

DAVID RUDENSTINE

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Benjamin N. Cardozo School of Law, Yeshiva University
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POSITIONS

1979–Present	Benjamin N. Cardozo School of Law Full Time Faculty Member
2005–Present	Sheldon H. Solow Professor of Law
2005–Present	Vice President for Legal Education
2001–2009	Dean
1996–2005	Dr. Herman George and Kate Kaiser Professor of Constitutional Law
1996–1997	Dean ad Interim
1994–1996	Associate Dean for Academic Affairs
2000–2001	Princeton University Fellow, Law and Public Affairs Woodrow Wilson School of Public and International Affairs Visiting Research Scholar Visiting Professor of Public and International Affairs
1974–1979	New York Civil Liberties Union Acting Executive Director; Associate Director Director of the Project on Sentencing and Parole
1974	The National News Council Counsel
1972–1974	Citizens' Inquiry on Parole and Criminal Justice, Inc. Director
1970–1972	Community Action for Legal Services Attorney
1969–1972	Mobilization for Youth Legal Services Attorney
1964–1966	United States Peace Corps Volunteer, Uganda

LAW SCHOOL COURSES TAUGHT

Appellate Advocacy; Authority and Liberty; Civil Procedure; Civil Rights; Constitutional Law; Cultural Property; Current Constitutional Controversies; Federal Courts; First Amendment; Free Speech and National Security; From Socrates to Dr. Spock: Treason, Sedition and Protected Speech; Labor Arbitration; The Law, the Ethics, and the Politics of Press Freedom; Mass Media and the First Amendment; President Trump and the Constitutional Order

SELECTIVE LAW SCHOOL GOVERNANCE

2018–Present	Chair, Clerkship Committee
2015–2018	Faculty Advisor, Cardozo Law Review
2016	American Bar Association Self-Study Committee
2010–2015	Faculty Advisor, Dean’s Distinguished Scholars
2015	Dean Search Committee
2013–2014	Chair, Faculty Committee on Statutes of Clinical Professors
2011–2012	Chair, Clinical Appointments Committee
2010–2011	Chair, Steering Committee
2001–2009	Dean, Cardozo School of Law
1999–2000	Chair, Academic Standards Committee
1998–1999	Chair, Placement Committee
1997–1998	Chair, Building Committee
1996–1997	Dean ad Interim
1994–1996	Associate Dean for Academic Affairs
1992–1993	Chair, Budget and Priorities Committee
1991–1992	Chair, Long Range Planning Committee
1989–1991	Member, Budget Committee
1987–1988	Chair, Clerkship Committee
1985–1986	Chair, Appointments Committee
1983–1985	Member, Appointments Committee
1980–1982	Member, Dean Search Committee

EDUCATION

1969	New York University School of Law Juris Doctorate
1965	Yale University Master of Arts in Teaching
1963	Yale University Bachelor of Arts

PUBLICATIONS

Books

THE AGE OF DEFERENCE: THE SUPREME COURT, NATIONAL SECURITY AND THE CONSTITUTIONAL ORDER (Oxford University Press 2016).

THE DAY THE PRESSES STOPPED: A HISTORY OF THE PENTAGON PAPERS CASE (California University Press 1996) (Pulitzer Prize Nominee, University of California Press; Best Books of 1996, Publisher's Weekly; Robert F. Kennedy Foundation Nominee).

THE RIGHTS OF EX-OFFENDERS (Avon 1979).

PRISON WITHOUT WALLS: REPORT ON NEW YORK PAROLE (Praeger Publishers 1975).

In Progress

TROPHIES FOR THE EMPIRE: THE EPIC DISPUTE BETWEEN GREECE AND ENGLAND OVER THE PARTHENON SCULPTURES IN THE BRITISH MUSEUM (forthcoming 2020).

Articles

The Courts and National Security: The Ordeal of the State's Secrets Privilege, 44 U. Balt. L. Rev. 37 (2014).

Self-Government and the Judicial Function, 92 Texas L. Review 161 (2013) (Reviewing Wilkinson, J. Harvie, COSMIC CONSTITUTIONAL THEORY: WHY AMERICANS ARE LOSING THEIR INALIENABLE RIGHT TO SELF-GOVERNANCE (Oxford University Press 2012)).

The Irony of a Faustian Bargain: A Reconsideration of the Supreme Court's 1953 United States v. Reynolds Decision, 34 Cardozo L. Rev. 1283 (2013).

Roman Roots for an Imperial Presidency: Revisiting Clinton Rossiter's 1948 Constitutional Dictatorship: Crisis Government in the Modern Democracies, 34 Cardozo L. Rev. 1063 (2013).

Breaking the Tradition: The Case for the 640 Detainees in Guantanamo, in GUANTANAMO BAY AND THE JUDICIAL MORAL TREATMENT OF THE OTHER (Clark Butler ed., Purdue Univ. Press 2007).

Common Ground: Law Schools in American Life During the New Age of Faith, 37 U. Toledo L. Rev. 143 (2005).

Weapons of Mass Destruction, National Security, and a Free Press: Seminal Issues as Viewed through the Lens of the Progressive Case, 26 Cardozo L. Rev. 1337 (2005) (Symposium Introduction, Cardozo School of Law, New York, N.Y. March 2, 2004).

Lord Elgin and the Ottomans: The Question of Permission, 23 Cardozo L. Rev. 449 (2002).

A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document, 22 Cardozo L. Rev. 1853 (2001).

Cultural Property: The Hard Question of Repatriation, 19 Cardozo Arts & Ent. L.J. 69 (2001).

Who is entitled to Own the Past? 19 Cardozo Arts & Ent. L.J. 243 (2001) (roundtable discussion).

The Legality of Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles, International Journal of Cultural Property 8:1 at 356 (1999).

Yet Another Fox in the Hen House: Government Protection of Artistic Expression within Privately Owned Public Space, 17 Cardozo Arts & Ent. L.J. 159 (1999).

Need a Lift? Read The Federalist, 1 St. Francis College Rev. 15 (1999).

The Book in Retrospect, 19 Cardozo L. Rev. 1283 (1998).

Daniel Ellsberg and the Pentagon Papers, in ETHICS & POLITICS: CASES AND COMMENTS (Gutman and Thompson, eds., Nelson Hall Publishers 1997).

The Impact on the Arbitration Process of Arbitrating Statutory Claims, Proceedings of New York University, 46th Annual National Conference on Labor (Little Brown 1994).

The Pentagon Papers Case: Recovering Its Meaning Twenty Years Later, 12 Cardozo L. Rev. 1869 (1991).

Foreword: *A Symposium on Justice Scalia's Jurisprudence*, 12 Cardozo L. Rev. 1593 (1991).

Tolerance: The Bridge Between Religious Liberty and Privacy, 11 Cardozo L. Rev. 821 (1990).

Imprisoned for Membership: The Junius Scales Case, 11 Cardozo L. Rev. 791 (1990) (co-author).

Justice Brennan, The Constitution, and Modern American Liberalism, 10 Cardozo L. Rev. 163 (1988).

Forward: *Symposium on the Bork Nomination*, 9 Cardozo L. Rev. 5 (1987).

Judicially Ordered Social Reform: Neofederalism and Neonationalism and the Debate Over Political Structure, 59 S. Cal. L. Rev. 449 (1986).

Pennhurst and the Scope of Federal Judicial Power to Reform Social Institutions, 6 Cardozo L. Rev. 71 (1984).

Institutional Injunctions, 4 Cardozo L. Rev. 611 (1983).

The Rehabilitation and Risk Assessment Goals of Parole Theory: A Reply to Professor Vincent O'Leary, CRIMINAL LAW BULLETIN, Vol. 11, No. 4, at 488 (1975).

Report on New York Parole: A Summary, CRIMINAL LAW BULLETIN, Vol. 11, No. 3 at 273 (1975) (co-author).

Other Writing

Gorsuch's Adherence to Originalism Should Keep Him From SCOTUS, LAW.COM, March 13, 2017.

Why Antonin Scalia Became So Prominent—And Why His Influence Will Not Last, The Nation, March 15, 2016.

The Pentagon Papers at 40, New York Law Journal, June 27, 2011.

Rwanda, Cardozo Life, Issue No. 2 (2008).

Review of Secrets: A Memoir of Vietnam and the Pentagon Papers, by Daniel Ellsberg (Viking 2002); The Nation, December 23, 2002, at 33.

Review: *The Miner's Canary* by Lani Guinier and Gerald Torres (Harvard University Press 2002); The Journal of Blacks in Higher Education, Autumn 2002, at 132.

Go Ahead. Let's Publish: Katharine Graham and the Pentagon Papers, Legal Times, July 23, 2001, at 50.

Review: Langguth, A.J., *OUR VIETNAM: THE WAR, 1954–1975* (Simon & Schuster 2000), The Nation, March 5, 2001, at 25.

Did Elgin Cheat at Marbles?, The Nation, May 29, 2000.

Review: *THE CONSCIENCE OF THE COURT: SELECTED OPINIONS OF JUSTICE WILLIAM J. BRENNAN JR. ON FREEDOM AND EQUALITY* (Sepinuck & Treuthart, eds.), New York Law Journal, October 22, 1999, at 2.

Sunstein's Law, The Nation, October 11, 1999, at 26.

Review: *Reports from the Front Reporting Vietnam, Part I: American Journalism 1959–1969 and Part II: American Journalism 1969–1975*, 20 Cardozo L. R. 1705 (1999).

Telford Taylor 1908–1998, Cardozo Life, Fall 1999.

Review: Tushnet, Mark V., *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961–1991*, New York Law Journal, September 30, 1997.

Democracy, the Press, and National Security, Yeshiva Review, Fall 1996.

An Excerpt from The Day the Presses Stopped, Cardozo Life, Spring 1996.

Pentagon Papers, Twenty Years Later, New York Times, June 30, 1991 (op-ed).

Review: Kutler, Stanley, *The Wars of Watergate: The Last Crisis of Richard Nixon*, The Nation, August 6, 1990.

Watchdogs, A Report to the Fund for the City of New York (1984).

Review: Silberman, C., *Criminal Violence, Criminal Justice*, National Law Journal, March 26, 1979.

On East 67th Street, An Injunction Against the World, New York Times, November 25, 1978 (op-ed).

Press v. Bench: Closure is Worse than a Gag, The Nation, July 8, 1978, at 41.

Review: Sakall & Harrington, *Love and Evil: From a Probation Officer's Casebook*, Juris Doctor (1975).

Parole in a Legal Perspective, Fortune News (1975).

Review: Garment, Leonard, *Crazy Rhythm: My Journey from Brooklyn, Jazz, and Wall Street, to Nixon's White House, Watergate and Beyond*, New York Law Journal, May 23, 1997.

HONORS, AWARDS, & FELLOWSHIPS

Monroe G. Paulsen Award for Devoted Service to the Continued Vitality of the Ideals and Purposes of Legal Education (2009)

Legal Teaching Award, NYU School of Law Alumni Association (2004)

Anita Walton Award for Best Administrator (2003)

Honorary Degree: St. Francis College, Degree of Doctor of Laws (2002)

Best Professor (2002)

Fellow, Law and Public Affairs, Woodrow Wilson School, Princeton University (2000–2001)

Monrad G. Paulsen Award for Contributions to the Law School (1997)

Fellow, National Endowment of the Humanities, Seminar: Philosophical Underpinnings of Constitutional Law (Summer 1981)

Guggenheim Visiting Fellow, Yale Law School (Fall 1978)

SPEECHES, LECTURES, PANELS, AND TESTIMONY

Panels

Trump and the Presidency, Fordham Law School (February 2020)

The Age of Deference, Opening Remarks (September 2016)

Snowden: Traitor or Hero? (January 2014)

The Press and National Security: The Pentagon Papers, WikiLeaks & Snowden” (Fall 2013)

The ACLU in American Life, Cardozo School of Law (April 2012)

WikiLeaks and the Pentagon Papers Case, Cardozo School of Law (April 2011)

Courts and National Security, Princeton University (October 2010)

The Pentagon Papers Cases: Did the Courts Get it Right?, The Historical Society of the District of Columbia Circuit in Washington, D.C. (November 30, 2006)

The Pentagon Papers Case? 35 Years Later: How Would the Court Decide Today?, 11th Annual Conference of the ABA Forum on Communications Law in La Quinta, CA (January 12-14, 2006)

Terrorism, Globalism and the Rule of Law, International Meeting at the Bellagio Study and Conference Center in Bellagio, Italy (July 18–22, 2005) (under grant by the Rockefeller Foundation).

Selective Speeches (through 2007)

The Canary and the Hawk: The Utility of Hate Speech, Convention Address at The Impact of Global Terrorism on Society in Madrid, Spain (September 6–7, 2007).

Two Frames of Mind: A Brief Historical Perspective on the Federal Courts During an Age of National Security, Conference Keynote at Cardozo School of Law: Secret Evidence and the Courts in the Age of National Security (December 5–6, 2006).

Keynote Address on Constitutional Day, Cardozo School of Law (September 18, 2006).

Fundamentalism and Freedom of Thought, Introductory Speech at the Conference of Fundamentalism and the Rule of Law, Cardozo School of Law (March 14, 2006).

Breaking the Tradition: The Case for the 640 Detainees in Guantanamo, Keynote Address at the Guantanamo Bay and the Judicial Treatment of Aliens Conference in Fort Wayne, Indiana (December 10–11, 2004).

Symposium Introduction, Weapons of Mass Destruction, National Security, and a Free Press: Seminal Issues as Viewed through the Lens of the Progressive Case, Cardozo School of Law, New York, N.Y. (March 2, 2004) .

Myth and Illusion Surrounding Lord Elgin's Taking of the Parthenon Sculptures, Address at the Annual Helen Buchanan Seeger Lecture Sponsored by the Center for Hellenic Studies, Princeton University (April 26, 2001).

Lord Elgin and the Parthenon Marbles, Lecture at the Princeton University Museum (April 2001).

Comment on Professor Christopher Eisgruber's Paper, "Civic Virtue," Princeton University (April 2001).

The U.S. Supreme Court in a Constitutional Democracy, Lecture given at Leicester, De Montfort, Birmingham, and Nottingham Universities, in England (February 2001).

The Legality of Lord Elgin's Taking of the Parthenon Marbles, Lecture at Princeton University's Law and Public Affairs Seminar (October 2000).

Grand Illusion, The Legality of Lord Elgin's Taking, Presentation at UNESCO and the Greek Ministry of Culture Conference in Athens, Greece (May 2000).

Public Institutions, Public Collections, Public Ethics, Conference Chair for a roundtable discussion with representatives of major museums, dealers, collectors, and art source nations (May 2000).

Reports on Art and Cultural Property Law Wars, Conference Co-Director (April 2000).

Art and Censorship in Privately Owned Public Spaces, AALS Annual Meetings (January 1998).

The Pentagon Papers Case, Barnes & Noble (June 1997)

The Press and National Security, The Carnegie Council on Ethics and International Affairs (December 1996).

The Pentagon Papers Case, The Kennedy School, Harvard University (October 1996).

Prior Restraints, A Panel Discussion, Association of the Bar of the City of New York (June 1996).

Democracy, the Press, and National Security, a public lecture at Central Eastern University in Budapest, Hungary (December 1995).

Free Speech and National Security, Guest Lecturer at U.S.A.I.D. funded seminar for Hungarian press and government officials, Cardozo Law School (November 1990).

Conference Director, Justice Scalia's Jurisprudence, Cardozo Law School (Oct. 28–29, 1990).

Emerging Constitutionalism in Eastern Europe, Guest Lecturer at Eötvös Lorand University in Budapest, Hungary (July 1990).

Commentator at Law and Religion Conference, Cardozo Law School, Fall 1989

Commentator on Extremist Speech, Cardozo Law School Faculty Seminar (March 1987).

Threat of AIDS in our Prisons, Presentation at the Association of the Bar of the City of New York (March 1987).

Orthodoxy of a Generation: The Pentagon Papers Case, Luncheon Address at the Free Speech Conference, Cardozo Law School (February 1987).

Judicially Ordered Social Reform, Speaker at the Law and Society Meetings (Chicago, 1986).

Selective Lectures & Speeches, 1971–1980

New York State Association of Supreme Court Justices (1984); State University of New York at Albany School of Criminal Justice (1980); Connecticut Criminal Justice Convention (1979); Yale Law School (1978); Community Service Society (1978); New York University Law School (1977, 1978); New York Criminal Justice Coalition (1977); New York State Bedford Hills Prison for Women (1976, 1977); John Jay College of Criminal Justice (1977); Association of the Bar of the City of New York (1976); University of Connecticut School of Law (1975, 1976); Brooklyn Law School (1974)

Selective Legislative Testimony & Political Commentary

Numerous appearances on major networks discussing current constitutional issues (2017–2019).

New York State Assembly and Senate Committees; New York State Commission of Correction; Connecticut Legislative Task Force on Criminal Sentencing; Governor Hugh Carey's Select Committee on Criminal Sentencing (1974–1979).

ARBITRATION, MEDIATION, REFEREE, & LITIGATION EXPERIENCE

Referee, Appointed by the Surrogate, New York County (1994–2000).

Arbitrator, Labor Panel, American Arbitration Association, New York, N.Y. (ceased active membership).

Arbitrator, Dispute Settlement Panel, Office of Collective Bargaining (ceased active membership).

Arbitrator, State/CSEA Disciplinary Arbitration Panel (ceased active membership).

Arbitrator, New York State Education Department Panel, Section 3020(a) Education Law Proceedings (ceased active membership).

Mediator, appointed by a United States District Judge and a Justice of the New York State Supreme Court (appointment completed).

Lead Counsel for the ACLU (1986–1989) (attorney's fees claim against the City of New York).

General Litigation Experience, New York State and Federal Court (1969–1979).

Consultancies: Fund for the City of New York (1982–1983); Correctional Association of New York (1982); Children's Defense Fund (1974); Ford Foundation (1974); WNET (1975).

SELECTIVE COMMITTEES AND BOARDS

Member, Advisory Council on the Attorney Emeritus Program established by Chief Judge Jonathan Lippman (2010–Present); Member, Board of Advocates, Human Rights First (2010–Present); Trustee, Wooster School, Danbury, Connecticut (1990–2004); Chair, Labor and Employment Law Committee, Association of the Bar of the City of New York (1993–1996); Advisor, SJD (Doctoral) Program, Legal Studies Department of Central European University,

Budapest, Hungary; Member, Free Speech Committee, American Civil Liberties Union (1987–1996); Member, AIDS and Prisons Subcommittee (1987–1989); Member, Correction Committee (1986–1989); Board of Directors, Correctional Association of New York (1976–1988); Administrator, Screening Panel of the New York County Democratic Committee for Civil Court Vacancies (1985); Member, Board of Directors, Citizens’ Inquiry on Parole and Criminal Justice, Inc. (1974–1983); Chairman, Project Committee, report on “The Prison Population Explosion in New York State: A Study of its Causes and Consequences with Recommendations for Change.” (1982); Member, Joint Committee for the Criminal Justice Costs Project, “The Price of Punishment: Public Spending for Corrections in New York.” (1980); Member, Due Process Committee (1979–1982); Member, Committee on Lectures (1970–1980).