

Six Easy Steps to Sanity If You're
A Stressball Trial Lawyer

When I first started practicing law more than 30 years ago, I quickly learned that most busy trial lawyers were total "stressballs." A heavy trial calendar soon takes its toll in dealing with an unpredictable judge, exasperating clients, surprise witnesses at trial, the vagaries of a jury, late nights and weekends filled with intense preparation and irascible opposing



Allan Browne and his horse Kewanee

counsel. Some of the renowned litigators with whom I crossed paths dealt with pressure by opting for heavy drinking and/or chain smoking; some developed nervous ticks, bad stomachs or terrible dietary habits. The more unlucky ones became ill and simply abandoned the profession. Their burnout rate was amazing.

In my second year as a litigator, I was fortunate to write a brief which made its way to the Supreme Court of the State of

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Only Six?
I Bid Seven

We all know the Thirty-Nine Steps is an international spy organization bent on dominating the world, the Twelve Steps will lead us to a sober life and now Allan Browne has given us The Six Steps To Sanity. Since I find Allan's analysis practical, incisive and almost comprehensive, I can only come up with one step. The McDermott One-Step is neither a dance nor a new exercise device, but rather a modest suggestion to complement what Allan has given us.

Before I divulge the Blockbuster McDermott One-Step (Reg. TM), let me now praise famous men (a little foreshadowing) and say a few words about Allan Browne that he didn't (and wouldn't) say about himself. Allan founded the ABTL. Although he notes its "serendipitous birth," that birth was serendipitous only in its remarkable growth and success. Allan and Leon Alexander in the beginning, and then with a few others, conceived and implemented the entire concept, its first meeting, its Board and its early growth. Without Allan Browne, there would be no ABTL.



Tom McDermott

Allan is one of the outstanding lawyers of California. His seminal work on the law of trade secrets is unsurpassed. He is a consummate litigator. I know because I have litigated with him. Indeed, I was present when Allan took the most prurient deposition of my experience, though no fault of Allan's. It was a simple securities fraud case and the grandmotherly witness was describing a particular discussion with her broker who had asked her to step into his den. Allan asked: "What happened next?" Unfortunately, she told us, and in some detail. I have been cautious of that question ever since.

My One-Step, an increment to Allan's Six Steps, is reading. The Los Angeles Times had a headline recently, "The Whole World Awaits In Books." The trial lawyer knows that pretty much the whole world awaits on his/her desk, so it's not for vicarious experience I suggest reading. It's for the same reason that Allan's Six Steps work; reading gets you out of yourself and your challenges and into the contemplative relaxation necessary to remain human.

I'm speaking of reading books of course and good books at that. No one can define another's taste but one can know, in general, what books have been rather consistently enjoyed. They remain in print. They have ups and downs with the critics but they always come back. As you read they spark epiphanies:

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California. Having the privilege of attending this proceeding, carrying the briefcase of my mentor, I watched as one of the premier appellate attorneys in California made his argument to the Court. I was amazed at the halting, nervous style of this legendary attorney. When the Supreme Court adjourned for lunch, all counsel broke bread together. During our repast, this famous orator gulped down three Martinis straight up! To my utter amazement, the remainder of his argument after lunch was electrifying! Wow, what an object lesson for a cub litigator.

I soon realized that a steady diet of intense, lengthy trial work often leaves physical and emotional scars. Constant combat, too little sleep, and an over demanding conscience requiring a “win” for every client is clearly a recipe for the “stressball syndrome.” I began searching for a magic elixir. Was there a healthy antidote to the barrage of stress bullets hammering at you day-after-day? You will be happy to hear that the answer is “yes.”

Let me share with you what I consider to be the six most effective methods of dealing with “the stressball syndrome” affecting trial lawyers.

Meditation

I’ve been a meditator for 25 years. Transcendental Meditation (TM) requires 20 minutes in the morning and 20 minutes before dinner. In my opinion, it’s a life saver. I participated in a TM seminar which took a few Saturday mornings in the mid 1970’s. After that, the benefits began flowing. Extra energy, spontaneous epiphanies, greater relaxation, and a deep sense of well being are but a few of the by-products. The greatest tribute to TM is that I have never missed a day in 25 years. Why? Because the results are so far reaching. I have meditated on airplanes, in taxis, in airports, indoors, outdoors, while on vacation in virtually every country of the world and, as an added bonus, Patricia, my wife, also finds it beneficial. We often meditate together.

People ask me “what’s it feel like?” Well, the best description is that you feel as if you’re in the twilight zone just before fully awakening in the morning. You’re half awake and half asleep, experiencing a wonderful cozy sense of internal well being.

Consider this: if you’ve had a tough day in trial, after meditating you will likely experience an extra spurt of new found energy that lasts at least three to four hours. Often ideas spontaneously pop into my head during meditation which open new doors in some of the cases I handle. And yet, the surprising thing is that meditation requires no concentration, since you don’t try to think about anything in particular. It’s effortless.

Medical studies demonstrate that during meditation your heart and pulse rates, brain wave activity, enzyme and metabolic functions slow down to a pace which is deeper and more restful than ordinary sleep. Small wonder that when you “awaken” from the meditation, you’re likely to feel fully rested.

Moreover, clinical studies show meditators experience in excess of 40% less illness and hospitalization. Do I now have your interest and attention?

A good way to explain the benefits of meditation is to visualize a wood table sitting out of doors being pummeled day-after-day with a heavy rain fall. After a while the wood starts to warp and decay. Meditation provides an all weather protective coating which is impervious to rain. We, as lawyers, have stress bullets pelting us day-after-day, and the meditative process gives us that same all weather coating which stabilizes your emotional response to stress and provides the physical fortitude to deal with it. In a nut shell, it keeps you calm and collected under pressure.

I never went searching for TM, TM found me. I was a skeptic who had no interest in the training or the program. My wife felt in need of some stress reduction while we were in the process of raising five children in the mid 70’s. Time magazine had printed a

lengthy article about TM and its leader was featured on the front cover of the magazine. I was in the midst of trial and had neither the time nor interest to participate. However, the first training session began on a Saturday afternoon and I decided to accompany my wife in order to determine whether it contained any real substance. After a couple of hours of discussion and training, we began our first meditation in a class of about 15 people. At the conclusion of the 20 minute exercise, the instructor asked for comments and reactions from our group. Virtually everyone was excited about the deep and restful state they had entered and in many cases the results were quite dramatic. But after the training exercise I was depleted of energy and emotionally drained. I shared this with our instructor who then quizzed me on what I had been doing the past two weeks. When I described my workaholic schedule, the instructor gave me some advice which still resonates in me today. She said “Allan, the reason you feel totally drained is because your mind has been whipping your body to work harder and harder during the past two weeks without regard to your capacity. During meditation, your mind released its grip on your body and enabled your body to send SOS signals to you that you’ve been pushing yourself to the breaking point. Unless you allow your brain and body to communicate so that these warning signals can be processed by your brain center, you probably will not be enjoying your family for many years into the future. In fact, you are shortening your life. I guarantee that unless you change your behavioral patterns, you will be a very, very sorry individual.” This little speech hit me like a thunderbolt and made me realize the predicament I had created for myself. My devotion to TM since that day has been unflinching. I am a happy convert and wish to pass this drugless miracle onto others.

Moderate Exercise

In my third year of law at USC, I was an overweight smoker who never exercised. One afternoon, a close law school pal fainted on campus while playing handball. A medical exam disclosed that he had a malignancy of the lymph system. This episode sent shock waves through our entire class when we learned our classmate was doomed — at the tender age of 24! In response, I began a physical fitness campaign enlisting all students to begin the Royal Canadian Air Force Exercises (promoted by John F. Kennedy when he was President) which included a regimen of calisthenics and jogging. When I started this program, I had to purchase “tennis shoes” because “jogging” gear had not yet been introduced on the market. I have maintained that same physical program through today, including a three mile run, three to four times per week. Regular exercise is an effective way to release stress. It provides a sense of order and control in your life which counteracts anxiety and tension from our daily grind. The endorphin phenomena adds a healthy “high.”

The key to successful exercise, however, is MODERATION. I have never been injured in any of my physical activities for the simple reason that I don’t try to run marathons or other long distances. Some of my friends who suffer from knee, back and hip problems extended themselves too far by running 10 to 25 miles at some point during their training. Too much exercise, like everything else, is counterproductive and actually can be harmful. Moderation is the key to fitness and good health. “DO IT, BUT DON’T OVERDO IT,” a trainer once told me. It’s great advice to follow!

Yoga Is a Must

Every morning I spend about 10 to 15 minutes doing a bit of yoga before jogging or using the stationary bike. The stretching routines are particularly important to maintain elasticity, a limber body, and a clear mind. I spent a couple of years in yoga (one hour — several days a week). I now have condensed the program

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to 10-15 minutes which I practice in my home each day without the necessity of an instructor.

So, my morning starts with a 20 minute meditation, followed by 10 to 15 minutes of yoga, and then a 25 minute jog or stationary bike activity. It takes one hour that is devoted only to me. If your reaction is that you are too busy to handle this program, then, I must say, your overall life is too busy! You deserve one hour to yourself each day. The result is that ultimately you'll be more effective in your profession and your career will be lengthened.

The cumulative effect of yoga, meditation and a regular exercise program is powerful. Together, these activities will boost your effectiveness as a litigator and in life's other endeavors.

Watch Your Diet

It's no secret that being overweight and eating unhealthy foods will eventually undermine your strength and stamina.

As a trial lawyer, you must stay in tip-top physical health because you're in the boxing ring and must have the stamina to go 15 rounds (the equivalent of a 15-day trial). Your fuel intake will clearly affect the quality of your performance. If you are weary and over tired, you can't think straight, and if you can't think straight, your adversary will outwit you in the courtroom.

I won't bore you with my diet since you can intuit it's low in fat, high in fiber, lots of fresh fruits and vegetables, no red meat, with fish and chicken as my main protein. Use common sense and moderate your intake.

Your Outlook on Life

While all of us are aware that our time on earth is finite, some young lawyers don't personalize mortality. When I started practicing law, I never thought about this subject because I naively assumed that youth was everlasting! That may sound ridiculous but nevertheless I was so intent on developing a career I repressed the concept of mortality and a healthy lifestyle.

Consider the following suggestions to enhance each day.

- *Enjoy The Moment!* Each day upon awakening, I reflect on "what will I do today which will be stimulating and enjoyable?" Make every minute count. Look for light at the end of the tunnel each and every day.

- *Does This Really Matter!* We all have stressful and upsetting moments each day in our professional lives. Before becoming sullen or upset, ask yourself, "Does this event really matter?" "How important is this in the scheme of life?" "Will I really be thinking about this problem six months from now?" "Place such events in perspective — and then get on with the rest of your day!"

- *Uncertainty Is A Normal and Natural Part of Our Lives.* Often, anxiety is the result of uncertainty in our professional lives. Anxiety produces stress, and stress can be a killer! We are battered with uncertainty daily — e.g., will we win the motion, will we prevail at trial, will the judge accept our argument, will we make the client happy, will the client pay our bill, will our partners appreciate our efforts, will we be humiliated in defeat, and will we meet our deadlines? Thus, uncertainty (and anxiety) appear as a line of limitless foot soldiers that can harass and irritate us unceasingly each day. But, think about what our lives would be like without any uncertainty. Life would be totally predictable and depressingly boring. Uncertainty creates challenge and variety. It cultivates excitement and interest. What's my point? Uncertainty is a natural phenomena which all human beings experience and can bring spice to our lives. View uncertainty as a plus, not a minus! Think of it as an exciting stepping stone to stimulation rather than a depressing obstacle.

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What We Learn in Arbitrator School

The first thing that one learns in "arbitrator school" is that cases are to be decided under broad equitable principles so that the result is fair and just. Although it sounds simplistic and obvious, the second thing that one learns in arbitrator school is that the arbitrator has to make a decision, regardless of the quality or quantity of proof that the parties provide in the arbitration.

After "graduation," and in the process of arbitrating cases, an arbitrator quickly learns the relationship between the first lesson and the second lesson. In some cases, the quality and quantity of proof makes it relatively easy to reach a decision, leaving the arbitrator with a strong positive feeling that a just and fair result has been determined. In others, it is enormously difficult, leaving the arbitrator with a queasy uncertainty about the appropriateness of the result.

How can knowing more about how arbitrators think make you a better advocate in arbitrations? Simply stated, a better understanding of the standards under which arbitrators decide disputes and the manner in which arbitrators approach the task of reaching a decision can prove to be invaluable in persuading an arbitrator and more effectively representing parties at arbitrations.

Let us start with some basics. In seeking to reach a resolution, an arbitrator wants to determine two things: (1) What is the essence of the dispute? (2) What is a fair and just result? But what does this mean to the litigants and their lawyers? First, although many business cases appear to be complex, involving lengthy factual scenarios and numerous documents, the essential dispute between the parties is almost always relatively simple. Second, no matter how complex or simple the dispute, the arbitrator wants to reach a just and fair result.

How does this operate in the "real world" of arbitrations? An example will help to show how both important considerations manifest themselves in the arbitration process. Suppose the arbitration involves a dispute between the buyer and seller of a home. The buyer had deposited \$75,000 into escrow. During escrow the buyer had the right to inspect and either approve or disapprove various physical and other conditions. The buyer disapproved a particular physical inspection contingency and sought to cancel the escrow and obtain the return of his deposit. The seller refused to return the deposit.

Like most real estate transactions, there would be many documents in the case, including the purchase and sale agreement, the escrow instructions, inspection reports, letters, demands, records of telephone calls and the like. There would also be many arguments made by both parties on the issue.

But at the end of the day, the two analytical guideposts still direct the arbitrator toward his or her goal: what is the essential issue of the dispute, and what is a fair and just result? In our hypothetical example, the essential issue was whether the buyer's disapproval was proper and timely. What would proper mean in this context? Was the disapproval in bad faith? Did the buyer give



Robert S. Mann

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the seller the opportunity to cure? Was there some sort of detrimental reliance on the part of the seller? The resolution of this specific issue might, and usually does depend on only one or two documents and one or two items of testimony. Likewise, and as discussed more fully below, what is fair and just may depend on a variety of factors, often not limited to the documents or the holdings of the case law.

With regard to the essential dispute, all too often litigants and their counsel get caught up in the minutiae of the dispute, the lengthy factual background, the personality differences, the suspected motives, the hostilities, the repeated (and sometimes self-serving) letters of counsel. The focus on these largely extraneous issues can detract from an effective and persuasive presentation for two reasons. First, it distracts the arbitrator from the task of searching for the essential dispute between the parties. Second, and particularly when one party presents more “irrelevancies” than the other, it has the effect of making the arbitrator believe that the party presenting a great volume of seemingly irrelevant material is attempting to mask the weaknesses in that party’s case.

With regard to reaching a fair and just result, the issue becomes more complex, because what the arbitrator believes to be fair and just depends on many factors, some of which may have little to do with the evidence and arguments. In order to understand this, consider again the fact that an arbitrator must reach a decision, regardless of whether the quality and quantity of proof makes it easy or difficult to reach that decision. And again keep in mind that every good arbitrator wants to make the “right” decision, meaning the most just and most fair decision possible under the circumstances.

Reaching the decision, and reaching the “right” decision, depends on a host of tangible and intangible elements. First, recall that what the law requires does not always correlate precisely with a fair and equitable result. This basic fact is overlooked far too often, perhaps because lawyers are so used to dealing with highly technical issues. Thus, reliance on semantics, technicalities, hair-splitting, and jesuitical (or, to be ecumenical, talmudic) interpretations of the law are rarely helpful to the arbitrator’s decision-making process. Instead, invoking fairness and justice is likely to be more effective.

Second, while it is certainly important to direct and focus the proof toward a result of fairness and justice, the quality and the quantity of that well-directed proof is equally important. Remember that the arbitrator is evaluating two kinds of “proof” in an arbitration, although only one, strictly speaking, is actually “proof.” The two kinds of “proof” are evidence and argument.

Effective evidence in an arbitration is evidence that speaks to the essence of the dispute and is directed to substantial fairness. An example will illustrate this point. Assume that the parties are arbitrating a dispute over change orders on a construction project. The contract language contains a provision that the contractor is not entitled to additional money for change orders unless the owner has approved those change orders in writing before the work was done. The contractor is claiming that additional work was done and is demanding that the owner pay for that work.

The owner might be tempted to focus the testimony on the contract, and to point out the contract terms that require written change orders. The owner might argue that a strict interpretation of the contract absolves the owner of any liability for the changes because there was no written change order. But the arbitrator wants to know more about what is fair under the circumstances than what is only set forth in the contract. The arbitrator would probably want to know, under the facts of this case, whether the contractor was trying to take advantage of the owner, or whether the owner was trying to take advantage of the contractor, consid-

erations that are consistently important in disputes over change orders. Thus, if one represented the contractor in this dispute, one might wish to direct his or her testimony to why it was equitable to award the change order charges to the contractor despite the contract language, perhaps by pointing out that the owners were in a tremendous hurry (too much of a hurry to comply with the written change order procedure), or that the owners’s agent instructed the contractor to make the changes, or that the owners were physically present and saw the changes being made (and did not object).

Effective argument is equally important, because of the arbitrator’s desire to reach the right result. Effective argument does not necessarily mean a convincing verbal style (although it can’t hurt to have one), nor is it limited to oral arguments made during or at the end of an arbitration hearing. Effective argument really means credibility. Establishing credibility starts from the first moment of the arbitration process. It starts with a clear and concise statement of facts and arguments in support of the arbitration claim or the response to that claim. It continues with professionalism throughout the pre-arbitration hearings, including an approach to the process that reflects knowledge of the rules. It is assisted by briefs that are dependable and carefully reasoned and that do not overstate or omit the facts, legal authorities or the arguments based on those theories.

Sometimes it only takes a seemingly small item to adversely impact upon credibility, but that adverse impact may have a lasting and profound effect on the arbitrator. For example, a case citation that upon further examination and reading of the case leads the arbitrator to believe that the author has not correctly summarized the court’s holding; a statement of facts in a brief that is not supported by the exhibits to that very same brief; a representation that a certain witness will testify to a certain thing followed by testimony that is far different.

All of these tangible and intangible elements combine to lead an arbitrator to feel that he or she can trust a party and counsel or that he or she should be suspicious of that party and counsel. The arbitrator’s feelings of trust are critically important to the outcome of the proceedings. Remember that the arbitrator must make a decision, no matter what the quality and quantity of proof. In a close case, trust can often make the difference.

What arbitrators learn in arbitrator school is the obverse of the trial lawyer’s coin — what the lawyer and the parties need to prove and how they need to persuade. The arbitrator looks to the essence of the dispute. The successful party will tailor the evidence to the essence of the dispute. The arbitrator looks to what is fair and equitable. The successful party will direct the evidence and argument to the very same issues. Counsel who know and understand the arbitrator’s concerns are substantially more likely to prevail and effectively represent parties at arbitrations.

— **Robert S. Mann**

Contributors to this Issue

Allan Browne is a partner with Browne & Woods.

Alan E. Friedman is President of ABTL and a partner with Jones Day.

Kent A. Halkett is a partner in the law firm of Miller & Holguin [www.millerholguin.com] in Century City.

Hon. Susan Y Illston is a United States District Court Judge for the Northern District of California, and serves on the Board of Governors of the Northern California Chapter of the ABTL.

Robert S. Mann is a member of the National Roster of Commercial/Construction Arbitrators of the American Arbitration Association. He arbitrates and mediates commercial and construction disputes.

Tom McDermott is a partner with Shanks & Herbert in San Diego.

• *Be A Kinder, Gentler Parent.* According to Freud, all of us have an id, ego, and super ego. Our super ego (conscience), is largely created during childhood. A parental figure is often the nominal spokesperson for our conscience which directs and commands our actions each day. An inner voice asks us “Did we write a ‘perfect’ brief?” “Did we deliver a ‘perfect’ closing argument?” “Did we conduct a ‘perfect’ cross-examination?” “Did we suffer a loss because we were not persistent or sufficiently thorough?” Learn to program your conscience to be a kinder and gentler parent. Don’t be so hard on yourself! Try to avoid being judgmental or overbearing in rating your performance. Tell yourself daily “I’m a good human being deserving praise, not harshness.” Take pride in your work and accomplishments and, in short, be good to yourself.

• *Joy Is in the Journey.* All trial lawyers are outcome determinative. We judge ourselves by a win/loss column. We place our lives on hold until the case is concluded and the verdict is rendered, which is our “judgment day.” But don’t forget that real joy in life is in the journey, not the destination. Focus on enjoying each moment of the day even though you are awaiting the nail-biting outcome. Since the past is behind us and the future has not yet appeared, we must all live in the present — it’s the most rewarding!

• *Helping Other Human Beings.* Tolstoy concluded in his late years that real joy can only be experienced by serving and helping other people. From the time of our childhood, all of us learned “it’s better to give than to receive.” I try to incorporate “giving” in some form each day. It can easily be incorporated into our professional lives by contributing time to pro bono activities, bar associations, writing and speaking for ABTL, and assisting young lawyers to “learn the ropes” in our profession. It can also cushion the pain of occasional defeat in the courtroom.

• *Humor is Therapeutic.* Each day of our lives would be dull and drab if we didn’t create some good old fashioned fun for ourselves. Frivolity lifts your spirits and adds lightness to your step.

Medical studies have shown that a person who experiences humor and laughter is less likely to become ill. Laughter also has a tendency to heal the body, and subdue stress.

Maintain a Positive Attitude

Pessimists draw flies, optimists develop clients. Adopt the lyrics “accentuate the positive, eliminate the negative.”

Positive thinkers are more successful because their personalities attract others to them. However, it takes a great deal of work and practice to maintain a sunny disposition in the face of adversity. You can train yourself to do it. An upbeat personality will pay enormous dividends, and that will enrich your self image, which compounds further success.

Conclusion

My first impulse, when asked to write an article for ABTL’s 30th Anniversary, was to talk about how serendipitous was its birth. But on reflection, I realized that while the history of our organization may be important, in the final analysis it will not provide perspective or guidance for litigators who have experienced the “stressball syndrome” which all of us face at some point in our career.

In truth, none of us will ever totally eliminate stress from our daily lives, but stress and anxiety can be subdued and placed in check within limits. For those who find stress eating away at their emotional or physical health, I hope that some of these suggestions will help bear that burden. It’s worked for me!

Good luck in your career!

— Allan Browne

The Anti-SLAPP Statute: The Legislature Slaps Back

California’s “Anti-SLAPP Statute” (California Code of Civil Procedure Section 425.16) was enacted in 1992 to provide an early screening mechanism for certain actions commonly known as “strategic lawsuits against public participation.” Now, after only a decade, the California Legislature has concluded that misuse of the Anti-SLAPP Statute has become a problem requiring a statutory remedy. Accordingly, it has enacted California *Code of Civil Procedure* Section 425.17.

Historical Development

In 1992, in enacting the Anti-SLAPP Statute, the Legislature codified and explained its intent in Section 425.16(a) as follows:

“The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process.”



Kent A. Halkett

In 1997, the Legislature amended that provision to include a concluding sentence which stated: “To this end, this section shall be construed broadly.”

Litigants, their counsel and the courts took the Legislature’s stated intent to heart. The California Supreme Court promptly acknowledged and followed the “shall be construed broadly” directive in *Briggs v. Eden Counsel for Hope & Opportunity*, 19 Cal. 4th 1106 (1999). In *Navellier v. Sletten*, 29 Cal. 4th 82, 92 (2002), it held that “[n]othing in the statute categorically excludes any particular type of action from its operation.” Indeed, over the past five years, use of the Anti-SLAPP Statute has escalated exponentially in the trial and appellate courts.

The California Supreme Court dutifully applied the Anti-SLAPP Statute according to its plain language and explicit intent, but it did so with the open reservation that the Legislature could and should change it if litigants and the courts overextended it. For example, in *Briggs* (19 Cal. 4th at 1123), the California Supreme Court stated “[i]f we today mistake the Legislature’s intention, the Legislature may easily amend the statute.” Most recently, in *Jarrow Formulas, Inc. v. La Marche*, 31 Cal. 4th 728, 741 (2003) (holding that malicious prosecution actions may be subject to an anti-SLAPP motion), it noted that “[i]f on reflection the Legislature desires to create an exemption for malicious prosecution claims, it may easily do so.”

In 2002, the Legislature passed legislation designed to reign in the broad application of the Anti-SLAPP Statute, but Governor Davis vetoed it.

New Section 425.17

On September 6, 2003, Governor Davis signed into law the Legislature’s renewed attempt to restrict the scope and application of the Anti-SLAPP Statute by creating a new statute (California *Code of Civil Procedure* Section 425.17).

The Legislature codified and explained its intent in Section 425.17(a) as follows:

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“The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process of Section 425.16.”

The Legislature reaffirmed and repeated verbatim its original finding that “it is in the public interest to encourage continued participation in matters of public significance” and that such public interest has been “chilled” by abusive litigation. Significantly, however, the Legislature now finds that the “disturbing abuse” of the Anti-SLAPP Statute has become part of the problem litigation that it was intended to resolve when it was enacted a decade earlier.

Based upon these new findings, the Legislature attempted to identify certain “good” guys and causes as well as various “bad” guys and conduct for purposes of the Anti-SLAPP Statute. For example, Section 425.17(b) provides that the Anti-SLAPP Statute “does not apply to any action brought solely in the public interest or on behalf of the general public” under certain circumstances — thereby establishing a statutory safe harbor for plaintiffs and causes satisfying all of the conditions enumerated in subsection (b). Conversely, Section 425.17(c) provides that the Anti-SLAPP Statute “does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments” under certain circumstances — thereby depriving those defendants and activities of the procedural protections afforded under the Anti-SLAPP Statute. Moreover, under Section 425.17(d), certain individuals (*e.g.*, persons involved in “the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation”) are exempt from subsections (b) and (c). Section 425.17(e) restricts the immediate appeal provisions of the Anti-SLAPP Statute in certain circumstances.

Finally, in anticipation of challenges to the provisions of Section 425.17, the Legislature made its provisions “severable” so that if any provision or application is held to be invalid, the other provisions and applications are not invalidated or otherwise affected.

Recent Judicial Developments

As noted above, in August, the California Supreme Court rendered its decision in *Jarrow Formulas, Inc.* (holding that the Anti-SLAPP Statute could be applied to malicious prosecution claims). It has accepted review of another malicious prosecution action, *Strook & Strook & Lavan v. Tandler*, as well as an action for defamation and invasion of privacy, *Gates v. Discovery Communications, Inc.* In addition, the appellate courts continue to render published and unpublished decisions defining the contours of the Anti-SLAPP Statute at a furious pace.

Conclusion

The saga of the Anti-SLAPP Statute is a cautionary tale that validates the adage that everyone should be afraid of what they wish for because their wish may be fulfilled. The Legislature enacted a very broad statute in 1992 in an attempt to curb litigation abuses, and amended it in 1997 so as to emphasize that it “shall be construed broadly.” Litigants, their counsel and the courts took full advantage of the Legislature’s expansive statutory language and intent. However, by 2003, the Legislature found it

necessary to try to scale back the scope and application of the Anti-SLAPP Statute by enacting Section 425.17 (the anti-Anti-SLAPP Statute). The effectiveness of Section 425.17 in curbing the ongoing litigation “abuses” remains to be seen. Nonetheless, it seems safe to predict that Section 425.17 will spawn another generation of litigation and caselaw.

— **Kent A. Halkett**

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“Yeah, that’s just the way I felt” or “Yeah, that’s the way it is.” As one person said, writings of genius are your own thoughts, just put down on paper.

“Universals” are the insights that authors include that keep their works alive through the ages, whether it be the psychological concepts of Shakespeare, the religious dichotomies of Milton, the societal realities of Austen, or the things that dreams are made of, the diamond encrusted “Maltese Falcon” of Hammett.

Reading is, and should be, sheer pleasure, but these universals affect us at a subconscious level and give us some of that relief from every day stress that Allan speaks of. Yes, things have been hectic, even disastrous, but that’s happened before and life goes on and it’s not such a bad life either.

Reading also is a painless way to achieve the fluency you desire when you write your briefs. There seems to be an osmosis that occurs. You can be a better writer from reading better books and without even trying. Joe Ball, one of the nations greatest trial lawyers, on the night before closing argument did not re-read his notes. He read Shakespeare. He said he wanted to feel the cadences of that great poetry so that the next morning he would subconsciously incorporate those cadences into his oral presentation.

Okay, McDermott, what books will relax me, help me write better briefs, lead me to outstanding closing arguments and just make things hunky-dorey? Unfortunately, I don’t know. I don’t know your taste or your interests. I do know that in your local Barnes and Noble or Borders, they will be found in the areas labeled Fiction and Literature, Shakespeare, and Poetry, not Self-Help.

I’ll mention a few possibilities to explore if you have not already read them. These are not difficult to find, not difficult to read. I would not suggest Erasmus or Walter Benjamin anymore than Allan would suggest pole-vaulting, because, although they might be just fine for you, they are a bit exotic and not too accessible.

To start, how about Dante’s “Divine Comedy,” Milton’s “Paradise Lost” or any Flannery O’Conner short story. Each, in its own way, suggests that the existence of pure evil establishes the existence of pure good. In other words, if there’s a hell there must be a heaven, if there’s a devil there must be a God. Dante and Milton do this on a rather metaphysical level but O’Conner nails it to today, to your own life. This might seem a little farfetched, but remember that in the late twentieth-century, scientists determined that for every molecule of matter in the universe there is a molecule of anti-matter. And we know that for every argument there’s a counter argument.

Dante is in translation and you need a good one, but as you descend the rings of purgatory and hell, you will revel in the fate that awaits the lawyer who serves the summary judgment motion at five-thirty on Christmas Eve.

Milton’s “Paradise Lost” may be tough going for some, but it’s worthwhile to explore the precise concepts held by a previous culture of a higher authority than the Bench. I may be prejudiced since La Quinta, California, where I live, has been identified by some as the Original Garden of Eden (really) so it’s like reading about gossip in the old home town.

O’Conner, on the other hand, is hard to put down. Try the
(Continued next page)

story "A Good Man is Hard To Find" for a couple of nights of nice, cathartic nightmares.

Moving on, see (as we lawyers like to say) Conrad's "Nigger of the Narcissus" for a display of pure paranoia in the work place that would startle even the employment attorney; see Shakespeare's "The Tempest" to appraise how one of the most insightful persons in history sums up in his last play and to ponder a final declaration, life as tempest. See any Conan Doyle Sherlock Holmes or Rex Stout Nero Wolfe to contemplate how legal reasoning should actually appear.

At sometime, try the snobs, perhaps an apt subject for lawyers. John O'Hara is often a beautiful writer, often clumsy, but a chronicler of modern snobbery in its meanest suburban environment. F. Scott Fitzgerald is always a beautiful writer, never clumsy, and worked his way from the surface of snobbery to its depths and tragic results. Jane Austen, a writer for writers, genius beyond compare, follows snobbery to its base of, well, "Pride and Prejudice" and then disposes of it for the peripheral that it is and dives deep into the human nature.

And don't forget Christopher Isherwood's "Goodbye to Berlin." For direct, simple, sharply observed prose (just the type you want to write), Isherwood is unbeatable, magnificent. And if you wonder why various people produced a play, a film, a stage musical and a film musical about Sally Bowles, you need only read the

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P.O. Box 351649
Los Angeles, California 90035
(323) 939-1999 • FAX: (323) 935-6622
e-mail: abtl@attbi.com • www.abtl.org

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President
(213) 243-2517

Jeff S. Westerman
Vice President
(213) 617-9007

Patrick A. Cathcart
Treasurer
(213) 623-7777

Michael A. Sherman
Secretary
(310) 907-1000

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CONTRIBUTING EDITORS ON THIS ISSUE

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MANAGING EDITOR

Stan Bachrack, Ph.D.

What Civil Lawyers Need to Know about Criminal Sentencing

Potential or pending parallel criminal cases can substantially affect the consequences and outcomes of civil cases. Lawyers representing individual and corporate clients in civil matters in the fields of antitrust, securities and intellectual property need to understand the criminal penalties that their clients could face for the conduct at issue in the civil action. Defendants can take actions that may lead to downward departures (*i.e.*, shorter sentences) from the federal sentencing guidelines. Plaintiffs may be able to persuade defendants to provide information or cooperate in ways that could impact later sentencing decisions. Either way, civil lawyers would be well advised to learn about the mechanics of criminal sentencing in federal court.

The Sentencing Reform Act of 1984 established the U.S. Sentencing Commission to create sentencing policies for federal courts. The U.S. Sentencing Guidelines, first issued in 1987, prescribe guidelines for appropriate sentences for federal crimes. Their purpose is to standardize the sentences given to federal criminal defendants and introduce proportionality by basing the length of the sentence on the severity of the crime. Judges are required, except in "extraordinary circumstances," to sentence within the guideline ranges.

The guideline range — the number of months to be spent in prison — that a court must use in a particular case is determined by the Sentencing Table (on the inside back cover of the Guidelines Manual). The Sentencing Table is a matrix, with 43 different "offense levels" on the vertical axis. The offense level is based on the specific nature of the charged offense; the higher the offense level, the longer the sentence. There are six different "Criminal History Categories" on the horizontal axis, which take into account prior criminal history. Part 5H of the Guidelines specifically precludes judges from considering most other behavior characteristics, including age, education, physical condition, employment record, family ties and military, civic, charitable or public service contributions.

Sentencing Individual Defendants

The Guidelines Application Instructions. Part 1B1 of the Guidelines, "General Application Principles," prescribes sentencing procedures. Section 1B1.1 summarizes the process: determine the offense guideline section that is applicable based on the offense conduct (*i.e.*, the specific federal statute charged); apply relevant adjustments from Chapter Three (adjustments, up or down, may relate to the victim, to defendant's role in the offense, to defendant's obstructive conduct and to defendant's acceptance of responsibility); and determine the criminal history category. Section 1B1.2 specifies how to determine the applicable guideline section.

"Offense conduct" is generally the crime, charged in the indictment or information, of which the defendant was convicted, by plea or at trial. Section 1B1.3 outlines the ways that "Relevant Conduct" can affect the guideline range. Relevant conduct



Hon. Susan Y. Illston

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includes the conduct of the defendant during the crime — what exactly occurred during the commission of the offense and in preparation for the offense, what harm resulted, and whether that harm was intended. Finally, courts consult the sentencing table where the grid coordinates particular offense levels to the criminal history category, and prescribes, at each coordinate, a particular sentencing range.

Downward Departures and Adjustments. Once the sentencing range is established, courts may be asked to depart downward. Judges must sentence within the guidelines' range unless "the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." 18 U.S.C. section 3553(b).

While downward departures are only allowed in "the extraordinary case — the case that falls outside the heartland for the offense of conviction" (*U.S. v. Jackson*, 30 F.3d 199, 201 (1st Cir. 1994)) — the Sentencing Reform Act specifically states that sentences must be "sufficient, but not greater than necessary" to comply with the designated statutory purposes (18 U.S.C. section 3553(a)). Downward departures from sentence ranges are available because the Sentencing Commission recognized that the guidelines cannot possibly be tailored to fit every case and every offender. Downward departures are reviewable by an appellate court, generally under an abuse of discretion standard; a refusal to depart is not appealable.

The Guidelines' explanation of circumstances in which downward departures may be warranted is found in Part K ("Departures"). The section that probably has the most relevance to civil lawyers with clients in parallel civil and criminal proceedings is section 5K1.1, "Substantial Assistance to Authorities" which states, "Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines." Section 5K1.1 may only be invoked by the government, but once invoked, the court has discretion to depart downward as much, or as little, as it finds appropriate.

Voluntary Disclosure of Offense

Another particularly relevant section is section 5K2.16, "Voluntary Disclosure of Offense," which provides that disclosure may be grounds for downward departure when the defendant discloses the offense prior to discovery by authorities, and authorities would not likely have discovered the offense but for disclosure.

Under section 5K2.0, "Grounds for Departure," the guidelines note that pursuant to 18 U.S.C. section 3553(b), sentences may be imposed under circumstances warranting departure that are not specifically enumerated in the guidelines. "With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in the unusual case."

The Guidelines provide for reduction of offense levels when defendants accept responsibility for their crimes. Whether offense levels should be reduced on this basis is a question for the court in every case, and no government motion is required. Section 3E1.1 (a) states "If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels." One more level of decrease is available where: (1) the defendant qualifies for a decrease; (2) the offense level is 16 or greater; and (3) the defendant has assisted authorities in the investigation or prosecution of his own misconduct. The com-

mentary notes that "voluntary payment of restitution prior to adjudication of guilt" is an appropriate factor to consider when determining whether responsibility has been accepted.

Sentencing of Organizational Defendants

Organizational defendants, including corporations, partnerships, and other entities, are sentenced according to Chapter 8 of the U.S. Sentencing Guidelines, and may be subject to downward and upward departures. Crimes addressed in Chapter 8 include fraud, bribery, money laundering, theft, tax offenses, and antitrust offenses. The purposes of the organizational guidelines are: remedying the harm; divesting a criminal organization of its assets; basing fines for normal business organizations on the seriousness of the offense and organization's culpability; and probation to ensure that a sanction is carried out or that future criminal conduct is avoided.

When sentencing corporations, courts examine the connection between the bad actors and the corporation's key officers. The stronger the connection, the stiffer the penalties. For example, section 8C2.5, "Culpability Score," considers the organization's size and the level of involvement that "high level personnel" had with the offense. Culpability of organizational defendants generally turns on steps taken to prevent, remedy and detect offenses, and whether assistance was provided to law enforcement after the discovery of an offense. The culpability score determines the number by which to multiply the fine imposed.

Illustrative Example

The following hypothetical illustrates how the Guidelines work, and how the defendant's conduct in the civil case can affect sentencing.

Bill Blue, CEO of Blue Corporation (BlueCo), was investigated by the SEC for securities fraud. Blue held 25% of this publicly traded corporation's stock. BlueCo made public statements that earnings were expected to triple in the second quarter, which increased stock prices and sales. In fact, the company's sales volume in the second quarter was half the volume of the previous quarter. An SEC investigation revealed that Blue instructed the press office to publish false information about projected earnings after learning about a projected sharp decline in sales for the second quarter. When the SEC investigation began, Blue immediately turned over information showing insider knowledge that the statement regarding projected earnings was false when made. During the investigation, Blue admitted sharing insider knowledge with Red, who owned a significant percentage of stock in BlueCo. Red, Blue told the investigators, told Blue that on the basis of this information he would sell his shares before stock prices fell. Red sold his stock at the height of its value and its worth subsequently declined by half. Blue was indicted for insider trading and securities fraud, resulting in a \$1.5 million loss to stockholders. Red was indicted, tried and convicted, based in part on the information provided by Blue.

Simultaneously, shareholders brought suit against Blue, in his individual capacity, and against BlueCo. This suit alleged that Blue knowingly issued fraudulent statements about BlueCo, in reliance upon which they purchased stock in BlueCo at inflated prices and subsequently lost \$1 million.

While the criminal prosecution was pending, the civil suit settled for \$750,000. As part of the settlement, Blue admitted making the false statement. Blue, who had no prior criminal history, accepted a plea agreement in which he pled guilty to fraud and insider trading.

At sentencing, the court refers to section 2B of the U.S. Sentencing Guidelines, titled "Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud and Deceit," which applies to fraud and insider trading. Section 2B1.1 provides a Base Offense Level of 6. By examining the specific offense characteristics, the court determines how

(Continued next page)

much to increase the level of the offense. The most important specific offense characteristic in this case will be the amount of the loss suffered. Here, the loss suffered was \$1.5 million as a result of Blue's insider trading. For a loss of \$1.5 million, 16 points are added to the base offense level, raising the offense level to 22. Because there were more than 50 victims of Blue's criminal activity, the offense level is increased by 4, to 26.

Next, the court makes any adjustment to the offense level warranted under Part 3 of the Guidelines. There is evidence that the defendant has accepted responsibility for his actions and provided restitution to the victims, which warrants a reduction in offense level by 2. Because defendant provided assistance to authorities in the investigation of his own wrongdoing and his offense level is over 16, his offense level is decreased by an additional one point, to 23. Because defendant does not have a prior criminal record, he is in criminal history Category I, and the sentencing range to which he could be subject would be from 46 to 57 months.

Blue's Assistance

The government moved for downward departure pursuant to section 5K1.1 for Blue, based on his substantial assistance during the investigation of Red. It is clear that Blue's assistance led to Red's conviction; thus, he qualifies for a downward departure. The government's motion suggests a 5-level downward departure to offense level 18, range 27 to 33 months. Defense counsel may argue for a greater departure. The court will evaluate all of the factors presented in making its decision.

In any event, Blue's civil lawyers should advise him or assure that he is advised, that settling the parallel civil case early, admitting wrongdoing and/or providing information about related corporate wrongdoing could have dramatic consequences on the sentence imposed.

Assume the corporation was also convicted of fraud. During the sentencing of the corporation, the court considers the appropriate fines and restitution to be made. If the corporation is particularly helpful to authorities in the prosecution or investigation of another organization or individual not directly affiliated with the defendant who has committed an offense, the government may move for downward departure under section 8C4.1. The court also may depart downward where there are organizational mitigating factors, such as section 8C4.7 (corporation is a public entity); section 8C4.8 (where members or beneficiaries of the organization were victims); section 8C4.9 (where remedial costs greatly exceed criminal gain); and section 8C4.10 (where organization implements mandatory program to prevent and detect violations of law). Since section 8C4.1 provides that Chapter 5, Part K is applicable to organizations, courts might consider departing downward from the fines and restitution guidelines range for a corporation that promptly settled with consumers. Alternatively, the Court may depart upward where warranted.

The fines guidelines, while serving the goals of punishment, deterrence and disgorging defendant corporations of ill-gotten gains, do not serve the goal of providing restitution to the harmed consumers. Downward departure may be appropriate where a corporation commits to paying restitution to harmed plaintiffs.

Conclusion

Many white collar crimes have both civil and criminal consequences. Civil lawyers should have a working knowledge of the common grounds for adjustments and departures from the guidelines. This will equip them to advise their clients about how their conduct in the civil case could affect the criminal sentencing result.

— Hon. Susan Y. Illston

Happy 30th Anniversary To All of Us

Celebrating the 30th anniversary of ABTL, we are privileged to bring you articles from two early founders of the organization — Allan Browne, the first President, and Tom McDermott — the first Editor of *ABTL Report* and the seventh President of ABTL. Together, these unique individuals offer an unusually fresh departure from the *Report's* standard editorial format of legal issues and practice articles.

Relying upon their collective experience of over 80 years of legal practice, Allan and Tom share with our readers their perspective for achieving balance in their lives outside the law. In the process, they reveal themselves as thought-provoking, vital individuals who have maintained their zest for the legal practice by knowing when to take a break.

Let's take an historical break now. How many readers can remember 30 years ago? In 1973, the Vietnam War ended; the U.S. Senate opened the Watergate hearings; the U.S. Supreme Court, headed by Warren E. Burger, rendered its seminal opinion in *Roe v. Wade*, 410 U.S. 113 (1973).

Bobby Riggs challenged Billie Jean King. Helen Reddy sang "I am Woman" and Carly Simon echoed those sentiments with "You're so Vain." "The Exorcist" captivated moviegoers. Attorneys dictated to their secretaries and the only machine with memory was a typewriter. Research was conducted using real books and Shepardizing was a daunting affair, as one had to make sure that all the pocket parts were consulted.

The advent of technology was supposed to make us more efficient and free up our time. Instead, attorneys are working harder than ever.

For many attorneys, the goal of maximizing billable hours to the exclusion of everything has unfortunately become the norm. These days, it takes a concerted effort to take care of ourselves, mentally and physically, and still find some time to give back something to the community.

So take a cue from Allan and Tom and think about your sanity. While you're at it, how about writing an article for *ABTL Report*? Writing can be as relaxing as Allan's meditation or Tom's reading. Try it!

Also included in this special issue are a primer for civil attorneys written by the Honorable Susan Y. Illston, a United States District Court Judge for the Northern District of California, concerning the federal guidelines for criminal sentencing; an "insider" article by arbitrator Robert S. Mann regarding the arbitrator's decision-making process, an update on the Anti-SLAPP statute by Kent Halkett and a Letter by ABTL President Alan Friedman.

Finally, we've updated the Index of the first twenty years of *ABTL Report* with a five-year Index of articles published for the period 1997 - 2003. The Index will help you find previously published articles of interest.

We'd be pleased to hear comments from readers about this special issue.



Denise M. Parga

— Denise M. Parga

5-Year Index 1997–2003

The January 1998 issue of *ABTL Report* (Volume XX, No. 2) published a complete annual Index of the publication's first 20 years. Below is an updated Index beginning with the September 1997 issue (Volume XX, No. 1). A limited number of copies of the January 1998 issue are available on a first come first served basis from Editor Denise M. Parga (dparga@wrslawyers.com).

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Sally Bowles section of “Goodbye to Berlin,” one of the most accurate descriptions of a certain type of female since “Anna Karenina.”

What sparked this writing was the confluence of reading Allan’s article and at virtually the same moment seeing a book review in the Los Angeles Times that included the language, “. . .while writers have spun narratives, like ‘Winesberg, Ohio’ and ‘Our Town’ which emphasize the virtues of small town life.”

“Our Town” is no more about the virtues of small town life than the Bible is about day to day life in Egypt. Our Town is about life itself, what it is, how to experience it, how precious it is, and how we may tend to ignore its glories to our peril, all things that Allan is giving us practical advice about.

I do not speculate, I know this as a fact through a serendipitous set of circumstances. Mandel Sherman was a child psychiatrist teaching at the University of Chicago when he was brought to Los Angeles as the first head of the Marion Davies Children’s Clinic. During one of my discussions with Dr. Sherman, he told me about a dinner party he attended at the home of Gertrude Stein and Alice B. Toklas in Paris in the mid nineteen-thirties. Along with Ernest Hemingway and Dr. Sherman, another diner was Thornton Wilder, then famous for his best-seller “The Bridge

of San Luis Rey.” Wilder turned to Ms. Stein and said, “But I don’t know what to write next.” She replied “What do you consider most important?” Wilder thought a moment and replied casually “Oh, life and death, I guess.” Stein replied, “ Then write of life and death.”

“Our Town” was the result. You should read it.

The Our in “Our Town” is not the Our of the Stage Manager or the other characters in the play, not Grovers Corners, but the Our of all of us. This is where we all live. Newspaper in the morning, breakfast with the family, off to work, growing up, courting, weddings, babies, death. The genius of Wilder is to make us see these things in a new, bright, indeed blinding, light. The simple plot, unexceptional but real characters, the lack of scenery or props, all lead us to the proper conclusion: These day to day moments of intimate passage are not the important things in life, they are the only things in life.

All of the writers above are worth reading, just so we might learn to write well, an absolute necessity for the successful trial or appellate lawyer. But more importantly, all of the works of the above authors allow us a glorious, almost sinfully delicious, entering into worlds we do not now know, to tell us how we might have lived then so that we might learn how to live now.

I’ll even give you the best book on yoga: it’s “Light on Yoga” by B. K. S. Iyengar.

— Tom McDermott

Letter from the President

When the ABTL was founded in Los Angeles thirty years ago, it was immediately the preeminent bar association for business litigators in California. It had better and more timely programs, more judges in attendance, and a higher concentration of lawyers specializing in civil business litigation than anyone else. It was a unique blend of the highest quality continuing legal education programs with the opportunity to meet with judges and peers regularly and informally. It fostered professionalism, camaraderie, and civility.



Alan E. Friedman

In the years since, the ABTL has gotten bigger and better. We are now five chapters statewide. Our programs are more innovative than ever. Over the last decade the ABTL has produced: lunch programs and a judges' college devoted to Bus. & Prof. Code §17200; seminars led by judges from the CCW complex litigation program; a program by screenwriters on the art of storytelling; groundbreaking demonstrations of the use of jury questionnaires, focus groups, and graphics; a fascinating program by a professional psychologist specializing in the psychology of influence; a program devoted to the problems overcome in the prosecution of the Oklahoma City bombing case; keynote addresses at annual meetings by California and United States Supreme Court justices; and a weekend trial demonstration in which professional actors set up the hypothetical facts by acting them out in a live radio play, then took the stand as witnesses to be cross-examined in character by

some of the best trial lawyers in California.

This year's annual seminar on October 17-19 at the Tamaya Resort in New Mexico was sold out. A particularly timely and thought-provoking program on Trying the Business Punitive Damages Case, the seminar featured superb presentations and unusually comprehensive written materials. If you missed it you should seriously consider buying the tapes. Next year's annual seminar will be held October 21-24, 2004 at the Mauna Lani Bay Hotel in Hawaii. Annual seminar attendance is limited to ABTL members only, so make sure your membership dues are paid and make your reservations early.

The fall 2003 dinner program schedule will culminate with the ABTL 30th Anniversary Dinner on November 15 at the Hotel Casa del Mar in Santa Monica. The program will feature a video retrospective and an engaging keynote address by United States Supreme Court Justice Antonin Scalia. Seating is limited.

Over the years the ABTL has worked hard to improve the administration of justice in both state and federal courts. The newly expanded Board of Governors of the Los Angeles Chapter comprises 32 judges and business litigators drawn from the greater Los Angeles area. The Board includes a Ninth Circuit judge, two federal district judges and a magistrate judge, a justice of the California court of appeal, and two superior court judges. The ABTL has over the years commented extensively on proposed amendments to the Local Rules of the Central District, helped staff volunteer mediation programs in the superior court, and opposed state budget cuts that threatened to shut down 100 courtrooms in Los Angeles County. This year the ABTL is upgrading its Web site and has organized a new Committee on Public Service to sponsor pro bono initiatives and programs.

Past board members and officers often tell me their participation in the ABTL ranks among the most rewarding and satisfying professional experiences of their careers. I share their feelings and so will you. There has never been a better time to be active in the ABTL. Sign-ups for 2004 membership are now underway with reduced dues levels for corporate counsel, government lawyers, and lawyers in their first seven years of practice. For an application form visit www.abtl.org or e-mail abtl@attbi.com.

— Alan E. Friedman

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REPORT

P.O. Box 351649
Los Angeles, California 90035

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