

**OH MY GOD, IT'S ALIVE!**Gary Minda<sup>1</sup>

I can still recall the feeling and the sounds of what it was like being there when I arrived at the American Association Law School Conference in San Francisco in January of 1984. There was a buzz of conversations about Critical Legal Studies having some sort of counter-event on the politics of legal education, covering institutional reform, clinical issues, and law and economics issues. It was exciting, knowing that something different and perhaps dangerous was about to happen. I soon found what I was looking for — a small group of *Crits*, what members of the Conference of Critical Legal Studies (CCLS) were warmly called, who were in the process of putting together an [underground] newspaper called the *Lizard*. Before I knew it, I was enmeshed in helping to bring the infamous *Lizard* to the AALS.

According to the disclaimer published in each issue, the *Lizard* represented the views of a small faction within CLS, who prided in calling themselves the “True Left.” The *Lizard* did not represent the views of the CCLS which were said to be “far more responsible and boring than anything we would be interested in printing.” The disclaimer emphasized that “[s]ince most CLS people would dislike this paper were they to become familiar with it, it would be gross guilt by association to treat them as co-conspirators.” Of course, it was all hogwash. That disclaimer was probably something the FTC would regard as a classic example of bait and switch false advertising; the truth being that if you came and got involved you would be guilty by association, and your guilt would be shared by all members of CCLS [and if you didn’t have tenure — well start packing.]

On the other hand, the *Lizard* was absolutely truthful in proclaiming: “If there is a warm, supportive community to be found anywhere in academia, it is in critical legal studies.” One must remember that it was the decade of greed and *me-ism* and Reaganism; alienation reigned high in legal education as it does today, and it was easy to go into denial about what was happening in the dean’s office at most law schools. Disco was still popular and Wall Street was becoming a force in the law school, but for a few of us who stumbled into Critical Legal Studies, it was also strangely like the sixties. One could find the feeling of community of Left politics at CLS gatherings — CCLS conferences and

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<sup>1</sup> Professor of Law, Brooklyn Law School.

summer camps — that brought people together under the banner of resistance to the structures of unjustified hierarchy. Going to a CCLS summer camp meeting was sort of like going to a Grateful Dead concert and finding the counterculture of the sixties alive and still kicking even if you knew that when the concert was over you would be returning to the culture of Ronald Reagan. Strange is the only word that comes close to describing what it was really like.

For many of us a moment of truth would be faced sooner or later — you either go into self-denial and hope you forget what you know to be true and become another Dworkin pod or maybe an eco-techno head or you remain silent and hope nobody notices. A lot depended on your identity and where you came from. If you were a woman, person of color, or a white man who grew up in the inner city of Detroit or had Duncan Kennedy during your first year at Harvard, chances are you would gravitate toward Critical Legal Studies. I was one of them, but in some ways I was no different than you today. I had found myself behind a big desk in a small office and I wondered if I would become just another pod [or maybe just a pea]. I was longing for community, and I hoped that I might find one by looking for people who I could agree with and feel that I was part of something greater than my tenure and personal successes (or failures). I really didn't have a clue about how to go exactly, except I knew I felt at home with CLS folks. My feelings of longing were always especially acute when I attended AALS meetings where it seemed that people were more interested in your name tag and the identity of your school than getting to know you as a person. But at CLS meetings, the conversation was really interesting. [For the first time I felt that the ideal of academia was really alive with people debating and arguing about all kinds of things. Habermas would have felt that communicative action had finally reached America or maybe he would have boycotted the group for fear of getting tainted by the communicative action.]

I have to admit that I had moments [when I thought that maybe I could use CLS for gaining] fame and success. But when I came to my senses I knew that I was [deluded by those fleeting thoughts]. I was way too pedestrian, too non-Ivy league, [and my association with CLS would be like getting bird flu]. No, fame and success was never in the cards. If you didn't have the right resumé and the right people anointing then you needed a different strategy and that too was probably what brought me to CLS. Sure, you could stay outside and regard yourself as just a "fellow traveler," but if you came to CLS meetings and hung out and got involved, you soon found that you were "in" and whether you liked it or not your colleagues back home would start looking at you as if you were reptilian.

"Oh my God, it's alive!" read the story line on page two of the first edition of the *Lizard* heading up a story on the incredible

debates about theory within CLS. On the front page was a picture of a frog and lots of large bold words like OOPS, FREE GARBAGE and IS SUPERKID JUST A MURDERING BRAT? — printed on an angle between the columns of a story entitled: “36 Ways to Qualify for a Job You Want!” Page 3 featured a column called “Astounding Revelations” and a letter to Ann Slanders from Mr. Nice Guy who had accepted a teaching job at a very conservative law school and who was having a difficult time trying to fit in by hiding his true politics. (Ann Slanders wrote a long, supportive letter giving Mr. Nice Guy some opposition existence advice — go ahead if necessary and conform to survive, but find an ally and get involved with people of the same mind at other schools and support your students who identify with your views etc. etc.)

You would have had to be there to get the full experience of the *Lizard*. To be there standing in the halls of the conference hotel handing out copies of the *Lizard* to attendees captured for me, at least for a brief moment, the heat of the eighties in legal education. I am not saying that the earth moved or that real truth was revealed — no, nothing like that; rather it was a feeling that you had when all of the sudden you knew that you could never go back and replay the tape and become a Dworkin wanna-be. *Zap* — you were one of them and whether you liked it or not you would be forever Crit in the eyes of your conservative friends who would now look the other way when you passed each other in the halls of conference meetings. Academic freedom only goes so far in our business. What made it all worthwhile was the feeling of unity and community, even if it was with a bunch of people that your colleagues back home would call the “crazies.” It was a real trip; not unlike the experience of walking down the street in Moody Texas in 1968 with long hair and bell bottom jeans. It felt cool but you knew at any moment someone might take off your head.

I am not sure who had the idea to bring the *Lizard* to the AALS conference but as I recall the organizing force behind the idea was a small ragtag group of crits inspired by the usual suspects, mostly from Harvard. Morton (Morty) Horowitz, a famous CLS heavy from Harvard, was at the conference, but he was definitely against the idea and was not happy that we were doing it. Horowitz was concerned that CLS was already getting a bad name in the profession and that trashing the holy conference of the AALS would be grounds for further repression at the law schools where young Crits were coming up for tenure. He was right to be concerned. By 1984 a backlash against CLS was mounting, and it was becoming harder for people associated with CLS to get jobs. On the other hand, there was at this time a lot of interest in CLS, and it seemed like a good idea to do something at the AALS conference, and there was this saying in CLS circles about letting the proverbial kettle boil on the stove (whatever that meant). Anyway, it would be a lot of fun to try to open up the AALS audience to the possibility of self-governance and to [begin]

a discourse about the politics of legal education. Can't fault CLS for wanting that, right?

We met in [a conference] hotel room, and we worked into the wee hours of night. [One of the heavies from Harvard] did a lot of the editing but everyone who participated in the project wrote for the newspaper. All submissions were accepted and published! The paper was printed on legal size paper and was six or seven pages in length containing single spaced columns with print on each side of the page—placed between pictures brought from the Cambridge press called AFAR. [The basic] idea [was to model] the [Lizard] after a supermarket gossip tabloid like the National Enquirer or one of the lesser known gossip rags with lots of pictures situated on angles and advertising slogans like “Weight-Loss!” and “Guaranteed.” There was a lot of give and take about each of the pieces published, and everything was polished before publication. [The copy was reprinted locally at a college for] distribution. The next morning we all met in the conference hotel and handed out the *Lizard*. I can still recall the quizzical expression of those I personally handed a copy of the *Lizard*. There I stood, sleep deprived, slightly hung over, smiling and looking self-satisfied in the hotel conference hall, handing a copy of the *Lizard* to the likes of Paul Carrington. Not a very great career move, and I am definitely saying that you should not do this if you do not have tenure or if you have any hopes of becoming a famous legal philosopher [or maybe just get a job at Cardozo].

I'm not sure who had the idea of calling the paper *Lizard*, though it probably had something to do with the complaint that CLS was constantly changing its position much like the changing color of a chameleon. No one had a picture of a chameleon or a lizard so a picture of a frog was used, and it became the pictorial symbol of the *Lizard* distributed at the AALS. There were three editions published on three consecutive days. No names were used to identify authors and to this day no one can say for sure who wrote what. But everyone did write something. There were a number of “reporters” who were supposed to write stories on the various section meetings at the conference along with a number of essays on Critical Legal Studies, law and economics, and legal education.

There was a particularly controversial letter to Ann Slanders involving an exchange on sexual relations between a male law teacher and female students. The romance piece stirred up some internal debate about whether it should be published, but the decision was reached that on balance it would be better to “open up the issue in a flawed way than to permit it to remain submerged.” The letter was entitled “Forbidden Love,” and it was written by a male law professor who identified himself only as “Unfamiliar Longings.” Unfamiliar Longings explained that he was in the midst of breaking up with his wife and that he had had

several “crushes” with female law students over his career and was now “falling in love” with one of his current objects of desire. Unfamiliar asked Slanders for her help. What to do? Ann Slanders first explained that her name was misleading because she was really a man and therefore he would not be able to give help “in thinking about the feminist dimension of your problem from what a feminist woman Slanders might have been able to give.” Slanders also admitted that he too was a law teacher, divorced, and that he had had two affairs with students, “one of which ended disastrously for us both (though not publicly, thank God).” Getting that straight, Slanders approached Unfamiliar’s situation “abstractly” (as male *crits* typically [did back then]), to see what “critical legal studies has to say about this situation.”

Slanders first waxed and waned about the public/private dichotomy, a favorite CLS topic, reaching the conclusion that “[w]orkplace politics are real politics” and “[w]orkplace politics are oedipal/erotic politics.” Having explained this important CLS point, Slanders concluded that it was quite clear accordingly that Unfamiliar should reject the absolutist position that says that “a male teacher should never sleep with a female student, period.” That would be too rational, and it [had to be] trashed. But Slanders then surprisingly advised caution; the student “might be intimidated by your status as a law professor at a ‘good’ school, [but then] your student might see you as the semi-competent plodder you really are, and love you anyway.” Slanders was especially alarmed by the fact that Unfamiliar Longings was thinking of beginning an affair while in the middle of a break up with his wife. “Men I’ve known,” Slanders said, “have tended to be pretty crazy during this phase of things, capable of doing a lot of damage before they catch up with their feelings.” However, in keeping with CLS methodology, Slanders ended with straight-out CLS phenomenological wisdom: “. . . real trust and warmth and mutual confirmation just *appear* unpredictably in relationships. Maybe that’s about to happen to you, and if so may your good fortune be lasting.” (After reading that story before it went to print some of us began to wonder if we should have joined Morty and boycotted the *Lizard*. But then we realized that it would be no good, we were in this to the bitter end.)

There were a number of follow up letters addressed to Ann Slanders about the Forbidden Love column written on stationery from the San Francisco Hilton & Tower (the official AALS hotel) and reprinted in the *Lizard*. One sympathetic but disappointed responder complained about the insufficiency of Slander’s advice, stating that Slanders should have downplayed his “male point of view” — just “one more in a million conversations in which men puzzle about what they are allowed to *do*.” The letter also strongly chastised Slanders for failing to condemn the affair, arguing that it would have been better if Slanders had stated that “it would be dangerous and very likely immoral for him to proceed further into

the affair, and that *he shouldn't do it.*" Finally, the letter ended by raising the obviously correct question: "[Would the victim of Unfamiliar Longings receive] less or just another kind of education than he would have gotten had he directed his longings somewhere else." The letter was signed, Sincerely Disappointed.

Another response letter to Ann Slanders, also written on the AALS hotel stationery and reprinted in the *Lizard*, was from a male law professor who was concerned about process. The letter went on to point out that law teaching creates a dynamic whereby students may be influenced by charismatic teachers and that the power to grade gives us teachers real power over them. The letter admonished that even friendship relationships between student [and faculty] are likely to be tainted by the student/teacher process and that teachers can never hope to become true equals and friends with their students. The author signed the letter "Concerned About Process," and ended with advice that Unfamiliar should "stay away" from his students. All in all, one is left wondering about the dynamics of the pro and con argument, and it was clear to this reader that the Ann Slanders column had made a major contribution to what was an extremely sensitive and indeterminate issue, and it was worth printing, even though it was unfortunate that some feminists within CLS [stopped talking to the responsible males].

One story about the Professional Responsibility Section noted how the discussion was "beautifully balanced shadow-play . . . nobody [knew] the rules, let alone obey[ed] them." The reporter went on to explain: "There seems to be 3 reasons for this state of suspended disbelief: 1) Everybody really knows that ethics is not about rules which affect behavior; 2) People are just using the rules to proselytize for, and justify, a particular picture of lawyers — but 3) It would be embarrassing to admit it." The reporter then ended with the following observation: "It would have been even more embarrassing to admit another 3 things: 1) 70% of the population don't receive adequate legal services; this is one manifestation of a pretty excremental society; 2) Law teachers are playing at being reformers by advocating marginal adjustments to irrelevant, incoherent rules about confidentiality; 3) By doing this, among other things, we bear a substantial moral responsibility for a twisted social order which lawyers do much to maintain. Come to think of it, no wonder it was a shadow-play." You have to admit that this one was hot. It was also something that yells out for respect. Except for the "excremental society" reference, this story was something that might find its way into a mid-level law review starving for copy. Who can say for sure?

Indeed there were a number of first-rate scholarly submissions published in the pages of the *Lizard*. A story in the *Lizard* No. 1, entitled "Debates About Theory Within Critical Legal Studies," contained a revealing exposition about the recurring CLS debates between the instrumentals and irrationalists — or the

Northerners and Southerners, as Duncan Kennedy named the two positions for some irrational reason. I will stick with the names used in the *Lizard* article. The instrumentalist camp sees power in society exercised in the domination of specific groups over others (say, capitalists over workers) and reflected in the distribution of wealth and decision-making authority. Legal rules are said to be “instruments” of this domination structured by race, class and gender. The irrationalist, on the other hand, finds legal rules to be much too marginal in their effect and too indeterminate and incoherent in their content to be instrumentally necessary for any particular social reform. What got the instrumentalists mad was the irrationalists’ insistent demands that “there is no ultimately rational way to think about or organize the world, there is no ultimate irrationalist program, no attempt to substitute ‘truth’ for ‘ideology.’” When instrumentalists asked how it was that irrationalists could speak rationally about irrationalism, the irrationalist would say that the instrumentalist must cease and desist from all rational critiques; it just was not the irrationalist way. On and on it went, in exquisite scholarly detail, each thrust matched by equally effective parry. I am absolutely confident that the great Legal Realist father Llewellyn would have enjoyed reading that one.

There was, of course, another reason for bringing out the *Lizard* at the AALS conference. It was to publicize a counter-event—an alternative three-part panel on the “Politics of Legal Education” that would be organized by the Stanford Crits at a hotel within walking distance from the AALS hotel. Refreshments were to be served. Each edition of the *Lizard* had the notice of the counter-event on the front page in large bold capital letters: CHECK IT OUT, with directions for getting to the event. The notice promised a three-part panel on the “Politics of Legal Education,” covering institutional reform, clinical issues, and law and economics issues.

The event was held on January 6, 1984 at the Bellevue Hotel, and it was attended by several hundred law teachers, practitioners and fellow travelers. Keeping with the *Lizard* practice of covering all AALS related events, *Lizard* reporters were in attendance and wrote an article entitled, “Trashers Trashed: Audience Rebels Against CLS Panel” reprinted in the last edition of the AALS *Lizard* (No. 3). As reported in the *Lizard*, about 250 people attended the event, but the audience trashed the entire affair. It is true, as the *Lizard* article noted, that at one point, “widespread applause greeted the somewhat plaintive remark of one audience member, ‘No matter how bad this is, it’s still better than anything going on at the AALS.’” Nonetheless, as reported in the *Lizard*, the audience rebelled against the “counter-event” with several audience members stating for the record that “the CLS event was every bit as pompous and vacuous as the *Lizard* claims the AALS panels are.” I have to say that I was there, and I also attended

several AALS section meetings, and I can say without hesitation that the counter-event sponsored by the Stanford crits was not as bad as the AALS panels I attended! I am not saying it was great, but no way was it as bad as the AALS.

I do agree with the *Lizard's* criticism that the CLS panel sort of resembled the “reified, hierarchical AALS model.” Peter Gabel, recognized as a white male [Heavy], gave a talk about reification, and it did seem that he was lecturing at one point (he even called upon members of the audience to [participate]). But there was absolutely no ground for saying that Peter’s lecture resembled in any way the reified, hierarchical AALS model. (I really like Peter, and I know that what he was doing was attempting to get the “kettle boiling” – [CLS slang for getting people off their knees.]) If you followed what he and the other crit speakers on the panel were saying and if you ignored the fact that they were white males from Stanford (except Peter, of course, who was from New College), then you would see that they were all saying something really important that needed to be heard even if I cannot remember what it was. It was too bad that there were a lot of people talking and some even were getting up and probably heading for Mill Valley. The weather was nice, and I have heard that the wine is really good there.

The negative audience reaction to the CLS counter-event at the Bellevue Hotel was so unruly and unprofessional that it broke up the meeting, forcing everyone to break out of the lecture hall meeting and reconvene in small groups. Efforts to reconvene the meeting met with failure. As the *Lizard* reported, “several panel members fled the podium and tried to blend into the audience.” One distinguished audience member who remained unnamed, and who had been studying CLS for years, was reported to have said: “The event demonstrated conclusively that CLS has nothing to offer beside a lot of childish prattle.” In response, a CLS insider disagreed, stating: “The audience enactment of the destruction of hierarchy had a cathartic effect that is pre-requisite to serious discussion of the politics of law schools.” When asked to comment on this statement, the distinguished mainstream professor dismissed the remark as “typical CLS mystification.” On the last day of the conference, after the last *Lizard* had been distributed, the ragtag band of CLS conspirators who regarded themselves as the “True Left” disbanded and headed for the hills. It was quite anticlimactic, as most endings are at AALS conferences. You go with high hopes of linking up with lots of law professor friends, but when you arrive you discover everyone is nervously searching for recognition and nothing ever really happens. Proverbial ships in the night, glancing at each other’s name tag and hoping that they will be recognized by that special hierarchically name-tagged person. The True Left just left, leaving those who still believed in the law school meritocracy game to continue to hope that they would be noticed by the right person wearing a Harvard or Yale

name tag and that their colleagues back home would see it. The *Lizard*, left strewn on the floors of the conference hall, had its brief moment of recognition at the AALS. [It was back to business as usual.]

When I returned home, not a word—not one single word—was ever mentioned about [the *Lizard*]. It was like it never happened. That nothing was said was not really a surprise. Crits have always been invisible, and the truth is they would not want it any other way so long as the crit backlash continues in stride. I must admit that I felt both relieved and proud. Relieved because the police were not called, and no one went to jail. Proud because for once I had fun at the AALS and I think it helped to get people thinking. It taught me one can take risks and get off the hierarchical ladder that is erected each year at the AALS. Why not just trash it and do something more meaningful with our professional organization. AALS officials keep sending out emails for ideas about what to do at the next meeting. Did the AALS organization ever take a political stand on anything? It's not like we don't have issues to pursue. *Bush v. Gore*? The War in Iraq? Suspension of habeas corpus? You can insert your favorite hot political issue that has legal and ethical consequences here. Doesn't the legal academy have any shame for its silence and reticence in these times? Is it just all about name tag recognition and the pecking order? [We talk about lap tops in the law school classrooms instead of the political manipulation of United States Attorney Office. No wonder students are surfing the web in class.] How sad and utterly depressing to see the hopelessness of professional spectacle we all help to create year after year at the AALS while Rome burns.

But for a brief few days in January 1984 when the *Lizard* came to the AALS there was a little fresh air, fun, anti-hierarchical thinking, and the possibility of self-governance. The fact that it didn't work doesn't mean it wasn't worthwhile. It did demonstrate that there is real power in negation. You can always vote with your feet, but why not take the initiative and refuse to play out the same old social themes and try something really different and see what happens. True, CCLS is now kaput, and the movement is no longer in existence, but the story is not over yet. The possibility always remains that people will once again come to question the normal science and recover courage and find inspiration to not just interpret their world but change it. You can always still go for a tour of the vineyards if it doesn't work out.

Was it worth it? You bet your suspenders it was worth it. Just think about this one undeniable fact—the 1984 conference was one of the few times that the AALS met in San Francisco, and law professors actually stuck around for at least a little while before checking out the vineyards. I concede that some things never really change; the AALS today is as it was then, most people continue to head for the hills soon after checking into their

conference hotels, and civility continues to be ugly. For those pods who seek to carry on there is always the possibility there will be some who will rediscover the Lizard --- Oh my God, could it still be alive?

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### **POSTSCRIPT**

The *Lizard* continued to be published by a group of critical legal studies law professors at Buffalo, but it was never the same. The publication had become a pamphlet or small book and much of the edginess of the paper had been lost. I believe the last edition of the *Lizard* was the memorial issue published in honor of the late Mary Joe Frug in November 1991. To my knowledge, the official administration that runs the AALS has never acknowledged the *Lizard* at the 1984 conference though I am willing to bet copies of the *Lizard* made their way to the national headquarters in Washington, D.C., probably even to the White House.