

BAJI Expansion Covering Contracts Studied

The Committee on Standard Jury Instructions, Civil, of the Superior Court of Los Angeles County has now resolved to expand BAJI to encompass jury instructions in the trial of actions on contracts. We are honored that Judge Philip H. Richards, Judge of the Superior Court (retired) and consultant to the Committee, has asked ABTL for its assistance in this project

In the preparation and renumbering of the 5th Edition of BAJI in 1969, Parts 7, 10 and 12, three of its fifteen chapters, were reserved for future use. In the years that followed, the Committee, always responsive to current Court decisions, has added, revised and deleted instructions as required and in addition has vitalized Part 12, entitled "Miscellaneous Actions." This Part covers jury instructions in will contests, actions in fraud and deceit, cases of either contractual or non-contractual implied indemnity and in matters dealing with intentional and non-intentional infliction of emotional distress. The test of time and the impact of judicial appraisal will no doubt establish the value and usefulness of these instructions in their relevant areas. Now, Part 10 has been chosen to give life to civil jury instructions in actions on contracts; Part 7 has yet to learn its fate.



Murray M. Fields

There is no need to dwell at length on the history of standard or pattern instructions. From the publication of the first edition in 1938, under the inspiration and guidance of Hon. William J. Palmer, truly the father of pattern jury instructions, to the present time, their value has been increasingly recognized and unchallenged. Judge Palmer believed there was a need to have a set of clearly worded instructions as a basis for charging a jury in particular cases and devoted many hours of his time to their creation. In each succeeding edition of BAJI we find the Committee, composed of eminent members of the California Judiciary and Bar, striving diligently and successfully to accomplish the goal of pattern instructions: to represent "an accurate statement of law," to "be as brief and concise as practicable," to "be understandable to the av-

Continued on Page 6

L.A. County Bar's Judicial Evaluation Committee

With the creation of its Special Committee on Judicial Evaluation in January 1976, the Los Angeles County Bar took an important step toward helping the public make informed choices in judicial elections. The Committee's first task was to evaluate the candidates in all contested races for Superior Court in the June primary. Later it was asked by the Bar Association to evaluate the candidates in the contested races for Municipal Court in the November general election.

Procedure

Initially, the fifteen person Committee had to decide how to proceed in a manner that would be fair to the contestants; feasible, given the limited amount of time the busy Committee members could spend on the project; and helpful to the voting public. The Bar Association asked Leonard S. Janofsky to serve as chairman and Daniel Fogel and David K. Robinson to serve as vice-chairmen. Other members: James H. Ackerman, Victor E. Chavez, Mary Anne Harrison, David A. Horowitz, Carl E. Jones, William A. Masterson, James J. McCarthy, Mary S. Park-

Continued on Page 5

The Antitrust Bar Discovers the First Amendment

The relationship between the First Amendment of the United States Constitution and the antitrust laws has been percolating on a fairly low flame since the Supreme Court held, in *Associated Press v. United States*, 326 U.S. 1 (1945), that the purported exercise of First Amendment rights (in that case, freedom of the press) would not immunize a larger scheme to monopolize or restrain trade. Two recent decisions by California courts indicate that the pot has moved to the front burner: *Franchise Realty International Corp. v. San Francisco Local Joint Executive Board of Culinary Workers*, — F. 2d —, 1976-2 Trade Cas. ¶61,102 (9th Cir., September 17, 1976), the "MacDonald's case," in honor of the hamburger chain which is a named plaintiff; and *Writers Guild of America, West, Inc. v. FCC*, — F. Supp. — (C.D. Cal. 75-3641-F,

Continued on Page 2

The Antitrust Bar and the First

Continued from Page 1

November 4, 1976), the "Family Hour" case.

These two decisions represent a growing body of suits in which both First Amendment and antitrust issues are found. In most instances — the MacDonald's case is an example — the First Amendment has been asserted defensively. However, recent developments in First Amendment law raise the likelihood that antitrust plaintiffs, as exemplified in the Family Hour case, will increasingly contend that the acts of the defendants alleged to restrict the exercise of the First Amendment rights of the plaintiff also violate the antitrust laws and therefore entitle plaintiff to recover treble damages.



David B. Toy

In the years since *Associated Press* the principal appearance of the First Amendment in antitrust litigation has been found in a select group of lobbying cases. The earliest cases, *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and *United Mine Workers v. Pennington*, 381 U.S. 676 (1965), together stand for the proposition that a bona fide approach to a branch of government, whether executive, legislative or judicial, is protected by the First Amendment against claims made under the Sherman Act, even if the approach is made with a desire to do damage to the business of a competitor. A limitation on this general proposition is the "sham exception" of *Noerr*: that conduct ostensibly intended to influence government action may actually be an attempt to interfere directly with a competitor, which is unlawful.

Obviously this statement required some refinement. The process began in 1972 with *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), where the plaintiffs alleged that defendants conspired to monopolize the motor transport business in California by a campaign of opposing license applications "regardless of the merits." The district court dismissed the complaint under *Noerr-Pennington*. The Ninth Circuit reversed the district court; and the Supreme Court affirmed the circuit, citing the "sham exception" of *Noerr* and declaring that proof of a purpose to deny plaintiffs "free and unlimited access" to courts or administrative agencies would indeed violate the antitrust laws.

Trucking Unlimited was followed in the next term by *Otter Tail Power Co. v. United States*, where the Supreme Court first vacated for reconsideration [410 U.S. 366 (1973)], and then affirmed per curiam following remand [417 U.S. 901 (1974)], a decision that use of multiple litigation constituted part of a monopoly violation.

Against this background, a majority of a Ninth Circuit panel in *MacDonald's* affirmed dismissal of a complaint patterned after *Trucking Unlimited*. Like plaintiff's in *Trucking Unlimited*, MacDonald's alleged that defendants, two trade associations and a labor union, had sought to deny it "free and unlimited access" to administrative agencies. Unlike *Trucking Unlimited*, MacDonald's alleged no facts other than defendants' appearances before the administrative agency in question and that defendants' "would threaten lack of political support to

each [agency] member." The Ninth Circuit affirmance was made on the ground that the plaintiffs had failed to allege specific acts in addition to direct lobbying activity or litigation to support their claim that defendants had conspired to restrain trade. In effect, the Ninth Circuit held that exercise of First Amendment rights, standing alone, cannot sustain an antitrust claim. Since this holding came at the motion stage, the Ninth Circuit went on to announce a higher standard of pleading for antitrust cases involving First Amendment rights than the usual "notice pleading" rule: "for conduct which is prima facie protected by the First Amendment, the danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required." Judge Browning dissented. MacDonald's sought rehearing *en banc*, which was denied. A petition for certiorari will be filed shortly.

In any respect other than as a pleading case, *MacDonald's* indicates that the lower courts have not yet become completely comfortable with what is, or is not, sham in the sense intended by *Noerr* and *Trucking Unlimited*. It is perhaps worth noting that both *Trucking Unlimited* and *Otter Tail* are monopoly cases while *MacDonald's* is a restraint of trade case. It may therefore be significant that a San Francisco jury has recently found for plaintiff in a monopoly case with patent overtones where abuse of litigation was a large part of plaintiff's case. *Handgards, Inc. v. Johnson & Johnson*, N.D. Cal. No. C 49451 WHO. Post trial motions having now been denied [1976-2 Trade Cas. ¶61,138 (July 13, 1976)], the Ninth Circuit will apparently soon have another opportunity to consider a First Amendment defense.

To complete the picture, consider two recent decisions from other circuits, rendered after court trials: *Clairol, Inc. v. Boston Discount Center of Berkeley, Inc.*, ___ F. Supp. ___, 1976-2 Trade Cas. ¶61,108 (E.D. Mich. September 21, 1976); and *B.A.M. Liquors, Inc. v. Satenstein*, ___ F. Supp. ___, 1976-2 Trade Cas. ¶60,997 (S.D.N.Y. July 19, 1976). In *Clairol* the Eastern District of Michigan read *Noerr*, *Pennington* and *Trucking Unlimited* as holding that efforts to influence the legislative, executive or adjudicative processes, even if part of a conspiracy to restrain trade, were not within the Sherman Act, and therefore concluded that *Clairol's* practice of threatening infringement litigation, allegedly to keep distributors of its products in line, did not violate the antitrust laws. In *B.A.M. Liquors* the Southern District of New

Continued on Page 4

ABTL Annual Meeting

ABTL's Annual Meeting will be held February 17, 1977, at the Hyatt Regency (711 S. Hope St.,) at 6:00 p.m.

The new Board of Directors will be elected.

The program to follow will feature a joint presentation by ABTL and the Corporate Law Department Section of the Los Angeles County Bar Association on the subject of the problem of interfacing between outside counsel and corporate counsel.

Letter from the President

In March of 1976, Assemblyman Knox, with the concurrence of the Governor, introduced a bill which would have required attorneys to provide not less than 40 hours per year of "public service" (to be defined by the State Bar Board of Governors), without fee or at a substantially reduced fee. According to the proponents of the bill, there are a vast number of people other than "the very rich and a few of the very poor" who are unable to obtain legal services and the lawyers have failed in their obligation to provide such services. In May of 1976, Tom Ehrlich, President of the Legal Services Corporation, suggested to the Los Angeles County Bar Association that at least five percent of a lawyer's time should be devoted to legal services for the poor, with a minimum of 80 to 100 hours a year. This five percent figure has been recently echoed by Ralph Campell, President of the State Bar.



John H. Brinsley

In September of 1976, in *Payne v. Superior Court*, 17 Cal. 3d 908, the California Supreme Court held that an indigent prisoner had been deprived of due process by a default judgment entered against him in a civil case after his request to attend the trial was denied. The Court held that the petitioner had been unconstitutionally deprived of his right of access to the courts, and also of his constitutional right to counsel. The Court also held that counsel should have been appointed to represent the petitioner without charge, thus providing a convicted criminal with a right presently denied to a law-abiding citizen. Mr. Justice Mosk, speaking for the majority, recognized that there was no legislative authority to compensate appointed counsel from public funds but stated that until there was such funding, "attorneys must serve gratuitously in accordance with their statutory duty not to reject the 'cause of the defenseless or the oppressed,'" [Citing Business and Professions Code, §6068 (h).]

These developments have triggered considerable discussion and a spate of articles at both the local and state bar levels. They raise a host of complex questions: What is the professional responsibility of the lawyer to provide public interest legal services? How broadly or narrowly should this responsibility be defined? What is the meaning of the phrase "public interest"? Should the responsibility be mandatory? If not, how can the profession persuade its members to fulfill their responsibility voluntarily? Should distinctions be made for area (urban or rural), specialty, age, experience, size or nature of practice, type of clients, or amount of income? Can the responsibilities — whether mandatory or voluntary — be met through donations to appropriate organizations such as the Legal Aid Foundation? How do all of these issues affect the present activities of the many lawyers who give

unstintingly of their time and money to causes they believe worthwhile?

These intriguing questions are most specifically directed towards litigators, since the thrust of additional *pro bono* representation would be to provide additional assistance to the disadvantaged in the resolution of disputes before and after litigation. As litigators, we are the most likely to be affected by the answers to these questions and, perhaps, are the best able to consider their resolution. Accordingly, in an effort to obtain a careful and lucid appraisal of these problems, I have appointed a committee, chaired by Loren Rothschild, treasurer of ABTL, to consider these issues and report back to the Board of Governors. We anticipate that the Association will canvass its members and actively become involved in the resolution of these sensitive matters.

On other fronts, a committee of ABTL has recently completed its investigation and reported to the Los Angeles Superior Court regarding the problem of selection and discovery of expert witnesses. The committee concluded that, for reasons of economy in litigation and judicial efficiency, an appropriate rule with adequate safeguards concerning the disclosure of such witnesses should be established. If adopted, ABTL's position should help to assure the uniform administration of justice, and prevent undue delays and interruptions of complex trials.

—John H. Brinsley

Report on ABTL Seminar: Aftermath of "The Hired Gun"

The Third Annual ABTL Seminar held at the San Diego Hilton on Mission Bay the weekend of October 22-24, 1976, involved an in-depth exploration of the practical problems of using expert witnesses in business litigation cases. Speakers were selected to provide a mixture of lawyer and expert witness so that the audience would be given a discussion of problems from all sides. Written materials were prepared with the intention of providing the ABTL with practical reference material in terms of check lists, outlines, practical tips and an ABTL Expert Directory.



Marshall G. Mintz

Friday's program was chaired by Arthur Fields of Ervin, Cohen & Jessup, who kept the panel experts on track by telling the audience of the problems lawyers encounter in dealing with experts. Experts on this panel were John J. Costello of Arthur Young & Company, Glenn N. Desmond of The Corporate Appraisal Company, and Gerald H. Larsen of Unicorn Systems Company, a computer design and consulting firm.

The Saturday morning program presented experienced litigators discussing use of experts during litigation and trial. The panel, chaired by Jerome L. Goldberg of Loeb and Loeb and also consisting of William A. Master-son of Sheppard, Mullin, Richter & Hampton and Joseph Wheelock of Latham & Watkins, often disagreed,

Continued on Page 6

Continued from Page 2

York held, on the authority of *Trucking Unlimited* that a joint resort by a group of liquor retailers to liquor licensing boards and the courts of New York, in an effort to deny plaintiff a liquor license, violated the antitrust laws. The litigation authority of defendants seems to have been within the First Amendment, but the trial court concluded that defendants acted for the wrong motive, profit, and therefore ruled against them.

These decisions do not demonstrate a consistent reading of the Supreme Court's opinions. *MacDonald's* may arrive before the Court is ready to speak again, but it seems almost inevitable that a conflict among the circuits will eventually lead to another hearing on the subject.

However, there is one respect in which prior art, *MacDonald's* included, does not purport to define the impact of the First Amendment on the antitrust laws, and that is where the Family Hour case comes in. It is implicit in both *Trucking Unlimited* and *MacDonald's* that plaintiff's right of petition is at stake, but those cases really turn on the First Amendment characteristics of defendants' actions. Now, in Family Hour, the assertion will apparently be made that a conspiracy which restrains rights of free speech may also violate the antitrust laws. The distinction is significant: a successful antitrust plaintiff collects both treble damages and attorney fees under section 4 of the Clayton Act. The Writers Guild found out that a successful First Amendment plaintiff is assured of neither.

As everyone knows by now, the Central District of California, per Judge Ferguson, ruled in the Family Hour case that the television network's joint "Family Hour" programming policy, aimed at reducing violence on television before 9:00 PM, was created in violation of the First Amendment by an unlawful conspiracy among the networks and the Federal Communications Commission. The claim that this joint adoption of a programming policy likewise violated the antitrust laws was severed from trial on the constitutional issues but now will apparently be pursued. Partial substantiation for the Writers Guild's theory comes from *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, ___ U.S. ___, 48 L.Ed. 2d. 346 (1976), where the Supreme Court finally held that "commercial speech" (in that case price advertising of pharmaceutical products) was protected by the First Amendment. More may come when the Court considers, as it will this term in *Bates v. Arizona*, number 76-316, the validity of an Arizona State Bar rule prohibiting attorney advertising. *Bates* arose when two partners of a legal clinic placed an ad in a Phoenix newspaper describing both their services and their fees. In the inevitable disciplinary proceedings, Bates and his partner defended themselves on the dual ground that the rule in question violated both the antitrust laws [citing *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975)] and the Constitution [Citing *Virginia State Board, supra.*]. [In *re Bates*, 1976-2 Trade Cas. ¶61,085 (Ariz. S. Ct., July 26, 1976).] Since the Supreme Court in *Virginia State Board* reserved its position on the regulation of attorney advertising, the outcome of *Bates* is by no means assured. However, the broader principle remains: now that "commercial speech" is safely within the limits of the First Amendment, con-

spiracies to restrain its free exercise may very well restrain trade too.

What all of this suggests, obviously in a preliminary way, is that invocation of the First Amendment in anti-trust litigation, and vice versa, is rapidly becoming a routine occurrence. It is too early to tell whether the boundaries of potential violation will expand significantly, but the Supreme Court will have a number of early opportunities to educate us.

—David B. Toy

abtl REPORT

523 West Sixth Street
Tenth Floor
Los Angeles, California 90014
(213) 620-1240

OFFICERS

John H. Brinsley
President
Murray M. Fields
Vice President
Richard H. Keatinge
Secretary
Loren R. Rothschild
Treasurer

BOARD OF GOVERNORS

Richard M. Coleman
Robert E. Currie
Arthur Fields
Oliver F. Green, Jr.
Patrick J. Kightlinger
William A. Masterson
Thomas J. McDermott, Jr.
Marshall G. Mintz
Samuel O. Pruitt, Jr.
Henry J. Shames
John A. Sturgeon
David Brice Toy
Laughlin E. Waters

PAST PRESIDENTS

Allan Browne
William A. Masterson

EDITOR

Thomas J. McDermott, Jr.

Contributors to this Issue:

William D. Warren is Dean of the UCLA School of Law and a member of the Los Angeles County Bar Association's Judicial Evaluation Committee.

John H. Brinsley, a partner in the firm of Adams, Duque & Hazeltine, is also Vice President and Treasurer of the Los Angeles County Bar Association as well as president of ABTL.

Murray M. Fields is a partner in the firm of Buchalter, Nemer, Fields & Savitch and chairman of ABTL's committee on drafting BAJI instructions for contract cases.

Marshall G. Mintz is a partner in the firm of Keatinge, Bates & Pastor and program chairman of ABTL.

David B. Toy is a partner in the firm of Toy & Rymer.

Continued from Page 1

er, Carl J. Schuck, Richard A. Walton, James O. White, and myself.



William D. Warren

The Committee first studied procedures employed by other bar associations in judicial evaluations and then agreed to evaluate each candidate as either *Well Qualified*, *Qualified*, or *Not Qualified*. To be *Well Qualified* the candidate had to possess professional ability, experience, competence, integrity, and temperament indicative of superior fitness to perform the judicial function with a high degree of skill and effectiveness. To be *Qualified* the candidate had to have professional ability, experience, competence, integrity, and temperament indicative of fitness to perform the judicial function satisfactorily. *Not Qualified* meant the candidate lacked some or all of the qualities indicative of fitness to perform the judicial function satisfactorily.

A questionnaire was sent to each candidate asking for detailed information about the person's education, experience, health status, and other matters relating to the candidate's ability to perform the judicial function. Most, but not all, of the candidates responded. Investigating subcommittees of two people were assigned certain candidates to investigate. Subcommittee members either met with or telephoned people who had first-hand knowledge of the candidate's performance. If the candidate was a sitting judge, calls were made to lawyers who had practiced before that judge. Members of the District Attorney's and Public Defender's Offices were frequently consulted as were other judges. If the candidate was a practicing lawyer, views were sought of opposing counsel and judges before whom the candidate had practiced. Basically, information was solicited about the candidate's integrity, legal ability, and judicial temperament. Each person contacted was assured that nothing said would go beyond the members of the Committee. Although some were guarded in their opinions, most spoke freely.

Next, each candidate was invited to appear before his or her two-person investigating subcommittee plus one additional Committee member (either the chairman or one of the two vice-chairmen). This three-person interviewing committee then sought clarifications or further information from the candidate. Some candidates did not appear before the interviewing subcommittee. If the candidate did not return the questionnaire and did not appear for the interview, the subcommittee gathered information from the usual sources and evaluated the candidate on the basis of available information.

When the investigation and interviewing processes were completed the full Committee met and discussed each candidate. After a tentative evaluation was made, the candidates were notified of the evaluation. Those given *Qualified* or *Not Qualified* ratings were invited to appear before the whole Committee to appeal the rating. Several candidates did appear in this manner, and some tentative evaluations were changed in the light of the impression made by their appearances. The final evaluations then were made and the Committee submitted its report.

Problems

Perhaps the most difficult problem was giving concrete meaning to the rather abstract standards of *Well Qualified*, *Qualified*, or *Not Qualified*. How good does one have to be to be rated *Qualified*? To what extent should the standards vary between qualifications for the Superior and Municipal benches? How necessary is trial experience as a qualification to be a trial judge? No rigid conclusions were reached and no attempt was made to prescribe guidelines on these matters for the existing Committee or its possible successors.

Committee members were troubled by the effect of a *Not Qualified* rating on the reputation of a practicing lawyer. Would the public decide that the Committee's recommendation bore on this person's abilities as a practitioner? The Committee stated in its reports that a *Not Qualified* rating did not in any way reflect either on the candidate's qualifications as a practicing attorney or for other endeavors.

Would the public construe the Committee's function to be the endorsement of candidates? No such function was intended for the Committee; indeed, it was theoretically possible for the Committee to evaluate all persons running for a given office as *Well Qualified* or *Not Qualified*. The purpose of the evaluations was not to tell the public how to vote but to provide information about judicial candidates that would help the public formulate its own opinions.

Results

No one can be sure what impact the Committee's recommendations had. Two incumbent judges were rated *Not Qualified* and neither was elected. One Municipal Court judge running for the Superior Court was rated *Not Qualified* and was not elected. On the other hand, one incumbent judge was rated *Well Qualified* and was defeated. One Municipal Court judge who was rated *Qualified* lost to a practitioner who was also rated *Qualified*. Since Bar Association reports are not accessible to the public except through the media, the impact of the Committee's recommendations rested largely on their treatment by the media. In particular, did the local newspapers make use of the ratings in arriving at their own endorsements? It is a fair estimate that the newspapers did give wide exposure to the evaluations of the candidates, and their endorsements show good correlation with the Committee's evaluations.

Future

The Board of Trustees of the Bar Association must decide whether to continue this form of judicial evaluation, and it should give serious thought to doing so. The method is clearly superior to the plebiscite in that evaluations are based on detailed, first-hand information about the candidate from those who have frequent contact with the person. I was struck by the differing views about candidates between those who knew the candidate only by general reputation and those who regularly worked around the candidate.

Clearly, the danger of this sort of judicial evaluation is the potential for abuse if a Committee ever became politicized. Allegedly, this has happened in other cities. Our 1976 Committee operated in what appeared to me to be virtually a political vacuum. If the Board decides to continue this form of judicial evaluation, it must be ever vigilant in its choice of Committee members to avoid politicization.

—William D. Warren

BAJI Expansion

Continued from Page 1

erage juror" and to "be unslanted and free of argument." In large part most of the instructions have been judicially tested and, in great measure, have been found acceptable. There can be little doubt that the use of BAJI has served to offer useful, comparatively error-free instructions and has eliminated the time-consuming task of preparing them anew.

Whether the successes of the past can be continued in the preparation of pattern instructions in contract actions is the Committee's new task and assignment. The number of contract cases put before juries is far less than the number of jury trials in negligence and tort actions. Yet trial attorneys would cordially welcome the assistance of standard instructions when confronted with the onerous duty of preparing jury instructions "from scratch" in a breach of contract case.

The problem that confronts the designers of pattern instructions is no longer their acceptance but their depth and extent. How basic and fundamental should they be? Can they be framed in language that will be sufficiently precise and intelligible for the average juror to understand and apply? Should they include instructions for unusual as well as usual cases? Will they pass the test of freedom from error or ambiguity? These and many other questions must be considered before viable contract instructions can be adopted.

It would be comparatively simple to design contract instructions to paraphrase the provisions of the Civil Code. But would they be sufficient, and more significantly, would they serve to accomplish the goals of pattern instructions? To expand them beyond the basic principles of the law of contracts requires an evaluation of the ability to express variables in clear, precise and unambiguous language understandable to the lay jury. They should be concise and brief and yet must convey the message of the applicable law to the juror. Lawyers and judges, often reluctant to break with tradition, and fearful to adopt language that differs from accepted legal words of art, continue to employ terms which do not convey the desired clarity.

We live daily with instructions on "burden of proof," "preponderance of the evidence," "proximate cause," "contributory negligence" and the like. Surely no one would suggest that these instructions are models of precision and clarity. Yet their lack of precision is in practice balanced with the common sense of the jurors charged with the duty of applying those very instructions to the case entrusted to them. The above illustrations are not offered as support for the posit that drafters of instructions should not hesitate to use legal language that is too often legal jargon. On the contrary, the examples should demonstrate both the difficulty of composing acceptable instructions and the need for careful attention to their preparation.

A draft of proposed contract instructions is presently being reviewed by an ABTL Committee appointed for that purpose. The instructions cover the general and essential elements governing the formation of a contract, its termination, its performance and excuses for non-performance, the definition of a breach of contract and the damages that flow from such breach including dam-

ages in the sale of land, contracts to pay money and construction contracts. The basic instructions are there. The questions remain: Do they meet the high standards set by the Committee in its prior efforts? Are they sufficient as they stand or should they be expanded to embrace special and more exotic contract cases? We intend to keep ABTL members informed of the progress of this Committee and welcome suggestions and participation in our task.

—Murray M. Fields

ABTL Seminar

Continued from Page 3

enabling the audience to hear both sides of the issues.

Saturday afternoon was left to recreation.

The Sunday morning program was unique in terms of content and presentation. Richard H. Keatinge of Keatinge, Bates & Pastor and Benjamin E. King of Buchalter, Nemer, Fields & Savitch put on an outstanding program based on a hypothetical case situation involving a lawsuit for unfair competition. A motion for protective order was argued before Judge Lester Olson, a deposition of the plaintiff's expert witness, ably played by Richard Sylvester, Ph.D., of the Tait Appraisal Company, was taken by Dick Keatinge, followed by a demonstration of putting on direct testimony of an expert witness by Tom King and cross-examination by Dick Keatinge. Of exceptional value was the critique of the hypothetical situation given by Judge Olson, the two lawyers, and, in particular, Dr. Sylvester, who discussed from an appraiser's point of view the areas of inquiry that could be exploited by a defense expert witness and the deliberate weaknesses in the sample appraisal.

—Marshall G. Mintz

To join ABTL, please cut out this coupon and return to:

abtl

Association of Business Trial Lawyers
700 So. Flower St., Suite 700
Los Angeles, California 90017
Att: Murray M. Fields, Esq.

—I would like to join ABTL. Enclosed is a check for \$20.00 covering my first year's dues.

NAME _____

FIRM _____

ADDRESS _____

