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IN MEMORIAM

IN MEMORIAM: JUDGE MIRIAM GOLDMAN CEDARBAUM

*Gerard E. Lynch**

I must confess that I don't read law reviews. Of course, I read law review *articles*, in the course of judicial research and keeping in touch with academic literature in areas of my scholarly interest, but like most judges and lawyers, I don't have time or interest to just pick up the latest issue of a law review and read it through. I do, however, regularly read the quarterly *Ballet Review*, a quasi-scholarly journal of reviews and articles about dance. Only once, in some twenty years of reading that publication, has it overlapped my legal interests. The Fall 2002 issue of *Ballet Review*¹ devoted nearly forty of its then-regular 100 pages to reprinting a judicial opinion: Judge Miriam Goldman Cedarbaum's opinion in *Martha Graham School & Dance Foundation, Inc. v. Martha Graham Center of Contemporary Dance, Inc.*² The opinion detailed the judge's findings of fact and conclusions of law after a bench trial about the disputed ownership of the dance works created by the American choreographer and modern dancer Martha Graham. In a lengthy opinion that affirmed the bulk of Judge Cedarbaum's rulings, the Court of Appeals for the Second Circuit commended the judge for her careful analysis³ of a case whose complexities, the court said, called to mind the title of a Graham work about the myth of Ariadne: *Errand into the Maze*.⁴ Judge Cedarbaum's penetration into and safe escape from the maze of conflicting claims resolved a dispute that had kept Graham's works from public view for years and that therefore (in an artistic medium that depends for its transmission on the mental and physical memories of dancers who have performed the works) threatened the very existence of the vital artistic legacy of a major figure of mid-twentieth century American dance. Along the way, her groundbreaking legal analysis of copyright in choreographic works set the terms

* United States Circuit Judge, Second Circuit. Paul J. Kellner Professor of Law, Columbia Law School.

1. *Ballet Rev.*, Fall 2002.

2. 224 F. Supp. 2d 567 (S.D.N.Y. 2002).

3. *Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, Inc.*, 380 F.3d 624, 647 (2d Cir. 2004).

4. *Id.* at 628–29 & n.1.

on which future choreographers have undertaken to protect and maintain their work beyond their lifetimes.

I was a very junior colleague of Miriam's on the district court when I encountered her opinion in *Ballet Review*, and I forwarded my copy to her. She returned it with a note, thanking me and saying that since she never "expect[ed] [her] opinions to appear in non-legal magazines, . . . for a vain creature, this was a thrill." The elegant self-deprecation was typical of the judge; she was anything but vain. The *Graham* opinion was utterly typical: Though the judge, a cultivated woman with a life-long interest in the arts, was fully aware of the cultural significance of the case, and of the gossipy allegations that surrounded it, her approach was methodical and meticulous, without rhetorical flourish or self-aggrandizement. It quietly did the job.

The child of two public school teachers, Miriam Goldman grew up in Brooklyn and graduated from Barnard College, where she would later serve as a Trustee, in 1950. In what a contemporary young woman might think a natural progression, she went on to study at Columbia Law School, where she won the highest academic honors, being elected to the *Columbia Law Review*, named a Kent Scholar, and awarded the Jane Marks Murphy Prize, at that time given to the highest-ranking woman in the class. At the time, of course, that was anything but natural: Miriam was one of only eight women in the class of 1953. Her legal resumé goes on to list many jobs typical of successful lawyers then and now:⁵ law clerk to a Southern District judge, Assistant United States Attorney, Justice Department lawyer in Washington (where she played a role in the historic Little Rock school-desegregation case⁶), in-house counsel to the Museum of Modern Art, law practice with a major New York City law firm. In each position, Miriam was a pioneer,⁷ performing with quiet excellence in a world that did not expect women to appear in such roles. She was appointed to the federal bench by President Ronald Reagan in 1986, on the recommendation of Senator Daniel Patrick Moynihan⁸—a typical bipartisan recognition of her skill and dedication—and served for nearly thirty years as a district judge. I imagine that Martha Graham, much of whose work focused on the travails and endurance of women in history and myth, would have

5. For a multipart interview Judge Cedarbaum later gave, in which she discusses her varied career, see generally Interview by Sharon Zane with Miriam Goldman Cedarbaum, U.S. Dist. Judge, S. Dist. of N.Y., in N.Y.C., N.Y. (Sept.–Nov. 2000), http://www.moma.org/momaorg/shared/pdfs/docs/learn/archives/transcript_cedarbaum.pdf [<http://perma.cc/G7SD-4FLL>].

6. *Id.* at 17.

7. She was the only female clerk in the Southern District that year, and one of only two women among the fifty-five Assistant United States Attorneys when she joined that office.

8. See, e.g., Lawyer Sworn in as Federal Judge, *N.Y. Times* (Mar. 29, 1986), <http://www.nytimes.com/1986/03/29/nyregion/the-city-lawyer-sworn-in-as-federal-judge.html> (on file with the *Columbia Law Review*).

been pleased to have her legacy in the hands of a woman of Miriam's strength and intelligence.

On the bench, Judge Cedarbaum was careful and restrained, but always in command. She presided over thousands of cases, from the mundane to the notorious.⁹ Her *New York Times* obituary linked her to a different Martha: It was headlined "Sentenced Martha Stewart."¹⁰ This is surely the way district judges are remembered in the press—for the criminal cases over which they presided. The true work of a trial judge, like that of a dancer, is ephemeral; presiding over trials and handling civil disputes is mostly a performance art, recorded, if at all, in media (trial transcripts) that do not generally reveal the work in full, and the occasional landmark opinion is often too specialized to fit into a headline. Both the legal analysis and the courtroom mastery are best appreciated by specialized connoisseurs (courtomanes?). But her colleagues on the bench and the lawyers who appeared before her understood what lay behind the occasional headline case: a steady devotion to fairness, deep thought, and hard work.

In 2015, Columbia Law School awarded Judge Cedarbaum the Medal for Excellence, its highest alumni award.¹¹ I remember the day well as marking a first for the school in its distinguished history: Every speaker that day, from our then-new dean to the president of the alumni association to the two presenters to the two awardees, was a woman. Miriam was fighting the illness that would eventually take her life; it might have been better for her health for her to have accepted the award in absentia. But of course she did not. The same steely resolve that characterized her rise through a profession that, for most of her early career, posed obstacles to her, carried her to the stage that day to express her gratitude to the law school and to those who had helped her along the way, and to encourage those younger women who will follow in her footsteps. I'm sure, though, that she did not think of it in quite such dramatic terms. Of course she would be there. Like every other job she had done or assignment she had undertaken throughout her legal career, she would do it to the best of her ability. It was as simple as that.

9. See, e.g., Chad Bray, *The Federal Judge With Terror on Her Docket*, Wall St. J. (Oct. 2, 2010) (describing a "long string of high-profile litigation in front of Judge Cedarbaum," including the Faisal Shahzad terrorism case regarding his failed attempt to bomb Times Square).

10. Joseph P. Fried, *Miriam Cedarbaum, U.S. Judge, Dies at 86; Sentenced Martha Stewart*, N.Y. Times (Feb. 6, 2016), <http://www.nytimes.com/2016/02/07/nyregion/miriam-cedarbaum-86-dies-longtime-federal-judge.html> (on file with the *Columbia Law Review*).

11. Press Release, Columbia Law Sch., *Medal for Excellence Awarded to Miriam Goldman Cedarbaum '53 and Roberta A. Kaplan '91* (Feb. 27, 2015), http://www.law.columbia.edu/media_inquiries/news_events/2015/february2015/winter-luncheon-2015 [<http://perma.cc/FB7X-XGQZ>].