

What I Wish I Knew Then: Robbie Kaplan

By Steve Cohen

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Roberta “Robbie” Kaplan is a founding partner of Kaplan Hecker & Fink, which she started after 25 years at Paul, Weiss, Rifkind, Wharton & Garrison. She was perhaps best known for successfully challenging a key provision of the Defense of Marriage Act (DOMA) on behalf of her client Edith Windsor in the landmark case *United States v. Windsor*. That is, until her two recent victories representing writer E. Jean Carroll in her sexual battery and defamation suits against Donald Trump, which secured \$5 million and \$83.3 million jury verdicts.

In my conversation with Kaplan, she discussed her inspiration for becoming a lawyer, the advice she imparts upon fellow attorneys and the importance of asking for extensions.

On Beginnings

As a child, I supposedly loved to talk. A lot. There is a famous story within our family about when my maternal grandmother, having lost her patience, said to me at one point when I was very young: “Robbie, can you just be quiet for two minutes?” I responded: “I can’t, Grandma. I’m a big talker.”

At some point as a kid, I realized that if you’re a lawyer, you get to talk for a living. And when Sandra Day O’Connor was appointed to the Supreme Court, I thought, maybe I could become a lawyer too.



Photo: David Handschuh/ALM

Roberta Kaplan of Kaplan Hecker and Fink in New York.

When I got to college, I majored in Russian history and literature. This was at the height of the “evil empire” that was the U.S.S.R., which unfortunately, is still evil, but now with a different name and form of government. I thought about pursuing an academic career in Russian history, but realized that if I did, I wouldn’t have much choice about where I lived. Since I had always wanted to live in New York City, I decided to go to law school. But I really thought of it as a kind of holding pattern.

I went to Columbia Law School, figuring I’d decide what to do after that. I have to admit, I did not instantaneously fall in love with law school. Please keep in mind that I teach at Columbia Law School, I’m a loyal Columbia

Law School alumna, and I am honored to represent Columbia University. But law school itself was not that fun for me. I just wasn't that interested in the academic study of law. I probably should have taken a year or two off between college and law school instead of going "straight through" (the nickname some of my friends called me at the time).

That changed as soon as I got into court when I fell in love with being a lawyer. I saw that you really did get paid to talk a lot. That's when I decided what I wanted to do with my life.

Early Experiences

After graduation, I clerked for a federal district court judge in Boston, Mark Wolf, who is now a senior judge. I did that for a year, and in 1992 I came back to New York City, where I'd always wanted to be, and started at Paul Weiss.

About two years later, I was working with a Paul Weiss partner named Colleen McMahon. She is now a senior judge in the Southern District of New York. Colleen was then heading a group called the Jury Project, which had been set up by the Chief Judge of New York and tasked with reforming New York's jury system.

It is hard to imagine just how disorganized and onerous jury service was in those days. Our Project recommended common-sense changes, like having enough chairs in the jury assembly room that weren't broken, and a phone-in system that allowed jurors to know in advance whether they were really needed at the courthouse for voir dire. There were also a bunch of pretty strange exemptions, as I recall, like for embalmers and Christian Science practitioners. Against all odds, Chief Judge Kaye somehow was able to implement most of these reforms.

After the Project's work was complete, Chief Judge Kaye invited me to clerk for her, which I did for about a year and a half. I then returned to Paul Weiss, where I made partner at the end of 1998.

'Trust Your Gut'

The best advice I ever received came from my grandmother. She said to always trust your gut—although

she would have used the Yiddish word for it, "kishkes." It's really important in life and especially important as a lawyer to listen to yourself. If your gut or your instincts tell you that something is wrong, whether legally, factually, ethically, or otherwise, then chances are that it is wrong. Don't let other people who may have louder voices dissuade you from what your gut is telling you.

The second piece of advice that was really important—and that I share with my colleagues and associates—is something I got from one of my mentors at Paul Weiss, the great trial lawyer, Marty London. He always said never let your clients' problems become your problems.

Representing a client is an important responsibility. It is also a great honor and a great duty. But when, as a lawyer, you must decide between defending a client who may have done something wrong, and you yourself being asked to do something wrong, it should be obvious which path to take.

Getting Extensions

The third piece of advice comes from another one of my mentors. Though I'm pretty sure she would deny it today, but she once told me that the secret to being a litigator was asking for extensions.

That is absolutely true. If you're juggling, like many lawyers are today, five, six, or even ten cases at one time, you're inevitably going to have scheduling conflicts. So you need to get extensions. On the other hand, you also have to be willing to grant extensions when people ask for them.

Loving What You Do

I think it's very important that you love what you do. If, as a young lawyer, you're doing something that you just don't like, whether it is because of lack of interest in the case you're assigned, or you're not motivated by the legal issues you're facing, or you're not thrilled with your colleagues, the solution is simple: find something else to do. Do another kind of case, find another area of the law.

I think in my generation we shared a "grin-and-bear-it" attitude; a belief that things would change if we

just kept at it. But that isn't true. Sometimes, you have to make the change happen yourself.

The Importance of In-Person Interactions

I hate Zoom calls. I'd rather just do a regular old-fashioned telephone call or I'd rather meet in person. Granted, a lot of parts of the law don't suffer at all from remote meetings. For example, I don't see any change in writing and research ability as a result of people not being in the office. But learning how to deal with clients, adversaries and witnesses, learning how to put together testimony in a way that best presents a compelling account of what happened, I think those are skills that tend to suffer from not being together. Plus, there can be no question that working together in person enhances creative thinking.

Let me share a story that is instructive. We were preparing to go to trial in the first E. Jean Carroll case against Donald Trump. We, of course, did a lot of prep by Zoom, but we also did an awful lot of prep in person. There was a point—as we were preparing for that first trial—when E. Jean had a really hard time acknowledging that she'd been hurt by the sexual assault. E. Jean grew up in Indiana; she's very Midwestern in some ways and couldn't get her head around the idea that she was a victim.

I finally said that I thought what we needed was a change in scenery. So we all went away for the weekend and continued our witness prep there. And it turns out that that led to the breakthrough we needed. E. Jean was able to acknowledge what she knew in her brain, but couldn't admit to herself in her own heart—that what Trump had done to her all those years ago had fundamentally impacted her life.

Silence, Style, and Story-Telling

One important thing that all young lawyers have to learn is when to stop asking questions. It may be the most important skill a lawyer needs when examining a witness. I definitely made that mistake a few times when I was a young lawyer. I'd have a great record, and then, because I couldn't help myself, I'd ask the

next question. Whatever answer I would get would then compromise what had already been said. In other words, I needed to learn when to stop talking.

I also think every lawyer has to find their own style. For example, trying to write briefs in a style that's not your own is never a good idea. I remember back in the old days at Paul Weiss, many partners that had their own styles; and when I was working with a particular partner, I would try to mimic their style to the extent I could. Knowing what I know now, I'd advise against that. But it did help me develop my own style which has bits and pieces "borrowed" from a lot of older lawyers.

This is probably the most important of all: if you can't describe whatever case you're working on in plain, colloquial language, and in just a few sentences, then you need to go back and rethink your case. Even the most complicated cases should and can be described in simple terms.

On Work-Life Balance

I'm probably not the best person to talk to about work-life balance. I work very hard. But even when I'm not working, I have to admit that I'm often thinking about my work. So for me personally, the most important thing I can do is find things that take my mind away from whatever it is I'm working on.

I like to hike, but I really love fly fishing. It's probably the single best way for me to get out of my head, and that's because when you are fishing, you have to pay absolute attention to what you are doing in the moment. If you're not focusing on the fly, then you're going to lose the fish. Kind of like our motto in the Windsor case: "It's all about Edie, stupid."

However, I'm also sure that if you were to talk to my teenage son about it, he would say that I work too hard and that I have a lot of room for improvement. (Unfortunately, he does not like to fish, but, in the spirit of compromise, I did agree to watch the most recent "Planet of the Apes" movie series with him).

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