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3-11-2022

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Recommended Citation

Benjamin N. Cardozo School of Law, "Former Clerks on the Current Court: Cardozo Professors Offer Wisdom from their Supreme Court Clerking Experiences" (2022). *Cardozo News 2022*. 17.
<https://larc.cardozo.yu.edu/cardozo-news-2022/17>

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Former Clerks on the Current Court: Cardozo Professors Offer Wisdom from their Supreme Court Clerking Experiences



“You will never get the kind of responsibility in your first two years of practice that you will in a clerkship,” Dean Melanie Leslie remarked as she introduced the speakers at “Former Clerks on the Current Court,” an event hosted by Cardozo’s Floersheimer Center for Constitutional Democracy on March 3. Cardozo Professors and former Supreme Court Clerks—Michael Herz, Deborah Pearlstein, Michael Pollack, and Kate Shaw—joined Dean Leslie in discussion.

Pollack, who clerked for Justice Sonia Sotomayor of the U.S. Supreme Court and Judge Janice Rogers Brown of the U.S. Court of Appeals for the D.C. Circuit, opened with background on the role of clerking and the day-to-day work involved.

“You see advocates argue, you read briefs and you get to know from the judge firsthand what worked and didn’t work,” he said. “That’s going to make you a better lawyer down the road.”

Dean Leslie commented, “As a clerk, you start at such a high level that by the time you get to practice, you get a lot more responsibility at the firm because you have

the skills and confidence that comes from working with people at the highest level of the profession.”

The Dean asked the panel about the different kinds of working relationships the justices had with their clerks.

Shaw, who clerked for Justice John Paul Stevens of the U.S. Supreme Court and Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit, referenced Justice Stevens's description in his memoir of her work with him on his dissent in *District of Columbia v. Heller*. In *Heller*, she explained, Stevens thought he could convince one or more of his fellow justices to rule in favor of the District of Columbia. As a result, he wanted to circulate his dissent first, before Justice Scalia's draft majority opinion. “We had to draft and circulate it in four or five weeks, and that period is a blur,” Shaw recalled. “Once Justice Scalia did circulate his majority opinion, we went back and forth for forty, maybe fifty drafts.”

Dean Leslie followed up by asking how much influence clerks have and whether they collaborate to have influence.

“Clerks are enormously valuable in helping justices make up their minds,” said Herz, who clerked for Justice Byron R. White of the U.S. Supreme Court and Judge Levin H. Campbell of the U.S. Court of Appeals for the First Circuit. “But they are not all that influential; it varies from case to case and justice to justice.”

Pearlstein had a different experience while clerking for Justice Stevens. She described a close working relationship in which she felt she did have influence, especially when managing a fragile majority or trying to win a majority. “The negotiation and the use of the clerks as backchannels... was a central feature of the work I did,” she said.

Pearlstein also described the close relationships she forged with her fellow clerks, and how many are still her close friends to this day.

The panel took questions from the audience. One student asked about the experience gap between the justices and the clerks, and how that dynamic plays out in the clerkship. Shaw spoke about Justice Stevens: “He really liked having his clerks be proximate to new developments in legal thinking and scholarship. That to him was a real advantage.”