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## Most Admired Attys: Boies Schiller's David Boies

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By **Elaine Meyer**

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Law360, New York (August 24, 2010) -- David Boies of Boies Schiller & Flexner LLP may have achieved career heights on the winning side of some of the most significant antitrust lawsuits of the past 40 years, but that hasn't stopped him from tackling other areas of law as lead counsel in cases such as *Bush v. Gore* and the recent decision to overturn Proposition 8 — making him one of Law360's 10 Most Admired Competition Attorneys.

Boies' busy schedule during the month of August attests to his ability to juggle headline cases with very little in common. At the beginning of the month, he and co-counsel Ted Olson — his foe in *Bush v. Gore* — made the media rounds after their legal victory in getting California's gay marriage ban overturned.

While on the West Coast, he also fielded questions about the divorce of his client Jamie McCourt from Los Angeles Dodgers owner Frank McCourt.

And on Tuesday, he was back in New York — where his practice is located — and in trial once again, defending Barclays PLC against bankrupt Lehman Brothers Holdings Inc.'s accusations it was stiffed in the 2008 deal in which its assets were sold to the British bank.

At the U.S. Bankruptcy Court for the Southern District of New York, he questioned a securities attorney about an element of the Barclays-Lehman deal involving the transfer of exchange-traded derivatives.

It was about as far from Proposition 8 as a lawyer can get, but Boies appeared comfortable asking questions about complex regulatory issues involving the transfer while flashing various e-mails at the witness through a projector.

So comfortable, in fact, that as he requested a moment to look for a document, Judge James Peck wanted to know how much longer Boies would be questioning the witness, who had been on the stand for about half an hour.

Boies estimated an additional 30 minutes, at least.

“If you’re going to be more than half an hour, why don’t we use the lunch break to find that document.” Judge Peck said.

Boies smiled, unphased. His understated manner belied the significance of his involvement in the case.

“A big part of the fun of this case is having him on the other side,” Robert Gaffey of Jones Day, who is representing Lehman, said in the courthouse elevator.

Boies sparks this kind of excitement with whatever case he touches, known as he is for his meticulous cross-examinations and his ability to speak to juries in plain language about some of the most complicated lawsuits.

“He just has huge analytical gifts, a facility with economics, and can concentrate intensively but also have a sense of detachment,” said longtime Boies Schiller colleague Robert Silver. “David has a combination of those temperamental qualities to a degree I’ve never seen in my life in anyone else.”

Colleagues say it is his unique temperament — an obsessive drive to master a legal record combined with a preternaturally calm detachment that prevents him from getting ruffled over his high-stakes cases — that helps explain his wide-ranging success.

At age 69, Boies is still pulling off feats for his clients in significant antitrust suits, such as the record \$4 billion settlement in 2008 in American Express Co.’s suit against MasterCard Inc. and Visa Inc.

The suit came after the U.S. Department of Justice won its own case against the defendants. AmEx’s 2004 suit alleged MasterCard, Visa and eight big banks locked AmEx out of the bank-issued credit card business in the U.S.

Four years later, AmEx walked away with a settlement that, while not as large as the damages requested, was the largest in U.S. antitrust history.

MasterCard’s lawyer in the case, Kevin Arquit of Simpson Thacher & Bartlett LLP, left the case respecting Boies’ straight-forward approach in settlement negotiations.

“We didn’t have drawn-out discussions or time-wasting. Instead, it was very quickly done. David would say, ‘Here’s where I think I had a weakness in a case.’ The reason a lot of lawyers don’t do that is they’re afraid they’re giving something away. But the way David does it is the way people should do it,” Arquit said.

Boies’ mastery of the facts in a case allows him to hold out for significant settlements, according to Philip Bowman, one of the younger partners at Boies Schiller.

“It’s a combination of developing a record that prepares you to be able to win at trial, being prepared to take the case to trial, having the other side understand that you’re able to take the

case to trial and can win, and giving your client the confidence to say you can and will win the case,” Bowman said.

Boies, who earned a bachelor's degree in science from Northwestern University and graduated magna cum laude from Yale Law School in 1967, made headlines early in his career as a newly minted partner at Cravath Swaine & Moore LLP defending IBM Corp. against the U.S. government and related private suits.

The government suit, filed at the end of the Lyndon Johnson administration, alleged IBM was trying to monopolize the market for computers designed for business purposes and spurred the related suits.

“Back then, IBM was under siege,” Silver said.

Boies became lead counsel for IBM in his early 30s in a \$300 million suit filed by now-closed Calcomp Technology Inc. The trial lasted a year, drew a standing-room crowd and finally a winning court decision in 1977 for Big Blue, which was upheld by the U.S. Court of Appeals for the Ninth Circuit.

The courts sided with Boies' argument that IBM's impact on consumers and not its competitors was what was important in determining whether the company violated the Sherman Act, according to Silver.

“That's something which has since been so ingrained in the law that people take it for granted, but it wasn't then,” Silver said. “[Boies] helped usher in this new era in antitrust.”

Two decades later, Boies' legal acumen would be called on again for another landmark Justice Department case against a technology behemoth: U.S. v. Microsoft Corp. This time he was on the government's side, arguing that Microsoft's bundling of its Internet browser with its operating system was anti-competitive.

Silver remembers Boies staying up all night working on the exhibit list for the case. Despite the significant pressure, Boies was exceptionally calm, Silver said.

“What was notable about him was both how hard he worked and how relaxed he felt,” Silver said. “He couldn't have been more relaxed.”

More recently, Boies exhibited his deft skills in front of a jury, when in 2009 he represented Maurice “Hank” Greenberg, who was accused by American International Group Inc., the company he once headed, of taking \$4.3 billion in company stock.

In his opening statement, AIG's attorney Ted Wells of Paul Weiss Rifkind Wharton & Garrison LLP, a well-known trial lawyer himself, told the jury that the case was a little complicated but promised he would not bore them, Bowman recalled.

Boies then got up and told the jury there would likely be certain points in the case when he would bore them, according to Bowman.

“Right at that moment, he won over a certain level of confidence, because they thought, ‘This guy’s telling me the truth at least,’” Bowman said.

After four weeks of trial, the jury took less than five hours to reach a verdict, ruling unanimously in favor of Greenberg.

Bowman credited Boies’ rapport with the jury, good relationship with Greenberg and cross-examination style in part for the big win.

“The other side — as is typical — spread the witnesses out between the different lawyers, and David did most of the witnesses himself. By doing that, he was able to not only keep a unified theme, but also keep a kind of a rapport going that is hard to do if you have different lawyers coming in every morning,” Bowman said.

Given these accomplishments, it's no surprise that Boies is a busy man. He is so busy that he was not available for an interview for this article during the two weeks he was asked. Another media request has been pending for two and a half months, according to his press assistant.

Those who work with him speak almost routinely about the late nights that go into his litigation preparations.

“I’ve seen him cross-examine a witness for several hours without using a single document. Some people might look at that and think that he’s lucky or he has some sort of uncanny abilities — which he does — but from having spent the week before preparing, I know that it’s not just a matter of that. It’s almost like a game of chess where he’s played out every single move beforehand,” Bowman said.

"He puts in the time and immerses himself in the facts of the case in a way that his opponent never does, because most people, when they get to be successful, try to get other people to do the less glamorous work, and he realizes to be successful, you have to put in the time, particularly for a jury trial, you have to kind of know that for yourself," Bowman added.

Like many prominent attorneys, Boies has had his share of losses — Bush v. Gore being the most famous — and some flare-ups.

In 1997, Atlanta Braves owner Time Warner Inc. objected to Boies’ representation of New York Yankees owner George Steinbrenner against Major League Baseball, even though Cravath had not found a conflict.

Less than a week later Boies, who had been at Cravath for over 30 years, decided to leave and start his own firm.

The day the new firm started, it made the front page of the New York Times. Silver received a phone call from Boies, expecting that his longtime friend and colleague would immediately break the news.

But Boies, who typically called Silver in the morning to go over what they were working on while they were both at Cravath, did the same that day.

Finally, he casually mentioned his plans.

“I’m starting a new firm, and I hope you’ll join me,” Silver recalled Boies saying.

“I was wondering when you were going to get around to that,” Silver joked back.

It was a fitting exchange with a man for whom work comes first.

“There’s never any drama, no drama ever. And this was on the front page,” Silver said.

*Methodology: From May 25 through June 11, Law360 invited readers to nominate attorneys they admire to be profiled for the "Most Admired" series. Readers were asked: "Is there an attorney you've argued against in court who you respect — or whose briefs you fear? What about a lawyer whose views on the latest hot-button issues you eagerly seek out? Or a former classmate who is practicing the law in novel ways?" Survey participants were not permitted to nominate attorneys from their own firms and submissions from public relations and marketing professionals were not considered.*

*Separately, Law360 sought out nominations from practice group heads at the 100 largest law firms in the United States. In total, 1,016 nominations were received.*

*Nominations were reviewed by a board comprising experienced lawyers and Law360 editorial staff. Sixty-five attorneys covering seven practice areas of the law were then selected to be profiled for the "Most Admired" series.*

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