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TH W. STARR — The U.S. Solicitor General says from lawyers he used to practice with in Los Angeles es years to get a civil case to trial in the county Supe-t, but that judges in the U.S. Central District of Cali-re bringing cases to trial very quickly."

Experts Explore the Civil Justice Landscape

By Terry Carter
Daily Journal Staff Writer

CHICAGO — The spectacle, more than the coffee, awakened a conference hall full of sluggish synapses Thursday.

There was the maestro of roundtable give and take, Professor Arthur R. Miller, of Harvard Law School, Court TV and seemingly every forum but Penthouse magazine, conducting a panel of high-powered legal minds working hot and fast on the future of the adversarial system.

And the panel of 11 of the best and brightest thinkers on the subject were like so many members of an orchestra, leaning forward in their seats so as not to miss the movement of the unpredictable maestro's baton.

Among them were U.S. Solicitor General Kenneth W. Starr, Federal Judicial Center Director William W. Schwarzer, former U.S. Attorney General Benjamin R. Civiletti and Judge Pamela Rymer of the 9th U.S. Circuit Court of Appeals.

Thus began the leadoff program for the American Bar Association Litigation Section's annual meeting, with the topic "The Adversary System in the 21st Century: The Challenge and Promise of Change."

Under the quick, jumping questions and cutoffs characteristic of Miller as moderator, there was a profusion of near-aphorisms from the panel addressing the ills of discovery and other pretrial procedures. Among the gems:

■ "Rather than killing the jury trial I think we ought to go back to trial by ambush," said Judge William J. Bauer of the 7th Circuit, concerning moves afoot to limit discovery.

■ "I suspect in large part it will be private justice," said Judge Rymer, telling Miller what the adversarial system will be like in the year 2010.

■ "They have immense confidence in the courts and no confidence in the judges," Schwarzer said of Congress and its micromanaging of the judicial system, including legislation that adds more and more matters to the federal docket.

Miller's gimmick to get the topic going was to portray himself as an explorer from Mars, telling the panel that Martians are interested in colonizing on Earth and assimilating here. Further, the Martians heard that the United States is the fairest, most human-oriented, most decent and most justice-oriented country, and they are interested in coming here.

"We are hard-working and most of us would vote Republican," Miller said in his introduction to the panel. But the Martians won't be able to come here until the year 2010 and have concluded that there no longer will be a civil justice system in the country. It had been an interesting experiment for a couple of hundred years, Miller's Martians concluded, but it was coming to an end.

System Is Broken

Clearly the system is broken, and the panel's job, under Miller's method of Socratic goading, was to fix it. They went at it for two hours without break.

The well-attended session set the tone for three days of meetings on such topics as: science and technology in the courtroom of high-tech persuasion, the civility debate, applying the fast-track discovery of bankruptcy court to other areas of civil litigation, and the future of litigation as seen through the eyes of clients.

And there was another matter of tone brought up in many discussions over evening drinks, morning coffee and during breaks at the program presentations: What is Vice President Dan Quayle going to say at today's luncheon? Or perhaps more significant, how is he going to say it?

Quayle spanked the ABA pretty soundly at its annual meeting two months ago in Atlanta, dropping a bombshell of proposed litigation reforms developed by the president's Council on Competitiveness.

And Wednesday — clearly setting up Quayle's trip to Chicago — an executive order was issued requiring government lawyers to adhere to certain of those proposals, such as voluntary disclosure of core information at the outset of litigation.

'The Way They Want It'

Whatever is planned, for some reason the vice president's advance people pulled back this week from the original offer of a Q-and-A with Quayle and the luncheon audience. Quayle will eat and speak and leave.

"They have a great way of getting it just the way they want it, then changing it even more to the way they want it," said one ABA official.

During Thursday's debate on how to save the civil justice system the Martians so astutely discerned is dying, one of the more interesting exchanges — more a succession of making one's

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The Nation

Civil Justice Landscape Explored

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points — was between Schwarzer, formerly a federal district judge in San Francisco, and Solicitor General Starr, who once practiced law in Los Angeles.

Schwarzer told the Martian that one solution to the problem would be to reinstate separation of power between the branches of government. Judges' discretion has been eroded, he argued.

Congress and the administration have "thoroughly politicized" the federal judicial system, Schwarzer said, with the administration using the courts to implement policy and Congress using them to make points with their constituents.

"There just simply isn't any sense in using the federal courts for political posturing or the kind of competition that goes on in Washington over who can be more anti-crime, who can be tougher on criminals than the next guy," Schwarzer said. "And that's what's happening. The federal courts are being used as a vehicle for this politicizing."

Following that, Starr, a former U.S. circuit judge in Washington, tried to show that federal judges have not lost too much discretionary power.

'I suspect in large part [the adversarial system in the year 2010] will be private justice.'

—Judge Pamela Rymer,
9th U.S. Circuit Court of Appeals

Starr mentioned that he hears from lawyers he used to practice with in Los Angeles that it takes years to get a civil case to trial in the county Superior Court, but that judges in the U.S. Central District of California "are bringing cases to trial very quickly."

The roundtable discussion moved quickly and sometimes heatedly through problems and solutions, from just how skeptical a law student should be trained to be, to what will become of the economics of big law firms faced with vastly scaled-back pretrial procedures.

There perhaps will be less theorizing and more concrete proposals Saturday morning in what is being billed as the first plenary session of members of the Civil Justice Reform Act of 1990 advisory groups. Those groups, primarily lawyers, are following Congress' statutory mandate in the so-called Biden Bill to come up with home-grown, tailor-made plans for reduction in costs and delays in their federal districts.

It is expected to be the first look at what ideas are percolating from the bottom in the various federal districts for reform of discovery and other pretrial procedures.

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Discrete Forces Get in Line for Civil Reform

Judicial Conference, Quayle Committee, Biden Bill Converge

Pilot Programs to Start

By Terry Carter
Daily Journal Staff Writer

After years of fits and false starts at reforming discovery and other pretrial procedures, suddenly there is an alignment of disparate forces seeking radical changes in the universe of federal civil litigation.

The phenomenon is sort of like what happened in the solar system a few years ago when all the planets lined up and gravity's gravamen was expected to dispatch California to the Pacific depths.

Except this alignment is more likely to have real and lasting effect, and the litigation universe already is changing shape

Additional Coverage

under its sway. Whether it dispatches the elaborate and lengthy ritual that has become big-firm litigation is another matter. The answer is not in our stars, borrowing from the bard, but in our committees.

The lineup:

- A Judicial Conference of the United States committee recently completed a five-year study of civil justice and is proposing what its reporter describes as "some fairly radical reforms."
- The so-called Biden Bill this year started advisory groups of lawyers percolating ideas from the bottom in each of the 93 federal districts — by order of Congress — to come up with local plans for significant reductions in costs and delays.
- The much-maligned vice president a couple of months ago won his biggest official victory when he dropped a lawyer-bashing bomb in the American Bar Association annual meeting while calling for major, sweeping changes in how and why we sue, complete with blueprints.

At the very least, this convergence of forces is a three-branches-of-government quickening of the issue and has done for litigation reform what the bruising Clarence Thomas/Anita Hill spectacle did for sexual harassment: Everybody's now hyper-aware, looking through a sharply focused lens. And things will never be the same.

With that said, what will become of civil justice?

ABA Litigation Section Meeting

And what will appear in the crystal ball in Chicago this week at the American Bar Association Litigation Section's meeting on "The Adversary System in the 21st Century"?

The four-day gathering amounts to the first plenary session since the Biden Bill — formally, the Civil Justice Reform Act of 1991 — took effect and will include major players riding the three-branch bandwagon.

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Groups to Converge On Reform

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Among them are Vice President Dan Quayle as well as his "smart bomb" on the issue, Solicitor General Kenneth W. Starr, who took the lead in the reform agenda proposed by the President's Council on Competitiveness overseen by Quayle; and the more-radical-than-thou mover and shaker William W. Schwarzer, formerly of the federal bench in the Northern District of California and now director of the Federal Judicial Center.

In the eyes of some, there's a freight train of reform high-balling toward what, since the 1970s, has become a monolith blocking the tracks — the peculiar culture of big-firm litigation, a moneymaking pyramid churning away somewhat in self-defense because of the rules of the game and somewhat in self-enrichment because of the financial rewards.

For others, it's an exciting time for an idea that has come back for the umpteenth time, still seemingly worth little more than a cynical shrug, but this time with just enough taste of inevitability to renew wishes and hopes.

A Train 'Hurtling Along'

"In my wishful point of view, that's right, it may be a freight train now hurtling along," says Walter K. Olson, author of the much-talked-about new book, "The Litigation Explosion: What Happened When America Unleashed the Lawsuit."

"But we may not yet be looking at a consensus on what to do about it," he adds.

That something will be done is foregone. But how much and how far and how soon remain the questions.

"I don't think there has ever been quite this strength of feeling about problems associated with discovery," says Schwarzer, confident in the knowledge that his ideas and writings have fueled and formed much of the debate.

If Schwarzer had it his way, beginning right now the filing of a complaint would include all pertinent names, documents and information known to the plaintiff, and the defendant would respond in kind, with no guessing, no games in voluntary disclosure throughout pretrial proceedings.

It is important to note that the Schwarzer way does include significant safeguards and hurdles to prevent fishing expeditions and abuses.

"Whether it's adopted eventually or not, it's focused attention on the issues of discovery," Schwarzer says of his manifesto. "It is drastic. It would mean changing the culture."

Change is definitely in the wind, if not of Schwarzer magnitude.

"This is an unusual historical circumstance with all three governmental branches pressing for thoughtful improvements," says U.S. Magistrate Judge Wayne Brazil of San Francisco, who in the late 1970s and early 1980s, first at the law school at the University of Missouri in Columbia and then at Hastings School of Law, was the strongest voice among legal scholars for legal reform.

Building on Brazil's diagnosis, Schwarzer came along soon after with specific remedies. "He's been a groundbreaking thinker," says Brazil.

Those studying the issues can't help but hear Schwarzer's footsteps. For one thing, "the truth of it is there isn't much out there in the literature beyond Schwarzer," says Paul D. Carrington, a law professor and former dean at Duke University Law School. "There aren't any other new ideas."

Carrington is the reporter for the committee that just completed its work for the Judicial Conference. The committee has proposed what he calls "fairly radical reforms" to be put out for public comment next month in Los Angeles and again on the East Coast.

The proposals include limits on the number of depositions and interrogatories, subject to extension by the court, some early disclosure that now comes through interrogatories, and new rules for pinning down the opinions of experts early on.

Further, the Judicial Conference committee proposes a "safe harbor" amendment to Rule 11, requiring prior notice of a possible claim against counsel for sanctions and giving them a chance to withdraw pleadings or other filings at issue.

But the group balked at much of Schwarzer's wide-open scheme of voluntary disclosure.

'A Little Tender'

"The committee's a little tender," Carrington says. "They weren't confident that a rule that went the full distance would be enforceable. There was concern about imposing a full duty of disclosure, where too often a lawyer won't comply with broader requirements. We wanted one they'll perform. We wanted to take that step and then down the line take another one.

"It may be that gradualism is a mistake," he adds.

Schwarzer, in turn, says that both the Judicial Conference and the Biden Bill advisory committees around the country are coming up with "watered down" versions of ideas he's been promulgating.

Under the Biden Bill, the U.S. Southern

It is significant that at this critical juncture Schwarzer was handpicked by the search committee, in general, and Chief Justice William H. Rehnquist, in particular, to run the Federal Judicial Center, the educational and long-range planning arm of the Judicial Conference, the policy-making body of the federal courts.

In the past, the Federal Judicial Center has failed to take a leading role in reforming the judiciary, and the Federal Courts Study Commission, by Rehnquist's hand, made clear two years ago that it should.

So perhaps it's no coincidence that just as the Judicial Center took charge under Schwarzer, the Congress was there with the Biden Bill and the administration followed in kind with the work of the Council on Competitiveness. It goes without saying that within the three-branch admixture looking at reform there are some cross-purposes, resentments and a bit of unattributed name-calling.

Some within the advisory groups carrying out the Biden Bill complain that the administration was just trying to pile on and grab some of the headlines two months ago when it issued the 50-point "Agenda for Reform of the Civil Justice System in America."

As far as discovery and pretrial reform are concerned, it proposes 21 changes to the Federal Rules of Civil Procedure. Among them would be having litigants pay the other side for any discovery production beyond certain core information and ensuring expert witnesses are in the mainstream of opinion in their fields to keep out "junk science."

And there's rumbling within the Judicial Conference that the Biden Bill advisory groups aren't coming up with anything substantive, anything new. "It's a big air ball," says one member of the Judicial Conference.

And many of the advisory groups scrambling to find ways to cut costs and delays feel the Biden Bill has put them in a box by adding what amounts to a "speedy civil trial act" on top of the one already in place for criminal cases. It's no secret that criminal cases have pushed a lot of civil matters off the dockets.

"I have some trepidation that out of all these studies, effort and commotion some changes might be made that might adversely affect the administration of justice in the name of expediency," says Donald C. Smaltz, chairman of the advisory committee in the U.S. Central District of California and a partner in the Los Angeles of Philadelphia's Morgan, Lewis & Bockius. "I'm thinking of the rocket docket."

Magistrate Judge Brazil sees the predominance of other forces during the flux.

"It turns out the discovery amoeba has a wonderful capacity to regroup when you push on it," he says. "I don't think anyone believes we're going to completely solve the problems here or change human nature. But in the next year or so there will be a lot of energy and experimentation, and we'll learn a lot at least about how dense and mobile the problems are and come up with some ideas that reduce this."

PARTICIPANT — Vice President Dan Quayle is scheduled to attend the American Bar Association Litigation Section's meeting on "The Adversary System in the 21st Century" this week.

District of California is one of 10 "pilot districts" that had to come up with detailed plans for curtailing costs and delays, for implementation by Jan. 1. And, unlike the other 83 federal districts, it had to do so with specific guidelines included in the legislation.

The Northern District of California asked to be an "early implementation district," which may qualify it for some funding to carry out its home-grown experiments, outside the more specific statutory guidelines, and expects to submit a plan in time to implement it Jan. 1.

The variety of experimentation within the federal districts could be no more clearly shown than with what is happening in the Northern and Southern districts of California.

Case Management Stressed

In the Southern District, the advisory group's completed plan does not call for voluntary disclosure in discovery but instead emphasizes greater use of existing rules for case management by judges.

In the Northern District, where Schwarzer was on the bench for 16 years before leaving in May 1990 for the Federal Judicial Center, the advisory group has concluded that one of the biggest problems in pretrial matters is structural, having an adversarial approach, according to Melvin R. Goldman, a partner at Morrison & Foerster who chairs the discovery subcommittee. So that group is advocating voluntary disclosure in the plan being considered.

Local Plans Form

Southern: A Thumbs-Down to Voluntary Disclosure

While the Northern District is considering a system of voluntary disclosure in lieu of the cat-and-mouse method of discovery, the Biden Bill advisory group for the U.S. Southern District of California, one of 10 "pilot districts" taking the lead in the nationwide experiment, gave a thumbs-down to the concept.

"Forcing the defendant to come forward with a lot of information would drive counsel right off the page," says Robert G. Steiner, chairman of the district's advisory group and a partner in San Diego's Luce, Forward, Hamilton & Scripps.

And the group rejected limits on numbers of depositions and interrogatories, preferring to encourage judges to practice strong case management and push for stipulated solutions monitored through regular status conferences.

Steiner's group had to move quickly as a "pilot district" to have a plan ready for implementation by Jan. 1.

First, they brought in a consultant, the Philadelphia-based Judicial Research Institute, to study the conditions of the civil and criminal dockets. The plans are to be tailor-made, district by district, and the most significant aspect of the Southern District is its criminal docket.

Most Criminal Cases Filed

The consultant reported back that "the district has probably the highest per judge criminal case filing in the nation and the largest percentage nationally of drug-related cases." The result was that the advisory group looking into civil justice reform went straight at the problems of the criminal docket.

Some of the more interesting findings: Civil docket filings have fallen from 3,125 in 1984 to 1,868 cases in 1990; during the same period the felony docket grew from 1,694 to 2,536. In just the past year, the median time for disposition of civil cases has increased by three months, from 18 to 21.

"The biggest culprit, Steiner says, is the mandatory sentencing guidelines, which have greatly curtailed plea bargaining and added to the similar impact of the Speedy Trial Act in displacing civil cases.

Thus the cost and delay reduction plan includes a rotation system to pull each judge from the criminal docket draw for two months a year, hopefully creating an open space on the judges' conveyor belts to move civil matters along.

'One Big Breakthrough'

"The one big breakthrough we had was on the criminal side," Steiner says. "We went outside the committee and initiated conversations with the U.S. attorney and the Defenders Corporation and some criminal defense lawyers. We've taken the first step in a dialogue we hope will address and resolve our criminal cases, and keep them from taking up time from civil matters."

The most controversial issue within the committee concerned what eventually became an overwhelmingly majority vote to recommend, as part of the plan, that Congress repeal mandatory minimum sentences and sentencing guidelines.

"Criminal cases are now basically non-negotiable, and they're breaking our back by going to trial," Steiner says.

Among other aspects of the plan:

- Encourage judges from other districts to visit San Diego and try criminal cases. The civil cases should be handled by local judges so lawyers can have the certainty and predictability needed in evaluating cases and reaching settlements.
- Set prompt trial dates in certain cases. Social Security matters, enforcement of judgments, prisoner petitions and forfeiture and penalty cases would be set to come to trial within a year; Federal Tort Claims Act cases would be tried within 15 months; and a quarter of all other civil cases that aren't "complex" should be set for trial within 18 months.

— Terry Carter

Northern Sets Sights On Pretrial

Melvin R. Goldman seems only half-facetious when he immediately shoots back a question to a reporter, turning things around when asked about his Biden Bill advisory group's work on a plan to reduce costs and delays in civil litigation in the federal Northern District of California.

"Do you have any ideas?" Goldman wants to know at the outset. His delivery is deadpan, and it's difficult to tell whether he's emphasizing what will be his first point or whether he's still contemplating square one.

After all, the group in San Francisco did begin at the beginning, surveying the literature on the issue and then looking to see what various state and federal courts have tried.

"And when it came right down to it, there weren't a lot of specifics about reforms," says Goldman. What they came up with at the beginning was a unanimous perception of abuses and inefficiencies.

One of the key thumbnail observations by Goldman on his subcommittee's findings: The fundamental problem is that discovery is adversarial, and thus the issue is one of structure.

"So if at trial you're going to be fighting over admission of evidence," Goldman says, "you'll be fighting at an early stage in discovery over it. Lawyers are highly skilled and vocal, and bring it in at that point."

Thus the subcommittee is advocating voluntary disclosure and exchange of most information before trial, under the watchful eye and approval of a judge strongly involved in case management. "I would be somewhat along the lines of Judge [William W.] Schwarzer's ideas," Goldman says.

The proposals have not yet been considered by the full advisory group.

Central Sends Questionnaires, Going to 'Customer' on Reforms

With all the angst and breast-beating about civil justice reform, there's this from Los Angeles:

"Our docket, among all the federal districts, is in relatively good shape," says Donald C. Smaltz, chairman of the U.S. Central District of California's Biden Bill advisory group, and himself no fan of the legislation that set him about his task.

"The Legislature is really exacerbating the problem, and my sense is the so-called Biden Bill was passed without a lot of support from the judiciary," he says.

Nonetheless, the former federal prosecutor and current partner in the Los Angeles office of Philadelphia's Morgan, Lewis & Bockius and his committee have begun an extensive survey of judges, litigants and their lawyers. And their district purposely avoided being one of the "early implementation districts," preferring to come up with their own plan for curtailing costs and delays toward the end of the statutory requirement, with the latest time for implementation being Jan. 1, 1994.

"I think it's more important to get a big response from the customer, rather than trying to get out a report in double-quick time," says Smaltz.

The advisory group is sending out about 2,000 questionnaires in the survey, with all of them expected to be mailed by mid-November. They are going to judges, lawyers and litigants involved in 300 cases disposed of in the past four years, selected at random.

For now, Smaltz points the finger back at Washington.

"One of the first things we could do is ensure an adequate number of judges and promptly fill vacancies," he says.

— Terry Carter

Bill Gives Districts the Leverage

ıe Civil Justice Reform Act of 1991 — Biden Bill — sticks in the craws of y in the judiciary and the bar who ' it as congressional micromanaging ; worst.

ut it's not. Things could have been se, and nearly were. The federal judi- y very nearly had more specific statu- rules and guidelines jammed down hroat. Now at least, in the final version ıe statute, each federal district in the ntry has a Biden Bill advisory group ointed by the chief judge to design t-and-delay reform tailor-made to the rict.

n the eyes of many, the Biden Bill sim- forces courts — for the most part lazy, dstrong or recalcitrant judges — to and emphasize many of the local rules l Rules of Civil Procedure already in ce. New rules and amendments geared ost and delay reduction are being con- ered by the Judicial Conference of the United States.

Of four Biden Bill categories of districts for implementing home-grown plans at reform, the federal Northern and Southern districts of California are in the two that are fast-track. The ranges run from implementation by Dec. 31, 1991, for the fastest, and by Dec. 31, 1993, at the latest.

A 'Pilot District'

The Southern District of California is one of 10 "pilot districts" that must be ready by the end of this year, and those districts also are the only ones required to devise their plans according to six specific guidelines set out in the legislation.

The Biden Bill states that the pilot district plans must:

- Implement differential case management geared to case complexity and time reasonably needed to prepare for trial. The judge should make an early assessment of how best to manage the case and keep it event-oriented, with certain pretrial stages used to gauge its progress.
- Have "early and ongoing control of the pretrial process through involvement of a judicial officer in assessing and planning the progress of a case." The statute goes into considerable detail about judges identifying and clarifying issues of fact and law in dispute; scheduling cutoff dates for amendment of pleadings; and setting cutoff dates for other pretrial stages.
- Set "early, firm trial dates" within 18 months of the filing of the complaint unless the judge finds compelling reason, such as case complexity. Tipping its hat to the reality of today's dockets, Congress added another reason: The case can be scheduled for later than 18 months because of "the complexity of pending criminal cases."
- Control "the extent of discovery and the time for completion of discovery." Congress also recommended, rather than required, that the court encourage voluntary exchange of information during discovery.
- Consider exploring the litigants' receptivity to settlement or alternative dispute resolution.

The Southern District of California already has sent its plan to the Administrative Office of the U.S. Courts and is ready to go with it Dec. 31.

The Northern District, which is one of five "demonstration districts," has until Dec. 31, 1992, to put a cost and delay reduction plan into use. But the district elected to be an "early implementation district" as well, and its plan will go into effect Dec. 31. Early implementation districts may get some funding to help carry out their experiments.

The demonstration districts do not have to adhere to the six guidelines set out in the Biden Bill.

— Terry Carter

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.

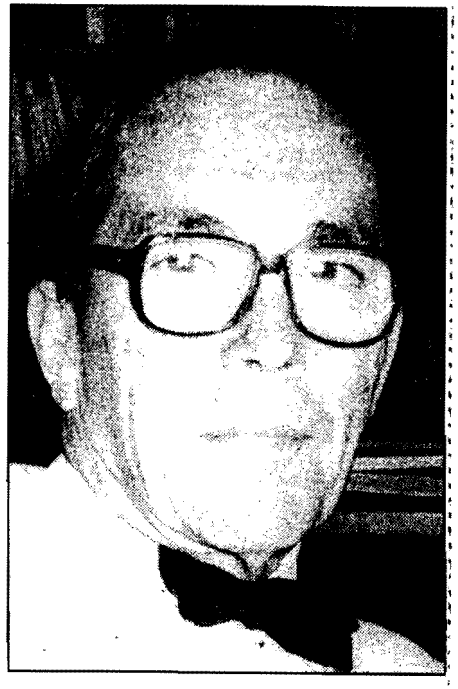
In Schwarzer's detailed scheme, the current trend of litigious fishing expeditions would be precluded: Claims would have to be developed before discovery, not during it.

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



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