

On Tax—Heather Benjamin of Cravath

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we're joined by Heather Benjamin. Heather is a partner in the Trusts and Estates Department at Cravath in New York. Heather, welcome to the podcast, and thank you for being here.

Heather Benjamin: Thank you, Len.

Len: Sure. So, Heather, trusts and estates is a tax-adjacent practice, which is probably something that we'll talk about as we get into the discussion. But I'm curious, how do we start talking about your journey to the tax law or adjacent to the tax law?

Heather: So, I always thought I wanted to be a corporate lawyer, going back as long as I can remember. For a time, I thought maybe I wanted to be a business person. I knew that whatever I wanted to do, I wanted to make a lot of money doing it. And I wanted to be at the center of the world. For me, growing up in Stamford, Connecticut, that meant Wall Street, right? I saw a lot of people commuting into New York and I thought, "Wow, they look so important, and I want that to be me."

So, I went to NYU for college, thinking NYC is where it's at. And I did their traditional sort of pre-law majors—politics, economics. But I thought, "Hmm, before I go to the trouble and the cost of going to law school, why don't I check it out a little bit more? Why don't I work at a corporate law firm?"

So, I applied and joined a corporate legal department as a legal assistant for two years. And I really enjoyed that. I really enjoyed being sort of the last line of defense before something went out, whether that was a filing with the SEC or the work product we were sending to the clients. I just felt a lot of ownership.

And I also enjoyed being part of a deal team. And it was great. Long hours weren't as great, but I didn't mind it because I just felt like I was working on a very complicated, very important transaction, and I enjoyed that.

So, I thought, "Check, this works for me." So, I took the LSAT, went to law school, took all the corporate law-related classes someone can take. I happened to take income tax because someone told me it's one of those foundational classes like con law.

So, I took it as a 3L in my spring semester. I thought it was interesting, especially the policy components to it, but it was late in my career. And again, I knew I'm a corporate lawyer. That's who I am. I don't know what litigators do. And tax seems interesting, but more as like a high-level policy matter.

So, I came here. I worked in banking. Here at Cravath, they throw you in the deep end right away. So, I was talking to clients, negotiating contracts two months in and building really great relationships with people. And I enjoyed that. I enjoyed when someone would call me back to ask me follow-up questions instead of calling the partner. That was what I loved.

And so, I moved on to capital markets, and I also enjoyed that practice group, but I missed some of what I enjoyed most about banking, which were the relationships I had created and established. And the more freestyle drafting that I did in that practice group.

I really liked that, but I still wasn't sure whether I should just keep working in capital markets and maybe some of that would come in that practice group too. I just knew that there were some things I really liked and other things that I could kind of do without.

And Allen Parker was the Presiding Partner at the time. He was also one of the banking partners. So I had worked with him during my first year and a half at the Firm. He just seemed like someone whose door is open: "Come talk to me."

So, I took him up on the offer and went to him and said, "Allen, I love what I'm doing, I'm not scared about the amount of work or even the fast-paced aspect to it. But I really enjoy the relationships and being a more general lawyer that I felt like I was more in banking. What do you think about this? I don't really have the answer. I just feel compelled to communicate this, because I'm trying to take control of my career and I don't know what steps I should take."

And he said, "Trusts and estates. I think you'd be a great fit for it. Go talk to Dan Mosley." And I said, "OK, I don't know what a trust is or an estate, but interesting."

So, I went back to my corporate partner at the time, and I told him that Allen had said this and he was like, "Whoa, whoa, whoa, do you know that that group is a tax group?" And I said, "Ah! Tax? Wait a minute. That sounds way too technical."

So, to date, my experience with the Tax Department was that they were the specialists. We would talk about a very discrete part of the larger transaction, but it didn't strike me that they were the center of the deal, which is what I had always craved. I've learned now that, in many ways, the tax considerations are the drivers of many deals, but at the time...

Len: I was going to say you forgot about incredibly sociable and friendly.

Heather: Yes, and incredibly sociable and friendly. Exactly. And lovely, lovely people.

But anyway, Allen has great judgment in my opinion. So, I said, "He must know what he's talking about." So, I went and I knocked on Dan's door and the rest is history.

Len: So, I want to talk about this conversation with Allen Parker. What was going through your mind, as you were reflecting on your career, such that you ended up in a position where you were having this conversation?

Heather: Well, I think I was considering what it was that I liked most about my practice and the things that I wasn't sure I would enjoy most going forward.

And so, I wanted to take a moment to reflect before I found myself as a seventh year, sixth year, still going through these corporate rotations. And as I started thinking through that, I thought, "Well, what I enjoy most is advising on the big picture, being able to explain things to clients in a very clear way."

But I enjoyed almost more often than not talking to clients who really had no idea about the substance. I didn't enjoy as much talking to the bankers who do this all the time. But I enjoyed the company-side things where I'm talking to these people who are selling themselves, and they've never done that before, and having to be the legal advisor, but in many ways, also, being almost like a friend or a more general advisor to just fill in the gaps for them and make sure they felt comfortable while also understanding the risks and the options.

Len: I think this is a really interesting reflection that you give about the way you were looking at your work life. Because some people might wake up, after four or five years as a corporate associate, and say, "Maybe I just don't like practicing law very much."

You're making a more sophisticated and nuanced observation that reflected a lot of self-awareness. I think you were saying, "I like a lot about what I do every day." And the delineation you're making is that the folks who see this less every day, who are less sophisticated about transactions are the people who benefit the most from my advice, my expertise.

And I think for our listeners, particularly young lawyers, I think that kind of delineation is a useful way to think about your career. "Today, I worked 10 hours. I really liked seven of them. I didn't like three of them. Why?" And you can really start to figure out which tasks you prefer, and that helps guide you as you specialize in your career.

So, Allen sent you to Dan Mosley who was the Head of the Trusts and Estates Department back then. Tell us how that went.

Heather: I walk into his office with this mentality of like, “OK, this is a tax group. I’m nervous.”

If anyone’s ever met Dan Mosley, he’s a terrific guy, an amazing storyteller. So, I walk into his office and, immediately, he starts going into all these crazy stories he’s experienced with his clients. And they’re all so interesting and so unique and so dynamic and so different.

And yes, there’s some tax components to it, but the focus in the conversation was clearly on his relationships with the clients and the role he played. And the best way I can describe it is sort of like a general counsel for individuals.

And that was like, “That’s what I want.” That’s what I’ve been wanting in corporate. And I’ve been able to get it somewhat, but that’s really where I’d like to focus my energy because I want to be a subject matter expert. And certainly, you need to be that because the foundation is certainly tax. But there’s a personal element to all of what we do that really is deeply integrated in this practice group.

And because of that, you end up starting a relationship talking about the tax efficiencies—“OK, if you do this, it can result in that, and if you do this, it’ll result in this.” But it’s never a bottom-line thing because families are always moving around and people always have different thoughts about what they want to happen now, what they want to happen when they’re no longer around, right?

And so, you have to be able to build those relationships and to also understand who your clients are in a way where they can understand what you’re saying. And for them to be open with you about their innermost personal, sometimes, thoughts and feelings, and that’s the best way to advise them. And it was something that, for me, just really resonated. So, within three and a half minutes, I said, “Yes, Dan, please, this is…”

Len: Really?

Heather: Yes, it was a very—

Len: Three and a half minutes.

Heather: Three and a half minutes in.

Len: So, here you are as a third-year associate or going into your fourth year, and you’ve identified that there’s this technical area of the law that’s going to be totally new to you. And there is also going to be this social area of the law that’s going to be totally new to you too. And dealing with people as clients. What do you remember about your early days in T&E, your first three or six months?

Heather: So, in some ways, moving into this practice group as a third year was like a rotation of mine, but it was even harder because there actually is substance of law to know. Whereas when I was in corporate there is law, but it’s about lawyering. And using precedent and understanding what this bank likes to do over that bank.

And so, although this department had more substantive law than the corporate groups that I was in, I felt like, “OK, I need to just take the time to get familiar with the law,” which was new for me. Which was something that I thought again, “I don’t know. Am I going to like dealing with the Tax Code and regulations?”

But something about trusts and estates law, the Code itself, maybe it’s because I can personalize it, makes sense to me. And that was helpful for me because it didn’t seem as abstract. There’s substance of law here that I need to know. There’s also state law, property law, but I’ve enjoyed it. And now, I like that I feel like I’m an expert in something.

Len: One of the reasons I really liked the tax practice over the years is I feel like our transactional practice is intensely legal. There’s a code; there’s regulations; there’s cases; there’s administrative guidance. There’s all of that.

But then, it's always applied in a very practical way. Sometimes, the legal question is very hard and the application of it is easy once the lawyers have reached a judgment about what the legal answer is. And sometimes the legal answer is really easy. For example, the buyer gets the deduction in this case. Super easy. Everybody agrees.

The problem is, in this deal, they want to give the seller the economic benefit of the deduction. And all of the practice is about how do we, in this contract, take a deduction that legally belongs to the buyer indisputably and shift it to the seller? That raises a lot of issues, but none of those issues has to do with tax law.

All those issues have to do with contracts, negotiating, assumptions, drafting. And I really like that dichotomy. It sounds to me that your experience is the same and probably amplified because you have all this intense tax stuff, you've got to learn about trusts. You've got to learn about state law. You got to learn about the taxes in the Internal Revenue Code, but then you have to explain it to human beings and make sure that they are arranging their affairs, understanding the way the law works.

Heather:

That's right. And I think part of it too is that if you're a tax lawyer helping on a deal, most likely you're seeing the deal from the beginning of the deal to the end of the deal. And then there's a closing and everything is sort of tied up at the end.

Something that we have to deal with often is that clients come in, and we talk about their planning. We help them get a document together. But then there's all of these steps that have to happen after you get the thing together that really requires a lot of continuous touches and a lot of handholding and a lot of continued explaining.

For example, a lot of our clients are very successful people. And so, they're used to being in a position of control. But much of what we do involves giving up control over things to be able to get the tax benefits of the transfer. You actually have to transfer something to get it out of your estate.

Len:

Because the tax rules themselves turn on how much control you've maintained or given up, right?

Heather:

Exactly. And sometimes, it's black and white. Most times, if you tell someone, "You can't do this for tax reasons, it'll cost you X," they're like, "OK, fine. I get that."

But there's an in-between where someone can kind of be in control, but they can't do certain things. It takes a lot of like, "Yes, I know you want to be the one voting these shares because it is your company. And no one's disputing that. But if you do this planning, someone else needs to come in and be that person for you."

Len:

To cast the vote or to make the decision.

Heather:

To cast the vote. And that's a whole other consideration in trying to figure out, "Well, OK, if I can't be the actor and I'm used to being the actor, who is my trusted person?" And it's not always an easy answer. And so, we oftentimes have to help the client think through those considerations as well, which are not tax considerations. The tax piece is, "It can't be you." That's kind of it.

But the rest of it is, "OK, well, in your judgment, what do you think? What do you think makes a good trustee? What makes a good executor?" Pulling on the experiences that we've had to help someone reach that conclusion is something that we have to do all the time and they need to remember to continue to do that once they're outside of our office.

Len:

One question I wanted to ask you when I knew that we were going to be talking was, I'm sure you probably see situations where some people have a clear legal interest in doing X. This makes the most sense either from a tax perspective or from some legal perspective.

However, their personal interest is so different. Their personal interest is either that they hate this member of their family, or instead they really, really adore this new person who has come into their lives and they're willing to give a lot of control or assets or whatever to this new person. How do you deal with advising somebody when their legal interests and their personal interests or preferences are at odds in such a stark way?

Heather:

It's a great question. And we do deal with it often, and we deal with it in different ways. Sometimes it depends on how far apart those things are and who the client is.

So, for example, if there's a client who is a sophisticated person that we've known for a long time, and we kind of understand the dynamics and yes, it would be more tax-efficient if the client gave assets to his child and not his grandchild, because there's another layer of tax when you give to grandchildren. But the child is estranged or the child just made the parent mad. Our role really, in my opinion, would be to very clearly and in writing explain the tax consequences to that person. And I say in writing because it's so important and the tax consequences can be so extreme that you really want to make sure there's no confusion about what the consequences are of someone's actions.

Now, if after seeing and hearing all of that, the client still says, "This is what I want to do," then we'll execute on that. And sometimes, we'll suggest to the client, "You might want to talk to that person and let them know now, while you're alive, that this is your will, and this is what you've decided to do." They don't always take us up on that, but sometimes that's helpful because I have had situations where someone has not done that, they've died, and then it's left to everyone else to explain, "No, no, this is what that person wanted and these are the reasons why."

Now, take the other example though, where there's someone who's older, whose spouse might not be alive, who has children, who are trying to influence her or him to do something. In that situation, I would be even more hesitant to make changes without spending a significant amount of time alone with that client. To really make sure that the client understands what planning has been done before and pointing out to them, "OK, this is the tax consequence from doing this. But also, John, once he learns about this, that might put him in an awkward position with his sibling. And so, why don't we just think through that for a moment and is this change you're thinking about really, maybe, worth that result?"

And again, just playing, not so much a legal counselor, but almost a psychologist or a therapist to be like, "Let's just think through whether you're thinking about something in the moment, because you're upset, or whether this is something that you've really taken a step back and given some real thought to and want to execute on."

Len:

You've highlighted a couple points in that answer that I think are worth pausing on. One of the themes of our podcast episodes for On Tax has been that, in the tax world, you have many different clients. And I think in the deal world that's easier to see. Your client is essentially anyone who consumes your legal advice and is supposed to act in accordance with it or on reliance of it.

In your practice, I think it's probably a little bit different. It seems like you've got one client. You've got a person who is making decisions about his or her assets, and there's lots of family dynamics that need to be taken into account. And I think it's very prudent advice to make sure that the descendants are all often updated about the planning.

But in the end, it's you, Heather, and one person, mom or dad in some family, who's got to get in a room and within the veil of attorney-client privilege, exchange legal advice and make decisions about how to act in accordance with that. And that is highly different than the way I practice law on a daily basis. Am I understanding correctly how you live and work in the world of tax in that way?

Heather:

Yes. So, you are in a room with one person who's your client, but because you're dealing with a family and you end up being, like I was saying before, in this sort of role as a general counsel. Like if you own a company and you have your business lawyer, fine, but you're not going to call your business lawyer to talk about something happening with your apartment.

So, what ends up happening is yes, mother or father, or both maybe are technical clients, but more often than not—and I think it's actually a good thing—their children and then their grandchildren also start calling us for things. And it doesn't mean we're always the one to answer their questions or solve any problems, but we do become like the hub for the family as a whole.

And so, it is very interesting and important to remember, “Well, who is really the client here?” And if I have someone else in the family that I can see is sort of trying to use me sometimes as a way to get a message to the ultimate client, it’s important to recognize that and remember, “Well, OK, I can communicate this if you want,” but that that mother or father really is the client. And it’s their interest that I really need to be representing in the situation.

And it can get a little bit tricky, which is why I think it’s really important as a T&E lawyer to always be able to read the room. You have to be able to really keep in a lot of information. Because, to be successful, you need to be able to build the confidences of your client and be able to get them to trust you and communicate with you.

That’s not going to work if you’re going to turn around and tell their children what their plans are or what their thoughts are. It really has to be them. So, you just have to constantly be in this mode of being friendly, being helpful, looking out for the family as a whole, but also remembering that at the end of the day, your clients are one or two individuals in the group.

Len: I know that many of our listeners are law students. I wonder if you can talk a little bit about how you train associates and how you recruit associates? What sorts of things might a law school student experience that would lead you to recommend that they think about trusts and estates as a career practice?

Heather: That’s a great question. I think that someone who is interested in mastering a subject, who has an interest in working in a technical space, but also someone who enjoys the human aspect to it and dealing with individuals. You have to have a certain patience and a certain desire to want to explain to someone: “This is what a trust does. This is how you establish a trust. This is what an executor is.”

Some people might not want to do that. They might want to just get to like the advanced level and talk in an advanced way and in code to their clients. So, that is one way I would say if you’re a law student, or even if you’re already practicing and you find that those are things that you’re interested in, T&E can be a good place for you.

And then I would say someone who’s interested in being more of a generalist, because although it is based in tax, we practice all sorts of law. We help clients create museums. It’s all sort of adjacent to tax, but it’s a wide variety of things.

Clients often are wanting to make grants to institutions; we help with that. I have a client who has a large family office and we helped them restructure their family office. Of course, we worked with a corporate lawyer, we worked with an employment lawyer, but we were heavily involved there.

So, someone who just has a yearning and an interest to constantly learn and be willing to be asked a question that they might not have the answer to and have never thought of before. So, if always on your toes here is something that sounds interesting to you, then this is a practice that would fit that.

Len: It’s a great answer. And the first part of that answer made me realize something that I don’t think we’ve really covered on other episodes. And that is sometimes tax lawyers—and I’ll include trusts and estates lawyers in this—fail to appreciate how rudimentary they need to be at the start to make sure that the person they’re talking to is following, and therefore, will be able to understand the real thing you want to say.

But it’s a really useful lesson for young lawyers. And I think your practice probably drives it home—that every person you’re talking to may be starting at a different level of understanding of the legal principles and the commercial principles involved in what you’re saying.

Heather: Exactly right. And this is what I was saying about reading the room. You need to understand where are these people starting from? And I think if you’re unsure, assume they know nothing. But the other consideration in our practice is that this isn’t always a topic people want to talk about. Because a lot of what we talk about is, “You’re dead.”

Len: What happens after I die?

Heather: And your family's here, you're not. So, their mind already sometimes is kind of blown like, "Whoa, whoa, whoa, wait a minute, what do you mean I died? I didn't think I was ever going to die."

Len: Never going to happen. Never going to happen.

Heather: And it's funny because the two things that are certain in life are death and taxes, and that's what makes our practice so relevant. Some people just aren't in the mind space to begin with to want to really engage on this. And so, you don't want to dwell so much in the weeds or give them an excuse to just turn off and not want to focus on it, because some people are just inclined already to say, "OK, I'll do that later. I'm young. I can do planning in 10 years."

And it's like, "Well, wait a minute, let me explain something really quickly to you to get you to understand why it's so important to do planning early. And it's just as fundamental as there's a tax based on the value of the assets you pass. Probably the value of your assets is lower now because you're going to be so successful at what you do, that it's going to multiply by a hundred-fold."

Len: Or this startup company you're dealing with is brand-new. And you want to transfer this stock before it becomes a unicorn billion-dollar company.

Heather: Which it will because you're so wonderful. So, let's do that now. And then you don't have to think about it. So, it's trying to almost convince people that this is something important to focus on. Whereas when you're working on a deal, everyone already acknowledges like, "We're doing this. This is happening. It's going to get done. Let's do it." Sometimes for us, it can be a little bit like pulling teeth to get people to want to focus on it. And then you need to be able to explain it to them in a way that they understand.

Len: That's really interesting. Well, Heather, in the few minutes we have left, I wonder if we can talk about your life outside of work? What do you like to do when you're not acting as a Trusts and Estates partner at Cravath?

Heather: Well, so Len, I have three young kids. And so, a lot of my time is spent being with them. Working here, I found that it's so important for me to be able to balance my work and my family to do something that's just for me. So, for me, that is playing tennis. I played some when I was a kid, but then stopped. And in the pandemic because everyone else was doing it also, I picked it back up again just to be outside. It's very social. It's a little competitive, which I like.

And so, I started doing that, and it's wonderful because I can't look at my phone. I can't process any of the mental load that I know a lot of working parents can relate to. I just need to focus on hitting the serve, getting the ball across. And it's been really helpful for me just kind of also relieving stress and hitting those ace serves. So, I do that. I've been doing that.

And then I also enjoy cooking. On the weekends, every weekend if I can, I make a big brunch. My family gets together and we play this game called rose and thorn, where we share with each other our high and low of the week. And it's just a nice way to be able to connect. And then I have my kids, they're my sous chefs. So, it's another activity where it's helpful. We do need to eat, but we're able to work together to produce something that's yummy. And so, that's been a lot of fun too.

The other thing I think it's taught me is a little bit more patience because it's like, OK, she's not cutting the strawberries exactly how I want them to be cut, but I'm not going to say anything. I'm just going to let it go. So, it's been an exercise in just biting my tongue and just letting things slide, which is something that I've not always been great at, but I continue to learn.

Len: Similar challenge for me is, we give advice for a living, and so, I end up giving a lot of unsolicited advice to my kids or like in my personal life. But sometimes you just need to like turn off that part of your work persona and have a different way of approaching people outside of the office.

Heather: Yes, exactly, exactly. And what I think is right doesn't always need to be the answer, and that's just been helpful. And the pandemic has helped underscore that for me because I have spent so much time at home over the last two years where I wasn't before. Now I'm seeing myself do things over and over again with my family and with my friends and outside of the office, that it helps me to reel some of it in.

Len: I'm really taken by, "What I think is right doesn't always need to be the answer." I think that's very well said. Of course, in our day jobs, often what we think is right needs to be the answer because otherwise, people pay a lot of tax that they don't want to pay. Even in work, that's not always true, but outside of work it's a great approach to take. I'm going to take that with me from this conversation. So, thank you.

Heather: You're welcome.

Len: Well, it's been great talking to you, Heather. We've been joined by Heather Benjamin, a partner in the Trusts and Estates Department at Cravath. Heather, it was great to have you. Thanks for coming.

Heather: Thanks for having me, Len, I really enjoyed our conversation.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify. If you enjoy the show, please consider rating or reviewing us wherever you listen. We'd also love to hear from you directly. You can tell us what you'd like to hear on the show by emailing podcast@cravath.com.

I'm your host, Len Teti—thanks for listening.