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The District of Rhode Island: A Safe Harbor for Justice

Casey M. Charkowick*

INTRODUCTION

Recent surges in local commercial maritime activity suggest that industry leaders have taken notice of the economic value that Rhode Island's extensive marine resources provide.¹ For instance, the Port of Providence is expected to increase production, jobs, and revenue after recently receiving a \$10.5 million federal TIGER grant.² The Port of Davisville, which recently celebrated the addition of its 10,000th employee, has attracted the attention of companies like Honda and Porsche who recently moved import

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1. See MARTIN ASSOCIATES, RHODE ISLAND'S PORTS: OPPORTUNITIES FOR GROWTH 83 (2011), available at <http://www.rilin.state.ri.us/Reports/RI%20Ports-Opports%20fr%20Grwth%20050311%20Report.pdf> (listing industry leaders currently using the Port of Davisville at Quonset).

2. See MAYOR ANGEL TAVERAS, PUTTING PROVIDENCE BACK TO WORK 11–12 (2013), <http://www.providenceri.com/efile/4353>; see also *\$10.5 Million TIGER Grant Will Modernize Port of Providence and Boost Job Creation*, PROVPORT (Oct. 15, 2010), <http://www.provport.com/10152010release.html>.

operations there.³ Using Quonset Business Park as a staging area, Deep Water Wind is set to begin construction of a multi-turbine wind farm off the coast of Block Island in the summer of 2015.⁴ And finally, General Dynamics Corporation, which owns and operates Electric Boat in Quonset, recently received two maintenance contracts totaling \$545 million from the U.S. Navy to oversee the support of its active nuclear submarine fleet, in addition to a \$17.6 billion contract for the construction of ten new Virginia-class, nuclear submarines over the next five years.⁵ Whether this activity is illustrative of the success of some of the State's recent efforts to build on its momentum,⁶ or if it is attributable, rather, to some other source, is beyond the scope of this Comment. Within the scope of this Comment, however, is the reality that with increased business comes increased litigation.⁷

The United States Constitution provides the federal judiciary with jurisdiction over "all cases of admiralty and maritime jurisdiction,"⁸ and section 1333 of Title 28 of the United States Code provides the federal district courts with original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction."⁹ As such, the increased litigation that is likely to arise from this surge in maritime activity will end up on the docket of the United States

3. See Susan Campbell & Angie Angers, *Quonset Business Park celebrates growth, 10,000th employee*, WPRI (Dec. 8, 2014), <http://wpri.com/2014/12/08/quonset-business-park-celebrates-growth-and-10000th-employee/>; *Honda to begin shipping new autos to Port of Davisville in 2014*, RI.GOV (Apr. 19, 2013), <http://www.ri.gov/press/view/19170>; *Porsche Cars North America Will Use Davisville as Port of Entry*, PORSCHE (Sept. 14, 2010), <http://press.porsche.com/news/release.php?id=561>.

4. See *The Bottom Line: Why Quonset's Growing, Adding New Jobs*, R.I. PUB. RADIO (Jan. 16, 2015), <http://ripr.org/post/bottom-line-why-quonset-s-growing-adding-new-jobs>.

5. See *General Dynamics to Render Nuclear Submarine Support*, ZACKS (Sept. 29, 2014), <http://www.zacks.com/stock/news/148781/general-dynamics-to-render-nuclear-submarine-support>; *General Dynamics to Build Navy Subs for \$17.6B*, ZACKS (Apr. 29, 2014), <http://www.zacks.com/stock/news/131612/general-dynamics-to-build-navy-subs-for-176b>.

6. See e.g. *Reed & U.S. Transportation Secretary Foxx Tour RI Port Facilities*, U.S. SENATE (Sept. 8, 2014), <http://www.reed.senate.gov/news/releases/reed-and-us-transportation-secretary-foxx-tour-ri-port-facilities>.

7. See Ross Appel, *Worry Wort: A Path to Acquiring Trademark Rights in the Craft Brewing Industry*, 24 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1029, 1031 (2014).

8. U.S. CONST. art. III, § 2.

9. 28 U.S.C. § 1333(1) (2012).

District Court for the District of Rhode Island. Admiralty litigation contains procedural nuances that distinguish it from other areas of federal litigation, which is why the Federal Rules of Civil Procedure (“FRCP”) contain the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules”).¹⁰ Promulgated in 1966, these unique rules were intended to preserve “certain distinctively maritime remedies” and bring the relevant provisions of the former Rules of Practice for Admiralty and Maritime Cases into the general federal rules.¹¹ The Supplemental Rules, however, are incomplete and require augmentation either through ad hoc judicial interpretation or a well-crafted uniform set of local rules.¹² While some argue that the former is the appropriate choice,¹³ the District Court for the District of Rhode Island chose the latter by recently promulgating a set of Local Admiralty Rules (“LAR”) that uniformly fill in the gaps of the federal Supplemental Rules.¹⁴

While it is true that form must give way to substance and judges should be encouraged to decide cases on their merits, it must also be recognized that *procedure matters*. Procedure can provide a systemic framework that brings the merits to the surface quicker and at less expense.¹⁵ It can build confidence in a forum, open court access, and make our courts more efficient. Through the lens of local rulemaking in the admiralty context, this Comment will reveal the greater impact that procedure can have on a district. Now that the federal judiciary in Rhode Island is better equipped to efficiently resolve admiralty disputes that

10. See FED. R. CIV. P. SUPP. A advisory committee’s note.

11. *Id.*

12. See FED. R. CIV. P. SUPP. advisory committee’s note (1985 Amendment). Admiralty rules in general govern special procedures such as arrest and attachment that are unique to admiralty law. See *id.* Local admiralty rules, like all local rules, are modified to address specific nuances within the district. See *id.*

13. See, e.g., Note, *Rule 83 and the Local Federal Rules*, 67 COLUM. L. REV. 1251, 1255 (1967).

14. See generally Julie McMahon, *Lawyer: New Maritime Rules May Mean More Work for Bar*, R.I. LAWYERS WEEKLY, Feb. 4, 2013, at 1.

15. See David M. Roberts, *The Myth of Uniformity in Federal Civil Procedure: Federal Civil Rule 83 and District Court Local Rulemaking Powers*, 8 U. PUGET SOUND L. REV. 537, 540 (1985) (noting that local rulemaking may achieve efficiencies by allowing for mechanical application, rather than requiring a judge to “re-invent the wheel” with each procedural decision (internal quotation marks omitted)).

arise off our shores, the question becomes: so what?

This Comment will answer that question through a thorough analysis and discussion of rulemaking, its purpose, and its numerous benefits. It will reveal the inadequacy of the federal Supplemental Rules and demonstrate that busy federal judges must be able to invoke their rulemaking authority as an appropriate mechanism to efficiently manage their dockets, address local conditions, and satisfy “pressing needs.” Through an examination of the District of Rhode Island’s use of local rules to ensure the uniform resolution of admiralty disputes, this Comment will show how the efficiency of the federal court here has been improved through the promulgation of new rules.¹⁶ While some argue that the court’s rulemaking authority is merely an unintended consequence of procedural reform,¹⁷ this Comment suggests that such an argument, and others like it, is misplaced. Through a discussion of local rulemaking, this Comment will reveal that rules like those promulgated in the District of Rhode Island are precisely the kind the drafters of the FRCP sought to encourage by providing district court judges with the authority to create local rules.

This Comment will analyze the history and purpose of the local rule-making process under the FRCP and discuss why local rules are generally an effective way for courts to address local needs and improve overall performance. It will then discuss how procedural rules have improved patent litigation and highlight how those benefits can be translated into the context of admiralty procedure here in Rhode Island. Then, through an examination of certain aspects of admiralty disputes this Comment will unveil the complexities of admiralty procedure and highlight gaps in the Supplemental Rules that are contained in the FRCP.¹⁸ In closing, this Comment will explain that by effectively filling those gaps, the local admiralty rules in Rhode Island have made its federal

16. See McMahon, *supra* note 14, at 1 (explaining that the local admiralty rules provide guidance for judges that may rarely be called upon to decide admiralty disputes).

17. See, e.g., Carl Tobias, *More Modern Civil Process*, 56 U. PITT. L. REV. 801, 810, 818 (1995).

18. Supplemental Rules A through G, contained within the FRCP, are federal rules that address admiralty and maritime procedure. See FED. R. CIV. P. SUPP. A–G.

court more accommodating to maritime business leaders.

I. THE HISTORY AND PURPOSE OF LOCAL RULEMAKING

In 1934, Congress passed the Rules Enabling Act, which provided the Supreme Court with the authority to create and enforce rules of procedure for the federal courts.¹⁹ Subsequently, the Supreme Court established the first advisory committee, to whom it charged with the responsibility of drafting a uniform set of procedures to be implemented in all of the district courts.²⁰ The drafters set out to develop a system of procedure that would eliminate the complex and unpredictable procedural regime created by the 1872 Conformity Act.²¹ The Rules Enabling Act was thus intended to create a uniform federal judiciary to ensure “the just, speedy, and inexpensive determination” of civil disputes.²² While the drafters’ intention was to replace the confusion and complexity created by the Conformity Act with a uniform set of procedural rules, the drafters also recognized that they could not address every conceivable condition that might arise in the districts and that, inevitably, gaps in the federal rules would need filling.²³ Thus, the drafters included Rule 83 so that district judges could create local rules to serve as a body of law to not only fill the gaps, but also address local conditions.²⁴ Rule 83(a)(1) provides:

- (1) In General. After giving public notice and an opportunity for comment, a district court, acting by a

19. Rules Enabling Act, Pub. L. No. 73-415, 48 Stat. 1064 (codified as amended at 28 U.S.C. § 2072 (2012)).

20. See Tobias, *supra* note 17, at 805.

21. See *id.* at 806. The Conformity Act required federal district judges to employ procedures that essentially mirrored the rules of procedure employed by the state courts in which the federal courts sat. See *id.* at 808.

22. FED. R. CIV. P. 1; see also Tobias, *supra* note 17, at 806 (“The drafters meant to write a national procedure code that was simple, uniform and trans-substantive while encouraging cases’ prompt, inexpensive resolution and their disposition on the merits.”).

23. See Stephen N. Subrin, *Federal Rules, Local Rules, and State Rules: Uniformity, Divergence, and Emerging Procedural Patterns*, 137 U. PA. L. REV. 1999, 2013 (1989); Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909, 984 (1987).

24. See 12 CHARLES A. WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, *FEDERAL PRACTICE AND PROCEDURE* § 3151 (3d ed. 2014).

majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.²⁵

The promulgation of the Federal Rules created a national procedural regime to promote and encourage uniformity and consistency among the federal judiciary;²⁶ however, with the inclusion of Rule 83, the drafters also provided district courts with the flexibility needed to accommodate the local needs of the districts.²⁷ Local rules thus synchronize the needs of the districts with the national procedural regime. Some courts appropriately invoked this authority through the promulgation of local rules.²⁸ Often these local rules dealt with matters such as bar admittance, regulation of attorney conduct, or other administrative matters that the FRCP simply do not address.²⁹ Other courts promulgated rules that addressed local conditions or clarified ambiguity in the FRCP.³⁰ For example, the District of Rhode Island's local rule concerning motions to amend illustrates how a local rule can provide transparency by seamlessly picking up where a federal

25. FED. R. CIV. P. 83(a)(1).

26. See Tobias, *supra* note 17, at 808.

27. See *id.* at 810 (“Rule 83 . . . was meant to afford flexibility in addressing peculiar, difficult local conditions.”).

28. See *id.*

29. See Steven Flanders, *Local Rules in Federal District Courts: Usurpation, Legislation, or Information?*, 14 LOY. L.A. L. REV. 213, 218–19 (1981).

30. See McMahon, *supra* note 14, at 1 (discussing Rhode Island's Local Rules as filling in gaps of federal admiralty rules and also differing from the model rules issued by the Maritime Law Association because “there [are] certain things that just never happen[] around here”).

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rule leaves off.³¹ This rule augments Rule 15 of the FRCP, which requires a party seeking to amend his pleadings to first obtain the court's leave. However, the federal rule does not provide what the court requires before leave will be granted. The local rule, therefore, provides clear instructions for an attorney to follow, which helps to streamline litigation:

Any motion to amend a pleading shall be made promptly after the party seeking to amend first learns the facts that form the basis for the proposed amendment. A motion to amend a pleading shall be accompanied by:

- (a) the proposed amended pleading; and
- (b) a supporting memorandum that explains how the amended pleading differs from the original and why the amendment is necessary.³²

A local rule such as this clears up confusion, minimizes judicial interpretation, and improves efficiency. The federal rules provide an adequate framework; however, district court judges need more specificity to effectively manage their day-to-day tasks.³³ The federal rules alone are simply insufficient to provide judges and litigants with clear and predictable guidance.³⁴ Local rules are an effective way for courts to uniformly manage ambiguities among the federal rules, which in turn limits judicial interpretation on mundane procedural issues, promotes consistency, and improves the quality of litigation before the court.

A. *The Evolution of the Local Rulemaking Debate: National Uniformity v. Local Flexibility*

Soon after the FRCP took effect, local rules were subjected to

31. Compare FED. R. CIV. P. 15 (providing the circumstances under which a party may file a motion to amend), with D.R.I. R. Cv 15 (listing the documentation that must be filed along with a motion to amend and requiring that a motion to amend be made "promptly after the party seeking to amend first learns the facts that form the basis for the proposed amendment").

32. D.R.I. R. Cv 15.

33. See Daniel R. Coquillette et al., *The Role of Local Rules*, A.B.A. J., Jan. 1989, at 62, 65.

34. See *id.*

harsh scrutiny.³⁵ Some in favor of the new national regime were staunchly opposed to local rulemaking, while others felt that local flexibility could coexist with the new system and that it was, in fact, necessary.³⁶ As a result of the rising tension between those in favor of local rules and those opposed, a subcommittee of district judges conducted a study in 1940 of the local rules in the districts promulgated under Rule 83.³⁷ The subcommittee found that many local rules that predated the federal rules were still in effect, and many of the new local rules were “out of harmony” with the new rules.³⁸ As a result of its finding, the subcommittee issued a report in which it concluded: “no additional local rules [should] be promulgated except when experience has shown that a pressing need for them exists.”³⁹ Left there, the report’s findings would have been clear that local rules are discouraged. However, the report went on to recognize the need for local rules in certain circumstances and discussed the value of local rules as a valuable source for innovative, new national rules.⁴⁰ The subcommittee’s report, therefore, appealed to both sides of the argument and provided no concrete standard by which to measure the existing rules. Thus, the report illustrated the then-existing dichotomy and allowed the war to wage on. Local rules, therefore, persisted; yet they remained the target of harsh criticism.

According to Columbia University School of Law Professor Maurice Rosenberg, “[t]he Federal courts of this country are becoming a kind of procedural Tower of Babel because of the differences in local rules.”⁴¹ Rosenberg and others argued that this would ultimately result in confusion, complexity, and uncertainty in the federal court system.⁴² We have yet to see

35. See WRIGHT, MILLER & MARCUS, *supra* note 24, § 3152 (citing several comments, see, for example, Subrin, *supra* note 23; Note, *supra* note 13).

36. See *id.*

37. See *id.*

38. *Id.*

39. *Id.* (internal quotation marks omitted).

40. See WRIGHT, MILLER & MARCUS, *supra* note 24, § 3152.

41. Note, *supra* note 13, at 1259 (quoting *Administration of Justice in the Federal Court System: Hearing on S. 915 and H.R. 6111 Before the Subcomm. on Improvements in Judicial Machinery of the House Comm. on the Judiciary*, 90th Cong. 276, 282 (1967) (testimony of Prof. Maurice Rosenberg)) (internal quotation marks omitted).

42. See Roberts, *supra* note 15, at 540; Note, *supra* note 13, at 1258.

these concerns materialize. Even though Professor Rosenberg's concerns have yet to come to fruition, recent critics still maintain that the adoption of local rules undermines the goal of the federal rules—uniformity—by adding diversity, as local rules often “repeat or restate federal rules, cover pre-empted ground, or provide[] rigid procedural detail in areas deliberately unregulated.”⁴³ While some rules may fall into this category, the benefits that local rules bring to federal litigation are far greater than the frivolous concerns brought up by recent critics.

B. *The Civil Justice Reform Act: Too Many Cooks in the Kitchen?*

Prompted by concerns of increasing delay and expense among federal civil litigation, Senator Joseph Biden created a task force to evaluate federal case management and make suggestions for improvements.⁴⁴ The task force concluded that increased cost and delay was hindering access to the federal courts and recommended that the federal courts employ judicial case management tactics to rectify this problem.⁴⁵ Relying in large part on the task force's findings, Senator Biden drafted a bill, which was ultimately put before the Senate.⁴⁶ The Civil Justice Reform Act (“CJRA”) was passed in 1990 despite opposition from the Department of Justice, the American Bar Association, and the Judicial Conference of the United States.⁴⁷

As a revolutionary attempt to reform federal procedure, the CJRA encouraged judicial case management as a means of reducing the delay and expense associated with civil litigation.⁴⁸

43. Roberts, *supra* note 15, at 540; see also Walter W. Heiser, *A Critical Review of the Local Rules of the United States District Court for the Southern District of California*, 33 *SAN DIEGO L. REV.* 555, 559, 575 (1996).

44. See Carl Tobias, *Civil Justice Reform Sunset*, 1998 *U. ILL. L. REV.* 547, 561 (1998).

45. See *id.* at 562.

46. The “Biden Bill,” as it became known was enacted as Title I of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990). The Civil Justice Reform Act, is currently codified at 28 USC §§ 471–482 (2012). See generally Jeffrey J. Peck, “Users United”: *The Civil Justice Reform Act of 1990*, 54 *LAW & CONTEMP. PROBS.* 105 (1991).

47. Civil Justice Reform Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (codified as amended at 28 U.S.C. §§ 471–482 (2012)). See also CHARLES A. WRIGHT & MARY K. KANE, *LAW OF FEDERAL COURTS* § 63A (6th ed. 2002).

48. See Linda S. Mullenix, *The Counter-Reformation in Procedural Justice*, 77 *MINN. L. REV.* 375, 376 (1992); Stephen C. Yeazell, *The*

The CJRA required each district to create an advisory rulemaking group to improve case management and form a plan to reduce litigation expenses and delays.⁴⁹ The “bottom up” approach taken by the Act resulted in local rulemaking by local civilian lawyers, rather than by district judges.⁵⁰ According to critics of the Act, this further added to the already existing local rulemaking “epidemic.”⁵¹ The CJRA, however, exemplifies the effectiveness of local rulemaking as a case management tool. For instance, the CJRA led districts to employ the assistance and advice from a variety of participants to civil litigation, which provided those with an interest an opportunity to voice their concerns and offer suggestions.⁵² Many of these groups developed “creative cost and delay reduction measures that were responsive to all interests that are involved in federal lawsuits.”⁵³ In addition, the CJRA spawned an increase in regional uniformity as a result of the adoption of identical procedures among neighboring states that encompassed numerous districts.⁵⁴ Most notably however, the CJRA led to the federal judiciary’s public commitment to judicial case management, which it expressed in its final report to Congress on the CJRA: “The federal judiciary is committed to, and believes in, sound case management to reduce unnecessary cost and delay in civil litigation.”⁵⁵ Congressional endorsement of judicial case management through the passage of the CJRA has helped to further the goal of the judicial system, which is “to secure the just, speedy, and inexpensive determination of every

Misunderstood Consequences of Modern Civil Process, 1994 WIS. L. REV. 631, 672 (1994).

49. See Linda S. Mullenix, *Unconstitutional Rulemaking: The Civil Justice Reform Act and Separation of Powers*, 77 MINN. L. REV. 1283, 1285 (1993).

50. See Mullenix, *supra* note 48, at 379.

51. *Id.* at 380 (arguing that the Act further exacerbates the “balkanization” that began with the proliferation of local rules under Rule 83).

52. See Tobias, *supra* note 44, at 591.

53. *Id.*

54. See *id.*

55. Steven S. Gensler, *Judicial Case Management: Caught in the Crossfire*, 60 DUKE L.J. 669, 680 (2010) (alteration in original) (quoting JUDICIAL CONFERENCE OF THE U.S., THE CIVIL JUSTICE REFORM ACT OF 1990: FINAL REPORT 10 (1997)) (internal quotation marks omitted).

action.”⁵⁶

Nevertheless, critics of Congress’s efforts to improve the federal judiciary maintained that the use of local rules promulgated under the CJRA “spawned . . . variations in practice,” thereby diminishing uniformity amongst the federal courts—a fundamental goal of the FRCP.⁵⁷ However, this argument is flawed in two important ways. First, while the CJRA did call for local rulemaking, local rules persisted long before the Act was passed. Second, local rules provide judges with effective case-management mechanisms, which have led to consistent practice and efficient judicial administration within districts.⁵⁸ The procedural management at the local level, according to critics, “ha[s] apparently undermined the federal rules’ core precepts, such as uniformity, simplicity, and economical, expeditious dispute resolution, and ha[s] eroded important process values, namely court access.”⁵⁹ These arguments, however, are merely impulsive reactions to unpopular legislation by those who felt the CJRA “infringed on Article III prerogatives of federal judges.”⁶⁰ These critics, however, fail to examine the effects of the CJRA and recognize the benefits of effective judicial case management that remain in its wake.⁶¹ The CJRA, through the promulgation of local rules, has made courts more transparent and removed the tactical advantage that the absence of such rules can provide to local practitioners, thus helping to *improve* court access.⁶² Critics

56. FED. R. CIV. P. 1.

57. Edward D. Cavanagh, *The Civil Justice Reform Act of 1990 and the 1993 Amendments to the Federal Rules of Civil Procedure: Can Systemic Ills Afflicting the Federal Courts Be Remedied By Local Rules?*, 67 ST. JOHN’S L. REV. 721, 728 (1993).

58. See, e.g., Sherman L. Cohn, *Federal Discovery: A Survey of Local Rules and Practices in View of Proposed Changes to the Federal Rules*, 63 MINN. L. REV. 253, 264–67 (1979) (discussing how local rules are used to streamline discovery); Samuel P. Jordan, *Local Rules and the Limits of Trans-Territorial Procedure*, 52 WM. & MARY L. REV. 415, 421 (2010); see also generally Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374 (1982) (discussing how judges use local rules to manage cases).

59. Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 NOTRE DAME L. REV. 533, 533 (2002).

60. Judith Resnik, *Changing Practices, Changing Rules: Judicial and Congressional Rulemaking on Civil Juries, Civil Justice, and Civil Judging*, 49 ALA. L. REV. 133, 156 (1997).

61. See, e.g., *id.*

62. See Brooke D. Coleman, *Recovering Access: Rethinking The Structure*

have credited the CJRA, not with improving civil litigation like it set out to do, but rather with leaving in its wake, “a reigning reality of procedural complexity.”⁶³ According to Professor Linda S. Mullenix of the University of Texas School of Law, “the practitioner’s life will now be further complicated by the overlay of new rules” promulgated as a result of the CJRA, and this new “reality” created by the CJRA has severely affected lawyers’ lives.⁶⁴ The CJRA has created, “for the average lawyer and potential federal litigant, . . . a pointed real-life dilemma,”⁶⁵ in which attorneys are unable to work. The crux of this argument, therefore, is that lawyers cannot cope with the addition of new rules. Notably, the elusive rules that are claimed to have led to such uncertainty are a mere Google search away. The remainder of this Comment will demonstrate the misplaced nature of these arguments and unveil the varying benefits of local rules.

C. *The Benefits of Local Rulemaking*

Local rules replace discretionary judicial functions with standardized processes that may help to streamline cases and lead to more rapid dispute resolution.⁶⁶ This removes some of the uncertainty inherent in judicial discretion and provides a fair forum to foreign counsel. By adding predictability and fairness to the forum, local rules provide a more accessible court to disadvantaged litigants and promote the equal administration of justice. Through the promulgation and publication of local rules, potential litigants are provided with confidence and assurance that a particular forum is likely to apply a uniform procedural regime to all of the cases pending on its docket. While the federal rules adequately address many aspects of trial, they do not address many of the other issues that courts must address daily, like routine administrative matters such as the regulation of attorney behavior and the acceptable format for documents. Local rules clearly define and publish court procedures, thus allowing judges to spend less time on administrative matters and more

of *Federal Civil Rulemaking*, 39 N.M. L. REV. 261, 264 (2009) (discussing how procedural rules increase court access).

63. Mullenix, *supra* note 48, at 380.

64. *Id.* at 381.

65. *Id.*

66. See Roberts, *supra* note 15, at 550.

time focused on traditional judicial functions.

D. *Local Rules Provide Legal Stability*

Without local rulemaking authority, judges would have no effective way of accommodating local conditions within their districts, or of publicly declaring the court's expectation for attorneys. They would have to fill gaps in the federal rules individually—on an ad hoc basis—resulting in intra-court procedural diversity and inconsistent outcomes.⁶⁷ Local rules, by providing a uniform and fair forum, create stability within the district. They cut down on judicial interpretation and enable lawyers to easily predict the outcome of a procedural issue.⁶⁸ Similarly, local rules provide clear expectations to attorneys, which they can use to accurately inform clients prior to trial.⁶⁹ Opponents of local rulemaking, however, overlook these critical facts. Instead, they choose to focus on the nuts and bolts of *particular* local rules that they claim to be “in conflict with the policy of simplicity which underlies the federal rules.”⁷⁰ They fail to recognize, however, that local rulemaking is entirely compatible with the national ideology, and while certain district rules may in fact be in conflict with the national regime, the entire framework of rules en masse, is not.⁷¹ Local rules are a mechanism by which judges can address local practices and conditions so as to bring them into alignment with the national regime.⁷² In other words, local rules make it easier for judges to ensure that their courts are comporting with national procedure. Local rules are also crucial to promoting the efficient management of cases and dockets by providing an organized structure for attorneys, judges, and litigants to work within.⁷³ The federal trial courts are forced to adapt to the environment in which they necessarily must operate. Thus, if a court encounters a procedural challenge, it can quickly be addressed through the adoption of an appropriate and narrowly

67. See Steven Flanders, *In Praise of Local Rules*, 62 *JUDICATURE* 28, 35 (1978); see also Roberts, *supra* note 15, at 549.

68. See Flanders, *supra* note 67, at 35.

69. See *id.* at 34 (stating that even foreign lawyers may gain an initial familiarity with local practice by researching publicly available local rules).

70. *Id.* at 30 (internal quotation marks omitted).

71. See, e.g., *id.* at 31.

72. See *id.*

73. See Flanders, *supra* note 29, at 263.

tailored local rule. Accordingly, while critics argue that district courts use local rules as a way of undermining the requirements of the federal rules, the reality is that local rules serve as effective tools that judges can use to implement the FRCP and efficiently carry out the job of the federal courts—to “resolve and contain local conflicts and disputes.”⁷⁴

E. *What About Local Uniformity and Local Fairness?*

Opponents attack the local rule-making process by claiming that it erodes national uniformity, but what about local uniformity? While a cursory view may suggest that local rules chip away at the national procedural uniformity of the federal courts, a closer look reveals that well-crafted local rules dovetail suitably with the framework of the federal rules by providing uniformity at the local level. This, by necessity, eliminates any disparity that can arise through varying judicial application of the federal rules. The advancement of uniformity creates a number of beneficial byproducts—notably, predictability, and fairness—within the district.

Legal stability, as a fundamental tenant of the “Rule of Law,” has “a moral valence insofar as it assures that like cases will be treated equally.”⁷⁵ The uniform application of procedure helps promote this fundamental tenant by creating consistent legal outcomes so that the same set of facts will produce the same result—every time. Under a common law system that relies on *stare decisis* for biding legal precedent this consistency is essential. Consistency and predictability within a district advances the public “interest in enabling citizens to predict the legal consequences of their actions across judges and time.”⁷⁶ Through the publication and application of native procedures and practices, local rules allow attorneys and litigants to make more informed decisions and speed up the resolution of disputes *within*

74. Flanders, *supra* note 67, at 31.

75. Stefanie A. Lindquist & Frank C. Cross, *Stability, Predictability and the Rule of Law: Stare Decisis As Reciprocity Norm 1* (Mar. 26, 2010) (unpublished manuscript), available at <http://www.utexas.edu/law/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf>.

76. *Id.* at 2.

the national framework.⁷⁷

Critics argue that local rules increase the risk of error among foreign counsel and provide local litigants with an advantage, thus eroding the federal goal of fairness.⁷⁸ This argument, however, is fundamentally flawed. Local procedures that are publically accessible are no less available to foreign counsel than they are to local counsel. It is the local practices that are *not* published that threaten fairness.⁷⁹ Such unpublished practices act as “booby traps,” targeting foreign counsel who are unaware of how to proceed.⁸⁰ Without local rules, judicial interpretation would prevail in putting local counsel who are more inclined to be privy to the varying practices among judges in their home district at a distinct advantage, while their foreign counterparts would be left vulnerable to varying and unpublicized local practices.⁸¹ Therefore, under a system devoid of local rules, foreign counsel are far more likely to be “home-towned”⁸² and their cases are much more likely to get dismissed on procedural technicalities, rather than adjudicated on the merits. This necessitates the acquisition of local counsel, increases litigation expense, and narrows the accessibility of the courts. Local rules avoid all this, as they are an effective way for judges to manage cases and consistently provide a fair and predicable forum to *all* litigants. Rather than getting caught up in procedural technicalities, local rules allow more cases to move fluidly through the stages of a trial, ultimately to be tried on the merits. This provides for the speedy resolution of cases, more consistent results, and further *advances* the federal rules’ goal of uniformity and fairness.

F. *Local Rules Provide a Valuable Source for Procedural Reform*

Local rules often serve as models for reform where new approaches are tested on a limited scale. Rather than forcing national rule-makers to invent, local rules allow them to simply

77. See Roberts, *supra* note 15, at 549.

78. See, e.g., *id.* at 551; Note, *supra* note 13, at 1261 (asserting that the Supreme Court’s attempt to establish a simple federal procedural system is undermined by “inordinate burdens [placed] on non-local counsel”).

79. See Flanders, *supra* note 67, at 34.

80. *Id.*

81. See *id.*

82. *Id.*

codify practices that are already thriving at the local level.⁸³ Successful rules are likely to ultimately become included in the amendments to the federal rules, while unsuccessful rules need not be tested nationally.⁸⁴ For example, the mandatory scheduling order under Rule 16 “is based in part on Wisconsin Civil Procedure Rule 802.10.”⁸⁵ When emerging court problems arise, the local rulemaking authority provides judges with an opportunity to test rules on a small scale. Once a rule has adequately addressed an identified issue, national policymakers can use it as a template for a nationwide amendment.⁸⁶ Local rules, in this respect, “can be an important channel of policy making” and an effective way to improve judicial case management.⁸⁷ Local rules provide valuable empirical data that can be used to successfully implement new procedural innovations to the national regime.⁸⁸ Local rules, thus, provide a valuable source of information on procedural development that can shape and improve the national regime.⁸⁹

Local rules have also served as the court’s guideposts in the implementation of national policy.⁹⁰ For instance, many districts have employed the use of local rules to define the powers of magistrates in the course of implementing the various Magistrate Acts.⁹¹ Local rules have also been effective tools in the administration of the Federal Judicial Center Guidelines concerning prisoner civil rights cases, the Model Federal Rules of Disciplinary Enforcement, habeas corpus proceedings, and the

83. See Resnik, *supra* note 60, at 157.

84. See Roberts, *supra* note 15, at 550.

85. FED. R. CIV. P. 16 advisory committee’s notes (1983 Amendment); see also FED. R. CIV. P. SUPP. E advisory committee’s notes (providing an example of another local rule that has been adopted nationally: “The provision relating to clearance in subdivision (b) is suggested by Admiralty Rule 44 of the District of Maryland.”); FED. R. CIV. P. SUPP. E advisory committee’s notes (1985 Amendment) (“The new Rule E(4)(f) is based . . . on local admiralty rules in the Eastern, Northern, and Southern Districts of New York. Similar provisions have been adopted by other maritime districts. Rule E(4)(f) will provide uniformity in practice and reduce constitutional uncertainties.”).

86. See Flanders, *supra* note 67, at 31.

87. *Id.* at 34.

88. See Flanders, *supra* note 29, at 219.

89. See *id.*

90. See *id.* at 270.

91. See *id.*

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statutory requirements of court plans under the CJRA.⁹² In this respect, local rules are often the mechanism by which local courts conform with national policy.

II. LOCAL RULES IN THE PATENT LAW CONTEXT

While patent law and admiralty law, at first glance, may seem worlds apart, they share some significant features. For example, patent law and admiralty law often involve multinational companies with vast resources and are concentrated in specific geographic locations.⁹³ Like admiralty law, where time is crucial due to the inherent mobility of vessels, in the patent law context, speed of litigation is critical because patents have an expiration date. Time spent defending a patent in court is time that a patentee is without exclusivity in the market.⁹⁴ Similarly, the speedy resolution of a patent case frees up a patentee to pursue the next defendant, thus building the reputation of the patent.⁹⁵ Admiralty and patent cases also share a common thread in the area of judicial interpretation. Most admiralty cases are tried before the bench rather than a jury.⁹⁶ Although patent cases are often tried before a jury, many times the dispositive issue is one of claim construction, which is a question of law decided by the district court judge.⁹⁷ These two peculiar and complex areas

92. See *id.*; see also Coquillette et al., *supra* note 33, at 62.

93. See James Ware & Brian Davy, *The History, Content, Application and Influence of The Northern District of California's Patent Local Rules*, 25 SANTA CLARA COMPUTER & HIGH TECH. L.J. 965, 966 (2009). Admiralty suits are most often filed near commercial ports, while patent cases are often filed near hubs of innovation, i.e., Silicon Valley. *Id.*

94. See Mark A. Lemley, *Where to File Your Patent Case*, 38 AIPLA Q.J. 401, 403 (2010).

95. See *id.* at 413.

96. See Billy Coe Dyer, Note, *The Jury on the Quarterdeck: The Effect of Pleading Admiralty Jurisdiction When a Proceeding Turns Hybrid*, 63 TEX. L. REV. 533, 534 (1984). Except in cases where the "savings to suitors" clause is invoked, which typically happen when an admiralty claim is brought concurrently with a common law claim—in which case a plaintiff may be entitled to a jury trial on both claims. See 28 U.S.C. § 1333 (2012); see also *Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 17 (1963).

97. See, e.g., *Retractable Techs. Inc. v. Becton Dickinson & Co.*, 659 F.3d 1369, 1374 (Fed. Cir. 2011) (O'Malley, J., dissenting). Claim construction is how the judge interprets a patent; it is akin to a decision on the merits, as it is "the single most important event in the course of patent litigation. It defines the scope of the property right being enforced, and is often the difference between infringement and non-infringement, or validity and

of litigation thus involve high-stake cases where delay can lead to ruin, and the judge plays a much more significant role.⁹⁸

In an effort to swiftly manage the complex cases that are inherent in patent litigation, district courts have successfully promulgated a plethora of local patent rules.⁹⁹ These local rules have been credited with providing numerous benefits to patent litigants such as: (1) the streamlining of patent litigation; (2) improved intra-district case management standardization; (3) increased predictability and efficiency; and (4) an increase in litigation quality.¹⁰⁰

The benefits of local patent rules have been recognized—and in fact endorsed—by Congress through the passage of the Patent Pilot Program.¹⁰¹ The program is “intended to enhance expertise and efficiency in presiding over patent litigation” by requiring district courts to certify their intention to adopt local patent rules.¹⁰² The first set of local patent rules surfaced in the Northern District of California in 2000.¹⁰³ Soon after, in *Advanced Cardiovascular Systems, Inc. v. Medtronic, Inc.*, these rules were subjected to the harsh scrutiny of the Federal Circuit Court.¹⁰⁴ In *Advanced Cardiovascular Systems*, the Federal Circuit upheld the Northern District of California’s local patent

invalidity.” *Id.* at 1370 (Moore, J., dissenting).

98. See, e.g., *Ins. Co. v. Dunham*, 78 U.S. 1, 25 (1870); see also Lemley, *supra* note 94, at 413, 415.

99. See Pauline M. Pelletier, *The Impact of Local Patent Rules on Rate and Timing of Case Resolution Relative to Claim Construction: An Empirical Study of the Past Decade*, 8 J. BUS. & TECH. L. 451, 461–63 (2013); see also Ware & Davy, *supra* note 93, at 1017.

100. See Pelletier, *supra* note 99, at 463. Note that this list is intended to be illustrative, not exhaustive. See *id.*

101. See Patent Pilot Program of 2011, Pub. L. No. 111-349, 124 Stat. 3674 (2011).

102. Pelletier, *supra* note 99, at 468; accord *District Courts Selected for Patent Pilot Program*, U.S. CTS. (June 7, 2011), http://www.uscourts.gov/News/NewsView/11-06-07/District_Courts_Selected_for_Patent_Pilot_Program.aspx. But see Jeff Becker, *On Creating Specialized Patent District Courts: Why H.R. 34 Does Not Go Far Enough to Address Reversal Rates In District Courts*, 61 SMU L. REV. 1607, 1608 (2008) (claiming that the purpose of the pilot program is to “reduce the outrageous number of Federal Circuit reversals of District Court rulings on substantive patent law, especially regarding claim construction”).

103. See Ware & Davy, *supra* note 93, at 1017.

104. 265 F.3d 1294, 1304 (Fed. Cir. 2001).

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rule that restricted the amendment of infringement assertions.¹⁰⁵ As a result, those rules became a model for reform, leading many other districts to quickly follow suit.¹⁰⁶ Local patent rules have enabled districts to effectively manage this complex area of litigation by creating structure and predictability.¹⁰⁷ Patent claims filed in districts with local patent rules are almost twice as likely to reach a decision on the “merits”¹⁰⁸ than those filed in a district absent local patent rules.¹⁰⁹ This trend exemplifies how carefully crafted local rules can drastically improve litigation and case management in these unique cases.¹¹⁰ The widespread adoption of local patent laws has also spawned an industry-wide discussion about whether a set of patent rules is required at the federal level—demonstrating the reform value that local rules can have.¹¹¹

A. *The District of Rhode Island Absent Local Admiralty Rules*

Like patent law, admiralty litigation is a practice area that is unfamiliar to many judges.¹¹² As such, it demands local rules to ensure its uniform application. Before the promulgation of local admiralty rules, the United States District Court for the District of Rhode Island had no effective mechanism to address the unique procedural nuances that are inherent to maritime disputes.¹¹³ As such, the court, attorneys, and litigants had to rely solely on the perforated Supplemental Rules for admiralty claims that are

105. *Id.*

106. *See* Ware & Davy, *supra* note 93, at 1017–18.

107. *See* Pelletier, *supra* note 99, at 494.

108. “Merits” here refers to claim construction. *See* Pelletier, *supra* note 99, at 455.

109. *See id.* at 499 (“[A] decision on claim construction is reached more frequently in jurisdictions with local patent rules, on average fourteen percent of the time, than those without local patent rules, on average eight percent of the time.”). It is also important to note that, according to Pelletier’s study, there does not appear to be a bias with respect to the outcome of these cases. *Id.* at 461.

110. *See* Ware & Davy, *supra* note 93, at 1017–18.

111. *See* David Long & Matt Rizzolo, *Establishing Federal Rules of Patent Procedure*, *INSIDE COUNS.* (August 20, 2013), <http://www.insidecounsel.com/2013/08/20/establishing-federal-rules-of-patent-procedure>.

112. *See* McMahon, *supra* note 14, at 1.

113. Rhode Island’s local admiralty rules became effective January 15, 2013. *See* L.A.R. A.

provided in the FRCP.¹¹⁴ The Supplemental Rules are an adequate foundation; however, they contain many gaps and are thus susceptible to varying judicial interpretations and applications.¹¹⁵ Absent local rules, the perforated nature of the Supplemental Rules makes them inadequate to ensure the fair administration of justice in high-stake admiralty cases. However, when combined effectively with local rules, they provide an ideal procedural regime that can specifically target the needs of geographically unique districts.¹¹⁶

III. COMPLEXITIES OF MARITIME PROCEDURE & THE PERFORATED SUPPLEMENTAL RULES

Due to the unique remedies and procedural nuances endemic to admiralty practice, the FRCP contain cursory Supplemental Rules that govern the procedure of admiralty cases.¹¹⁷ While the Supplemental Rules provide an adequate framework, they are not plenary and, thus, allow wide variations in judicial application. The Supplemental Rules themselves reflect the drafter's recognition and appreciation of the unique aspects of maritime procedure. However, the Advisory Committee notes demonstrate that the drafters also recognized the inadequacy of the Supplemental Rules and their failure to sufficiently address all of the complexities of admiralty law.¹¹⁸ The inadequacy of the Supplemental Rules is, therefore, both apparent and deliberate. The Advisory Committee Note to Rule A states:

No attempt here is made to compile a complete and self-contained code governing these distinctively maritime remedies. . . . [T]hese rules are not to be construed as limiting or impairing the traditional power of a district court, exercising the admiralty and maritime jurisdiction, to adapt its procedures and its remedies in the individual

114. See McMahan, *supra* note 14, at 1; see also FED. R. CIV. P. SUPP. A–G.

115. See McMahan, *supra* note 14, at 1; see also Note, *supra* note 13, at 1255.

116. See McMahan, *supra* note 14, at 1.

117. See FED. R. CIV. P. SUPP. A advisory committee's notes; see also Warren J. Marwedel et al., *Maritime Procedure: An Overview and a Caution Regarding Privilege Waiver*, 79 TUL. L. REV. 1421, 1435 (2005).

118. See FED. R. CIV. P. SUPP. A advisory committee's notes.

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case, consistently with these rules, to secure the just, speedy and inexpensive determination of every action.¹¹⁹

The Supplemental Rules simply *require* augmentation through local rulemaking in order to satisfy the premier goals of the Rules Enabling Act—to provide “a national procedure code that [i]s simple, uniform and trans-substantive while encouraging cases’ prompt, inexpensive resolution and their disposition on the merits”—and the uniform application of federal law.¹²⁰ The District of Rhode Island recognized this and appointed a committee to draft a set of rules to fill in the gaps and make the complicated processes of maritime procedure easier for litigants, attorneys, and judges.¹²¹ The subcommittee’s work is the result of a highly inclusive information gathering process.¹²² Input was obtained and considered from the U.S. Marshal’s office, the court’s clerks, the judges, and local practitioners.¹²³ This process has resulted in a carefully crafted admiralty procedural regime that adequately addresses the needs and concerns of all who will come to reply upon them.

The new local rules provide clear procedural guidance and make it easier for litigants to bring a suit in admiralty. This increases court access and provides widespread administration of justice. Local admiralty rules also provide assurance to the aforementioned maritime industry leaders who have recently moved operations to our waters. The success of the committee becomes clear through a comparison of the FRCP’s Supplemental Rules and the District of Rhode Island’s local rules. A perfunctory look at some of the complex admiralty procedures, such as the ability of a vessel owner to limit its liability to the post casualty value of a vessel, the ability for a plaintiff to sue a vessel in rem as the named defendant, and maritime attachment/arrest proceedings, unveils the pressing need for such rules within the

119. *Id.*

120. Tobias, *supra* note 17, at 806.

121. The committee consisted of Providence and Boston attorneys James T. Murphy, Samuel P. Blatchley, Michael J. Daly, Merlyn O’Keefe, and Roger Williams University School of Law Professor Jonathon Gutoff. See McMahon, *supra* note 14, at 1.

122. Email from James T. Murphy, Chair of the Subcommittee to Casey M. Charkowick (on file with author).

123. *Id.*

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district.¹²⁴*A. Rule B: Attachment, Quasi In Rem v. Maritime Attachment and Garnishment*

Rule B of the Supplemental Rules allows a plaintiff to commence an in personam action through the attachment or seizure of the defendant's property when the defendant is "not found within the district."¹²⁵ The plaintiff must attach to the complaint an affidavit "stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district."¹²⁶ A plaintiff can easily satisfy the vague standard provided by Supplemental Rule B and quickly obtain a defendant's property. This rule is open to varying judicial interpretations, as there is virtually no standard by which to measure the plaintiff's assertion that the defendant is "not within the district." Local Admiralty Rule B, however, succinctly addresses this issue by requiring plaintiffs to "list the efforts made by and on behalf of the plaintiff to find and serve the defendant within the district."¹²⁷ This rule ensures that the plaintiff has done her due diligence before concluding that the defendant is not jurisdictionally present within the district. This rule provides clarity to plaintiffs as to what is expected of them and protection to defendants to ensure that property is not wrongfully seized based on the imprecision of the federal rule.

B. Supplemental Rule C: Supplemented by Local Admiralty Rule C: In Rem Actions

In admiralty law, a plaintiff can sue a vessel, its cargo, or other property by naming such property as the defendant in the proceeding. Rule C of the Federal Rules provides: "In an action *in rem* the complaint must: (a) be verified; (b) describe with reasonable particularity the property that is the subject of the action; and (c) state that the property is within the district or will

124. See FED. R. CIV. P. SUPP. B(1)(a), C(1), F.

125. *Id.* R. B(1)(a).

126. *Id.* R. B(1)(b).

127. L.A.R. B(1).

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be within the district while the action is pending.”¹²⁸ Once an in rem action is commenced, the vessel, or other property is held liable for the offense. This is a very useful procedural mechanism that allows plaintiffs to seek recovery in situations where the owner cannot be brought into the action for lack of in personam jurisdiction.¹²⁹ If all of the conditions required for an in rem proceeding are satisfied, the court will then issue a warrant for the arrest of the vessel or other property, which the marshal will serve upon the garnishee—i.e., the person or entity in control of the property.¹³⁰ Upon delivery of service, the vessel (or other property) remains in the custody of the marshal for fourteen days, at which point the plaintiff must give public notice of the action and the arrest.¹³¹ This is required for two reasons: first, to give the defendant adequate notice and second, to provide notice to other potential creditors of the arrested property.¹³² Supplemental Rule C(4) governs this aspect of an in rem proceeding; it provides in pertinent part:

If the property is not released within 14 days after execution, the plaintiff must promptly—or within the time that the court allows—give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer.¹³³

Perhaps the most unique aspect of admiralty law is the fact that during this process a garnishee could cast off lines and get underway. Once beyond the borders of the district, the plaintiff loses her ability to recover. Therefore, this process must be

128. FED. R. CIV. P. SUPP. C; *see also* Marwedel et al., *supra* note 117, at 1438.

129. *See* Marwedel et al., *supra* note 117, at 1438.

130. FED. R. CIV. P. SUPP. C(3)(a)(i), C(3)(b)(i).

131. *Id.* R. C(4).

132. This is especially important in maritime law because, unlike other security interests, most maritime liens are secret liens. *See* Bruce A. King, *Ships as Property: Maritime Transactions in State and Federal Law*, 79 TUL. L. REV. 1259, 1331 (2005).

133. FED. R. CIV. P. SUPP. C(4).

carried out very quickly. There is no margin of error. Critics of local rules maintain that judges should make ad hoc decisions in situations where the federal rules are inadequate,¹³⁴ but have they ever considered the effects of this approach in an arrest proceeding of a vessel that can escape adjudication by sailing off into the sunset?

Rhode Island Local Rule C addresses the gaps in Supplemental Rule C, promotes fairness, and provides clear guidelines that expedite the entire process.¹³⁵ Local Rule C(1) requires that notice be published in the *Providence Journal*, which promotes fairness as the *Providence Journal* reaches a wider audience than a small town newspaper such as the *Bristol Phoenix*.¹³⁶ This provides other potential creditors with sufficient notice and an opportunity to intervene in the proceeding.¹³⁷ In addition, the rule provides precise guidelines as to what information must be included in the notice. Local Admiralty Rule C(1) provides in part:

The notice shall contain:

- (a) The court, title, and number of the action;
- (b) The date of the arrest;
- (c) The identity of the property arrested;
- (d) The name, address, and telephone number of the attorney for plaintiff;
- (e) A statement that the claim of a person who is entitled to possession or who claims an interest pursuant to Supplemental Rule C(6)(a) must be filed with the Clerk and served on the attorney for plaintiff within 14 days after publication;
- (f) A statement that an answer to the complaint must be filed and served within 30 days after publication, or, alternatively, within 21 days after filing a statement of interest, and that otherwise, default may be entered and condemnation ordered;

134. See, e.g., Note, *supra* note 13, at 1258.

135. See L.A.R. C(1).

136. See *id.*

137. See *id.*

(g) A statement that intervenor claims by persons or entities claiming maritime liens or other interests shall be filed within the time fixed by the Court; and

(h) The name, address, and telephone number of the Marshal, keeper or substitute custodian.¹³⁸

Local Admiralty Rule C(1) makes the process more predictable for both attorneys and judges alike. Attorneys know what information is required for notice, and judges know what type of information ought to be included in this unfamiliar proceeding. This increases the efficiency of the action, promotes fairness, and enables attorneys to provide clients with accurate advice.¹³⁹

C. Local Rule C(3): Augments Federal Rule 55 and Provides Increased Protection to Foreign Defendants

Under Rule 55 of the FRCP, a plaintiff “must apply to the court” in order obtain an entry of default judgment from the court.¹⁴⁰ Rule 55(b)(2) provides:

[T]he party must apply to the court for a default judgment. . . . If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence;
or
- (D) investigate any other matter.¹⁴¹

Federal Rule 55 provides little guidance for attorneys seeking a

138. L.A.R. C(1)(a–h).

139. See McMahon, *supra* note 14, at 2.

140. FED. R. CIV. P. 55.

141. *Id.* R. 55(b)(2).

default judgment. What is required in the plaintiff's application to the court? Do all judges require the same information? Is a defendant's property adequately protected under this rule? Will a defendant's property be wrongfully handed over by a judge to a plaintiff with a substandard application? Will another judge wrongfully withhold the defendant's property from the plaintiff despite a comprehensive application? Clearly there is much room for interpretation within this rule. Given the fact that the property is often a vessel of high value, the District of Rhode Island's Local Admiralty Rule provides much more robust standards for protection. Local Rule C(3) provides:

After the time for filing an answer has expired, the plaintiff may move for entry of default under LR Cv 55. The Court will enter default upon showing that:

- (a) Notice has been given as required by LAR C(2)(a), and
- (b) Notice has been attempted as required by LAR C(2)(b) where appropriate, and
- (c) The time to answer by claimants of ownership to or possession of the property has expired, and
- (d) No answer has been filed or no one has appeared to defend on behalf of the property.¹⁴²

Local Admiralty Rule C(3) more adequately governs the entry of default judgment. Unlike the corresponding federal rule, the local rule requires the plaintiff to make a showing of sufficient notice before the court will enter judgment against the defendant. Under the local rule, in addition to first demonstrating to the court that notice and service have both been satisfied, the plaintiff must also mail "notice to every other person who has not appeared in the action and is known to have an interest in the property."¹⁴³ While local rules are criticized for providing an advantage to local players and threatening the erosion of the fair and predictable forum that the federal rules provide, Local Admiralty Rule C(3) offers more protection to vessel owners who often are foreign

142. L.A.R. C(3).

143. *Id.* R. C(2)(a)(1-3).

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litigants, as well as other persons with potential interests in the property.¹⁴⁴ This rule is designed to more effectively protect the interests of the owner and other potential parties once the time to reply has expired.¹⁴⁵ While Supplemental Rule C provides the foundation for this unique proceeding, without the aid of Local Rule C, it does not sufficiently address all of the ancillary details, and absent judicial application, it certainly does not fully protect the rights of the parties involved.

D. *Central Oil Co. v. M/V/ Lamma Forest*

These in rem actions not only are unique to admiralty law, but they are complex, and more importantly, require courts to work extremely efficiently to combat the mobility of offending vessels. For an example of how these unique procedures can, and have, played out, *Central Oil Co. v. M/V Lamma Forest* provides a suitable example.¹⁴⁶ There, a vessel that contracted for and received fuel in Florida departed without delivering payment to the fuel broker.¹⁴⁷ The vessel was bound for Providence where it was scheduled to take on a load of scrap steel to be delivered in South Asia.¹⁴⁸ While the broker could have waited for the vessel to return to Florida or any other U.S. port before seeking an arrest, this would have proven to be a huge mistake as the vessel was on her last voyage. She was scheduled for destruction in a Bengali scrapyard after completion of the scrap steel delivery.¹⁴⁹ Without an efficient arrest procedure in place, the vessel would have been free to depart. Once demolished, the plaintiff could not have recovered.¹⁵⁰ Although this case predates the Local Admiralty Rules in the District of Rhode Island, the plaintiff's counsel, who went on to chair the subcommittee that wrote the Local Admiralty Rules, was a seasoned admiralty lawyer who provided the judge with detailed instructions to follow so that the arrest was carried out quickly and correctly. Fortunately for the

144. *See id.*

145. *See id.* R. C(3), *see also* FED. R. CIV. P. 55.

146. 821 F.2d 48 (1st Cir. 1987).

147. *Id.* at 49.

148. *Id.*

149. *Id.* When a ship reaches the end of its life it is dismantled and demolished by "ship-breakers," often in foreign shipyards where cheap labor is readily available.

150. *See* McMahon, *supra* note 14, at 1.

plaintiff, the judge followed the instructions. However, in the hands of a less experienced attorney, or perhaps a different judge, this plaintiff might not have been able to recover. This is an example of not only the unique efficiency required of courts sitting in admiralty, but also of how a district without local rules provides local counsel with a distinct advantage. Such a scenario contains a far greater risk of putting foreign litigants on unequal footing than would a set of clearly defined and publically accessible local rules that any attorney can quickly and easily learn.

E. *Increased Forum Shopping or Increased Confidence in the Forum?*

Maritime industry leaders are likely to seek a favorable forum when available; however, “favorable” is not what one might expect.¹⁵¹ While districts with local patent rules have been criticized for encouraging forum shopping by becoming plaintiff-friendly, this is where patent litigation and admiralty law diverge for two reasons.¹⁵² First, a plaintiff can bring a patent claim in any district where the patented product is sold; plaintiffs therefore have a wide array of forums from which to choose.¹⁵³ These conditions, due to the nature of admiralty jurisdiction, simply do not exist in maritime law.¹⁵⁴ Second, the endemic of forum shopping that persists in patent litigation most often stem from patentees’ desires to obtain favorable judgments.¹⁵⁵ They, therefore, are inclined to seek out a biased forum with a reputation for favoring their side.¹⁵⁶

In the context of admiralty law, however, litigants ultimately “want predictability and fairness in their business relationships,

151. Districts that adopted local patent rules saw an increase in case filings. See Lemley, *supra* note 94, at 402–03; Pelletier, *supra* note 99, at 493.

152. See Pelletier, *supra* note 99, at 493.

153. *Id.*

154. Admiralty jurisdiction requires the satisfaction of a two-part jurisdictional test. For torts, the tort must have occurred on navigable water and have had a connection to a traditional maritime activity. See *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). In contracts, the contract must be a “maritime” contract. See *Norfolk S. Railway Co. v. Kirby*, 543 U.S. 14, 23–28 (2004).

155. See Pelletier, *supra* note 99, at 493.

156. See Lemley, *supra* note 94, at 402.

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and neutrality and justice in the resolution of their disputes.”¹⁵⁷ Commercial vessels are extremely costly to operate, and they provide no revenue stream while sitting idle.¹⁵⁸ Vessel owners, carriers, and shippers seeking a favorable forum are concerned with obtaining a fair and efficient resolution, not necessarily a favorable judgment.¹⁵⁹ Litigation is part of business, and disaster is part of maritime business. Industry leaders recognize this, and therefore, they seek fairness and efficiency in the forums they choose. Rhode Island’s local admiralty rules are designed to be neutral and efficient. They simply provide judges, attorneys, and litigants with transparent procedural guidelines to help them navigate admiralty’s complicated and unique procedures. This is precisely what these industry leaders are looking for in a forum. Any party to an admiralty dispute, domestic or foreign, will benefit from the new rules created by the District of Rhode Island, as the Local Admiralty Rules ensure that a just result is obtained more quickly and at a lower cost to the litigants.

Absent local admiralty rules, parties are unlikely to choose the District of Rhode Island as the forum of choice in a bill of lading.¹⁶⁰ The new local admiralty rules, therefore, are likely to enable the Ocean State to develop a reputation as a favorable place to both conduct maritime related business *and* resolve admiralty disputes that may arise from such business. While some could argue that local admiralty rules will lead to increased litigation revenues as a result of forum shopping, any increased litigation revenue is more likely attributable to the creation of a favorable environment where business leaders will *want* to conduct business and resolve disputes.

157. Neil A. Quartaro, Author, Presentation at Connecticut Maritime Association 2014 Legal Panel Meeting: The Devil You Thought You Knew: Dispute Resolution Clauses (Mar. 19, 2014).

158. Charter prices for oil tankers can reach as high as \$50,000 a day. See Raymond J. Learsy, *Risks to the Suez Canal Set the Stage for Falsely Hying the Price of Oil*, HUFF. POST (Feb. 6, 2011), http://www.huffingtonpost.com/raymond-j-leary/the-risks-to-the-suez-can_b_819309.html. This does not include wharfage fees, fuel costs, crew provisions, etc. See *id.*

159. See Quartaro, *supra* note 157.

160. A bill of lading is a document that serves three primary purposes: first, it acknowledges the receipt of goods by a carrier; second, it contains the terms and conditions for the shipment of those goods; and third, it serves as title to those goods. See BLACK’S LAW DICTIONARY 188 (9th ed. 2009).

F. *Ad Hoc Decision Making & National Revision?*

Critics have been vocal about the disastrous effects of local rules; however, the Supreme Court rarely overturns them,¹⁶¹ and the Federal Circuits routinely cite to local patent rules with approval.¹⁶² This is demonstrative of how these concerns are misplaced. However, some points often raised warrant discussion. While local rules generally are an effective case-management tool, there are some local rules that are unnecessary. Districts that have repetitive provisions in their local rules should indeed purge them and leave only those that actually supplement the federal rules.¹⁶³ Similarly, local rules that purport to address “local” needs, but actually address a larger national issue ought to be removed and brought to light so that national solutions can be promulgated.¹⁶⁴ While there are bound to be some repetitive, conflicting, or abusive local rules, scrapping the whole process in favor of ad hoc judge-made decisions, as some critics have suggested, is simply not the answer. Doing so would result in clogged dockets. The district courts would provide unpredictable and diverse forums, where complex, cumbersome, and overwhelming litigation would prevail. Intimidated plaintiffs simply would walk away leaving justice unserved.

While the benefits of federal patent rules may be extended nationally due to the far-reaching effects of patented products, the need for a comprehensive set of national admiralty rules simply does not exist. The perforated nature of the current Supplemental Rules provides a balanced mix of stability and flexibility. The resources expended in pursuit of a vastly amended set of admiralty rules would be largely misplaced, as the majority of the districts have no need for admiralty rules. The most effective scheme is the one adopted in Rhode Island: local rules that are narrowly tailored to adequately supplement the federal rules. While the arguments against local rulemaking are compelling on their face, upon a deeper look none consider the vast complexities of admiralty practice and procedure. After an examination of local

161. See *Davidson Bros. Marble Co. v. United States*, 213 U.S. 10, 18, (1909).

162. See *Ware & Davy*, *supra* note 93, at 966.

163. See *Heiser*, *supra* note 43, at 580.

164. See *Roberts*, *supra* note 15, at 540.

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rulemaking within the context of admiralty procedure and the Supplemental Rules, it seems as though the Supplemental Rules are also coined “supplemental”—in addition to their relation to the FRCP—because they yearn supplementation from local district rules.

IV. CONCLUSION

The Federal District Court for the District of Rhode Island and the subcommittee that drafted the local admiralty rules deserves a nod. Their hard work and foresight has created an environment in the federal judiciary that is likely to provide confidence to the many new maritime business leaders that have moved operations to Rhode Island. Their efforts have aligned the District of Rhode Island with the other efforts the State has made to “develop industry that is conducive to its nature, historically and industrially.”¹⁶⁵ Through the promulgation of a comprehensive and narrowly tailored set of local admiralty rules the court has taken the first step toward making the District of Rhode Island a forum of choice for maritime contracts. Ship-owners and other industry leaders now know that the District of Rhode Island is ready to address their very specific and complex needs. As new maritime businesses are likely to thrive here, the number of cases filed in admiralty is likely to increase. With an effective procedural scheme in place, Rhode Island’s Admiralty Court is more accessible and ready to confront the increased caseload. Now is an opportune time for others in the State to take advantage of this momentum and make attempts to cater to the new businesses that have moved to the Ocean State.

165. McMahan, *supra* note 14, at 3.