

ROBERT E. HINERFELD
Arbitrator of Commercial Disputes and
Expert Witness & Consultant on Lawyers' Professional Responsibilities

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Experience Summary

- More than 45 years of complex civil and criminal litigation experience.
- Counsel in more than 50 state and federal civil and criminal appeals and appellate writ proceedings.
- Lead trial counsel in more than 20 civil and criminal trials.
- Former Assistant United States Attorney and former Associate Independent Counsel.
- Founding member of the Executive Committee, The State Bar's Litigation Section.
- Arbitrated more than 30 civil disputes.
- Adjudicated more than 2,000 State Bar Court lawyer discipline cases in 4 years on the state-wide Review Department.
- Expert witness & consultant in 99 engagements involving claims of professional misconduct by lawyers.
- Past President, California Academy of Appellate Lawyers.
- Past member, The State Bar of California's Commission on Judicial Nominees Evaluation.

Education

Harvard University, A.B., *magna cum laude* in economics, 1956; J.D., 1959.

Arbitrator and Referee¹

- Member, National Panel of Neutrals (Commercial), American Arbitration Association (1966 - present); Advanced Arbitrator II Training; Member of Large Complex Case Panel (2003 - present).
- Member of a three-neutral AAA Large Complex Case Panel which decided a high eight-figure claim of 9 years fiduciary mismanagement of a California-licensed gaming casino joint venture by the U.S. Government. Co-neutrals: California Supreme Court Justice (ret.) Armand Arabian and California Second Appellate District Justice (ret.) the late Campbell Lucas (2003 - 2004).
- Sole neutral arbitrator for AAA's Commercial Panel in a dispute between a computer software author and an international publisher (2002 - 2003).

¹ See also details of service as a California State Bar Court Referee, *below*, at page 6.

- Sole neutral arbitrator for AAA's Commercial Panel in a dispute between a medical management consulting organization and a medical service provider organization (2001 - 2002).
- Sole neutral arbitrator, AAA's International Center for Dispute Resolution (NYC), in a \$1.3 million contract dispute over extras for production by a U.S. special event production company of a one-day televised outdoor entertainment in the Middle East (2000 - 2001).
- Party arbitrator in a healthcare insurance industry coverage dispute between a physicians and surgeons malpractice insurance trust and its physician insured. Neutral arbitrator: Richard Chernick; other party arbitrator: Raphael Cotkin (1997).
- Party-selected arbitrator in various commercial realty lease arbitration panels (late 1980s).
- Arbitrator on a three-neutrals American Arbitration Association Commercial Panel in a 30-day trial of a \$7,000,000 requirements contract dispute between a U.S. Navy prime contractor and its iron foundry subcontractor (1984 - 2085).
- Referee, The State Bar Court, Review Department: hearing and determination on appeal of all lawyer disciplinary cases state-wide and awards up to \$75,000 from State Bar's Client Security Fund (1984 - 1987).
- Arbitrator, Los Angeles County Bar Association mandatory fee arbitration program (1981 - 1983).
- Referee, The State Bar Court, Hearing Department: trial of lawyer discipline cases and recommendation of discipline (1981 - 1983).
- Referee, The State Bar Court, Investigation Department: investigation of, and determination whether to charge, lawyer discipline offenses (1979 - 1980).
- Referee, Los Angeles Superior Court Arbitration Program's Business Panel (1979 - 1983).

Appellate Mediator

- *Pro bono* mediator for Divisions 1 - 5, 7 - 8, Second Appellate District, sponsored by the Appellate Practice Committee, Los Angeles County Bar Association Appellate Practice Committee appellate case settlement project. Member of first 5 - day mediator training class sponsored by California Court of Appeal, Second Appellate District, and presented by Richard Birke (Director of Center for Dispute Resolution and Associate Professor of Law, Willamette University) and Dana Curtis (Instructor in Mediation, Stanford Law School) (2002).
- Settlement Officer for Division Seven, Second Appellate District (1995).

Expert Witness and Consultant on Professional Responsibility of Lawyers

- Principal in-house ethicist for Manatt, Phelps & Phillips LLP (1985 - 2000).
- Expert witness and consultant on professional responsibility and business litigation malpractice matters. Engaged / designated as consultant / expert witness in 99 engagements and testified in more than 20 state and federal jury trials (1989 - present).

Government and Private Litigation Practice

- 1960 - 1962: Assistant United States Attorney, Los Angeles - Criminal Division, Special Prosecutions Section. Criminal investigations, trials, and appeals in the United States District Court and the United States Court of Appeals for the Ninth Circuit.
- 1962 - 1966: Associate lawyer, law office of Leonard Horwin, Beverly Hills, California - General civil trial, appellate, and transactional law practice.
- 1967 - 1974: Partner, Simon, Sheridan, Murphy, Thornton & Medvene, later known as Simon, Sheridan, Murphy, Thornton & Hinerfeld, Los Angeles, California. Business litigation, civil and criminal, in the state and federal trial and appellate courts and administrative agencies.
- 1975 - 1985: Partner, Murphy, Thornton, Hinerfeld & Elson, Los Angeles, California. Business civil trial and appellate litigation in the State and federal courts and administrative agencies.
- 1985 - 2000: Partner, Manatt, Phelps & Phillips, LLP, Los Angeles, California. On May 1, 1985, Murphy, Thornton, Hinerfeld & Elson merged into the litigation division of Manatt, Phelps & Phillips LLP. Business civil trial and appellate litigation in the State and federal courts and administrative agencies; professional responsibility advisor, consultant and expert witness. "The [Manatt] firm's litigation department was given a big boost in 1985, when Manatt Phelps absorbed the Los Angeles litigation firm [of Murphy, Thornton, Hinerfeld & Elson], which brought three partners and five associates aboard." (*Los Angeles Daily Journal*, California Law Business section, Monday, Oct. 29, 1990, p. 23).
- 1993 - 1995: Associate Independent Counsel (diGenova) under the Independent Counsel Act (28 U.S.C. §§ 591 *et seq.*).
- 2000 - 2005: Senior Counsel, Manatt, Phelps & Phillips LLP, Los Angeles, California.
- 2005 - Present: Solo practice as commercial disputes arbitrator and expert witness and consultant on lawyers' professional responsibilities, Santa Monica, California.

Selected Noteworthy Cases as Litigation Counsel

- Special counsel to RAND Corporation, Dr. Henry Rowen (former president of RAND) and the late Dr. Richard Moorsteen in connection with the federal criminal prosecution of Dr. Daniel Ellsberg for unauthorized copying of the "Pentagon Papers." *United States v. Ellsberg and Russo* (C.D. Cal., 1973, Hon. Wm. Matthew Byrne, Jr., United States District Judge) (1973).
- Examiner (prosecutor) for The State Bar of California in *Jacoby v. State Bar*, 19 Cal.3d 359 (1977), the California constitutional test case on regulation of lawyer advertising and solicitation which involved the *Legal Clinic of Jacoby & Meyers*. Lead counsel at the 20 - day hearing and in the Review Department, and of counsel to The State Bar's general counsel in the Supreme Court of California. (1974 - 77.) The California Supreme Court's decision of the *Jacoby & Meyers* case preceded and foreshadowed the nationwide invalidation of the traditional anti-advertising and solicitation rule for lawyers by the United States Supreme Court about three months later in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1973-1977).
- Co-trial court counsel and lead appellate counsel for defendant / appellee Richard M. Nixon, *People Versus PORN (Profit of Richard Nixon) v. Richard M. Nixon*,

465 F.Supp. 340 (N.D.Cal. 1978), *aff'd*, 634 F.2d 635 (9th Cir. 1980), *cert. denied*, 452 U.S. 916 (1981), dismissing taxpayers' claim for imposition of a constructive trust on the assets of the former President of the United States, based upon alleged concealment of the material facts of the *Watergate* affair (1978-1980).

- Lead counsel for Team Lotus International, Ltd., in three *Formula I* race car Grand National championship arbitration proceedings: *In the Matter of the Lotus 88*: regarding the United States Grand Prix at Long Beach, CA, heard in Atlanta, GA (March 1981), and in Paris, France, in the International Court of Appeal, Fédération Internationale du Sport Automobile (April 1981); heard in Rio de Janeiro (March 1981) regarding the Brazilian Grand Prix; and at the British Grand Prix at the Silverstone Circuit (July 1981). Co - counsel on appeal from the F.I.S.A. president's unprecedented invalidation of the decision of the Stewards of the Meeting in favor of the Lotus 88 at the British Grand Prix, heard in the British Court of Appeal of Motor Racing at the Royal Automobile Club, London (September, 1981). The British appeal was heard by a 5-person arbitration panel chaired by Lord Shawcross who ruled that the F.I.S.A. president's invalidation of the decision of the British Stewards of the Meeting at Silverstone was erroneous – that the Lotus 88 was lawful and should have been allowed to compete in the British Grand Prix. Lord Shawcross' ruling was vacated by the international tribunal in Paris on jurisdictional grounds (1981).
- Plaintiffs' counsel, *Smith v. Superior Court (Abbott Ford, Inc., r.p.i.)*, 151 Cal. App.3d 491 (2d Dist. 1984) (hearing denied 1984); later, on post-settlement appeal, *sub nom., Abbott Ford, Inc. v. Superior Court (Ford Motor Company and Sears Roebuck Co., r.p.i.)*, 43 Cal.3d 858 (1987), recognizing a new American tort of intentional spoliation of evidence. The California Supreme Court revisited the spoliation tort 14 years later and overruled *Smith* in *Cedars - Sinai Medical Center v. Superior Court of Los Angeles County (Bowyer, r.p.i.)*, 18 Cal.4th 1, 14 fn.3, 18 fn.4 (1998). As of the summer of 2004, the tort was recognized by courts in eight jurisdictions (Alabama, Alaska, District of Columbia, Florida, Illinois, Montana, New Mexico, and Ohio). The tort has been given limited recognition in two other states (Indiana and New Jersey). Gorelick, *et al., Destruction of Evidence* (John Wiley & Sons, New York, 1989). "The Tort of Spoliation of Evidence," Chapt. 4, pp. 139 - 168; and 2005 cum. suppl. pp. 191-251, esp. at p. 196 (1981-1984).
- Lead trial court and appellate counsel for defendants in *Universal Analytics, Inc. v. MacNeal-Schwendler Corp.*, 707 F.Supp. 1170 (C.D. Cal. 1989) (Stephen V. Wilson, U.S.D.J.), granting summary judgment to the defendants on claims of monopolization and attempt to monopolize (15 U.S.C. § 2) a part of the computerized engineering analysis software industry (the NASTRAN variety of finite element analysis software), *aff'd*, 914 F.2d 1256 (9th Cir. 1990) (*per curiam*, Hug, Schroeder and Hall, C.J.J.) The Ninth Circuit said, "[T]his is the first reported case of a claimed violation of [Sherman Act] section 2 as a result of alleged employee raiding or predatory hiring." Cited with approval in *Pacific Express, Inc. v. United Airlines, Inc.*, 959 F.2d 814, 817-818 (9th Cir. 1992); *Midwest Radio Co. v. Forum Pub. Co.*, 942 F.2d 1294 (8th Cir. 1991); discussed in Areeda & Hovenkamp, *Antitrust Law* (Little, Brown and Company; 1995 Supp.) ¶702 (Acquiring Talent) pp. 389-90 (1988-1989).

Overview of Arbitration and Litigation Experience - Claims and Industries

Claims involving:

- Antitrust Law;
- Breach of Contract;
- Breach of Fiduciary Duty;
- California property taxation;
- California Talent Agencies Act;
- Civil RICO;
- Commercial Defamation;
- Commercial Bribery;
- Copyright Infringement;
- Directors' and Officers' Liability;
- Domestic and International Conservatorships;
- Election Law;
- Espionage & Theft of National Defense Information;
- Federal Income Taxation;
- Fraud and Deceit;
- Hobbs Act (interstate extortion);
- International Sovereign Immunity;
- Lawyer Licensing;
- Lawyer Professional Discipline & Civil Liability;
- Negligence;
- Official Bribery;
- Price Discrimination;
- Product Liability;
- Radio Broadcast Licensing;
- Television Broadcast Licensing;
- Trademark - Servicemark Infringement;
- *Ultra Vires* Conduct by a Public Charity;
- Unfair Competition; and
- Wrongful Termination of Employment.

Industries and professions including:

- Accountancy;
- Aircraft Manufacturing;
- Apparel Manufacturing & Marketing;
- Architecture;
- Automobile Manufacturing;
- Automobile Racing (International Formula I & NASCAR);
- Commercial Banking;
- Charitable Corporations;
- Construction;
- Computer Hardware Manufacturing;
- Computer Software Design;
- County Government;
- Federal Government Tort & Contract Liability;
- Federal Land Use Planning;
- Healthcare;
- Insurance;
- Legal Profession;
- Entertainment (live);
- Entertainment (music recording & distribution);
- Munitions Manufacturing;
- Ocean Shipping;
- Petroleum Marketing;
- Radio Broadcasting;
- Real Estate;
- Savings and Loan Associations;
- Securities Brokerage; and
- Television Broadcast Licensing.

State Bar Court Referee (Pro Bono) in Investigation, Hearing and Review Departments

- Referee, The State Bar Court, Review Department – appointed by the Board of Governors. The Review Department was an administrative appellate court with state-wide jurisdiction, sitting *en banc* monthly for two days, alternating between San Francisco and Los Angeles.

The former Review Department in the 1980s, sitting in bank, had the power to review the Hearing Department's disposition of any lawyer discipline case, without a request for review either from The State Bar or the respondent lawyer – including review of stipulated dispositions. Unlike most American appellate tribunals, the Review Department was allowed to re-determine the facts found below. Fifteen of the 18 referees were lawyers. The referees were appointed variously by the Governor of California, the President *Pro Tempore* of the Senate, the Speaker of the Assembly, and the State Bar Board of Governors.

The former Review Department considered every contested lawyer discipline disposition by the Hearing Department of the State Bar Court for the then 115,000 members of The State Bar of California. It also awarded compensation from The State Bar's Client Security Fund up to \$75,000 per client defrauded by dishonest acts of California lawyers. The Department disposed of monthly calendars of 50 to 75 discipline cases and claims to the Client Security Fund. Review Department referees devoted a monthly average of four to five days of case preparation and attendance at the Department's hearings (1984 - 1987).

- Referee, The State Bar Court, Hearing Department: trial of lawyer discipline cases (1981 - 1983).
- Referee, The State Bar Court, Investigation Department: investigation of, and determination whether to charge, lawyer discipline offenses (1979 - 1980).
- Member, Investigation Panel, District 7, The State Bar of California: investigation of, and determination whether to charge, lawyer discipline offenses (1977 - 1978).

Selected Honorary, Elected and Appointed Positions in Professional Organizations

- Commissioner, State Bar of California, Commission on Judicial Nominees Evaluation (appointed by The State Bar Board of Governors May, 2000 - February 29, 2004).
- Life Fellow, American Bar Foundation (elected 1989).
- California Academy of Appellate Lawyers. (Elected, 1979; President 1988 - 1989).
- Member, First Executive Committee, Litigation Section, The State Bar of California; supervised its first publication, *Litigation in Brief* (1983 - 1986).
- Member, Board of Governors, Association of Business Trial Lawyers (1982 -1984).
- Member, Board of Governors' *Ad Hoc* Committee *re* Civil Litigation, The State Bar of California. This special committee studied the need for and recommended the creation of The State Bar's Litigation Section (1983).
- Settlement officer for California Court of Appeal, Second Appellate District, Division Seven (1994 - 1995) and for Los Angeles County Bar Association's Second District-wide Mediation Project (1996 - 2004).
- Delegate, California Criminal Justice Leaders Delegation to Cuba (sponsored by People To People Ambassador Program, Spokane, WA), Professor Gerald Uelmen, University of Santa Clara School of Law, Delegation Leader (December 2002).