

Interviewee: David Zapolsky

Interviewer: Hayley Landman

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Re: Law Review Alumni Feature

Q: What was it like when you were an Executive Editor on *CLR*?

A: It definitely was one of the most fun parts and most intensive parts of being in law school. We were in offices that were not far from where you are now, but they were really in terrible condition – it was a dump. I just have tons of memories of the Executive Editors all in the same big room, sitting across from each other for hours and hours on end, staring into our computer monitors, working late into the night, with many trips to Top Dog along the way. I think it was an incredibly beneficial experience for my ability to write and edit. It really forced me to break down the structure of articles and notes, sentence by sentence, paragraph by paragraph, and also on a larger narrative basis. It really forced me to work through the whole writing process. To have to explain in great detail to an author the reason for every suggested change requires incredible discipline. That exercise was incredibly time consuming, and served me well as a writer.

Q: What is your takeaway for current members who are considering becoming Executive Editors?

A: It is probably the single best thing you can do to refine yourself as a writer, which is a discipline that should be important to any lawyer. We used to call ourselves the “style department” jokingly. There was an implicit understanding that the Articles Editors and the authors needed to worry about the high concepts and not so much how they are expressed. Our job was to make those understandable, clear, and compelling in a way that a reader could understand. That is an oversimplification and served to increase the friendly rivalry between the articles group and the executive group, but there is a truth there, that we worked to make the articles readable and understandable.

Q: What is your favorite *CLR* memory?

A: I remember having long, random talks about philosophy and politics and law with the senior editorial team in the old offices, punctuated by the buzz-saw sounds of the old dot matrix printers, that we had to yell over, because that was the state of the technology in 1988. By the way, of the friendships I developed in law school, those have been some of the longest-lasting, so I have great affection for that time in my life.

Q: What big challenges or conversations was *CLR* having at the time?

A: There is always an inherent tension, and there was at the time, between student agendas versus what the faculty thought we should be publishing -- the dialogue on what to publish and what types of articles to pursue that weren't too far out of line with what the faculty thought was

worth publishing. Also, we were a year behind. We seemed to be constitutionally unable to get out the issues in any sort of reasonable timeline. I don't understand why that was, but that was the big thing: staying on track and continuing to make progress in a timely way on all the work we had to do.

Q: I want to shift gears to your career. How did you break into the in-house world, and do you have any advice for how attorneys in general can do that?

A: It was completely random. It was the case, at least 20 years ago, and I think is still the case, that litigation positions in-house are much more scarce than corporate positions. Litigation positions in-house are very different jobs than being a litigator in a firm. You don't sit up and draft interrogatories all night. You manage different matters and you chart strategy and make important decisions about directions of various conflicts. It is quite a different job, and for that reason not only are the positions scarce, but it is very rare that somebody without a lot of experience could go into one of those jobs. You have to have seen a lot of different cases to be qualified to direct them.

For me it was pretty random. I was interested in going in-house. I had extended discussions with other companies, but ultimately there was a serendipitous opening at the time and was one of those things that happens in life – you get an unexpected opportunity through a connection you didn't know you had. A friend's wife had gone in-house at Amazon and was looking to hire someone to start the litigation group. Her husband played the intermediary and introduced us, and we hit it off so she invited me to join her.

I was very lucky, but you do make your own luck. You do that by making choices in your career that you think will make you most fulfilled and happiest. Because even if they are not choices that others would make or where you would make the highest compensation, only when you are fulfilled and you have passion for your work are you going to do your best work, make connections, and be the kind of person that people want to hire or send work to. If you are going someplace where you are not going to be that happy, you are not going to be that person. You won't be able to be. And I was able to do that several times in my work by making choices that other people might not have made -- first to go be a prosecutor and then to leave Wachtell Lipton to go to a mid-sized regional firm in Seattle. But because I did it, I became the kind of lawyer that people knew, and when my friend's wife was looking for litigation counsel at Amazon, he was the first to recommend me. And that's how you make serendipity happen over the long term.

Q: What advice do you have for alumni who are looking to make that magnitude of career change?

A: At Amazon we don't hire right out of law school, so if you want to go in-house, no matter what discipline you're in, the best candidates are ones who have seen a lot already and have some level of experience and competency in the area they are in. The best way of doing that is probably to work in a firm because you work on different kinds of matters and you build your knowledge base pretty quickly. When we look to hire, we look for people who are seasoned enough to hit the ground running and exercise independent judgment and autonomy and don't need that much training. Frankly, most companies' legal departments are not that good at

training. We rely on firms to do that training. If you are in law school and know you want to go in-house, work at a law firm or somewhere else before you try.

The second thing is to be flexible. In some ways since joining Amazon I have had a boring career. I started as a litigator and I stayed one until my predecessor, the woman who hired me, tapped me to take over as general counsel. That is not how most in-house attorneys go. We encourage people to move around to try different roles and learn different skills, including, if possible, to practice in different countries, if that works for their situation. People who have had a broader range of experience are ultimately going to be the most valuable, flexible, and knowledgeable leaders in the future. Fortunately we have a big enough company where you can work in different areas without having to leave. Those roles are available for litigators to learn how to be a products attorney or a compliance attorney, for example.

Q: When you moved from being a prosecutor to an associate at a firm did you find a steeper learning curve than you expected or did that role prepare you?

A: In some ways I had advantages based on my experience, and in some ways I had some disadvantages. The Brooklyn District Attorney's office then, and I suspect now, was not a place to go if you wanted to do research and writing. The body of law is fairly contained. The most interesting issues are evidentiary. Most of the work is in investigating the cases, bringing the cases, and trying them. The facts are always incredibly varied and interesting. It was the opposite of what you do on law review, and it was what I was looking for: to get out of the ivory tower.

So the transition from that to a place like Wachtell Lipton where most of my life was research and writing was a big change. In some ways I was starting from scratch and I needed to catch up to polish my writing skills and understand how giant cases get done. On the other hand, there were other areas I had a clear advantage already. Conducting depositions and examinations was something that came fairly easily to me because I had done two dozen jury trials and I knew how to examine witnesses. It was great complementary experience in some ways because it allowed me to fill the holes in my skillset while allowing me to bring the strengths that I had in a way that made it a pretty fun and satisfying experience. It was also like a graduate course in how businesses and Wall Street work. Some of the cases I got to work on included interviewing senior people in Wall Street firms. I was clueless about all that, so it really expanded my knowledge base and world view.

Q: Is there anything that you wish you had known that you could not have known when you were leaving *CLR* and graduating that you know now? What advice would you have given yourself?

A: I knew I was going to be a prosecutor coming out of law school so I had made the decision to make sure I understood evidence before doing that. That was a very good decision that has served me very well. In terms of gaps, I'm not sure. It's all kind of a blur.

A real lesson that I learned was that for litigators, being a convincing presence in the courtroom is not about mimicking someone else's style or how other people do things. You are most effective if you can channel your own personality, your authentic self, in such a way as to

project it to a jury and judge. I had a colleague who was a gifted natural trial attorney who was also very dramatic by nature. We were doing child abuse and sexual abuse cases, and he was unbelievably gifted at being empathetic and rolling with the emotions of those cases in front of a jury. I learned early on that I can't do that authentically. I can't pull that off. But what I can do is be more of a Mr. Science personality and much less emotional, just emphasizing the facts and evidence. I had to learn after leaving law school how to channel that in a way that was convincing and credible to judges and juries. When you are a junior lawyer you really have to work with what you start with as opposed to becoming what you see.

Q: Is there anything else that you want to share?

A: I've come to appreciate that Berkeley is a unique experience that I truly loved. I was in the last generation of people who paid \$800 per semester to get a legal education, the return on investment of which has been beyond imagination. Berkeley has always maintained a culture that is not a rah-rah culture, but that is filled with smart people who value social justice and have cynicism and question authority. But that leads to an alumni community that tends to be disengaged from the school. As I've learned more about how schools work and other universities try to deal with continuing their mission, it is kind of stunning to me how the level of alumni engagement with the school is so low. I am working with the Alumni Association as a Director to try to find ways to increase that engagement. Given the years between when I went to school and now, with the level of defunding by the state over that time, it is somewhat miraculous that Berkeley remains at the top echelon of law schools. I hope that students today and recent alumni appreciate that and remain engaged with the school.