

The Message Was Empowerment

By Lauren J. Wachtler

The kickoff for the Section's Women's Initiative began at the Annual Meeting of the New York State Bar Association with the panel: "Advancing Women in the Profession: A Conversation Among Former Women Section Chairs." The Women's Initiative was an idea conceived by the female Section Chairs to bring the next generation of women in the Section, and the profession, into leadership positions. Rather than focus on the usual "glass ceiling" or "cement floor," which is sometimes the cornerstone of panels dealing with women and the challenges they often face in the workplace, the panel took a more positive outlook and focused on mentoring, creating opportunity for young and upcoming women in the Section and the profession, and how, by providing them with the right tools, they can succeed.



Carla Miller, Lesley Rosenthal, Lauren Wachtler, Sharon Porcellio, Carrie Cohen, Bernice Leber, Shira Scheindlin and Tracee Davis

Moderated by the incomparable Carla Miller, Vice President, Business & Legal Affairs at Universal Music Group, and Co-Chair of the Section's Corporate Litigation Counsel Committee, the panel, consisting of Section former Chairs, the Honorable Shira Scheindlin, Bernice K. Leber, Sharon Porcellio, Lauren J. Wachtler, Lesley Freidman Rosenthal, Carrie Cohen, and Tracee Davis brought

together a vast reservoir of experience from the judiciary, the public and not-for-profit arena, and the private sector in both the upstate and downstate communities. The Panelists engaged each other and the audience, which, as noted by Judge Sheindlin, remarkably, consisted mostly of men, in an exchange of ideas, experiences, and advice on ways in which their experiences helped them succeed. The discussion ranged from seeking mentors—both men and women—early in their careers, stepping up to the challenges by asking for and taking on tasks and responsibilities that might ordinarily be given to men, and having the confidence to know that it can be done. Judge Sheindlin noted the paucity of women who argue substantive motions in her courtroom, while also noting that based on the whispered exchanges between the Partner in charge and the (usually) female associate, it is the associate who knows what the case is about and really should be arguing the motion or examining the witness at trial. In those cases, Judge Sheindlin has taken the bull by the horns, so to speak, and invited the associate to make the arguments she was obviously capable of making on her own.



**Carla Miller
Moderator**

The panelists also discussed the age-old "work-life balance" issue, which Lesley Rosenthal said should really be called "work-life synergy," as balance connotes compromise, and synergy brings a better perspective to those of us who work and have families. Lesley and Carrie both gave examples of how bringing one's family into one's work-life can be a benefit and not the ominous doom that so many say it inevitably portends. Carrie brought her children to watch her try a very high visibility criminal case; Lesley listens to some of the practical solutions her children, who are musicians, offer to solve some very



Bernice Leber, Sharon Porcellio, Lesley Rosenthal, Tracee Davis, Carla Miller, Carrie Cohen, Lauren Wachtler and Shira Scheindlin

human issues at Lincoln Center; and my daughter, who is now 25, attended so many Spring meetings of the Section, from the time she was 7 that she had her own badge and ribbon designating her as “Mascot since 1998.”

Both Sharon and Tracee noted the support their Law Firms have given in their respective career paths and how, when the Firm (and male partners in particular) is invested in female partners and associates succeeding, women can be a very valuable business asset. When that happens, everyone, including clients, benefits. Bernice, a former State Bar President, noted that her consistent Bar involvement has provided her with an extraordinary platform for networking and creating a personal brand.

While many of us on the panel were “firsts”—whether first female Chair of the Section or first female partner

at a law firm—it was generally agreed that as “firsts” we certainly do not want to be the “lasts,” and that it is our obligation to ensure that the next generation meets the challenges of the profession head-on with the right tools to give them the skill, and most of all the confidence, they need to succeed.

The panel closed with words of advice from each of the former Chairs and a quote from Gloria Steinem: “Power can be taken, but not given. The process of the taking is empowerment in itself.”

For inquiries, or if you would like to get involved with the Section’s Women’s Initiative, contact Lauren Wachtler at ljw@msk.com.

Commercial Litigation in New York—Choosing Between State and Federal Courts

By Timothy S. Driscoll

Federal court versus the Commercial Division—not an athletic contest or a reality television show, but rather a decision that commercial litigators in New York must make every time they decide the forum in which to bring an action in our state. There are myriad factors to consider in making this decision, which were the focus of a panel moderated by former CFL Section Chair Bob Haig at the January NYSBA meeting. Federal District Judges Margo Brodie (E.D.N.Y.), former Section Chair P. Kevin Castel (S.D.N.Y.), and Mae D’Agostino (N.D.N.Y.), along with Commercial Division Justices Timothy S. Driscoll (Nassau), Deborah Karalunas (Onondaga), and Jeffrey Oing (New York), answered various questions regarding commencement of the action, provisional remedies, discovery, dispositive motions, and trial. Those areas, and others, are addressed in Chapter 12 (Comparison with Commercial Litigation in Federal Courts) in the recently published Fourth Edition of *Commercial Litigation in New York State Courts*, of which Bob Haig is the editor.

The initial question, of course, is where a plaintiff or petitioner should file the action. Judge Castel initially discussed concurrent jurisdiction and concluded that practitioners should first ensure that their case could in fact be filed in their choice of venue before choosing the incorrect forum. If the plaintiff indeed chooses state court, the Commercial Division judges highlighted their experience and specialization in business litigation, as well as the various innovations spearheaded by the Commercial Division Advisory Council, such as summary jury trials. To the extent that counsel choose state court because they fear stricter scheduling orders in federal court, Judge D’Agostino quickly allayed that concern by assuring that the scheduling orders are not meant to be punitive. Nevertheless, following the adage that “it is better to ask permission than beg forgiveness,” she cautioned that counsel should request any deviation from a scheduling order before a deadline expires.

The second discussion area revolved around the fact that many commercial cases are initiated upon a party requesting provisional relief. As federal practitioners are readily aware, a temporary restraining order (TRO) expires 14 calendar days after its entry, with the possibility of renewal for an additional 14 days. There is no analog in the CPLR, and thus a TRO in the Commercial Division could theoretically last far longer. Nevertheless, the Commercial Division judges noted that they will use an application for a TRO as an opportunity to shape the course of the entire litigation, and explore settlement then if at all possible.

The differences amongst any two judges, much less an entire system, in the management of discovery are worthy of an entire seminar, and Bob Haig spent some time exploring that subject with the panelists. Although state courts have had some recognized budget challenges, the Commercial Division judges assured the litigators present that the changes to the Commercial Division rules ensure that discovery issues will be addressed with the same expeditiousness and innovation that characterizes the division. For example, Rule 14, as the author pointed out during the panel, creates a “3-4-3” formula for informal resolution of discovery disputes, in which a party may send a letter to the Court that is no more than 3 pages in length outlining the particular controversy. Within four business days thereafter, opposing counsel may send a letter of similar length expressing her position. The Court has the choice of whether to address the dispute through a telephone conference, in-person conference, or other mechanism. And, as Judge Karalunas recognized, Commercial Division judges also have the benefit of other new discovery rules, including limitations on the type and number of interrogatories, elimination of boilerplate objections to discovery requests, and the opportunity to limit the number of depositions and the time period for each deposition. Finally, Judge Oing stressed that cost-shifting in commercial cases may be a new beachhead for state court jurisprudence.