Louisiana Law Review

Volume 36 | Number 1
The Federal Rules of Evidence: Symposium
Fall 1975

Introduction

Robert Van Pelt

INTRODUCTION

*Honorable Robert Van Pelt**

In responding to the invitation for comments on the drafting and enactment of the new Federal Rules of Evidence, I would emphasize at the outset that the views herein expressed are those of only one member of the Committee. I am not speaking for the Committee or for any other member.

As I see it, the charter for the Advisory Committee on Federal Rules of Evidence was derived from three sources:

a) The letter of the Chief Justice of the United States notifying each member of his selection;[1]

b) The press release of March 8, 1965, in which the Chief Justice announced the names of the Advisory Committee; and

c) The 1962 report of the Special Committee of the United States Judicial Conference on the advisability and feasibility of developing uniform rules of evidence for the United States District Courts,[2] a copy of which was enclosed to each member with the letter mentioned under (a).

In this letter of appointment, the then Chief Justice referred to the duty of the Judicial Conference to recommend to the Supreme Court changes and additions to the rules of practice and procedure "to promote simplicity in procedure, fairness in administration, the just determination of litigation and the elimination of unjustifiable expense and delay."[3] He also mentioned the conclusion of the Special Committee that it was "feasible and desirable to formulate uniform rules of evidence." He further stated:

> I regard the task assigned to the Advisory Committee on Rules of Evidence as of the greatest importance in improving the administration of justice in the federal district courts. Moreover, its work may well serve as a model for the states to follow.[4]

In the press release above mentioned, the Chief Justice stated that there was a need for rules which would regulate

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1. Letter from Honorable Earl Warren to Robert Van Pelt, Dec. 22, 1964.
2. REPORT OF THE SPECIAL COMMITTEE OF THE UNITED STATES JUDICIAL CONFERENCE (1962).
3. Letter from Honorable Earl Warren to Robert Van Pelt, Dec. 22, 1964.
4. *Id.*

both the admissibility of evidence and the competency of witnesses. Further, he said, "The need for simplicity, clarity, and uniformity of application of rules of evidence in the trial of civil and criminal cases in the United States courts has long been recognized."

The 1962 report of the Special Committee set forth four purposes of the Federal Rules of Civil Procedure. Briefly stated, they were:

(1) To meet the need to modernize federal procedure.
(2) To make federal procedure more flexible and to place its control in the hands of persons better qualified than Congress to deal with it.
(3) To replace conformity to state procedure with uniformity throughout the nation.
(4) To furnish a simple, modern, efficient system which would serve as a model for the state courts.[5]

The report made it clear that the four purposes had equal application to Federal Rules of Evidence.[6]

We should therefore measure the draft of the Federal Rules of Evidence as proposed by the Committee and as approved by the Supreme Court and the draft enacted by the Congress by these standards and objectives. Construed broadly, the rules do regulate the admissibility of evidence and the competency of witnesses. They have already been the model in several states for evidence codes[7] and are being considered and cited by courts and discussed by bar associations in many others.

Generally speaking, the Committee and the Congress succeeded in a majority of the objectives. It is in the field of uniformity and conformity that they failed, chiefly because of the changes which the Congress made in the Advisory Committee draft which the Supreme Court had approved.

This failure to accomplish uniformity raises basic questions which the Republic has not solved in two hundred years, and on which there will continue to be disagreement as long as we have a democracy. It is easy to state that each of the three separate branches of our government has a field that should not be invaded by the others. But we must recognize

5. REPORT OF THE SPECIAL COMMITTEE OF THE UNITED STATES JUDICIAL CONFERENCE (1962).

6. *Id.*

7. *See, e.g.*, NEV. R.S. ch. 402, §§ 1-17, 27-37, 70-85, 96-168 (1971); N.M. Stat. Ann. § 20-4-101 (1973); NEB. R.S. (Supp. 1975) Chapter 27.

that many of the tensions and political upheavals of the past have arisen because of such attempted invasions.

Readers may disagree with the second objective set forth in the Special Committee reports. The Committee suggested the placement of control of federal procedure in the hands of persons better qualified than Congress. Readers probably will not have a unanimous opinion on whether a "committee," if you want to look upon it as such, of 100 Senators and 435 members of the House of Representatives, the vast majority of whom have had no legal training, is better fitted to draft a code of evidence for use in the United States courts than the Supreme Court of the United States assisted by a small committee of 15, most of whom are or have been active trial lawyers.

The result, whether the reader agrees with the desirability of the Congress acting in such a field or not, was and is that in the field of privilege and in the field of competency of witnesses we have, not one uniform code but, conceivably, 51 different codes. To the extent that uniformity was one of the purposes of the project assigned to the Advisory Committee, the congressionally enacted draft did not bring it about. All, however, was not lost by the congressional enactment. A compilation was needed that could be quickly and accurately used. A compilation was needed that would be capable of being perfectly mastered and used by every-day judges and practitioners. These objectives I believe have been accomplished. Decades of litigation had proven the need for clarification of some of the rules of evidence, for simplification and abbreviation and for modernization. By and large these objectives have also been accomplished.

There is another aspect of the new rules on which the Congress, the Supreme Court and the Advisory Committee were unanimous, namely, the purpose and construction of the rules, stated in this language:

> These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.[8]

Rules of evidence in themselves are unimportant. Their im-

8. FED. R. EVID. 102.

portance lies in their being a usable tool by which justice can be more uniformly secured in court cases tried by means of our adversary system.

It still remains for the bench and bar to so master and implement the new rules in the United States courts that civil wrongs of which the federal courts have jurisdiction are righted, that constitutional and statutory rights and obligations are protected and enforced, that in criminal trials no innocent person is convicted and no guilty person goes free.

Having said this, I hasten to add that we must not forget that a court as we know it is not a purely scientific body and that justice, dispensed by a judge or a jury, can only be approximate. Following the example of the Advisory Committee, we can, however, try for improvement.