AZ AT Q&A

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Dean at Center Stage

ASU Law's Paul Schiff Berman

The Sandra Day O'Connor Law School at ASU saw a change in leadership in 2008. We sat down recently with its new dean, ***Paul Schiff Berman****, to talk about the school and his goals, as well as President Michael Crow, globalization—and even running a theater company. This is the first of our conversations with Arizona's three law school deans.*

Arizona Attorney: How old are you?

Paul Berman: 42.

AzAt: You're kind of young for this line of work—deaning?

Berman: Yes. But it was interesting to me when I met the various deans of all the colleges at ASU, that none of them had ever been deans before. That told me that [ASU] President [Michael] Crow was not interested in hiring someone who's already been a dean or is currently a dean who can say, "I raised X amount of money over the last 5 or 10 years," and so forth.

He clearly is looking for entrepreneurial and innovative leadership that doesn't necessarily follow the traditional models. That's part of what attracted me to come.

AzAt: What made you think you'd like to be a dean?

Berman: I was not on the dean market generally. I had thought that I might at some point in the future possibly want to become a dean, but I wasn't looking last year, broadly. But ASU contacted me, and the more I found out about the opportunity, the more excited I became.

What excited me was the vision of transformation that the university has, the already-strong position that the law school is in, which meant that there was a lot of upside potential, and the excitement that comes from being the only fully accredited law school in the fifth-largest metropolitan area in the country—which is an opportunity that doesn't exist anywhere else.

In any other large city in this country, I would be heading a law school that would be one of five or six law schools, whereas here we are essentially the only game in town. And I would like to make the case to the Phoenix metropolitan area that if it is going to be a world-class city, it needs to have a world-class law school, whether you are an alum of that law school or not. It's part of what makes a city attractive and innovative and high-functioning.

It seemed to me that both on the university level and at the law school itself, there was an opening for real transformational ideas, that we could try to create a law school that doesn't look like every other law school in the country. That was an extraordinarily exciting opportunity that I wasn't sure I would get, even if I waited six or seven years.

AzAt: When you began looking at the job, the economy was in a far better place than it is now. Will many of your ideas have to be shelved?

Berman: We have a large number of new initiatives, and I believe a fair number of them can be implemented, though it's possible they will need to be implemented on a slower schedule. But I don't believe in waiting until all of the resources are in place before dreaming and thinking of innovative ideas. You have to come up with the ideas, start implementing them even in a small way, and hope that the energy that is generated by the idea will create its own momentum. So I don't think that this moment, this economic crisis, prevents us from doing the kind of transformational thinking that I was looking to do.

AzAt: How does the bad economy affect diversity pipeline issues?

Berman: I'd expect a greater number of applicants from diverse backgrounds, and therefore I suspect we will have a strong and diverse group applying. The law school has been extremely good in terms of the diversity of its student body over the years, and I would hope that we would be able to keep that commitment over time.

AzAt: And how's the pipeline for recent graduates into jobs?

Berman: It's a tough market for the people who just graduated. It's going to be a tough

Paul Schiff Berman

Dean: Sandra Day O'Connor College of Law at ASU
Previously the Jesse Root Professor of Law at the University of Connecticut School of Law
A.B., Princeton University, 1988
J.D., New York University School of Law, 1995

Clerkships with: Then-Chief Judge Harry T. Edwards, U.S. Court of Appeals for the District of Columbia Circuit, and Associate Justice Ruth Bader Ginsburg, United States Supreme Court

Previously: Before law school, he was a professional theater director in New York City and Artistic Director of Spin Theater. He was also Administrative Director of The Wooster Group and of Richard Foreman's Ontological–Hysteric Theater at St. Mark's Church.

Married to: ASU Law Professor Laura Dickinson, who also serves as the Faculty Director of the Center for Transnational Public–Private Governance at the law school

Son: Julien, age 5

market for the people who are about to graduate this spring; that's going to be true nationwide.

One of my initiatives to try to help students is that we have created a post-graduate fellowship program, under which we will provide a small stipend to students who are having difficulty finding a job, as long as they intern for a public-interest organization or government agency, for 8 to 12 weeks.

The idea is that it is a foot in the door of the legal market for the student, and maybe they will do such a great job that maybe they will be hired at that entity. But even if they don't, they'll have a letter of recommendation, they'll have a line on their resume.

It provides students to do public interest and government work at a time when those entities really need help—so it helps the world, as well.

AZAT: When does that begin?

BERMAN: I have already instituted it for the group of graduates who as of now have not been able to find a job. We're in the process of placing them now.

AZAT: Have you had any surprises as dean yet?

BERMAN: Coming from Connecticut, I am surprised how much engagement there is in the student body in public pro bono and public interest extracurricular activities. There is a much higher proportion of involvement in community outreach activities than I was used to in Connecticut.

AZAT: Why is that?

BERMAN: I really have no idea, but it's very exciting.

AZAT: You had a distinguished law school career—you even earned the highest cumulative GPA at NYU. So I have to ask: What was your worst course in law school, the one that made you knock your head against the wall?

BERMAN: I think I did worst on first-year, first-semester criminal law, possibly because that was the very first exam I took.

AZAT: Did you come to like the subject later?

BERMAN: I actually thought when I went to law school that I wanted to be a public defender. So I interned in the second semester of my first year with a public defender's office in New York City. I decided based on that semester that although I think the work that those lawyers are doing is heroic, that it was not something that I thought I could do without real severe burnout.

AZAT: What came next?

BERMAN: Then I thought I might do civil rights law, so I interned with a private civil rights attorney during my first-year summer. And I also did pro bono civil rights work in the year between my two clerkships. But I loved law school so much that I had the itch to come back.

AZAT: And you clerked for Justice Ruth Bader Ginsburg on the U.S. Supreme Court. Are there any particular memories of your clerkship?

BERMAN: It was an extraordinary experience to come into that building every day. I remember one of the outgoing clerks telling us that every once in awhile during our clerkship, instead of going in the side employees' entrance, we should walk up the front steps and through the grand columns, just to remind ourselves where we are—so that it's not just going into the office and being anxious about all the work that's piling up, but that you take a moment and remember what you're doing.

AZAT: And the Justice?

BERMAN: Justice Ginsburg was wonderful to work for. She's one of the most detailed and thorough people I've ever encountered. It was a great learning experience.

AZAT: In college, you were an anthropology major?

BERMAN: Yes, cultural anthropology.

AZAT: Did you consider law school at the time?

BERMAN: No, I was a theater director undergrad. I spent every waking moment that I wasn't in classes in the student-run theater at Princeton. All I wanted to do after graduating was to form my own theater company in New York and direct shows, which I did.

It wasn't until much later that I even thought about law school.

So my anthropology work at the time was focused on theater and looking at political theater in cultural context—that was my senior thesis. But there's no doubt that anthropology provided me with a lens for viewing the world that I brought in to my legal work, and I now bring in to my administrative work.

AZAT: I've interviewed a lot of lawyers and even deans. I think you're the only one who's ever been cited in *The Village Voice*.

BERMAN: [laughs] That may be true.

AZAT: In fact, I read a great quote praising you for putting on work that constituted "nonlinear ideaparades." The critic said you were dedicated to "slickly reimagining theatrical *auteurs*." Was that your goal?

BERMAN: My goal was to work with an ongoing group of collaborators so that we could build a shared aesthetic, and then to create shows that were fully imagined worlds. They were worlds that were packed every moment with as much visceral theatrical excitement as I could build into them.

AZAT: Is that the connection between theater and deaning?

BERMAN: Yes. I was a director, and we created our own shows, usually in a long rehearsal process, so there wasn't a prescripted play. And if you're creating shows like that, two things follow, which are relevant to deaning.

One is that you're trying to create space in the room to energize other people to be creative. When someone then has an idea, you don't squelch that idea, you run with it. Some ideas will fall away over time, some ideas will get transformed into something else, and some ideas will make it into the final product. But you don't know which one they'll be at the moment of inception. So you need to provide the energy and enthusiasm for it. And I find that I'm doing the same thing as dean. When I'm out in the community or here at the law school, and somebody has an initiative, a proposal, when students come to me with some suggestion, however small, about how to improve the law school, I jump on it and try to put it into practice as quickly as possible. That I think comes from the same ethic of being willing to try stuff.

AZAT: And the second connection?

BERMAN: We built shows around the strengths and weaknesses of the personnel we had, as opposed to trying to force people into a role that had been pre-written.

Again, if you're managing staff, faculty, particularly tenured faculty members for whom the relationship [with their dean] is not fully hierarchical, the goal is to construct structures that will make as full use as possible of their strengths and de-emphasize the things that they are less good at or less interested in doing.

Paul Schiff Berman

Sandra Day O'Connor College of Law at ASU

So I find, in sum, that being a dean is actually very similar to being a theater director in fundamental ways.

AZAT: I go back to that critic's word "reimagining." In the theater, in your scholarship, and perhaps why President Crow hired you, that word keeps coming up.

BERMAN: That's true. I was interested as a theater director in constructing worlds that were not like the world as it is. One of the things that I loved about anthropology was that it was a celebration of human creativity and diversity, so it was a way of recognizing that the expected way things are in your particular culture is not the only way they could be. If you get outside the box of your culture, you might see lots of other alternative possibilities. And now, as dean, I'm looking for innovative ways to reimagine what legal education could be, and particularly what public legal education could be in this country, at what I think is a particularly crucial crossroads for public legal education.

> I'm looking for innovative ways to reimagine what legal education could be.

AZAT: Well, I went to law school, and its administration—and that of pretty much every law school—claims that "This is not your grandfather's law school." What evidence is there that it's finally true at ASU?

BERMAN: You'll have to decide that 5 or 10 years from now. But I hope it's true.

AZAT: Well, you've moved into a university trying to broaden a name for itself. How do you define what the school calls the "New American University"?

BERMAN: One of the things that we have seen again and again in leaders, and even in the most recent presidential election, is that the narratives—the words, the rhetoric that is used to describe a project, a community, a country—matter. So the words that President Crow keeps using—New American University; the sense of community embeddedness; focus on access, excellence and impact—are tremendously evocative, and they energize people, even when people have different ideas of exactly what they mean.

For me, what I'm looking to do is expand the notion of what counts as legal education to include not only the training of lawyers for practice with the J.D. degree, which will always be at the core of what law schools are doing. But also thinking about how to serve people who are not planning to be lawyers, but who could use at least a year of legal training in targeted master's and LL.M. programs designed for health care professionals, or for businesspeople, or designers, or urban planners, or people in education.

Also, we should include undergraduates. Currently, there is no law school that I am aware of, with the partial exception of UC–Berkeley, that has a full undergraduate division as part of the law school.

I think that every American citizen should have to do at least one year of legal training—both to get a sense of the political institutions that are so fundamental to American culture, but also to have that prototypical first-year law school experience where you have a gut reaction that something is the most fair or just response to a problem, and then you are immediately asked to articulate five, six, seven other ways of looking at the problem. At its core, that is a training on how to be a tolerant member of a multicultural democracy. It may be at the end of the day that you end up with the same value system and the same idea of what's right and wrong that you had going in, but if you're forced to articulate multiple other points of view, my hope is that your position will be a little bit more nuanced, a little bit more thoughtful, a little bit more tolerant of those who have other positions, because you were forced to articulate them. I think that's a core value that we should be inculcating in undergraduates, as well.

AZAT: But we're talking about law school here, which is not known for broadening views or fostering tolerance. Can it provide that experience?

BERMAN: I actually think that the core common law method that is done in the first year of law school should and does usually provide that kind of education. I think it does it fairly well, and recently the Carnegie Foundation for the Advancement of Teaching report [*Educating Lawyers: Preparation for the Profession of Law,* 2007, available at www.carnegiefoundation.org] said that. The problem is then what happens in terms of training lawyers for the multiple areas for which they might want or need training. There, I'd like to see the law school move in the direction of creating pathways through legal education that students could have more of a role in designing.

This law school already has an extraordinarily large number of clinics. We have eight for a fairly small student body, and that's terrific. So from the point of view of training people in hands-on legal skills training, I think we do pretty well, if students are interested in that. I'd like to see us expand a little bit in non-litigation clinics. We have one, the Technology Ventures Services Group, where students work with startups and entrepreneurs on their business plan and articles of incorporation, startup legal issues and intellectual property issues. I'd love to see us have some sort of land use or land transaction clinic that could do pro bono, public–private partnership real estate deals. It would have benefit for the community and connect the law school with the community, and give students a transactional hands-on experience.

We're also trying to create a juvenile legal assistance program with the juvenile courts.

AZAT: And beyond the skills side?

BERMAN: It seems to me that the public law school should also have a greater role in the major public policy debates of our day, either through providing research and white-paper-type documents, like the Morrison Institute does, or providing very specific research assistance for government or corporations. Or by convening, not just academic conferences, but higher-profile summit meetings of policy makers, different stakeholders, different constituencies, to try to address large social and political issues facing the country.

One of the things that we're talking about is creating a series of public policy incubators or think tanks that would allow students to work with faculty members not only from the law school but from other units in the university, and work in a public

policy vein that is not just about a litigation outcome but is about digesting a lot of data, working with multiple constituencies that may disagree, trying to think through larger policy solutions, and writing a document that is not just a legal brief. A lot of what lawyers do nowadays is not just litigation; it's lobbying the legislature, talking to zoning boards, giving testimony. In a number of different areas—sustainability issues, land use planning, immigration, Indian law, law and science, genomics, places where we have tremendous amounts of strength and a distinctive comparative advantage—we should be a go-to place nationally for people who want to hear cutting-edge information, gather to work out innovative solutions that might work not only in Arizona but be shopped around nationally.

That seems to me to be at the core of the kind of community embeddedness that the New American University represents, and it is certainly a way of building the national profile of the law school.

AZAT: How has your faculty responded to this re-imagining?

BERMAN: The faculty as a whole I have found to be poised and ready to do transformational thinking about this law school. Trish White, the former dean, did a wonderful job. I take over a law school that does not have major crises or problems to be solved. I think everybody here is in general ready to think creatively and engage in re-imagining legal education.

When it comes to the specific details of what that might mean, there are likely to be some faculty who will more naturally gravitate in certain directions, and some who will gravitate in other directions. I don't want to force someone whose strength is in one area to do something in a totally different area or with a different style just because I'm trying to impose some hierarchical and predetermined outcome. Law schools have to be sufficiently multivariate that I shouldn't have to do that because there will be need for different kinds of training. There will be people who really want straight-ahead legal skills training for certain kinds of practice. There will be people who want more of a policy approach. There will be people who want more of a graduate education–jurisprudence–philosophy approach. There will be people who want to specialize in a particular area, so we're creating, for instance, a law and sustainability program. Those could provide packages of courses, both here and elsewhere in the university, for those students.

We're not going to be the strongest law school at every single area. But law schools have to be sufficiently multidimensional. So the transformation has to do with loosening up the curriculum to allow different paths through it, as opposed to forcing all of the faculty to do one kind of teaching or one kind of scholarship.

AZAT: You have a new associate dean for clinical affairs "and the profession." What do those last three words mean?

BERMAN: One of the first things I did as dean was create two new associate deans. I named Doug Sylvester associate dean for faculty research and development, and I named Cathy O'Grady associate dean for clinical affairs and the profession.

Partly I wanted to emphasize that I have a collaborative relationship and process with the faculty, and partly I wanted to emphasize both the importance of faculty scholarship and connection with practice.

Cathy oversees the clinics. But I wanted her to think about the web of issues related to law schools as pre-professional training, what it means to enter the profession. For example, she is working to rethink how we teach professional responsibility, which is a course that students tend not to like, even though they should, because it's at the core of not just how the society operates but how happy lawyers are made, it seems to me.

She is also involved with student disciplinary issues, the externship program, and the wide range of issues having to do with how law students become professionals and connect with the profession. I certainly think that's an important part of what law schools do, and I thought it was worth having someone who was not just putting out fires but doing some long-term strategic thinking about how we could do that part of our job better.

AZAT: Might you consider summits on law-practice issues, like alternatives to the billable hour?

BERMAN: That's a good thought. I do consider practicing lawyers as part of our audience. I think that it's extraordinarily important—and this is part of the New American University—for the law school to see itself as connected with our local community. We should be a national and international player, but it is crucial that there is a connection with the practicing bar.

> We should be a go-to place nationally for people who want to hear cutting-edge information.

We are looking to expand our continuing legal education offerings and to do that not just in the traditional ways but also broader sessions on the sorts of issues you're talking about: How do we practice? Are there other models?

We're also proposing to the Supreme Court that we do training for out-of-state lawyers who will soon get reciprocity but have to do a course on Arizona law.

AZAT: A portion of your scholarship has been on globalization. Has that topic taken a beating lately in economic hard times?

BERMAN: No. I think what we're seeing is the interconnection of our economic and political systems. What happens here in the local real estate market has reverberations in China. We're also seeing the possibility—the requirement—that solutions must be global. We're not going to pull out of this economic crisis or pursue any particular public policy agenda without cooperation and collaboration from other countries.

And not just other countries, but other entities within countries. It's not all done state to state. One of the observations of my scholarship is that a lot of the regulatory activity that ends up mattering in the world is done by supranational, subnational or transnational entities, like corporations or nongovernmental organizations, or networks of mayors, or religious organizations,

or private military contractors—none of whom fit the classical model of where you would look for law or policy.

AZAT: You've described international law as a term that is too constricting a model.

BERMAN: Yes. Because that has historically been about the relationships among states. It has looked at states as the only players who were relevant. It's generally had a fairly cramped notion of what counts as a state interest—usually power and money. It has focused all attention on treaties, rules, protocols, conventions, that states enter into.

But when you look at what actually matters to businesses, to human rights activists, to people on the ground, you see that there are lots and lots of other actors and other regimes that end up having as much as or more influence as the official state-sanctioned entity.

AZAT: There is much talk about globalization, as well as plurality and diversity. But are they in conflict? How do you protect plural cultures when globalization is largely about commodification rather than diversity?

BERMAN: Globalization to me is not synonymous with universalism. It is itself an understanding that there are many, many diverse lawmakers, if you will, and that you are not going to eradicate them, either through conquest or through international organizations. Therefore, we need to think about governance structures that are neither about walled-off, territorially based nation-states, on the one hand, or about creating universal rules that apply to everyone, but something in between, which has to do with ongoing engagement among multiple actors to try to bring people to the table and involve them in multiple levels of governance, recognizing that you'll never get total agreement, but that you might possibly have a chance of getting acquiescence in processes of dialogue, of accommodation, of compromise. That is going to be the only hope we have of building a structure where we can all get along, but where we recognize that we're never going to be identical.

In that sense, I draw from a political theorist who speaks of the imagined city, the ideal vision of a city. A place where people with wildly different backgrounds, ways of dressing, ways of eating, ways of thinking about the world, manage to co-exist in very close proximity to each other without trying to transform each other into all being the same.

AZAT: Who is that theorist?

BERMAN: Iris Marion Young [a University of Chicago professor in political science, who died in 2006]. She calls it "the unoppressive city."

AZAT: Is this a tough sell in our local context? At ASU, a lot of the vision is top-down vision of one white, male, East Coast, Ivy League-background president—Michael Crow.

BERMAN: I would say that to have a plural governance structure doesn't mean that there's no structure at all and no hierarchy at all. It certainly is true for organizations that without some sort of a vision at the top, it's often hard to pursue any particular path. So I think the key is not to focus on who the person is who may be running an institution, but how aware of multiplicity that person is, how open to multiple visions and multiple ideas they are, how many structures they create that allow for discourse, what their vision is as to how the organization connects with the community.

My sense is, on those metrics, ASU has done quite well over the past few years.

AZAT: Maybe I'm focusing too much on the "traditional state actors" and not enough on the web of others.

BERMAN: That could be.

AZAT: Who is your greatest influence?

BERMAN: My greatest intellectual influence was Kay Warren, who was my anthropology adviser at Princeton and is now at Brown University. I certainly didn't know what anthropology was when I went to Princeton. The whole idea of looking at not just official law but at how law actually operates on the ground is an anthropological notion. The idea that there are multiple actors beyond the state, and to look at the meaning-making that goes on within legal discourse, is an anthropological notion. To study the process of interaction among multiple groups is also an anthropological notion.

None of that would have been the way I approached law had I not come from anthropology.

AZAT: You just held a town hall meeting with students in October?

BERMAN: Yes, and I intend to do that at least twice a year. In addition, I have dean–student drop-in hours every week, where students can come, starting at 4:30, without an appointment, and I will stay here as long as there are students to talk with me. I think it is extremely important for students to feel a connection with the law school administration—even when what I have to say may not be what they want to hear.

And students have great ideas. Often, there are things that I actually can do. They don't cost much money—maybe it's a course they'd like taught.

AZAT: Is there an example?

BERMAN: I had a student e-mail me because during on-campus interviewing period, when the students are dressed up, they said it would be great if we had a coat hook so that people could hang up their jackets while they eat. I thought that was a great idea, and a coat rack doesn't cost me very much money, and I put it downstairs. It's useful because the law students feel as if I care about their concerns, and it makes the law school better.

AZAT: Another Phoenix-area law school now offers part-time and evening programs. Will you do the same?

BERMAN: We're having a faculty discussion in December. I am hoping to create a flexible scheduling option that would allow somebody to take the first year of law school over a couple of years and have enough classes in the 4:00-6:00 period that they could do it while they had a job.

Rather than have a large-scale debate about whether we should have an evening program, we should offer the option to be flexible and see how many people there are out there who would satisfy our normal admission criteria but who are currently not going to the law school because we don't have that flexibility. Maybe that's 5 people; maybe that's 70 people. If it turns out to be consistently 50 people, maybe we'll have an evening division because we'll have an evening division. If it turns out to be 5 people, then fine; we'll have this flexible option for those 5 people.

AZAT: Does that illustrate your approach?

BERMAN: That's how I want to move forward as a law school. I don't want to sit around and say, "If we had money, we could do X." I want to just do things. If you develop energy and enthusiasm, a sense of transformation, the money will work itself out, and we will find the resources to do the things that everyone is excited about.