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A Salute to Judge William W Schwarzer*

by
CARL TOBIAS**

United States Senior District Judge William W Schwarzer will complete his tour of duty as the Director of the Federal Judicial Center, the principal research arm of the federal courts, in April 1995. Judge Schwarzer's half decade of dedicated leadership of the Center constitutes a fitting capstone to his highly distinguished career on the federal bench. Since President Gerald Ford appointed him to the United States District Court for the Northern District of California in San Francisco nearly twenty years ago, Judge Schwarzer has been intimately involved in virtually all of the important efforts undertaken to improve the federal civil and criminal justice systems.

Throughout Judge Schwarzer's decade and a half of service on a federal court that has one of the largest and most complex dockets, he actively experimented with numerous procedures intended to expedite the resolution and reduce the expense of civil litigation. The Northern District of California was probably the first and the foremost federal court to develop and implement innovative mechanisms for efficiently processing cases, particularly during the pretrial process.

Judge Schwarzer was instrumental in crafting and applying these measures, which fall under the rubric of managerial judging. The jurist and a number of his colleagues played integral roles in guiding lawsuits from filing to disposition, especially through close monitoring of cases during their discovery phase. For example, judges of the Northern District, including Judge Schwarzer, presided at litigation conferences in which parties and lawyers explored the possibility of employing alternatives to traditional dispute resolution, such as mediation, arbitration, and early neutral evaluation, identified important issues for resolution, and exchanged information significant to both sides' cases.

* Judge Schwarzer will join the Hastings faculty as a Visiting Professor of Law in 1995.

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In addition to serving as an active judicial case manager, Judge Schwarzer has been centrally involved in all of the controversial debates surrounding the Federal Rules of Civil Procedure over the last two decades. Judge Schwarzer was a strong proponent of the 1983 Federal Rules amendments that effectively enhanced judicial control over civil cases by codifying the concept of managerial judging and that enlarged attorneys' responsibilities to act as officers of the court.

More specifically, Judge Schwarzer championed the 1983 revision to Rule 11 which required that lawyers conduct reasonable prefiling inquiries and mandated that judges impose sanctions for the provision's violation. In an effort to limit the pursuit of frivolous lawsuits, Judge Schwarzer encouraged judges to apply the amended rule rigorously and did so himself. When Judge Schwarzer perceived that the revised Rule 11 was being misused and overused, leading to expensive, unnecessary satellite litigation, he wrote an influential article urging that judges and attorneys exercise greater restraint in relying upon the rule. This writing and his advocacy were partly responsible for the United States Supreme Court's 1993 decision to amend further the 1983 version of Rule 11 by reducing incentives to invoke the provision.

Judge Schwarzer substantially affected the enforcement, and often the amendment, of other important rules of civil procedure. He was a tireless supporter of comparatively stringent use of Rule 56, governing summary judgment motions, as a mechanism for expediting the disposition of cases. Judge Schwarzer's views apparently contributed to the Supreme Court's issuance of the 1986 trilogy of opinions which required that federal judges apply summary judgment more strictly.

Judge Schwarzer concomitantly sought modification of Rule 68, covering offers of judgment, to improve that provision as a mechanism for promoting settlement. Moreover, he was one of the earliest proponents of mandatory pre-discovery disclosure, a highly controversial technique which requires that litigants divulge information important to their cases before commencing formal discovery. The jurist played a significant role in guiding the disclosure procedure through a tortured rule revision process that culminated in the 1993 promulgation of automatic disclosure requirements.

Judge Schwarzer has correspondingly been a prolific author who committed to paper his thoughts on how best to facilitate the resolution of federal court litigation. As mentioned above, the judge's writing on Rule 11, Rule 26, relating to traditional discovery and to

automatic disclosure, Rule 56, and Rule 68 have prompted either revision or serious reconsideration of those specific rules. During his tenure on the Northern District of California and at the Federal Judicial Center, Judge Schwarzer penned numerous additional pieces on diverse topics, ranging from guidelines for sentencing individuals convicted of federal crimes to the coordination of federal and state court litigation aimed at achieving efficiencies.

Judge William Schwarzer has enjoyed a lengthy, distinguished career first on the federal bench and more recently as the Director of the Federal Judicial Center. He has made enormous contributions to the administration of justice, and his efforts at the Center will be sorely missed. However, federal court judges, lawyers, and litigants across the nation will continue to reap the benefits of the improvements in federal practice that Judge Schwarzer has wrought long after he has departed the Center to sit as a Senior Judge by designation on the United States Court of Appeals for the Ninth Circuit.