Letter from NY Law Faculty in Support of Diploma Privilege

Myriam E. Gilles  
*Benjamin N. Cardozo School of Law, gilles@yu.edu*

Betsy Ginsberg  
*Benjamin N. Cardozo School of Law, betsy.ginsberg@yu.edu*

Michael Herz  
*Benjamin N. Cardozo School of Law, herz@yu.edu*

Rebecca Ingber  
*Benjamin N. Cardozo School of Law, rebecca.ingber@yu.edu*

Kate Levine  
*Benjamin N. Cardozo School of Law, kate.levine@yu.edu*

*See next page for additional authors*

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**Recommended Citation**

Gilles, Myriam E.; Ginsberg, Betsy; Herz, Michael; Ingber, Rebecca; Levine, Kate; Pollack, Michael; Reinert, Alexander A.; Shaw, Katherine A.; and Yankah, Ekow N., "Letter from NY Law Faculty in Support of Diploma Privilege" (2020). *Online Publications*. 1.

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By electronic mail

July 21, 2020

Chief Judge Janet DiFiore
New York State Court of Appeals
20 Eagle Street
Albany, New York 12207

Honorable Carl E. Heastie
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

Honorable Andrea Stewart-Cousins
Temporary President and Majority Leader, New York State Senate
Legislative Office Building, Room 310
Albany, NY 12247

Dear Chief Judge DiFiore, Speaker Heastie, and Temporary President and Majority Leader Stewart-Cousins:

We are over 300 full-time faculty teaching across all disciplines at New York State’s fifteen law schools, and we are writing in support of New York Senate Bill S8682A /A10794 to institute a one-time emergency “diploma privilege” to practice in New York for any person who is otherwise qualified for admission, provided that they demonstrate compliance with section 520.9 of the Rules of the Court of Appeals.¹ We also ask the New York Court of Appeals to exercise its authority to grant diploma privilege pursuant to N.Y. Judiciary Law § 53. We commend the Court of Appeals for responding to this unprecedented crisis by canceling the in-person bar exam scheduled for September. But because the Court has not yet decided what will replace the canceled exam, 2020 law school graduates and others who planned to sit for the September bar are now in an extremely difficult position.

Our support for diploma privilege is driven by many considerations. First, given the current COVID-19 global pandemic, authorizing a diploma privilege is the most prudent and equitable option for our state. Diploma privilege is not new. Wisconsin has granted diploma privilege to graduates of in-state schools since 1870, and in light of the ongoing pandemic, three states — Washington, Oregon, and Utah — have already granted diploma privilege to 2020 law school graduates.

Second, while administering an on-line exam mitigates some of the serious health concerns posed by in-person administration, it will only amplify the inequities that have been laid bare by the COVID-19 pandemic. Law students in New York and across the country had to finish their law school careers remotely, sometimes under dire home circumstances due to COVID-19. While finishing law school, some students home-schooled their children; others suffered job loss; and still others coped with family members who fell ill, became unemployed, or even died. And, because our campuses and other states’ campuses were closed to students during the latter part of the spring semester, many of our students

¹ The bill requires applicants to take and pass the New York Law Course, the New York Law Examination, and the Multistate Professional Responsibility Examination; satisfy the requirements for good moral character and general fitness as required by section 90 of the Judiciary Law; and intend to practice law primarily in the State of New York.
could not find a quiet place to study, as some struggled to find sufficient internet connections to even attend class. These same struggles will only be amplified in preparation for—and the actual taking of—this ultimate, high-stakes test.

With New York in a state of emergency, our campuses have been closed for months and only some have begun to reopen, and then only partially. Graduates have thus been unable to access quiet study spaces, quality internet access, in-person workshops or counseling with faculty members, or other resources that are routinely provided to our bar studiers. Graduates of color, who are disproportionately at risk of contracting the virus and suffering adverse consequences, are perhaps the most challenged in their bar preparation due to the increased health risks and inequality of access. Similarly, graduates whose families are struggling economically are much less likely to obtain these important services so long as campuses remain closed. This is true not only for graduates of New York law schools but also for all graduates who will be required to sit for the bar exam if they wish to practice law here.

In addition to the extreme stresses of this unprecedented pandemic, our state and nation are also reeling from the senseless and outrageous killings of George Floyd, Ahmaud Arbery, Breonna Taylor, Tony McDade and Rayshard Brooks—to name but a few who are the most recent victims of ingrained racism and violence toward people of color in our country. Those killings have prompted a massive ongoing effort to force a reckoning with the reality of structural racism in America, including protests throughout New York State. The profound impact of the protests, and the tragedies that led to them, do not fall equally upon all members of our community but put a significant burden on our communities of color, who experienced them on a very personal level.

Finally, our graduates are preparing for an exam that may not occur. With the postponement of the July exam and now the cancellation of the September exam, uncertainty abounds, only adding to the stress current bar applicants now face. Even if the bar exam goes forward at some unknown time, the applicants’ ability to perform as well as possible will have been seriously undermined by the historic, disruptive circumstances under which our applicants are preparing, as well as the constant uncertainty and extraordinary conditions under which they will have to take the exam.

Given the turmoil our nation has endured over the past three months, the continued disruptions in the daily lives of our graduates, and the continued threat of COVID-19 throughout the United States, it is difficult to imagine how any bar examination in the coming months could be considered either prudent or fair. Allowing our graduates to engage in limited supervised practice is an insufficient substitute because many will be unable to secure work until licensed. Even those who can secure work would be tasked with studying for a postponed examination while actively representing clients. Furthermore, there is no guarantee the health crisis will have resolved by the next bar exam.

As law school faculty, we are confident that our graduates are practice ready. Graduates today are required to engage in practical skills while in law school and many students exceed the American Bar Association’s requirements for experiential learning in clinics, simulation and skills classes, externships and clerkships. Moreover, the purpose of the bar exam — to ensure that licensed attorneys are competent to represent the interests of their clients — can be fulfilled through other means. For example, the Court of Appeals could impose heightened or specialized continuing legal education requirements for individuals who enter the profession through diploma privilege.

Diploma privilege is the most humane response for aspiring attorneys. And, with provisions such as enhanced continuing legal education requirements, the public can have great confidence that our newest New York attorneys will be more competent than ever to serve our community well.
Our state needs well-trained, compassionate lawyer-leaders—now. Each day that passes in this new reality uncovers a host of important and novel legal issues. Our graduates can assist on the front lines, helping to address the complex and evolving legal needs of New York’s citizens. Under these unprecedented circumstances, we strongly support the above-mentioned bill and also ask the Court of Appeals to exercise its authority to afford diploma privilege for our 2020 graduates.

Very truly yours,

(institutional affiliations provided for identification purposes only)

Myriam Gilles
Paul R. Verkuil Research Chair and Professor of Law
Benjamin N. Cardozo School of Law

Betsy R. Ginsberg
Clinical Professor of Law
Benjamin N. Cardozo School of Law

Michael E. Herz
Arthur Kaplan Professor of Law
Benjamin N. Cardozo School of Law

Rebecca Ingber
Professor of Law
Benjamin N. Cardozo School of Law

Kate Levine
Associate Professor of Law
Benjamin N. Cardozo School of Law

Michael Pollack
Associate Professor of Law
Benjamin N. Cardozo School of Law

Alexander A. Reinert
Max Freund Professor of Litigation and Advocacy
Benjamin N. Cardozo School of Law

Kate Shaw
Professor of Law
Benjamin N. Cardozo School of Law

Ekow N. Yankah
Professor of Law
Benjamin N. Cardozo School of Law

(additional signatories listed alphabetically on following pages)
City University of New York School of Law

Ann Cammett
Senior Associate Dean for Academic Affairs and Professor of Law
City University of New York School of Law

Juli Campagna
Professor of Legal Writing & Assistant Faculty Director of International Programs
Maurice A. Deane School of Law at Hofstra University

Bennett Capers
Professor of Law and Director of Center on Race, Law, and Justice
Fordham University School of Law

Stacy Caplow
Professor of Law
Brooklyn Law School

Rosa Castello
Professor of Legal Writing
St. John’s University School of Law

Oscar G. Chase
Russel D. Niles Professor of Law
New York University School of Law

Asima Chaudhary
2L Evening Skills Instructor
City University of New York School of Law

Nina Chernoff
Professor of Law
City University of New York School of Law

Elaine Chiu
Professor of Law
St. John’s University School of Law

Wilfred U. Codrington III
Assistant Professor of Law
Brooklyn Law School

Jim Cohen
Associate Professor of Law
Fordham University School of Law

Jeffrey M. Colon
Professor of Law
Fordham University School of Law
Howard Erichson
Professor of Law
Fordham University School of Law

Jeffrey Fagan
Isidor and Seville Sulzbacher Professor of Law
Columbia Law School
Golnaz Fakhimi
Visiting Assistant Professor - Immigrant & Non-Citizen Rights Clinic
City University of New York School of Law

John D. Feerick
Norris Professor of Law
Fordham University School of Law

Dave Fields
Senior University Dean
City University of New York School of Law

Martin Flaherty
Leitner Family Professor of International Human Rights Law
Fordham University School of Law

Katherine Franke
James L. Dohr Professor of Law
Columbia Law School

Eric M. Freedman
Siggi B. Wilzig Distinguished Professor of Constitutional Rights
Maurice A. Deane School of Law at Hofstra University

Barry Friedman
Jacob D. Fuchsberg Professor of Law
New York University School of Law

Jeanne Fromer
Professor of Law
New York University School of Law

Kellen Funk
Associate Professor of Law
Columbia Law School

Raquel Gabriel
Professor of Law & Director of the Law Library
City University of New York School of Law

Paolo Galizzi
Clinical Professor of Law
Fordham University School of Law

James A. Gardner
Bridget and Thomas Black SUNY Distinguished Professor
University at Buffalo School of Law

David Garland
Arthur T Vanderbilt Professor of Law
New York University School of Law

Mark A. Geistfeld
Sheila L. Birnbaum Professor of Civil Litigation
New York University School of Law

Philip M. Genty
Everett B. Birch Clinical Professor in Professional Responsibility
Columbia Law School

Doni Gewirtzman
Professor of Law
New York Law School

Shubha Ghosh
Crandall Melvin Professor of Law
Syracuse University College of Law

Maeve Glass
Associate Professor
Columbia Law School

Cynthia Godsoe
Professor of Law
Brooklyn Law School

Rachel T. Goldberg
Assistant Clinical Professor of Law
Cornell Law School

Elizabeth Goldman
Clinical Professor of Law
Benjamin N. Cardozo School of Law

Julie Goldscheid
Professor of Law
City University of New York School of Law

Ann Goldweber
Professor of Clinical Education
St. John's University School of Law
Professor of Law  
Fordham University School of Law  

Bernard E. Harcourt  
Isidore and Seville Sulzbacher Professor of Law  
Columbia Law School  

Jonathan Harris  
Acting Assistant Professor  
New York University School of Law  

Melina Healey  
Assistant Clinical Professor of Law and Director of Clinical Programs  
Touro College Jacob D. Fuchsberg Law Center  

Julia Hernandez  
Associate Professor  
City University of New York School of Law  

Tanya Hernandez  
Professor of Law  
Fordham University School of Law  

Helen Hershkoff  
Herbert M. and Svetlana Professor of Constitutional Law and Civil Liberties  
New York University School of Law  

Randy Hertz  
Professor of Clinical Law  
New York University School of Law  

Robert A. Heverly  
Associate Professor of Law  
Albany Law School  

Michael F. Higgins  
Clinical Teaching Fellow, Civil Rights and Transparency Clinic  
University at Buffalo School of Law  

Tracy Higgins  
Professor of Law  
Fordham University School of Law  

Alexis Hoag  
Practitioner in Residence, Lecturer  
Columbia Law School  

Martha R. Hochberger  
Visiting Professor of Law  
New York Law School
Babe Howell
Professor of Law
City University of New York School of Law

Rob Howse
Lloyd C Nelson Professor of International Law
New York University School of Law

Bert I. Huang
Michael I. Sovern Professor of Law
Columbia Law School

Carmen Huertas
Professor of Law
City University of New York School of Law

Kyron Huigens
Professor of Law
Benjamin N. Cardozo School of Law

Tarek Z. Ismail
Associate Professor
City University of New York School of Law

Conrad Johnson
Clinical Professor of Law
Columbia Law School

Paula C. Johnson
Professor of Law
Syracuse University College of Law

Kathryn Judge
Harvey J. Goldschmid Professor of Law
Columbia Law School

Mitchell Kane
Gerald L. Wallace Professor of Taxation
New York University School of Law

Arlene S. Kanter
Professor of Law
Syracuse University College of Law

Ramzi Kassem
Professor of Law
City University of New York School of Law

Constantine N. Katsoris
Wilkinson Professor of Law
Fordham University School of Law

Avery Katz
Milton Handler Professor of Law and Reuben Mark Professor of Organizational Character
Columbia Law School

Eileen Kaufman
Professor of Law Emerita
Touro College Jacob D. Fuchsberg Law Center

Florence Kerner
Executive Director of Bar Prep and Licensing
City University of New York School of Law

Jocelyn Getgen Kestenbaum
Associate Professor of Clinical Law
Benjamin N. Cardozo School of Law

Richard Klein
Professor of Law
Touro College Jacob D. Fuchsberg Law Center

Kate Klonick
Assistant Professor of Law
St. John’s University School of Law

Lewis Kornhauser
Frank Henry Sommer Professor of Law
New York University School of Law

Minna Kotkin
Professor of Law
Brooklyn Law School

Anita S. Krishnakumar
Mary C. Daly Professor of Law
St. John’s University School of Law

Rebecca M. Kysar
Professor of Law
Fordham University School of Law

Sarah Lamdan
Professor of Law
City University of New York School of Law

Christine Lazaro
Professor of Clinical Legal Education
St. John’s University School of Law
Donna Lee  
Professor of Law  
City University of New York School of Law

Nicole Lefton  
Assistant Professor, Director of Academic Support & Bar Prep  
Maurice A. Deane School of Law at Hofstra University

Arthur S. Leonard  
Robert F. Wagner Professor of Labor & Employment Law  
New York Law School

Michael Lewyn  
Associate Professor of Law  
Touro College Jacob D. Fuchsberg Law Center

Theo Liebmann  
Clinical Professor of Law & Director of Clinical Programs  
Maurice A. Deane School of Law at Hofstra University

Edward Lloyd  
Evan M. Frankel Clinical Professor of Environmental Law  
Columbia Law School

Stephen Loffredo  
Professor of Law  
City University of New York School of Law

Grace M. Lozito  
Sr. Administrative Director for Clinical and Experiential Programs  
Fordham University School of Law

Shirley Lung  
Professor of Law  
City University of New York School of Law

Mary Lynch  
Kate Stoneman Professor of Law  
Albany Law School

James Macleod  
Assistant Professor  
Brooklyn Law School

Kevin Maillard  
Professor of Law  
Syracuse

Matthew Main
Instructor
City University of New York School of Law

Deborah C. Malamud
An-Bryce Professor of Law
New York University School of Law

Michael W. Martin
Clinical Professor and Associate Dean for Experiential Learning
Fordham University School of Law

Princess Masilungan
Staff Attorney - CLEAR Project
City University of New York School of Law

Camille Massey
Founding Executive Director, Sorensen Center for International Peace and Justice
City University of New York School of Law

Nancy Maurer
Professor of Law
Albany Law School

Andrea McArdle
Professor of Law
City University of New York School of Law

Justin McCrary
Paul J. Evanson Professor of Law
Columbia Law School

Thomas M. McDonnell
Professor of Law
Elisabeth Haub School of Law at Pace University

Kevin McElroy
Professor of Legal Writing
Maurice A. Deane School of Law at Hofstra University

Peggy McGuinness
Professor of Law
St. John’s University School of Law

Estelle M. McKee
Clinical Professor of Law, The Lawyering Program
Co-Director, Asylum and Convention Against Torture Appellate Clinic
Cornell Law School

Mary Helen McNeal
Professor of Law
July 21, 2020
Page 18 of 27

Syracuse University College of Law

Suzette M. Melendez
Teaching Professor & Director, Children's Rights & Family Law Clinic; Faculty Director of Inclusion Initiatives
Syracuse University College of Law

Gillian Metzger
Harlan Fiske Stone Professor of Constitutional Law
Columbia Law School

Chi Adanna Mgbako
Clinical Professor of Law
Fordham University School of Law

Flora Midwood
Assistant Director of Academic Success
Brooklyn Law School

Kathryn Miller
Clinical Assistant Professor of Law
Benjamin N. Cardozo School of Law

Meredith R. Miller
Professor of Law
Touro College Jacob D. Fuchsberg Law Center

Joshua Mitts
Associate Professor of Law
Columbia Law School

Kate Mogulescu
Assistant Clinical Professor of Law
Brooklyn Law School

Laura Mott
Director, Academic Skills for Evening 1L Program
City University of New York School of Law

Elora Mukherjee
Jerome L. Greene Clinical Professor of Law
Columbia Law School

Erin Murphy
Professor of Law
New York University School of Law

Jessica R. Murray
Associate Teaching Professor
Syracuse University College of Law
Justin Murray  
Associate Professor of Law  
New York Law School

Melissa Murray  
Frederick I. and Grace Stokes Professor of Law and Faculty Director of the Birnbaum Women's Leadership Network  
New York University School of Law

Michael B. Mushlin  
Professor of Law  
Elisabeth Haub School of Law at Pace University

Athena D. Mutua  
Professor of Law  
University at Buffalo School of Law

Smita Narula  
Haub Distinguished Professor of International Law  
Elisabeth Haub School of Law at Pace University

Lindsay Nash  
Assistant Clinical Professor of Law  
Benjamin N. Cardozo School of Law

Robert Nassau  
Teaching Professor  
Syracuse University College of Law

Burt Neuborne  
Norman Dorsen Professor in Civil Liberties  
New York University School of Law

Elizabeth Nevins  
Clinical Professor of Law  
Maurice A. Deane School of Law at Hofstra University

Leslie Newman  
Professor of Law  
Benjamin N. Cardozo School of Law

Jacqueline Nolan-Haley  
Professor of Law  
Fordham University School of Law

Tracy L. Norton  
Associate Professor  
Touro College Jacob D. Fuchsberg Law Center
Anthony O'Rourke  
Joseph W. Belluck & Laura L. Aswad Professor of Civil Justice  
University at Buffalo School of Law

Jonathan Oberman  
Clinical Professor of Law  
Benjamin N. Cardozo School of Law

Ngozi Okidegbe  
Assistant Professor of Law  
Benjamin N. Cardozo School of Law

Judith Olin  
Associate Clinical Professor  
University at Buffalo School of Law

Nancy K. Ota  
Professor Emerita  
Albany Law School

Jason Parkin  
Professor of Law  
City University of New York School of Law

G. Michael Parsons  
Acting Assistant Professor of Lawyering  
New York University School of Law

Frank A. Pasquale  
Professor of Law  
Brooklyn Law School

Russell G. Pearce  
Professor of Law  
Fordham University School of Law

Deborah Pearlstein  
Professor of Law  
Benjamin N. Cardozo School of Law

Talia Peleg  
Associate Professor of Law  
City University of New York School of Law

Katharina Pistor  
Edwin B. Parker Professor of Comparative Law  
Columbia Law School

Margot Pollans  
Professor of Law
Elisabeth Haub School of Law at Pace University

Karen Porter
Associate Dean of Inclusion & Diversity
Brooklyn Law School

David Pozen
Charles Keller Beekman Professor of Law
Columbia Law School

Edward A. Purcell, Jr.
Joseph Solomon Distinguished Professor
New York Law School

Paul Radvany
Clinical Professor of Law
Fordham University School of Law

Aziz Rana
Richard and Lois Cole Professor of Law
Cornell Law School

Martha Rayner
Clinical Associate Professor of Law
Fordham University School of Law

LaVonda Reed
Professor of Law
Syracuse University College of Law

David J. Reiss
Professor of Law
Brooklyn Law School

Alice Ristroph
Professor of Law
Brooklyn Law School

Allie Robbins
Associate Professor of Law
City University of New York School of Law

Nicholas A. Robinson
Kerlin Professor of Environmental Law Emeritus
Elisabeth Haub School of Law at Pace University

Ruthann Robson
Professor of Law & University Distinguished Professor
City University of New York School of Law
Professor of Law
St. John’s University School of Law

Theodore Silver
Associate Professor of Law
Touro College Jacob D. Fuchsberg Law Center

Jocelyn Simonson
Professor of Law
Brooklyn Law School

Janet Sinder
Professor of Law and Director of the Library
Brooklyn Law School

Charisa Smith
Associate Professor
City University of New York School of Law

Rachel H. Smith
Professor of Legal Writing
St. John’s University School of Law

Jeff Sovern
Professor of Law
St. John’s University School of Law

Jane M. Spinak
Edward Ross Aranow Clinical Professor
Columbia Law School

Christopher Sprigman
Professor of Law
New York University School of Law

Edward Stein
Professor of Law
Benjamin N. Cardozo School of Law

John Paul Steines Jr.
Professor of Law
New York University School of Law

Jed Stiglitz
Professor of Law
Cornell Law School

Katherine Strandburg
Alfred Engelberg Professor of Law
New York University School of Law
Susan Sturm  
George M. Jaffin Professor of Law and Social Responsibility  
Columbia Law School

Daniel E Subotnik  
Professor of Law  
Touro College Jacob D. Fuchsberg Law Center

Deborah Sundquist O’Malley  
Associate Teaching Professor  
Syracuse University College of Law

Olivier Sylvain  
Professor of Law  
Fordham University School of Law

Mary Szto  
Teaching Professor  
Syracuse University College of Law

Mateo Taussig-Rubbo  
Professor of Law  
University at Buffalo School of Law

Nelson Tebbe  
Jane M.G. Foster Professor of Law  
Cornell Law School

Ruti Teitel  
Ernst Stiefel Professor of Comparative Law  
New York Law School

Leslie Y. Garfield Tenzer  
James D. Hopkins Professor of Law  
Elisabeth Haub School of Law at Pace University

Maria Termini  
Associate Professor of Legal Writing  
Brooklyn Law School

Steven Thel  
Wormser Professor of Law  
Fordham University School of Law

Kendall Thomas  
Nash Professor of Law  
Columbia University

Monica Todd
Teaching Professor
Syracuse University

Erin Tomlinson
Visiting Professor
City University of New York School of Law

Cora True-Frost
Bond Shoeneck and King Distinguished Professor
Syracuse University College of Law

Jacob Victor
Assistant Professor of Law
Albany Law School

Rachel Vorspan
Professor of Law
Fordham University School of Law

Amy Wallace
Adjunct Professor
New York Law School

Matthew Wansley
Assistant Professor
Benjamin N. Cardozo School of Law

Ettie Ward
Professor of Law
St. John’s University School of Law

G. Ray Warner
Professor of Law
St. John’s University School of Law

Daniel Warshawsky
Professor of Law
New York Law School

Ian Weinstein
Professor of Law
Fordham University School of Law

Samuel N. Weinstein
Associate Professor of Law
Benjamin N. Cardozo School of Law

Richard H Weisberg
Floersheimer Prof of Constitutional Law
Benjamin N. Cardozo School of Law
Robert Wertheimer  
Adjunct Professor of Law  
Cornell Law School  

John Whitlow  
Associate Professor of Law  
City University of New York School of Law  

Andrew Williams  
Director, Lawyering Program  
New York University School of Law  

Rev. Dr. Yvette Wilson-Barnes  
Dean of Students  
City University of New York School of Law  

Charles M. Yablon  
Professor of Law  
Benjamin N. Cardozo School of Law  

Ellen Yaroshefsky  
Professor of Legal Ethics  
Maurice A. Deane School of Law at Hofstra University  

Steven Zeidman  
Professor  
City University of New York School of Law  

Benjamin C. Zipursky  
Professor of Law, James H. Quinn '49 Chair in Legal Ethics  
Fordham University School of Law