

Forty Years Since Law School

An Asian-American attorney reflects on four decades in the law.

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By Phil Tajitsu Nash

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“This is the most important case since *Marbury v. Madison!*” said Professor Arthur Kinoy of Rutgers University School of Law – Newark, as he held up and shook a folded copy of that morning’s *New York Times*. As he read excerpts to our Constitutional Law class in his famously sing-songy orator’s voice, we quickly forgot the 19th century opinions we had studied the night before. Arthur had argued and won important Supreme Court cases such as *Dombrowski v. Pfister* and *Powell v. McCormack*, so his sense of urgency was a reminder that the world of law was not just abstract principles—it was a place where real people were affected every day.

Most of the case law, statutes, legal history and lawyering tips I learned 40 years ago have become embedded in a giant kaleidoscope of knowledge that has grown unevenly as I have continued a lifetime of learning. What sticks with me, however, are the emotionally engaging experiences I had during those three years.

With no digital research tools yet available, Professor Nadine Taub and my fellow Women’s Rights Litigation Clinic students stayed late at the law school library to prepare for a case that would help nurse midwives preserve their right to practice independently. In the pre-computer era, we considered ourselves fortunate to have an IBM Selectric typewriter with a track ball. Most typewriters had metal strikers that got jammed if you typed too quickly. However, even though we had a state-of-the-art typewriter, we still had to use WiteOut to fix typing errors, taking care to leave enough room on each page for the footnotes.

In 1980, in a small seminar on Education Law with Professor Paul Tractenberg, we discussed why some suburban New Jersey kids had schools with swimming pools and well-stocked libraries, while their urban neighbors had outdated textbooks and broken-down facilities. Two years later, I remember sitting late one night in the sparsely furnished offices of the Education Law Center with Paul and my pal Peter Van Schaick. We had just returned from the State Board of Education office in Trenton with many cardboard boxes of documents. Within months, they would become part of the *Abbott v. Burke* school finance case.

Both fear and laughter are great triggers for memory, and I had a bit of both during my days at Rutgers. I can still hear Professor David Haber saying, "MIS-ter Nash, WHO is the rightful owner of the broooooche," as we took our seats in his first year Property class. And, of course, even if I answered one question to his satisfaction, he would continue with questions related to the dysfunctional family living in Greenacre or those free-spirited *ferae naturae*. And while I secretly laughed at the misfortunes of the poor souls who didn't tell the coat check staff that a valuable item was hidden in the bag they were checking, I have internalized the lesson and am always careful to show the coat check staff my laptop before I check my bag.

Closing my eyes, I can remember many experiences away from the law school as well. For example, hauling case books, blankets and food on PATH trains from Newark to NYC in September 1981 so that we could see Simon and Garfunkel's free Central Park concert while not falling behind on our reading. I also remember listening to the news that John Lennon had just died as I was driving home from the law school to Bergen County late on Dec. 8, 1980. The radio station played the first song from his newly released album. As the ping-ping-ping of the Japanese prayer bell pierced the highway's blackness, I had to pull over when I heard the irony in his lyrics: "It's time to spread our wings and fly/ Don't let another day go by, my love/ It'll be just like starting over."

After law school, I took John Pieper's bar review class, and his focus on Rule, Rule and Rule worked for me. I was able to pass both New York and New Jersey exams while working full time. In looking on his website these days, however, it's amazing to see that Troy and Damian—the two young sons he used in his case law examples—have grown up, gone to law school, and are now helping him run his classes.

Passing the bar exam was an important vindication for me and for others who had gained entry to Rutgers through the Minority Student Program, because we started our first classes in September 1979 under the shadow of *Doherty v. Rutgers*. That lawsuit challenged the very existence of our program, and we did not finally prevail until a month after our graduation in May 1982.

Fortunately, using an innovative approach that saw the Student Bar Association, the Women's Caucus, and the Asian American and Pacific Islander (AAPI), African American, and Latin American student organizations join the lawsuit as defendant-intervenors, we helped the law school win in both the district court [*Doherty v. Rutgers School of Law-Newark*, 487 F. Supp. 1291, (D.N.J. 1980)]; and the Third Circuit [*Doherty v. Rutgers School of Law-Newark*, 651 F.2d 893 (3d Cir. 1981)]. Argued Jan. 12, 1981. Decided June 16, 1981].

If you go back and read the *New Jersey Law Journal* from May 1982, you will see a letter from many 1982 graduates of the Minority Student Program, thanking the faculty for training us. Based on updates from my MSP classmates over the decades, I know that we have gone on to teach at several law schools, serve as judges on several courts, and work as attorneys in law firms, government offices, and public interest firms.

As I was graduating 40 years ago, AAPI law students at Rutgers-Newark were advocating for the school to hire an AAPI faculty member. When I return this month to Rutgers Law School in Newark, I will be overjoyed to meet Dean Rose Cuison-Villazor, a Filipina American Professor of Law, Chancellor's Social Justice Scholar, and Director of the Center for Immigration Law, Policy and Social Justice, who is currently serving as Interim Co-Dean.

Another AAPI faculty member, Professor Ronald Chen, previously served as Dean, and a quick look at the faculty list shows at least five AAPI names. Yes, sometimes dreams (if propelled by hard work and persistence) really do come true.

Forty years ago, when there were very few AAPIs in the profession, I participated in the first National Asian Pacific American Law Students Association “Not in the Casebooks” Conference at NYU in 1980, and the first Third World Law Students Conference at Columbia in 1981. Today, there are many more AAPIs in the profession. However, the recent horrific rise in anti-AAPI violence has led to Rutgers Law School teaming with the Asian American Legal Defense and Education Fund (AALDEF) to sponsor the nation’s first Continuing Legal Education (CLE) program on “Addressing Anti-Asian American Violence.” I hope that we can encourage bar associations in all 50 states to create similar CLE programs.

Yes, a lot has changed since I graduated 40 years ago. Justice Ketanji Brown Jackson has recently joined the Supreme Court as the first African American woman justice. I now read Supreme Court opinions on my cell phone and am glad I no longer have black ink stains on my fingers after reading the day’s newspapers. I enjoy the convenience of attending classes and hearings via Zoom, and am glad the Backspace button has freed me from the drudgery of analog document editing.

However, one thing has not changed in the 40 years since I graduated. Arthur Kinoy always ended his speeches by reminding us that each of us has an obligation to use our legal skills to participate in the great issues of our times. In view of the many ways that the rule of law is being threatened these days, let’s all recommit ourselves to this challenge.

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