

abtl REPORT

Volume I

Number 1

Letter from the President

We believe that ABTL provides special opportunities for the business litigator to contribute, to learn, and to improve friendships with other lawyers and judges involved in the commercial trial and appellate process.

During its first three years, ABTL has more than met the expectation of its founding firms. It now has almost 800 members from Los Angeles, San Diego and Orange Counties. ABTL has analyzed such important and diverse subjects as trial court consolidation, fee-shifting, and election and discovery of expert witnesses. It plans to examine specialization and the pro bono obligations of lawyers, as well as other matters of concern to its members. The thoughts of commercial litigators have been little expressed and thus often ignored. We think that this can be changed.



John H. Brinsley
President, ABTL

Since its formation, ABTL has enjoyed excellent and close working relationships with the local state and federal judges, and bar associations. The growth in membership and the enthusiasm of the participants at our meetings (the average attendance is between 250 and 300) attest to the void which our Association has filled.

The success of our seminars is primarily due to the high calibre of panelists from both the bench and bar, and the detailed syllabi prepared by the firms responsible for the presentations. We have concentrated upon substantive and procedural areas of particular concern to those who labor in the vineyards (or jungles) of complex litigation.

Our Board of Governors now plans to use a variety of methods to obtain a consensus of the views of the Association's membership upon important matters. In some instances, we will distribute detailed questionnaires. This approach provided a comprehensive view of our members' opinions regarding court consolidation, as demonstrated by Richard Coleman's article regarding this issue in the current *Report*.

In other instances, we plan to use small committees of ABTL members to work with interested leaders of the Bench and Bar to analyze problems and recommend their solutions. This approach is particularly useful in connection with procedural matters; it is being followed by a committee, under the leadership of James Nolan, which

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ABTL: A History in Brief

The founding of ABTL in 1973 signified agreement by 67 members representing 30 of the leading law firms in Los Angeles, Beverly Hills and Century City that business trial lawyers needed a voice to focus upon matters of particular professional and public interest.

Significant issues of public policy had placed the legal profession on the front pages of the nation's press. Aside from Watergate, which mortified the country at large, other law-related issues were generating public discussion: no-fault insurance, tort reform, certification, specialization, internship, court consolidation, advertising.

ABTL's founders decided, in essence, that business trial lawyers had a responsibility to debate these vital questions among themselves, then to communicate their views to the press and appropriate legislative bodies. And they selected a novel meeting form (for lawyers) in order to encourage widespread participation: dinner meetings followed by high quality seminars on matters of particular interest to commercial litigators.

Approximately 400 people attended the first such gathering on December 4, 1973, convened immediately after

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The Master Calendar System: Avoiding the Side Effects of the Cure-all

The master calendar system is a little like penicillin. Once viewed as the miracle cure-all for congestion of metropolitan court systems, the method is now being recognized as throwing off undesirable side effects. As in the use of the antibiotic, identification of the area of effectiveness and means of elimination of adverse side effects are required in the case of the master calendar.

The master calendar system works particularly well in the judicial administration of cases of a similar nature. No other system yet devised moves fungible cases to a conclusion as quickly and cheaply from the standpoint of the trial court. By spreading the case-court base for assignment on any one day, the master calendar eases the hard choice between oversetting, so that a trial date is an illusion, and undersetting, so that court facilities are not used to capacity. Imperfect as it is in that regard, the system is the only method that comes close

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is investigating the problem of the election and deposition of experts. The Association was asked by the Los Angeles Superior Court to participate in this venture because of the Court's concern regarding the increasing number of instances where cases have had to be adjourned in the middle of trial to permit depositions of experts. The matter is of particular interest to business litigators whose cases require that all discovery, particularly of expert witnesses, be completed well in advance of trial.

The Board of Governors is acutely aware of its responsibility to be circumspect before taking public positions on behalf of the Association. I would welcome the thoughts of our members regarding the Association's role in the legal community and the extent to which it should be expressing the views of business trial lawyers.

Once ABTL adopts an official position, through its membership and Board of Governors, that position will be transmitted to the appropriate members of the executive and legislative branches. We anticipate that representatives of the Association will be requested to testify, on occasion, and we plan to monitor the results of our activities to see if they have had any appreciable impact.

We invite you to join with us and participate in our work.

—John H. Brinsley

1976 Annual Seminar

ABTL will hold its annual seminar at the San Diego Hilton on Mission Bay during the weekend of October 22-24. The educational program, entitled "The Hired Gun: Selecting and Utilizing Experts in Business Litigation," will be devoted to practical tips on how to utilize experts such as accountants and appraisers. A mock trial situation involving the direct and cross-examination of an expert witness by outstanding trial counsel will be presented. Extensive written materials involving examination checklists, glossaries of terms used by experts, and sources of experts will be available only to those attending the weekend program. (See coupon, P. 6)

Report on ABTL's Survey of Court Reorganization

Recently ABTL surveyed its membership concerning the latest proposed court consolidation bill (Senate Bill No. 1500; Senate Constitutional Amendment No. 48). The bill passed the Senate Judiciary Committee in the State Legislature but failed passage in the Finance Committee. Because it may be resubmitted in the future, following is a brief overview of the bill's provisions plus the results of ABTL's survey.

The Bill

In general, the bill provided for division of the state into districts each comprised of at least one county containing a superior court only. Each new superior court would have been divided into a general division with jurisdiction of the present superior court and a special division with jurisdiction of the present municipal court. An appellate department was also proposed. Appeals from the general division would have gone to the court of appeals while appeals in the special division would have been heard by the appellate department.

Municipal court judges would have become judges of the special division. Some justice court judges could have succeeded to superior court judgeships in the special division, with increases in salaries by 5% on July 1, 1977. All superior court judges would have received the same salary as of January 1, 1978. Judges of the special division could have been assigned to cases in the general division, but general division judges could not have been assigned to special division matters unless they consented. A mandatory retirement age of 70 was established for all judges. All permanent employees of the courts would have been transferred to the unified court and, for some duties, the sheriff's and marshal's office would have been made interchangeable.

Survey Results

ABTL's survey found respondents overwhelmingly op-

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ABTL's Past Programs

| | | | |
|---|--|--|--|
| 12/4/73—California Long Arm Statute Judge Robert S. Thompson | Judge Richard Schauer Max Blecher John Brinsley | Jule Kvamme of Carnation | Private Counsel to the Consumer Protection Unit of Attorney General Herschel Elkins, Head of Unit |
| 2/5/74—Effective Law & Motion Practice Latham & Watkins | 10/18-10/20/74—First La Costa Seminar Trial Preparation: Robert Warren | 3/13/75—Enforcement of Rights of Secured and Unsecured Creditors in Bankruptcy Proceedings Judge William J. Lasarow | 10/24-10/26/75—Second La Costa Seminar Trial techniques and aids in commercial litigation |
| 4/4/74—Trial Preparation — The Last 30 Days Judge Parks Stillwell Judge Lester E. Olson Benjamin King Howard Miller Clifford Meyer | Trial: Alan Halkett Post-Trial: Richard Keatinge Discussion Groups | 5/18/75—New Federal Rules of Evidence Richard Keatinge John McDonough Judge Manuel Real Prof. Kenneth W. Graham, Jr., UCLA | 12/10/75—Class Action Seminar Judge Manuel Real Judge Campbell Lucas Marshall Grossman William Masterson |
| 6/13/74—Proof and Recovery of Damages in Business Litigation Judge Ernest J. Zack Judge William H. Levit William A. Masterson John A. Sturgeon Paul M. Reitler | 12/10/74—Winning Your Case by Effective Use of Preliminary Remedies Judge David Eagleson Judge Jerry Pacht Mike Inman Richard Mosk Loren Rothschild | 6/24/75—Protecting Your Client During Federal Grand Jury, SEC and FTC Investigations Leonard Janofsky Oliver Green Robert Lane William Campbell Daniel Williams | 2/18/76—Antitrust Blecher, Toy and Rymer 4/6/76—Expert Witnesses Nossaman, Waters, Krueger, Marsh & Riordan |
| 9/30/74—Practical Aspects of Settlement of Lawsuits In Federal and State Courts Judge Lawrence T. Lydick | 1/29/75—Responding to Auditors' Inquiries Marco Weiss Don Wharton of Arthur Young William Camm of Arthur Andersen | 9/17/75—Relationship of | 6/9/76—Proposed Civil Trials Manual Judges Richard Schauer, Julius M. Title and John A. Loomis |

Current Trends and Developments: The Limiting of 10b-5

We granted certiorari to resolve the question whether a private cause of action for damages will lie under § 10(b) and Rule 10b-5 in the absence of any allegation of "scienter" — intent to deceive, manipulate, or defraud. 421 U.S. (1975). We conclude that it will not and therefore we reverse.

Thus, the United States Supreme Court in *Ernst & Ernst v. Hochfelder*, (CCH Fed. Sec. L. Rep. ¶ 95,479 (March 30, 1976)), overturned lower court decisions holding negligence was sufficient for civil liability under § 10(b) of the Securities Exchange Act of 1934 (the "1934 Act"), and Rule 10b-5 promulgated thereunder, and continued a recent trend of limiting, to the extent possible, private civil actions under the federal securities laws. In Note 12 to its opinion, the Court referred to *White v. Abrams*, 495 F.2d 724 (9th Cir. 1974), as a decision which "held in substance that negligence alone is sufficient for civil liability under § 10(b) and Rule 10b-5," thereby indicating *White v. Abrams* is no longer good law.

In the *Hochfelder* case, the plaintiffs instituted an action against Ernst & Ernst in the United States District Court for the Northern District of Illinois under § 10(b) and Rule 10b-5. The plaintiffs alleged that Ernst & Ernst had failed to utilize appropriate auditing procedures in its audits of the financial reports of First Securities, a small brokerage firm, and contended that a proper audit would have uncovered certain fraudulent activities undertaken by the President of First Securities. The plaintiffs had not relied on any financial reports of First Securities and conceded that Ernst & Ernst had not engaged in fraud or intentional misconduct. In reaching its decision, the Supreme Court observed that the wording of § 10(b) "connotes intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities." In examining provisions of the Securities Act of 1933 (the "1933 Act") and other provisions of the 1934 Act, the Supreme Court concluded that in each instance where Congress created civil liability in favor of purchasers or sellers of securities, "it clearly specified whether recovery was to be premised on knowing or intentional conduct, negligence or entirely innocent mistake," and in allowing recovery for negligent conduct under certain provisions of the 1933 and 1934 Acts, Congress subjected such actions to significant procedural restrictions not applicable under § 10(b). Additionally, the Supreme Court ruled that, in adopting Rule 10b-5, the Commission could not expand the scope of § 10(b).

The Court expressly declined to consider whether civil liability for aiding and abetting was appropriate under § 10(b); whether scienter was a necessary element in an action for injunctive relief; whether, in some circumstances, reckless behavior was sufficient for civil liability under § 10(b) and Rule 10b-5; and whether the plaintiffs could assert a civil claim of liability under § 17(a) of the 1933 Act independently of § 10(b).

In *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S.

723 (1975), the Supreme Court also expressly reserved the question whether § 17(a) of the 1933 Act gives rise to a civil claim. There is currently a conflict on this issue among lower federal courts; however, in view of the analysis and ruling in the *Hochfelder* case and the express civil remedies provided by §§ 11 and 12 of the 1933 Act, with their attendant procedural restrictions, it seems unlikely that the Supreme Court will permit civil recovery under § 17(a) of the 1933 Act absent the scienter necessary for recovery under § 10(b) and Rule 10b-5. See, generally, 3 Loss, *Securities Regulation* 1784-1791 (2d ed. 1961), 6 *id* at 3912-3915 (Supp. 1969); *Vacca v. Intra Management Corp.*, Doc. No. 74-1794 (E. D. Penn. June 14, 1976).

In a Memorandum dated April 26, 1976 from the Office of the General Counsel of the Securities and Exchange Commission to all Staff Attorneys (Reprinted in *Securities Regulation & Law Report*, No. 354, May 26, 1976, pg. F-1), the General Counsel suggests certain approaches and theories to minimize the impact of the *Hochfelder* decision on present or future enforcement actions by the Commission for injunctive relief. First, the General Counsel makes the following suggestion:

Depending on the facts in a particular case, we might argue that notwithstanding that the court is of the view that the conduct of the defendant was merely negligent and, under *Hochfelder*, not a violation of Section 10(b), it still remains a proper basis for drawing an inference that *such conduct* may continue into the future.

In addition, the memorandum suggests that "we could make a strong argument that a showing of recklessness would be sufficient in Commission injunctive actions," based on *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), in which the Supreme Court remarked that "it is not necessary in a suit for equitable or prophylactic relief to establish all the elements in a suit for money damages." The memorandum also contains several suggestions for drafting complaints for violations of § 10(b) and Rule 10b-5 which might be of assistance to plaintiff's counsel in preparing complaints in civil actions.

In the April 26, 1976 Memorandum, the *Hochfelder* case is viewed by the Commission "as the most recent of a line of Supreme Court decisions which emphasize the Court's determination to cut back on the proliferation of federal court remedies and, in general, to reduce the increasing workload on the federal court systems." In support of this view, the Memorandum refers to several recent United States Supreme Court decisions, including *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), in which the Supreme Court held that the plaintiff must actually purchase or sell securities in order to institute a private action for damages under § 10(b) and Rule 10b-5; and *Rondeau v. Mosinee Paper Corp.*, 42 U.S. 49 (1975), in which the Supreme Court ruled that a private plaintiff who brings an action to enjoin violations of Section 13(d) of the 1934 Act must show irreparable injury, inadequacy of legal remedies and the other prerequisites for obtaining equitable relief.

As mentioned above, the *Hochfelder* decision leaves unanswered what constitutes "a mental state embracing intent to deceive, manipulate or defraud."

The penumbra between negligent behavior and inten-

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tional wrongdoing will undoubtedly be the subject of much future litigation under § 10 and Rule 10b-5. In cases involving insolvent or bankrupt issuers, plaintiff's counsel will attempt to characterize the conduct of "deep-pocket" defendants such as accounting, legal and brokerage firms as constituting willful and knowing participation in an intent to deceive, while defense counsel will argue that the conduct was, at worst, merely negligent. See, e.g., *Hertzfeld v. Laventhol, etc.*, CCH Fed.Sec.L. Rep. ¶ 95,660 (2d Cir., July 15, 1976); *Straub v. Vaisman & Co., Inc.*, CCH Fed.Sec.L.Rep. ¶ 95,623 (3d Cir., June 15, 1976); and *Kaback v. Schweickhart & Co.*, CCH Fed.Sec.L.Rep. ¶ 96,619 (S.D.N.Y., June 15, 1976).

The plaintiff's bar can also be expected to rely increasingly upon common law concepts in seeking to recover from accountants, attorneys, broker-dealers, and others, for losses resulting from securities transactions on account of alleged failures by such defendants in the performance of their duties. It is well established, for example, that attorneys and accountants can be held liable in civil actions for failure to use reasonable care. See, e.g., *Lucas v. Hamm*, 56 Cal. 2d 583, 591 (1961); *R. I. Hospital Trust Nat'l Bank v. Swartz*, 455 F.2d 847 (4th Cir. 1972). However, in these cases, the plaintiff must establish some element of privity between the plaintiff and the defendant and reliance by the plaintiff on the defendant's work product. It is not entirely clear how far liability will extend. In *Ernst & Ernst v. Hochfelder*, 503 F.2d 1100, 1105-1107 (7th Cir. 1974), for example, the Circuit Court ruled that Ernst & Ernst had not breached any common law duty to plaintiff because "at no time did Ernst & Ernst specifically foresee that plaintiff's limited class might suffer from the consequences of a negligent audit on its part. More important, however, is the plaintiffs' admitted lack of reliance on the financial statements and reports prepared by Ernst & Ernst and Ernst & Ernst's certificate of opinion." Presumably, the courts will limit the extent of liability to the client, and those persons who foreseeably will rely, and who in fact rely, upon the defendant's work product. (See, generally, *Restatement of Torts* 2nd, § 552 (Tent. Draft 1966); 45 A.L.R. 3d 1181; and the *Lucas v. Hamm* and *Swartz* cases cited above.)

Even with such a limitation, devastating liability could be incurred should a court determine that all the shareholders of a publicly-held corporation foreseeably relied, and in fact relied, upon some allegedly negligent work product. In the *Hochfelder* case, the United States Supreme Court expressed concern, in Note 33 to its opinion, that:

The standard urged by respondents would significantly broaden the class of plaintiffs who may seek to impose liability upon accountants and other experts who perform services or express opinions with respect to matters under the Acts. Last Term, in *Blue Chip Stamps*, *supra*, at 747-748, the Court pertinently observed:

"While much of the development of the law of deceit has been the elimination of artificial barriers to recovery on just claims, we are not the first court to express concern that the inexorable broadening

of the class of plaintiffs who may sue in this area of the law will ultimately result in more harm than good. In *Ultramares Corp. v. Touche*, 255 N.Y. 170, 174 N.E. 441 (1931), Chief Judge Cardozo observed with respect to a liability in an indeterminate amount for an indeterminate time to an indeterminate cause:

"The hazards of a business conducted on these terms are so extreme as to enkindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences." *Id.*, at 179-180, 174 N.E., at 444."

Hopefully, the courts will express a similar concern when asked how far liability will extend in cases involving common law concepts of negligence.

—Lloyd P. Derby

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The Master Calendar System

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to achieving the necessary accommodation.

The accommodation between over and undersetting is attained at a substantial cost. Master calendar calls involve guesswork based upon the law of averages. Estimates must be made well in advance of knowledge of court availability and the percentage of cases to be called that will go to trial rather than settle or be continued by reasons of necessity. If the mix on a particular day is not close to the average, then court facilities will be idle if the mix is one way, or, if the other, parties, witnesses, and counsel will sit awaiting call. Dependent upon funding from legislators constantly on the lookout for an opportunity to charge the court with inefficiency (knowing that parties and lawyers may grumble but will seldom be in a position to do more), judges operating master calendars are not about to err in their educated guesswork on the side of undersetting. Clients and witnesses are inconvenienced and often handicapped in their economic pursuits, and the expense of litigation escalates because of lawyer stand by time and the frequent need to re-prepare for postponed trials.

Because any other method of calendaring similar type cases in a metropolitan court will result in the same adverse consequences, the advantage to court administration of the master calendar, if the case is a typical one, justifies the time lost to witnesses and parties.

The master calendar, however, does not operate well in the situation of the atypical case, because the foundation for its existence is lacking. Fungible cases can be assigned to any one of a number of fungible judges. The law of averages, dependent upon a large number of cases to be tried and a large number of judges potentially available to try them, works its magic. Where a matter is significantly different in nature from the bulk of the mix, that is not the case. The non-fungible matter is by definition one of a small group. Any assumption of a broad equality of ability of all the judges of the court to try the case is not valid. Only a small proportion of the judicial pool consists of judges with both the background as a lawyer and the experience as a judge necessary to understand the issues involved in a fashion which permits an expeditious trial or expeditious exploration of a judge-induced settlement. The advantage of accommodation of maximum use of court resources with a firm trial date is much more difficult to achieve than in the situation of cases in the fungible mix. Hence the undesirable side effects of costs to clients, witnesses, and lawyers is exacerbated as the failure of the law of averages inevitably causes an unrealistic trial setting date.

In the context of the California metropolitan court system, criminal, personal injury, probate, and domestic relations cases are each, with an occasional significant exception, fungible with other cases in the same category. Because these types of cases account for the overwhelming bulk of the total tried by those courts, all other cases are, in this context, atypical.

The failure of the general master calendar system in cases not within the typical mix suggests experimentation with different methods of judicial management.

There are already separate calendar systems in the Los Angeles Superior Court for criminal, domestic relations, and uncomplicated probate cases. A simple extension of that recognition of different courts for different cases is the creation of a personal injury master calendar sep-

arate from the general civil calendar. If, as may well be the case, the data base of cases in general is not a fair indicator of the ratio of ready atypical cases which in fact will go to trial, calendaring will become more realistic, both in the personal injury and general civil master calendars. Experimentation with individual calendaring is also attractive in nonpersonal injury cases because of the generally more complex nature of pretrial proceedings.

ABTL has become a leader not only in lawyer education but also in the long overdue current effort to make the dispute resolution process more responsive and less expensive to the needs of the public. Promotion of modification of the master calendar system to that end seems a worthy goal.

—Judge Robert S. Thompson

ABTL History

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the first Board of Governors, named in the group's Articles of Incorporation, had adopted bylaws and elected the following officers: Allan Browne, president; William A. Masterson, first vice president; Henry J. Shames, second vice president; John H. Brinsley, secretary; and Murray M. Fields, treasurer. Annual dues were established at \$10 per person. Standing committees were organized for membership, legal affairs, programming and public relations, and nominations.

Justice Robert S. Thompson inaugurated the Association's first program seminar that evening (as he graciously inaugurates the *Report's* first guest column) with a paper entitled "Obtaining Jurisdiction Over Non-Residents - California's Long Arm Statute."

ABTL has averaged one dinner meeting and seminar program, frequently consisting of panel discussions, every two months. Additionally, two three-day weekend seminars held at La Costa have explored topical subjects in even greater depth while providing trial lawyers the opportunity to achieve more professional and social awareness. (A complete list of past seminar programs appears on page 2.)

Elected to the Board of Governors in the spring of 1975 were (one-year terms) Leon Alexander, John L. Endicott, Downey Grosenbaugh, Marshall Grossman, Seth M. Hufstedler, Richard H. Keatinge and Roy E. Potts; and (two-year terms) Robert Currie, Thomas J. McDermott, Jr., William A. Masterson, Samuel O. Pruitt, Jr., Henry J. Shames, John A. Sturgeon, David B. Toy and Laughlin E. Waters.

By the end of 1975, ABTL membership had reached 800 members from Los Angeles, San Diego and Orange Counties. At that time, the Board of Governors began to explore ways of broadening the Association's contacts with outside organizations. Bar associations throughout the state were contacted and advised of ABTL activities. The Los Angeles Superior Court sought the Association's view on the subject of setting up a special panel of judges to conduct settlement discussions on commercial cases. A planning committee was formed to analyze the Association's purposes, performance and future activities.

Following election of the present officers and Board of Governors in February 1976 (see masthead on page 4), the Board of Governors voted to begin publication of the *Report* this fall. Thomas J. McDermott, Jr. was elected the first editor.

ABTL's Court Reorganization Questionnaire

Attached hereto is a summary and brief statements of arguments for and against the proposed Court Consolidation Bill (Senate Bill No. 1500; Senate Constitutional Amendment No. 48) which is presently being considered by the California Legislature. If passed, the legislation would have a substantial impact upon ABTL Members. We wish to give the Legislature the benefit of our views. To that end, please complete the following questionnaire. The results will be tabulated and submitted for consideration.

| | YES | NO |
|--|-----|-----|
| 1. Do you wish the bill enacted into law? | 41 | 132 |
| If you answered No to number 1, please respond to the following questions. | | |
| 2. Do you favor some other form of consolidation? | 106 | 16 |
| such as, | | |
| (a) consolidation of the Sheriff's and Marshall's court functions? | 108 | 8 |
| (b) consolidation of the Municipal and Justice Courts? | 108 | 8 |
| (c) consolidation of the Municipal Court systems on a countywide basis? | 100 | 16 |

Survey of Court Reorganization

Continued from Page 2

posed to the particular bill: Of 173 replies, 132 (76%) were against the bill, 41 (24%) in favor.

Still, 106 (61%) said they would favor some other form of consolidation while only 16 (9%) were opposed. Three alternate consolidation plans (sheriff's and marshal's court functions, municipal and justice courts, and municipal court system on a countywide basis) each received 100 or more yes votes.

Over 50 respondents took the time to write comments concerning the legislation (most *contra*) which may be digested as follows:

| | |
|--|----|
| System not economic | 17 |
| Against salary raises | 6 |
| Against retention of all clerical positions | 5 |
| Concern with impact on judicial quality | 11 |
| Higher standard for qualification or qualification review before elevation of municipal court judges to superior court status should be required | 7 |
| Lawyers' approval should be required before special division judge could sit in general matter | 1 |
| Bill is relabeling only and not substantive | 8 |
| Intent is good but not this bill | 11 |

Three other issues received specific comments: six members mentioned the mandatory retirement provisions, four against, two in favor; four ABTL members suggested that municipal court jurisdiction should be increased, three to \$10,000, one to \$15,000; three respondents suggested the superior court adopt the federal court's assignment to a one judge system.

The comments also included alternative suggestions for

increasing efficiency in the court:

Redefine the courts, putting all superior court civil matters in superior court, leaving all but the more serious criminal trials in municipal court.

Merge the clerk's office so that one would serve all courts.

Divide the superior and appellate courts into civil and criminal divisions, each with their own staff of judges to handle respective workloads and to develop expertise in their respective areas. Judges could be reassigned as special situations require (the author of this suggestion pointed out that civil litigators frequently had to experience inordinate delays because of precedence given to criminal cases by all judges).

Retain the present division between the municipal and superior courts but use the municipal court as a proving ground for experiments in alternative procedures for settling disputes, such as experiments limiting discovery in certain matters.

Among six members favoring the bill who added comments, there seemed to be a consensus that criticisms of the bill could be handled at a later date (e.g., making the bill a genuine consolidation with just one type of judge).

Also, two members suggested the addition of a system for monitoring judges. One suggested a panel for reviewing both the qualifications of municipal court judges before elevation and the monitoring of sitting judges in the consolidated court. The other respondent suggested that judges should be assigned to either general or special division cases, arguing that better qualified judges would get the more significant cases; this plan would serve as an incentive to improve judicial performance. How would "better qualified" be determined? The proponent suggested an annual anonymous survey of lawyers who had appeared before each judge.

In sum, although ABTL's survey showed substantial opposition to this year's legislative attempt at court consolidation, it also suggested that respondents might accept a different court reorganization plan.

—Richard M. Coleman

Please cut out and return to:

Association of Business Trial Lawyers
523 West Sixth Street, Tenth Floor
Los Angeles, California 90014

—I would like to join ABTL. Enclosed is a check for \$10.00 covering my first year's dues.

—Please send me information about ABTL's annual seminar at the San Diego Hilton the weekend of October 22-24.

NAME _____

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