

Q&A With Foley & Lardner's Barry Mandel

Law360, New York (May 19, 2011) -- Barry J. Mandel is a partner with Foley & Lardner LLP in the firm's New York office and chairman of its securities enforcement and litigation practice. Prior to joining Foley, Mr. Mandel, who has been in practice for nearly 40 years, was senior vice president and head of global litigation, employment and regulatory affairs at Merrill Lynch & Co. Inc. Prior to Merrill Lynch, Mr. Mandel was a partner at Baer Marks & Upham where he handled civil, criminal and regulatory securities and commodities litigation matters. He began his career as an attorney with the New York office of the U.S. Securities and Exchange Commission, where he served as a branch chief in the Division of Enforcement.

Q: What is the most challenging lawsuit you have worked on and why?

A: The most challenging litigation on which I have worked was a criminal commodities tax fraud case. I represented one of the two defendants who went to trial in an 11-defendant case. The other nine defendants testified against our client. If that wasn't enough of a challenge, the case also required that we simplify highly complex commodities and tax issues for the jury. The trial lasted three months and ended in a hung jury. We then had to retry the case again for another three months.

Q: Describe your trial preparation routine.

A: Trial preparation is all consuming. Trials require total preparation and organization, including personal knowledge of all legal issues, testimony and every document. The ability to quickly identify critical testimony and relevant documents can make the difference between a persuasive argument or examination and an unprepared presentation.

Q: Name a judge who keeps you on your toes and explain how.

A: Kevin Thomas Duffy [of the Southern District of New York] is a judge who keeps the lawyers in front of him very much on their toes. While he is very smart and highly experienced, he also is unpredictable. Thus, lawyers who appear in front of Judge Duffy have to be prepared for virtually anything to happen in the courtroom.

Q: Name a litigator you fear going up against in court and explain why.

A: David M. Brodsky [of Latham & Watkins LLP] is an excellent litigator with whom I have tried a case and against whom I have tried a case. He is bright, totally prepared, experienced, very comfortable in court and aggressive.

Q: Tell us about a mistake you made early in your career and what you learned from it.

A: In one case I made two mistakes from which I learned good lessons. First, in a regulatory enforcement case tried in the old federal courthouse, we “won” the case in that we were able to prevent the government from obtaining the relief it had requested. Nevertheless, the court granted the government other relief that had a dramatic adverse effect on the client’s business. While, at first, I thought we had been victorious in defeating the government, I then realized that victory is not in “winning” the case, but in achieving a successful result for the client.

The second mistake I made was when I stood to make an argument in the case. Unbeknownst to me, the large easy chair used in the old courthouse had tipped back and fallen silently on the carpeting. When I went to sit down, the chair was gone and I ended up on the floor. From that mistake, I learned to “look before I sit.”