Dean Inaugurates New Programs, Annual Fund
Features

An Interview with Dean Paul Verkuil

A new look at the core curriculum, bigger and better facilities, and an Annual Fund are among the initiatives launched by the dean since his arrival at Cardozo.

Peaceful Transitions to Constitutional Democracy: Lessons from the Case of Spain

The Spanish shift from authoritarianism to constitutional democracy without violence is a lesson that can be learned—and hopefully emulated—by eastern European countries.

BY MICHEL ROSENFELD
PROFESSOR OF LAW

“It’s a Black Thang, Ya don’t Wanna Undertand!” Ten Years On, Critical Race Theory Comes of Age

Critical Race Theory (CRT) has made it from the halls of academe to the popular press. This essay traces CRT’s development and contradicts its characterization as “race-conscious separatist thinking.”

BY E. NATHANIEL GATES
ASSOCIATE PROFESSOR OF LAW

From Law Journal Article to the Supreme Court, With Time for Teaching and Motherhood, Too

How and why a full-time professor and mother takes a US Supreme Court case and wins it.

BY MARCI A. HAMILTON
PROFESSOR OF LAW

An excerpt from The Reader

This excerpt from the highly acclaimed novel by Schlink, a German law professor and judge, tells of the war crimes trial of a female SS guard charged with committing atrocities. The narrator is a law student who had once been her lover.

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From the Dean

A Dream for our 25th Anniversary

This issue of Cardozo Life marks the inauguration of the Law School's first Annual Fund—something that may not strike you as particularly notable unless you understand how it underscores a critical juncture in our history.

For one thing, we have completed the celebration of Cardozo's 20th anniversary. After two decades, we have solidified our position in the New York legal community. We have alumni at the most prestigious law firms. Our faculty are invited to speak at the most important conferences; they write for the best known journals and publications—many of them appear on national media programs and their thoughts are contained in major newspapers and magazines. In addition, we have the full support of the Yeshiva administration and our Board of Directors, led by Chairman Earle Mack. As Dr. Norman Lamm put it at our last Board meeting, Cardozo should now achieve the national reputation in law that Einstein College of Medicine has in medicine. That is truly our next step: to move as Einstein has into the top quartile of our peer institutions.

Our friends, alumni, and donors can see that our efforts are paying off and that we are poised to seize the future. To reach our goals we must build new library space, acquire a dormitory, make Cardozo technologically competitive, and provide a facility that works comfortably for faculty and students alike. Clearly these achievements will require a major financial commitment. Therefore, the time is ripe to formalize our fund-raising program and to institute an Annual Fund—a signal from our alumni that Cardozo is ready to move to a higher level.

The magazine tells part of the story. Editorially it features exciting scholarship that is taking place here in many areas—in comparative constitutionalism, critical race theory, and First Amendment rights. It communicates the yeasty atmosphere that we all enjoy here as a result of interaction among our faculty members and visiting professors, the special panels and symposia that bring well-known guests to the campus, and student events that provide a sense of community and enthusiasm for the study of law.

This is Cardozo's time. I hope that you will join us in our efforts to provide for Cardozo's future and help us realize by our 25th anniversary the dreams we put in place now.
Cardozo Honors King Juan Carlos I

Benjamin N. Cardozo School of Law and Yeshiva University honored King Juan Carlos I of Spain for his restoration of democracy in Spain; his leadership in international affairs; his support for education, culture, and technology; and his "historic and healing" visit to the Madrid Synagogue in 1992, 500 years after Sephardic Jews were expelled from Spain. In an afternoon convocation on April 8 at Cardozo, YU President Norman Lamm bestowed upon the king an honorary doctor of laws degree. Later, at a dinner at the Pierre Hotel, Lamm presented Juan Carlos with the Benjamin N. Cardozo Democracy Award. His Majesty is the second recipient of the Award: Mikhail Gorbachev, former premier of the USSR, received the first in 1992.

Juan Carlos praised the Jewish contribution to Spain's cultural, historic, and intellectual development and acknowledged that the banishment of Jews during the Inquisition depleted his country of some of its most creative minds. In his convocation address, Juan Carlos described the early Middle Ages, and particularly the 12th century—when Jewish culture flourished alongside those of Arab-Muslims and Christians—as "periods of fruitful coexistence and cultural splendor."

The healing process between Spain and the people of Israel began, the king said, in the middle of the 19th century. The breach closed following the 1978 restoration of Spanish democracy and such succeeding initiatives as the establishment of full diplomatic relations between Israel and Spain in 1986; the awarding of the Prince of Asturias Prize—Spain's most prestigious honor—to the world's Sephardic communities in 1990; and the activities of Sephard '92, including His Majesty's visit to the Madrid Synagogue with then Israeli President Chaim Herzog and other leaders.

Earle I. Mack, a YU trustee and chairman of Cardozo's Board of Directors, played a leadership role in arranging for the king's visit and participated in the ceremonies. Honorary chairmen of the gala were Governor George and Libby Pataki of New York. Internationally renowned fashion designer Carolina Herrera was dinner chairman.

A conference, organized by Prof. Michel Rosenfeld and supported by the Jacob Burns Institute for Advanced Legal Studies, "Peaceful Transitions to Constitutional Democracy: The Exemplary Case of Spain and Its Influence on Eastern Europe," was held earlier in the afternoon. An audience of legal scholars and students joined participants, including Dr. José Pedro Perez Llorca, former minister of foreign affairs of Spain and one of the framers of the Spanish constitution, in a discussion of the Spanish transition to democracy and the Spanish influence on eastern European transitions. Other participants included Aryeh Neier, president, Open Society Foundation; Luis Lopez Guerra, professor of law, Carlos III University, Madrid, general counsel to the Judicial Council of Spain; and former vice president of the Constitutional Court of Spain; Bronislaw Geremek, Foreign Minister, Poland and then president of Poland's
Gilles Directs
Academic Support Program

Myriam Gilles is new to Cardozo—in a new position, creating a new program. Her official title is director of academic support; however, as lecturer in law also, she will teach a course next semester titled “Civil Rights and Civil Liberties.”

“I interviewed at Cardozo believing that I wanted to teach research and writing skills to first-year law students,” she explains. When she met with Dean Verkuil, it was his suggestion that she take on the greater challenge that her new job entails. “Starting this program was really the dean’s idea. He wants student morale boosted along with the bar passage rate.”

Gilles, who is young and enthusiastic, seemed the perfect candidate. “She has excellent credentials and struck me immediately as someone who Cardozo students could open up to and feel comfortable with,” explains Verkuil. She received a J.D. from Yale Law School in 1996, and then spent a year as an associate at the firm of Kirkland & Ellis in New York City.

“Nearly one hundred fifty law schools have some kind of academic support program,” said Gilles, who is in the process of reviewing the services and courses offered by other schools. It is her hope to initiate Cardozo’s new program next semester. “Programs like this usually focus on the learning process as relevant to law school. That means students learn to hone their analytical skills, organize information, and apply knowledge when time is short and the pressure is on. They also learn better study habits and methods.”

In addition to a formal course, Gilles, who is also the faculty advisor to BALLSA, is planning workshops and panels covering such subjects as case briefing, outlining, and preparing for and taking exams. The first one scheduled is on time and stress management skills and effective study habits. She also intends to offer informal counseling.

Early in September she invited every Cardozo student by letter “to stop by my office to talk, brainstorm, or just to schmooze.” Two weeks into her new assignment, she was already noticing a recurring theme, primarily from 2Ls: “I need help with exam-taking skills!”

According to Gilles, these students come to her because they don’t understand why they didn’t do better on their final exams. She reads the exams, goes over them with the students, and points out things that could have improved their scores. Usually she finds that some combination of stress, lack of ability to organize ideas, and an incomplete legal analysis of the issues is responsible for a low grade.

“My goal is to have these students learn how to organize their writing and thinking through outlining. This is a critical skill they will need when they take the bar exam and in practice.” She says that by outlining, a student is assured of discussing an issue completely and having sufficient time to finish an exam. She is prepared as well to recommend and administer practice exams to those in need of this kind of assistance.

Gilles notes, “My job is to help the maximum number of students as early as possible in their law school careers.”
Class of 2000 Ranks High

Members of the class of 2000 began their studies at Cardozo with the highest academic record in the School's history, a median GPA of 3.31. And remarkably, although law school applications nationally are down nearly 10 percent, the admissions office reports an increase in applications to Cardozo of 5.7 percent.

The 250 students who make up this exceptional class are from diverse and impressive backgrounds: they range in age from 19 to 73; 50 percent are women; and 27.7 percent are students of color. Robert Schwartz, director of admissions, notes, "We have achieved amazing results given the national picture." He attributes the higher quality of this class to increased merit scholarship funding, the School's top-10 ranking for its Intellectual Property Law Program, and the faculty's ranking as the 15th most prolific nationally and the 2nd most prolific in the New York area. "This year we have given out more scholarship money, and have introduced the new Cardozo Scholarship, which is a full-tuition award for students who have shown outstanding academic performance and whom we feel will make their mark in the world," says Schwartz.

The caliber of the class of 2000 is exemplified by students like Valerie Mahoney and Francesca Brottman-Orner, this year's Cardozo Scholars. Mahoney received an M.B.A. from the University of North Carolina, Chapel Hill, 10 years ago, and then worked in consulting and marketing firms. Recalling her experience as a volunteer in the Pediatric AIDS Respite program of New York Hospital she explains, "At one point, I attended court as an advocate for a family. It was then that I realized I wanted to be a lawyer, to defend those who need help." Mahoney, who intends to pursue a career in public interest law, has joined the Cardozo Advocates for Battered Women, a newly formed advocacy group that gives moral support and advice to clients who are gathering evidence for hearings in Domestic Violence Family Court.

Brottman-Orner is intrigued by the law, she says, because she grew up in a family involved in liberal political advocacy. "I learned that it is the manipulation of precedent, tradition, and public policy that decides questions of law." She was a government major at Smith College and then worked for two years doing software testing and application development for a computer software company. So far, notes Brottman-Orner, "Cardozo is extremely demanding. It's like taking a break from life and immersing yourself in another world."

This year's class is enhanced as well by a large number of returning students who enrich the classroom with their insights and life experiences.
Jacques Derrida, professor, École des Hautes Études en Sciences Sociales, Paris, and Cardozo Distinguished Scholar, visited again as part of the Law & Humanism Speakers Series co-sponsored by the New School for Social Research and coordinated by Prof. Michel Rosenfeld. Other speakers this fall were Justice Itzhak Englard of the Supreme Court of Israel and Jules Coleman, John A. Garver Professor of Jurisprudence and Philosophy, Yale Law School. The series is funded by the Jacob Burns Institute for Advanced Legal Studies. From left: Dean Paul Verkuil, David Weiss '00, Robert Rigolosi '99, Jacques Derrida, Gabriella Davi '99, and Professor Rosenfeld.

For a week in September, second- and third-year students displayed their oral advocacy and brief-writing skills at the 18th Annual Monrad G. Paulsen Moot Court Competition, named after Cardozo’s first dean and sponsored by the Moot Court Honor Society. This year’s intramural competition dealt with whether same-sex sexual harassment claims are actionable under Title VII of the Civil Rights Act of 1964, an issue now before the US Supreme Court. Judges for the final round were: The Hon. Denny Chin, US District Judge, Southern District of New York; The Hon. Joseph Bellacosa, associate judge, New York Court of Appeals; and David Boies, a partner in the firm Boies & Schiller and a new adjunct professor at Cardozo. Natasha Young-Ricks (at left) won the oral round, Elizabeth Kase (on right) placed second, and Vered Adoni and Matthew McCurdo tied for third. Jennifer Zacharyk won for best brief; Adoni was runner-up.

Michael Pope, at age 73, is the oldest member of the fall class. Pope, a combat veteran of World War II, founded and owned an international engineering and design company and has served on both state and federal commissions related to construction projects. Over the past few years, Pope frequently found himself being asked to provide expert testimony in construction disputes, which provoked his interest to know more about law. He takes great personal joy in his work as a founding trustee of the Manhattan Country School, whose mission is to provide quality education to New Yorkers of all socio-economic groups. Pope is enjoying the challenge of law school. He comments, “Cardozo is fabulous. I’m impressed with the faculty and think the kids are great. I especially enjoy how integrated the School is with respect to race, gender, and age.” Cardozo is not entirely novel to Pope; his wife, Sally Pope, is an adjunct professor of Mediation.

Kwanzá Jones, a former beauty queen, was Miss Baltimore for 1995–96 and one of nine finalists in Revlon’s Unforgettable Woman campaign. She graduated from Princeton University, where she was enrolled in the Woodrow Wilson School for Public and International Affairs and also received a certificate in African-American studies. Coming from a family of attorneys, Jones always knew she would one
Then he taught a course similar to the one on European Union law that he is teaching this semester. However, when he arrived in New York this time, he was greeted by a stunning book review in the New York Times that praised his first novel, The Reader, as "arresting, philosophically elegant, morally complex."

The author, who is already well known in his native Germany for a number of mysteries, said that the book is being well received in Germany as well as France and other European countries. In fact, he is currently deciding which of several film offers to accept. (see p. 31)

Schlink is a professor of constitutional and administrative law and philosophy of law at Humboldt University in Berlin and sits on the Constitutional Law Court of the State of Nordrhein-Westfalen, Munster. This semester he is also co-teaching Comparative Constitutionalism with Michel Rosenfeld. Current students and recent graduates may recognize him from his appearances as a guest speaker at several international law conferences, including the very successful "Justices at Work," held at Cardozo in 1995.

With only eight students in his European Union Law class, he said, "It doesn't seem as if Cardozo students understand how important international and European law is in today's practice. Maybe the Law School could advocate on behalf of this field. On the other hand, of course, it is wonderful to have such a small group. It creates more of a dialogue and my students seem extremely interested and well prepared."

Schlink explained that in Germany many students are not nearly as committed to the study of law as their counterparts in the US. "In Germany there is no tuition and many students choose law because they don't know what else to study and expect law to open up many options." Humboldt, which is one of only two schools in Berlin that offers a law program, has nearly 4,000 law students.

This fall, Schlink is also preparing a grant for the German Research Fund for a project in international constitutionalism that picks up on ideas that came out of the "Justices" conference. He will work with Professors Rosenfeld and Michel Trouper of the University of Paris X.

"It was surprising that the Justices found a common theoretical language so easily, especially since they came from different countries and work with different constitutions," noted Schlink. "Below the surface there is a common structure that we want to find out more about."
Kathleen Cleaver, who visited Cardozo last spring, has returned for the fall. She is again teaching Pre-Trial Practice and Slavery and Anti-Slavery. (see Cardozo Life Spring 1997, p. 4) During her time at Cardozo she has been actively engaged in writing and speaking on her areas of expertise. This summer she was a panelist at the W.E.B. Du Bois Institute conference “Conversation on Race,” which was moderated by Prof. Henry Louis Gates, Jr., and featured Charles Ogletree, Randall Kennedy, and Christopher Edley of Harvard Law School; Patricia Williams of Columbia Law School; Cornell West of Princeton; Anita Hill; and actress Anna Deveare Smith. Cleaver was a planning committee member and workshop leader at the Wheelock College conference “Race and Racism in the ’90s: Teaching Social Justice, Living Social Justice.” Her essay “The Antidemocratic Power of Whiteness,” was reprinted in Critical White Studies, edited by Delgado and Stefancic.

Neal E. Devins, a professor at the Marshall-Wythe School of Law, College of William and Mary, has worked for the US Commission on Civil Rights, the American Bar Association as a reporter for the Congressional Process Committee, and as a consultant for the Central and Eastern European Law Initiative. He is teaching Regulating Intimate Relations and Constitutional Law this fall. Devins said of the former, “It is a policy-driven course more than case-driven. The class will examine state power to regulate issues like gay marriage and domestic violence and will attempt to sort out appropriate and cost-effective policy.”

Devins, who holds an A.B. from Georgetown University and a J.D. from Vanderbilt Law School, was a colleague of Dean Verkuil’s at The College of William and Mary, where they shared a common professional interest: the issue of separation of powers.

A prolific writer of books, articles, and editorials, Devins also is the editor of the Constitutional Conflicts Book Series, published by Duke University Press. He is researching and writing a piece on constitutional politics as well as an article with Associate Dean Michael Herz titled “Should the Justice Department be the Government’s Lawyer?”

Legal, moral, and philosophical philosophy are the chief interests of Andrei Marmor, who is visiting from Tel Aviv University, where he is chair of the LL.M. program and former director of the Taubenschlag Institute of Criminal Law. He holds a B.A. and LL.B. from Tel Aviv University and a Ph.D. from Oxford University, where he studied with legal theorists Joseph Raz, R.M. Dworkin, and P.M.S. Hacker. This fall, he is teaching two seminars: Interpretation and the Law and Theories of Criminal Liability.

Marmor is the author of Interpretation and Legal Theory and editor of Law and Interpretation, both published by Oxford University Press, and is now writing a new book on the conventional foundations of law. He has many articles in both English and Hebrew to his credit. He has organized two major international conferences, “Law and Interpretation” in 1993, and “Civil Rights” in 1996.

Criminal defense attorney Kathleen Hardy is associate clinical professor in the Criminal Law Clinics and will be at Cardozo for the entire academic year. She is on leave from the Criminal Defense Division of the Legal Aid Society in Manhattan, where she carried her own felony cases, supervised new lawyers in their trial cases, and was a trial trainer for more experienced lawyers. Hardy is enjoying her new position because, she said, “In the clinics, I spend more time on less cases. At Legal Aid, it was the opposite. The caseload was tremendous.”

Hardy indicated that Cardozo students are eager and enthusiastic to get hands-on experience. She noted, “The other day, I took my students out to Riker’s Island. It was a real eye-opener for them to see where their future clients live.” Hardy holds a B.A. from Holy Cross College and a J.D. from George Washington University. She received an LL.M. in Trial Advocacy from Georgetown University Law School, where for two years she was a Prettyman Teaching Fellow.
Moran and Scheck Debate Legal Ethics and TV

The O.J. Simpson trial provoked impassioned national debate about race, the legal system, celebrity, and police behavior.

For Barry Scheck, professor and director of Clinical Education and one of the lawyers on the Simpson defense team, the televised trial also raised the issue of how to prevent the media from presenting sensationalistic, biased, and inaccurate reports while performing the important role of showing the justice system at work.

At a forum sponsored by the Jacob Burns Ethics Center, Scheck and former Court TV anchor Terry Moran discussed televised trials and debated the pros and cons of instituting a code of ethics for lawyers who appear as TV legal commentators. They agreed that a legal commentator's role is to teach and empower the public, to stress the burden of proof, and to remind the viewers that the defendant is innocent until proven guilty.

Since the Simpson trial, Scheck has been a legal commentator on NBC's Today Show and on MSNBC. He is drafting a code of ethics with a group of prominent lawyers and judges for the National Association of Criminal Defense Lawyers to insure that TV commentary does not interfere with a citizen's constitutional right to a fair trial.

Moran, however, rejects the concept of a required code and believes that it is a journalist's obligation to tell the truth and point out, for example, if a lawyer is representing his client poorly.

Both Scheck and Moran eschew the gladiatorial spirit that frequently prevails on television today and noted how TV can distort reality. As an example, Scheck cited what is now known as the "Oliver North effect." In that well-watched congressional hearing, people in the hearing room thought North seemed histrionic and untrustworthy, whereas television viewers perceived him as a man of great integrity.

Scheck and Moran are concerned that if televised legal commentary continues on its current path, it will do serious damage to the legal system, erode Sixth Amendment protections, and result, perhaps, in the removal of TV cameras from the courtroom.

Recruiting Season Seems Bullish

Every fall, firms and organizations come on campus to interview students for summer associate positions and for employment after graduation. During OCI (on-campus interviews) the hallways at the Law School fill with students dressed for success, who wait to meet with recruiters at the appointed hour. This year the hallways were somewhat busier than usual.

According to The National Law Journal, and confirmed by hiring partners at major law firms, this fall's recruiting season is "shaping up to be the most competitive hiring season in a decade." In addition, some firms are reporting salaries for first-year associates of $91,000—an increase of $3000 to $6000 since last year. According to recent statistics compiled by the Bureau of Labor Statistics, law is the highest paying and fastest growing occupation with a projected 24,000 job openings for lawyers annually.

Associate Dean Ellen Cherrick indicated that at Cardozo the impact was seen in an increased number of interviews for both second- and third-year students. "About halfway through the OCI season, we calculated that in comparison to last year, firms are seeing sixty-seven percent more 3Ls," said Cherrick.
Clive Davis Shares Insights

The classic words of advice, “Hard work is the key to success,” opened the special class “taught” by legendary Arista Records founder and president, Clive Davis. Students and faculty had the opportunity to hear the veteran insider’s view on the music industry as he conversed about his career with Adjunct Professor Michael Reinert ’82, vice president for business affairs, Polygram Holding, Inc., during a well-attended meeting of Contract Negotiation for the Music Industry.

Show business was not on his mind in law school, said Davis. Rather, it was chance and the ability to seize opportunities that led him into entertainment law. His first job after graduation was at a firm whose principal client was CBS. Not long after, he was offered a prominent position in the legal department at Columbia Records. He worked hard by day, took more law classes for additional expertise at night, and gradually became aware that he had an ear for “sounds and talent.”

Davis’s reputation “as a man who can hear a song” was launched in the mid-sixties. “At that time rock and roll hadn’t exploded on the album scene. Doris Day and Johnny Mathis were more typical,” noted Davis. Then came the Monterey Pop Festival in 1967, where, Davis recalled, he may have been the only record executive present. Seeing artists like Jimi Hendrix, Janis Joplin, The Who, and Santana opened his eyes to a new world of music and artistry as well to the social revolution transforming America. He said, “I knew it was my time to step forward, though I did so with anxiety and trepidation.”

He became totally involved in rock music for a period, signing many rock and roll greats including Bob Dylan, Janis Joplin, Santana, Chicago, Blood, Sweat & Tears, Aerosmith, and Billy Joel. “I felt my way in dealing with these new artists. Some, like Joplin and Dylan, were incredibly visionary. Sometimes albums were flops. We had to work together to support and develop these young talents. I hired new people in the company to deal just with the artists,” he explained.

Next, Davis started his own record label, Arista, “to see if I could do it from scratch.” At this point, Davis’s talent for arranging, producing, and putting together the right artist with the right song truly blossomed. Arista branched out from rock and signed on country and pop stars like Melissa Manchester and Barry Manilow. Today, Whitney Houston and Bruce Springsteen are among the label’s big stars.

Davis continues to work 17-hour days. He reiterated, “The work ethic is what distinguishes so many people who are successful. You also need an interest in music to be a great lawyer in this field. If you don’t love it, the hours will be lethal.” Davis concluded, “The bottom line is, if you want to guarantee success, you have to have good artists.”
Lucibello, Brooklyn District Attorney’s Office, Domestic Violence Bureau; Mary Haviland, director of the Criminal Justice Program and attorney for the Family Violence Project of the Urban Justice Center; and Joshua Price, a doctoral student in anthropology at the University of Chicago, and son of Prof. Monroe Price. Prof. Scott Shapiro moderated.

As a result of heightened attention and a legal approach that says when domestic abuse becomes physical it becomes criminal, these new courts are swamped with cases. The courts’ goals, according to Leventhal, are swift punishment of offenders, higher monitoring of court orders, promotion of victim safety, assistance for victims and batterers by social service agencies, increased information from criminal court to social service, and judicial supervision and monitoring of the batterer.

Fear and financial dependence are the two most frequent reasons domestic violence victims recant allegations against the batterer. Lucibello said that in Brooklyn 70 percent of complainants drop charges before a case even comes to trial. Now, the new courts can prosecute a case without the victim if there is evidence such as 911 tapes. There was a general consensus that the courts have been successful and that plans to open them in every borough will benefit battered women.

“Legal Careers in Advertising” was the topic of one of the panels sponsored by the Office of Professional Development to give students information about career opportunities. Dean Ellen Cherrick (second from right) is shown here with panel members. From left: Ronna Brown, vice president, NY Better Business Bureau; Harvey Dzodin, vice president of commercial standards, ABC; Susan Kassapian ’79, special counsel, NYC Department of Consumer Affairs; and Debra Godstein, associate general counsel of Cordiant Holdings, Inc. and former director of the national advertising division of the Council of Better Business Bureaus.
Rosenfeld Takes Leadership Role in Comparative Constitutionalism

As international issues become more critical in the daily practice of law, comparative constitutionalism has become a subject and discipline recognized by American scholars as increasingly relevant. Michel Rosenfeld is at the forefront and has insured that Cardozo is at the cutting edge of this growing specialty.

Dean Verkuil noted, "Cardozo is taking its rightful place in this exciting arena with Michel Rosenfeld at the lead. He can be credited with a high level of scholarship and has been responsible for the quality of visiting international professors who provide their energy and expertise to the Cardozo community."

In 1988, Rosenfeld was invited by Lou Henkin, University Professor at Columbia University, to speak at a conference in Athens sponsored by the International Association of Constitutional Law (IACL), which now has more than 400 members, including Justices Scalia, Ginsburg, and Breyer, who are honorary members. The USACL and the IACL work together to promote and foster scholarly exchange through conferences and publications, presenting the widest possible range of views on constitutional law. As the organization's prestige has grown, members of the International Association have been called on to consult in constitutional crises including those in the former Yugoslavia and South Africa.

According to Rosenfeld, who is also vice president and treasurer of the USAC, a major conference is planned for November 1998 and will be held at NYU, Columbia, and Cardozo. All three institutions are coordinating the conference, titled "Constitutionalism, Constitutional Rights, and Changing Civil Society," which will bring together the most prominent judges and scholars in the US and the world.

Explaining the burgeoning interest in international constitutionalism by American scholars, Rosenfeld suggests, "In this area the US has traditionally looked inward; however, recent developments have led to a globalization of constitutionalism. Simultaneously, legal studies generally have become more international, making US law professors and judges more interested in scholarly exchange."

In addition, he pointed out, there are now international courts that enforce human rights, and a movement toward universal protection of human rights. "American scholars can learn much through these interchanges and can be extremely influential."

As a result of Rosenfeld's enthusiasm for the subject, Cardozo has been very active in the area of comparative constitutionalism for several years, providing students with an atmosphere rich in resources and innovative conferences that include a regular schedule of visiting international constitutional scholars. Bernhard Schlink, a professor and judge from Germany, is here this semester (see p. 7). Andras Sajo, head of Constitutional Law Studies at Central European University has a five-year agreement to visit every fall; and Thomas Fleiner, president of the IACL, visited in spring 1996.

The groundbreaking "Justices at Work" conference held in fall 1995 brought seven international
Justices to Cardozo; three of them visited Rosenfeld’s Comparative Constitutionalism class. Cardozo Law Review just issued a special volume on the conference. And a follow-up conference will be held in France in June 1998. “These kinds of activities and visitors make the subject vivid and more exciting for our students,” said Rosenfeld.

PROFESSIONAL HONORS

Paris Baldacci was re-elected to the executive committee of the Board of Brooklyn Legal Services Corporation, A and as chair of its personnel committee. He was a panelist in the Practicing Law Institute’s program on Issues Facing the Contemporary Family where his topic was the succession rights of non-traditionally recognized families in rent-regulated housing in New York State.

J. David Bleich won an award from Memorial Foundation for Jewish Culture. He has continued to write prolifically, including a chapter in Jewish Thought and Law, “Tikkun Olam: Jewish Obligations to Non-Jewish Society,” and articles in the spring issue of Tradition, “Medical and Life Insurance: A Halakhic Mandate;” the summer issue of The Jewish Observer, “Today’s Dreams for Tomorrow;” and several articles in Tradition. The volume will be published in paperback next year. Weisberg (below) did a similar evening at the Lincoln Center branch for his book, Vichy Law and The Holocaust in France, which will soon appear in a French translation. Cardozo students, professors, and alumni were among the large number of people who came out to meet each of the authors and get signed copies of the books.
He spoke at a number of synagogues on 

"Who is a Jew: In Israel? In the Diaspora?" and at both the annual conference of the Rabbinical Council of California and the 12th World Congress of Jewish Studies in Jerusalem on "Get Legislation and Prenuptial Agreements," and "Betrothal of a Minor Daughter: Anguish that Can be Prevented" respectively.

**Lester Brickman**

was a visiting scholar at the Center for Socio-Legal Studies, Oxford University, during May and June. He testified in April before the Subcommittee on Telecommunications, Trade and Consumer Protection, House Commerce Committee, on "How the Legal Fee Structure Affects Consumer Compensation." He published with Larry Cunningham "Game Theory and Nonrefundable Retainers: A Response to Professors Croson and Mnookin," in the *Harvard Negotiation Law Review*.

A shareholders' committee that succeeded in obtaining various governance reforms at Shoney's Inc. unveiled a proposed slate of directors that included **Larry Cunningham**. They are seeking to call a special meeting to replace the company's board.

**Lela Love** was named Honorary Fellow by the American College of Civil Trial Mediators. She has continued to provide mediation training at such places as the US District Court, the Eastern District of New York; and the Michigan Supreme Court. She taught Advanced Mediation at Pepperdine University School of Law Summer School and published "The Top Ten Reasons Why Mediators Should Not Evaluate" in the *Florida State University Law Review*.

**Monroe Price** was named a Fellow at the Media Studies Center in New York and at the Centre for Socio-Legal Studies at Oxford University. In June he presented a paper on broadcasting reform at the Centre for Media Studies in New Delhi, India, and is editing a book on the use of comparative media models in the Indian legislative debate. The book will be published first in the *Cardozo Journal of International and Comparative Law*. He helped organize and participated in a conference on defamation law in Moscow, co-sponsored by the Center for Media Law and Policy at the Faculty of Journalism, Moscow State University, and the Libel Defense Resource Center in New York. Last spring, he gave a speech, "Space, Place, Race, Face: Media and Globalization," as part of a conference on media policy and change at MIT. At a panel this fall at the Association of the Bar of the City of New York, Price moderated "Regulating Television Violence: V-Chips, the Market and Beyond," which featured leaders from the industry.

**David Gray Carlson** was the keynote speaker at Georgetown University Law Center's conference "Bankruptcy '97," which brought together bankruptcy court judges from around the country. The annual seminar presents a broad overview of critical issues surrounding Chapters 7, 11, and 13. Carlson's speech was titled "Time and the Bankruptcy Code."

Applause Books will publish **Edward de Grazia**'s play *Vacuum Cleaner* in a volume titled *Best American Short Plays of 1996–1997*.

**Malvina Halberstam** has written "Justice Ruth Bader Ginsburg: First Jewish Woman on the US Supreme Court" for *Jewish Women in America: A Historical Encyclopedia* and "US Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women" for *Wo-
Supreme Court argument

Fall 1997

Marci Hamilton, who is on sabbatical, is a visiting scholar at Princeton Theological Seminary. As a result of her successful Supreme Court argument in Boerne v. P.F. Flores, Archbishop of San Antonio, and the US, she has made presentations at the Center of Theological Inquiry at Princeton, the Southeastern Regional Meeting on Historical Preservation at the University of Georgia, the Pennsylvania Bar Institute’s First Annual Constitutional Conclave, the Colorado Bar Association Annual Meeting, the Institute for Judicial Administration at NYU School of Law, and as distinguished lecturer at the University of Arkansas at Little Rock.

She has published several articles as well, including “Reconceptualizing Ratings: From Censorship to Marketplace” in the Cardozo Arts & Entertainment Law Journal; “Slouching Toward Globalization: Charting the Pitfalls in the Drive to Internationalize Religious Human Rights,” a review of John Witte, Jr., and Johan D. van der Vyver’s Religious Human Rights in Global Perspective in the Emory Law Journal; and “Computer Science Concepts in Copyright Cases: The Path to a Coherent Law” in the Harvard journal of Law & Technology.


Paul Shupack chaired the working group of the Association of the Bar of the City of New York that produced a report for the New York State legislature recommending the adoption of a new version of Revised Article 8 of the Uniform Commercial Code. He reports that the State has adopted the new version. His article “Natural Justice and King Lear” appears in the latest issue of Cardozo Studies in Law and Literature.

Peter Tillers presented a paper, “What is Wrong with Character Evidence,” at a Hastings College of Law conference titled “Evidence Reform and the Goals of Evidence Law.”

Richard Weisberg participated in a planning conference at Santiago de Compostela, Spain, titled “The Future of the Humanities,” a colloquium designed to prepare a new international school to teach the humanities using innovative and interdisciplinary approaches. While teaching in the Cardozo/Tulane program in Jerusalem, he pursued work at the Floersheimer Research Center on religious/secular conflicts.

Charles Yablon visited the University of Sydney Faculty of Law this summer where he addressed a seminar on executive compensation in American corporations.


Appointments

Michel Rosenfeld was appointed by the French Minister of Labor to a special commission to study the role of women in public life. He spoke on “Democracy and Constitutionalism” at Columbia University, at “Constitutional Law in a Post-Castro Cuba,” sponsored by New York University School of Law, the Hispanic National Bar Association, and the Cuban-American Research Group; on “Citizenship and Statehood: Historical and Theoretical Foundations” at a conference in Vilnius, Lithuania titled “Nationality and State Succession”; on “A Pluralist Critique of Contractarian Proceduralism” at the Tau International Conference on Civil Rights at Tel Aviv University; on pure procedural justice at a conference, “Justice and Procedure,” in San Remo, Italy; and was a commentator at an international conference, “Fiscal and Budgetary Implications of Constitutional Rights,” at Central European University in Budapest. He lectured at Universidad Autonoma de Madrid and Universidad Carlos III (also in Madrid). His article, “Pragmatism, Pluralism and Legal Interpretation: Posner’s and Rorty’s Justice Without Metaphysics Meets Hate Speech,” was published in Cardozo Law Review.
Paul R. Verkuil was named dean of Cardozo in April 1997. He arrived with seven years experience as dean of Tulane Law School (1978–1985) and another seven as president of the College of William & Mary (1985–1992). He is a well-known legal scholar with a specialty in administrative and regulatory law. He has taught at the law schools of the University of North Carolina, Columbia, Duke, and the University of Pennsylvania. Just prior to his coming to Cardozo, he was special master in the US Supreme Court case, New Jersey v. New York, in which he was asked to resolve the issue of Ellis Island's sovereignty. Now, as he tries to put his personal stamp on Cardozo's future, he discussed with Cardozo Life editor, Susan Davis, his plans for the curriculum, facilities, and the School's first Annual Fund.

SUSAN DAVIS: Your tenure as dean has been distinguished by your energetic tackling of new programs and galvanizing various constituencies. Can we begin with the plans that you have for the academic future of Cardozo?

PAUL VERKUIL: Academically the school is in very good shape. My job is to build on those strengths—especially the quality of the faculty and its commitment to high academic standards. Among the areas that we are working on now is the curriculum. The idea is to make it more responsive to the way the legal system has changed since the School was founded 20 years ago. I don't believe that the curriculum has been looked at since then. As a consequence, it tends to be weighted too heavily on the private law side. Constitutional law and other public law fields should be brought into the curriculum earlier, as building blocks. My sense is that the faculty is prepared to make the necessary changes in this regard.

The other curriculum effort comes with the establishment of two LL.M. programs to take advantage of the faculty's expertise. We are developing programs around some of our strongest people and have proposed graduate programs in intellectual property and legal theory. We have several faculty members with national reputations in copyright, trademark, and media law, for example, and others who are highly respected in legal theory and comparative constitutionalism. These programs must receive approval from the American Bar Association and New York State before we can proceed.

DAVIS: And if these two LL.M. programs are successful do you see a third or a fourth coming on line?

VERKUIL: It is hard to say at this stage. I'd like to see how well we do before proceeding further. By the way, the advantage of the LL.M. in legal theory is that it's open-
ended. It's really a general LL.M. with an emphasis on legal theory. So we could probably provide subspecialties under this heading such as Jewish law, if we sense sufficient interest in the bar.

DAVIS: Have there been any thoughts about offering just a master's degree that's open to people who don't have J.D. degrees?

VERKUIL: Not explicitly. Although it is possible in fields like Jewish law that we could offer courses that non-lawyers might take. Indeed, I don't think we would rule out offering courses to people without having them apply for the LL.M. degree.

DAVIS: You have supported the new position of Director of Academic Support and the development of an academic support program.

VERKUIL: The signals were very important there. Students in academic difficulty are often not getting the attention they deserve and need. Sometimes these same students, when they graduate, don't succeed on the bar examination, and we want to improve those results. The students came to me the day I arrived and said they were particularly concerned about the academic treatment of minorities and that there was a need for better guidance in course selection. This is one way we have tried to respond.

My goal for this program is to demonstrate a commitment to everyone that enters Cardozo—to help them graduate, pass the bar, and succeed in their professional lives. Beyond support programs, we need to have a better understanding of building-block and core courses. At the advanced level we want to make sure that students take a coherent set of courses—or at least are informed about them.

DAVIS: This leads me into the area of placement. Certainly once our students pass the bar, and even prior to that, they want to know that they have good jobs waiting for them. At the luncheons that you have had with hiring partners, it has been clear that this year's hiring season is shaping up to be an extremely good one. Do you see a way for Cardozo to take advantage of this upturn?

VERKUIL: Yes, honestly, it's a wonderful time. What we learned from these meetings with the firms is that hiring is picking up substantially. We want to take advantage of the upswing. Obviously every school has the same goal, but the signs are good for us because we are relative newcomers and have much to offer. Our third-year students, for example, have two-thirds more interviews than they had last year. That's significant.

If we can convert those interviews into offers and acceptances, then everyone will relax around here. Students feel better about going to law school if they are optimistic about their job prospects. By the end of the first year, if not sooner, job placement becomes the key student concern.

DAVIS: Do you think the students here seem more nervous than students that you have worked with previously?

VERKUIL: I think they are intense, if not nervous. Perhaps it's the nature of the place. This is, after all, New York, not New Orleans or Williamsburg. When you are on a secluded campus you can relax a little and think about other things.

Our 'campus' is a building right in the middle of New York City. It's harder to get reflective time in this setting, but I'd like to try—if only by making this a friendlier and more organized place to learn.

DAVIS: Is this one of the reasons that you're working so hard on developing new and better facilities?

VERKUIL: Yes. Really. We need to maximize this building's potential. To create a new aura for the place. It's hard enough when you don't have a campus to create a feeling that you have an academic institution. It's not a bad building; it just doesn't cooperate. I'd like to overcome it. So there is a grand scheme on which we are working that includes the expansion of student lounge and study space on the ground floor as well as the opening of a residence hall.

DAVIS: The 11th floor looks beautiful and seems to be making students happier and prouder of the facility. Can you say what the plans are for the 9th and 10th floors?
The Dean has conducted extensive meetings with faculty, students, alumni, board members, and guests—galvanizing these important constituencies and initiating new programs. Dean Verkuil is shown here with Prof. Shlomo Avineri.

with The Hon. Denny Chin, US District Judge, Southern District of New York, and at a luncheon for hiring partners from major law firms.

at his weekly luncheon in the student lounge, with alumni during the 11th floor construction.

with students at the reception last spring to welcome him to campus.
My goal is to demonstrate a commitment to everyone that enters Cardozo.

VERKUIL: We are now doing engineering studies for the 9th floor and will probably report back the results of those studies at the next meeting of our board, which is in December. Hopefully we will start working on the 9th floor, which will be primarily library space, in the spring. The 10th floor offices vacated by the move of Admissions and the Center for Professional Development to the 11th floor will be reassigned to other needs in the spring as well.

DAVIS: These plans, obviously, are going to cost money. I know that one of your jobs as dean is to help stimulate fundraising. Will you tell us about your plans in this area?

VERKUIL: First of all, it should be noted that this issue of Cardozo Life is serving as the kickoff of our first Annual Fund. We have an initial goal of $100,000, which I am hopeful we will meet and exceed.

At the same time, we are doing a study of donors for sources of capital funding to allow us to proceed with our building improvements. The sources include alumni, friends of Cardozo, and members of our board. Indications of support are very positive. We are fortunate to have a leader like our chairman, Earle Mack, who, with his family, has been committed to Cardozo for many years. There are others on the board who have been active participants also. I will report to the board with what amounts we can reasonably ask people to give to our capital campaign.

DAVIS: What kind of role do you see the alumni playing in this?

VERKUIL: Well, a variety of roles. First of all, we hope that they will give on an annual basis. Not all gifts have to be at the million-dollar level, obviously. Smaller gifts add up. Alumni must feel, as I do, that Cardozo is a worthy object of their beneficence. Beyond that, perhaps they will encourage their friends, relations, and clients to make gifts. We will be happy to have our alumni direct us to people who would like to do something for Cardozo.

DAVIS: Do you have a vision for Cardozo over the next three years? Where will it be? How will it be perceived?

VERKUIL: I think Cardozo's visibility will be raised. I would like to think it will be perceived, in all respects, as well as the faculty is perceived now. In other words, our students will be more sought after, our facilities will be more suitable, and we will have better connections to the community around us.

My vision is really to make Cardozo a little better across the board. I think this is a doable goal that will be self-fulfilling in a way: because the more you do to make Cardozo better, and the more we receive recognition for that, the better our Law School becomes. This interactive process between perception and actuality is how institutions rise.

DAVIS: Is it fair to say that now that you have returned to a law school setting you're finding it challenging and interesting?

VERKUIL: Yes, I am. I have been around law schools most of my career and this place has a very nice feel about it. It has much to offer, I am comfortable here, and I think I can be of help.

We are working on the curriculum...to make it more responsive to the way the legal system has changed since the School was founded.
Peaceful Transitions
to Constitutional Democracy:

Lessons from the case of Spain

Michel Rosenfeld
Professor of Law

Transitions from authoritarian regimes to constitutional democracy have traditionally involved violent breaks with the past. As we all know, both the American and the French eighteenth-century transitions, which gave birth to modern constitutionalism, occurred in the wake of bloody revolutions—though, strictly speaking, it would be more accurate to refer to the American Revolution as a war of liberation. Similarly, the more recent transitions in Germany and Japan in the aftermath of World War II came after complete military defeat and surrender.

The link between violence and the institution of constitutional democracy seems perfectly logical inasmuch as despots have not been prone to relinquish their powers willingly. These lessons from history and logic make it all the more remarkable that Spain successfully undertook a peaceful transition from authoritarianism to constitutional democracy in the mid-1970s, and that it has managed to develop a vibrant constitutional culture over the past two decades. The case of Spain hardly qualifies as an anomaly. Indeed, it marks a turning point toward an era of peaceful transitions. Starting in the 1980s, there has been a veritable global trend towards constitutional democracy, and a predominant number of the transitions involved, be they in East/Central Europe, Latin America, or South Africa, have been peaceful. In many cases, moreover, the architects of these peaceful transitions have emulated the Spanish example or looked to Spain for inspiration.

This new trend toward peaceful transition is puzzling not only because it breaks with history but also because the presence of some kind of violence has long been thought a prerequisite to a successful transition from a despotic regime to a constitutional democracy. While it is obvious that violence may be necessary to dislodge an unyielding tyrant, violence can also serve another important function which may not be as apparent.
Transitions to constitutional democracy involve a switch in systems of justice that requires discrediting the old legal regime and the ways in which it purported to dispense justice. At the same time, such transitions must successfully institute and legitimize the new legal regime to foster adherence to newly adopted constitutional values and renewed respect for the rule of law. It is difficult to concurrently dismantle the old regime and build up the new one without any violence; emergence from an oppressive past usually requires a clean break and an interim period in which old accounts may be settled without compromising the new legal regime.

A clean break is considered necessary because it is often not enough to get rid of the tyrant without disempowering those whom the old regime has entrenched in influential positions. For this reason, some of the recent peaceful transitions in Eastern Europe have been criticized as “counterrevolutionary” for keeping the communist nomenklatura in charge despite embracing the formal trappings of constitutional democracy and changes of personnel at the highest levels of government.

On the other hand, when the old regime has been violent against its citizens, victims of the old regime—such as those who have been tortured or who have had loved ones killed by or on behalf of the state—have in many cases demanded criminal prosecution of their old tormentors and have even threatened to take the law into their own hands should the new regime fail to act. If the acts complained of were legal when carried out or were illegal but not prosecuted and the relevant statutes of limitations have expired, the new regime will inevitably confront a difficult dilemma. Either prosecution will promote moral and political justice at the expense of legal justice and thus undermine the new regime's adherence to the rule of law, or, failure to prosecute might safeguard the rule of law but deprive the new regime of much-needed legitimacy and threaten the polity's peace and stability.

Although revolutionary violence might conveniently lead to a complete uprooting of the old regime's ruling elite and to a settling of old accounts without sullying future institutions, solutions compatible with avoidance of bloodshed are obviously preferable. This is why the case of Spain seems so promising and why it deserves to be carefully examined.

Spain's peaceful transition to democracy is doubly remarkable in that not only did it avoid violence but a break in legality as well. The process began with the death of the dictator Francisco Franco at the end of 1975 and culminated with the entry of Spain into the European Community (now the European Union) in 1986. In the intervening years, Spain adopted a constitution (1978), successfully survived a military coup attempt (1981), and saw a peaceful transfer of power from the centrist, who ruled during the constitution-making process, to the socialists, who won the 1982 parliamentary elections.

Franco's dictatorial regime followed Spain's bloody civil war (1936-1939) and was marked by personal rather than party rule. Although Franco was surrounded by collaborators who played an increasingly important role during his declining years, and although he allied himself with the Spanish Church, his authoritarian regime was ultimately that of a single man who did not clearly or systematically provide for his succession. He did groom Prince Juan Carlos de Borbon, the grandson of the last King of Spain, but the monarchy had been abolished by the republican government that was in power at the outset of the civil war. Technically, it was Juan Carlos's exiled father who was the legitimate heir.

Shortly before his death, Franco appointed Carrero Blanco to head the government, thus, for the first time since he assumed power, formally separating the functions of the head of the government from those of the head of state. Soon afterwards, however, Carrero Blanco was assassinated by Basque terrorists. After Franco's death, Juan Carlos became king and appointed a new head of government, but the political situation in Spain...
Spain's peaceful transition to democracy is doubly remarkable in that not only did it avoid violence but a break in legality as well.

was highly volatile. Right and left had a deep mistrust of each other, the Basques and Catalans became more outspoken in their demands for autonomy, the economy was adrift, and all factions of the political spectrum were suspicious of the king. Those who had been loyal to Franco feared that the king would abandon their cause while those who wished to restore democracy saw him as a pawn of Franco's political heirs.

It was in these very unsettled circumstances that Spain began its peaceful transition to constitutional democracy. On the one hand, the government launched the process of transition while remaining firmly within the bounds of Francoist legality. In particular, it made use of the unrepresentative and submissive parliament nurtured by the dictatorship to legalize political associations, and thus paved the way to legitimate party politics.

On the other hand, the king made full use of the powers awarded him by the dictatorship, but did so not in furtherance of authoritarianism but with a view toward breaking away from it. Most notably, the king appears to have played a key role in the replacement of the first post-Franco head of government, who was too close to the old regime to carry out the requisite reforms to establish a functioning democracy. The new head of government believed to have been recommended by the king was the centrist, Adolfo Suarez, who would prove more than equal to the delicate and complex task at hand. The king also took care to legitimize his position as rightful heir to the Spanish Monarchy by having his father renounce his succession rights. That important step had the symbolic effect of restoring the monarchy, and as a consequence bolstered the king's support within the military and among a sizeable proportion of conservatives. Finally, a few months after legitimizing his occupation of the throne, the king declared at the opening of the new parliament in July of 1977 that it was the Spanish people who were sovereign and that as a constitutional monarch he would take no role in fashioning a political program for Spain. From that moment on, the king rose above politics and became a symbol of national unity during the course of the vexing and delicate process of constitution making.

Suarez proved a deft master of politics during the potentially explosive situation. He first managed the difficult task of legalizing the Socialist Party and the Communist Party, enabling the entire political spectrum to participate in the parliamentary elections designed to produce a constituent assembly. There was great opposition to the Communists, but the Socialists refused to proceed without them. To break this impasse, Suarez carefully orchestrated the legalization of the Communist Party, and timed the announcement to produce the least possible publicity: the beginning of a national holiday weekend.

The Elections of June 1977 gave Suarez's centrist party the largest number of seats in parliament; Socialists, Communists, Basques, and Catalans also achieved significant representation. The parliament thus had broad enough representation for most concerned to regard it as a legitimate constituent assembly. Moreover, Suarez resolved some of the thorniest issues through strategic uses of ambiguity, secrecy, and creative solutions, thereby managing to craft an acceptable constitution in spite of strong party divisions.

Two of the most salient features that seem to have been crucial to the constitution's eventual success were the delegation of its drafting to a group of legal academics who worked largely in secret and the creative way in which the aspirations toward autonomy of the Basques and Catalans were addressed without losing the support of the rest of the country. The seven drafters of the constitution were representatives of the major parties in parliament, and each of them was responsible to his own party. The parties represented were Suarez's UDC; the Socialists and Communists; Popular Alliance, the principal rightist party; and the Catalan party, whose representative also took into account the Basque point of view. Secrecy allowed for consultation and compromise and insured that the Spanish constitution would remain a consensus-based document. Eventually there was pub-
lic discussion in parliament and many amendments were considered and adopted; however, drafters had by and large laid the essential framework. The constitution was overwhelmingly approved by the parliament, accepted by the people in a referendum, and promulgated by the king at a joint session of the two houses of parliament on December 27, 1978. Only a handful of extreme right and extreme left parliamentarians voted against the constitution, while the Basques abstained.

The solution devised to address the Basque and Catalan claims to autonomy was ingenious in not singling them out or setting them legally apart from all the other regions of Spain. It divided all of Spain into “autonomous communities” and apportioned powers among the central authorities and those of the communities in a federal type of political organization. The resulting arrangement was very vague and gave the status of “autonomous community” to regions of Spain that had no aspiration toward autonomy.

In closing, two brief observations: one concerning the peaceful nature of the Spanish transition; the other concerning the lessons that can be drawn from the Spanish experience. While it is both true and remarkable that the Spanish transition was peaceful, it must be emphasized that violence was never far removed from the constitution-making process. Indeed, Basque terrorism was omi-

Whereas Poland did not have a king, the Catholic church played a key role that was analogous to that of the Spanish king.

nously present throughout the entire transition. Furthermore, it is quite possible that the painful memories of the extensive bloodshed experienced during the Spanish Civil War were sufficiently present to positively influence most political actors’ capacities for compromise. If this hypothesis is warranted, then the violence was not eliminated but, in the case of Spain, replaced by a vivid recollection of violence. Finally, although the constitution-making process remained peaceful, it must not be forgotten that the military began a coup by seizing parliament on February 23, 1981, and that Spanish democracy was saved only through the wise and courageous intervention of the king.

The second observation is that Spain’s peaceful transition was anchored on an internal bedrock of unity and animated by an external set of goals and standards. Once the king clearly emerged as the legitimate heir to the throne—and above politics—he provided an internal rallying point for national unity and furnished a link between pre-Franco and post-Franco Spain. And because admission to the European Community required the establishment of a working constitutional democracy and it was in Spain’s economic and political interests to become a member, European norms undoubtedly played a significant external role in the shaping of the Spanish transition.

The full scope of the influence of the Spanish transition has yet to be determined, however, both the fact that it took place and its key elements have had an impact on subsequent transitions. Poland’s post-socialist peaceful transition drew inspiration from the Spanish example, and even though there were many differences between the two cases—for example, Spain had a working capitalist economy before the transition, while Poland did not—it has been suggested that there were many significant similarities. Hence, whereas Poland did not have a king, the Catholic church played a key role that was analogous to that of the Spanish king.

Finally, one lesson that may be drawn from the Spanish experience for constitutional practice in general is that ambiguity and secrecy are not necessarily constitutional vices if, as a consequence, certain open-ended constitutional provisions can foster consensus and broad-based cooperation. Incidentally, this last conclusion is quite similar to that drawn by Chief Justice Marshall of the US Supreme Court in his landmark opinions in the early 19th century. Indeed, Marshall emphasized that a constitution should contain broad-based provisions readily adaptable for many generations to come. The recent Spanish example may be viewed as a contemporary confirmation of Marshall’s insights, or at least as an excellent vehicle for a serious reexamination of Marshall’s thesis.
In recent months the work of several scholars who have long labored in the relative obscurity of legal academe has come to the notice of the popular press. In tandem with this newfound notoriety, Critical Race Theory (CRT), the product with which these scholars are variously identified, has been transformed from the work of a loosely defined scholarly movement into a racially specific, 1990s version of the boogeyman. This transformation was set in motion largely by a short news item which appeared in the May 5th, 1997 edition of the New York Times: “For Black Scholars Wedded to Prism of Race, New and Separate Goals.”

In a brief article that pointedly sought to reduce CRT to a “black” phenomenon and devoted far more space to misrepresentation than to honest exploration, Times reporter Neil Lewis portentously informed his readers that “critical race theorists...have drawn from an idea made popular by postmodern scholars...that there is no objective reality. Instead...there are competing racial versions of reality that may never be reconciled.” Warming to his subject, Lewis went on to assert that “critical race theory is providing an intellectual foundation for newly flourishing forms of black separateness.” His most fanciful remarks, however, were reserved for the portion of the article in which he asserted that the movement’s “most prominent” interest is “a reconsideration of the goals and successes” of the Civil Rights movement.

For the most part, other media coverage of CRT has merely embroidered upon Lewis's thematic design, dismissively characterizing it as “race-conscious separatist thinking,” or advancing provocative, racially-coded claims such as, “surely, the most striking example of the influence of the critical race theorists on the American legal system is the O. J. Simpson case....” Of course, anyone even remotely familiar with the actual texts produced by the diverse ensemble of scholars who have allied themselves with this fledgling movement would be hard pressed to discern an accurate reflection of their scholarship in the fun-house images purveyed by the popular media.

Given a political climate in which distorted and intemperate attacks upon “feminazis” and “radical sodomites” are routinely deployed to interdict, disempower, and eviscerate the epistemological perspectives advanced by the adherents to feminist and queer theory, popular characterizations of critical race theorists as “Black separatists” or advocates of some Hitlerian variant of thinking “with the blood” are hardly surprising. Indeed, rapidly escalating efforts to stigmatize and racialize public representations of CRT and its adherents seem decidedly premeditated. As such, they are perhaps most appropriately viewed as preemptive strikes in an ongoing war for the hearts and minds of society’s disaffected. Shameful as they are, such tactics unmistakably evidence a certain practical, if morally perverse, logic. The enemy, after all, is not wholly devoid of natural appeal. Quite the contrary. In one short decade, CRT has gained a notable number of adherents across a broad spectrum of academic disciplines and, with the recent publication of several popular anthologies, now threat-

“It’s a Black Thang, Ya Don’t Wanna Understand!”:

Ten Years on,

E. Nathaniel Gates
Associate Professor of Law
ens to spill beyond the narrow byways of academic discourse into the broad avenues of popular consciousness.

CRT's origins as an academic movement may be traced to the lonely efforts of three pioneering scholars to address the pivotal role of "race" consciousness and "white" supremacist racial ideology in structuring US law and legal theory. In the late 1970s, the late Alan Freeman, Derrick Bell, and Richard Delgado each offered powerful critiques of the epistemological categories of "traditional" legal scholarship and "color-blind" antidiscrimination law. These critiques were offered, respectively, in response to (i) the failure of civil rights laws to appreciably alter either the dynamics or the pervasiveness of US racism, and (ii) the reluctance of the legal academy to facilitate the participation of non-European American scholars in the development and evaluation of the central tenets of anti-discrimination law.

In a series of thoughtful and influential publications, both Freeman and Bell argued that the new, post-Brown paradigm of civil rights law had established a plausible basis for the belief that both European-Americans and Americans of non-European ancestry enjoyed equivalent formal legal rights. This was so in spite of the fact that persistent, intractable, racial discrimination continued to assure the subordination of the vast majority of persons of non-European extraction. Freeman's critique indicted the judiciary and the legal academy for their shared atomistic view of the dynamics of racism. Its conception, he argued, was rooted in the "perpetrator's perspective," and depicted racial discrimination as an irrational, albeit intentional, deviation from otherwise neutral, rational, and "just" ways of distributing economic power, prestige, and wealth.

Expanding on Freeman's insights, Bell suggested that this outlook prevailed because hegemonic, racialized elites had made limited, strategic concessions that only superficially advanced the cause of racial equality. For Bell, the false rhetoric of neutral rights, which has proven to be the most enduring heritage of these concessions, effectively prevents the legal system from meaningfully redressing the persistent, substantive inequality between the "races." In a distinct but related critique, Richard Delgado trained his criticisms upon the substantive failures of the so-called scholarly tradition. Delgado argued that because minority scholars had been excluded from that tradition, their work was rarely cited by either authoritative commentators or the courts. Delgado maintained that the contributions of non-European-American scholars were either wrongfully ignored or systematically undervalued by an "inner circle of about a dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand upon each others' ideas."

In the late 1980s, these early "race"-conscious critiques began to coalesce with a newly emergent tendency within the Critical Legal Studies movement (CLS). Coming together somewhat episodically as attendees at various CLS workshops, a small group of non-European-American scholars sought to add a "race"-sensitive dimension to the standard CLS critique. Self-consciously
echoing the concerns raised earlier by Freeman, Bell, and Delgado, this new generation of scholars sought to build upon their provisional findings by uncovering the extent to which law served as a constitutive element of the concept of "race" and of the concomitant racial power that buttressed "white" supremacy.

Ten years ago, with the founding of the Critical Race Theory workshop, CRT was formally launched as a distinct critical movement. Supported by a grant from a CLS mainstay and organized by an ad hoc committee consisting of Kimberlé Crenshaw, Neil Gotanda, and Stephanie Phillips, a group of 35 legal scholars gathered at the University of Wisconsin-Madison to "synthesize a theory that, while grounded in critical theory" would be more directly "responsive to the realities of racial politics in America." Since its founding, the CRT workshop has continued to convene annually and has stimulated and inspired a prodigious level of scholarly production among participants and nonparticipants alike.

Although CRT has been popularly depicted as a monolithic movement, in actuality it is surprisingly eclectic. There are no litmus tests for participation in CRT workshops, and the politics of CRT's self-proclaimed adherents range from the neo-conservativism of Randall Kennedy to the nationalistic improvisations of Paul Butler.

"difference is a derivative concept based upon identity," such that "two things are different if they are not identical." Accordingly, one's racial identity is only comprehensible in terms of one's difference from an "other." Kimberlé Crenshaw, who is perhaps the most articulate proponent of this view, has argued that in the US context, the positising or confabulation of a stigmatized "colored other" has created a bond or sense of common identity amongst all non-stigmatized parties whose humanity and interests are then necessarily defined in opposition thereto. This perspective on the construction and function of "white" racial identity has led Crenshaw and others to the view that a so-called color-blind society, in which the position of many continues to be defined, characterized, and subordinated in accordance with oppositional, subaltern racial identities, cannot be "just."

Thus, mainstream critical race scholars like Crenshaw and Ian Haney Lopez, whose 1996 book White By Law is another cogent presentantion of this view, maintain that to effect the elimination of racial subordination, traditional notions of formal equality must be rigorously deconstructed. A "color-blind" society erected upon a "race"-conscious ideology suffused with assumptions of Euro-American supremacy might give the appearance of formal equality, but in actuality, the legal categories defined by its underlying ideology would continue to subordinate non-European-Americans to an ideologically "whitened" European-American strata.

Although CRT has, to date, been largely identified with the work of a comparatively small band of legal academics, the aforementioned critique of racial categories draws heavily upon an understanding of the social construction and reproduction of racial ideology developed and elaborated upon by scholars like Barbara Jeanne Fields, David Roediger, Alexander Sexton, Noel Ignatiev, Stuart Hall, Collette Guillaumin, David Theo Goldberg, Lucius Outlaw, Michael Omi, Howard Winant, David Lloyd, and Toni Morrison. This group of historians, social theorists, and cultural critics—each of whom has long sought to illustrate how "white" supremacist ideolo-

**CRT**...has been transformed from the work of a loosely defined scholarly movement into a racially specific, 1990s version of the bogeyman.
rapidly escalating efforts to stigmatize and racialize public representations of CRT and its adherents seem decidedly premeditated

gy is hidden within the categorical interstices of numerous aspects of Western thought—have greatly informed, amplified, and deepened the explorations undertaken by CRT’s legal academic devotees. In the process, they have also demonstrated that an appreciation of the ideological role of racial classifications extends far beyond the legal academy.

Indeed, it is the aforementioned scholars who have been most influential in the development of a truly deracnist critique of the concept of “race.” Significantly, this deracnist tendency is the only manifestation of CRT that has enjoyed any real success in inspiring concrete political praxis. The deracnist critique regards every racial formation—and most especially that which is based upon a normatively posited “whiteness”—as a negatively constituted amalgam, summoned into being for the purpose of extending and bolstering pre-existing hegemonic social arrangements. In recent years this critique has spawned such hopeful new political alignments as the New Abolitionist Society. It has also given rise to the publication of a spate of special journal issues, the founding of a five-year-old quarterly called Race Traitor magazine, and the widespread dissemination of several other works dedicated to the elimination of the pernicious notion of an identifiable “white race” and the baleful forms of social solidarity that follow in its train. Given the stakes, one cannot help but wonder whether it isn’t this emerging complex of novel political engagements that has given rise to the suddenly intensified distortions and disapprobation of the popular press. Were such a clearheaded appreciation of the ideological function of “race” and “race-consciousness” to gain currency among any measurable portion of the European-American populace, the trickle-down economic agenda of a substantial sector of the dominant elite would suddenly find itself far more seriously embattled.

Perhaps the nature and potency of social movements, like the character of individuals, is partially disclosed by the moral commitments of the enemies they generate. If so, the sound and fury of today’s baleful media machinations ought to be less mourned than celebrated. The fact that CRT must be attacked in terms that seek to link it to the Manichean fantasies of the very caste system it aims to uproot speaks volumes about the fear that the deracnist critique inspires. The loyal servants of those whose social perquisites substantially depend upon the maintenance of “race”-based allegiance and dominion have resorted, once again, to denigration and the standard shorthand for defilement and pollution. One senses that their unvarying hope is that the residual power of these representations will still a nascent impulse toward free inquiry. This apprehension leads to the distressing conclusion that they have undertaken to conjure CRT into a “Black thang” precisely because they understand that it is not!

For further reading on Critical Race Theory see:


K. Crenshaw et. al., Critical Race Theory: Key Writings that Formed the Movement, 1995.


Mike Hill, Whiteness: A Critical Reader, 1997

Noel Ignatiev, How the Irish Became White, 1996.


Suzanna Sherry & Daniel Farber, Beyond All Reason, 1997.
From Law Journal Article to the Supreme Court, with Time for Teaching and Motherhood, too

IN THE SPRING OF 1995, I RECEIVED A TELEPHONE MESSAGE FROM A LAW FIRM in San Antonio, Texas. The message asked if I had an article forthcoming on the Religious Freedom Restoration Act (RFRA) and, if so, could I fax it to the law firm immediately. I returned the call and learned that a federal judge in the Western District of Texas was going to rule on the constitutionality of the Act by 5 p.m. that day in a case involving a zoning dispute over a church in Boerne, Texas. An enterprising law clerk at the firm had found a reference to my article arguing that RFRA was unconstitutional and suggested to the firm’s partner working on the case that he take the article to the judge, whose chambers were across the street. The article was not in its final form yet, but it was very close, so I faxed it at 2 p.m. that afternoon. At 5 p.m., the district court judge, the Honorable Lucius Bunton III, ruled that the Act was unconstitutional and cited my article to that effect. The law firm, the thriving municipal law practice of Denton, McKamie & Navarro, was thrilled, I was thrilled, and we promised to speak again.
The article, “The Religious Freedom Restoration Act: Letting the Fox into the Henhouse Under Cover of Section 5 of the Fourteenth Amendment,” was the product of my constitutional law research and a casual conversation with one of my colleagues. The Cardozo faculty has a well-deserved reputation for intellectual breadth and depth. The exchanges between faculty members are valuable at many different levels. In fact, I might not have become involved in the national debate over RFRA had it not been for an offhanded discussion with my colleague Rabbi David Bleich.

One evening, Rabbi Bleich called me at home to discuss some faculty committee business. The conversation drifted to our shared interest in law and religion and the recently enacted RFRA. I was surprised that it had made it through Congress, especially with the huge margin it received. Regulating religion was none of Congress’s business in my view. David wondered aloud what constitutional power Congress had or what power could have been invoked to enact RFRA. Soon thereafter we hung up, but his question continued to pester me.

As I lay awake in bed that night I mentally ticked off the possible sources of power: the Commerce Clause, the Spending Power, Section 5 of the Fourteenth Amendment. None of them fit this law, which was an attempt to overrule the Supreme Court’s most recent free exercise decision, Employment Division v. Smith, and which applied to every area of government regulation.

The next morning I examined the text of the statute and the legislative history, and concluded that the members of Congress seemed to think that the First Amendment was a source of power. Having spent the previous year immersing myself in the views of the Federalist framers of the constitution, I was incensed. The constitution was intended to be a document of enumerated powers. Congress had those powers explicitly pledged to it, and no others. The First Amendment is plainly a limitation on governmental power, not a license to legislators to regulate liberty. How could Congress decide that it was now our protector of religious liberty when in fact it was the object of the First Amendment’s limitations? Thus, I started writing the article that I faxed to San Antonio.

The Cardozo Law Review has an uncanny knack for accepting articles that get publicity. Once I had the full scope of the article outlined in my head, I knew that it would be important to publish it as soon as possible. Because of RFRA’s breathtaking sweep—it applied to every law and every government in the United States, whether the law was in effect before or after RFRA was passed—challenges were likely to crop up quickly, and its constitutionality would be an important claim in every well-briefed free exercise case. I mentioned this to my research assistants, who were also members of the Law Review. They were very eager to publish the article and promised to get it out quickly.

As someone who was not then tenured, I decided that I should send the article out to other law reviews as well. In general, publications in in-house journals are discounted in the tenure process. I had a number of “nibbles” from other law reviews, some of them quite insistent, but no other journal could publish the article in the record time promised by Cardozo. I chose Cardozo, and was glad I did, especially when I received the call from San Antonio.

I did not hear from Denton, McKamie & Navarro for quite a while after that. I certainly was not looking for extra work. I was pregnant with our second child and had moved on to constitutional and copyright topics beyond RFRA. Alexandra was born three weeks early on May 19, 1995. Three weeks later, I received a call asking whether I would read and comment on the brief that Denton, McKamie & Navarro was filing on behalf of the City of Boerne, Texas in the Court of Appeals. The Church had appealed the district court’s ruling declaring RFRA unconstitutional. I agreed to do so, and for the balance of the weekend juggled the demands of my three-year-old son, William, our newborn, Alexandra, and the brief. When the brief was finally complete, the firm sent me flowers, and I went back to concentrating on my children before returning to teach in the fall.

The Boerne case was scheduled for oral argument that fall. Having worked on the brief, I flew down to New Orleans to watch the argument. There, I finally met the City’s attorney, Lowell Denton. He is one of the name partners in Denton, McKamie & Navarro in San Antonio. Having been born in Dallas, I was not a bit surprised to meet a prominent Texas attorney wearing a cowboy hat and boots, and whose tie was imprinted with a bottle of tabasco sauce.

Denton was also a former San Antonio city attorney and the owner of a ranch. He complained that his shoulder had been bothering him ever since he had roped a steer several months back. I liked him immediately. He did a truly fine job at the oral argument. We lost in the Court of Appeals, but so did every other challenge to RFRA in the federal courts of appeals. Guidance from the Supreme Court was clearly necessary. When I was asked by the City to serve as lead counsel to the Supreme Court, Denton enthusiastically lent his support, for which I was very grateful.

The Boerne case was a natural extension of my legal scholarship and my lifelong interests in religion and law. For this academic who wholeheartedly chose the ivory tower, it was thrilling to participate as the story of the Religious Freedom Restoration Act unfolded. The case
pitted an unprecedented coalition of organized religions against a small town in south Texas; the people of tiny Boerne, Texas against the town's Catholic Church; and a relatively young constitutional scholar (myself) against a much more seasoned legal academic (Professor Douglas Laycock of the University of Texas School of Law).

Perhaps equally interesting, at least to some, is how I managed to be lead counsel in a precedent-setting case, continue to teach a full complement of courses, and balance the demands and joys of a family. In fact, the most frequently asked question that I heard during the months that I prepared for the argument was, "How do you do it all?" My answer, almost always, is that I simply love all that I do. My family is a constant source of renewal, and I have been blessed by an occupation in which I can combine my love of writing, thinking, and public speaking. Taking the Boerne v. Flores case to the Supreme Court was another very stimulating and enjoyable part of the puzzle.

The real question is, "Why do I do it all?" The answer is quite easy: When I decided to pursue an exciting and challenging career and have children, I had no idea what I was taking on. Having just reached my 40th birthday, I can now say with conviction that what looked easy to me as a teenager is often difficult to live.

My children are my first priority. That made the deadlines for each of the briefs I filed with the Supreme Court even more challenging than they might have been, given that every deadline was hailed by the arrival of some new virus. My only saving grace was that I did not catch those viruses myself. My theory is that these viruses consider an exhausted mother a lousy host.

Alexandra, who was now two, managed to get a 103-degree fever two days before the oral argument at the Court, and I had to be in Washington to participate in a debate at the Cato Institute the day before. I left her in the arms of my husband, Peter, saying to myself, "It's just a virus. It will go away."

Peter had been planning to join me in Washington. He called me at the hotel the night before the argument to say that Alexandra had infections in her nose, throat, and ears, and because she was so contagious, no one should be around her who had not already been—leaving only Peter to care for her. Therefore, Peter stayed with Alexandra for the two days I was in Washington. I was deeply relieved that she was with Peter, who would give her the most loving care, but I was very disappointed not to have him with me.

Many have asked if I was "afraid" during my representation of Boerne before the Supreme Court. On the day of the oral argument, except for the briefest of moments when I walked into the Supreme Court's imposing chamber and realized just how close my podium was to the justices' bench, I never felt fear of any kind. My grandfather, a successful practicing attorney in Wyoming, had argued a water rights case before the Supreme Court in the 1940s, and I had clerked for Associate Justice Sandra Day O'Connor, so the Court did not strike me as an alien place. As I took my notes out of my grandfather's briefcase, I thought of my friends and family seated behind me, of my son, William, who was then sitting in his pre-kindergarten classroom, and of my husband holding Alexandra. My perspective quickly returned. The Court was the place where I hoped to right the wrong done by Congress. I told myself that the case was not about me, but rather about a federal legislation that had lost sight of its constitutional moorings.

After the Supreme Court announced that we had prevailed and that the Religious Freedom Restoration Act was beyond Congress's power I received many congratulatory calls and letters (and read the many news reports falsely claiming that the end of religious liberty was near). I especially appreciated the following letter:

I write now both to congratulate you on the outcome in the City of Boerne v. Flores case and to express my thanks for the public service you've rendered. Your service has been "public" not just in the sense of helping state and local governments reasonably do the public's work but also in the sense of helping the Supreme Court to reaffirm some basic constitutional principles...to restate the idea that ours is (or should be) a nation that depends on the rule of rational law evenhandedly applied rather than one in which the law's application varies according to the person it is applied to.

I equally appreciated the student who thanked me for bringing my son to class one day that spring, saying, "It was so comforting to see that you have gone to the Supreme Court, but that you also have a family that is your first priority." I told her what I have told everyone else, that "having it all" is a lot of work, but well worth the effort.

It is rare that a scholar has the opportunity to make a real difference. It was an honor and a privilege to represent the City of Boerne, Texas before the United States Supreme Court.
When I saw Hanna again, it was in a courtroom.

It wasn't the first trial dealing with the camps, nor was it one of the major ones. Our professor, one of the few at that time who were working on the Nazi past and the related trials, made it the subject of a seminar, in the hope of being able to follow the entire trial with the help of his students, and evaluate it. I can no longer remember what it was he wanted to examine, confirm, or disprove. I do remember that we argued the prohibition of retroactive justice in the seminar. Was it sufficient that the ordinances under which the camp guards and enforcers were convicted were already on the statute books at the time they committed their crimes? Or was it a question of how the laws were actually interpreted and enforced at the time they committed their crimes, and that they were not applied to them? What is law? Is it what is on the books, or what is actually enacted and obeyed in a society? Or is law what must be enacted and obeyed, whether or not it is on the books, if things are to go right? The professor, an old gentleman who had returned from exile but remained an outsider among German legal scholars, participated in these debates with all the force of his scholarship, and yet at the same time with a detachment that no longer relied on pure scholarship to provide the solution to a problem. “Look at the defendants—you won't find a single one who really believes he had the dispensation to murder back then.”

The seminar began in winter, the trial in spring. It lasted for weeks. The court was in session Mondays through Thursdays, and the professor assigned a group of students to keep a word-for-word record for each day. The seminar was held on Fridays, and explored the data gathered during the preceding week.

Exploration! Exploring the past! We students in the seminar considered ourselves radical explorers. We tore open the windows and let in the air, the wind that finally whirled away the dust that society had permitted to settle over the horrors of the past. We made sure people could breathe and see. And we placed no reliance on legal scholarship. It was evident to us that there had to be convictions. It was just as evident that conviction of this or that camp guard or enforcer was only the prelude. The generation that had been served by the guards and enforcers, or had done nothing to stop them, or had not banished them from its midst as it could have done after 1945, was in the dock, and we explored it, subjected it to trial by daylight, and condemned it to shame.

Our parents had played a variety of roles in the Third Reich. Several among our fathers had been in the war, two or three of them as officers of the Wehrmacht and one as an officer of the Waffen SS. Some of them had held positions in the judiciary or local government. Our parents also included teachers and doctors, and one of us had an uncle who had been a high official in the Ministry of the Interior. I am sure that to the extent that we asked and to the extent that they answered us, they had very different stories to tell. My father did not want to talk about himself, but I knew that he had lost his job as lecturer in philosophy for scheduling a lecture on Spinoza, and had got himself and us through the war as an editor.
for a house that published hiking maps and books. How
did I decide that he too was under sentence of shame?
But I did. We all condemned our parents to shame, even
if the only charge we could bring was that after 1945
they had tolerated the perpetrators in their midst.

We students in the seminar developed a strong group
identity. We were the students of the camps—that's how
the other students described us, and how we soon came
to call ourselves. What we were doing didn't interest the
others; it alienated many of them, literally repelled some. When I think
about it now, I think that our eagerness to assimilate the horrors and
our desire to make everyone else aware of them was in fact repulsive.
The more horrible the events about which we read and heard, the more
certain we became of our responsibility to enlighten and accuse. Even
when the facts took our breath away, we held them up triumphantly.

Look at this!

I had enrolled in the seminar out of sheer curiosity. It
was finally something new, not contracts and not property,
torts or criminal law or legal method. I brought to
the seminar my arrogant, superior airs. But as the winter
went on, I found it harder and harder to withdraw—
either from the events we read and heard about, or from the
zeal that seized the students in the seminar. At first,
I pretended to myself that I only wanted to participate in
the scholarly debate, or its political and moral fervor. But
I wanted more; I wanted to share in the general passion.
The others may have found me distant and arrogant; for
my part, I had the good feeling all that winter that I be-
longed, and that I was at peace with myself about what
I was doing and the people with whom I was doing it.

The court was in a turn-of-the-century building, but
devoid of the gloomy pomposity so characteristic of
court buildings of the time. The room that housed
the assize court had a row of large windows down the left-
hand side, with milky glass that blocked the view of
the outdoors but let in a great deal of light. The prosecutors
sat in front of the windows, and against the bright spring
and summer daylight they were no more than black silhouettes.
The court, three judges in black robes and six
selected local citizens, was in place
at the head of the courtroom and on
the right-hand side was the bench of
defendants and their lawyers; there
were so many of them that the extra
chairs and tables stretched into the
middle of the room in front of the
public seats. Some of the defendants
and their lawyers were sitting with
their backs to us. One of them was
Hanna. I did not recognize her until
she was called, and she stood up and
stepped forward. Of course I recog-
nized the name as soon as I heard it: Hanna Schmitz.
Then I also recognized the body, the head with the hair
gathered in an unfamiliar knot, the neck, the broad back,
and the strong arms. She held herself very straight, bal-
anced on both feet. Her arms were relaxed at her sides.
She wore a gray dress with short sleeves. I recognized
her, but I felt nothing. Nothing at all.

Yes, she wished to stand. Yes, she was born on Oc-
tober 21, 1922, near Hermannstadt and was now forty-
three years old. Yes, she had worked at Siemens in Berlin
and had joined the SS in the autumn of 1943.

"You enrolled voluntarily?"
"Yes."
"Why?"

Hanna did not answer.
"Is it true that you joined the SS even though Siemens
had offered you a job as a foreman?"

Hanna’s lawyer was on his feet. “What do you mean
by ‘even though’? Do you mean to suggest that a woman
should prefer to become a foreman at Siemens than join
the SS? There are no grounds for making my client’s
decision the object of such a question."

He sat down. He was the only young defense attor-
ney; the others were old—some of them, as became appar-
rent, old Nazis. Hanna’s lawyer avoided both their jargon
and their lines of reasoning. But he was too hasty and too
zealous in ways that were as damaging to his client as his
colleagues’ Nazi tirades were to theirs. He did succeed in
making the judge look irritated and stop pursuing the
question of why Hanna had joined the SS. But the impres-
sion remained that she had done it of her own accord.
and not under pressure. It didn’t help her when one of the legal members of the court asked Hanna what kind of work she expected to do for the SS and she said that the SS was recruiting women at Siemens and other factories for guard duties and she had applied and was hired.

To the judge’s questions, Hanna testified in monosyllables that yes, she had served in Auschwitz until early 1944 and then in a small camp near Cracow until the winter of 1944-45, that yes, when the prisoners were moved to the west she went with them all the way, that she was in Kassel at the end of the war and since then had lived in one place and another. She had been in my city for eight years; it was the longest time she had spent in any one place.

“Is her frequent change of residence supposed to be grounds for viewing her as a flight risk?” The lawyer was openly sarcastic. “My client registered with the police each time she arrived at a new address and each time she left. There is no reason to assume she would run away, and there is nothing for her to hide. Did the judge feel it impossible to release my client on her own recognition because of the gravity of the charges and the risk of public agitation? That, members of the court, is a Nazi rationale for custody; it was introduced by the Nazis and abolished after the Nazis. It no longer exists.” The lawyer’s malicious emphasis underlined the irony in this truth.

I was jolted. I realized that I had assumed it was both natural and right that Hanna should be in custody. Not because of the charges, the gravity of the allegations, or the force of the evidence, of which I had no real knowledge yet, but because in a cell she was out of my world, out of my life. I wanted her far away from me, so unattainable that she could continue as the mere memory she had become and remained all these years. If the lawyer was successful, I would have to prepare myself to meet her again, and I would have to work out how I wanted to do that, and how it should be. And I could see no reason why he should fail. If Hanna had not tried to escape the law so far, why should she try now? And what evidence could she suppress? There were no other legal reasons at that time to hold someone in custody.

The judge seemed irritated again, and I began to realize that this was his particular trick. Whenever he found a statement either obstructionist or annoying, he took off his glasses, stared at the speaker with a blank, short-sighted gaze, frowned, and either ignored the statement altogether or began with “So you mean” or “So what you’re trying to say is” and then repeated what had been said in a way as to leave no doubt that he had no desire to deal with it and that trying to compel him to do so would be pointless.

“So you’re saying that the arresting judge misinterpreted the fact that the defendant ignored all letters and summonses, and did not present herself either to the police, or the prosecutor, or the judge? You wish to make a motion to lift the order of detention?”

The lawyer made the motion and the court denied it.

I did not miss a single day of the trial. The other students were surprised. The professor was pleased that one of us was making sure that the next group learned what the last one had heard and seen.

Only once did Hanna look at the spectators and over at me. Usually she was brought in by a guard and took her place and then kept her eyes fixed on the bench throughout the day’s proceedings. It appeared arrogant as did the fact that she didn’t talk to the other defendants and almost never with her lawyer either. However, as the trial went on, the other defendants talked less among themselves too. When there were breaks in the proceedings, they stood with relatives and friends, and in the mornings they waved and called hello to them when they saw them in the public benches. During the breaks Hanna remained in her seat.

So I watched her from behind. I saw her head, her neck, her shoulders. I decoded her head, her neck, her shoulders. When she was being discussed, she held her head very erect. When she felt she was being unjustly treated, slandered, or attacked and she was struggling to respond, she rolled her shoulders forward and her neck swelled, showing the play of muscles. The objections were regularly overruled, and her shoulders regularly sank. She never shrugged and she never shook her head. She was too keyed up to allow herself anything as casual as a shrug or a shake of the head. Nor did she allow herself to hold her head at an angle, or to let it fall, or to lean her chin on her hand. She sat as if frozen. It must have hurt to sit that way.

Sometimes strands of hair slipped out of the tight knot, began to curl, lay on the back of her neck, and moved gently against it in the draft. Sometimes Hanna wore a dress with a neckline low enough to reveal the birthmark high on her left shoulder. Then I remembered how I had blown the hair away from that neck and how I had kissed that birthmark and that neck. But the
memory was like a retrieved file. I felt nothing.

During the weeks of the trial, I felt nothing: my feelings were numbed. Sometimes I poked at them, and imagined Hanna doing what she was accused of doing as clearly as I could, and also doing what the hair on her neck and the birthmark on her shoulder recalled to my mind. It was like a hand pinching an arm numbed by an injection. The arm doesn't register that it is being pinched by the hand, the hand registers that it is pinching the arm, and at first the mind cannot tell the two of them apart. But a moment later it distinguishes them quite clearly. Perhaps the hand has pinched so hard that the flesh stays white for a while. Then the blood flows back and the spot regains its color. But that does not bring back sensation.

Who had given me the injection? Had I done it myself, because I couldn't manage without anesthesia? The anesthetic functioned not only in the courtroom, and not only to allow me to see Hanna as if it was someone else who had loved and desired her, someone I knew well but who wasn't me. In every part of my life, too, I stood outside myself and watched; I saw myself functioning at the university, with my parents and brother and sister and my friends, but inwardly I felt no involvement.

After a time I thought I could detect a similar numbness in other people. Not in the lawyers, who carried on throughout the trial with the same rhetorical legalistic pugnacity, jabbing pedantry, or loud, calculated truculence, depending on their personalities and their political standpoint. Admittedly the trial proceedings exhausted them; in the evenings they were tired and got more shrill. But overnight they recharged or reinflated themselves and droned and hissed away the next morning just as they had twenty-four hours before. The prosecutors made an effort to keep up and display the same level of attack day after day. But they didn't succeed, at first because the facts and their outcome as laid out at the trial horrified them so much, and later because the numbness began to take hold. The effect was strongest on the judges and the lay members of the court. During the first weeks of the trial they took in the horrors—sometimes recounted in tears, sometimes in choking voices, sometimes in agitated or broken sentences—with visible shock or obvious efforts at self-control. Later their faces returned to normal; they could smile and whisper to one another or even show traces of impatience when a witness lost the thread while testifying. When going to Israel to question a witness was discussed, they started getting the travel bug. The other students kept being horrified all over again. They only came to the trial once a week, and each time the same thing happened: the intrusion of horror into daily life. I, who was in court every day, observed their reactions with detachment.

It was like being a prisoner in the death camps who survives month after month and becomes accustomed to the life, while he registers with an objective eye the horror of the new arrivals: registers it with the same numbness that he brings to the murders and deaths themselves. All survivor literature talks about this numbness, in which life's functions are reduced to a minimum, behavior becomes completely selfish and indifferent to others, and gassing and burning are everyday occurrences. In the rare accounts by perpetrators, too, the gas chambers and ovens become ordinary scenery, the perpetrators reduced to their few functions and exhibiting a mental paralysis and indifference, a dullness that makes them seem drugged or drunk. The defendants seemed to me to be trapped still, and forever, in this drugged state, in a sense petrified in it.

Even then, when I was preoccupied by this general numbness, and by the fact that it had taken hold not only of the perpetrators and victims, but of all of us, judges and lay members of the court, prosecutors and recorders, who had to deal with these events now; when I likened perpetrators, victims, the dead, the living, survivors, and their descendants to each other, I didn't feel good about it and I still don't.

Can one see them all as linked in this way? When I began to make such comparisons in discussions, I always emphasized that the linkage was not meant to relativize the difference between being forced into the world of the death camps and entering it voluntarily, between enduring suffering and imposing it on others, and that this difference was of the greatest, most critical importance. But I met with shock and indignation when I said this not in reaction to the others' objections, but before they had even had the chance to demur.

At the same time I ask myself, as I had already begun to ask myself back then: What should our second generation have done, what should it do with the knowledge of the horrors of the extermination of the Jews? We should not believe we can comprehend the incomprehensible, we may not compare the incomparable, we may not inquire because to inquire is to make the horrors an object of discussion, even if the horrors themselves are not questioned, instead of accepting them as something in the face of which we can only fall silent in revulsion, shame, and guilt. Should we only fall silent in revulsion, shame, and guilt? To what purpose? It was not that I had lost my eagerness to explore and cast light on things which had filled the seminar, once the trial got under way. But that some few would be convicted and punished while we of the second generation were silenced by revulsion, shame, and guilt—was that all there was to it now?
Alumni Join Dean to Launch Annual Fund

For such a diverse group of alumni, the response was fairly uniform: “I’m delighted to participate in Cardozo’s Annual Fund, I’ve just been waiting for someone to ask.” These were encouraging words as the dean and the Office of Alumni Affairs began the introduction and institutionalization of Cardozo’s Annual Fund.

After an initial meeting last spring with Alumni Coordinating Committee members, movement was quick in the establishment of a first year goal: $100,000 and the development of a leadership committee: two representatives from each class. Then, the real beginning: a Pacesetter’s Luncheon at the famed Salmagundi Club—steps from Cardozo’s campus and a perfect place for the launch. There, amidst fine paintings from the 19th and early 20th centuries, the dean outlined the plan to nearly three dozen guests, all of whom were alumni who have shown prior commitment to the Law School, have been successful in their fields, and are representative of every graduating class.

Dean Verkuil said, “This is your institution and I want to help you enjoy it. I came out of academic retirement because I like Cardozo and want to see it succeed.” He told of plans for capital improvements including a totally revamped entrance, lobby level, and student activities and lounge areas. In addition, he mentioned the soon-to-be-implemented Masters of Law degree programs. (see p. 16)

He called on alumni to join board members, parents, and faculty by participating in Cardozo’s Annual Fund. He requested that those present support the Law School with contributions of $1000 or more. This group of “Founders” will be convened each spring to hear from the dean, faculty, and others about Cardozo and issues of concern to the group. “At this stage, we already have commitments from several board members as well as faculty. Sign up and help lead the way for us,” asked the dean.

Rachel Warren ’92, a member of the Cardozo Board of Directors, said, “The Board is committed to making Cardozo a top tier law school.” She indicated that alumni involvement was important to achieving this goal. “The Board wants to start an alumni liaison committee and is looking for your input, let me know if you are interested,” she asked. The committee will work to develop programs that are important to alumni and will serve as a way to increase alumni representation on the Board.

Dan Forman, Yeshiva University’s vice president for development said, “It is important for you to know that all of the monies raised—100 percent—will go directly to Cardozo for such things as scholarships, clinical education, technological improvements, public interest stipends, and other Law School needs.” He emphasized that since Cardozo is in an expansion mode in terms of facilities, offerings, and reputation that everyone, especially alumni, will benefit. He suggested that if those in attendance know family, clients, or friends who may be in a position to give to Cardozo, they should pass those names on to the dean. “You can play a significant role in getting large gifts for your School,” said Forman.

Providing the showstopper, Rosemary Byrne ‘80, a long-time member of the Alumni Coordinating Committee and an ex officio member of the Board, gave an impassioned overview of how far Cardozo has come in the past 20 years. In fact, the Committee is instituting an Alumni of the Year Award to highlight the accomplishments of Cardozo alumni and to “make us all proud.” She continued, “I am convinced that with our help the dean’s plan to take Cardozo to the next tier of law schools will work. To evidence my support of these efforts, I have pledged $5000 to this year’s Annual Fund and urge all of you to participate also.”
Jewett '92 Delivers Speech at The Court of Appeals’s 150th Anniversary

On September 8, The Court of Appeals, New York’s highest court, observed its 150th anniversary. Edward Lewis Jewett ’92, an associate at Kramer, Levin, Naftalis & Frankel, was among the lawyers, judges, and politicians gathered to commemorate the historic occasion. Jewett’s ancestor, Freeborn Garrettson Jewett, was the first Chief Judge of the New York Court State of Appeals. As part of the ceremonies, Jewett was one of only three speakers—Chief Judge Judith S. Kaye and Dean John Sexton of New York University Law School were the other two—paying tribute to the Court and its ideals from the time of his great-great-great-grandfather. Excerpted here are parts of Jewett’s speech.

“My ability to retain idealism for my profession lies in the fact that I had the most splendid opportunity a lawyer of this state may be dealt. I had the honor of clerking for the Honorable Joseph W. Bellacosa at the Court of Appeals from 1993 to 1994. That experience, that wonderful year, forever altered and strengthened my opinion of the practice of law; and along the way gave me a chance to follow in some of the footsteps left by my ancestor.

“The inspiration grew from observing very hard-working people with a singular, powerful dedication to the ever-live, ever-growing body of New York Common law—tied to its past by decisions already made, yet forging ahead to adapt to new technology.

A court, essentially human, searching to instruct a society that believes it has advanced in so many ways, yet in fact remains, in many ways, unchanged. We have duties as citizens. We have needs as individuals, and we have rights as human beings. The Court of Appeals, as it has from its very beginning, stands to protect and adapt these rights to our constantly shifting civilization—one individual litigant at a time.

“In arriving at a given decision, the Court—and I saw it to be true—functions as a perfect democracy, the kind envisioned by the likes of Thomas Jefferson, John Adams, Benjamin Franklin, and others: One vote, majority rules, and the weight of reason alone pushes a vote yea or nay, to affirm or reverse....

“The dedication at the Court to our law was, and continues to be, an inspiration to me, and to the many others with whom I shared the experience. Not a day passes that I am not rejuvenated by the lessons I learned there. The stellar example of conduct set by the current Court gives faith to us all—the practitioners, that our hard work, those endless nights perfecting the brief, and the search for the perfect case law have a purpose; and that our profession is in fact noble.”

ALUMNI OF THE YEAR AWARD ESTABLISHED

The Coordinating Committee of the Cardozo Law School Alumni Association is pleased to announce the establishment of the First Annual Alumni of the Year Award. The award will be presented to one or more outstanding graduates of Cardozo who, by their accomplishments, have enhanced the reputation of the Law School. The Committee welcomes nominations for this honor. Please submit the name and address of your nominee (or yourself), along with a statement of the reasons you believe the nominee should be named Alumni of the Year. Please send all of the information either by fax to (212) 790-0232, or by mail to the CSL Office of Alumni Affairs, 55 Fifth Avenue, New York, NY 10003.
1997 Grads Elect Reps to Alumni Coordinating Committee

Elections during the summer filled two positions on the Coordinating Committee, the governing body of the Cardozo Alumni Association. Christine O’Donnell and Randall Rothschild were elected to three-year terms representing the Class of 1997. Linda Chan is the alternate.

Have You Graduated Since 1994?

The Cardozo Loan Repayment Assistance Program was established to benefit graduates who have chosen to pursue careers in public interest law. The program was established in recognition of the fact that, with few exceptions, public interest jobs pay considerably less than those in the private sector. By the time many Cardozo students graduate, they have accumulated so much educational debt that the choice of public interest law, with its low salaries, may present insurmountable financial obstacles. The program was designed to alleviate some of those burdens, thereby encouraging graduates to consider public interest law.

Graduates who received a J.D. from Cardozo in 1994 or later are eligible to apply. For an application, contact the Office of Student Finance at (212) 790-0392.

Over 40 Cardozo graduates and special guests attended the breakfast for alumni practicing real estate law. Mitchell B. Rutter, Essex Capital Partners, Ltd. delivered a talk “Flying Under Radar: Real Estate Deals in the ’90s.” From left: Marc Weill, chief investment officer, The Travelers Group; Ed Geraghty, senior vice president, Real Estate Investments, The Travelers Group; Rutter; Prof. Lawrence Cunningham ’88; and Susan Neuberg ’83, counsel, Real Estate Investments, The Travelers Group.

The Annual Cardozo Law Review Alumni Reunion at the Manhattan Penthouse brought together alumni, professors, and current students for cocktails, a buffet dinner, and an opportunity to network and see old friends. Siblings Karyn Kornfeld ’97 and Adam Kornfeld ’94 were among the guests.

Steven A. Weiss ’90, Allison Young Ross ’91, and Christopher A. Seeger ’90.
More than 340 Graduate at 19th Commencement

Jerome J. Shestack, president-elect of the American Bar Association and a partner and head of the litigation department of the Philadelphia law firm of Wolf, Block, Schorr and Solis-Cohen delivered the keynote address at the 19th commencement ceremony held on June 15th at Avery Fisher Hall. He urged Cardozo's 342 graduates to consider the moral dilemmas of the profession and to find joy in striving for the public good and in perfecting the craft of law.

Eight Receive Alumni Association Scholarships

Eight members of the class of 1997 received Alumni Association Scholarships made possible by contributions received during the Alumni Association Scholarship Fund annual appeal. These scholarships assist second- and third-year law students with their tuition. They are awarded on the basis of financial need, community service, academic achievement and publications; and/or to students with disabilities or those who are disadvantaged in some way.

Scholarships of $1,500 were given to Marcy Chelmow and Mei S. Chen when they were 2Ls and to Benjamin Gruberg, Rebecca Heller, Veena K. Murthy, Claribel Rosado, and David Z. Solomon when they were 3Ls. Elizabeth Franqui received $2,000 this year when she was named the winner of the Monroe E. Price Scholarship.

Marcy Chelmow, B.A., State University of New York at Albany, was an articles editor of the Arts & Entertainment Law Journal and a member of the Mediation Clinic. She is now an assistant district attorney in the New York County (Manhattan) District Attorney's Office. Mei S. Chen, B.A., City University of New York, Hunter College, is currently with the New York City law firm of Caesar & Napoli.

Benjamin Gruberg, B.A., Goddard College, graduated magna cum laude from Cardozo. He received Elizabeth Franqui, B.A., City University of New York, Queens College, was an acquisitions editor of the Arts & Entertainment Law Journal and president of the Latin American Law Students Association. She is now pro se law clerk at the United States Court of Appeals for the Second Circuit. Benjamin Gruberg, B.A., Goddard College, graduated magna cum laude from Cardozo. He received Alumni Association Scholarship winners. From left: David Solomon; Benjamin Gruberg; Elizabeth Franqui; Claribel Rosado; Karel Turner '87, chair of the Alumni Association; Marcy Chelmow; Veena Murthy; Mei Chen; Rebecca Heller.
the West Publishing Company Award for Academic Excellence and was an H. Bert & Ruth Mack Scholar. He was administrative editor of the Law Review, which published his note. He is now with Robinson, Silverman, Pearce, Aronsohn & Berman. **Rebecca Heller, B.A., New York University,** was a member of Law Review and an H. Bert & Ruth Mack Scholar. She was vice president of the Student Bar Association, ran the 1996 SBA Auction, and received the Steven Eric Tanenbaum Leadership Award at graduation. She is now with Solovay Marshall & Edlin. **Veena K. Murthy, B.A., Barnard College,** was a notes editor of Cardozo Women's Law Journal; her note will be published this fall. As a recipient of a Heyman Fellowship in Corporate Governance, she worked at the Federal Trade Commission. She was a Belkin Scholar and research assistant to Prof. Melanie Leslie '91. Veena co-authored a petitioner's brief for the United States Supreme Court and will assist the law partner at oral argument before the Supreme Court. She is now studying part-time in NYU's Taxation LL.M. Program. **Claribel Rosado, B.A., New York University,** received the C. Bainbridge Smith Scholarship Award and a Puerto Rican Bar Association Scholarship. Claribel was vice president of the Latin American Law Students Association and a member of the Bet Tzedek Legal Services Clinic. She is now with MFY Legal Services. **David Z. Solomon, B.A., City University of New York, Queens College,** received a Heyman Fellowship in Corporate Governance and was a member of the Journal of International and Comparative Law. He also received a Masters in International Affairs in June 1997 from the Columbia University School of International and Public Affairs. David is now with Schulte Roth & Zabel.

**Justices Ginsburg and Breyer Join Alumni at Supreme Court Reception**

Eighteen alumni and their families attended the Supreme Court swearing-in ceremony at the United States Supreme Court last March. At the reception they were joined by Justices Ruth Bader Ginsburg and Stephen Breyer. Admitted to practice were Paul J. Burr '91, Avery S. Chapman '91, Lucille Gerard '81, Warren S. Goodman '89, Alexander Gurevich '88, Elaine M. Harrison '92, Jonathan S. Klein '91, Michael F. Kremins '81, Victoria A. Kummer '92, Stuart J. Levine '89, Sheri F. London '93, Gina M. McGillicuddy '90, Janet D. Miller '80, James R. Norman '83, Michael A. Schloss '87, Alan L. Sklover '82, Mary I. Swartz '86, and Robert M. Tils '86. The group's admission was moved by David Rudenstine on his last full day as dean *ad interim.*
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Be on the cutting edge of the hottest legal issues. Subscribe to Cardozo publications.

The Cardozo Law Review
You won’t want to miss the upcoming issue devoted to the Journal’s symposium on the legendary investor entitled “Warren Buffett: Lessons for Corporate Lawyers.” Recent issues have included symposiums on legal theory, including the renewal of pragmatism and an examination of the philosophy of Jurgen Habermas; another recent double issue, “Bondage, Freedom & the Constitution,” focuses on new slavery scholarship. The Law Review, a student-run organization, actively solicits outstanding contributions from scholars and practitioners in all fields of law.

Subscriptions: $40/year (six issues); single issue $8; double issue $15. Contact: Administrative Editor, The Cardozo Law Review, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone: (212) 790-0355. E-mail: cardlrev@ymail.yu.edu.

Cardozo’s Women’s Law Journal
Is mandatory testing of newborns and their mothers constitutionally problematic? Has the academic community deemed legal writing instruction “mere women’s work?” Medical malpractice—is it forcing mothers into sub-standard care and obstetricians out of practice? For answers to family law’s most challenging dilemmas, for the most incisive works on a broad range of gender-based legal topics, for articles by the legal community’s most respected scholars and practitioners, subscribe to the Cardozo Women’s Law Journal.

Subscriptions: $45/year (two issues) $30 student; $60 corporate. Contact: Cardozo Women’s Law Journal, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone: (212) 790-0239.

Post-Soviet Media Law and Policy Newsletter
The only journal of its kind, the bi-monthly Newsletter founded in 1992 by Prof. Monroe Price, follows the emerging media laws and policy in the former Soviet Union, and post-communist East and Central Europe. Find out about developing media policy and press laws, censorship, defamation, privatization and the closing of media outlets, and foreign investment in media and telecommunications in the region. Newsletter supplements also provide in-depth regional analysis and annual human rights report.

Subscriptions: $125 institutions, $50 individuals. Contact: Monroe E. Price, Editor, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone: (212) 790-0402, Fax (212) 790-0205. E-mail: price@ymail.yu.edu.

Cardozo Arts & Entertainment Law Journal
New technology poses new legal questions that affect whoever uses on-line services. Are you infringing copyright law by downloading or uploading information? What if a big company doesn’t like what you say about it in an e-mail message? Is this defamation? Who and what are behind the new television ratings system? The Journal has recently focused on these cutting-edge topics and developments in intellectual property protection that have far reaching influence on mass media outlets as well as individual authors and performers.

Subscriptions: $28/year (three issues); special issues $13; single issue $10. Contact: Cardozo Arts & Entertainment Law Journal, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone: (212) 790-0292. E-mail: cdzaelj@ymail.yu.edu.

Cardozo Journal of International & Comparative Law
Gain insight into international legal developments. Articles by law scholars and notes by students cover a variety of current topics including: ascension into NAFTA contingent on improvement in worker rights; the legitimacy of prenatal gender testing in India; and comparisons of same-sex marriage laws in Europe.

Subscriptions: $14/volume, domestic; $16 foreign; $8/issue, domestic; $10 foreign. Contact: Cardozo Journal of International & Comparative Law, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone (212) 790-0264.

Cardozo Studies in Law and Literature
Explore the confluence of legal and literary issues from an interdisciplinary perspective. Subjects range from First Amendment religion and free speech jurisprudence to the study of legal rhetoric in and as literature. Book reviews, original works of fiction, and art are regularly included.

Subscriptions: $20/year (two issues) $50 institutions, $18 students. Contact: Cardozo Studies in Law & Literature, Benjamin N. Cardozo School of Law, 55 Fifth Avenue, New York, NY 10003. Phone: (212) 790-0370.

New York Real Estate Law Reporter
Be informed on the latest issues in landlord-tenant law, condominiums and co-operatives, real estate development law, and real property law. The New York Real Estate Law Reporter features summary and analysis of significant recent cases, combined with insightful articles by distinguished practitioners.

Class of 1979
Richard S. Corenthal became a partner at Vladeck, Waldman, Elias & Engelhard in NYC. Richard handles labor law matters, is an adjunct professor at Pace University School of Law, and is special assistant to NY State Assemblyman Richard Tocci.
Jerry Goldfeder has been re-elected Democratic Party District Leader from Manhattan’s West Side. He has held the office since 1984. Mark Partnow ran in the primaries for Democratic civil court judge in Brooklyn on the Democratic party line.
Harriet W. Rothfeld has become a staff attorney for the Special Education Clinic at Rutgers (Newark) Law School, while at the same time continuing her private practice in Millburn, NJ, where she specializes in special education litigation and estate planning for families of persons with disabilities.
Mitchell G. Shapiro was highlighted in “What the Nazis Stole,” an article in U.S. News & World Report, March 17, about efforts of Holocaust survivors to regain properties in Poland.

Class of 1980
William Null is a partner at Cuddy & Feder & Worby, one of NY State’s leading law firms in commercial real estate, land use, and environmental review issues. Rosalie Osias wrote an article in the August 26 New York Daily News, where she discussed her two-year battle with the grievance committee of the 10th Judicial District on Long Island over her law firm’s advertising, which relies heavily on sex appeal. John Lino Ponzini, who has a private law practice in Stamford, CT, was elected to the Board of Representatives, City of Stamford and is the vice chairman of their fiscal committee.

Class of 1981
Congratulations to Brian Bernstein and his wife on the birth of their second child, Alison Page, who joins brother Adam. Abigail T. Kelman has joined the litigation department of Gallop, Johnson & Neuman L.C. in St. Louis. It was reported in the New York Law Journal that Stephanie B. Mudick, deputy general counsel at The Travelers Group, is involved in negotiations regarding Travelers’s acquisition of Salomon Inc.

Class of 1983
Stephen Gaines has joined the NYC law firm of Mandel and Kesnik, P.C., continuing his practice in real estate law. He was previously an assistant attorney general in the Real Estate Financing Bureau of the NY Department of Law.

Class of 1984
Irwin Kuhn and Diane Silberman Kuhn live in Nashville, TN with their daughter, Laura, eight, and sons, Bobby, five, and Benjamin, one. Irwin is with Eisenstein Moses & Mossman in Nashville. Laurie MacLeod has been appointed attorney-in-charge of the Franklin County (MA) office of the Northwestern District, District Attorney’s office. She was assistant district attorney for five years, the last three of which were spent as domestic violence prosecutor in Franklin County. Steven E. Millon has been elected to the NY State Bar Association’s 23-member executive committee. He will serve as vice president for the 12th Judicial District.

Class of 1985
Dana Belcher and her family were profiled in the New York Times in a September article about home schooling. Robyn Lederman Hamer and her husband, Shlomi, announce the birth of a son, Dean Gabriel. Robin is an intellectual property law attorney in Herzelia, Israel. Joan Waks, who has her own law practice specializing in family law, is the Democratic Senate nominee for the NJ 34th Legislative District. She has been using property tax and auto insurance reform as a platform for her campaign. She sits on the board of trustees for Eva’s Kitchen and Sheltering Programs, Chilton Memorial Hospital, Church of the Annunciation, and the Passaic County Bar Association. She lives in Wayne, NJ with her husband, David, who is mayor of that town.

Class of 1986
Susan Carson and her husband, George Verlaene, announce the birth of a daughter, Jane. Stephanie R. Cooper has become counsel at Moses & Singer, LLP in NYC. She litigates in entertainment, employment, and matrimonial law. Hannah Holmes Freilich joined the Bronx District Attorney’s Office as an assistant district...
Almost 200 alumni attended reunions of the classes of 1982, 1987, and 1992. As in previous years, the party took place in May at Bridgewaters in South Street Seaport.

(All captions read left to right.)

Labe Richman '82, Robin Nichinsky '82, Prof. David Rudenstine, and Alan Brown '82.

Gail Levine-Rubel '87 and Marla Figman Pinsker '87.

Norton Pinzer '87 and Sandy Hausler '87.

Marc Lesser '82, Neil Moldovan '82, and Richard Adelson '82.

Joan Ehrlich-White '87, director of alumni affairs, reconvened her class study group of Sam Feldman '87, Susan Danoff '87, and Jane Earle '87.

William Greenblatt '82, Abby Notterman '82, and Barry Segall '82.

William Rogers '92, Glenda Dixon '92, and Jill Bradshaw-Williams '92.

Susan Schuchinsky '92, Prof. John Beckerman, Nancy Tainiter '92, Marianne Paoli '92, and Prof. Ellen Yaroshesky.
attorney. Jeffrey I.D. Lewis received a certificate of excellence from Volunteer Lawyers for the Arts. Dana Mitchell Jaffe became the youngest sitting judge in Nassau County (NY) when she was elected to the County District Court for a six-year term. Dianne Renwick was appointed a judge of the Housing Court of the Civil Court of the City of New York, and was then nominated to run on the Democratic ticket in November for Civil Court of the City of New York, Bronx County. Mary E. WanderPolo successfully completed an examination to become a certified elder law attorney in Arizona.

Class of 1987
Ross N. Herman was recently appointed vice chair of the National Association of Criminal Defense Lawyers (NACDL) Environmental Crimes Committee. Dana L. Rubenstein has been named executive director of the Delaware Society of Certified Public Accountants, an organization representing more than 750 CPAs in that state. Kenny Schachter’s NYC art gallery was profiled again in the New York Times, this time in a May 9 article titled “The Streets of SoHo.” Congratulations to Stephen Verp and his wife. Deborah, on the birth of their daughter, Alison Hannah. In September, Todd Zuckerbrod and his wife became the proud parents of triplets: Charles David, Stephanie Lauren, and Jacqueline Hope.

Class of 1988
Doug Drazen is running for Congress in the Kingston, NY 26th Congressional District.

Michael A. Gross has opened his own law practice, with offices in NYC and Bergenfield, NJ. He specializes in real estate law and commercial litigation. It was reported in the New York Law Journal that Seth Lapidow, vice president and senior counsel at Viacom Inc., is involved in negotiations regarding Seagram Company’s purchase of 50 percent of Viacom’s USA Network.

Stephen R. Leone has formed a law firm in Toms River, NJ that handles real estate, land use litigation, property tax appeals, construction and business litigation, and other areas. Rebecca E. White gave birth to a daughter, Catherine Emily, on May 15. Rebecca, formerly a partner at Loeb & Loeb in NYC, is now vice president and legal counsel in charge of US litigation at Union Bank of Switzerland. Diane Windholz became a partner at the NYC law firm of Jackson, Lewis, Schnitzer & Krupman.

Class of 1989
Stafford H. Byers is running for the position of supervisor for the Town of Hempstead (NY) in the November elections. He lives in Freeport, NY with his wife and four children. Leora and Marty Fineberg announce the birth of their third son, Louis Ari. Elizabeth Klampert became president-elect of the Law Library Association of Greater New York for 1997-1998. Faith Glickman Ross is of counsel to the Boston law firm of Lerner & Holmes LLP, practicing in the area of commercial real estate. She and her husband, Fred, and their two sons, A.J. and Tyler, live in Manchester, MA.

Michael Wildes is representing Hami Abdel Rahim al-Saegh, the Saudi suspect implicated by Canadian authorities in the bombing that killed 19 Americans in Saudi Arabia.

Class of 1990
Lee Chabin is a divorce/family mediator in Manhattan, Queens, and Nassau Counties. Richard A. Cohen was married to Stephanie Van Auk in May, and they now live in Livingston, NJ. Richard is a financial consultant with Smith Barney in Florham Park, NJ. Richard Katz became director of business affairs at Sony Classical, a group of Sony Music Entertainment, Inc.

Eric Schneider, a solo practitioner in Brooklyn, was featured in “The City” section of the New York Times on Sunday, April 6. He is representing the Park Slope Community, a citizens group that wants to close the homeless shelter in the Park Slope Amory. This is the second time in a few months that Eric has inserted himself into a contentious issue. According to the article, “In January he led a rebellion against the board of directors of the Park Slope Food Co-op.” Shoshana Charlop Schneider and her husband, Michael, announce the birth of a son, Mordechai.

Class of 1991
Mark L. Beigelman is a partner at the NYC law firm of Kaufman, Feiner, Yamin, Gildin & Robbins, LLP.

Rachel Mandel Berger and her husband, Gary, announce the birth of a daughter, Nicole Daria. Lloyd J. Jassin and Steven C. Schechter are co-authors of the newly published Copyright Permission and Label Handbook, a step-by-step guide for authors, editors, and publishers. Lloyd is an intellectual property attorney in NYC. Steven practices media law in Fair Lawn, NJ and was just appointed chair of the NJ State Bar Association’s Entertainment and Arts Law Section.

Class of 1992
Stacy Alevy and Allen Sragow ’93 announce the birth of their son, Noah Ohr Dovid. They live in Long Beach, CA. Justin C. Brash was elected a representative to the New York State Democratic Committee from the Upper West Side. In his law practice he specializes in commercial litigation, landlord-tenant, and criminal law.

Martha A. Calhoun received The Association of the Bar of the City of New York’s Corporation Counsel Award in June. Robyn Henzel was named Volunteer of the Month in the May newsletter of The Association of the Bar of the City of New York for her work at the Immigrant Women and Children’s Repr-
sentation Project of the Robert B. McKay Community Outreach Law Program. A. Jeff Ifrah recently joined the Washington, DC office of Paul, Hastings, Janofsky & Walker, LLP as an associate in the litigation/white collar crime group. Jeff recently completed three and a half years as an assistant judge advocate general and special assistant US Attorney for the US Army. He and his wife, Barbara Davidovits-Ifrah announce the birth of a daughter, Aliza Nechama, who joins brother Arni and sister Shindel.

Sheryl D. Jassen welcomed her new baby, Hannah Ruth Jassen Fink, this past spring. Edward L. Jewett spoke at the 150th anniversary of the Court of Appeals of the State of New York. A photo in the New York Times on September 9 showed him with Chief Judge Judith Kaye and a portrait of Edward’s ancestor, Freeborn G. Jewett, the Court’s first chief judge. (see p. 36)

Class of 1993

Arlene B. Finkelstein is assistant counsel in the corporate law department at Interim Services Inc., a Ft. Lauderdale, FL corporation that provides staffing, consulting, and health care services, and employs more than 400,000 people. Sharon H. Roscn gave birth this spring to her second son, Nathaniel Eli.

Class of 1994

Adam Berner has married Hila Uraveich ’98, and is now in private practice in Manhattan and Riverdale, NY. His area is family law, with a focus on mediation. Yassin El-Ayouty wrote “The War Over Parking Space: New York City v. Diplomatic Scufflaws,” NY Real Property Journal, in summer 1997. Congratulations to Cheryl Himmel and Mark Schreck on their marriage; and to Cheryl (Litman) Siegel and her husband, David, on the birth of Deborah Adina.

Steven Weinberger recently joined the NYC firm of Proskauer Rose Goetz & Mendelsohn, LLP as a real estate associate. He lives on the Upper East Side with his wife, Susan, and daughter, Lauren, two. Mendel Zilberberg writes a column entitled “Decisions, Decisions” for a NY publication, Insurance Advocate. He has his own law firm, specializing in insurance law, with offices in NY and NJ, and one in Florida anticipated in the near future.

Class of 1995

Ronald Aronds is the director of the criminal defense department at Garces and Graber, a law firm with offices in seven central NJ cities. He is in the Perth Amboy office. Ross Brady has joined the law firm of Alan Lee, Esq. in NYC, a practice limited to immigration and naturalization law. Adam Chernichaw and his wife, Limor, announce the birth of their first child, a daughter, Elli, on May 15. Peter J. King, Jr. was profiled on the front page of the Morristown, NJ Daily Record when he ran for the Republican nomination for a State Assembly seat. Dara Norman successfully argued before a New York State Supreme Court justice to reject the Department of Transportation’s petition to throw out a lawsuit by a former employee. James E. Raved was married to Suzanne Licht on August 23.

Class of 1996

Debi Gherege married Robert Alten on June 7. They are living in Coral Springs, FL. Richard Hornowitz, who specializes in legal and investigative services, spoke on the Economic Espionage Act at conferences of the American Corporate Counsel Association, the National Security Institute, and the Society of Competitive Intelligence Professionals. Richard also spoke on trade secret law at IBM and on money laundering at the annual convention of the American Society for Industrial Security. Merrett McKeon co-authored a book on domestic violence with Lou Brown and Pastor Francois Dubau. The authors made appearances on several television programs including Good Morning America, Larry King, Inside Edition, and Charles Grodin. Merrett is teaching a course in domestic violence at the American College of Law in Anaheim, CA. Eitan Alexander Ogen is president of QuickClue! Inc., Internet information specialists in NYC. He can be found at eitan@quickclue.com. Judah Prem recently joined the Bureau of Legal Affairs as an assistant counsel at the NYC Department of Environmental Protection. Joel Schmidt, who has been clerking for Justice Dorit Beinish of the Supreme Court of Israel, will publish “The Growing Body of Israeli Law: Two New Sources on the Law of Israel: A Review Essay” in New York International Law Review, winter 1998.

Class of 1997

Andrew S. Burchill has joined the NYC office of Fulbright & Jaworski, LLP, specializing in corporate law. Antonella Falzarano-Papaleo and Oscar E. Sanchez joined the Bronx District Attorney’s Office as assistant district attorneys. Jacqueline Klosek is an LL.M. student in international and comparative law at Vrije Universiteit Brussel in Brussels, Belgium. Aron Mandl is pursuing a Ph.D. in Dispute Resolution at Nova Southeastern University, Fort Lauderdale, FL. David Z. Solomon is at Schulte Roth & Zabel, LLP in NYC, specializing in mergers, acquisitions, information services, and bank finance.

IN MEMORIAM

Jerome J. Gordon ’92
Benjamin Schmeltz ’91
BENJAMIN N. CARDOZO
SCHOOL OF LAW
Jacob Burns Institute for
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Yeshiva University
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55 Fifth Avenue
New York, New York 10003-4391

Paul R. Verkuil
Dean

Ellen R. Cherrick
Associate Dean for Placement,
Student, and Alumni Affairs

Michael Herz
Associate Dean for
Academic Affairs

Matthew Levine
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Cardozo Calendar of Events

JANUARY 7
Alumni Reception in San Francisco

JANUARY 25-26
Conference: The Holocaust: Moral & Legal Issues Unresolved 50 Years Later

FEBRUARY 16
10th Annual International Law Careers Day

MARCH 19
Symposium: The Phoenix Rises Again: The Nondelegation Doctrine from Constitutional and Policy Perspectives

APRIL 26-27
Conference: The Modes of Law: Music and Legal Theory

MAY 14
Reunions for Classes of 1983, 1988, and 1993

MAY 18
US Supreme Court Swearing-in Ceremony and Reception

JUNE 14
Benjamin N. Cardozo School of Law Commencement