ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

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Making the Evidence Code Work for You

Having come from criminal justice, where most practitioners are constantly in trial, the shift to civil practice was most jarring when dealing with litigators with less practical experience with jurors and jury trials. The biggest gaps showed up with litigators' lack of familiarity with the Evidence Code. My first up-close introduction to this gap came when I asked a trial lawyer "352??" and heard "No, your honor, it is only 2:30 p.m." [Evidence Code section 352 regarding relevance.] Having the perspective of a litigator and a bench officer, it is my firm belief that the lawyer who masters the Evidence Code masters the courtroom.

Hon. Jacqueline Connor

The reality of trial practice is that today's jurors are not the same jurors of even our most recent past. Generation X (post baby boomers) and Y ("Echo Boomers") jurors have entirely different expectations and perspectives than baby boomers. Respect for authority and credentials are notably reduced. Attention spans are vastly more limited. Snappy sound bites are expected, with entertainment and visuals de rigueur. Our youngest citizens have never been without iPods, texting or instant access to the net. [It is a good idea to "Google" yourself before every trial to see what jurors might be seeing.]

Blogging, twittering, Facebook and MySpace are part of the air that they breathe.

The current economy creates an additional significant dynamic that impacts the way jurors view lawyers and the things

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INSIDE

The Business of Practicing Law: Now at Risk as Courts Close

ABTL is primarily an association of trial lawyers who share an interest in representing clients in business-related matters. Fundamentally, ABTL is also an association of attorneys engaged in the *business of practicing law*. This business is vitally important, not only to the attorneys who engage in it, but to the economy of California.

The state's ongoing budget crisis, and the resultant systematic closing of our court system, has placed the business of law in California at risk. If the trend continues unabated, the damage to that business could be far more serious than most realize. Here's why.

Hon. Charles W. McCoy, Jr.

Grave Risks Ahead

Beginning in July, budget shortfalls forced the Los Angeles Superior Court to furlough its workforce one day per month. That adds up to 2-1/2 weeks of lost work a year. Beginning in September, California's entire court system has been closed one day a month. The crisis ahead is, however, far more severe than closing one day a month might reveal. Shortfalls are continuing to grow, and next year will very likely be worse than this. Unfortunately, the situation is going to get worse before it gets better.

Current budget shortfalls, if not remedied, will soon force the Los Angeles Superior Court to permanently close courtrooms and courthouses. As many as 100 courtrooms and 9 courthouses could be affected. The majority of closures will fall squarely on civil, given the public safety concerns associated with closing criminal courts.

In 1975, when I began practicing law, the time to trial in civil cases was 5 years, and more. The legal business in Los Angeles has grown and prospered since the 1970s in part because cases now move reasonably quickly through the system. When business comes in lawyers' doors, lawyers need courts where that business can get done. Closing courtrooms permanently will do more than harm the public, for whom "justice delayed is justice denied." The rapidly growing case backlogs will greatly damage the business of practicing law in Los Angeles.

Matters set over for future dates accumulate over time. The backlog created by a closure in one month is not fully cleared before the next monthly closure occurs. Worse, inefficiencies created by closure-related continuances are not linear. They are

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lawyers are asking for. An increasing number of jurors are just hanging on to their homes, their jobs or their ability to get through the day, the month, the year or the rest of their retirement.

The conversion to One Day One Trial in 2000 in California is a significant variable that has altered the landscape, as well, by ensuring that very few escape jury duty. This means litigators will see everyone from CEOs to doctors to retired engineers to actors to just plain folk.

Effectively using jurors' time and attention become particularly critical when facing each of these dynamics. The older jurors need to get back to businesses or their lives. The younger jurors are quickly bored and resent being kept from their technology. (It is not uncommon to hear of jurors resorting to Sudoku or texting while in trial. Blogging and texting during trial have become culturally acceptable despite admonitions from the bench.)

With this background in mind, the following assumptions underlie the practical suggestions and observations offered. It is assumed that trial lawyers:

- want to know exactly what evidence will be admitted in trial;
- want to present their own evidence effectively;
- are committed to avoiding wasting jury time;
- are sensitive to the cost of losing juror goodwill and attention;
- are sufficiently prepared so as to avoid repetition; and
- agree that objections during trial are not a good thing.

On this last point, objections in front of the jury are truly a lose-lose proposition. As acknowledged by experienced trial lawyers, if you win the objection, the jurors wonder what you are trying to hide. If you lose the objection, you are a loser. In addition, integrity and credibility come squarely into play with the judge. If an issue is truly important, most judges consciously or unconsciously assume the prepared trial lawyer would have brought up the issue in advance in an Evidence Code section 402 or in limine motion, permitting all sides and the judge to give it the attention and consideration it deserves. If the objection is made for the first time in front of the jury, that same attention simply cannot and will not be accorded. If the reason it has not been addressed in advance is that the matter is not that important, is it worth making the objection in the first place? It is the rare piece of evidence that cannot be spun into something that helps in some way.

Many judges are increasingly trying to reduce downtime during a trial. Jurors hate delays and they will hold the trial lawyers responsible. Consequently, judges are increasingly loathe to grant sidebars for objections or will relegate them to the end of the day, on lawyer time instead of juror time. There are truly few issues in a jury trial that cannot be anticipated in advance by thoughtful and prepared trial lawyers, and the risk of getting the wrong ruling increases exponentially with the pressure of time and impatient jurors.

There is no upside.

Having staked out these positions, consider the following proposed solutions.

Exhibits

All exhibits should be marked in advance, in blocks of numbers. These can be separated into categories if natural groupings come into play.

Plan on stipulating to the admissibility of all exhibits and carefully consider whether an objection you might be contemplating is really valid. If a stipulation is not possible, the matter can be resolved by the court in advance in a 402 hearing, but common sense dictates that you have a good reason to contest admissibility. Legal procedure involving foundational issues should never be wasted on precious jury time. If a matter legitimately involves admissibility flaws, a hearing can take care of the problem and the trial lawyers will know where they stand before the trial starts. If the goal is simply to make the other side jump through formal hoops, reconsider whether that is a good use of court time, your relationship and credibility with the other side and the judge, and your ultimate goals. Obviously, if the inquiry on foundation goes to weight rather than admissibility, stipulating does not make sense. Items solely for impeachment don't fit in this scenario either, but the risk of being accused and sanctioned for sandbagging and perhaps not being permitted to introduce something not previously disclosed, should be weighed carefully.

This approach will also ensure that all exhibits have been shown to the other side so that jurors and the judge are not subjected to the painful silences that occur when one side demands to see something they claim not to have been shown before, and the quarrel starts over whether it has in fact been disclosed. (*Bates* stamping all discovery always eliminates these major headaches in trial.)

Though premarked, each exhibit should nevertheless be formally marked on the record when used for the first time in front of the jury, so both the court and jurors can keep track and identify each item. To the extent it is more common than not for exhibits to be marked but never actually used in trial, both sides should have an idea whether they expect all exhibits to actually go into the jury room, or whether the jurors should only see those items used in their presence. In the absence of an agreement, it would make sense that based on pretrial stipulations, all sides should reasonably rely on the fact that all exhibits and documents will physically go into the jury room.

All exhibits must be reviewed with a fine tooth comb. This is particularly true with the most voluminous exhibits. It is a very common phenomenon for jurors to "find" things in the evidence that the attorneys never saw, disregarded or interpreted differently. Not infrequently, juror-discovered evidence can make or break a case. This can occur with handwritten notes that can be interpreted in ways other than contemplated by counsel, or they can be abbreviations or other documentations that might mean different things to different people, even reasonable people. If something isn't needed, it should be eliminated. If only one paragraph of a long contract is at issue, for example, simply eliminate the noncritical portions. If this makes counsel uncomfortable, the jury can always be advised that the rest of the pages deal with unrelated matters and that they are not to be concerned or make any assumptions about the absence of the additional pages. If anything, the jurors will be grateful for the focus provided.

Any factual issues that are not truly in dispute should not be dragged in to waste jury time and goodwill. Counsel who stipulate to issues or facts are usually rewarded with enhanced credibility with jurors, particularly if the matter is of import to the other side. The opposing party tends to appear confident and not afraid of the "truth." Stipulating, especially when it is clear the evidence is coming in anyway, can project the impression to the jurors that perhaps this issue may not be that damaging. In some instances in determining whether to stipulate to a fact or issue, some trial lawyers feel that the force and impact of the item or fact may get lost by "giving it away" as a stipulation. If such is the concern, the particular piece of evidence or fact being stipulated to can be blue-backed or otherwise marked, and admitted as its own exhibit.

Having pre-established which exhibits are available for the trial, litigators then have the freedom to use them as visuals in miniopening and formal opening statements as well as argument. [Miniopenings are 3 to 5 minute opening statements made to jurors before voir dire and replace the traditional "statement of the case." See California Rules of Court 2.1034 effective January 1, 2007.] In cases with multiple documents, it also permits the lit-

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igators to take advantage of the ability to create a prepared list of the exhibits (numbered and briefly described) with copies for each juror at the commencement of trial. If this list is provided in advance, jurors can take notes on them, identify them for their own purposes, and easily find critical exhibits during deliberations. The reality of having to fish through stacks of documents after days or weeks of testimony usually means that jurors don't bother. Also, even experienced trial lawyers make the mistake of identifying exhibits with descriptions when first used, but thereafter referring to them solely by number. Jurors will not remember what the numbers relate to. Having their own copy of the list of exhibits lets them refresh their recollections as to exactly what that document is.

Jury Books

Even in the shortest of cases, jury books can be of great value to the lawyers and jurors. "Jury books" are inexpensive three ring binders that house exhibits, note paper and instructions. Jurors often complain that they cannot see exhibits at the time when they are most meaningful, being when the exhibit is in use. Seeing them days, weeks or months after the fact diminishes their power. Enlargements projected onto screens present a significant improvement to papers being waved around in front of a testifying witness. However, a well received alternative is to select key exhibits and include them in advance in the jury book so that each juror can see, feel and take notes on that particular piece of evidence.

It is my practice to limit such inclusions to five separate pieces of paper (not five exhibits of variable lengths). This permits counsel to narrow their focus on what is truly critical and gives the jurors a chance to see the item at the time that it is being used. Where spatial or geographical issues are important, exhibits should always include diagrams or maps. These are typically included in the "top five" for the jury book. Where the timing of events is critical, timelines are also invaluable, particularly as one of the "top five."

A few litigators have expressed concern that giving jurors their own copies of a few exhibits gives those exhibits too much weight. These litigators usually confess to being "control freaks," but the irony is that the concept of control in a jury trial is illusory. [The last moment of any control is when the jury is accepted.] Obviously the numbers of exhibits provided individually to jurors can be increased or decreased depending on the circumstances of a case, with the caveat that the higher the number of exhibits provided individually, the less likely they will be examined. There is no point in overwhelming the jurors. However, if jurors' decisions turn on how they view particular exhibits, photographs or documents, keeping them away from them until the trial is over and these key items become part of the flood of paper they are given, does neither side any service and would seem to warrant less "control" over the results. (Unless the point of the litigator is to keep the jurors from seeing the exhibits or a particular exhibit.)

In addition to the "top five" exhibits, jury books ideally should include a copy of the verdict form as well as preliminary instructions outlining the basic elements of the causes of action. Having these elements at the start and knowing what the "final exam" looks like, jurors will understand the significance of key points, evidence and issues as they are being presented. It does little good for the litigator to put on evidence relating to an element of a cause of action, only to have jurors tune out because the significance of that evidence is not apparent and will not become apparent until the jurors are formally instructed long after the testimony and evidence are forgotten.

If the facts of the case contemplate any technical jargon, a

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SPECIAL APPEARANCE: PAST PRESIDENTS SPEAK UP

California Joins the E-Discovery Age

(Editor's Note: This is the second in a series of columns by past presidents of the Association. Mark A. Neubauer was president of ABTL from 1991-1992 after serving as Editor and Co-Editor of The Report from 1983-1990.)

Three years after the federal amendments to F.R.CIV. P. Rule 34 opened the floodgates to electronic discovery, California's state procedure has finally adopted its own Electronic Discovery Act which will dramatically change the playing field of state discovery law the way the Rule 34 changes altered the federal landscape.

Mark A. Neubauer

Simply put, so-called "e-discovery" changes the equilibrium of litigation. Because of the volume of emails, recovery, production, and analysis of emails can impose tremendous costs upon the responding party, an individual plaintiff seeking e-discovery from a large corporate organization can wreak havoc, often forcing settlements unrelated to the merits simply to avoid the tremendous economic burden of e-discovery.

Similarly, e-discovery — which in even a normal case may often run into six figures — can cause two warring corporations to hold back on e-discovery like two nuclear superpowers hold back from mutually assured self-destruction by not firing their missiles.

No doubt, emails have tremendous discovery value. They often contain important admissions or candid statements of intent. However, they also contain a lot of "junk" – meaningless communications or repetition of communications which have little or no discovery value, yet each of which must be reviewed for both privilege and substantive basis. Furthermore, very few cases hinge on the need for metadata or the internal electronic aspects of the communication since emails rarely involve a defalcation or change of the electronic data.

Yet, the California amendments to virtually all of the discovery statutes went immediately into effect upon passage on June 29, 2009 and will dramatically change how parties deal with discovery, including subpoenas. It will involve a new set of court rules and case law dealing with this new avenue of discovery as both courts and litigants attempt to sail between the competing icebergs of excessive cost and the need for valuable and relevant information.

New Court Rules

Just weeks after the passage of the California Electronic Discovery Act, the Judicial Council amended California Rule of Court 3.724 to include electronic discovery planning at the outset of litigation. Taking its cue from the more generalized Rule 26 of the Federal Rules, this new California Rule of Court requires the parties as part of the initial case management conference to review, consider and discuss potential e-discovery problems. Rule 3.724(8) provides:

Any issues relating to the discovery of electronically stored information, including:

• Issues relating to the preservation of discoverable electroni-

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cally stored information;

- The form or forms in which information will be produced;
- The time within which the information will be produced;
- The scope of discovery of the information;
- The method for asserting or preserving claims of privilege or attorney work product, including whether such claims may be asserted after production;
- The method for asserting or preserving the confidentiality, privacy, trade secrets, or proprietary status of information relating to a party or person not a party to the civil proceedings;
- How the cost of production of electronically stored information is to be allocated among the parties;
- Any other issues relating to the discovery of electronically stored information, including developing a proposed plan relating to the discovery of the information; and
- Other relevant matters.

As a result, every case will be part of the electronic discovery age. How state court judges respond to these rules remains to be seen. Clearly, in a lawsuit by an individual against a corporation, the individual will have little electronic discovery issues, but will be able to put tremendous pressure upon a corporation, which may have a massive number of emails to review, produce and categorize. There are fundamental issues of cost-shifting which courts will have to consider, balancing an individual's right of access to justice and discovery with the unequal burden e-discovery will place on a corporate defendant.

This will be a new world for California courts. But there is a growing body of federal case law where the issue of cost-shifting is considered. One of the leading cases is *In Re Priceline.com Securities Litigation*, 233 F.R.D. 88 (D. Conn. 2005). Unfortunately, cost shifting tends to be the exception rather than the rule, and so how California state courts respond to these new e-discovery rules will be important for all litigants, whether large or small. Now that e-discovery is an issue common to both state and federal courts, clients will have to be advised, even if they rarely have had a federal case before that would require electronic storage, to prepare standards and protocols regarding the maintenance of electronic data.

A key resource for developing client protocols for the retention of electronic data can be found in the Sedona Principles, an organization set up years ago to begin to deal with electronic discovery problems. Both lawyers and clients alike should examine the Sedona website, www.sedonaconference.org. Reliance on the Sedona principles will develop into important standards for determining "reasonableness" in state court, as they have been in federal court.

Subpoenas

One of the biggest changes to occur under the California Discovery Act is the manner in which third parties will have to respond to subpoenas.

For most of us, responding to a third-party subpoena consisted of merely copying the file, making sure that no privileged material was produced, and providing the copy to the subpoenaing party. No more.

Section 1985.8 has been added to require production of information "in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable". The latter phrase may still allow production of hard copy. However, the parties propounding the subpoena can specify the forms for the type of information. Any astute party would require it done in "the form in which it is ordinarily maintained".

The simple fact is that most information is not maintained in hard copy anymore. It is maintained electronically. Emails, Word or WordPerfect documents or PDF files. That will become the new form of production pursuant to subpoenas.

If that new type of production is costly, the responding party has the right to oppose the production because of "undue burden or expense" but must bear the burden of demonstrating that burden.

Similar to the federal rules, there can be cause-ship, Section 1985.8(f) provides that a court "for good cause" may "set conditions for discovery of the electronically stored information, *including the allocation of the expense of discovery*". (Emphasis added)

This is an important tool in controlling abuses to e-discovery. Propounding parties need to be careful what they ask for, because they may get it but have to pay for it as well.

Responding to subpoenas with electronic data is far different than simply grabbing a hard file. To search for a key word, you cast a dragnet drawing literally thousands of emails into the net. Those emails may not only contain relevant information but privileged communications or confidential business information. Moreover, the casual use of emails may also sweep into that dragnet embarrassing personal emails which have nothing to do with the search but were caught in the dragnet when someone appends a personal email to a business email. The electronic dragnet, using search terms, catches both in its web. As a result, responding parties have to exercise far greater care in responding to California's e-discovery requirements on subpoenas. No doubt, most clients will be unaware of the potential pitfalls in these new requirements for responses to subpoenas. Indeed, many subpoenas will be responded to by laypeople without realizing the problems they are unleashing.

Document Responses

The series of statutes beginning with CCP Section 2031.010 have all been amended to add "electronically stored information" to types of evidence such as "documents, tangible things, and land or other property".

Like statutes dealing with third-party subpoenas, responses to requests for production of documents requires the responding party to "produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable".

As those who have practiced under the changes to the federal rules already know, most astute document requests will specify the form, usually requiring the information in its native format.

That will sometimes require software to be made available to read the electronically stored information. California's new Electronic Discovery Act requires that the responding party "at the reasonable expense of the demanding party shall translate any data compilations…into a reasonably usable form".

Under the Federal Rules, these obligations have created not only cost burdens, but some questions as to the ability to read the electronic data. For example, in *In Re Honeywell International, Inc. Securities Litigation* 230 FRD 293 at 297 footnote 1 (S.D.N.Y. 2003), a confidentiality order was necessary to protect the proprietary software needed to review the data. *See also In Re Livent, Inc*. NoteHolders Securities Litigation, 2003 WL 2354 *23254 (S.D.N.Y. Jan. 2003).

The Burden Factor

Clearly, the most difficult issue in e-discovery has been its cost. Rule 34 of the Federal Rules of Civil Procedure has — since 2006 — evolved a series of cases attempting to control the burgeoning cost of e-discovery by shifting them to the propounding party.

One way federal courts have adopted to try to control the abusive potential of e-discovery is running sample test searches. Each side is requested to come up with search terms and agree upon a limited time frame. A search is then run to determine whether the search produces thousands of hits on responsive emails or a mere handful. In that way, courts seek to narrow the explosive potential of e-discovery. However, those examples have

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generally occurred in large cases, and in federal courts, which have far greater resources than state courts. It remains to be seen whether the recent changes in California Rule of Court 3.724 will be utilized by already-overworked state judges to deal with the tremendous problems of e-discovery.

Privilege Clawback

One of the major problems of e-discovery is the inadvertent disclosure of privileged information. It is simply unreasonable to expect the parties to catch every privileged communication in the deluge of potential emails that are responsive to a discovery requests.

Accordingly, as part of the Electronic Discovery Act, California has added Section 2031.285 to the Code of Civil Procedure which provides a dramatic change in prior law by codifying a "clawback" for inadvertently-disclosed material.

Under this new section 2031.285, a party who discovers it has accidentally disclosed privileged material can notify the receiving party who is obligated to "immediately sequester the information" and either return it and any copies or "present the information to the court conditionally under seal for a determination of the claim."

But the burden on obtaining court determination ironically is placed not on the party seeking to protect the information, but on the "receiving party." That motion must be made "within 30 days of receiving the claim and presenting the information to the court conditionally under seal."

Additional teeth is provided to this clawback provision by saying that prior to the resolution of such a motion for determination of the privilege, the receiving party is "precluded from using or disclosing the specified information." Section 2031.285(c)(1).

Again, this differs greatly from the federal rules, which do not even address this clawback problem.

Sanctions

Almost every California lawyer is aware of the nightmare that occurred in *Qualcomm, Inc. v. Broadcom Corp*., 548 F.3d 1004 (Fed. Cir. 2008), where previously undiscovered and un-produced emails led not only to an adverse judgment and award of attorneys fees, but several attorneys referred for potential bar discipline.

Indeed, most lawyers comment that the fight over e-discovery has been more a fight over spoliation than a fight over actual discovery. For that reason, both Section 2031.300 and Section 2031.310 have been amended with a special provision regarding sanctions in the case of e-discovery.

The new standard is "absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to produce electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation." The battle, of course, will be whether it is in "good faith."

It also means that clients should develop protocols to establish good faith by, among other things, canvassing their industry as to what others are doing on file maintenance, documenting the economic and practical limitations of their electronic storage systems, and other factors set forth in the Sedona Principles. This should be done well before litigation, rather than after.

In short, we have entered a new age of electronic discovery in state court. No longer will people have to focus on burdensome interrogatories or requests for admissions. A simple request for electronic data should be enough to create havoc in a lawsuit.

In the days ahead, our state judges will have to deal with these substantial problems as new case law is developed to deal with this new form of discovery.

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glossary of terms is always effective. Typically, the attorneys are very familiar with the particular terms of their case and their witnesses and experts will give fine explanations and definitions of such jargon…exactly once. Jurors don't always pick up that familiarity with a single definition and a simple glossary can keep them engaged and in the loop.

Depositions

Deposition transcripts are most effectively lodged, not filed, with the court on the day they will be used. Providing stacks of transcripts in advance will make it likely that they will not be found when needed and will present logistical problems for the court clerk. Experienced litigators never permit logistical problems to weigh down court staff.

Familiarity with the rules of evidence relating to the use of deposition transcripts in trial can be critical. A regular review of CCP Section 2025.620 before trial and before the taking of a deposition is well advised. "Objection: not a proper use of the deposition transcript" is a frequent but invalid evidentiary objection. As Section 2025.620 outlines, some objections are waivable and some are not. Non-waivable objections include those relating to the form of the question, the reasoning being that had the objection been made at the deposition, the error could have been summarily cured and the question reposed. Objections based on foundation need not be made in advance and can be made for the first time at trial. CCP Section 2025.620(c).

Also, a common misuse of deposition transcripts occurs when counsel insist on reading portions that actually do nothing to contradict or disprove what a witness has just said. Use of prior testimony to impeach means that there is something to impeach. The reading of sections of a transcript that sound exactly like what the witness just said is a common occurrence in trial, and wastes juror goodwill.

Some attorneys believe that before a witness can be confronted with prior deposition testimony, the witness must be provided with a copy of the portion at issue to be read silently before examination can proceed. Nowhere is this required by Evidence Code Section 770.

Video presentations of deposition testimony can also be very effective but counsel should not be sabotaged by their lack of compliance with notice components, the opposition's opportunity to object, and the necessity to lodge written transcripts in advance with the trial court.

Technology

It goes without saying that Murphy's Law operates in good standing during jury trials. If the system can fail, it will. Ensure that any use of technology is tested and in working order in advance of use. A backup system has been known to prevent premature aging. Even with the best of technicians, I have never yet seen an entire presentation via Elmos or computers not malfunction sooner or later. Counsel must know how to punt if punting and manual methods become necessary. The silence as lawyers or their technicians try to get the computer to work, the screen to light up, or the focus to provide clarity…can be beyond excruciating.

Experts

Most judges trying civil cases agree that one of the most problematic issues in trials revolve around objections to expert testimony, whether it relates to scope, discovery or foundational issues. This should all be handled in advance, whether it involves proper notice of the expert, qualifications of the expert, the

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scope of the testimony to be offered, or *Kelly-Frye/Daubert* issues. It is nearly impossible for judges to switch gears in the middle of a trial to consider often complicated disputed expert issues and to shut down the trial while attorneys scramble to find the deposition testimony that supports their argument that the expert should or should not be permitted to render an opinion on a particular issue. If a preliminary ruling has not been secured, attorneys must ensure that their arsenal to support their objection or defense to an objection is at their fingertips. Again, if the issue is important enough, it should have been anticipated and resolved.

He who knows the Evidence Code has a serious strategic advantage in the courtroom. But he who keeps the Evidence Code out of the trial by handling evidentiary issues in advance is indeed the Master.

— Hon. Jacqueline Connor

The Business of Practicing Law

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exponential. Managing a clogged system adds significant work associated with unproductive "case-shuffling." The potential of courtroom and courthouse closures greatly compounds the problem.

One might think this will only drive more business into alternative private dispute resolution — that the legal business needing to get done will get done through ADR. Not necessarily so. Trial lawyers know the axiom: "trial dates settle cases." If the availability of real trial dates is cut by reductions in the number of courtrooms ready to try cases, then the number of timely resolutions will likewise plummet. The certainty of timely trial is often a necessary precondition for there to exist a realistic opportunity of settlement. Many, many cases do in fact "settle on the courthouse steps" and, for that to happen, the courthouse must be open and available for business.

The days of long delays in civil cases that existed when I began practicing law in 1975 are not as far away as we might think.

The Court's Reserves Will Soon Exhaust

In the years following the 2002-2003 recession, the Los Angeles Superior Court prudently built up reserves to use when California experienced its next down-turn. The good news is we prudently saved up substantial reserves. The bad news is our vigilance in controlling costs, and saving for a rainy day, has left us very little room to absorb new cuts. But we're cutting more, anyway. Unfortunately, this time not just to the bone, but deep into the marrow. And that means last-resort measures, such as closing courtrooms and courthouses, now loom close on the event horizon.

So far we have forestalled substantial closures by spending down reserves, but they will soon be exhausted. Only long-term solutions, not short-term reserves, will bring the courts through the storm ahead.

To remedy this, the courts can try to persuade the Legislature and Governor not to again impose multimillion dollar cuts on the courts in the next fiscal year. That is unrealistic, in my view. All agree the state budget situation next year is going to be worse than this, when large cuts had to be imposed on the courts. So, even larger cuts must occur next year. And, if not on the courts anymore, then who will be forced to suffer the court's present and future share: The health care system? Education? Law enforcement? Another alternative is to ask the Legislature and Governor for more money, but they do not have more, and it is very unlikely they would move to raise more for the courts through new taxes, fines and fees.

So, in my view, we must look within the Judicial Branch for solutions. That means we must have a frank discussion among ourselves, including all stakeholders, not just the judges, but lawyers and others, about how we spend the resources presently accessible to us. What takes first priority? Keeping our courtrooms open for business, or something else? The question is not an "either/or" proposition, but is there any priority so pressing that it merits permanently closing over 100 courtrooms in Los Angeles to achieve it?

A Life-Preserver that Can Save the Courts

And, here, I see a potential life-preserver that may be adequate to prevent substantial closures and allow us, albeit with great difficulty and sacrifice, to weather the gathering storm without suffering lasting damage to our court system and the business of law associated with it. The solution requires thinking as big as the crisis we face.

The Legislature passed SB 1407 in 2008 — a $5 billion courthouse construction bond bill. To support the bonds, which will not be sold for at least three years, the Legislature created a new income stream in the form of added fees and fines. In Los Angeles alone, that new revenue stream is producing about $73 million per year. Statewide, the sum is over $200 million per year.

SB 1407, which was a majority vote bill, can be amended to redirect this revenue stream for a short period of time to save court operations rather than build new courthouses. The Legislature recently redirected a small portion of this money as part of the current fiscal year budget solution. I am convinced we must be willing to redirect, for a period of time, as much of the SB 1407 revenue stream as is necessary to save court operations — not just in Los Angeles, but to save courtroom operations statewide.

$73 million per year in Los Angeles is the funding equivalent of nearly 1,000 jobs. On average, efficient court systems need about 10 employees to perform the work required to support each courtroom. Thus, about 100 courtrooms can be saved by redirecting SB 1407 funds to support courtroom operations during the ongoing budget crisis. Court operations must, I believe, take priority over new brick and mortar projects.

When SB 1407 bonds are eventually sold, and the budget crisis has abated, the SB 1407 income stream can be redirected to support the bonds and the building program can shift back into full operation. In challenging times as these, people and their legal problems must be given priority over resource-intensive capital projects that can prudently be delayed or postponed.

I'm aware some fear if the bare subject of redirecting SB 1407 revenue to save court operations is raised with legislators or the Governor, they will seize the money and use it for other purposes outside the courts. In reality, they are already fully aware of the availability of the SB 1407 income stream, and they have already redirected $25 million to help the courts survive the current fiscal year and have indicated an intent in the future to redirect an additional $20 million next year. In deciding priorities, it does not appear legislators or the Governor are inclined to sweep SB 1407 money away from court uses, as some fear, and the existence of the funds is no secret.

While ABTL is an association whose primary interest rests in serving clients in business-related matters, I am convinced ABTL's members will now rally to the cause of preserving the business of practicing law — a business vital to California's economy — a business that depends daily on a healthy court system that remains open and accessible to all.

— Hon. Charles W. McCoy, Jr.

Mentoring Towards the Pursuit of Good Judgment: A "Do" and "Don't" List for New Attorneys

As new associates begin their careers at law firms during the next few months, senior attorneys will undoubtedly recite a version of the profession's axiom: "The one common denominator of all great attorneys is good judgment." To the new attorney, good judgment may sound as mysterious as "due process" and "equity" once seemed. There are some known characteristics, however. For example, it must be exercised each day, both in and out of the office. Also, it is independently measured throughout an attorney's career by clients, juries, judges, opposing counsel and peers.

For those entering the practice of law, one thing about good judgment is important to understand at the outset. Although some attributes of good judgment are inherent in our fabric, others are learned. Accordingly, mentoring from senior attorneys is critical to developing good judgment. As such, mentors and mentees must be mindful of the professional purpose and value of attorney mentoring. While discussions about current events or sports are traditional and invite bonding, there must be a conscientious effort to discuss the practice of law. Mentoring is ultimately about the profession, not simply spending time together.

To create meaningful mentoring relationships, it is important for senior attorneys to take the lead. Although some associates may be aware of the steps in their career paths, others are just as capable of taking the steps but may be unaware of the staircases. Senior attorneys need to invest the time to walk through the halls, stop by offices and take associates to lunch. The investment is more than an in-kind contribution to the profession and the administration of justice. Developing young attorneys runs to the firm's bottom line because it improves employee retention and builds the farm team of future leaders of the organization.

For new attorneys, this is a time of great transition. Obtaining a law degree and passing the bar exam are meritorious accomplishments. But as annoying as it may be to hear, the following old proverb also has merit: Law school does not prepare you for the practice of law. No great trial lawyer learned the trade by law school alone or by learning on an island without mentors. The apprenticeship remains a part of a lawyer's education.

As a senior associate, I stand on the bridge where I can perhaps relate temporally to the views and concerns of both the new attorney and the partner. Accordingly, to jump-start meaningful mentoring discussions, I have catalogued an introductory "do and don't" list for new attorneys. Practitioners may agree or disagree with my points, but hopefully the list can help partners recall early lessons that are now habit or provide guidance to young attorneys on issues they have not contemplated.

Time Management

• *Do not procrastinate*. The following anonymous quote is posted at my desk: "A common element of failure is procrastinating on important projects until there is too little time to complete them properly, often making careless errors as a result." Effective time management is integral to a successful career.

• *Take the time to prepare*. My civil procedure professor advised, "the will to succeed is nothing without the will to prepare." Time is a commodity in practice, but using it to prepare makes all the difference.

• *Meet all internal time deadlines*. Final products such as briefs are team efforts. As a young associate, you are probably the first link in the chain. When you miss the opening deadline, the team product suffers because it decreases the amount of time that others will be permitted to spend on the brief.

The Practice

• *Don't shoot from the hip*. Cowboys generally do not make good lawyers. Confirm that you know what you're talking about before espousing a position. This is true even when asked in open court or in front of a client. Don't guess. Acknowledge that you don't know for certain and that you will research the matter further.

• *Hit the books*. Westlaw and Lexis are incredible tools for today's practitioners, but the library still provides unparalleled benefits. Treatises, digests and statutes are particularly best examined in print initially because something may catch your eye that was not on your radar and thus not entered into the electronic "search" box. Young attorneys too often return with an incomplete research answer because they relied solely on electronic research tools.

• *Don't proceed blindly*. "First settle what the case is before you argue it." Lord Chief Justice Howe, *Trial of the Seven Bishops*, 12 How. St. Tr. (1688). Don't plow ahead in a direction before doing some preliminary fact gathering and legal analysis. If the law or facts do not support your misguided path, you will lose.

Allen L. Lanstra

• *Become the expert*. Take ownership of an issue that you are asked to research. You were probably asked to research the issue in the first instance because no one knew the answer. Fill the void. Become the expert.

• *Offer solutions*. As Abraham Lincoln recognized: "A lawyer's advice is his stock in trade." Identifying a problem without proposing a solution effectively advises the client to find other counsel to provide advice.

• *Confirm the right answer*. Don't presume that senior attorneys are correct about the law. Even if you do so quietly, trust your instinct and double-check legal propositions that you suspect may be wrong or outdated. One of the primary responsibilities of an associate is to protect the partner from preventable missteps.

• *Learn the rules of statutory interpretation*. Many legal disputes are resolved by the court's interpretation of a statute.

• *Don't underestimate opposing counsel*. Great attorneys can come from any firm, any law school, and various levels of seniority.

• *Don't take discovery lightly*. The war on the facts is decided during discovery battles. Becoming an expert on the facts of a case makes you indispensable.

The Work Product

• *Always produce polished and complete work*. Take the extra time to do so, particularly where the names of others are to appear on your work product.

• *Be a serial proofreader*. Proofreading must be done to avoid careless errors, the number of which is inversely proportional to the quality of written products. This rule applies not only to memos, briefs and letters, but also emails.

• *Have a global view about memos*. Write research memos with the understanding that they may be circulated to others who were not privy to the conversation about the assignment or may be outside the firm. The memo may also be read three years from now.

• *Understand your assignment*. Even if you feel embarrassed to seek clarification, you will be ten times more uncomfortable if you deliver the wrong product.

• *Obtain examples*. If you are asked to prepare a witness out-

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Mentoring Towards the Pursuit of Good Judgment

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line, for example, there is no shame in requesting or hunting down a model. A useful witness outline is the one in the form preferred by the partner who will be using it.

Writing

• *Writing skills must be constantly developed*. Accept that becoming a better legal writer is a lifelong process, even if you majored in English. Be committed to withstanding criticism to improve your writing skills.

• *Learn to use fewer words*. "To be brief is almost a condition of being inspired." George Santayana. One of the largest challenges for many young attorneys is learning to be less "wordy." The simpler the message, the more understandable and convincing it becomes. Redundancy is glaring and signals weakness.

• *Keep your audience in mind*. Your purpose is to make the reader's job easier, whether it is the court, the client or a partner.

• *Select words carefully*. "Most of the disputes of the world arise from words." English jurist William Murray, *Morgan v. Jones*, Lofft. 177 (1773). Avoid falling victim to the sustenance of our own profession. Think about the words you employ. As an example, we do not tell clients what the law is, but rather our opinion of the law.

Filings

• *Follow the court rules*. Strictly adhere to the forms and requirements for court filings. They may not seem important to you, but they are to the court. Don't supply the notion of carelessness on something as simple as following clerical rules.

• *Checking authority is an attorney's job*. Utilize paralegals but review authority yourself. You are the one trained in the law.

• *Double-check court deadlines*. Missed court deadlines kill careers. Where jurisdictional they can result in ethics complaints and malpractice suits. Double-check staff calculations of deadlines and interpretations of court rules, which can be less than clear and inconsistent across jurisdictions.

• *Do not adopt the practice of waiting to file or serve documents until the last hour*. Things go wrong. Computers crash and copiers break. Do your best to have courts filings completed the day before they are due. The filing of an erratum should be avoided at all costs and is usually caused by last minute changes.

• *Review the actual papers before they are filed*. This includes making sure that the copy center made full, ordered and centered copies of the document.

Learning

• *Offer your thoughts and ask why*. Don't be so afraid to be wrong that you contribute no insight or original thought. Similarly, if you don't know why something was done, ask. Otherwise, you've learned nothing and may repeat the action for the wrong reason in the future.

• *Review legal periodicals*. Have them routed to you and commit to reading them. Being current on the state of the law helps you spot issues and many periodicals provide education as to the business side of the practice.

• *Publish*. It is an easy step towards improving your writing skills and builds the framework for business development. You can write independently or with a senior attorney.

• *Perform* pro bono *services*. You should identify pro bono opportunities that interest you and provide legal experiences beyond your years. They will make you a better person and a better attorney.

• *Go to court*. Even if it means not billing your time or not sitting at the counsel table, go to court. This is true even for cases on which you are not staffed. When I was a law clerk, I watched arguments of the best attorneys. Today, I still try to attend openings, closings and arguments handled by our firm's partners.

• *Spend time to learn the trade*. This includes not only observing senior attorneys in action but also picking up a practice manual.

• *Be active in professional organizations*. Join a local bar association or other legal organization, and be active. Don't be just a name.

• *Seek out your own mentors*. The firm's formal program may select a good mentor for you but consider it a supplement. You should be proactive about finding the right fit.

• *It's about experience, not age*. Realize that just because an attorney with seniority is actually younger than you in age, he or she likely still knows more about the practice of law than you do.

The Firm and Its Business

• *Appreciate the demands and pressures on the firm's partners*. Partners are saddled with comparable legal workloads but also need to be legal managers, business developers and mentors. Most of them also have spouses and children. In fact, partners have too many things to do; that's why associates are hired in the first place. So, if a partner projects his stress on to you, try not to take it personally. Just help him.

• *Know your firm*. Familiarize yourself with and remain updated on the firm's work outside your practice area. A potential client is a potential client for the firm, not necessarily for the particular attorney approached. If you are not familiar with the firm's practice areas and experts, you may miss the opportunity to capitalize on a lead.

• *Enter your time every day*. It improves accuracy but is also vital to the firm's administration. It is not simply to track your hustle.

• *Business development is a part of private practice*. Think actively about how you can help the firm develop new business. This includes seemingly unconnected activities like being active at your alma mater, publishing and engaging in public service or non-profit work. At the same time, recognize that even when not acting in the firm's name, you represent the firm.

• *Reach your own opinion about workmates*. Decide for yourself whether a partner or senior attorney is good for you to work with and don't rely on rumor. Some of my best mentors carried challenged reputations through certain associate eyes, but those attorneys were some of the most well-respected lawyers in their fields and in the legal community and I have benefited immensely from their tutelage.

Professionalism

• *Act professionally*. "[L]awyers who know how to think but have not learned how to behave are a menace and a liability not an asset to the administration of justice." Warren Burger, May 24, 1971 Address to the American Law Institute, *National Observer*. This includes being courteous and respectful when writing.

• *Be noble about errors*. If you make a mistake, be accountable and deal with the partner involved honestly and openly. Never blame others. There will undoubtedly be instances where you did not create the problem but also did not catch it before passing it on to someone else. Take responsibility for your contribution. Admit that you should have caught the error or that not confirming its correctness was careless on your part. Then learn from your mistake.

• *Mind your appearance*. Business attire may not be required by the firm, but professionals confront daily opportunities to make a good first impression.

• *Manage your personal calendar like a professional*. Go to the doctor for your annual check-up, but don't schedule the appointment for 2:30 p.m. in the middle of the week. Secure the 8:00 a.m. or Saturday appointment.

• *Go live*. Pick up the phone or stop by in person. Don't unnecessarily hide behind email or texting as they have no tone.

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Mentoring Towards the Pursuit of Good Judgment
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• *Accept staff assistance but retain responsibility*. Staff makes our lives easier but you must remain accountable for quality control. As example, I recall an associate blamed when a courier delivered a jurisdictionally time-sensitive appeal to the wrong court. Demand to see the conformed copy in plenty of time to correct any delivery error.

• *Turn off that BlackBerry or iPhone*. For those of another generation, attention to your BlackBerry is distracting behavior that screams: "I'm not interested in what you're saying."

• *Call clients back*. Failure to timely communicate leads not only to dissatisfied clients but also ethics complaints. Do not screen client calls.

• *Do not put a client on hold*. It announces: "Hold on. Another call is coming in and it may be more important than you."

• *Mum's the word*. No matter how unlikely it may seem, discussions about your cases in elevators or to friends or family can boomerang in an unpleasant way. Confidentiality is key. You never know to whom your listener may repeat your seemingly innocent comment.

— Allen L. Lanstra

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Battle of the Titans:

When Trade Secret Protection and the Prohibition on Non-Competes Clash

We all know that non-competes are generally verboten in California. California is very protective of its workers' rights to move from job to job, shopping his or her talents to the highest bidder (so to speak).

We also know that California is very protective of an employer's right to protect its intellectual property, especially its trade secrets. This includes, of course, customer lists and client information under proper circumstances.


Michael D. Young

So what happens when these two important and closely protected public policies crash head-on into one another?

What happens when workers want to compete with their former employer by soliciting business from the employer's customers…and the customer contact information is both stored in the employer's database and (with a little digging) available from public sources? Who wins this one?

Trade Secrets v. Non-Competes

Intellectually, the answer is easy. The courts (if they are paying attention) will say:

a) The employee can compete, solicit, plead and beg for business all he or she wants, even from the former employer's best and most valuable customers. B&P 16600 is extremely clear in its prohibition of any contracts that restrain (even a little bit according to the Supreme Court in *Edwards v. Arthur Andersen*, 44 Cal. 4th 937 (2008)) a person's ability to engage in a trade or profession.

b) BUT, he (or she) cannot use the former employer's trade secrets to jump start that competition. Assuming the employer properly protected its customer information as a trade secret, the employee cannot download the customer data onto a pen drive and use that to initiate solicitation.

But the intellectual answer — go ahead and compete, but don't use the employer's trade secrets to do so — is a lot easier to say than to implement. Even the trial courts run into trouble with this.

The Retirement Group v. Galante

Case in point: *The Retirement Group v. Galante* (July 30, 2009, 4th App. Dist., Cal. Court of Appeals Case No. D054207).

This case is a great example of the tension between the competing interests of employees and employers in California, and some of the confusion that can be created when the two collide.

In *The Retirement Group*, the employer (TRG) was in the securities/investment business. Its customers were individuals willing to invest money (a rare commodity). The employer "spent substantial resources to develop its customer base" and protected

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its customer data as a trade secret. The employees (actually, they were independent contractors, but let's not get picky, it doesn't make a difference) provided investment advice to TRG's customers on behalf of the employer.

You can guess what happened next. The employees (contractors) left the employer and joined a competitor. You can also guess who these workers targeted for business!

Now, if you have been paying attention, you should be saying to yourself, "Hey, it's o.k. for these employees to target, solicit, and get business from TRG's customers. That's what the protection of B&P 16600 is all about." And you would be right.

But you should also be saying, "But they better not be using TRG's trade secrets to do it." Excellent.

So that leaves the most important practical question for parties on both sides of this table to be asking: "*What information did the employees use in order to contact those customers?*"

In *The Retirement Group*, apparently there was enough evidence that the employees used (at least in part) the former employer's trade secret information to contact the customers that the trial court was willing to issue a preliminary injunction. The injunction prohibited four categories of conduct. Let's take a look at categories 3 and 4 in particular.

> *Injunction Category* 3 prohibited the employees from "using in any manner TRG information found solely and exclusively on TRG databases. [However,] [s]imilar information found on servers, databases and other resources owned and operated by other entities or businesses is excluded from the injunction."
>
> This is another way of saying "Don't use TRG's trade secrets, but it's okay to use the exact same data if you find that data somewhere else."
>
> *Injunction Category 4* prohibited the employees from "directly or indirectly *soliciting any current TRG [customers]* to transfer any securities account or relationship from TRG to [the workers] or any broker-dealer or registered investment advisor other than TRG." (Emphasis added.)

Do you see the problem with Category 4 here? It is a prohibition not on the misuse of trade secrets *but on the solicitation of business.*

Category 4 – The Non-Compete Gets Challenged

Not surprisingly, after the injunction issued, the parties continued to battle over the meaning and scope of the injunction language, with TRG complaining to the court that the employees were still soliciting its clients, and the employees arguing (among other things) that they didn't know what "solicit" meant (not their best argument, in my humble opinion).

But the workers also asserted (a) they had obtained customer information from public sources; and (b) they had used only that public information in order to contact (and solicit) the customers, so that Category 4 was "invalid" as a restraint on their lawful competition. The dispute made its way to the appellate court by way of a writ.

Justice McDonald, writing for the appellate court, nicely summarized the important public policies behind the competing employer/employee interests, and correctly distinguished between *the prohibition on the use of trade secrets* (allowed) *and the prohibition on customer solicitation* (not allowed). The Court summarized as follows:

> "We distill from the foregoing cases that section 16600 bars a court from specifically enforcing (by way of injunctive relief) a contractual clause purporting to ban a former employee from soliciting former customers to transfer their business away from the former employer to the employee's new business,…
>
> …but a court may enjoin tortious conduct (as violative of either the Uniform Trade Secrets Act and/or the Unfair Competition Law) by banning the former employee from using trade secret information to identify existing customers, to facilitate the solicitation of such customers, or to otherwise unfairly compete with the former employer."

In the end, the Court invalidated Category 4 of the injunction.

Lessons Learned

Are there lessons here to be learned? Sure there are:

1) For attorneys representing employers in trade secrets cases — *don't overreach* in the drafting of your injunction language, even if the trial court will give it to you. While the appellate work will surely make some appellate specialists happy, does your client really want to pay for the losing battle?

2) Employers, protect your trade secrets – but understand that there's not much you can do if your former employees want to *fairly and lawfully compete*.

3) Employees who want to compete with a former employer, do so fairly and lawfully. This means developing your customer lists after your employment relationship is terminated, and base them on publicly available sources or your own hard work. Don't even think of downloading anything on your way out the door.

4) Read the Alston & Bird California Labor and Employment Blog regularly (www.alston.com/laborandemploymentblog). We anticipated this issue (correctly, I might add) months ago.

Question – Did the *TRG* Court Really Get it Right?

The Retirement Group does leave one issue unaddressed. The appellate court threw out Category 4, the non-compete portion of the injunction, because it violated the public policy reflected in B&P Section 16600. That section states that "*every contract* by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." *Every contract!* The statute doesn't say "*every court injunction*" that restrains someone from practicing a trade is void, only every contract!

Don't the courts have some type of inherent equitable power to craft a remedy to fit the harm, so that if a trial court were to believe that an injunction forbidding competition was necessary to ameliorate a past bad act (to minimize the impact of prior trade secret misappropriation, for example), doesn't it have the power to issue such an injunction? If so, then maybe *TRG* wasn't analyzed quite so properly. This is an issue worth watching.

— Michael D. Young

2010 Membership Drive Kick-Off

It is that time of year again. For current members, it is time to renew your ABTL Membership for 2010. For non-members, now is the time to join so that you can enjoy an entire year's benefits.

• ABTL remains dedicated to promoting a dialogue between the California bench and bar on litigation issues. Anyone who has attended one of our lunch or dinner programs knows that we have wonderful judicial participation.

• ABTL provides top notch lunch and dinner programs with guest speakers that include local and national legal notables throughout the year. Indeed, the cost of membership is paid for with the discounts you receive on attending the events as members — as opposed to non-members.

• ABTL's 2010 Annual Seminar will take place at the Big Island of Hawaii (October 20-24, 2010) at the beautiful Mauna Lani Resort.

To establish your 2010 membership, visit us on-line at http://abtl.org/la_membership.htm

If you have any questions, please contact our Executive Director, Linda A. Sampson, by phone at (323) 988-3428 or by email at abtl@abtl.org.

2010 Dinner and Lunch Dates

Through July at

Millennium Biltmore Hotel, Los Angeles

January 12 — Lunch Program

February 9 — Dinner Program

March 9 — Lunch Program

April 20 — Dinner Program

May 11 — Lunch Program

June 8 — Judicial Reception

July 13 — Lunch Program

Letter from the President

I am truly humbled and honored to have been elected President of the Los Angeles Chapter of the Association of Business Trial Lawyers for 2009/2010. One need only look at the list of those Presidents who have preceded me to realize why this organization continues to be amongst the elite bar organizations in Southern California. Despite our sustained success, we cannot rest on our laurels. That is why I am proud to lead an outstanding Executive Committee and Board of Governors in expanding upon our organization's success.

Scott H. Carr

In the coming year, we anticipate (1) continuing to present the highest quality and most entertaining educational programs, which have become the cornerstone of our organization; (2) continuing to promote and advance dialogue and interaction between and amongst members of the bench and bar; (3) continuing to increase our altruistic goals through our public service efforts; and (4) continuing to provide opportunities to young lawyers.

The first area of focus is programming. With John Nadolenco leading the way in planning and organizing our Dinner Programs, and David Battaglia in charge of the Lunch Programs, we are well on our way towards our goal of not only meeting, but exceeding, expectations for our programs. With recent speakers and panelists such as Supreme Court Justice Antonin Scalia, Chief Justice of the California Supreme Court Ronald M. George, Dean Kenneth W. Starr and Former Solicitor General Walter Dellinger, the quality of our panelists and programs is unsurpassed. However, we will not stop there. In the coming months, keep your eyes and ears open for upcoming programs featuring well renowned and highly respected jurists, lawyers, and speakers from across the country.

Our efforts to promote communication and interaction between and amongst members of the bench and bar is also off to a strong start. Under the leadership of Curtis Porterfield, our Courts Committee has taken the lead in representing ABTL at judicial meetings, conferences and events. We have also been blessed through the participation on our Board of Governors of the Honorable Charles McCoy, Presiding Judge of the Los Angeles Superior Court. As Judge McCoy's article in this edition makes clear, it is the responsibility of all lawyers and judges to ensure fair and open access to the Courts for all. Through the joint efforts of our judicial and attorney members, ABTL will never back away from its role in promoting and ensuring such access. Additionally, our programs as well as our pre-program wine receptions for members are a great opportunity to interact with lawyers from big firms and small firms alike, plaintiffs' lawyers, and defense lawyers as well as members of the federal and state judiciary.

Our public service efforts are being guided by the steady hand

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Letter from the President

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of Marc Marmaro. Under Marc's leadership, our Public Service Committee is continuing our tradition of awarding scholarships to each of the accredited Los Angeles area law schools. These scholarships are awarded based upon financial need, interest in business litigation, and a commitment to public service. In addition, we continue to promote and provide speaking opportunities for our members at inner-city schools and to provide education to the community regarding the importance of our legal system. Finally, we continue in other philanthropic efforts such as our participation in the Court's Annual Toy Drive to provide toys at Christmas time to needy and underprivileged children.

Our Young Lawyers Division is also thriving under the leadership of Rena Scott and Erik Swanholt. The YLD events are an opportunity to get younger lawyers involved with ABTL, and for them to discuss issues unique to their group. They will continue in their goals of organizing events with members of the judiciary, in preparing judicial profiles which are accessible to our members, and in providing content of particular interest to young lawyers for our ABTL Reports.

ABTL is looking forward to another outstanding year. The goals and initiatives of our organization are ambitious, but with the support of all members, they will be attained. I look forward to meeting and speaking with each and every one of you. If you see me at any of the upcoming ABTL events, please feel free to introduce yourself, share your thoughts and say hello.

— Scott H. Carr

Contributors to this Issue

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