

A TRIBUTE TO  
PROFESSOR IRENE MERKER ROSENBERG  
UPON HER RETIREMENT

IN HONOR OF  
IRENE MERKER ROSENBERG

*David R. Dow\**

I wish I had been there to see it. Irene arrived at the University of Houston in 1974. Dan Rotenberg was on the faculty back then. He came from the Midwest and sounded like it. Everyone else who worked here was from Texas. Ira Shepard would arrive a year after Irene, but his New York accent had already been sanded down by the years he spent in Georgia. Don't misunderstand me; I love being from Texas. But a solitary New Yorker, who sounds like it, in a room full of Texans, who also sound like it, is something you notice.

The Law Center has aspired to national prominence for many years now. I don't think there is anyone more responsible for that aspiration, and for the strides the school has taken in that direction, than Irene Rosenberg. When she moved here with her late husband Yale, a native Houstonian, there were no tenured women on the faculty. In fact, there was only one other woman, period. The law school, having been established in 1947, had not yet entirely broken either the color or the gender barrier. Irene was part of that generation of women who began bringing about gender equality in America: in the corporate workplace, in the government, in higher education. People like Sandra Day O'Connor, Eleanor Smeal, and Ruth Bader Ginsburg are the big names, of course; but people like Irene Rosenberg were the foot soldiers: the women entering domains that had been all male (and all white), being successful, and proving that they belonged.

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As I say, I wasn't here to see it, but I've imagined it many times: every time she speaks up at a faculty meeting, every time I hear her counseling a student, every time I ask her to read a manuscript and get her comments. If I had to use one word to describe her, I'd say *kinetic*. As I sit here writing these words, I hear her hard-edged Brooklyn voice. It's loud, even when she tries to whisper. When I first met her I thought to myself, "She's too small for that big voice." During my first year on the faculty, twenty years ago, I went to watch Irene teach her criminal law course. It was cold in the room. She was wearing a sweater and a knit cap. I don't know whether she had lost weight, or whether she just buys big clothes, but I remember thinking that her sweater just swallowed her up. She looked tiny standing behind the rostrum. She opened her book and took out her seating chart. She looked at her watch. Then she started talking. It was like being in a small closet with a character from the Old Testament. Her personality, and her command of the subject, occupied every cubic inch of that space.

I remember reading the article she and Yale wrote on the Talmudic rule against self-incrimination.<sup>1</sup> It was one of those moments you have where you think to yourself that you might as well not ever write anything, because in your entire career you'll never write anything as good as that. Both before and after that article, Irene placed more articles in the nation's preeminent law reviews than any other member of this faculty. She is a national authority on juvenile law, criminal law, and Jewish law. Most people are content to master one field. Irene mastered three.

I used to have an office next door to hers. She would come to school every day with a bag of bagels she had bought that morning. Eventually she realized that either I am not a lunch eater, or I just don't like bagels. In the intervening year or two, though, she would ask me every day whether I wanted a bagel or an apple. She would ask by shouting through the wall that separated our offices. Irene is brilliant. It did not take her two years to figure out that I have no appetite at noon. She just thought that it would be good for me to eat something.

On another occasion, when I was lamenting that yet another of my death row clients had been executed despite my efforts, she came into my office and said, "You did what you could. Try to remember that this happened because your client did a bad thing." Irene is an observant Jew. The great Jewish sage

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1. Irene Merker Rosenberg & Yale L. Rosenberg, *In the Beginning: The Talmudic Rule Against Self-Incrimination*, 63 N.Y.U. L. REV. 955 (1988).

Maimonides stressed the obligation we all have to look after the welfare of others in our community. Irene has lived that injunction. She takes care of people around her. That might be her defining quality.

On the first Hanukkah that I was a colleague of hers, Irene and Yale gave me a plastic dreidel filled with jelly beans. I still have it on my desk. I spin it every day, it relaxes me, and as I watch the dreidel rotate on my desk, I think of Irene. Those jelly beans have been in that dreidel for two decades. They're like oblong pieces of colored rock. They're as hard as Irene sometimes pretends to be, and as hard as people who don't know her well might think she is. Her steely shell served a purpose. When she came to Texas and started appearing in juvenile court, the judges called Dean A.A. White and complained about her. She was apparently too aggressive in representing her clients. Harris County judges weren't used to that—to a lawyer they couldn't control. Dean White went into Irene's office and closed the door. He told her to keep on doing what she was doing. Irene never forgot that. Her gratitude could seem excessive. I told her so. She said, "You don't understand, dear. Men of his generation didn't do that. I was just being myself, but what he did was a true act of courage." She is someone who sees heroism in others and nothing unusual in herself. It can seem at times like Irene is blind. She isn't. What she is, is humble.

I realize that de Gaulle observed that the graveyards are full of indispensable people, and who am I to argue with de Gaulle? But I'll tell you this: Irene Rosenberg is in fact irreplaceable. There are other people as smart, other people as brave, other people as humble, other people as creative, other people as pathbreaking. But if there is anyone who has all those qualities at once, she isn't a law professor.

When my office was still next door to Irene's, I moved the desk so that I was sitting next to our shared wall. That way, I could shout questions to her from my chair. I'd say, "Hey, Irene, Wasn't it Justice O'Connor's concurring opinion in *Montana v. Egelhoff*<sup>2</sup> that created the law of the case?" She'd say, "O'Connor dissented, dear. It was Ginsburg who concurred and gave Scalia

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2. *Montana v. Egelhoff*, 518 U.S. 37 (1996) (upholding the constitutionality of a Montana statute that prohibited taking voluntary intoxication into account when assessing mens rea).

his fifth vote.” Then she’d make a sound of disgust, like a snort.

If her office were next door to mine still, I’d call through the wall to her again and say: “Hey Irene, I am writing an essay about you, and I want to say that your relationship to me, and a dozen or more other members of this faculty, is avuncular, but I’m wondering whether avuncular is a gender-neutral adjective, and if it isn’t, what I can say instead?” First she would try to persuade me not to write this essay at all. Then, if she were still next door, I’d know the answer.

## TRIBUTE TO PROFESSOR ROSENBERG

*Stuart J. Dow\**

I'm not sure what prompted her, but when Professor Irene Rosenberg offered to teach a class to my high school students, I immediately accepted. To be sure, I suspected that we'd be wise to enlist a special group of students for this special faculty surprise, but as I also suspected, the kids absolutely loved her. And learned tremendously. Their comments below are the best evidence of this great experience.

With great admiration and appreciation for Professor Rosenberg's intelligence, integrity, and courage!

*Kailey Caplan*

My name is Kailey Caplan, and I am a recent graduate of the Emery/Weiner School. Last year I was given the opportunity to partake in a new Judaics elective, Comparative Jewish & American Criminal Law, taught by guest professor Irene Rosenberg. Eight or so of my classmates and I walked into class to find this tiny little lady in a big hat and bigger glasses sitting on a table ready to whip us into shape. As an Emery student, very little shocks you, but Professor Rosenberg never failed to surprise us with her sharp tongue and unbelievable stories. What a wonderful lady and what a difference she's made with me, with my classmates, and undoubtedly with all her students.

*Ben Friedman*

During my junior year of high school, I took Professor Rosenberg's Comparative Jewish & American Criminal Law class—my first formal legal education. On the first day, she gave us a binder full of case documents about 400 pages long and told us to read it over the weekend. To many class members, this seemed like an overwhelming amount of initial reading; however, I was excited to finally be studying the law. As we journeyed through the course, comparing the Old Testament and Talmudic law to the U.S. Constitution and Supreme Court cases, Professor Rosenberg showed a level of passion in trying to instill in her

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students not only knowledge, but a greater sense of moral awareness and character, which I had never before experienced in a classroom. One minute she might be sitting calmly at her desk lecturing, and the next she might be up at the board frantically writing, proving her point, while panning the class to make sure each student understood her point. If a student challenged one of her points, she would listen to the student as an equal and would encourage the rest of us to challenge each other.

It seemed that she was happiest not when she was talking, but rather when she was listening to us debate each other because it showed her that we were interested and engaged in her class. Professor Rosenberg treated us like family and made sure to know all of our names and views. It was truly an honor to learn from a woman so passionate about her subject and even more passionate about the character and well-being of her students. After just one semester of Professor Rosenberg's class, I have had the best basis for a legal education that one could ask for. From this point forward, I owe all future thought along this path in large part to her and the questions she inspired me to ask and continues to inspire me to answer.

*Josh Rosner*

Occasionally life gives us the innate pleasure of crossing paths with people we may not ordinarily encounter. Such is the case with Professor Rosenberg and my F-period class junior year. It all began when this little woman with large glasses spoke to the entire student body. Typical speakers tend to bore high school students, especially in the morning, but Professor Rosenberg was special. She had come to talk about law and how we should relate Jewish law to our lives; however, she spent most of her time trying to figure out how to use the clip-on microphone and bashing technology. Needless to say, we hit it off. I, as well as the rest of my classmates, signed up to take her course the next semester.

The first week of that class was the most reading-intensive experience I hope to ever have. Professor Rosenberg had never taught a high school class and pulled us right up to the college level, scaring off a large percentage of the class; but those of us who stayed knew that we would not only be gaining valuable knowledge of law and our history, but also wisdom from a very learned human being.

Professor Rosenberg brought us into her life. She shared stories of her husband and did her very best to put up with the

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antics of high school juniors. She let us argue with each other and, by the end of the course, we almost sounded like we knew what we were talking about. One of the most patient people I have ever met, Professor Rosenberg worked to try and get one quiet student to participate every class. If he ever looked like he was about to say something, she would silence the room because she taught us that everyone's opinion is valuable and there is always something to be learned from what is said.

Now, I do not believe that I will be going to law school in the future, but, that being said, I have gained a vast appreciation for those that study law and especially those that teach the subject. Professor Rosenberg was a fortuitous gift to us all. A good teacher gets the students through the course. A great teacher allows the class to become engaged in the course material. Professor Rosenberg taught without us ever knowing the lesson had started. She took tedious reading and small print and turned them into real life situations that we took part in. It was an experience to have her as a teacher and a true pleasure to know her as a person. I hope she knows how large of an impact she has left on Emery/Weiner and that small F-period class.

A TRIBUTE TO  
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*Yvonne Y. Ho\**

When reflecting upon Professor Irene Rosenberg's qualities as a law professor, some might rightly focus on her illustrious thirty-five year career at the University of Houston Law Center. Still others would comment on her significant scholarly contributions to the fields of Jewish law, juvenile justice, and criminal law and procedure. But as one of her many former students, I will forever remember how, after a painful hiatus following the death of her devoted husband and colleague, Professor Yale Rosenberg, she whirled into a classroom, clutching an enormous binder so overflowing with papers that it would surely explode, and taught us Constitutional Law.

That first class began with an analysis of *Marbury v. Madison*, familiar to law students everywhere. But, straight out of the chute, Professor Rosenberg, arms waving like a conductor, body rising up on the very tips of her toes, caught me completely off-guard by declaring, "You know, I'm Jewish! And I'm a liberal!" To a student accustomed to the hide-the-ball routine characteristic of law school, her pronouncement made it clear that this was no ordinary class. Professor Rosenberg had thrown down the gauntlet: come forth and show me your hand, as I have shown you mine! She treated us as collaborators, and I was thrilled.

When we occasionally responded to her probing questions with uncomfortable silence, Professor Rosenberg would single us out, demanding loudly, "Are you reading? Are you reading *closely*?" There was nowhere to hide. She simply refused to let us ride passively along on the journey through Supreme Court jurisprudence. Moving unpredictably about the classroom, perching occasionally on our desktops, and pouncing spontaneously on startled students, Professor Rosenberg challenged us to piece apart the case law, dissect its reasoning, and, above all, to question it. This she did in a piercing voice that

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penetrated walls, making it easy to find her office in the faculty suite. But it was not just her voice that embodied her passion; every inch of her bird-like frame oozed Con Law. How could I not be carried away?

To this day, merely citing a seminal Supreme Court decision conjures up Professor Rosenberg's whirlwind presence. And during the years that have passed since my graduation from law school, I have treasured those moments seated beside her in her light and airy home, surrounded by colorful, delicate origami of her own creation and walls lined with beautiful books, bandying ideas about and seeing my own enthusiasm mirrored back to me through smiles of teacherly pleasure blossoming across her face. Professor Rosenberg, if your students love the law at all, they have you to thank for it. And if they adore you as I do, well, that is just because of who you are.

ADVOCATE, MENTOR, FRIEND:  
IRENE MERKER ROSENBERG

*Ellen Marrus\**

As I started to write this tribute to Professor Irene Merker Rosenberg I thought long and hard about how I wanted to approach it. On the one hand, it should be simple to write a tribute to a person who has contributed so much to legal scholarship and education, the profession, juvenile defense (an area of interest I share with Professor Rosenberg), and to my life and the lives of those in my family. On the other hand, it is difficult to put into words how much Professor Rosenberg has influenced the lives of so many people.

Early in Irene Rosenberg's legal career she worked for Legal Aid in New York City. As with most things, Professor Rosenberg did not take an easy route. Rather, she worked in one of the toughest boroughs—the Bronx—and represented children charged with criminal acts. For many of the children, Professor Rosenberg was the only adult person who was on their side, who showed some faith in them. Society, the courts, and oftentimes their families, had given up on them. Professor Rosenberg believed that the legal system and good lawyers working diligently on behalf of their young clients could provide a means for the youth to have a stake in the system, giving them another chance. I remember her telling me about children that she represented, where it must have been very difficult for her to advocate on behalf of her client. However, she always followed the Jewish tenet “Justice, justice, you shall pursue” and ensured that her clients did receive not just adequate representation, but the best that she could offer.

She was also the trial lawyer in *In re Winship*,<sup>1</sup> which set the standard of proof for delinquency cases at beyond a reasonable doubt, the same standard applied to adult criminal cases. It was her skill as a trial lawyer that ensured the transcript held the right language for the appeal. It was her dedication and perseverance that convinced the Legal Aid office to file the appeal. It was her passion for and belief in justice that led down

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1. *In re Winship*, 397 U.S. 358 (1970).

this path to see that children had rights that were equivalent to those of adults facing the same consequences. Although I teach *Winship* in my juvenile law course, I also use it to demonstrate how important it is for a trial attorney to see the whole picture and how a good trial transcript makes for a good appeal, when necessary, and the far reaching effects it can have.<sup>2</sup>

While at Legal Aid, Irene Rosenberg not only represented juveniles, but was also responsible for the supervision and training of the other attorneys in the office. She wrote the first training manual for juvenile defenders, a manual that is still being used today. In this role she was also a mentor and an inspiration to many young attorneys. Her passion and commitment to justice brought many defendants a quality of representation that they would not have received if Irene Merker Rosenberg had not either been their attorney or trained the attorneys representing them.

Upon starting at the University of Houston Law Center, Professor Rosenberg began a clinic in which law students represented children charged with crimes in the juvenile courts of Harris County.<sup>3</sup> In this role she not only helped provide a level of representation that was often unavailable for youth in Harris County, Texas, but she also trained and mentored law students, insisting that they provide the juveniles with the best representation that they could. This was very different from the typical representation provided in juvenile court. Professor Rosenberg's reward for being professional and motivating the law students to do their job properly was to have the juvenile judges call the Dean of the law school and demand that Professor Rosenberg be fired. Luckily, she was not.

Professor Rosenberg also taught constitutional law, criminal law, criminal procedure, legal analysis and writing, and juvenile law at the Law Center. Her passion for the law and the particular subject matter provided students with engaging, thought-provoking classes. Although I was never a student of Professor Rosenberg, I would often hear from law students how much they enjoyed her classes because they could see her enthusiasm for the subject matter, and that her classes "always made you think." In one of my early years at the Law Center we had a committee on teaching methodology. One of the things we

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2. For a more detailed description of Professor Rosenberg's role in this case, see Irene Merker Rosenberg, *Winship Redux: 1970 to 1990*, 69 TEX. L. REV. 109 (1990).

3. This was unusual as most clinics that represented children did so either in abuse and neglect cases or child custody cases. Very rarely at that time did clinics defend juvenile delinquents. Although there are more such clinics today, it is still not the norm.

did was to videotape certain professors' classes, view the videotapes, and discuss the methods the professor used to promote class discussion. Professor Rosenberg's constitutional law class was one of the videotaped classes. It was fun to watch her engage the students, the energy she displayed while teaching, and the intensity of the discussions. It was easy to pick out the things that worked from her classes and to encourage other faculty to try her methods.

For most of the time that Professor Rosenberg taught juvenile law there was no casebook that looked primarily at delinquency and status offenders (the two areas Professor Rosenberg covered in the course).<sup>4</sup> Professor Rosenberg developed her own materials for the course, putting together a four volume set of cases, law review articles, and newspaper articles. She would update the materials on a yearly basis, providing students with important cases and materials in the subject area. In addition, her scholarship in this area provided students, practitioners, and legal academics with well-written, analytical, and thought-provoking pieces. Her scholarship continues to promote the work of others in this field.

Given Professor Rosenberg's record of practice, teaching, and scholarship in several areas, but particularly in juvenile law, it should be no surprise that I might have been a little intimidated by her when we first met. My talk to the faculty during my hiring process was about my view of clinical education as I was being considered for the director position of our clinical programs. I talked about the hands-on experiences that clinical education gives law students, handling cases from beginning to end under the supervision of a clinical professor. I also discussed what involvement 1Ls could have in this process: doing intake interviews, serving subpoenas, and filing papers at the court house (a process that many new attorneys do not know how to do). Professor Rosenberg was clear that in her opinion 1Ls should only be concentrating on the fundamental law school courses—learning the law and legal analysis, not practice. In spite of the fact that we disagreed about this, she has always been supportive of my efforts and provided excellent mentorship over the years. She helped me select topics on which to write, ones that I knew about and was interested in, and warned me away from areas in

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4. Although a couple of casebooks have been written since that time, neither of them covered juvenile delinquency the way that Professor Rosenberg or I liked to cover it. This, among some other things, prompted us to write a casebook together that I now use when teaching juvenile law. See ELLEN MARRUS & IRENE MERKER ROSENBERG, CHILDREN AND JUVENILE JUSTICE (2007).

which my own personal experiences might color my judgment. She has pushed me to make my scholarship more rigorous and meaningful. Early in my career I was asked to present a paper on representing juveniles and what I came to coin as “holistic lawyering.” When I discussed with several people working this presentation into an article, it was only Irene who helped me see how to do it in such a way that it has become an article that has been used by practitioners and scholars alike, and has influenced the practice of juvenile defense attorneys.

Over the years my relationship with Irene has grown to more than just colleagues or one of mentorship. I have had the privilege of writing articles with Professor Rosenberg. This has been a pleasure, not because we always agree (in fact we have argued over several major points), but because I always learn from her and am able to see things from other angles and perspectives. I get great satisfaction when I win a point in our “discussions,” and can make Professor Rosenberg see something from my point of view, but I also enjoy listening to her position and being swayed to her side. It is the give and take that is stimulating. I am hopeful that we will be able to continue some of this work, even while Professor Rosenberg is in “retirement.”

Irene Merker Rosenberg continues to give of herself to people. She continues to be a mentor to individuals in the legal academy. I recently had the opportunity to attend a workshop for junior scholars in the area of children and the law. I was invited to comment on their work as a “senior” scholar. One of the participants discussed some of Professor Rosenberg’s scholarship and I offered to show her work to Professor Rosenberg. She was so pleased, particularly after Professor Rosenberg took the time to read it and contact her with her comments. I am sure that many young scholars will continue to benefit from Irene Rosenberg’s expertise.

Professor Rosenberg continues to help those in need in the community—not only her Jewish community, but also the larger community. Practitioners contact her with questions about cases and she provides ideas and strategy. She presents at conferences, particularly our conference on Zealous Advocacy, and I hope she will continue to do so. Practitioners always comment that her talks are some of the most beneficial. When people in the community need legal assistance, she helps them find the right person to help.

All of this is in the professional realm, and I and many others will continue to be grateful and to pay tribute to Professor Irene Merker Rosenberg for all that she does. But for me, and my family, the greatest tribute that we can give to her, and the

greatest gift she has given to us, is that we are family. My granddaughter looks to Irene as her “bubbe” and as they both say, there is a cord that goes from one of them to the other that binds them together. Although Professor Rosenberg may be entering retirement from teaching, she will continue to be someone that I turn to when I need to talk about anything—professional or personal.

A TRIBUTE TO  
PROFESSOR IRENE ROSENBERG

*Jo Nelson\**

I have had the pleasure of knowing Irene Rosenberg since 1975 when I took her Juvenile Law Class.

She was a passionate advocate for the underdog and has surprisingly remained so. Professor Rosenberg recently gave a lecture at the last Juvenile Law Conference at the Law Center in the spring of 2009. She sounded equally the same. Irene Rosenberg took a personal interest in her students. She actively tried to get her students clerkships and fulltime jobs. She encourages me to update for the Law Review.

Professor Rosenberg always encouraged her students to do well in whatever field they ended up. She has always been there for me. Once, after I graduated, I was at the Harris County Detention Center with three other new attorneys. We radicalized the inmates and found ourselves in front of the State Bar Grievance Committee facing charges of "Barratry and Champerty." Nothing came of the charges, but Professor Rosenberg was always a phone call away to help us.

Because of Irene Rosenberg, I have always done some juvenile work and, in 1980, I was chairperson of the newly created State Juvenile Law Section.

Over the years we have kept in touch and she has sent me copies of the articles she has written. I was sorry to hear of her retirement because the Law Center is losing one of its great minds.

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\* Jo Nelson, B.A., University of Houston, 1973; J.D., Bates College of Law, University of Houston, 1975, first Chair of the Juvenile Section of the State Bar of Texas, 1986-1987.

TRUE MENTORING:  
LESSONS LEARNED FROM  
PROFESSOR IRENE MERKER ROSENBERG

*Laura Oren\**

Professor Irene Merker Rosenberg started her legal career after graduating as a Florence Allen Scholar from New York University School of Law (NYU) in 1964. While at NYU, she served on the law review where she spent her time working hard, honing her critical and editorial skills, and debating with Yale L. Rosenberg, the man she was to partner with in marriage and in scholarship. After law school, she first worked as a staff attorney in the Public Health Division of the Department of Health, Education, and Welfare, in Washington, D.C. But she soon found her true calling as a Legal Aid Society attorney representing juveniles charged with delinquency in Bronx, New York. The children that she represented came from grim lives and faced an even more unforgiving legal system. They were fortunate to have Irene Merker Rosenberg as a champion. As a trial attorney, she constructed the test case that led to the crucial ruling in *In re Winship*.<sup>1</sup> Due to her foundation, the Supreme Court held that the reasonable doubt standard applied even to allegedly civil delinquency proceedings.<sup>2</sup> She was Attorney in Charge of the entire Bronx office, and Administrative Attorney in Charge of the division, supervising and training some sixty attorneys.

After she left Legal Aid, Professor Rosenberg briefly practiced criminal law on her own. She arrived at the University of Houston Law Center (then called the Bates School of Law) in January of 1974, where she taught until retiring in the spring of 2009 as the Royce R. Till Professor of Law. While at the Law Center, Irene Merker Rosenberg compiled a remarkable record of teaching and scholarship, winning awards in both areas and

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1. *In re Winship*, 397 U.S. 358, 364, 368 (1970) (holding each material element of a crime must be proved beyond a reasonable doubt in order to convict the accused in a criminal proceeding or in a juvenile adjudication). For a description of Professor Rosenberg's strategy and role in crafting the *Winship* appeal, see Irene Merker Rosenberg, *Winship Redux: 1970 to 1990*, 69 TEX. L. REV. 109, 109–12 (1990).

2. *In re Winship*, 397 U.S. at 367–68.

publishing in some of the top journals of the nation. The mere recitation of those bookends, however, fails to do justice to what she has meant to the Law Center and Houston communities, and to me personally. Irene Merker Rosenberg was my teacher, and then became my colleague and friend. Although I suffer from a general aversion to the term “mentor,” for me she is the exemplar of true mentoring in its best sense. Irene Merker Rosenberg taught by example. Observing her, in conversation with her, reading her scholarship and subjecting mine to her scrutiny, and in meetings with her, I learned many things.

By example, Professor Rosenberg provided inspiration for how to live the scholarly life with passion and how to walk through this world as a human being. Her teachings encompassed lessons in how to read a case; how to put children first in the law; how to nurture passion for the law; how to work with your husband; how to do legal scholarship that I will call “juxtaposive”; how to keep the beacon of constitutional law burning; how to be conscious of gender justice without consciousness raising; how to speak truth to power; how to mentor a colleague; and how to be a loving friend.

I am not even sure why I enrolled in Juvenile Law with Professor Irene Merker Rosenberg in the spring of 1979. I did not intend to represent juveniles in the “civil” delinquency system, nor did I have a particular interest in criminal law. But once there, it was hard to resist being caught up in her methods, insights, and enthusiasm. In 2007, Professors Rosenberg and Marrus published their casebook, *Children and Juvenile Justice*.<sup>3</sup> But when I was a student, Professor Irene Merker Rosenberg was using her assembled unpublished volumes of material, which included the unedited opinions and articles that she wanted us to read. She exposed me to the intensive mining of cases, including their footnotes. She taught me to look for inconsistencies between the stated goals of the legal system and its actual results. From her, I learned that children guilty merely of status offenses but whose parents could not or would not fight for them were likely to go to maximum security lockups. By contrast, those juveniles who were guilty of an underlying serious offense sometimes fared better in the system, provided someone intervened on their behalf. Professor Rosenberg taught me about the hypocrisy of the juvenile system. Predicated on a *parens patriae* rationale, juvenile justice is considered “civil” law, even when it results in the loss of liberty. While this is supposed to redound to the

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3. ELLEN MARRUS & IRENE MERKER ROSENBERG, *CHILDREN AND JUVENILE JUSTICE* (2007).

protection and benefit of children, Professor Rosenberg parsed the cases to reveal quite another lesson: Children somehow got the worst of all worlds.<sup>4</sup> Despite cases like *In re Winship*, children lacked the constitutional protections that adults enjoyed in the criminal law system.<sup>5</sup> At the same time, they suffered loss of liberty for status offenses and were sent to places of danger that did nothing to protect or rehabilitate.<sup>6</sup> I arrived in Professor Irene Merker Rosenberg's Juvenile Law class almost fortuitously. Once there, I welcomed the first few of her many lessons. Professor Rosenberg taught me how to read a case with analytical rigor; she made the intellectual and emotional case for putting children first; and she demonstrated how to turn students on with a passion for teaching law.

After my student years, I became Professor Rosenberg's colleague. It was only then that I came to know the full range of her scholarship. Over more than three decades of publication, Irene Merker Rosenberg has accumulated some of the highest accolades in legal academia. She has published her work in the most highly rated general journals and specialized peer-reviewed outlets, such as the *Michigan Law Review*,<sup>7</sup> the *Columbia Law Review*,<sup>8</sup> the *New York University Law Review*,<sup>9</sup> the *Texas Law Review*,<sup>10</sup> the *Virginia Law Review*,<sup>11</sup> and the *American Journal of Criminal Law*,<sup>12</sup> to name but a few. She has become an icon of

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4. See Rosenberg, *supra* note 1, at 111–12 (calling the “beneficence” of the “so-called rehabilitative” juvenile justice system a “myth”).

5. See Irene Merker Rosenberg & Yale Rosenberg, *The Legacy of the Stubborn and Rebellious Son*, 74 MICH. L. REV. 1097, 1118 (1976) (exposing the low standard of proof and minimal evidentiary requirements involved in many states' proceedings against children charged with juvenile delinquency).

6. See *id.* at 1104–08 (listing the possible consequences of a conviction for a status offense in juvenile court); see also Rosenberg, *supra* note 1, at 111–12 (“The institutions to which the delinquents were sent were truly awful.”).

7. Rosenberg & Rosenberg, *supra* note 5 (examining the modern role of status offense statutes and methods of limiting their negative effect on the children accused of violating them).

8. Irene Merker Rosenberg, *Ingraham v. Wright: The Supreme Court's Whipping Boy*, 78 COLUM. L. REV. 75 (1978) (disparaging the Supreme Court's decision in *Ingraham v. Wright*, 430 U.S. 651 (1977), in which the Court upheld the corporal punishment of school children against constitutional challenge).

9. Irene Merker Rosenberg & Yale L. Rosenberg, *In the Beginning: The Talmudic Rule Against Self-Incrimination*, 63 N.Y.U. L. REV. 955 (1988) (comparing a rule of Talmudic law barring confessions in criminal cases to the American legal system's privilege against self-incrimination).

10. Rosenberg, *supra* note 1 (exploring the *In re Winship* decision and its practical effect on the criminal justice system).

11. Irene Merker Rosenberg, *Stump v. Sparkman: The Doctrine of Judicial Impunity*, 64 VA. L. REV. 833 (1978) (condemning the broad reach of judicial immunity the Supreme Court condoned in *Stump v. Sparkman*, 435 U.S. 349 (1978)).

12. Irene Merker Rosenberg & Yale L. Rosenberg, *Of Miranda and Homely Brides:*

juvenile law scholarship who has consistently pierced the veneer of the changing politics of the day to go to the heart of what children really need and deserve. She has been a sharp and persistent critic of the regime of status offenses for juveniles.<sup>13</sup> At the same time, she has refused to jump on the bandwagon of juvenile court abolitionists.<sup>14</sup>

There are two other lessons that she taught by example: the way in which she co-authored with her husband, the late Professor Yale L. Rosenberg, and the way in which together they produced what I call “juxtaposive” legal scholarship. After the untimely passing of Yale Rosenberg, Irene Merker Rosenberg explained in the pages of this journal what it was like to engage in “co-authoring Rosenberg style.”<sup>15</sup>

As she noted, while common in other disciplines, co-authorship is rare for legal academics, and sometimes even frowned upon. Furthermore, “[n]on-hierarchical co-authorship is even rarer.”<sup>16</sup> Yet, over the course of more than twenty-five years, Irene and Yale pursued a dynamic collaboration that defied convention. They wrote about criminal law, juvenile law, and Jewish law. They wrote lengthy academic articles that achieved outstanding placements in other law reviews<sup>17</sup> and in our own *Houston Law Review*.<sup>18</sup> They peppered the pages of news outlets from the *New York Times*<sup>19</sup> to the *Houston Chronicle*<sup>20</sup> with letters and essays. They wrote apart, and then they brought it together. Irene pushed herself (and everyone around her) to get sentences out on paper as quickly as possible; Yale “wanted to

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*Imperfect Rules for an Imperfect World*, 28 AM. J. CRIM. L. 337 (2001) (analyzing the legal question before the Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), in terms of two competing tenets of Jewish law).

13. *E.g.*, Irene Merker Rosenberg, *Juvenile Status Offender Statutes—New Perspectives on an Old Problem*, 16 U.C. DAVIS L. REV. 283, 285 (1983) (contending juvenile status offender statutes invite “massive state intervention in family life and . . . undermine parental rights”).

14. *E.g.*, Irene Merker Rosenberg, *Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists*, 1993 WIS. L. REV. 163, 165–66 (“The proposed alternative of trial in the adult criminal courts . . . is even worse than what we now have.”).

15. Irene Merker Rosenberg, In Memoriam, *Co-authoring Rosenberg Style*, 39 HOUS. L. REV. 902 (2002).

16. *Id.* at 902.

17. *E.g.*, Irene Merker Rosenberg & Yale L. Rosenberg, *A Modest Proposal for the Abolition of Custodial Confessions*, 68 N.C. L. REV. 69 (1989).

18. Irene Merker Rosenberg & Yale L. Rosenberg, “*Perhaps What Ye Say is Based Only on Conjecture*”—*Circumstantial Evidence, Then and Now*, 31 HOUS. L. REV. 1371 (1995).

19. *See* Irene Merker Rosenberg & Yale L. Rosenberg, Letter to the Editor, *Old Testament Law Doesn’t Sanction Death Penalty*, N.Y. TIMES, Sept. 8, 1986, at A22.

20. *See* Irene Merker Rosenberg & Yale L. Rosenberg, *Don’t Try to Make Bill of Rights “Reasonable,”* HOUS. CHRON., Jan. 9, 1989, at 13A.

cogitate and write perfect sentences.”<sup>21</sup> They talked, dissected, even argued and compromised until the whole soared beyond any mechanical sum of their efforts.

In co-authorship and alone, Irene Merker Rosenberg departed from conventional scholarship. Irene and Yale pioneered what they called comparative studies of Jewish and secular criminal and juvenile law. Rather inelegantly, and stubbornly, I want to call this body of work juxtaposive instead. That’s because the juxtapositions that they explored shook up the reader’s mental framework in special ways. We sometimes hear, or assume, that contemporary secular law is based upon Judeo-Christian precepts, or should be. But that is not what Irene and Yale taught us. Instead, they uncovered the fallacies that lay behind the glib misuse of Old Testament aphorisms to justify an unforgiving modern agenda. In one of my favorite articles, they considered the Talmudic rule against self-incrimination.<sup>22</sup> The Talmud barred confessions nearly across the board, whether coerced or not.<sup>23</sup> The purpose of the Rosenbergs’ examination of the Talmudic rule was not to argue for a similar result in contemporary secular law, which is based on a different philosophy. Rather, it was to lay the two legal systems side by side in a manner designed to dislodge us from pat and unexamined positions.

A decade later, the Rosenbergs mused about the meaning of “eye for eye” and the death penalty.<sup>24</sup> In this piece, they dissected the eye for eye rationale by using the tools of interpretation and context accepted in Jewish law. As it turns out, with all the multiplicity of procedural protections and other rules and regulations governing capital cases, the historical Jewish court called the “Bloody *Sanhedrin*” sentenced only a single defendant to death in what was either a seven-year or even a seventy-year period.<sup>25</sup> After the Rosenbergs finished juxtaposing the reality of Jewish law against the sloppy secular use of the Biblical phrase, the reader cannot help but stop and think about the possible purposes behind the death penalty. We therefore are invited to substitute a deeper analysis for simplistic phrasemaking.

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21. Rosenberg, *supra* note 15, at 903.

22. Rosenberg & Rosenberg, *supra* note 9.

23. *Id.* at 964.

24. Irene Merker Rosenberg & Yale L. Rosenberg, *Lone Star Liberal Musings on “Eye for Eye” and the Death Penalty*, 1998 UTAH L. REV. 505 (1998).

25. *Id.* at 517–18. Jewish Sages debated the relevant period and whether or not even that one death was appropriate. *Id.*

As a colleague, Irene Merker Rosenberg mentored me and many others by directly working with us, as well as by the example that she provided. She was not afraid to be quite direct when directness was merited. When I was working on my first legal article as a faculty member, I was hurrying to get it out in time for the end of the summer submission cycle. But Professor Rosenberg refused to let me mail it out. It was not good enough and it was not ready. Instead, she literally sat over me, forcing me to rewrite the text page by page. That this first article<sup>26</sup> has become somewhat of a classic in my field (which was not hers) is due in no small measure to the true mentoring of Irene Merker Rosenberg. After that first time, I could remove the training wheels on my scholarship bicycle and ride on my own. But Irene was not through with me yet. Just before I was to be considered for tenure, Professor Rosenberg came across a case that she thought was up my alley. She sent me a note directing me to take up the topic; I wrote the article;<sup>27</sup> tenure followed. Nor was I the only beneficiary of Professor Irene Rosenberg's critical eye. Regardless of field, she offered to read the work of any young faculty member. I am sure that all who took her up on that offer appreciated the results as much as I did.

In her passion for the law, Irene Merker Rosenberg taught me something about scholarship and keeping hope alive. It has been difficult sometimes to keep the constitutional faith in an era where the Supreme Court so often seems to have it all wrong. What is the point of analysis that is doomed to disappointment in the short run? But as Professor Rosenberg once told me, times will change. The legal tools that we construct now will persist and be available for use later. Legal criticism is for the long run.

I do not think that Professor Rosenberg would appreciate my claiming to derive from a different generation than she did. While generations are loosely defined as twenty years or so, in recent years, eras fly by much more quickly, and they are sometimes called Generation X or Y or whatever. Perhaps Professor Rosenberg's defining era can be traced to the flowering of criminal law due process jurisprudence in the 1960s. I do not know what she would say about that. I would say that my own might be the 1970s, when I experienced feminist consciousness-raising. Professor Rosenberg, however, did not seem to require consciousness-raising. Instead, her instinct for gender justice

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26. Laura Oren, *Immunity and Accountability in Civil Rights Litigation: Who Should Pay?*, 50 U. PITT. L. REV. 935 (1989).

27. Laura Oren, *Signing Into Heaven: Zinerman v. Burch, Federal Rights, and State Remedies Thirty Years After Monroe v. Pape*, 40 EMORY L.J. 1 (1991).

arose out of the same wellspring that led her to advocate for children and for adult criminal defendants. It was constitutionally born and bred into her.

In all facets of her advocacy and scholarship, Irene Merker Rosenberg never hesitated to “speak truth to power,” as the saying goes. This extended even to the internal workings of the Law Center. I can hear an echo in my head of faculty meetings during prior administrations when she spoke up from the ranks. “Dean,” she would say, and then she would continue, bringing up those very uncomfortable criticisms that no authority figure wanted to hear and no other mere faculty member had the courage (or Bronx *chutzpah*) to talk about. She could be polite, but she did not shrink from calling power to account.

Perhaps most important of all, Irene Merker Rosenberg has taught and continues to teach me how to live as a loving friend. Her heart is large and encompasses many in and outside of the Law Center community. She is truly incapable of meeting anyone on even the most casual basis without engaging them as people. I have heard her get into extensive discussions with delivery people. As a friend, she is fiercely loyal and very generous. She feeds people, houses them, takes their rabbits into her pet-free environment, and encourages and chides each of us in turn. I am truly grateful for the mentoring and the friendship, and for the lessons that I have learned from Irene Merker Rosenberg.