

Clerkship Podcast

Episode 4 – Megan Bell, Patricia Kim, Terra Hittson, Rachel Sherman

BELL: Thanks for tuning into the Patterson Belknap Podcast on Diversity Clerkships. My name is Megan Bell. I am the moderator today. We are first going to start with an introduction of the folks around the table who you can't see but I can and, you know, our experience as it relates to clerkships and lawyering generally as it ties back to clerkships. Today's panel, today's podcast, is really focused on big picture, practical questions of clerking. Kind of the nuts and bolts. Some of the relationship aspects before you get into chambers but on your way to chambers and how you structure, kind of, your personal and professional around that move, whether it's from law school or from the law firm context and the prior episodes of this podcast has really covered the reasons for doing a clerkship. Why would you want to clerk? Why is it a good idea? What a clerk does day to day and how to get a clerkship? How to apply? What to consider? That type of thing. But, again, today we're really going to focus that you've made the decision. You've bought into clerkships being a good idea for you professionally. You know what needs to go into the application and what to think about and now, kind of, how do you get from that application process to, you know, the acceptance and beyond and when you're going to walk in those doors and what's that's going to look like for you personally and professionally. So, just to kind of start off, my name is, again, Megan Bell. I am a Partner here at Patterson Belknap. I am in our Exempt Organizations Group, which is not Litigation focused. We have clients who litigate all the time but I'm not a litigator. And that will, kind of, weave throughout some to the discussion today of why I'm at the table in a clerkship panel where most folks who do clerkships are, in fact, litigators. I've been at the firm for almost twelve years. I spent four years at another big firm right around the corner from here before I came to Patterson and before that I clerked for Judge Richard C. Tallman of Ninth Circuit, sat in Seattle, almost recently gone senior. I clerked right out of law school and I knew at the time I was applying for clerkships that I probably was not going to be a litigator for a variety of different reasons. So, turning to my colleagues, here. First of all, I'll start with Patricia Kim.

KIM: Hi, This is Patricia Kim, here. I am currently a fourth rising, fifth year at Patterson Belknap. I am a litigation associate. I was at Patterson for three years prior to clerking last year in the Eastern District of Pennsylvania and Philadelphia for Judge Timothy J. Savage.

HITTSOON: Hi, My name is Terra Hittson. I am a fifth year litigation associate at Patterson Belknap, rising sixth year and I came to Patterson as a summer associate and then I came back directly after law school and I applied, I clerked earlier this year for Judge Garfey in the Southern District of New York.

SHERMAN: Hi, I'm Rachel Sherman. I'm a counsel in the Litigation Department at Patterson Belknap and I was just elected to the Partnership. As of January 1, I'm looking forward to taking on a new role. I started by career at another law firm also doing litigation and I left after four years to clerk for Judge Passano in the District of

New Jersey. Unfortunately, he is retired now. Otherwise, I would tell all of you to apply to him because it was a great experience but after that I came to Patterson Belknap and I've been here for about six years now.

BELL So, we're just going to jump right in. I think one of the things that's apparent and of interest and worth talking about a little further here is something that came up in each of our descriptions of what we do and when we clerked. And, so that's really a question of timing. You know, I think it used to be when I was growing up in the law school days it was, kind of, on the tail end of where it was just very customary to apply for clerkships right out of law school and, you know, somewhat, unusual, at least and a lot of this a little kind of anecdotal and experiential, somewhat unusual to clerk mid-career and so it would be interesting to hear from each of you on how you decided to clerk after you had already been in a law firm for a handful and years and, you know, and kind of, hear your reflections on that. Was it...did you find it useful? Do you have any advice for folks listening as to what they might want to consider a factor into the decision of when to clerk?

SHERMAN I can jump in. I really didn't consider clerking while I was in law school. It wasn't really on my radar. I wanted to start working and get my practice started, but then I was at a firm and a number of people I knew had clerk and had had really good experiences. I also had some friends who were leaving their firms to go clerk so I started considering it more seriously and I applied after my second year. The judge that I clerked for hired on a two year ahead schedule. So, ultimately, I ended up leaving after, I guess it was four years at the firm in doing the clerkship and it was a great experience but I will say if you do it at that point in your career it really forces you to have some sort of a reassess where your career is going and what you want to do because I had to make, after the clerkship I had to make, a real decision about whether I wanted to go back my old firm and try to really pursue a career there or whether this was the point at which I should switch to another firm which is what I ultimately decided to do. So, I definitely think going after you've been at a firm is a great thing to do. You can, I got a lot out of by having already seen some of the litigation aspect from the firm perspective and getting to see it from the clerkship perspective, but if you do it, if you do it, after being at a firm it can complicate things just a little bit because you are breaking up your practice somewhat.

KIM So I had a somewhat different experience than Rachel. Not in the sense that I also practiced for a few years which I did, but I always knew that I wanted to get a clerkship and I had interned for Judge Rakoff in the Southern District during the summer and I had interned for Judge Roseburg in the District of Columbia for a semester when I was in Georgetown and I knew that, you know, seeing what happens in Chambers and working that closely with the judge was something I wanted to do so I started applying as a student in law school at Georgetown and the judges were just hiring so far out that I really didn't have the option of clerking right after I graduated and I was looking forward to that. I thought it would be very helpful to be at a firm first, get some big law training, get some work experience under my belt and to feel a little more confident going into a clerkship knowing - okay I know a little bit more about the law know and feel more confidence in my research skills to be able to talk to a judge and I wanted about

two years of work experience before clerking and when I interviewed for Judge Savage, he had just hired a two years out and asked me to come three years out which I accepted because I really enjoyed meeting with him and I thought he was a great mentor and a great judge and he was but it was a little bit later than I had wanted to do it but I thought it was still worth it to have that experience.

BELL I want to jump in here to with some of the thoughts that both Rachel and Patricia's reflections triggered. For me, it's that I, kind of, came at it from the opposite perspective or with different objectives to a similar set of fact like Patricia in that I went straight through college and law school and had my work experience, like I worked hard, managed a coffee shop and worked at a horse barn, shoveling horse manure for twelve hour days and all of that but I hadn't really existed as a worker in a professional setting and so I actually wanted to get more experience as a lawyer and a professional before I went into the law firm setting and so that was one of the things that was very appealing to me about clerking is to have one single boss who I understood, in all likelihood, would become a mentor to me throughout my legal career which has proven to be true and to kind of try on the suit of being a lawyer in a different capacity in a limited period of time before going into the law firm which is some ways felt more pressure to me than other and perhaps it's because I knew I wasn't going to be a litigator when I went into it so to point and counterpoint to a very similar motivation or drive so I think folks listening can see a lot of this is not hard and fast, you know, black letter, right and wrong, this is what you should do. These are all really, really personal. They weave into the professional but all of this varies for each of us around the table and all of you listening in. So, Tara, what was your path.

HITTSOON Yes, I think I had probably one of the more unusual paths to clerkship. In law school it was definitely on my radar but there were two reasons I didn't apply while I was in law school. One, is I was concerned that clerking was just another bell and whistle that all lawyers go for and I wanted to get out of the rat race and didn't want to do that; and, two, I found the application process completely daunting. A lot of my friends were applying for clerkship and they were sending out hundreds of applications and they didn't know the judges that they were applying to. They didn't know if they were good bosses, if they were good mentors, and I didn't want to be involved in that process so I kind of just let it go by me, but when I came to Patterson most of my colleagues had clerked and, at that point, a lot of my friends were clerking as well and so I heard wonderful things about it and so it was always, kind of, on my back burner as something that I should be on the look out for and I knew that, you know, unusual clerkship opportunities sometimes would crop up and that's, kind of, what happened to me. Earlier this year, I was contacted by the Managing Partner at Patterson and she said a former partner at that the firm, Paul Gardephe, who's now a judge in the SDNY is looking for someone to fill this gap that he has this year and we'd like to put you in touch with him and so a week later I was at the court clerking. So, that's, kind of, how I came into clerkship. I do agree with Rachel, that, you know, I clerked as a fifth year and I do think it's kind of an unusual time in your career to take a break. I was heavily involved in the cases in, you know, several litigations at Patterson and it was bit difficult to have those conversations with my colleagues who were going to left in a tight spot but I don't regret it for a second. It was definitely worthwhile and clerking having litigation

experience just gives you so much added perspective to what it is you're doing, what the judge is doing and seeing behind the curtain and into that process was very helpful.

BELL So, another thing that all of you have talked about is the cycle. We're not looking a universe where judge's hire for 6 months out and all the clerkships are one year in duration and they're all, you know, in the city you live in, or, you know, the city you want to live in and so one of the things that strikes me from your stories is the benefit of being flexible but also we're lawyers and we're on a professional path, whatever that might look like, so there's also a need to control it and set expectations as much as possible so I'm wondering from you're personal experiences: 1) how much room did you have if any to negotiate restructure, refrain with your judge – start dates or duration or things of that nature? and then 2) personal and professional decisions and approaches you adopted to accommodate what you couldn't control so whether it's moving, you know, Tara as you mentioned, like having to have such hard conversations with colleagues in a mid-project to kind of give folks listening a sense of, you know: 1) whether you can push back at all, which, my personal experience is that probably not a lot of push back invited or really helpful but 2) if they're trying to think through how to navigate and looking at this from, you know, the pre-clerking side, is this something I can do with family, with finances, with colleagues.

KIM So I can start speaking on that. This is Patricia again. I was applying in law school, as I mentioned in D.C. so I knew, as Tara referenced, there are people that send out hundreds of applications. I didn't send out hundreds but I definitely sent out many handfuls and I had to be strategic about thinking. At that time, I was married already and I had to be strategic about thinking what cities am I willing to live in, what cities are my husband and I willing to do long distance in again. He was working in New York at the time I was in D.C. for school. And so, I basically picked New York, New Jersey, Philadelphia and D.C. Philadelphia is where my hometown is from and where I was from and I got this interview offer very, very quickly and when I sat down and came in to interview Judge Savage said, "This is the term I have an opening for and I do two-year clerkships and are you okay with that?" And, so at the time, it was two years out, it was a two-year clerkship, it was a little longer and a little bit later that I wanted, not later, but a little bit longer than I wanted. I really like him. We clicked and so I said that was fine. And then when he offered me the clerkship, he had actually filled that spot and said, "Actually now the term I have for you is another year later." And so I had to negotiate with him then at said at that point I'll be a third rising forth year and it would be two years, and it would be doing long distance. I also went to law school after about a decade in a different career. I was a social worker prior and I knew my husband and I would start having conversations about family planning and what that would look like and as much as I wanted to do the clerkship, I didn't want it to derail too much of the ideas and plans that my husband and I had for our future. So he was fine with letting me do a one year clerkship which is not normally what he does and I'm not sure how much other judges would be flexible there but my judge, very luckily, was which worked out well because three year later, my husband and I did have a child and I had to move from New York to Philadelphia to do the clerkship and I, luckily, again had a firm that was very supportive about clerkships and they were very excited for my experience and they were very understanding and helpful when it came to, you know, the fact that I had

to leave a little bit earlier than I wanted to find an apartment and do the move and that was all, it made a very exciting time even more exciting knowing that I didn't have to the extra stress and anxiety that comes along with a move and knowing that I had the firm's support was very helpful.

HITSON Yeah, my experience was, as I mentioned before, kind of odd in that I knew and the judge was very frank with me when I interviewed then he was looking from somebody to fill a four month gap and he needed somebody to start right away and I had a very specific end date because a new clerk was going to be coming in on June 1 this year and so I didn't really engage in any negotiation. I knew I would be coming in because I was filling this gap of a missing clerk and but I did experience during my time there that he was very flexible with other clerks who had life events or who, you know, had to negotiate a second clerkship start date or anything of that nature. He was willing to have that conversation and willing to have, you know, kind of an odd mixture clerks – sometimes he would have four, sometimes he would have three and he was willing to have that work. So I think, you know, you come in expecting not be able to negotiate anything with a judge, it's his or her rules and you have to live by them, but I think that, you know, they've have very long, interesting careers and they understand that everybody's circumstances are different and they're willing to have those conversations.

SHERMAN I also had a similar experience with my judge. I didn't actually negotiate much with him. He did, I had applied, I thought I was applying for a year out and he wanted to hire me but he said it was two years out but he gave me some time to think about it and I thought about it and realized that would be fine. The bigger question that I had in my mind was whether or not move to New Jersey where the clerkship was or whether to stay in New York because it was in Trenton and not Newark so it ended up being about an hour and half to an hour and 40 minute commute each way and ultimately I had decided not to move to New Jersey because, you know, I had my whole life in New York, I knew it was only going to be a year and I was pretty certain I was coming back to work in New York after the fact, but it ended up being, the commute was long but my judge was very flexible about when we got there, when we left at the end of the day, so I was always on a relatively early train back so it didn't ended up being too burdensome but, in an ideal world, I probably would've have a little bit shorter commute for that year. So, I guess what I would say is be selective in who you're applying to and try to apply to places that you really think you could make it work and you would be willing to make it work. You know, don't apply to clerkships in Alaska if you're not willing to move to Alaska, but if you are, then by all means, apply broadly and just be willing to be open to different opportunities because you may find one not where you were expecting it first.

BELL And that's interesting because I think one of the questions that comes up from time to time is, you know, what if I don't get my first choice? what if I get an offer on my second interview and it's for one that I feel, kind of, ho hum about, what can I do? And I think, you know, from my perspective I was told by the people involved in clerkships and professional development at my law school to, you know, if you get an offer, you accept the offer unless there's something about it that is just unworkable as in, you know, you

had already accepted an offer for a different clerkship and the offer on the table is for that exact same time window and I think that it can be challenging to really want something but to really want a clerkship and know that the best way to get that clerkship is to be as broad in your reach and as flexible in where you are willing to go and when you are willing to go as possible and then to be faced with that moment of - Oh I got that one that I just at the last minute put in because I thought why not increase my chances - and not knowing that maybe I going to have the potential for all these other interviews so I think in some way when folks ask the question of, you know, what if I don't get my first choice? The answer is all of the clerkships on your list should kind of be your first choice and so I'm not sure if any of you kind of grappled with that decision or how to frame your net and your scope of what you were willing to do and what your answer would be to someone if presented with that same of question.

KIM So, actually, to your and Rachel's point, where you should really apply where you would be willing to work and live for that year or two. I think that's very true. My judge when he gave me the offer because it happened very, very quickly after I had sent out my applications he said, "Well I know you are from Philly and you like Philly but you know your husband is in New York so what if somebody calls you tomorrow and you know they are calling from the SDNY or the EDNY and it's much easier and it's much more convenient, like, are you sure you want this clerkship with me? Are you sure you want to come?" And I do think, you know, judge's when they see where you have ties to they will wonder that because they all assume that you are kind of applying. You have blanket applications out for neighboring cities and my law school had had the same talk with all of the students that were applying for clerkships that, you know, if you get an offer, you take that offer and you don't back out. It makes the school look bad. It makes you look bad. It hurts the relationships we have with judges. So, when I was sending out those applications, I thought to myself, that no matter what city it's in these all have to be viewed as first choices and maybe it would have been more convenient. I did get calls. I did get requests for interviews for clerkships in New York after I had already accepted the clerkship in Philadelphia and I just turned them down. I said thank you so much for the consideration and the opportunity but I'm clerking for so and so starting in this term and I'm very excited about it. All of those judges and law clerks that called were very gracious. You know, they congratulated me and I think it happens pretty frequently so my advice would just be what you and Rachel have already stated. You know you really just need to be thoughtful and don't apply somewhere that you wouldn't be happy living in and doing for that work for that year.

HITSON I agree with both Patricia and Megan on these points and I would just add that in addition to the location of the court and the judge there's so much information available on what judge's are like and what they are like to work and what you can expect to get out of a clerkship. There's word of mouth. There's online reviews and I highly recommend not just, you know, sending applications willy nilly to whatever judge's come up, but to, you know, do some research because this is going to be your sole boss for a year or two years or for however long your clerkship is and you want to make sure that it's a good fit.

KIM And to Tara's point, these chambers are very small. If you do not like your co-clerks, or your judge, or it's not the most positive or best environment, being in there day in, day out, in these small rooms, with that small handful of people will start to really wear on somebody if they are not prepared for or want that experience.

BELL And I will say, just kind of pivoting a little bit from that and coming from the perspective of applying for clerkships in a different time when I could hear the ring of the AOL dial up server, there wasn't as much information and, you know, there's the ability to talk to people or maybe I didn't pursue that information enough but I do think that one of the things that I've taken from my career more broadly is that yes do the diligence but you're also, you know, human beings are partially defined by the people they are interacting with and the moment they are in and I've found that I've made great connections and found excellent mentors and sponsors of my career and great role models in unexpected places and so I would say that also the geography and the time are kind of the couple of objective variables here that you can say okay this is what I'm willing to do and define your application net in that way. I think, you know, that if there's some indication in some judge's personality or demeanor or approach to the law that, you know, really doesn't sit with you and that you just know maybe you could learn something, maybe it could be good but probably they'd be tricky, certainly not apply but short of that I do think there's a lot to be gained from exploring, working for, working with people who may be, at first glance, have things about them or the way they practice that don't really resonate with you because I think that's how we kind of learn to as lawyers. I'm not saying to sign up for, you know, something that's going to make you miserable but, you know, short of the deal breakers, being willing to work with folks who might be different from your ideal boss or your ideal colleague.

SHERMAN I agree with that and the only thing I would add, this is really, a clerkship is really a unique experience. There's only a few hundred of them available each year and so even if it's not your "first choice" in terms of location or the level of the court or even, you know, if you didn't instantly click with your judge, then it really is a valuable experience. One that you will learn a lot from and you should keep that in mind and you should be open to the possibility that you may end up having an amazing relationship with the judge, you may have great relationships with your co-clerks or the other people that clerked for that judge beforehand. I know personally speaking, you know, in one sense it wasn't my first choice to have such a long commute each day but that was far outweighed by the fact that my judge was a great lawyer, such a great mentor. We are still in touch these days and he's also given me great advice and he has kept sort of a circle of all his law clerks. All of who are out doing great things in the world and so it's a whole other network that I feel connected to just by virtue of doing that clerkship and so in some sense would have been nicer to have a clerkship I could walk to sure but overall I think I got one that was more beneficial to me in the long run and if you can embrace those possibilities then I think you'll be better off.

BELL I think, Rachel, just leveraging off of what you just said, I'm the only one at the table who is not, have not, ever been a litigator. I think my litigation experience is mandatory moot court, wonderful judicial externship with Judge Kennelly in the northern district of Illinois during law school and my clerkship and when I was applying for

clerkships my law school and my classmates kind of took it stride although a number of them were they thought well you're going to be a tax lawyer what are you going to do a tax law clerkship and, in fact, when I had accepted by offer at my 2L law firm and I let them know I was applying for clerkships, the official reaction was – that's wonderful – and the conversational reaction was – Why? Why are you going to do that? As a 24-year-old law student, that did give me some doubt. Why am I doing this but by then the applications were out and shortly thereafter I had an offer with Judge Tollman and I think that to Rachel's point clerkships are pretty amazing opportunities and even if you're on the fence about being a litigator I do think that the clerkship will be a great way of distinguishing and throwing to relief your likes and dislikes about the potential of being a litigator. Certainly, I left clerking even though I thought it was an absolutely wonderful experience and I learned so much and I just adored my judge, I left feeling so confident about my decision not to be a litigator. Which was great. I mean that was one thing to get out of clerking even though I didn't have a plan of being a litigator. But just the chance to have a federal judge, a state court judge, someone who has been practicing and is kind of at the top of their field and just see so much to have them be your boss, to have them reviewing your work product, engaging you in dialogue, pushing you, is such a completely invaluable experience to being a lawyer and practicing law that I think regardless of what path you are taking, that if your dream is to become a mediator, if your dream is to have a start up three years after you've been practicing at a big New York law firm, go clerk. If you can manage it and you can get it, it's such a unique experience and I think Rachel talking about the pool of people you worked with that you interact with, I still have friends who were clerking on the Ninth Circuit before different judges at that time and we still you know have referrals for each other and go back and forth and the relationship with the judge continues over the years. I think in some ways I feel like my judge he's almost a parental role for me professionally. I think one of the experiences that we don't bring to the literal and figurative table here is multiple clerkships. I clerked with people who wanted a district court clerkship, wanted a magistrate clerkship, wanted an appellate clerkship and some did all three and none of us did that. So, what are your thoughts on and why didn't you do a second clerkship.

HITTSO So I knew before I even went to law school that I wanted to be a litigator and so I was very much aiming to get a clerkship at the trial level. I wanted to see lawyers in action and I wanted to get that behind the scenes look. Sadly, there were no trials on the cases that I had in my year of clerking and then the clerk that replaced me had three in her first two months so I was a little upset about that. But I think had this clerkship happened a little sooner I would have been interested in maybe doing an appellate clerkship right after. I think at the point I am at in my career as a 4th rising 5th year and having already been lucky enough to do the district level clerkship, it just doesn't seem to be something I'd want right now. I don't know if my mind would change later but for the type of lawyer I want to be and the type of work I want to be doing here at Patterson, I thought the district court level was the perfect type of clerkship for me.

HITTSO I think I would have been happy in all different types of clerkships. You know as I explained my clerkship kind of fell in my lap and I took it but I think I would have been just as happy clerking for a different for a magistrate judge, a court of

appeals or a state court judge. My judge, Judge Gardephe, recommends that you don't do two clerkships, especially if you are just starting with the district court clerkship. He doesn't see what the court of appeals clerkship has to add. I think he is pretty unique in that view. I don't think that a lot of people share that view.

KIM My judge thinks the same way.

HITTSOON Maybe it's a district Court judge thing. But he has a lot of clerks that have gone on to clerk in the court of appeals and I've had several friends who have done multiple clerkships. And they're very different experiences. The district court clerk is involved in trials and sees the nuts and bolts of starting a litigation and discovery and all that. And court of appeals they deal with more abstract legal issues and they are on a more sedate schedule from what I understand, So you have different things to add from each. At this point in my career a whole other year of clerking would be a lot.

SHERMAN I also didn't consider doing an appellate clerkship. In part that was because of similar concerns of sort of being at the middle point of my associate career to begin with and, too, just wanting to see how the district court clerkship went. So I think there is value in doing more than one but you should think about why you want to do it and if it really is feasible both financially in terms of where you are in your career whether you are willing to move to another location and whether you really are interested in seeing the different aspects of the litigation. So I agree with Terra's assessment on differences between the district court clerkships and an appellate clerkship and if you can see both aspects I think it could be very valuable but you should also ask yourself whether you really are interested in both and you want to learn about both at a granular level at the expense of continuing your time at whatever other job you are doing or starting your career. So I think it's a personal decision but either way you can't go wrong with getting a couple of clerkships. It's really whether if this is how you want to spend two years of your life and whether that works for you in all other aspects.

BELL Well thank you all. I think as you hopefully heard there were four people sitting around the table with very different career paths, with different experiences, different practice areas, at least in my case, and I hope that you've gotten a sense of not necessarily the answers to the big picture practical questions of clerking but some examples of how to think about answering those questions. And I think the theme throughout that I've heard is really being intentional, being thoughtful about what you can do and doing the balance that is something that we as lawyers and service providers have to do all the time and often is a general part of the human condition which is balancing what you can and can't control and trying to navigate that to fit in a workable solution or workable situation for yourself in the space in between. So thank you all.

Thank you.

Thanks.