

Q&A with David Lender & Luna Barrington

David Lender of Weil Gotshal & Manges is the Co-Chair of the firm's global litigation department, as well as an all-purpose trial lawyer. He has seen remarkable proven success in both capacities; his trial acumen and the acclaim he has received for it has landed him a plum spot as one of Benchmark's Top 100 Trial Lawyers in America for the past three years running, and his keen hiring, grooming and mentoring capabilities have allowed the next generation of talent at the firm to flourish. **Luna Barrington** is one such example of this next generation. Lender and Barrington speak to Benchmark editor **Michael Rafalowich** about the firm's staffing strategy, trial preparation, dealing with immediate challenges posed by the COVID-19 pandemic and what to expect in the future as it pertains to the firm and to litigation in general.



David, as Co-Chair of Weil's litigation department, I'm assuming you have an active hand in a good deal of the firm's recruiting decisions and mentoring programs, as well as grooming younger litigation talent. Did you want to speak to that as it pertains to younger partners like Luna and other recently promoted litigation partners? How has the COVID-19 pandemic impacted how you focus on these important aspects of the profession?

David: At Weil, we are always looking for the next generation of talented litigators, so we spend a lot of time focused on recruiting and mentoring. Members of the firm—from partners and counsel to associates—all actively participate in our mentorship efforts. In addition to sponsoring one-on-one mentoring, we have several affinity groups, including a Women@Weil mentoring group focused on the retention and development of female attorneys, as well as affinity groups focused on other diverse attorneys, including attorneys of color. We expect all of our partners, from Department Co-Chairs to Practice Heads to newly promoted partners, such as Luna, to participate actively. For example, I am the Management Committee liaison to the firm's Black Attorney Affinity Group.

I always encourage my mentees to look out for opportunities to build their skillsets, and to make the most of those opportunities by thinking critically and creatively about the issues instead of defaulting to the easy solutions. I also encourage them to think more about the business of law, which is something that was less of a focus when I started, but clearly critical given how competitive

the legal landscape has become. The pandemic has not changed my focus, but instead of coffee breaks or mentoring lunches, I make a concerted effort to check in with junior partners and associates through zoom, calls or email. I look forward to returning to the office to provide in-person feedback, mentorship, and training, but in the interim, we will adapt to make sure that our younger attorneys get the same quality and frequency of engagement on these important fronts.

Luna, did you want to comment on anything specific that drove you to Weil, whether in terms of recruiting or training, or the firm's reputation more broadly?

Luna: I was initially drawn to Weil's broad range of clients and its reputation for handling "bet-the-business" litigation. Weil handles the most complex cases, which often involve issues of first impression or high stakes – with significant damages on the line. It is incredibly exciting and challenging work, and the firm makes it a priority to give its young associates on-your-feet practical experience. Weil's reputation as a top-notch litigation firm is reflected in the bright and fantastic lawyers who work here, where the level of camaraderie and teamwork is unmatched.

What is one piece of advice each of you would offer to practitioners situated similarly to you about how to make the most of a mentor-mentee relationship in Big Law?

David: It is important to think about how you can use your unique access – to clients, other practitioners, and other stakeholders – to enhance a mentee's ability to meet goals and expand her network. It is also important to prioritize cultivating skills outside of the courtroom and the law firm, because the next generation of great litigators also needs to be the next generation of great business developers and client relationship managers.

Luna: I always encourage young associates to be proactive with their careers and to look for opportunities to develop their practical skills. A great way to do that is through your mentor. While David has always looked for opportunities for me, I have also asked him for opportunities when I saw them, and he has always facilitated them for me. More generally, David has taught me how to be an effective lawyer and how to exude courtroom presence just by watching and working with him.

You both acted on the case for C&S Wholesale Grocers, a sweeping trial win for your client that you recently sustained on appeal. Did you both want to comment on anything particularly unique or novel about that case, and speak to how you and the rest of the Weil team prepared for trial?

David: This case, and the outcome we secured, were properly called a "unicorn" by the legal press – the treble damages, the situation we walked into upon our retention, the complex economics, the challenging documents, and the rarity of the result all made it unique. C&S, a large grocery wholesaler and one of the largest private companies in the United States, retained us and our partner Eric Hochstadt to try the \$800M antitrust class action in Minnesota federal court after the court granted class certification. The plaintiffs in the case claimed that C&S and a competitor, Supervalu (which settled prior to trial, leaving our client potentially on the hook for all damages in the event of a plaintiff verdict), entered into a conspiracy to allocate certain geographic markets in violation of the Sherman Act.

Luna: We were meticulous in our planning and preparations for trial, which required us to master an enormous litigation and factual record dating back eight years. David always taught me to be one step ahead of our opponents and to

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review and re-review your documents because you'll never know what you'll find. In this case, we knew our documents front to back and back to front, including an exhibit that contained key metadata, which David introduced during a cross-examination and undermined the credibility of one of the plaintiffs' case themes. We were aware of all the thorny facts and we embraced them in a way that the jury found credible, which ultimately led to a complete defense verdict.

You both are fairly all-purpose commercial litigators, with cases spanning a broad range of practices to your credit. Was it a conscious decision by either or both of you to take the "generalist" tack? How do you best promote that label in an era where specialization is king?

David: I knew during law school I wanted to be a litigator and that I wanted to try cases. I think if you speak to any trial lawyer who handles significant cases, she or he will agree that, for the most part, your skillset has wide-ranging application and should be marketed that way, and that a broad practice is much more challenging and interesting. I've yet to have a chemical engineer as a juror on a patent case, or an economist as a juror on an antitrust case, so the skillset good trials lawyers have is the ability to take complicated concepts and explain them to people. Even in practices where historically you might see less differentiation – for example, IP or patent – I'm beginning to see those proven trial lawyers branch out and take on a more diverse blend of work. So for me it was very much a conscious decision.

Luna: When I clerked on the federal court, I was involved in a wide variety of cases and I liked the challenge of learning new areas of the law so I was definitely looking for a more generalist practice when I came to Weil. While it is helpful to have subject matter expertise in a particular area of the law, every litigation is different so it is also critically important to be able to showcase a broad range of success in complex, high-dollar-value cases regardless of the nature of the allegations. As generalists, we specialize in high-stakes trials without limiting them to specific practice areas.

Despite the fact that the firm has strengths in numerous capacities, as do you both individually, I couldn't help notice a good deal of antitrust work on the firm's plate recently. The C&S case you worked on together was one major example, but there were other I noticed, such as David's case for H&R Block and a case Luna is working on

for Farmers Insurance. Is this coincidence or trend? And, if the latter, what's driving it? In what other areas and types of cases are clients approaching the firm?

Luna: We have been involved in a large number of significant antitrust disputes recently. I think there are two factors at play: First, over the years, Weil has cultivated a premier antitrust practice, which has helped us attract meaningful cases and disputes that range from pure competitor disputes to major price fixing class actions to IP disputes with antitrust overlays. Second, antitrust cases tend to carry significant financial and business risks, and our clients look for firms that can deliver successful results in these procedurally, factually, and legally complex disputes. This is especially true now where companies are facing unstable economic conditions.

David: More broadly, we are continuing to see a major influx of new engagements in our other destination practices, including securities litigation, where we have a full slate of securities class actions and complex M&A-related disputes, intellectual property, including new significant patent litigations in the bio/pharma space, as well as major copyright music licensing trial work. In addition, we've been engaged in major product liability class actions and environmental litigations, and restructuring litigations, including expansive trial and contested hearings in courts around the country.

Another thing I noticed is that Weil is noted for a pronounced level of trial work, which is reflected in how many Weil partners make Benchmark's elite Top 100 Trial Lawyer list. Again, the C&S case was an example but there were several others. What is the firm's philosophy regarding trial work and, specifically, fostering the opportunities for younger partners to play roles in them? How does this make Weil stand out in the market, in terms of attracting talented associates and lateral partners, as well as attracting new business?

David: We are glad to hear that the market appreciates how much we focus on trial work – we really do prioritize this area across our platform, in terms of business development, marketing, attorney training, and mentoring, and increasingly see that our clients look for this specific skillset when making hiring and retention decisions. I'll let Luna talk about how we originate opportunities for younger partners, but as far as our standing in the market, we do think we stand apart from many of our peers. Over the past eight years, dating back to when I became Co-Chair of Weil's Litigation Department, many of our lateral hires had tremendous trial experience in private practice or government, and gelled at Weil because they wanted to continue focusing on trials. Others who didn't have as much experience nonetheless received it through first- or second-chair assignments since their arrivals. Our laterals and home-grown talent alike have generated considerable new business opportunities, owing to their trial track record, that might not otherwise have materialized. The C&S case is a great example – the company approached Weil to handle the trial on the basis of our reputation alone – but there are many other examples that showcase our trial chops across practices for new clients, which we have now converted, in many cases, to repeat clients of the firm.

Luna: Whether we are taking over a case specifically for trial or preparing for trial after months or years of working up the case from the start, our philosophy is the same. We staff cases leanly, usually with 2-3 partners whose experience and expertise obviously make them well suited to litigate the case, and a support team of counsel and associates. As noted in my earlier response, we immerse ourselves in the case and all aspects of pre-trial and trial practice, which requires significant contributions from all members of our team. Junior partners play

a lead role in developing the strategy for trial and lead the associate team in all aspects of the pre-trial work, including drafting final dispositive motions, deposing experts and other key witnesses, preparing motions in limine, and handling certain pre-trial hearings. At trial, we handle jury instructions and conduct directs and crosses of witnesses.

What are some other trends or phenomena that you have observed in the market, particularly since the COVID-19 pandemic took hold? Would you care to offer any predictions for the immediate future of litigation and trial law?

David: Not surprisingly, overall case filing volume has dropped relative to last year. But we are seeing upticks in certain areas – including antitrust, restructuring, securities, and patent in particular, all of which are sweet spots for us – that underscore that the pandemic is another form of disruption bound to trigger disputes. Some of these may relate directly to the source of the disruption, while others may relate to underlying issues that were simply exacerbated by the disruption. The market, at least the most sophisticated participants, are finding creative ways to address these disputes and partner collaboratively with clients to navigate them. At Weil, we took a number of steps to organize internally to ensure we were proactively engaging with clients on their most important issues, and involving and introducing the right lawyers and practices. Fortunately, this kind of innovation and adaptation is being embraced in courtrooms now as well, and we are beginning to see jury trials and in-court proceedings resume thanks to the careful planning and approach of judges and court officers around the country. As horrible as this pandemic is and has been, I've been impressed with how quickly our judicial system has reacted and planned for the future.

Luna: Dovetailing with what David mentioned about courts resuming trials, I predict that there will be a sustained wave of positive changes and innovation in litigation and trial practice that will help firms and clients realize efficiencies, and could help provide junior associates with valuable experience. For example, it's reasonable to assume that video and virtual formats will continue to be embraced for certain aspects of litigation such as depositions which, in turn, will reduce the overall cost for client while giving more junior attorneys an opportunity to participate in them and/or watch them live – a valuable learning tool.

David, did you want to call out on any other particular peers you have in the market, specifically trial lawyers?

David: For starters, I want to call out my Litigation Department Co-Chair Jonathan Polkes, and my partner Diane Sullivan, each of whom you have ranked as a Top 100 Trial Lawyer, and each of whom is a rock-star trial lawyer. More broadly, Bill Lee at Wilmer Hale, Beth Wilkinson at Wilkinson Walsh, Ted Wells at Paul Weiss, and Jeff Tillotson in Dallas continue to do amazing work.

Luna, would you care to give a shout-out to any partners or practitioners of your approximate vintage in the market, at Weil or another firm?

Luna: I'd like to call out my fellow Weil Complex Commercial Litigation partners Jessica Falk, Bambo Obaro and Adam Banks. We all made partner in the last 3 years and it is an honor to be joining these impressive ranks. And while not my approximate vintage, I have to thank our Executive Partner Barry Wolf, David, Litigation Department Co-Chair Jonathan Polkes, and partner Eric Hochstadt for helping me get here. I'm looking forward to an exciting and fulfilling career at Weil under their leadership.