CARLTON FIELDS

Law Firm Appellate Practice and How a Former Prosecutor Got There

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I began my legal career with an appellate clerkship in the former U.S. Court of Appeals for the Fifth Circuit when the court met in New Orleans. My exposure to interesting criminal law issues during my clerkship led me on a different career path from the one I had originally set for myself. When I was in law school, I had been involved in the Moot Court Board, and my coursework was heavy with commercial litigation courses. Following my clerkship, however, I accepted a position as an Assistant U.S. Attorney for the Southern District of Florida in the criminal trial section. This was not an obvious choice. As a clerk, I bled for every defendant. But as a prosecutor, I found I had no problem presenting a case that was novel, unpopular, or that could yield a result that would not reflect my personal philosophy. Mostly, I cherished getting up and saying I represented the United States of America. For a Cuban exile, this was an unbelievable phrase. After I accepted the offer, but before I began my 16-year career at the U.S. Attorney's office, my husband and I discovered I was pregnant. For about six weeks I worried about what I would say to the U.S. Attorney—how he would react and what this would do to my career. This was 1979 and there was not an abundance of women prosecutors—much less pregnant ones. It all worked out with the U.S. Attorney, and I continued to try criminal cases until the day I went into labor. After I came back from leave—there was no maternity leave at the time but you could borrow sick and annual leave—I was assigned to write motions for a high-profile civil rights case against police officers who had been acquitted in a criminal trial and whose acquittals led to protest riots in Miami. As I worked with the Chief of Appeals on one of those motions involving a Kastigar immunity issue, I began a professional relationship with the woman who was to become my mentor and friend. Shortly thereafter, she asked if I would be interested in splitting my time between appeals and trials. I agreed, and before long I was working in appeals full-time. The kind of creativity and technical analysis required in appeals is what I liked most about appellate practice. Although the usual factors of presentation and persuasion still play a role in appeals, it is legal argument at its purest. As a bonus, I was better able to control my time. I could review my often voluminous records at night, after I had read goodnight stories to my children. For many years, the chief and I together handled the entire appellate calendar for the Southern District in

the Eleventh Circuit. During my tenure as Executive Assistant U.S. Attorney and Special Counsel to the U.S. Attorney, General Manuel Noriega was brought for trial into the United States. I had accepted the management positions on the condition that I would be allowed to continue practicing law and would not be limited to duties such as hiring (we doubled the size of the office during my tenure), reviewing the budget, or approving performance evaluations. It was, needless to say, exciting to be part of a case that at the time consumed most headlines. I drafted the original jurisdictional motions involving extraterritorial application of our laws—an issue not unfamiliar to me, having defended jurisdictional challenges to the extraterritorial reach of United States law in vessel seizures under the High Seas Statute. I later drafted and argued the responses to Noriega's challenge to evidence obtained from the government's monitoring of the general's telephone conversations. I was fortunate to have had the opportunity to work on many other cases with cutting edge issues and national implications. I supervised a judicial corruption investigation and prosecuted appeals of high-ranking government officials from Cuba and the Turks and Caicos. I ultimately left the U.S. Attorney's Office in 1995 and began private practice with a former U.S. Attorney. We litigated almost exclusively in federal courts, a forum in which all of us were comfortable because the firm consisted largely of former federal prosecutors. We had fun because we were friends and we had amazing cases. We had numerous environmental lawsuits against federal agencies. And what could be better than fighting to protect Everglades National Park, an internationally recognized landmark, or to uphold the sovereign immunity of an Indian tribe. In 2000, I joined a midsize firm with a national practice because I believed this would offer a larger platform for my practice. Private practice in a midsize firm was very different from my small firm of five. Although I continued to work on major environmental and Indian issues with my former partner, I was exposed to other areas of the law such as class actions, and to more standard commercial cases. I continued to argue in the Eleventh Circuit and expanded my practice to other circuits and other states. For example, I was on the team that briefed a jurisdictional issue in a class action case in the Ninth Circuit and argued the appeal. I had cases in cities I had either never heard of, or had not been particularly interested in visiting. In the new firm, I had to learn about industry and practice groups. Having come from management in government, I readjusted to paperwork and meetings. But sometimes I longed for the simpler time of my first private practice experience. We have now merged with a larger firm, and that chapter remains to be written. However, I have learned that wherever we are, it is essential to continue to grow, to discuss new strategies, to remind ourselves of proven strategies, and to maintain an "edge" in our ever-evolving practice. Throughout my career, I have been fortunate to have practiced in front of some great judges. I have had excellent mentors, including some of the judges before whom I have argued. Given the pressures in private practice to succeed, to bring in clients, and to bill, the support of others in the profession is very important. In the specialized area of appellate practice, an experienced mentor can be priceless. Unlike in trial practice, where strength and tenacity are generally recognized as required traits, people often underestimate what it takes to successfully appeal a case, or to defend one at the appellate level. It is a pressure cooker, particularly for attorneys who care deeply about their clients. Throughout my career, my mentors have strengthened me and given me confidence. **Republished with permission by the American Bar**

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