

The Journal conversation:

Sheila R. Block, LSM, ASM

Stephen Grant, LSM and Chantelle Spagnola

This is an edited version of the Young Advocates' Standing Committee "Fireside Chat on Advocacy" at Campbell House on April 11, 2016. *The Advocates' Journal* is grateful to Neesons for transcribing the conversation.

STEPHEN GRANT: If you really dig, you can find out that, years ago, Sheila was a folk singer. She was also a motorcycle rider. As well, on her CV she has a list of practice areas in which she has engaged: class actions, corporate restructuring, defamation, intellectual property. She doesn't mention the fact she also does family law. She and I have co-counselled on a couple of cases that are not found in her resumé, but I'm here to tell the tale.

Lawyers like to talk about other lawyers, and particularly the great lawyers. Sheila and I have seen some great lawyers over the course of our careers, and I must say she is the real deal.

How did this happen?

SHEILA BLOCK: When I was coming through school, I didn't want to be a nurse, and I didn't particularly want to be a teacher. I thought, maybe I could be a social worker or a lawyer. It occurred to me, when I found out you could draft wills and do real estate deals, that you wouldn't actually have to speak in public—you could be a lawyer and sit at your desk. So I thought, I'll try that.

And, great surprise, Joyce Harris, now retired, and I did moot together at the University of Ottawa, and we won our moot. We were two of eight women in our class.

After that, we came to Toronto and mooted with everybody else at U of T. Professor Alan Mewett was one of the judges. All the other participants were men. And I'm tall compared with Joyce, so we were these two diminutive females. And we won the whole thing. And I thought – well, how hard can this be?

So I applied for three jobs. One with your guy, Ian Scott. He later told me he lost my application.

SG: That could easily have been true.

SB: One with Alan Borovoy.

SG: At the CCLA?

SB: Yes. And I also applied to [former Chief Justice] Charlie Dubin. And Borovoy said, "Look, if Charlie will hire you, go with Charlie." And so I did. Armstrong, Morphy, Blair and Brunner were with him.

SG: Later Justice Armstrong and Justice Blair. This was a litigation boutique, way, way, way before its time. But they did everything. Chief Justice Dubin was so profound a lawyer that, of the labour law he practised, he would act on the union side one day and on the management the next. He even acted for the Labour Board – a real trifecta – he was that great. You don't find that happening anymore.

SB: No.

SG: Has it been a fulfilling career over these years?

SB: It really has. First of all, it's a helping profession. And when I mentioned social work as a possibility, my sister is a social worker and it would have been the natural thing to do growing up in the sixties that you would become a social worker if you had any sort of care for people.

But I thought I'd try this law thing. And it really is a helping profession, particularly on our end of the practice where people are always in trouble somehow or another. Either they've done something, they've been sued, or they're suing because they believe something has been done to them. And you are their Pericles – you are the one who stands up for them.

SG: It's a privilege, what we do. No?

SB: It's totally a privilege. As I often say, "I could stay home and watch the soaps or come to work. You learn so much about other people's lives, the intimacy you get."

And this is a point my son made to me when he was interning for a criminal firm and he'd come home at night and I'd be working on my transcripts, after he made us a de-

licious meal – he is a wonderful cook – and he was reviewing Crown disclosure. He said the intimacy that you get – about people's lives – it really is a privilege. And with that privilege comes a lot of anxiety, responsibility and worry about doing your best.

SG: You had worries over these years? You?

SB: Yes.

SG: You wouldn't know it.

SB: I think I've managed the stress pretty well, and having three kids is a good antidote because as soon as you get home, you are in a completely different world.

SG: I've known you for a long time and worked with you from time to time, and the case or the cause doesn't matter because the passion was always there, and it's still there. How do you do that?

SB: Well, first of all, you don't become a judge – where you have to decide who is right and who is wrong. That really wasn't in my DNA. But knowing that somebody has a position that they can't themselves put forward and they need an advocate, a Paraclete, a representative who knows the landscape – that's my role, and I know what I'm to do. I'm to do what they would do for themselves if they had the skill and the training.

I like being given the assignment and knowing there will be somebody really good on the other side and that there is a third person who will ultimately decide the rights and wrongs of it. But I can be passionate about that because that's my job.

SG: Passionate but objective, no?

SB: Yes. It's not what I think or I feel or the idea that you just deny the other side's argument. It's being passionate for the role of putting forward the best possible case.

CHANTELLE SPAGNOLA: What skills do you possess that have made you the litigator you have become?



SB: The skills are all learnable skills, and I've spent a lot of time teaching advocacy skills, not out of any charitable notion but, selfishly, I teach to learn.

I learn so much from teaching – by watching other lawyers or law students take a problem and formulate a question, do an opening speech or make a closing argument. And I try to figure out why did that work, why didn't that work, how can I fix it. Can I make it better in two minutes or less? You can't help but learn if you do advocacy skills training.

So skills are all learnable. And Jim (Seckinger), my husband, and I did a lot of teaching in the UK when Margaret Thatcher decided she was going to give rights of audience to solicitors. Margaret had been the daughter of a grocer, she had been a barrister. They turned their noses down at her, and she got back at them because she decided she was going to give rights of audience, and all you needed to do was have some kind of training. So they brought over advocacy trainers from North America because there is a long tradition of training and, particularly, learning by doing training.

We would take these young solicitors from the Magic Circle firms, like Clifford Chance or Linklaters, and we'd go up to some lodge or some big country estate where they had interrogated Rudolph Hess after the Second World War or a place with the biggest rhododendron garden in the south of England, and we'd spend a week with them.

They're all smart as hell. They have all the legal context, but they never had the chance to ask the questions. They'd prepare all the witness statements, and they would kid that they'd be sitting behind the barrister, who would say, "I'm appearing on behalf of the plaintiff ...". They would tug his gown and loudly whisper "The defendant! The defendant!"

These young solicitors would get frustrated because they knew the case inside and out, yet couldn't make the submissions. And in one week they just went from zero to 60 in terms of advocacy skills. It was fantastic.

So these skills are all learnable. You can be trained in all these skills. We can't make you a smarter lawyer or make your analysis of the case better, but we can teach you the skills of who, what, when, where, why; how to describe in chief; or to tell, don't ask, on cross. One fact per question. So the skills are all learnable.

CS: There has got to be an intangible something then. What is it?

SB: Caring about your cases, caring about the role. Our mutual friend Garry Watson says the difference between the good lawyer and the great lawyer is that the great lawyer gets more out of the file – so, really, working and thinking. Although sometimes you can over-think it.

But you watch the English barristers, and they have a lot of easy manner and things that seem to be innate – but for them, some of what they do is really just part of the culture, the way they cross-examine. [In an English accent] Q: "You're lying, then, aren't you?" A: "No." Q: "So you say!"

We can't get away with that. We actually have to have a reference from the discovery or the documents to impeach the witness. So the English barristers have a lot of style that you don't really see here because our judiciary doesn't put up with it, but of course the English judiciary are pretty much all former barristers and they come from that same tradition. So they may have more tolerance for it. Of course, they have some fabulous advocates.

SG: Have you seen an evolution in advocacy over these years you've been practising?

SB: Yes.

SG: What's changed for the better, and what's changed for the worse?
SB: I think we're less technical now. I did an article about Charlie Dubin and his contemporaries with whom you and I grew up as the heroes and leaders of the bar, like Arnup, Scott, Robinette and Finlayson and Laidlaw – that whole crowd – and I went back and read a lot of their cases.

They would take technical points all the way up to the Supreme Court of Canada and get a new trial; then they'd lose again, all the way up again, and often for no fee. It was often one of those situations where they'd been buttonholed by the chief justice of the day in the courthouse hallway, saying, "You know, I need you to start a trial next week for the co-defendant. Show up in my courtroom at 10 a.m. on the seventh." So, nowadays, there are fewer technical arguments and fewer trials, appeals, retrials, et cetera.

I also think there's probably a better quality of the bench from those times – times when you really had to fight a lot with cranky old judges. So we don't get too much of that.

SG: Did you have any mentors who were meaningful to you?

SB: I have had so many mentors. Mentors come in all shapes. Mine were all old white guys, basically because of the era. There weren't women litigators. But both on the corporate side of the firm and on the litigation side of the firm, all the people I worked with were just fabulous.

And they also had a great culture of pushing you forward. They'd always say, you know, "Stephen is a great young lawyer"; or "Sheila will do a fantastic job for you." It was all generous, and that is a culture that you want to adopt in your own practices because it's so important for a young lawyer to be given opportunities.

When I look back at the early days, the first year was just misery.

I didn't know what I was doing – I was very, very unsure. I was thrown into the deep end over and over again, flailing around and felt (and no doubt was) completely inadequate. That was year one.

Year two and year three, you get a little more competence. But it was still a bit of a grind, and exactly when it shifted to be just a great joy I'm not sure, but for those of you who might have some doubts at the moment, hang in there. It really does get terrific because you can help people. It's intellectually challenging.

CS: So, for those of us who are still flailing around, what suggestions do you have for junior lawyers to gain the confidence of our clients?

SB: Permit me an anecdote. The first day I came to the firm after articling and bar admission, Bob Armstrong (who again is one of my wonderful mentors) had a discovery. And Dennis Lane, who at that time was a very senior lawyer, was on the other side.

And the president of a chemical company was coming in for discovery, and Bob said, "Dennis Lane has got a few more questions. Just go over to Oslers with the client." And we're walking over, and the client (who could tell I looked like I was 12 years old) asked, "So how many of these have you done?" I said, "This is my first one." And, typical of the time, and I hope it's still the same and I hope this has been your experience, Dennis was every inch the gentleman. He would have known it was my first day on the job, but he didn't take advantage at all.

We don't do that as much to lawyers on their first day. They don't seem to get the opportunity to jump in and sink or swim – mostly sink. That's because now there's so much at stake. Nobody anymore has a little case that doesn't count. Everybody's case is a mega-case, and so there is more reluctance to throw young lawyers into the arena.

What I found was I had a number of cases that were about to go to trial and they didn't go to trial – they would settle at the courtroom door. And I eventually realized I just enjoyed putting the cases together. Actually getting to the courtroom door was something I really enjoyed – finding that you've got everything lined up and you figure out what your opening is, how you want to close, what you want to say on closing about this witness or that witness. I enjoyed that process. And that was good because most of what we do doesn't go to trial.

SG: Did you have any lows?

SB: For sure. I did an injunction that was supposed to be in front of Justice Estey. He would have given me the injunction, but I ended up in front of somebody else, who shall remain nameless, and he just wasn't interested. It was a Friday afternoon and, as a result, a factory closed and all the people who had invested in it and were running it lost their jobs. And the lawyer who instructed me, he lost his whole practice.

SG: It's amazing how many years later you remember this.

SB: Oh, yes, I remember this one.

SG: Was it the injustice or the arbitrariness that resonates so powerfully with you these many years later?

SB: I think it was – and this sometimes happens at our end of the work – the serendipity of getting X instead of Y to hear your case.

SG: I pretty much always get X instead of Y, so I know what you're talking about. But was there something specific about that case which was so telling that you can relate the story so many years later?

SB: Well, I think I felt it was all on my shoulders. What I've tried to do over the years is accept that it's not my cause of action – it's the client's cause of action. It's not my case – I didn't make the facts. But there have been times when I walked out of court and felt I should have done more on that re-examination, or I should have done more on that reply, or I should have answered this question better. I can't tell you how many times I go out of court thinking, "If only, if only!"

SG: That happens to you, too?

SB: It happens, and it should happen. You should always be reflecting on it because you're never going to be perfect.

SG: It's hard, though, isn't it, because don't we always second guess ourselves no matter what?

SB: Unless we win, and then we're on to the next case.

SG: That's it. I always think the great advocates never remember the wins, but nev-

er forget the losses.

SB: Yes, absolutely.

SG: I think we're programmed to think we could have been better, we could have done better, we could have argued this or could have argued that.

SB: Sometimes your case isn't a winner, so you should be losing some cases. I've hit my quota, I think.

SG: How do you live with the fact that it's on your shoulders? You just say, "Well, it's like the doctor – the patient has the disease."

SB: You can't beat yourself up. I remember telling my mother after one loss how upset I was, and she said, "Look, you know, you have to get on with things." It's when you worry that maybe you didn't do your best.

SG: How are you ever going to know that?

SB: Oh, you know.

SG: Well, I don't think it's fair to say because you've lost a case that you didn't necessarily do your best. As you say, there are some cases that are simply not winners, whether on facts, on the law, the equities, whatever. There are some cases that are simply not winners, and I think it's a bad strategy beating yourself up. You would be bloodied and bruised if that were the case, but it can't be right that you have to worry about every case that you've lost.

SB: That's absolutely right. I mean, I do move on.

CS: Are there any particular wins that have stayed with you all these years?

SB: I've been lucky on a number of occasions, and one of them was with your colleague, Kent Thomson, when we did an arbitration with Coors against Molsons and we had an international arbitration panel. And even though arbitrations are private, the result was reported and the context was reported, so I'm not letting any cat out of the bag.

But this was one of those situations where Pete Coors and Eric Molson shook hands. They were both of the same temperament. They were both heads of large, wealthy, long-lived families and family businesses. So Coors thought he had a deal with Molson, and Molson obviously thought he had a different deal. And they papered it through time, but it didn't quite say everything that maybe they wanted it to say.

So we had to find an arbitrator who wasn't an Englishman because they'd just look at the words and put their blinders on. And it was an American company and a Canadian company, so we needed somebody from somewhere else. So we went and got a Kiwi, David Williams, who is now one of the biggest international arbitrators. He got

his start with our case.

We had a wonderfully long hearing, and Kent and I worked closely on it and had a great deal of fun. And I was on a holiday in Lunenburg, Nova Scotia, and got a 160-page judgment on a Friday night. Sitting on this big four-poster featherbed and reading this judgment, which we won – that was great fun.

SG: Did you feel that over the course of your career you had to make sacrifices in other areas of your life – vacations and that sort of thing?

SB: You should interview my son. I didn't miss one concert or one play. We went on lots of vacations. My nanny left at six and I had to be home at six, so I would get up at a very early hour and get to the office.

SG: So the sacrifice was either working out or sleep?

SB: No, it wasn't sacrifice. It was the choices I made. I wanted to have a family, I wanted to be a full participant at my firm, I wanted to hold up my end. That may have something to do with the era in which I grew up.

SG: A lot more mobility now, though, than what we saw? You have been at Torys 44 years?

SB: Yes. And I stayed there because I was and still am in a group of terrific people who care about each other, who work together. Their successes are my successes; my successes are their successes. It's a collegial environment. And if you're not in that environment, change your environment because you can find places where people love working together.

SG: I agree with that. Nobody is a prisoner of their firm, right? You always have options.

SB: Right.

CS: There are so few female litigators who have been practising for as long as you have. What advice do you have for female litigators in particular to try to manage both – to maintain a career for as long as you have and to still have it all, to go to the concerts and have a family. It seems almost unattainable, but you've managed to do it.

SB: It's totally doable, and there's no one way to do it – to have a family and have a career that you enjoy and that you think is meaningful. The idea of dropping out for that whole period of time when your kids are growing up is something that has left a lot of women with no confidence when the eight years are over (or however long they step out). It's like they were never in it to begin with.

So if you want to do both, it is possible. There are all kinds of configurations that women use that really weren't available in my day.

CS: Did you find you had to chart your own

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course in that regard?

SB: I was the first woman at the firm. I was the first married woman at the firm. I was the first, second and third pregnant woman at the firm.

SG: First woman partner at your firm?

SB: Yes, Pat Myhal and I became partners in the same year. So maybe it was easier because my male colleagues had no idea what to do, and they just let me do what I wanted.

SG: Big firms are better or worse now than they were then?

SB: They're better in the sense that they recognize it is a perfectly legitimate thing to do – get pregnant and have a baby and take some maternity leave and so on. It's not for me to say, "I did it this way, you should do it this way."

But it worked out for me. I don't play bridge, I don't have a squash game. There are a lot of accomplishments that I don't have.

SG: So are you actually going to share with us how you became you? I really want to know what the secret is.

CS: Me, too.

SB: Well, I have a total bathtub mind. I do a case, I'll know everything about automatic oil-drilling units for however long the case lasts, and then I'll pull out the plug. And I really can't remember anything.

SG: What's the key? Come on. There is a secret to this that you can share with this room of friends.

SB: I find all these things interesting. I find the cases interesting, even the boring cases.

SG: Because you're a natural problem-solver? You like crafting the logical answer to a problem?

SB: No, I have an obligation to the client who has a particular point that he or she wants to get across, and that's what I have to do.

CS: Who's the most difficult person you've ever had to cross-examine?

SB: Well, it was my inexperience and my ineptness that made this a difficult cross-examination. It was a *Combines* case – *Competition Act*, we call it now, but it was when the *Ottawa Journal* and the *Winnipeg Tribune* both closed. So the Southam paper and the Thomson paper both closed on the same day, leaving the cities, whose papers were owned respectively by those two companies, as one-paper towns.

And the head of *Combines* investigation didn't think that was appropriate and brought a criminal case. A couple of days in, Lorne Morphy had me cross-examine a woman from Montreal. I was about nine months' pregnant, a big beached whale in

a black gown, and she was about 32, an investigative journalist in the financial area, beautiful and stylish.

And I'm cross-examining her, and she's tough and I'm getting shrill, and she's getting shriller, and I'm getting shriller and Morphy is sitting there beside me, and I'm thinking, "Is it Tuesday yet? When will this end?"

And from that moment on, I have cross-examined women quite differently. It was a terrible day, but a total learning experience. There may come a time when it doesn't matter what your gender is as counsel and what the gender of the witness is, but it certainly wasn't the case back then. I've been mindful of it ever since.

AUDIENCE QUESTION: If you could give some advice to your young lawyer self, what would it be?

SB: It really is hanging in there through the learning curve. It's a steep learning curve, and there's a lot of insecurity in what you're doing. First of all, your billing rate is ridiculous and you're thinking, "People are paying me this much money for that, and I don't even know what I'm doing."

So, the advice is to realize that you actually are learning with everything you're doing. The first time you do a bill of costs or the first time you have to serve a summons, they're small, stupid things that you think you should know how to do. But if you've never done them, they're part of your evolving skill set. So you keep learning over those years, and eventually there is this point at which you feel like a lawyer. And it happens in every profession. Compare, though, the amount of flexibility you have to learn, to help people, to make money, to change the law, to lose cases and break your heart.

It's a fantastic profession. It's so intellectually stimulating. Case law is so malleable. As one of my friends said, "If the policy is with you, any technical argument will do – but not vice versa."

That's what the common law is built for, because you can find ways to make your point within the constructs of a legal argument in most cases, appealing to the justice of the cause.

AUDIENCE: What is something that advocates for better or for worse did 44 years ago that they don't do now, and what are things that advocates do now that they didn't do 44 years ago?

SB: I think now it's the quality of the help that lawyers get. You have all these terrific young people who are much better trained as lawyers than in my day, and they prepare the cases and you can deploy so many assets, to use a military term, to get your case ready. So you're in a much better position. I think we get to the point of the case faster, and I think we make better use of courtroom time, fewer and farther between but I think we make better use of it.

AUDIENCE: I wonder if you could comment about how the legal culture could change to make not just Bay Street but, generally, legal practice feel more safe and more comfortable for people who don't come from traditional backgrounds.

SB: There's been a huge change in the environment, even since Stephen and I started. At Torys there were no women, and everybody was a U of T grad and a white male. Now our firm has diversity from every possible group, so that's been a huge change and nobody would have predicted it before it started to happen.

And the thing about the legal profession is that the private bar runs through partnerships. In every entry level class there are going to be people like a Stephen Grant or a Sheila Block who, 40 years later, will be leaders of the bar. So you have the ability to change your firms from the inside.

Things have changed tremendously in my lifetime, and you folks at the entry level, you will make all kinds of changes going forward. I mean, you won't be sitting around in big offices with all that equipment and furniture and everything. You can now do legal work in so many different configurations and they will become prevalent sooner than later.

AUDIENCE: Any regrets? Anything you would have done differently?

SB: There are so many things that, when I look back, I could have done differently or had more confidence or less anxiety or more willingness or more courage. But I wasn't ready for it at those times.

So I don't look back with regret. I just look back and see, yes, I had to learn by doing, which of course is my motto because I do a lot of learning by teaching and I do think that's how you learn. That's the great thing about being a young lawyer: Everything you touch you can learn from if you think about it and reflect on it.

SG: I would like to thank my reluctant friend here for being with us tonight. It was truly a treat. 



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