

Q&A With Sheppard Mullin's Rob Friedman

Law360, New York (July 7, 2011) -- Robert S. Friedman is a partner in the business trial and white collar practice groups in the New York office of Sheppard Mullin Richter & Hampton LLP. He heads the business trial practice group in New York. Friedman focuses his practice on business and corporate litigation matters. He has particular experience in the areas of securities litigation, internal investigations, corporate trust litigation, real estate litigation, director and officer liability, bankruptcy litigation, restrictive covenants and intellectual property.

He has tried over 60 cases and regularly represents financial institutions, technology companies, Internet marketers and litigation trustees in significant business disputes. Prior to entering private practice, Friedman was a senior trial attorney in the homicide bureau of the Kings County District Attorney's Office in Brooklyn, N.Y.

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

A: In 2008, I tried a case in federal court in Boston on behalf of a large software company (wrongly) accused of misappropriating computer source code. This was a jury trial, and what made it most challenging was that the plaintiff's main witnesses and "owners" were two local gentlemen who founded the company. Plaintiff's goal was to present their client as the small, innovative, "built up from nothing company" owned by grandfatherly witnesses who were wronged and taken advantage of by the menacing computer giant.

In addition, our main witnesses were not from Boston or the U.S. To combat this theme, in addition to addressing the substantive allegations, we pointed out that plaintiff was now principally owned by a private equity firm controlled by a billionaire, so this was far from a David v. Goliath case. Our countertheme was that this case was about the greed of the billionaire who incentivized the original owners to fabricate the claims against my client. I realized our theme had taken hold when the courtroom deputy asked me whether the private equity guy had arrived yet in Boston "on his private jet."

Q: Describe your trial preparation routine.

A: I break this down into two categories: the substantive and the sublime.

Substantive: I draft my own outlines for each part of the trial, from opening statements, to direct examination, cross-examination and summation. There is no substitute for this. I start with a broad topical outline which becomes more detailed with each draft. By the third draft, I generally review the documents, exhibits and testimony excerpts myself and incorporate into the outline. The most important task is to synthesize the massive amount of information into the most important evidence to tell a simple, coherent and compelling story.

For cross-examination, the key is flexibility: In preparing, you cannot be wedded to a strict outline or order. Rather, you need to build in "nimbleness" — the ability to move around, pounce on a comment, change directions and close like an NFL cornerback. For direct examination, my routine is to prepare an outline with answers, not questions. Direct should not be a scripted recitation, but a story.

Sublime: Like many professional athletes, trial lawyers are creatures of habit and superstition. I am no different. I wear the same tie I've worn since I was a prosecutor (far too long ago) for summations. I take the same route to the courthouse every day. I eat the same breakfast each day.

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

A: The Hon. Joseph Bianco, Eastern District of New York. Judge Bianco is one of the most hardworking jurists I have tried a case in front of. He keeps you on your toes due to this preparation, knowledge and experience as a trial lawyer. You cannot be unprepared on evidentiary issues. He'll hear argument and knows the law cold. He will be familiar with every case you cite in papers. That said, he also has a terrific judicial temperament and treats lawyers in a professional manner.

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

A: This may be a bit off the beaten path, but the litigator I feared most was Jim DiPietro, a criminal defense lawyer in Brooklyn, N.Y. I had several cases with Jim when I was a prosecutor, including a high-publicity racial murder. I found Jim to be an excellent lawyer, very balanced and measured in front of a jury and very aware of the perspective needed in these cases. He was a formidable adversary because juries liked and respected him, which inured to the benefit of his clients.

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

A: In an early homicide trial as a prosecutor, I included literary references and allegories in a summation. When I sat down with my supervisor upon returning to the office, I said, "That didn't work, did it?" He arched an eyebrow and said, "Not at all."