

1 shall be, whether the paper shall be eight and a half by
2 eleven or eight and a half by thirteen, whether the margin
3 should be an inch and a half or an inch and three-quarters,
4 and whether you can serve a subpoena by mail or by the
5 sheriff, a multitude of details that are purely procedural;
6 it seems to me that if the courts are to be able to function
7 effectively as the third arm of government, they must have
8 the power to control these details and, in the event of
9 a conflict with the Legislature, the judiciary should
10 control.

11 MR. SAYRE: How do you make a distinction
12 between that which is procedural and which is substantive?

13 THE CHAIRMAN: This is a knotty problem and I
14 could only answer you by saying that the distinction has
15 been made heretofore by the Rules Committee bending over
16 backwards and, in case of doubt, resolved the question
17 in favor of acknowledging the right of the Legislature.
18 In other words, if it is doubtful whether it is solely
19 procedural and is perhaps substantive, they have deferred
20 to the Legislature.

21 Then in some instances, and I'm sure Mr. Sykes