

LASCHER AT LARGE
By Edward L. Lascher
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You take courage and accuracy where you find it. The latest example of such serendipity involved an editorial in the spring edition of California Litigation (Vol. 3, No. 3), in which Mark Neubauer of Santa Monica, chair of the State Bar's Litigation Section, devotes full editorial comment to what he accurately describes as "the maze of local rules" adopted by California courts, recognizing them as "costing clients and lawyers throughout the state thousands of dollars in wasted efforts". He adds, pointedly: "Because there are so many of these rules and they are often not readily available, they have lost their original objective of easing the practice for both court and lawyer and have become an impediment to the efficient administration of justice".

Mr. Neubauer's complaint is one which has been needed more and more. He makes his case persuasively. Considering his prestigious position with the section – a body whose quality should make it highly influential – it could hardly have come from a better source.

There is some irony in the fact that a local rule in San Diego which precluded substitution of attorneys except on a noticed motion and (apparently) formal hearing is cited in the editorial's parade of horrors. A couple of days after I read that, with a mental-voiced "They can't do that", I read the case of Hock v. Superior Court, ___ Cal.App.3d ___, 90 Daily Journal D.A.R. 7238, in which the Court of Appeal for the Fourth District said: "They can't do that."

In a wonderfully terse and persuasive opinion, the court pointed out something that should need no pointing out, i.e., that statewide rules reflected in either the Code of Civil Procedure or the Judicial Council Rules are superior to local rule-making and the latter simply cannot override the former. Why does anyone have to issue a published opinion to make such an obvious point? I dunno, could it be that, without such an opinion, the local rule purveyors would continue to overrule Legislature and Judicial Council, not to mention common sense and rather basic requirements of due process?

It should not be thought, however, that the only problem is one of conflict between local rules and general rule-making. As Mr. Neubauer convincingly shows, that's only part of the battle. Another is the widespread excess of local rule-making, whether or not there is any conflict. Our office now has 12 volumes of ring binders collecting some of the local

rules in California counties. That is too many. Something is wrong when it takes far more words to expound local peccadillos than Bernie Witkin uses to explicate the entirety of California procedure. Something is even more wrong when one considers that the content of those binders is only partial: many local rules are unwritten and apparently carried to the locals by tom-tom.

A third problem on this subject involves Fast Track (What doesn't, these days?). It is bad enough that each county, and each court within the county, and each branch of each such court, has its own procedural code. It just gets a little worse when you consider that the Fast Track system divides each court into individual-department principalities in which each judge feels free to promulgate his or her own set of rules, which are nowhere to be found in print but are more binding than anything from the U.S. Constitution on down.

It is time for the State Bar to look into this subject. It is precisely the type of thing that should be first on any agenda of that body, because it involves the administration of justice – the concern which is exactly what the U.S. Supremes said in Keller that the State Bar should be dealing with. That body should work with the Administrative Office of the Courts to bring some sense and some fairness into the growing balkanization of California procedure.

Between the Headlines

The announcement of retirement plans by Supreme Court Justice Eagleson recently sparked a lot of alarum and discursion over the reasons for and effect of departure of three justices from the high court in a really very short span of time. Conspicuous among those expressing concern has been Dean Jerry Uelmen of Santa Clara Law School, who has pretty well earned the title as No. 1 Commentator on the court, its achievements, its frustrations, and its statistics. (One newspaperwoman I was talking to recently told me that Jerry is quoted so often in her publication that he ought to be on the masthead.)

There is one factor in this number of departures that everyone seems to have overlooked lately. Not long after the court was drastically reconstituted following the 1986 election, there was one span measurable in a couple of months, if not weeks, when several of its newer members had medical emergencies. As far as can be determined, these were all very short-lasting with fine bills of health at the end.

Nevertheless, something of that sort can scare the hell out of a mature person, especially when he sees it reflected among others similarly situated. It sets one to thinking about a lot of things, and wondering

whether one has taken quite everything into account in ordering an approach to the future.

I can certainly vouch for that from my own recent experiences. Even if one comes out of such an experience healthy – perhaps especially if one does – it must be awfully hard to keep from thinking that, after all, one isn't going to live forever, no matter how much one had considered oneself the exception and, consequently, a great likelihood of thinking about whether the nearest and dearest things and people are being given the proper emphasis. Any kind of brush, no matter how faint, fleeting, or ungrounded, with the word "cancer" changes the color of a lot of things the brushee sees. I am not the least bit surprised that one part of the sequelae was some departures, whether or not those leaving were directly involved.

But, of course, that isn't all, about which more another day.

Unreportable Truth?

The State Bar covered itself with its usual kind of glory in connection with compensation of counsel appointed on automatic appeals. (In case you aren't into the jargon, that's the trade's term for death penalty cases.) It seems a blue ribbon committee was appointed, set to work on the task of finding out how that aspect of the ever-fascinating capital punishment issue was functioning, and they studied at great length.

Perhaps what caught the Bar by surprise was the fact that, unlike the usual committee, this one did a lot of digging and came up with a study and report. While that was startling enough, equally so was what the report said, in effect: "We've got a hell of a lot of trouble here." It cited long-continued delays that appointed lawyers go through, seemingly capricious allowances and disallowances, and many of the other foibles which afflict the already-strained tolerance of lawyers who take on one of these thankless and often devastating cases.

By the way, listening to the rhetoric of the redneck press, I keep looking for these lawyers who are getting rich on criminal appointments at 60 bucks an hour (or whatever similar rate it is) and a lot of the hours disallowed. The existential fact is that the appointed lawyer loses a bundle on every hour he spends on the case but makes it up in amazingly high volume. I haven't found one of those profiteers yet, but I digress.

Trouble was, the committee not only found the emperor was wearing no clothes, and not only reported that discovery, but also let the Supreme Court know what it reported. The State Bar went into spasm. Mr. Rothenberg couldn't wait to "apologize" to the Supremes. As far as could

be discerned, he had no question as to the substantive veracity or accuracy of the committee's report: he just didn't want the report reported. Oh. One of the leaders of the committee, a Public Defender from San Francisco, resigned in protest. My compliments to her on her understandable outrage.

When it becomes the practice of the State Bar to feel the truth needs to be suppressed – particularly truth the ascertainment of which the bar affirmatively asked for – it will be a sorry day. Or have I got the wrong tenses?

Room Temperature Tips

Don't say I never do anything for you. If you share my passion for good wines and share also my condition of finite resources to allow indulgence of that passion, you should know about an outfit in Santa Ana called The Wine Club (phone 800/966-5432 or 714/835-6485). They carry an extensive, but ever varying, stock of both Californias and imported and sell at prices I haven't been able to find duplicated anywhere.

You can get on a mailing list for their catalog and they've got a good system of shipping. I heard about them through wine buffs' words of mouth. I was grateful for the information and thought it should be shared, even on pain of increasing the competition for some of their future hot acquisitions.

Another thing you should know about is Verbatim, the language quarterly (\$16.50 a year from 7301 Woodland Drive, Indianapolis, IN 46268). My favorite in the current issue (spring) was a piece on those dictionaries that are included in most word processing programs. Among other things, they suggest synonyms that the system likes better. For example, "chalkboards" as preferable to "childbearing", or "bordellos" for "Bordeaux" (Didn't take me long to get back to wine, did it?), not to mention "unmentionable" for "unemotional".

Anyone who reads this column must have at least a high tolerance level for words in large quantity, but Verbatim aims more at the quality than quantity. Do yourself a favor and read it.

JUL

Now and then, somebody does something to improve the quality of lawyer life. A great example is the Judicial Council's adoption of subdivision (n) to Rule 40, providing that deposit of a brief or similar appellate document with the post office for priority or express mail, or with a com-

mon carrier such as Federal Express or UPS for guaranteed next-day delivery, makes service complete as of the day of such deposit. How did we ever get by without this exercise in taking into account the capacities of modern technology. I hope somebody is at work on a similar approach to trial court filings – in addition to the fax filing experiment now commendably underway.

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