousin of Angelo Bruno. He also represented the Bralynski brothers, Edward and Raymond, in a number of real estate deals in Hamilton Township. Edward had received notoriety when he was seen accompanying Simone to court for Bruno for a traffic ticket case.

Selecky was a character witness for Salvatore Profaci, who owned the Ming Room Restaurant in Hightstown. Profaci had been charged with using abusive language

towards police during a traffic stop. Profaci's uncle was Joe Profaci, who ruled one of New York's five families from 1930 until 1962. Profaci had also been caught by police digging what was believed to be a grave in Millstone Township in 1968.

Friedland had been involved in a loansharking deal in Woodbridge Township, involving Mafia figure, John Decilio.

Meanwhile, in 1970, Decavalcante was indicted for operating a \$20-million-a-year numbers lottery network. He was convicted and received a five-year prison term. He was released after serving two years. He then moved to Miami and died at age 85.



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