

Judicial Involvement in ABTL: A True Win-Win Experience

**By Hon. Gail A. Andler and
Hon. Andrew J. Guilford**



We both started our careers as young associates practicing business litigation in Los Angeles and lucked out when mentors took us to ABTL events. The discussions of cutting-edge issues at a sophisticated level helped us to hone our skills as new lawyers. And the ability to share a meal and pleasant conversation with state and federal judges made appearing in court a less intimidating prospect. Over our years in Los Angeles, ABTL became a chance to meet judges, learn about trials, and break bread with lawyers in our firms and beyond.



The passage of over a quarter century since our first meetings has enhanced, for

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The Origins of the Orange County ABTL Chapter

By Jeffrey W. Shields and Michael G. Yoder

Early in the Fall of 1996, telephone calls were quietly placed from three Judges -- Gary Taylor, the late Alicemarie Stotler and Bill McDonald -- to a select group of Orange County business litigators and fellow judges, requesting them to gather together to discuss the possibility of establishing an Orange County Chapter of the ABTL.



The primary instigator behind this effort was actually Bob Fairbank, who was not from Orange County himself, but, rather, was a former President of the Los Angeles ABTL Chapter. He strongly encouraged the formation of the Orange County Chapter both to the existing ABTL Chapters and to our new group, and his abundant enthusiasm and experience proved invaluable to our moving forward. As recalled by Judge Nancy Wieben Stock, "Bob was the Johnny Appleseed of our Chapter, and personally responsible for seeding our Chapter."



An initial organizational meeting was held at the offices of Paul Hastings and hosted by Don Morrow. Several of the Judges in attendance discussed their positive past experiences with the Los Angeles Chapter of ABTL, and Bob Fairbank, who had driven down for the meeting, explained the many strong points of belonging to ABTL, as well as why the other ABTL Chapters felt it was time for Orange County to join. Everyone present at the initial meeting was enthusiastic, and, thus, the plotting and planning began in earnest with the goal to be up and running by the Spring of 1997.

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The President's Message

By Michele D. Johnson



This year's Association of Business Trial Lawyers events have delivered the absolute best of the Orange County business community's bench and bar, and it has been a privilege to be a part of it. In this issue of the ABTL Report, we look both to the past and to the future, reflecting on the founding of our Chapter in 1997, and setting forth our goals and strategies for the years to come.

A marquee event each year for our organization is the Annual Seminar, bringing together attorney and judicial members of ABTL chapters from across California. The topic of this year's seminar, held at the Ojai Valley Inn & Spa, was "Countdown: The Digital World Confronts an Analog Profession." In one program highlight, attorneys from the plaintiffs' and defense bar sat across from each other, live on stage, and bravely conducted a real (sort of) mediation of the seminar's hypothetical lawsuit—competing for real (totally real) prizes awarded to the highest plaintiff's and lowest defendant's settlement figures—and then submitted their efforts to public critique by members of the state and federal bench. This was just one fascinating piece of an excellent program, also highlighted by keynote speaker Preet Bharara, U.S. Attorney for the Southern District of New York, who spoke on the peculiarities of rapid technological advancements to the criminal world. Next year's Annual Seminar will take place October 5-9, 2016 at The Ritz-Carlton, Kapalua on the island of Maui. Planning has just begun, and we expect another great program. Stay tuned.

Other events throughout the year have similarly underscored the unique strength of the ABTL—bringing business lawyers and members of the judiciary together in meaningful and educational ways. Our September 9, 2015 dinner program was entitled, Winning in the Media & the Courtroom: Strategies from the Pao v. Kleiner Perkins Defense, featuring Lynne Hermle of Orrick Herrington & Sutcliffe LLP. Ms. Hermle spoke to a rapt audience about the battles in the courtroom and outside of it surrounding the high-profile gender discrimination trial—a timely presentation that concluded, as it turned out, just hours before news broke that there would be no appeal of the jury's ver-

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Reporting on the ABTL Report By Dean J. Zipser and William C. O'Neill

The wealth of legal expertise in our Orange County chapter has always run deep. Tapping into that legal expertise became a hallmark of ABTL through its dinner programs, pre-dinner receptions, community projects, and a bevy of other avenues both formal and informal. The most formal route taken to harness that talent was the ABTL Report, now in its sixteenth year. As we highlight in this issue the history of our chapter, it's only right to look at the evolution of our ABTL Report.



As soon our chapter was up and running, the Board saw the need for and benefit of our own Report. Dean Zipser took the reins from day one, using the templates created by the Los Angeles and Northern California chapters as a guide. The OC's Report rounded into shape quickly when Dean formed an editorial board to help obtain and review the content. Justice William Rylaarsdam was a particularly valuable asset in those early days.



The overriding goal of the Report was, and continues to be, providing helpful and informative content to business trial attorneys in and around OC. The staple of the newsletter became the judicial interview, which debuted with our first issue. (*Ed. Note – yes, I know this special Report does not have a judicial interview, but tune in next issue!*) Dean conducted the early interviews, but soon delegated that to other attorneys in the area. Interviews are now handled routinely by attorneys between their first and seventh years in practice to help ensure that our younger members are interacting with judicial officers.

Archived issues – found on the ABTL website – reflect nearly two decades of attorneys and judges
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A History of Dinner Programs and Community Involvement By Karla J. Kraft and Maria Z. Stearns

Five times each year, over 200 members of our Orange County chapter of ABTL gather for cocktails, dinner, and a one-hour CLE-certified presentation. These evening gatherings have changed not only the legal community, but the Orange County community, over the 17-plus years of our chapter's existence. We draw legal luminaries of national prominence to speak here in Orange County, and our members have donated hundreds of thousands of dollars to the Public Law Center and other local non-profits. What an amazing impact we all have made while sharing a drink and a meal with our fellow litigators and judicial officers!



Our Orange County chapter has hosted 87 dinner programs. If you attended them all, then you enjoyed 87 opportunities to catch up with friends and colleagues, 87 (or more!) glasses of wine, and, of course, 87 insightful programs that satisfied nearly two-thirds of your CLE requirement for each reporting period. Whether this year marks your 80th-some



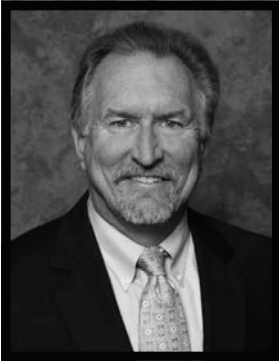
ABTL dinner program or your first, there is one constant: the outstanding quality of the speakers. ABTL is known for and expected to provide timely and compelling speakers who offer insight and information of great value to the business litigators of Orange County and beyond.

We attract legal super-stars from across the country to speak in Orange County. In fact, our very first speaker, on June 4, 1997, was Vincent Bugliosi, the New York Times bestselling author who made our dinner program a stop on his packed post-O.J. Simpson trial speaking tour. Other prominent presenters who traveled here for the sole purpose of talking to our members include California Supreme Court Associate Justices Ming Chin and Carol Corrigan; plaintiffs-side lawyers Tom Girardi and Joe Cotchett

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Leading ABTL Going Forward By Mark D. Erickson and Jeffrey H. Reeves

The reason why you accept the responsibility for leading ABTL is also the challenge of the position—you are



following some of the modern founding fathers of the Orange County legal community and the bar they have set for this organization is very high. As members, we owe a lot to the leaders who have gone before us in building a framework for success that has garnered the support of the local judiciary.

As the two most recent past Presidents of our fine chapter, we can tell you that the framework continues on today in large part through the excellent leadership of the Boards that preceded us and will succeed us.



These efforts require members who are willing to step up to support the organization in efforts as varied as dinner programs, annual seminar preparation, membership drives, and community outreach, to name only a handful. Our chapter continues to be blessed with such members each and every year.

On the one hand, the formula for a successful ABTL year is no secret—get interesting speakers for the dinner programs, maintain the incredible judicial participation, and offer members the chance to enjoy quality seminars at some of the best locations on the Pacific coast. In practice, it is more difficult to accomplish than one might think. The real challenge is keeping the ABTL program fresh and up to date for the members coming after us and adding programs that will survive our years of active participation.

We continue to work on a user-friendly website with links to meaningful information and opportunities for our members—a delivery device that ABTL's founders could only have imagined in their planning. We have been able to use the strength of our numbers and the organization name to reach out past our membership into the community with public service projects like Habitat for Humanity and seminars for Orange County law schools on how to be business trial lawyers.

If ABTL can continue to add members who are dedicated to principles supporting the organization and who are willing to learn from the members of the judiciary who volunteer their time, the future is bright for our group. Some president fifteen years from now will be

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both of us, our high regard for the value of ABTL. And, of course, we are no longer in Los Angeles, but are instead proud members of the Orange County Chapter, which focuses on the unique factors that make practice in Orange County special.

Our high regard for ABTL is based on the educational opportunities ABTL provides, the emphasis it places on civility, the collegial atmosphere it fosters, and the support it provides to the bench in advocating for our judicial system. In a society growing increasingly impersonal with electronic communication, ABTL keeps our profession human, and that increases our professionalism.

ABTL offers unique programs. Every year, business trial attorneys from around the state, representing both plaintiffs and defendants, gather for an Annual Meeting that packs substantive education into three days following a theme designed to make the programs both informative and entertaining. And it works! Federal and state judges attend as panelists and board members. The judges and attorneys sit side by side as speakers and attendees, talking about technology, evidence, experts, damages, advocacy, juries, and trends in litigation.

Locally, year after year our Orange County ABTL Chapter continues to present outstanding dinner programs featuring prominent speakers, while supporting programs that reflect ABTL's commitment to worthy causes like the outstanding work done by the Public Law Center to ensure access to justice. These dinner meetings also provide many opportunities for us to talk to students, associates, and partners about their experiences in the courtroom and the reality of the practice of law. We believe these on-going reminders of what it is like to be in the shoes of those who practice before us is invaluable for any judge.

Finally, we both want to remember our colleagues in our ABTL family who have died, and especially the recent loss of Past-President Robert Palmer. In his lifetime Robert inspired and touched many of us. In many ways, he exemplified what was best in ABTL: he practiced at the highest level; he exemplified civility and courtesy in the courtroom; he mentored young attorneys; and he gave back to his community. With each ABTL meeting, we continue to meet more lawyers who display these attributes. With the passing years, we have seen bright young stars become respected leaders, and respected leaders generously yielding the spotlight as they help others up the ladder. It continues to be our honor, and our privilege, to be part of your group. Thank you.

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Near the end of the meeting the question was raised as to who would be the initial officers? Everyone looked at Tom Malcolm and Don Morrow, but it was Tom Malcolm who simply ruled on the subject (*i.e.*, election by ‘Malcolm fiat’), instructing that Don Morrow would be President, but that he would assist as next officer in line, to be followed by Andy Guilford and the late Robert Palmer. At that time, Andy Guilford was not yet a Judge, but he was on track to become President of the State Bar of California in 1999-2000, so Andy requested that he be deferred a year and that Robert Palmer go ahead of him. Someone then asked who was going to be in charge of programs, and Tom Malcolm once again issued a ruling -- it would be Jeff Shields for the Orange County programs, and Mike Yoder would be our liaison for the ABTL Annual Seminar. As Rick Derevan recalled, Tom Malcolm had a singular impact “because of his leadership and great sense of humor.”

Regular group meetings then commenced every few weeks for the remainder of 1996 and through the first half of 1997, with the Orange County Chapter officially becoming chartered in April 1997. In addition to the three initiating Judges and the charter leadership mentioned above, other key attorneys and judges who participated in the original group included Wylie Aitken, Rick Derevan, Andra Greene, Don Martens, Justice Bill Rylaarsdam, Glenda Sanders (though not then a judge), Judge Nancy Wieben Stock, Judge Stu Waldrip, and the late Vern Hunt. Many other prominent judges and attorneys were gradually added to the Orange County Board during 1997-1998, and contributed significantly.

The very first Orange County ABTL program was held on June 4, 1997, at the Westin South Coast Plaza Hotel. There were 263 persons in attendance, and the seminal speaker was renowned prosecutor Vincent Bugliosi, who was gracious enough to chop his speaking fee down substantially since we were a brand new organization without a penny yet in the bank. Although the program and entire evening were a great success, Don Morrow – who was conducting that meeting in his capacity as the Chapter’s first President -- does remember that Mr. Bugliosi seemingly would not end his speech, and that Don “had to get the hook to finally cut him off and bring the evening to an end.”

At the same time, Orange County ABTL members became visible contributors at the State level. Wylie Aitken and Vern Hunt were featured panelists at the ABTL Annual Seminar held that Fall in Rancho Mirage, and a large contingent of the ABTL-OC Board

participated in the ABTL Board retreat the following Spring.

More successful ABTL-OC programs also followed, with notable speakers such as Max Blecher, Brad Brian, Jim Brosnahan, Joe Cotchett, Tom Girardi, Patricia Glaser, Herb Hafif, Raoul Kennedy, Pierce O’Donnell, Jack Trotter, and Prof. Charles Whitebread. For each program, the Orange County Chapter went all out to invite and include both federal and state judges, and to stress the collegiality between the bench and the bar.

As Tom Malcolm recalled, “the synergy between bench and bar was magic. The quality of the programs was a magnet that attracted the judges, hence lawyer turn out. Plus adopting the 9 pm deadline was the icing.” Judge Nancy Wieben Stock explained: “We were long overdue for a chapter. . . and there was no organization that offered the close partnership between the bench and bar, both in board membership, and also in networking and seminar content. Offering complimentary admission to the dinner programs, without reference to a judge’s current assignment or court location, proved to be a winning concept.”

As of the close of 1998 – the Orange County Chapter’s first full year of membership – the Chapter had achieved 255 paid members, which then jumped to 389 by the conclusion of 1999. When asked about the early success of ABTL in Orange County, Judge Andy Guilford attributed it to “the strength and camaraderie of our Orange County legal community and the support of key leaders from the very start”. He pointed to the strong support of “judicial giants like Judge Stotler”, and Don Morrow added the “heavy involvement” of “state and federal court judges on our initial board, including Gary Taylor, Alicemarie Stotler, Nancy Wieben Stock and William McDonald.”

So why did the Orange County Chapter of ABTL succeed so readily from the very outset? As Judge Stu Waldrip summed up: “The ABTL answers a need for mutual education and camaraderie between business litigators. We have a connection that is unique in both the legal world in general and the litigation world in particular. It is no surprise that Orange County succeeded as has the ABTL in other places.”

♦ *Jeffrey W. Shields is a litigator at Shields Law Offices and Michael G. Yoder is a partner at O’Melveny & Myers.*

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dict. On October 14, our Chapter's Young Lawyers Division (open both to the young and to those willing to act so) hosted a jury selection program featuring Kelly Ernby, the Orange County Deputy District Attorney, Charles Krolikowski of Newmeyer & Dillion LLP, and Steve Duffy of Trial Behavior Consulting. On November 4, we heard from Dr. Craig E.L. Stark, professor of neurobiology and behavior at the University of California, Irvine, who spoke on The Neuroscience of Memory & Deception: Implications for the Courtroom. And our Brown Bag Lunch series was especially well received this year (as always); thanks to Hon. James DiCesare, Hon. Geoffrey Glass, Hon. Gail Andler, and Hon. Kim Dunning for opening their courtrooms for informal and informative lunchtime chats.

We are especially thankful this year to our faithful sponsors, who support our programming and who deserve our support: Advanced Discovery; Judicate West; Zamucen & Curren; JAMS; DTI; and Veritext.

And thank you to all of our members and readers for another fabulous year.

♦ *Michele Johnson is a litigator at the law firm of Latham & Watkins LLP.*

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(twice; the second time, Joe's plane was delayed and he arrived minutes before taking the podium); Mark Geragos; Senior Counselor to the Secretary of Homeland Security Alice Hill; and, former White House Counsel Kathryn Ruemmler.

The roster of our past dinner program speakers also highlights the fact that lawyers of national esteem reside in our midst: Dean Erwin Chemerinsky speaking on recent developments in the U.S. Supreme Court; Jennifer Keller offering an insider's look at the re-trial of "Barbie vs. Bratz"; John Hueston providing a tutorial on cross-examination shortly after decimating former Enron chairman Kenneth Lay on the stand.

Many programs stand the test of time, such as U.S. Court of Appeals for the Ninth Circuit Judge Margaret McKeown providing insights on "Advocacy in the Federal Court: What I Know Now that I Wish I Knew Then." Others likely do not – the 1999 presentation of "Detecting the Hi-Tech Case" comes to mind, although at the time it was cutting edge.

Over the years, our Federal and State judicial officers and members of our chapter have given of their experience and knowledge time and again, taking the stage to share tips on trial presentation, admissible evidence, motion practice, and oral advocacy. We have enjoyed a lot of fun "war stories" along the way. One of my favorite presentations was a recent one, a panel this past June focusing on pro bono service. It was filled with personal stories and passions about volunteerism, so fitting for our June dinner which every year raises money to support the Public Law Center. Through this annual fundraising dinner, our chapter has raised over \$295,000 for the Public Law Center, Orange County's pro bono legal services provider, committed to providing access to justice for low-income and vulnerable residents.

As shown by the Public Law Center fundraising dinner, our Orange County chapter is committed to volunteerism and helping those in need. For the last five years, our members, in partnership with Habitat for Humanity, have shown that a hammer can be used for more than pounding on opposing counsel! We have sponsored 7 Habitat for Humanity build days. In doing so, we have assisted in the construction of 5 homes in Santa Ana and Huntington Beach, with over 150 participants donating their time, resources and

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craftsmanship.

Each holiday season, through our Holiday Gift Giving Program, we raise funds and other contributions for various local charities. We have given away everything from bikes to children of military families, stuffed animals for the Orange County Superior Court's adoption program, food to local food banks, and thousands of dollars to a variety of local charities including Beta Foster Care, Interval House, and Project Hope.

Through excellent programming and meaningful community involvement, our chapter has developed a rich camaraderie among its members that makes it unique and worthwhile.

♦*Karla Kraft is a Shareholder at Stradling, Yocca, Carlson & Rauth, P.C and Dinner Programs Chair for OC ABTL. Maria Stearns is a Partner at Rutan & Tucker and Public Service Chair for OC ABTL.*

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giving back to their community. From (now-Hon.) Jay Gandhi's 2003 discussion about federal preemption of state securities fraud claims to (now-Hon.) Peter Wilson's 2004 discussion about insurance issues affecting business litigators to (now-Hon.) Melissa McCormick's 2005 Ninth Circuit appeal certification orders, the OC Report has now published over 130 articles and nearly 50 judicial interviews.

We conclude by thanking all of the past Editors for their work ensuring that the Report goes to press. This includes Richard Derevan, Joel Miliband, Richard Grabowski, Linda Sampson, and Adina Witzling, in addition to the two of us. We thank especially every single author who helped provide the stellar content OC ABTL members have come to expect.

Finally, we encourage everyone reading this concluding paragraph to consider imparting their own wisdom into the community for future ABTL Reports. Who knows? Perhaps a future issue will reference you as (now-Hon.) too!

♦*Dean Zipser is a partner at the firm of Umberg Zipser LLP and Will O'Neill is a partner at Ross Wersching & Wolcott LLP.*

MARK YOUR CALENDER

February 3, 2016

Dinner Program
Westin South Coast Plaza

April 13, 2016

Dinner Program
Westin South Coast Plaza

June 8, 2016

PLC Fundraiser and Dinner
Westin South Coast Plaza

September 14, 2016

Dinner Program
Westin South Coast Plaza

October 5-9, 2016

ABTL 43rd Annual Seminar
The Ritz-Carlton, Kapalua
Maui, Hawaii

November 2, 2016

Dinner Program
Westin South Coast Plaza
Holiday Gift Giving

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