

**New York State Bar Association
Antitrust Law Section
2019 Chair's Report**

OVERVIEW

It has been a great honor and pleasure to serve as Chair of the Antitrust Law Section this year. Thanks to the support of our members and the many contributions of our active Executive Committee and substantive committees, I have been fortunate to preside over yet another successful year for the Section.

The Section's primary initiatives in 2019 were to:

- continue expanding its substantive antitrust programming, through multiple new programs sponsored by the Section's five substantive committees, while maintaining and improving annual programs such as the William Howard Taft Lecture and the Summer Mergers Program;
- undertake various initiatives to further our longstanding goal of enhancing the diversity of our section and the bar, including by appointing a new diversity chair and expanding the diversity committee;
- reach out to antitrust sections in other states and jurisdictions, including through cosponsored programming; and
- ensure that the value of the Antitrust Section is recognized by the NY State Bar.

This Report summarizes the Section's events and programming for the past year, demonstrating that the Section made meaningful progress toward all the 2019 initiatives. We began 2019 with our Annual Symposium in January. The five CLE panels were excellent and well attended. The Women's Networking Reception, Associates and Young Lawyers Reception, Annual Dinner and other evening events provided a great opportunity for attorneys of all levels to network, and we kicked off yet another strong year financially thanks to our generous Annual Dinner sponsors. Over the months that followed the Annual meeting, the Section put on **twenty four** substantive programs and several other functions directed towards networking, law student career education, and professional training. The Section also maintained its strong commitment to diversity through continued support of our Diversity Fellowship program, our mentoring and interview training programs, and more. It is testament to the energy, commitment and ambition of the Antitrust Section's members that an organization of just 541 was able to generate so much high-value content and community-building outreach.

This Report also recognizes members of the Section who made special contributions during 2019. But I would like to take the opportunity to thank in particular Kristina Maldonado and Tiffany Bardwell, our NYSBA Section Liaisons this year, for all they do and making what we do possible; as well as Kathy Suchocki, Lori Nicoll and Sally Bratton, the NYSBA staff members who support our Annual Meeting and various other section events. I am likewise deeply thankful for the efforts of the Section's leadership team, Hollis Salzman (Vice-Chair), Ben Sirota (Secretary) and Elaine Johnston (Finance Officer), who provided energy, ideas and support throughout the year. And I wish to express particularly deep gratitude and appreciation to my Axinn colleague Stacie Soohyun Cho for her year-long efforts to support my work as Section Chair, without whom this year would not have been a success.

PROGRAMMING

2019 Annual Meeting & Dinner

- The Section's Annual Meeting includes: (i) the Annual Symposium, a full day seminar on antitrust topics; (ii) the Annual Dinner, held at the University Club following the Annual Symposium; (iii)

a Women's Networking Reception held the night before the Annual Symposium; and (iv) an Associates and Young Lawyers Reception, held immediately before the Annual Dinner. The contributors to these events are too numerous to name, but **special thanks** to Ilene Gotts, Hollis Salzman, and Michael Weiner for co-chairing the Annual Dinner; Hollis Salzman and Mary Marks for hosting the Women's Networking Reception and moderating the panel discussion at the event; and to Erica Weisgerber and Puja Patel for coordinating the Associates and Young Lawyers Reception.

- The Annual Symposium featured five excellent panels:
 - “Annual Review of Developments and Hot Topics,” moderated by Elai Katz, and featuring Professor Eleanor M. Fox and Arthur J. Burke;
 - “Merger Enforcement in the Trump Administration,” moderated by Jamillia Ferris, and featuring John D. Harkrider, Lawrence Reicher, and Christine Varney;
 - “Blunt Instrument or Surgical Blade: Is Section 2 of the Sherman Act the Right Tool to Address Financial Market Manipulation?,” moderated by Eric Hochstadt and Kellie Lerner, and featuring Elizabeth B. Prewitt, Samuel Weglein, and David E. Kovel;
 - “A Discussion with the Antitrust Division’s New Deputy AAG for Criminal Enforcement,” moderated by Seth C. Farber, and featuring Richard Powers, Wendy H. Waszmer, and Lisa M. Phelan; and
 - “Don’t Be Afraid of the DARC (the Donnelly Act Revision Committee, that is),” featuring Michael L. Weiner, Zachary Biesanz, Professor Harry First, Adam C. Hemlock, Matthew Perez, William V. Reiss, and Erica S. Weisgerber.
- **Thanks to:** all of the Executive Committee members and other Section members who helped organize panels and participated as speakers.
- During the Annual Dinner, Executive Committee member Saul Morgenstern presented Stacey Anne Mahoney with the 2019 William T. Lifland Award, which is awarded annually to a distinguished antitrust practitioner in recognition of his or her contributions and accomplishments in the field of antitrust and service to the Section.
- The Annual dinner also featured keynote by Global Trade Expert Harry Broadman.

Antitrust Law Basics

- On June 10, 2019, a faculty of experienced antitrust law practitioners provided a broad overview of the current antitrust practice landscape, including its laws, procedures, and players. Course materials presented during the event can be found at: <https://www.nysba.org/AntitrustLaw2019ECM/>.
- **Thanks to:** Eva W. Cole, Adam C. Hemlock, Elai Katz, William V. Reiss and Gerald A. Stein for putting together a fantastic program and the Committee on Continuing Legal Education for sponsoring the event.

Summer Mergers Program

- On September 12, 2019, the Section hosted its annual Summer Mergers program on the subject of “A Policy Maker’s Perspective on Mergers and Market Concentration,” which focused on the role and scope of Antitrust merger review. The keynote speaker for this program was Senator Sherrod Brown, and the commentators were: Paul T. Denis (Retired Partner, Dechert LLP) and James

Levinsohn (Charles W. Goodyear Professor of Global Affairs and Director of the Yale Jackson Institute for Global Affairs).

- **Thanks to:** Ilene Gotts and the Mergers Committee for putting together a fantastic program and to the New York Bar Foundation and Analysis Group for sponsoring the event.

William Howard Taft Lecture

- On September 27, 2019, the Section hosted its annual William Howard Taft Lecture, “Balancing Unquantified Benefits and Harms Under the Consumer Welfare Standard,” which was moderated by Bill Rooney of Willkie Farr & Gallagher, and featured presentations by the Honorable Douglas H. Ginsburg of the United States Court of Appeals for the District of Columbia Circuit and Debra Aron, Ph.D. of Charles River Associates.
- **Thanks to:** Bill Rooney and his program committee for all of their hard work developing the topic and coordinating the event, and to Judge Ginsburg and Debra Aron for their thoughtful analysis. Thanks also to Charles River Associates for sponsoring the event.

Monthly Executive Committee Substantive Programs

- The Section’s Executive Committee met monthly except for July and August, and each meeting concluded with a substantive program that was open to all members of the Section as a benefit of membership (except for the January meeting, which occurred during the Annual Symposium, and the June meeting, because the presentation was postponed due to inclement weather conditions preventing the arrival of our arranged speaker from the West Coast).
- **2019 Substantive Programs:**
 - Almudena Arcelus, principal at Analysis Group, and Howard Ullman, Of Counsel at Orrick, presented on how the adoption of blockchain technology will impact various stakeholders, the potential risks, and useful mitigation strategies relevant to antitrust considerations;
 - Dr. Eric A. Posner, the Kirkland & Ellis Distinguished Service Professor of Law at the University of Chicago Law School and Of Counsel at MoloLamken LLP, presented his views on concentration in labor markets and proposed reforms to antitrust law so that it can better tackle the problem of labor monopsony;
 - Dr. Emily Walden, of NERA, presented on vertical healthcare mergers. Topic discussed during the presentation included the economic theory of vertical mergers and its application to healthcare mergers, in particular the acquisition of physician practices by health systems, as well as the use of merger retrospectives in prospective healthcare merger analysis;
 - Jonathan Baker, Research Professor of Law at American University and a former Director of the Bureau of Economics at the Federal Trade Commission, discussed his new book “The Antitrust Paradigm: Restoring a Competitive Economy.” Professor Baker presented his view on how enforcement and jurisprudence can be updated for the high-tech economy;
 - Andres Lerner, Executive Vice President at Compass Lexicon, presented his view on network effects (both same-side and cross-side network effects) and “big data” issues related to digital platform competition;

- Andrew Finch of Paul Weiss, a former Principal Deputy Assistant Attorney General at the Department of Justice’s Antitrust Division, reflected on his time in government in a Q&A with Ben Sirota;
- Herr. Dr. Jens Steger, of Simmons & Simmons in Frankfurt, Germany, discussed the European Commission’s treatment of data as a component of abuse of dominance cases, focusing on the Facebook case in Germany. Professor Harry First, the Charles L. Denison Professor of Law at New York University School of Law and Co-Director of the law school’s Competition, Innovation, and Information Law Program, provided commentary from the U.S. perspective; and
- Dr. Samuel Weglein, Managing Principal of Analysis Group, presented on labor-side antitrust issues in complex business settings, with a particular focus on the analysis of competitive effects in franchised business organizations.
- **Thanks to:** all of the speakers and to the Executive Committee members who participated in the discussions that help make the monthly substantive programs so valuable.

Substantive Committee Programs

- In 2019, our five substantive committees were extremely productive, hosting numerous programs throughout the year. **Thanks to** each of our Committee Chairs, Vice Chairs, and Executive Committee Liaisons, and to each of the speakers and moderators who participated in the programs listed below.

- **Cartel & Criminal Practice Committee:**

Leadership	Seth Farber (Chair) Grace Pyun (Vice-Chair) Jeffrey Martino (EC Liaison)
Programs	<ul style="list-style-type: none"> ▪ <i>A Discussion with the Antitrust Division’s New Deputy AAG for Criminal Enforcement (DAAG Richard Powers could not attend due to government shutdown)</i> (January 17, 2019) (Annual Symposium program, described further above) ▪ <i>Antitrust in the Financial Industry: Navigating the Pitfalls</i> (June 12, 2019) ▪ <i>Women in Antitrust: Career Perspectives in Cartel and Criminal Practice</i> (November 14, 2019)

- **Class Action Committee**

Leadership	Benjamin D. Steinberg (Chair) Margaret Rogers (Vice-Chair) William Reiss (EC Liaison)
Programs	<ul style="list-style-type: none"> ▪ <i>Litigation Financing in Antitrust: Pragmatic and Ethical Considerations in an Emerging Market</i> (November 7, 2019)

- **Coordinated Conduct Committee**

Leadership	Morgan J. Feder (Chair) Dina Hoffer (Vice-Chair) Jeff Martino (EC Liaison)
Programs	<ul style="list-style-type: none"> ▪ <i>Antitrust Plus Factors</i> (February 27, 2019)

- **Mergers Committee**

Leadership	Aleks Livshits and Puja Patel (Co-Chairs) Keira Campbell and Brian Desmarais (Vice-Chairs) Michael Jahnke (EC Liaison)
Programs	<ul style="list-style-type: none"> ▪ <i>Merger Enforcement in the Trump Administration</i> (January 17, 2019) (Annual Symposium program, described further above) ▪ <i>Views from the Trenches: Litigating Merger Cases</i> (April 10, 2019) ▪ <i>Working with Economists on Merger Matters</i> (May 14, 2019) ▪ <i>How to Conduct an Antitrust Overlap Analysis</i> (June 5, 2019) ▪ <i>Teleconference on Merger Enforcement by State Attorneys General</i> (August 8, 2019) ▪ <i>A View from the Other Side: Perspectives from In-House Antitrust Counsel</i> (October 29, 2019)

- **Unilateral Conduct Committee**

Leadership	Eric Hochstadt (Chair) Denise Plunkett (Vice-Chair) Robin Van der Meulen (EC Liaison)
Programs	<ul style="list-style-type: none"> ▪ <i>Blunt Instrument or Surgical Blade: Is Section 2 of the Sherman Act the Right Tool to Address Financial Market Manipulation?</i> (January 17, 2019) (Annual Symposium program, described further above) ▪ <i>Noerr-Pennington Immunity and ‘Sham’ Petitioning Developments in the Pharmaceutical Industry</i> (April 9, 2019) ▪ <i>Latest Legal and Economic Developments in Exclusive Dealing Cases</i> (November 25, 2019)

OTHER PROGRAMS & EVENTS

Outreach and Social Programs

- *Spring Fling*, April 17, 2019 (Erica Weisgerber)
- *Becoming an Antitrust Attorney*, February 20, 2019 (Michelle Clerkin)
- *Why Antitrust?*, June 17, 2019 (Wes Powell)
- See below-referenced diversity-focused outreach programs

Writing Competition

- Each year, the Section hosts a writing competition for currently-enrolled J.D. or LL.M. students at (i) New York law schools or (ii) if a New York resident, at any ABA-accredited law school outside of New York State. Submissions may be up to 50 pages, and may address any antitrust topic. The winner of the contest receives a cash prize of \$5,000 and publication of the article.
- **2019 Winners:** The section decided to award two authors this year, because the top two papers submitted were so excellent. They were David Dowling (Cornell Law School), for his paper, “Quick Look in an Age of Reason,” and Kristina Gliklad (Washington University School of Law St. Louis) for her paper “How Tying Arrangements Actually Work: The Printer-Ink Hoodwink vs. The Fortnite-Xbox Paradox.” They were both invited to and both plan to attend the 2020 Annual Meeting; Ms. Gliklad also plans to attend the Annual Dinner.
- **Thanks to:** Professor Edward D. Cavanagh for his continued leadership and organization of this program, and to Steve Houck and Steve Edwards for their help reviewing the submissions.

Diversity Fellowship Program

- To promote both diversity and continued antitrust scholarship, the Section offers Diversity Fellowships that allow several law students to spend the summer working on antitrust matters at state and federal antitrust agency offices in New York with the benefit of a \$6,000 stipend.
- **2019 Winners:** Three law students received the fellowship for the summer of 2019: Tyler T. Corcoran (The University of Tennessee College of Law) worked at the DOJ Antitrust Division in New York; Frank Piacenti (Fordham University School of Law) worked at the FTC in New York; and Kelsey R. Wiseman (Columbia Law School) worked at the NYAG Antitrust.
- **Second Annual Diversity Fellowship Luncheon:** On June 25, 2019, the Section hosted its Diversity Fellowship Luncheon, which brought together current and former Diversity Fellows for an afternoon of fun and networking. During this lunch, the Section’s Diversity Committee took suggestions for the upcoming program and selection process, which has begun for 2020.
- **2020 Applications:** The DOJ Antitrust, the FTC and the NYAG Antitrust have again agreed to take on fellows for the coming summer. In 2020, our fellowship offering includes a new opportunity to work in the corporate legal department of The American Express Company. The Section plans to continue offering up to four fellowships for 2020.
- **Thanks to:** Kellie Lerner and Wendy Waszmer for chairing the Diversity Committee and to many other members of the Membership and Diversity Committee and the Fellowship Committee for their hard work in leading these programs; to the three antitrust agencies who host and provide invaluable guidance and feedback to our Fellows; to the American Express Company for offering a new Fellowship opportunity for the upcoming year; to the New York Bar Foundation for serving as the administrator of the Fellowship Program; and to our past Fellows who perform valuable work for their host agencies and give us critical feedback on how to improve the Fellowship application process and program.

Diversity Interviewing Workshop

- On June 26, 2019, the Section held its workshop to provide training and feedback to law students and lawyers from diverse backgrounds on effective participation in job interviews.
- **Thanks to:** Kellie Lerner for her work in leading the workshop and to those who volunteered to serve as interviewers.

Mentorship Program

- This was the fourth year of the Section's Mentorship Program, which was created to provide law students and junior attorneys (those in their first 5 years of practice) with mentors from the antitrust bar (attorneys with 6+ years of experience) who will provide guidance, direction, and advice for pursuing a career in antitrust. The goal of this program is to grow the Section's junior membership. We celebrated the Mentorship Program as part of our *Spring Fling* event referenced above, which was attended by a number of mentors and mentees. The program continues to be successful.
- **Thanks to:** Erica Weisgerber and Justin Batten who led this program.

THE STATE OF THE SECTION

Leadership Planning

- On June 25, 2019, Section Leadership held its second annual Leadership Retreat, in which current officers and former Chairs discussed long-range plans and the mission of the Section.
- **Thanks to:** all the former Chairs who contributed their time and ideas.

Finances

- We began 2019 with on a strong financial note thanks to the success of our Annual Dinner Sponsorship program. This was immediately followed by the launch of a new program in which the Section offers our Annual Meeting sponsors the opportunity to sponsor any of five other section events (Spring Fling, Summer Mergers, Trial/Experts Training Academy, Taft Lecture, and Symposium), at a cost of \$2,500-\$5,000 depending on the event. We received an enthusiastic response to this new program, allowing us to top \$150,000 in sponsorship revenue for the year. Despite continuing to expand our program offerings, the Section's anticipates breaking even for 2019, leaving us with a surplus of approximately \$230,772 – roughly one year's operating budget. In sum, we enter 2020 in very healthy financial condition.
- **Thanks to:** Elaine Johnston for her outstanding service as Finance Officer for 2019; Ilene Gotts, Hollis Salzman, and Michael Weiner, who lead the Annual Meeting sponsorship drive; and each and every Executive Committee member who solicited sponsors.

Membership and Diversity

- Current section membership is 541, which is slightly higher than last year (535) but still leaves room for further improvement by the Section and its membership committee.

- The Section is proud of its diversity of membership and its steadfast commitment to increasing the number and diversity of our membership. Our Section has chosen to define “diversity” broadly, which has helped us maintain a constant and vigorous dialogue regarding antitrust law, enforcement, and policy. As a result of the Section’s longstanding commitment to diversity:
 - Approximately 45 percent of the Executive Committee’s members are women;
 - The current four-person leadership team (Chair, Vice-Chair, Secretary, and Finance Officer) has gender parity, and the 2020 leadership team will include three women;
 - The Section includes LGBT members; African-American, Hispanic, and Asian attorneys; lawyers who are within their first ten years of experience and beyond their fourth decade; attorneys who practice in upstate New York and outside of New York State; private practitioners from both the defense and plaintiffs’ bars; federal and state government antitrust enforcement lawyers; academics; and in-house lawyers from multi-national corporations.
- While there is always room for improvement, we are sensitive to enhancing diversity in the Section in terms of gender; LGBT/sexual orientation; age; years of experience in the practice; race/ethnicity; representation of plaintiffs and defendants; employment as outside counsel, in-house counsel, government enforcers, and academics; geographic location of practice (New York City, upstate New York, and international); law students; and attorneys who practice in related fields (such as litigation and white collar).
- The Section continues to undertake important initiatives specifically aimed at increasing this diversity in its membership, such as its Diversity Fellowship Program, Diversity Interviewing Workshop, Mentoring Program, and other activities throughout the year.
- The Section also participates in NYSBA Committee on Diversity and Inclusion meetings to understand better what other sections are doing to increase their diverse membership.
- **Thanks to:** the Membership and Diversity Committee for their efforts to work toward continued growth and diversity of the Section.

Collaboration with other Sections/Bar Organizations

- Beginning in 2019, the Section began actively seeking for opportunities to work with, and support the efforts of, other Sections and Bar organizations throughout the United States and beyond.
- In 2019 the Section fulfilled this goal by:
 - Hosting a joint mergers program with the Antitrust, UCL and Privacy Section of the California Lawyer’s Association that took place on August 8, 2019 (and a follow-up event is being planned for 2020);
 - Co-sponsoring the 2020 Annual Meeting with the Corporate Counsel Section;
 - Planning a joint mergers program with the Illinois Bar Association; and
 - Planning a joint Trial Training program with the ABA Antitrust Section.

Finally, I wish to express my thanks to the Section for your support and for allowing me the honor of serving as Chair. Since I joined the Executive Committee just over a decade ago, I have been privileged to serve the Section in a number of roles, including Membership Chair, all four officer positions, and on the Nominations Committee. Along with my service as Chair, however, I remain most proud to have been the very first Chair of the Section's Diversity Committee, upon the committee's creation in 2011, and to have helped operationalize the Section's Diversity Fellowship Program, in which I am still – and will continue to be – deeply involved. We have a talented and growing pipeline of diverse attorneys in our Section, in our substantive committees, and, increasingly, on our Executive Committee. I look forward to working with this new generation of diverse leaders in the decades to come.

Nicholas E.O. Gaglio, Chair
January 2020