Conference Chief Schwarzer Targeting Law Firm Culture

It would seem enough that William W. Schwarzer came out of a big firm, San Francisco's McCutchen, Doyle, Brown & Enersen, after 24 years as a top litigator and put in 16 years as a federal judge. Now, at a time when he should be boring luncheon groups with war stories, he's picked new and bigger battles.

Schwarzer is director of the Federal Judicial Center, the long-range planning and educational arm of the Judicial Conference of the United States, and in that job is helping implement the Civil Justice Reform Act of 1991. But, most interestingly, his own views for reform go far beyond that.

In trying to turn big-firm litigation on its head, Schwarzer is putting last first and first last, and shaking the money out of the big firms' pockets.

His manifesto took form in the 1989 University of Pittsburgh Law Review and in the American Bar Association's Judicature magazine of last December-January, the latter a 6,000-word article that had the effect of smelling salts sniffed along with slurps of strong coffee.

"A lot of people have said this identifies the problem and is the only solution," Schwarzer says. "It's drastic, and you need to change the culture and incentives."

In the new world of word processors, there is more excess than abuse in the discovery process, Schwarzer says. And that has raised profits at law firms, creating the wrong incentives.

Schwarzer's remedy: ongoing, mandatory reciprocal disclosure, beginning when the complaint is filed. The complaint should include the plaintiff's disclosure of all material documents and other materials, names and addresses of all persons believed to have material information. Defendants would be under similar obligation at the time of filing an answer, and so on back and forth throughout pretrial proceedings.

In Schwarzer's detailed scheme, the current trend of litigious fishing expeditions would be precluded: Claims would have to be developed before discovery, not during it.

And the necessary narrowing of issues early on in such a system would, in Schwarzer's words, give judges "no place to hide" and force them into strong-handed case management.

The judge's ideas now are something of an unattainable ideal, though they have been given a hard look by a Judicial Conference subcommittee examining civil justice reform.

And according to Paul Carrington, a Duke University School of Law professor who was the subcommittee's reporter, "He had great influence on us, but we couldn't realistically try to go that far."

— *Terry Carter*

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