

VERDICTS & SETTLEMENTS

Doing It Diligently: Discovery Referee Steps Up

By Maya Meinert
Daily Journal Staff Writer

Richard E. Best, a retired San Francisco County Superior Court commissioner who spends his days as a discovery referee, is known for his thoroughness and dedication.

"He's extremely hardworking, including working weekends and evenings well past midnight," said James B. Wright, a business litigator and general counsel for Buchalter Nemer who has known Best for 33 years.

Speaking about a trade-secrets case that settled in October 2006 for \$47 million, Wright described Best's tenacity. *Comerica Bank v. Commercial Capital Bancorp.* CGC-05-443546 (S.F. Super. Ct., filed July 29, 2005).

"He held hearings and attended all depositions either in person or on the phone and resolved disputes on the spot," Wright said. "As to motion practice, he accepted briefings on an expedited basis and entered several rulings a week."

And, in a cost-saving step, "to the extent that either party wanted to drag its feet, he didn't permit that," Wright said.

Though Best, 64, is known for his diligence, his knowledge of discovery matters also makes him stand out.

"I hear problem cases — cases that demand more than their fair share of time — where everything is contested," Best said. "And sometimes lawyers just want somebody on the scene. By just having a third party there, a lot of problems get resolved."

Best is one of 38 discovery referees in the state affiliated with ADR Services, and one of 11 in Northern California.

Someone may choose to use a referee instead of a judge to hear



TOM KURTZ / for the Daily Journal

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discovery proceedings because of high court costs, or one may be appointed because the court's schedule is backed up. But, usually, discovery referees are assigned to a case because it has evidence problems.

In a personal-injury dispute involving a minor who ended up a quadriplegic as a result of the injuries, Best was asked to sort through many documents, deciding which ones were admissible and which ones should be redacted. *Munoz v. Street Scene.*

"He was very helpful to us in resolving our dispute," said Shahab E. Fotouhi, name partner with San Francisco firm Fotouhi Epps Hillger Gilroy who presented his

first-ever discovery motion in front of Best in 1993. "He is a lot more user-friendly now in private practice than he was on the bench.

"It was a tedious project, ... and he did that for us. He probably saved us tens of thousands of dollars between all the lawyers involved. His fees pale in comparison to court costs."

Best said that not all discovery proceedings go smoothly and that some can get out of hand.

"Sometimes, people can be downright insulting to the opposing party," Best said. "The process just breaks down."

For example, Dennis Brown, a business and real estate litigator from San Jose, recounted when

Best was called in to referee discovery proceedings for a case involving a disgruntled Chinese investor in a real estate transaction. *Yuen v. Schaadt*, 102-CV813087 (Santa Clara Super. Ct., filed Dec. 4, 2002).

Brown called it a "hotly contested case with nasty discovery disputes," and Best even had his own interpreter to make sure the attorneys' interpreters were translating the deposed's words correctly.

Brown said the opposing attorney had lengthy objections to even the smallest things, and Best remedied the situation tactfully.

"In his endearing efforts to be totally objective and impartial, he

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Heiresses Settle Defamation Suit Involving Nightclub Brawl

By D. Heimpel
Daily Journal Staff Writer

An heiress fading into her mid-30s. Another heiress, young and on top of the world. A nightclub fight between the two that led to a story in a gossip column that, in turn, led to a defamation suit.

Just before a trial was scheduled to start, attorneys for model, actress and one-time diamond heiress Zeta Graff announced Aug. 22 that they had settled with attorneys for Paris Hilton in the \$10 million suit.

"The parties have jointly announced that they have amicably resolved the dispute," said Hilton attorney Henry Gradstein of Los Angeles's Gradstein & Luskin.

"They are happy they have avoided the time and expense of litigation. The trial date was vacated and the parties will not comment further."

Calls to Graff's attorneys at Santa Monica-based Greene Broillet & Wheeler were not immediately returned.

The claim, filed in Santa Monica on July 15, 2005, was sparked by a salacious story that ran in the gossip column of the New York Post on July 2 of the same year.

The claim stated that the story was not "supported by even a scintilla of truth." It further stated that Hilton was the aggressor during an altercation that took place in Kabaret, a London nightclub. Hilton tapped Graff on the shoulder and said, "You're a fucking bitch. I'm going to destroy you," according to the claim. *Graf v. Hilton*, SC06295 (L.A. Super. Ct., filed July 15, 2005).

The story, written by Page Six

editor Richard Johnson, claimed that Hilton — while in the arms of then fiance and one-time Graff lover Paris Latsis — mocked the then 35-year-old Graff while the lyrics to Barry Manilow's hit "Copacabana" played.

According to the story, Graff ripped a \$4 million necklace from Hilton's neck.

The story was leaked to Page Six by Hilton's publicist at the time, Rob Shuter, who, in his deposition, claims that Hilton told him what to say, down to quotes that were to be attributed to onlookers.

"This woman keeps turning up everywhere they go, almost like a stalker," Shuter said Hilton had told him to say.

Shuter was so concerned that he had Hilton sign a waiver saying that he would not be liable if he was sued, according to a 2006 story in the Post.

"That is a prophylactic move," said Hollywood publicist Michael Levine. "And it is pretty unprecedented."

But suits like this are common, according to entertainment litigator Lincoln Bandlow, of Los Angeles's Spillane Shaeffer Aronoff Bandlow.

He said Tom Cruise, Clint Eastwood and Carol Burnett have all earned litigious reputations in filings against press outlets they accuse of defaming them.

"Usually these suits are about the PR statement you get," Bandlow said.

Bandlow questioned how Graff's attorneys would be able to argue the damage amount in the first place.

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Hilton



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Retired Jurist Makes Name as Discovery Referee

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finally decided none of the objections needed to be translated into Mandarin," Brown said. "[The attorney's objections] confused the witness, tripling the time it would take for a normal deposition. [Best] knew it was wasteful to allow the objections to be translated.

"His presence there made all the change in the world."

Best said he often brings in a video camera to change attorneys' behavior. Sometimes, he just rolls his eyes skyward.

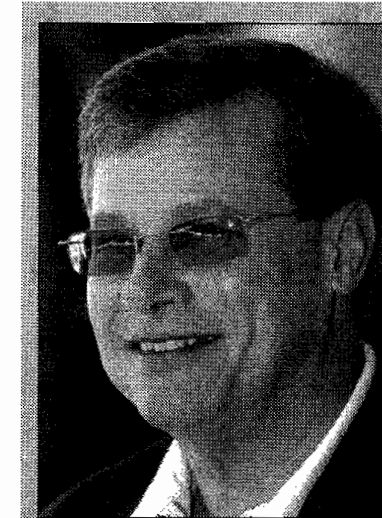
"Most lawyers are pretty good, but we all get out of line sometimes," he said. "They just need a neutral party to say, 'Just calm down; take a break.' It's almost like mediation."

Best said that, even though his specialty is discovery, he often feels like a mediator. He said that attorneys have been asking him more and more for what they have called a "guided meet-and-confer."

"I'm perfectly happy to rule on things, but at least 90 percent of the time, we begin to discuss a problem, and then something gets worked out as we're talking," he said. "I do a lot of things by telephone and e-mail, and I've had cases where I've never even met the people."

But that doesn't mean he's not taking his role as a discovery referee seriously — quite the opposite.

In 1999, Best created a Web site dedicated to discovery issues, <http://californiadiscovery.findlaw.com>.



Richard E. Best

Age: 64

Affiliation: ADR Services

Location: San Francisco

Areas of specialty:
Discovery

Rate: \$325 per hour

The site is a repository for developments in discovery law, including rulings on discovery matters and general information, with an emphasis on e-discovery.

"Most of the attorneys in my office have bookmarked it," Fotouhi said. "I don't know anybody around who knows discovery issues better than [Best]."

Best started the Web site after hearing that Orange County courts were posting tentative rulings online in the late 1990s. But because of the size and complexity of the San Francisco courts, he was told he couldn't do the same for his jurisdiction. He set out to prove them wrong, even taking the time

to learn HTML.

Best updates the site every day. "It gives me intellectual stimulation," he said.

Best grew up in Indianapolis with parents who wanted him to become an engineer, but he wasn't interested. He earned an economics degree in 1965 from Indiana University in Bloomington, Ind.

With the escalation of the Vietnam War, Best "combined politics and law as a matter of course" and earned a law degree from Columbia University School of Law in 1968. He worked at Chadbourne & Parke, then known as Chadbourne, Parke, Whiteside & Wolf, in New York as a corporate and securities lawyer.

"I became a corporate attorney

because I thought it was a big deal to me coming out of law school," he said. "It sounded exciting. But it just wasn't to be."

After a couple more stints in private practice at Chickering & Gregory and Frolik, Filley & Schey in San Francisco, Best saw a newspaper advertisement for county court commissioner and applied for the job. He became a commissioner in 1974 and thought he would do it for only a year or two, but before he knew it, he "was looking at retirement." He left the bench in 2003.

"I have never planned anything in my life because, if I do, it never works out," he said. "I probably became most things by accident, happenstance or for the wrong reasons. But I don't object to my journey."

Working from home and not having to get dressed up for work are the best parts of retirement for Best.

"I'll never be in an office again," he said.

Some of the lawyers who have used Best's services are Matthew S. Conant, Lombardi, Loper & Conant, Oakland; Shahab E. Fotouhi, Fotouhi Epps Hillger Gilroy, San Francisco; James B. Wright, Buchalter Nemer, San Francisco; Charles L. Post, Weintraub Genshlea Chediak, Sacramento; Dennis Brown, Law Offices of Dennis Brown, San Jose; Mark I. Schickman, Freeland Copper & Foreman, San Francisco; Peter G. Bertrand, Buchalter Nemer, San Francisco; David J. Silbert, Kecker & Van Nest, San Francisco; Daniel S. Mount, Mount & Stoelker, San Jose; G. Whitney Leigh, Gonzalez & Leigh, San Francisco.

Test Companies Settle SAT Error Suit

By Karen W. Arenson
New York Times News Service

Two big testing organizations, the College Board and NCS Pearson Inc., have agreed to pay \$2.85 million to settle a class action involving more than 4,000 students whose SAT exams were incorrectly scored in 2005.

Under the proposed settlement, the students would receive \$275 each, or possibly more if they can show they suffered greater damages. The board said last year that for 4,411 students, the reported scores were too low — in a few instances

Amanda M. Hellerman, of Yorktown Heights, N.Y., who said she initially received a score that was more than 300 points below what it should have been, said, "It is great to hear that the College Board is being held accountable." Hellerman, who now attends Amherst College, added, "But what would be more promising to me is they gave some indication of how they were going to ensure that this kind of thing does not happen again."

The College Board disclosed in March 2006, in the midst of the college admission season, that about 1 percent of the nearly 500,000

late to make changes. The board discovered the problems after a couple of students paid to have their tests rescored by hand.

The size of the minimum settlement is not that different from what some students pay for taking the SAT multiple times and for additional services like rushing their score reports, sending them to additional colleges, changing their testing centers or verifying that an exam had been scored correctly. Sitting for the basic SAT test costs \$43. The charge for having the results of the test double-checked is \$50.

Robert A. Schaeffer, public edu-

Heiresses Agree to Settlement

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