

O'Melveny, California's Top Litigation Department, on AT&T-Time Warner and Collegiality

By ALM Staff

Last month, at The American Lawyer Industry Awards in New York, The American Lawyer honored the litigation departments of six law firms for their work in jurisdictions across the country: Connecticut, Georgia, Florida, New Jersey, Pennsylvania and Texas.

O'Melveny & Myers' California team had an impact across the country, as it helped beat an antitrust challenge to the AT&T-Time Warner merger; secured an early win in the Johnson & Johnson opioid litigation; and set a new standard in the U.S. Supreme Court on the statute of limitations for securities class actions.

The following Q&A contains responses from the firm's litigation department:

How would you describe the philosophy of your litigation department in terms of the types of matters you look to handle, the types of clients you look to represent, and the way in which you approach cases?

As part of our commitment to every client, we put ourselves in their shoes: learning their business, understanding their priorities and recognizing what keeps them up at night.

We focus primarily on handling the matters of most concern to our existing clients. Some are bet-the-company cases. Some have importance for other reasons—a client's reputation may be at stake or the law may be adapting to new technology. Because these types of cases are not cookie-cutter, we field a range of talent from across our 15 offices around the world.

While settlement may ultimately serve a client's interest, we always look ahead, focusing right off the bat on what a trial will look like. What are the key themes we would want to hit in the opening statement? What are the jury instructions? Can a simple explanation be distilled for why our client is right—not just on the facts and law but also as a practical and equitable matter?

We recognize that cases can be won or lost through discovery strategy. Small decisions can have major ramifications. And credibility is critical. You cannot stretch



the facts or law to the judge who will be making decisions down the road.

Winning is important, but so is treating our colleagues well—within and outside the firm. We train our associates and counsel. Value their input. Recognize their contributions. And give them opportunities. That environment yields the best results, and the best talent.

What cases this submission period best represent that philosophy and what did the firm's litigators do to get the client a successful result in those matters?

Two cases help show the range of our work.

The first, the U.S. Department of Justice's challenge to the \$100 billion AT&T-Time Warner merger, set the stage for the "Antitrust Trial of the Century." O'Melveny & Myers partner Dan Petrocelli led an elite team of attorneys to win what The Wall Street Journal called a "sweeping victory" in the case. The victory drew on the contributions of some 140 attorneys and staff spanning multiple offices and practices. Many relocated to Washington, DC, embedding for months in a temporary war room. O'Melveny not only delivered for important clients at a critical moment under a glaring spotlight, but we also made a lasting impact on issues of great public interest. And we did that seamlessly with a number of other firms.

At the other end of the spectrum, we secured a much quieter (though no less important) victory for our nonprofit client Compassion & Choices in its ongo-

ing initiative to expand end-of-life options for the terminally ill. With matters of life, death, and suffering at stake, a handful of O'Melveny litigators used a novel legal strategy to appeal a ruling that temporarily blocked terminally ill Californians from seeking medical aid in dying. The appeal effectively reinstated the End of Life Option Act, vindicating the rights of Californians who otherwise would have been unable to access medical help to end unbearable suffering and ensure a peaceful passing.

In between these extremes, O'Melveny won high-impact litigation of all kinds. For one of the world's largest technology companies, we defeated litigation that could have barred it from importing any of its smartphones, tablets, computers, or watches to the United States. We secured a major victory for all class-action defendants when the U.S. Supreme Court unanimously ruled in favor of our client China Agritech, Inc., holding that courts cannot extend statutes of limitations to permit endless follow-on class actions. And we tried a headline-grabbing opioids case in Oklahoma, where a state court judge awarded 2.6% of what the state was seeking.

How has the legal landscape in California evolved and how has the firm looked to adapt?

As the oldest law firm in Los Angeles, we have a long history to live up to. We trace our origins to 1885, just 35 years after California became a state. From the early land rushes, through the Golden Age of Hollywood and the Silicon Valley boom, to the state's perch today as the world's fifth-largest economy, we've helped lead change in California. And as our clients have grown, we've grown too—into an international firm with 15 offices across the United States, Europe, and Asia.

California is a trailblazer in countless areas, constantly evolving, pushing boundaries, pointing the rest of the nation toward the future. The law is no exception. Legal doctrines and theories that have started in California have often spread to other jurisdictions.

We pride ourselves on being as creative and versatile as the state. We've challenged efforts to expand public nuisance law far from its origins to reach claims over global warming and opioids. We have a multidisciplinary team representing the Governor of California in connection with PG&E's Chapter 11 restructuring, a role that has put us at the frontlines of a broader effort to address wildfires, climate change, and the need for reliable, safe and clean energy. And we have a leading practice that deals with water issues—always important in California, and increasingly throughout the world.

What are you doing to attract, train and retain new talent in the litigation department?

We are committed to giving next-generation litigators strong experience at every step of a case, from drafting important briefs to taking key depositions to making courtroom arguments and examining witnesses.

It helps in retaining and attracting talent to have interesting, high-profile cases, and we do.

We have been actively hiring some of the nation's top legal talent—most recently, Michael Dreeben, the former Deputy Solicitor General who has argued for the United States in over 100 cases at the Supreme Court. And we also take great pride in maintaining a cohesive and collegial workplace, as evidenced by our strong rankings on The American Lawyer's "A-List" and Midlevel Associates Survey. We were delighted to be ranked #1 in Vault for Best Firm to Work For, Best Overall Diversity, and Best Summer Program.

How does pro bono work factor into the litigation department's mission?

In keeping with our century-plus legacy of public service, O'Melveny requires pro bono work from all our lawyers. We are proud that they passionately serve their pro bono clients, and that these cases are often at the center of many important policy matters, including immigration, housing, women's rights, foster care, education, veterans affairs, jail reform, and community building.

We recently prevailed for our clients El Paso County and the Border Network for Human Rights in a challenge to the Administration's construction of a wall along the Southern border. The court found that the Administration's declaration of a national emergency to divert military funds to the project was unlawful.

With *Roe v. Wade* facing a growing wave of state-by-state legal challenges, O'Melveny and co-counsel at the American Civil Liberties Union's Reproductive Freedom Project secured a vital win in Kentucky district court that preserves the right for women in Kentucky to obtain a safe and reliable second trimester abortion.

We approach these cases with the same commitment that we extend to our commercial matters. Over the past two years, our lawyers devoted nearly 140,000 hours to pro bono matters—6.6% of the firm's total work output.

