

COVER STORY

Dean of Appellate Lawyers Notes Caseload Increase

By Hudson Sangree

When Ellis Horvitz began his clerkship with the state Supreme Court in 1951, the court's seven justices considered 15 petitions for review each week.

"I don't think they had an A list and a B list in those days, because the whole list was so short, the justices could discuss each case," Horvitz says.

Now each week, the same number of justices, aided by the high court's staff attorneys, consider 150 petitions, a tenfold increase.

"What I've witnessed over a 50-year period is just a tremendous increase in the volume of cases in California's appellate courts," says the veteran attorney.

Horvitz, who turns 77 later this month, is regarded by many as the dean of the state's appellate lawyers.

His firm, Horvitz & Levy of Encino, was the first appellate boutique in the state. Over the decades, it has grown into a 30-lawyer appellate powerhouse with a roster of big-business clients and a long record of multimillion-dollar wins.

Horvitz says the exploding caseload is the most important change he's seen in the appellate courts since the 1950s.

"The mere difference in numbers speaks volumes," he says. "There are the same number of justices, but the staffs have expanded enormously to handle the caseload.

"There's necessarily more reliance on staff than there used to be," Horvitz says. "There's no way even the most conscientious justice can give as much attention to 160 opinions a year as he could give to 40 opinions a year."

Horvitz cites another example of the increase in appellate cases: In 1956, when he began practicing in Los Angeles, the 2nd District Court of Appeal had three divisions, with three justices in each division.



Photo by Hugh Williams

"What I've witnessed over a 50-year period is just a tremendous increase in the volume of cases in California's appellate courts," appellate attorney Ellis Horvitz says. "The California system dwarfs every other state. Our courts have not taken shortcuts.

Each justice had an output of 40 opinions per year, he says.

Now there are eight divisions, with 32 justices, and each justice accounts for 150-to-175 opinions per year, he says.

Yet even with the tremendous growth in cases, Horvitz says, the standards of the state's courts remain the highest in the country.

"Overall, the quality of opinions we get compared to what happens in other jurisdictions is very high," he says. "It's easy to be critical of the courts, but I think the California standard is much higher than most other courts apply."

Other busy jurisdictions deal with their caseloads by publishing cursory postcard opinions, Horvitz says.

"Many courts, including at least two of

the federal circuits, do postcard opinions," he says. "The New York intermediate appeal courts print out tiny opinions, four to a page. Those are just worthless as far as precedent or even telling the parties the court's rationale."

In California, Horvitz notes, "We get many 30-, 40- and 50-page opinions."

"The California system dwarfs every other state," he says. "But our courts have not taken the shortcuts some other states have done."

That's not to say the California situation is beyond improvement, he says.

The courts are underfunded, according to Horvitz.

And the increased caseload has had its drawbacks, including errors and a decline in the quality of writing, he says.

“Do the appeal courts make more mistakes than they used to? I think the answer is yes,” Horvitz says. “We see statements of law and even statements of fact that are just plain wrong, 180 degrees wrong.”

Though the courts’ staff attorneys are competent career professionals, they are understandably overwhelmed, he says.

“It’s the sheer volume of cases they have to do; 160 opinions is about four a week,” Horvitz says. “That’s not too far from one a day. If you’re processing cases that rapidly, it’s inevitable you’re going to make mistakes.”

Another change he notes is what he believes is a decline in the quality of writing among the justices.

Today’s state Supreme Court is “very competent, reasonable, able,” Horvitz says.

But there are no towering figures like former Chief Justice Roger Traynor, he says. Nor does the court turn out the kind of landmark opinions Traynor and others produced.

“Opinions by Traynor or [Justice Mathew] Tobriner could be described as great literature,” Horvitz says. “Overall, we see fewer examples of great writing. I can’t say the justices are less able. They just don’t have the time to do it. It’s the kind of indulgence that the caseload doesn’t permit.”

But maybe age has something to do with it, he says.

“When I look at the justices I appeared before 45 years ago or when I clerked at the Supreme Court, I was a youngster in my 20s and early 30s,” Horvitz says. “I was looking at the work of elderly justices in their 50s or 60s. I’m older than any of them

now. You necessarily get a different perspective with age.”

Also, towering figures like Traynor rarely come along, he says.

“If another Roger Traynor was sitting on the court today, I might not recognize him,” Horvitz says. “Traynor is considered to be one of the two most influential state-court justices of the 20th century. The other was Cardozo. We’re lucky if one like Traynor comes along once in a century. That’s a hard test.”

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Horvitz graduated from Stanford Law School in 1951 and began his career clerking for state Supreme Court Chief Justice Phil Gibson.

He says Gibson was a demanding teacher who taught him the art of appeals.

“It’s really because of him I’m an appellate lawyer,” Horvitz says. “I had no intention of going into appellate law.”

After his 18-month stint with Gibson, Horvitz went to work for the U.S. Atomic Energy Commission.

“After 2½ years, I was just climbing the walls with boredom,” he says. “If you were a nuclear physicist, it was interesting.

“If you were a lawyer, it wasn’t.”

In the early 1960s, Horvitz moved to Los Angeles, where he “had no clients and didn’t know anybody” but knew he

wanted to work for himself.

He started doing work for other lawyers, including appeals.

“I had a very good success record, and then they just started pouring in,” Horvitz says.

He attributes his success to Gibson’s teaching.

“Chief Justice Gibson had been a wonderful teacher,” Horvitz says. “When I started doing appeals, I understood the process and had a sense of comfort.

“He was a demanding teacher, but he was determined we should learn everything he could teach us right from the beginning.”

Horvitz, too, has been a teacher to many young lawyers.

He spent 23 years teaching appellate advocacy at the University of Southern California Law School and imported many of his classroom techniques to his firm.

“It’s stood us in good stead,” Horvitz says. “We have a very disciplined procedure. We stick to it.”

He says he enjoys helping younger lawyers prepare their cases.

“I don’t argue too many cases anymore,” Horvitz says. “I love it when I’m there but find the preparation very tiring.

“I enjoy the teaching part.”