LEADERS FOR CHANGE  (L-R) Gwen L. Zornberg, Emily C. Hewett ’78, Gwen Alexis ’72, Deborah A. Batts ’72 and Eleanor D. Acheson were among the 600 alumnae who returned to HLS to celebrate the 60th anniversary of the first women graduates.

Justice Breyer celebrates 20 years on the Court
Longtime jurist explains inner workings of Supreme Court

NEVER LET IT be said that a U.S. Supreme Court justice doesn’t keep his work close to his heart. During a lunchtime question-and-answer session at Harvard Law School on Oct. 1, Justice Stephen Breyer ’64 reached into his jacket pocket and pulled out a small white booklet. “This is a great document, the Constitution of the United States,” said Breyer. “It’s a fabulous document. I don’t know how they wrote it. It’s brief. It has general principles. Fabulous.”

Breyer visited his alma mater and former employer to have an informal chat with HLS Dean Martha Minow and to take a handful of questions from students. Back on campus to celebrate the 20th anniversary of his appointment to the high court, he also took part in a panel discussion later in the day with several HLS professors who examined his tenure and some of his most notable opinions.

During the afternoon session, one woman asked a question many students in the crowd were likely wondering: “What does it take to become a Supreme Court clerk?” The answer: a lot of work.

There are roughly 8,000 cases pointed toward the Court each year, said Breyer, who broke down some of the Court’s internal workings. Four law clerks for each justice review the cases and write detailed memos about each petition. The justices then review those memos and choose which ones to hear in a process that requires four votes to grant a writ of certiorari, or judicial review.

The final list typically includes about 80 cases. Contrary to what some people think, the justices’ decisions on which cases to hear aren’t based on how much “fun” they think a case might be, said Breyer.

“Our real object is to decide in those cases that require a uniform federal decision, which almost always is where the lower courts have come to different conclusions on the same question of federal law,” he said. “Mechanics play an important role” in the selection of cases and the decision process, said Breyer. “We’re not there to make some theory about something. We’re there to decide cases. That’s the job.”
BRIEFS

‘Trust and credibility depend on the appearance of fairness and accountability’

Barron nominated to U.S. Court of Appeals

Harvard Law School Professor DAVID BARRON ’94, an expert in administrative law and the separation of powers, was nominated to the United States Court of Appeals for the 1st Circuit by President BARACK OBAMA ’91 in September. Barron served as acting assistant attorney general in the Office of Legal Counsel, where he had a leading role in reviewing and writing legal policy about the conflict with Al Qaeda and on domestic issues, including how the TARP bailout fund should be used.

Blumenthal on the surveillance court

On Aug. 8, the same day that news outlets reported additional revelations regarding the scope of information gathered by the National Security Agency, U.S. Sen. RICHARD BLUMENTHAL (D-Conn.) delivered an address at HLS, on proposed legislation to reform the Foreign Intelligence Surveillance Court. Blumenthal stressed his deep respect for the intelligence agencies and institutions whose work has saved American lives. But, he warned, “trust and credibility depend on the appearance of fairness and accountability, and my fear is that some of those agencies and institutions are in peril of losing it.”

Former FCC chair teaching at HLS, HBS

JULIUS GENACHOWSKI ’91, who served as chair of the Federal Communications Commission from 2009 until May 2013, is teaching a course, Running a Federal Agency: Lessons from Business, Technology and Game Theory, to Harvard Law School and Harvard Business School students this fall. While at the FCC, Genachowski focused on unleashing the opportunities of wired and wireless broadband, successfully pursuing policies to promote investment and job creation, drive innovation, foster competition, and empower consumers.

Tumblr makes appearance before the Court

Professor LAWRENCE LESSIG submitted a Tumblr page to the Supreme Court as an appendix to an amicus brief. The case, McCutcheon v. Federal Election Commission, focuses on whether aggregate limits on donations to campaigns are constitutional, in the same vein as the Citizens United decision. Lessig created the blog to aggregate his survey of how the framers of the U.S. Constitution used the word “corruption,” highlighting that the framers used the word in a different, more inclusive way. Lessig’s Tumblr, the first that has ever been submitted in a Court brief, can be seen at occlusion.tumblr.com.

IHRC Report: ‘Nepali war victims need help’

Seven years after the end of Nepal’s armed conflict, civilian victims are still struggling in the absence of effective help from the government, according to a September report by HLS’s International Human Rights Clinic. A government relief program, set to end in 2014, has failed to deliver sufficient services and support, according to the report. Co-written by Lecturer on Law BONNIE DOCHERTY ’01, the report documents Nepali victims’ calls for financial and in-kind assistance as well as justice and truth after a decade-long conflict between government and Maoist forces.

The rule of law is being massively distorted by the rule of power, according to RALPH NADER ’58, who hosted a daylong conference at HLS on Oct. 24. The event featured a dozen speakers who said they want lawyers and law schools to do more to address inequalities in access to justice. “It’s very important for there to be a churning, a perturbation, a wave-making at every law school. There are examples in the history of HLS where organized, knowledgeable, persistent students who ask good questions about law and justice can make change,” he said.
Kagan: Court is changing our litigation system in unfortunate ways

IN A CONVERSATION WITH DEAN MARTHA MINOW IN early September, Supreme Court Justice ELENA KAGAN ’86 reflected on her career and her current role on the Court. Minow noted that several cases each term garner tremendous national and international attention. When asked which cases she believes deserve more public attention, Kagan replied that there are important cases every term in which big matters are being decided and which may be leading to divided decisions. “I wrote a couple of dissenting opinions this term on cases involving class litigation, class actions,” said Kagan. “I think the Court is doing some big things regarding how civil litigation is conducted in America and things which really affect the ability of people without a lot of money to bring lawsuits to vindicate their legal rights, that are changing our litigation system in ways that I think are unfortunate and are not supported by the law that’s out there. I wish that that got more attention.”

EPA administrator delivers inaugural address at Harvard

Less than two weeks after being confirmed by the Senate as Environmental Protection Agency administrator, GINA MCCARTHY delivered an inaugural address at Harvard Law School on July 30. McCarthy, who was the assistant administrator for EPA’s Office of Air and Radiation during President Obama’s first term, has played a key role in the administration’s efforts to address climate change. She previously served as the commissioner of the Connecticut Department of Environmental Protection.

Deconstructing the Court’s decisions

IN THE SPRING, THE U.S. SUPREME COURT SAVED a trio of critical rulings involving same-sex marriage, voting rights, and affirmative action for the final days of its term, and the repercussions from those decisions are still playing out. During a luncheon discussion on Sept. 26 moderated by Dean Martha Minow, four of the school’s constitutional experts, Professors MICHAEL KLARMAN, CHARLES FRIED, TOMIKO BROWN-NAGIN, and Visiting Professor JUSTIN DRIVER ’04, deconstructed the decisions and offered the audience their thoughts on the Court’s rulings.

AMA 2013

Presiding over the final round

Supreme Court Justice Ruth Bader Ginsburg ’56-’58 (center) presided over the final round of the Ames Moot Court Competition on Oct. 23. She was joined by Judge Merrick B. Garland ’77 of the U.S. Court of Appeals for the District of Columbia Circuit and Judge Ilana Diamond Rovner of the U.S. Court of Appeals for the 7th Circuit.

PETITIONER:
Martin D. Ginsburg Memorial Team
Gerard Justin Cedrone, oralist
Jeremy M. Feigenbaum
Caillin Halpern
Wookie Kim
Ashwin Phatak, oralist
Jillian Sheridan Stonecipher

RESPONDENT: BEST OVERALL TEAM, BEST BRIEF
Constance Baker Motley Memorial Team
Nikolas Bowie, oralist
Alison Deich
Dena Halbi
Lucas Issacharoff
Andrew Rorrbach
Kyle Wirshba
BEST ORALIST

Addressing team finalists, Judge Ilana Diamond Rovner, said, “I feel so privileged to have been here with Justice Ginsburg and Judge Garland and to know that the law will live on in such capable and able hands, and for that, I really, really thank you.”

“CAN WE STOP TALKING ABOUT ENVIRONMENTAL REGULATIONS KILLING JOBS, PLEASE? WE NEED TO EMBRACE CUTTING EDGE TECHNOLOGY AS A WAY TO SPARK BUSINESS INNOVATION.”

Gina McCarthy
A YEAR AFTER Christopher Columbus Langdell assumed the deanship of Harvard Law School in 1870 with the promise of making the school competitive and meritocratic, the first woman applied for admission. Helen Sawyer, a 27-year-old New Hampshire resident, wrote: “I trust that under the present liberal tone of Harvard, my sex will pose no misfortune for me.” The Harvard Corporation debated her request over two meetings but ultimately rejected her. For 80 years, the law school continued to bar women applicants, until, in 1950, 14 women were granted admission to Harvard Law School.

This fall, Harvard Law School hosted more than 600 alumnae back on campus, including several members of the pioneer Class of 1953, as part of “Celebration 60,” a reunion event to mark the 60th anniversary of the first women graduates.

The three-day event, which was held Sept. 27 to 29, celebrated what Dean Martha Minow described as “the smashing of the Harvard Law School tradition of exclusion.” The event was part of a worldwide women’s leadership summit of Harvard Law School alumnae, titled “Leaders for Change—Women Transforming Our Communities and the World.”

ALUMNAE REUNITE (L-R) Vernā Bigger Myers ’85, Tracy R. Brown ’85, Dean Martha Minow, Alison Dreizen ’77, Deborah Branch ’84 and Juana C. Hernandez ’83 gather for a Celebration 60 group photo. A panel discussion on “My Brilliant but Unusual Career” drew a standing-room-only crowd. (Pictured) Brande Stellings ’93, vice president, Corporate Board Services; Carolyn Edgar ’93, vice president and legal counsel, The Estée Lauder Companies; and Susan Estrich ’77, partner, Quinn Emanuel Urquhart & Sullivan and professor of law at the University of Southern California. Other panelists were Sarah Hurwitz ’04, speechwriter; Lucy Koh ’93, U.S. District Court judge; Silda Wall Spitzer ’84, principal, NewWorld Capital Group; and Jamienne S. Studley ’75, president & CEO, Public Advocates Inc.

JUSTICE RECOGNIZED ⑦ Justice Ruth Abrams ’56, the first female justice of the Massachusetts Supreme Judicial Court, praised the progress the law school has made in diversifying its student body, faculty and curriculum since the early 1950s, when, she said, women students were marginalized. “Harvard is a very influential institution. For them to treat women in this way meant the world could treat women this way. The 60 years that have passed have meant that women, by gaining acceptance here, have gained more acceptance in the working places of the world.”

The democratization of legal knowledge

Lawyers from around the world gathered at HLS on Oct. 9 for a panel discussion on the future of the global legal profession. Hosted by the Program on the Legal Profession, the event was part of the International Bar Association’s 2013 Annual Conference, held this year in Boston. The HLS session was titled “Preparing for the Future—Changes in Structures, Technology & Regulation.”

David Wilkins ’80, vice dean for Global Initiatives on the Legal Profession, delivered the keynote address. In recent years, he stated, profound changes have altered the nature of the global legal profession, including the globalization of economic activity, the rise of information technology, and the “blurring together of traditional categories of knowledge and organization,” such as business and law or the public and private sectors. “These things are reshaping the world, so why won’t they reshape us?” asked Wilkins.

The IBA event attracted hundreds of participants from around the world.

WE BUILD A GIANT PIPELINE OF IDEAS AND IT BECOMES WHO WE ARE, AND IT PAYS OFF FOR US FINANCIALLY. WE MAKE THESE INVESTMENTS IN RESEARCH BECAUSE IT’S HOW WE BUILD A VIBRANT FUTURE.”

Sen. Elizabeth Warren

INTERNATIONAL ACCLAIM
⑥ Zia Mody L.L.M. ’79, founder and senior partner of AZB & Partners in India, received a Celebration 60 award. ⑦ (L-R) Judges Kimberly Budd ’91 and Denise Jefferson Casper ’94.

PIONEERING WOMEN
⑧ 1953 classmates (L-R) Ann Pfohl Kirby, Charlotte Horwood Armstrong and Judge Sondra Miller. The Celebration of Women reunion event has been a tradition at Harvard Law School since the first reunion was held in 1978, 25 years after the first fourteen pioneering women attended HLS. ⑨ (L-R) Judge Karen Nelson Moore ’71 and Judge Patti Saris ’76 took part in a panel discussion on “Women in the Judiciary” moderated by HLS Professor of Practice Nancy Gertner. Judges Cynthia Aaron ’84, Christine Arguello ’80, Fernande “Nan” Duffy ’78 and Wilhelmina Wright ’89 were also on the panel.

Professor Wilkins emphasized the need for research in the changing legal profession.
Vicki Jackson marked her appointment to the Thurgood Marshall Professorship of Constitutional Law with an Oct. 3 lecture titled “Proportionality and Judging in American Constitutionalism.”

In her introduction of Jackson, Dean Martha Minow said, “What an enormous thrill that the very first holder of this chair, named for Supreme Court Associate Justice Thurgood Marshall, is one of his former clerks. In the years since that clerkship, Vicki has built a remarkable career as one of the leading experts in the world in comparative constitutional law, federalism, and gender and the law. Vicki brings meticulous care, thoughtful engagement and fresh perspective to everything she does.”

In her lecture, Jackson connected Justice Marshall’s signature positions in favor of a more flexible approach to standards of review and equal protection claims with a growing international literature on proportionality.

Using cases from the U.S. and abroad, Jackson argued that U.S. courts should give greater recognition to the role of proportionality in framing doctrine, and should be open to revised understandings, particularly in cases decided under the Fourth and Eighth Amendments.

“Reprising to some extent older debates about rules, standards, and balancing, and in light of this new literature,” she said, “I argue that U.S. constitutional law would benefit from greater clarity about and some greater use of the principle of proportionality that has been elaborated around the world.”

Prior to joining the HLS faculty in the summer of 2011, Jackson served as the Carmack Waterhouse Professor of Constitutional Law at Georgetown University. In December 2012, she was appointed amica curiae in United States v. Windsor, the landmark case that challenged the constitutionality of the 1996 Defense of Marriage Act. At the Court’s request, Jackson argued that the Court lacked jurisdiction.

In addition to her academic career, Jackson was a partner at the Washington, D.C., firm Rogovin, Hulse & Lenzner and served as deputy assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice from 2000 to 2001. She was co-chair of the Special Committee on Gender of the D.C. Circuit Task Force on Gender, Race & Ethnic Bias, a member of the D.C. Bar Board of Governors, and active in many other civic, law-related organizations.


The Thurgood Marshall Professorship was founded with an anonymous donation of $10 million in honor of Professor Laurence Tribe ’66. Upon his retirement from the faculty, the position will become the Laurence H. Tribe Professorship of Constitutional Law.

Confusing food date labels lead to food waste

of food products, manufacturers are free to determine shelf life dates according to their own methods. The report finds that the confusion created by this range of poorly regulated and inconsistent labels leads to results that undermine the intent of the labeling, including false notions that food is unsafe, costs due to consumer confusion and misinterpretation of labels, costs due to business confusion at supermarkets and other outlets, and mass amounts of wasted food.

The report recommends that food producers and retailers begin to adopt several changes to date labels voluntarily, but government steps, including legislation by Congress and more oversight by the FDA and the USDA, should be considered as well.

Voluntary changes include making “sell by” dates invisible to consumers, as they indicate business-to-business labeling information and are mistakenly interpreted as safety dates; es-
Legal scholars discuss Breyer’s ‘Greatest Opinions’

In honor of Justice Stephen Breyer’s 20th year on the Supreme Court, Harvard Law School faculty gathered on Oct. 1 to discuss some of his most notable written opinions. Breyer, who earlier in the day participated in a Q-and-A session with Dean Martha Minow, attended the panel discussion and shared insight into his thought process.

HLS Professor John F. Manning kicked off the discussion, describing Breyer as the “quintessential legal process judge” in an era when textual interpretation is more popular among many of the justices.

Professor Martha Field reflected on Breyer’s dissenting opinion in Holder v. Humanitarian Law Project, a case on the government’s prohibition of material support of terrorism, and an application of that to peaceful activities of human-rights organizations.

Professor Mark Tushnet focused on Breyer’s opinions on free speech. Other faculty panelists included I. Glenn Cohen ’03, Charles Fried, Todd Rakoff ’75, Cass R. Sunstein ’78 and Laurence Tribe ’66.

Each faculty member contributed an essay on Breyer’s written opinions for a commemorative book published in honor of the justice. Breyer proclaimed his appreciation that law professors carefully read his opinions, as sometimes it seems the decisions go “into thin air” after their release. “You’ve obviously put thought into this and it’s very helpful,” he said, acknowledging the importance of the larger circle of feedback from judges, attorneys, professors and law students.

LOOKING BACK

Dershowitz on his retirement: ‘It’s rare to have a profession where you can have such continuing influence.’

Professor Alan M. Dershowitz is retiring at the conclusion of the fall semester, and on Oct. 7 the school hosted a celebration of his 50-year career with an afternoon of panels recognizing his accomplishments and the influence he’s had on law, teaching, scholarship and society. Participants included current and former colleagues and students, judges, and legal analysts. While the event focused largely on Dershowitz’s many contributions to academia, law and society, it also provided panelists with opportunities to offer personal recollections.

As a member of a panel examining Dershowitz’s influence on the law, Boston criminal-defense lawyer Martin Weinberg ’71 recalled coming to HLS as a first-year student in 1968, during the Vietnam War and a time of deep social unrest, intent on being a trial lawyer who would fight against the government but finding little support in the law school to guide him in meeting his professional goal. “In 1968, there was no Gertner, no Olgletree,” he said. “Alan was the single role model, the mentor, the lodestar for those of us who came not to be Wall Street lawyers but to be trial lawyers and to learn how to defend people’s liberty.”

Boston criminal-defense and civil-liberties lawyer Harvey A. Silverglate ’67 had a similar tale to tell, describing what it was like to be a first-year student at HLS in 1964, the same year Dershowitz came to Harvard at age 25 as the youngest associate professor in the school’s history. Silverglate related that he’d grown somewhat disenchanted with law school and thought about quitting so that he could pursue a career in journalism, but Dershowitz dissuaded him and put him in touch with a well-known Boston criminal-defense lawyer who gave him a research job. Silverglate loved the job and set his sights on becoming a trial lawyer.

A second panel focused on Dershowitz’s classroom work, which he has always maintained is his highest professional priority.

Joel B. Pollak ’09, a former student of Dershowitz’s who is now editor-in-chief and in-house counsel at the conservative Breitbart News, said that Dershowitz has always enjoyed support from conservative students. “I think the fact that Alan’s students run that spectrum is a testament to how passionate he is about teaching, how effective he is teaching, and reflects his enthusiasm for challenging students to form arguments that are different from those we’re used to, to consider alternative points of view, to move beyond taboo and think about what our true beliefs are,” he said.

Another panel examined Dershowitz’s role as a public intellectual, including his work as legal commentator on television.

Television journalist Geraldo Rivera, who has a J.D. from Brooklyn Law School, credited Dershowitz with creating a new profession: “lawyer as television pundit,” Rivera said. “He was the first, and he was the best, of all the TV lawyers.”

Jeffrey Toobin ’86, staff writer at The New Yorker and senior legal analyst for CNN, picked up on Dershowitz’s involvement in the Simpson case as a watershed. “The O.J. Simpson case was such a tremendous learning experience for the country,” he said. “Alan was such a wonderful spokesman for just what the rules are and how you can’t just dislike somebody in order to convict them of a crime like that. Even though I disagreed with the verdict in the case, I thought Alan did a tremendous public service and has always done a tremendous public service, particularly on television.”

Throughout the celebration, Dershowitz ended each panel with comments of his own and concluded with an assessment of which element of his career has brought him the most satisfaction. “It’s teaching,” he said. “The thing that makes teaching so amazing is that I’m teaching students today who will be influencing the world 30 years from now. It’s rare to have a profession where you can have such continuing influence.”
A NEW VIEW

Everything old is new again

The oldest surviving building on Harvard Law School’s campus underwent a major transformation this year. Gannett House, the porticoed Greek Revival structure that has housed the Harvard Law Review since the 1920s, has been brought into the 21st century.

Beginning in December 2012, construction crews gutted and redesigned the building’s interior to accommodate an elevator, central air and heating systems, a reconfigured electrical system, and redesigned office space on the first and second floors. The building also now has a new roof and new windows.

Designed by Samuel William Pomeroy, the building, built in 1838, sits on the site where 1,200 Continental troops assembled on the night of June 16, 1775, before marching to Bunker Hill. The law school purchased the building in 1897 for $35,000 and named it in memory of the Rev. Caleb Gannett, an 18th-century steward of Harvard College. A variety of residents have occupied the house over the years. From 1906 to 1923, students rented rooms for $125 to $250 a year. Amenities included a cold-water tap in the basement, available at no extra charge, and a fireplace in each room, although students were expected to carry their own firewood. During World War II, the Naval Sonar Laboratory took over Gannett House and Hemenway Gym for four years and connected the buildings with a covered elevated passageway.

In 1938, at its 100th birthday, the building, which originally faced south toward Harvard Square, was rotated 90 degrees to the east, as part of a proposed mall that was never built. An original wing at the back of the building was torn down, and the present west entry facing Massachusetts Avenue was designed. After the first and second floors were remodeled in 1925, the building housed the Harvard Law Review, the Harvard Legal Aid Bureau, the Board of Student Advisers and the secretary of the law school. Gannett House was last renovated in the early 1980s, when the basement, described in a Spring 1981 Harvard Law Bulletin article as “a rabbit warren of little spaces,” was reorganized to accommodate a larger shipping department.

In a 1987 essay, “The Harvard Law Review—Glimpses of Its History as Seen by an Aficionado,” former Dean Erwin Griswold LL.B. ’28 S.J.D. ’29 wrote: “Gannett House is perhaps the most intensively used building in the law school. It was crowded when I knew it with thirty-five members of the law Review Board. How the present administration operates, with a Board of more than eighty members, has long been beyond my comprehension.”

The building’s interior was redesigned to accommodate an elevator, central air and heating systems, and reconfigured office space. The home’s original staircase was left intact.

Photographs by Brooks Kraft