

## IN TRIBUTE: EVA HANKS

*Jil Simon*<sup>†</sup>

I was fortunate to meet Professor Eva Hanks on my second day of law school orientation and she gave me advice that guided my choices during law school and continues to influence my career to this day. While sitting in the Cardozo lobby, eating one of many kosher lunches to come, Eva happened to sit next to me and we quickly discovered our mutual love of opera. At one point, she looked at me and, uttering a complete non sequitur, said “you’re anxious about law school because you don’t know what it will take to be successful.” I agreed, though at the time underscoring my anxiety felt a little unnecessary. But, as the consummate teacher she is, Eva offered up the following advice: “Give it everything you’ve got. Everything. If you do that, you won’t have a single regret.”

These words stuck with me. I heard them when I was tired and felt that reading one more thirty-page Supreme Court case was impossible; when I was interviewing for firm jobs; and when my husband got sick, and I spent most of a semester studying in emergency rooms and countless doctors’ offices. Eva taking the time to articulate this encouragement—so simple to understand, but requiring tremendous dedication to implement—foreshadowed the support she would offer me during my time at Cardozo and the inspiration that she continues to provide.

As luck would have it, Eva was my professor for Elements of Law. She once told me that Torts was her favorite class to teach, which may be true, but she brought such life and energy to Elements, that it is almost scary to think of her being more excited by another subject. Cardozo students are all familiar with Elements—but for the uninitiated: Elements of Law is a first year, first semester introduction to jurisprudence. The casebook—which Eva co-authored—begins by using a series of California attractive nuisance cases from 1891 to 1959 to analyze the development of the common law. One of the major takeaways from this unit is the idea that judges do not find the law, but

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<sup>†</sup> Jil Simon graduated *summa cum laude* from the Benjamin N. Cardozo School of Law in 2013. She is currently clerking for the Hon. Joseph A. Greenaway, Jr., United States Court of Appeals for the Third Circuit.

rather create it.<sup>1</sup> The second half of the course concerns statutory interpretation and works to rein in the typical, but erroneous notion of first year students that judges rule without any constraints.

The refrain common to both of these units is that it is lawyers who shape the law—by tackling hard problems and by making sound and convincing arguments that allow judges to reach the best conclusions. While this is likely an overwhelming prospect for law students to be confronted with on day one, it is also empowering, and inspiring, and frankly accrues to everyone's benefit for would-be lawyers to appreciate their role in this great exercise as early as possible. This is what makes Elements such a valuable part of Cardozo's curriculum, and is what Eva instilled in her students—the part we all play in forming the law.

Elements was one of my favorite courses in law school and I excitedly revisited the casebook during my 2L and 3L years as Eva's teaching assistant. The statutory interpretation section was always fun—reading *Holy Trinity*<sup>2</sup> and debating textualism and purposivism with first semester students is a riot. But my heart, and I believe Eva's as well, was always fullest when grappling with the development of the common law. How miraculous a thing is precedent—that it is “Janus-faced,”<sup>3</sup> that an entire body of law develops and is extrapolated from lawyers arguing and a group of judges deciding individual cases, and that although it must remain consistent enough if it is to serve any purpose at all, it is constantly in flux.<sup>4</sup>

These are big concepts to get one's head around. Especially when one has not yet developed anything close to a fluency with the language of the law. But Eva was incredibly generous with her time and seemed never to tire of working through these ideas with students who were curious enough (and brave enough) to seek understanding.

When I was asked to write this essay I decided that the best place to start was to revisit the Elements casebook and I was struck, once again, at how Eva's voice comes through and how tough these issues really are.

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<sup>1</sup> “As the years have gone by, and as I have reflected more and more upon the nature of the judicial process, I have become reconciled to the uncertainty, because I have grown to see it as inevitable. I have grown to see that the process in its highest reaches is not discovery, but creation . . . .” BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 166 (Yale Univ. Press 1921).

<sup>2</sup> 143 U.S. 457 (1892).

<sup>3</sup> KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 74 (Oceana Pubs. 1960, 10th prt. 1996) (“[Precedent] is not one doctrine, nor one line of doctrine, but two, and two which, applied at the same time to the same precedent, are contradictory of each other. That there is one doctrine for getting rid of precedents deemed troublesome and one doctrine for making use of precedents that seem helpful.”).

<sup>4</sup> “We draw our little lines, and they are hardly down before we blur them.” CARDOZO, *supra* note 1, at 161.

We're asking and expecting first semester law students to get this?! Yes!—and this is what Eva, and many other fantastic teachers who have come before and after her, realized: that to learn the language of the law, one must jump in with both feet and trust that if she is willing to struggle and fail (but always try again), the understanding will come.<sup>5</sup> Eva always showed great compassion for students who wholeheartedly embarked on this process. She knew that compassion was necessary because this journey can be so humbling and frustrating. But she also showed how rewarding it can be.

It is hard for me to imagine Cardozo without Eva—that one walking the halls will no longer see her surrounded by a group of students debating *Palsgraf* or eating lunch in the third floor lounge, again surrounded by a group of students. But she has left an incredible impression. One that exists beyond those halls, one that lives inside the decades of students who have learned from her, tackled these hard issues with her, and above all been inspired by her. I am honored to be among that group and to call her a friend. Thank you, Eva.

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<sup>5</sup> “Details, unnumbered, shifting, sharp, disordered, uncharitable, jagged. And all this that goes on in class but an excuse to start you on a wilderness of other matters you need. The thicket presses in, the great hooked spikes rip clothes and hide and eyes. High sun, no path, no light, thirst and the thorns. – I fear there is no cure. No cure for law but more law. No vision save at the cost of plunging deeper.” LLEWELLYN, *supra* note 3, at 122.