Learning How Young Lawyers Learn: A Short Story

Sharon Katz, Special Counsel for Pro Bono at Davis Polk & Wardwell LLP and winner of LAS's 2014 Public Interest Law Leadership Award, Shares Her Pro Bono Story

I had always been drawn to the "helping professions." It's just how it was. I graduated from Columbia University School of Social Work in 1975 and worked in a Congressman's community office helping constituents with landlord/tenant and housing problems, social security questions, education concerns, and community development issues. After almost three years, heading off to Brooklyn Law School felt like the next step in a natural progression, and nothing at all like a change in direction. So, given that background, Davis Polk & Wardwell may not have seemed like the most obvious landing spot for me upon graduation and completion of my clerkship. But this very interesting firm seemed willing to take a chance on me - and I on them.

Of course, it will be no surprise that I was quite predisposed to doing pro bono work. But, in truth, I was most fortunate to find myself at a firm that, from the outset, inculcated the value, importance, joy and, yes, obligation, of pro bono work, and taught me that pro bono work offers extraordinary opportunities for learning - no less so than with the exciting, important and sophisticated work that is done for paying clients.

I arrived at Davis Polk in November 1982. Barely a month later, in early December, while still trying to get myself adjusted to wearing a skirt to work every day (this was 1982 after all and women did not wear pants to a law office), I received a call from a litigation partner. In typical first-year associate fashion, I somewhat fearfully headed to his office, where I was asked to work on a new pro bono matter. Now this was intriguing and exciting. I certainly didn't need any coaxing, and besides, who says no to a partner?

The case involved a habeas corpus petition originally filed pro se but now on appeal before the Second Circuit Court of Appeals. The petition had been dismissed by the District Court Judge, in part, due to petitioner's failure to exhaust state remedies with respect to certain claims. By the time the appeal had been assigned to the Davis Polk partner, a related state court post-conviction proceeding, filed by the same petitioner, also pro se, had finally concluded in the denial of all relief to the petitioner in the state court. This meant that the petitioner had now satisfied the exhaustion of state remedies hurdle that had barred his presentation of those constitutional claims to the District Court in the habeas petition.
Oh boy. I loved this stuff.

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The parties stipulated to returning the case to the District Court, where we submitted an 87 page brief in support of the newly ripened claims. Once briefing was completed – and it was extensive and ferocious – the District Court agreed to hold an evidentiary hearing with respect to certain of the claims. The trial was scheduled in 1984. There were a number of witnesses. We prepared our client to testify. We interviewed the attorneys who represented him at trial. I did research; I drafted. So here I was, not yet two years in, mostly surprised to find myself still at this large, imposing law firm. But I was having a great time with this incredible pro bono work while knocking myself out on reviewing documents and writing briefs in securities and bankruptcy litigations and thinking that this was about the grandest, most challenging and interesting combination of assignments and work that anyone could have.

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Time for the trial approached. We were calling as witnesses the two lawyers who had defended the client at trial, as there were factual questions as to how, if at all, they had considered and addressed an important legal issue. I was tasked with putting one of them on the stand. (Not to worry, I assure you, I had the far less critical witness – but still!)

I diligently prepared my outline for the direct testimony. On the one hand, I was very excited for this opportunity, but on the other, even the thought of getting up in federal court and doing this had my stomach churning. I certainly did not want to make a fool of myself before the Judge, the lawyers, the partner or the client and, even more importantly, I didn't want to do anything that would harm the client's cause. So when the partner supervising the matter asked to review the draft of the direct, I asked if instead he would role play with me: if he would be the witness and allow me to actually practice asking the questions in real time. (I knew if I was going to ever look foolish, this was the time to do it. I think he knew it too.) "Of course," he said.

Well, this partner is a pretty smart fellow (indeed a genius, in my view, and although I didn't focus on it at the moment, the truth was that he was not going to let me go out there unprepared and potentially be able to do harm to the client). So, he played it very straight for a while. And I fell for his legal rope-a-dope. I was feeling very self-satisfied, as though I had this all under control. And then, he began to

(from the left) Seymour W. James, Jr., Attorney-in-Chief of The Legal Aid Society, Blaine (Fin) V. Fogg , President of The Legal Aid Society, Karen Fisher Gutheil, Supervising Attorney of Pro Bono at The Legal Aid Society, and Sharon Katz, Special Counsel for Pro Bono at Davis Polk & Wardwell LLP

counterpunch, to throw me curve balls (sorry for the mixed sports metaphors), to respond to questions with the most convoluted, obscure, gibberish-laden answers. And I, caught totally off-guard, and being totally inexperienced and unschooled in how to deal with such a witness – indeed with any witness – burst into embarrassed, semi-hysterical, uncontrollable laughter. He was not laughing. I could not have done worse. But that was his purpose, wasn't it? And it worked.

I finally took a deep breath, composed myself, and said, "Okay, I feel much better now. Let's do it again." And we did. A few times. And when I had to do it in Court, I was prepared, appropriately confident, and forewarned; and it went very well.

Ultimately, we lost the case, both at trial and at the Court of Appeals. But did I learn a lot? You bet.

We speak often of the benefits of pro bono work: providing representation for persons who would otherwise go unrepresented, enabling the judicial system to function more smoothly and economically, providing a vehicle by which lawyers can do "good" and give back to the larger community for the privilege of practicing law, and allowing young lawyers to develop skills that they need to represent their clients adequately. And so, in my current position, I try always to remember that first experience, the value of practicing, the value of good mentorship, support, and training and the need to create a space where young lawyers can try things and try again before they head out to represent clients.