

COMMENTARY

NONIDIOLOGICAL JUDICIAL REFORM AND ITS LIMITS—THE REPORT OF THE FEDERAL COURTS STUDY COMMITTEE

GEORGE D. BROWN*

I. INTRODUCTION—IDIOLOGICAL AND NONIDIOLOGICAL APPROACHES TO JUDICIAL REFORM

In April of this year the Federal Courts Study Committee issued its final Report containing over one hundred proposals for change.¹ According to the accompanying press release, "[t]he study generating these proposals reflects the most comprehensive examination of the federal court system ever undertaken."² It is certainly true that the Committee's members are exceptionally well qualified to perform this task.³ Their own expertise was supplemented by staff work, input from public hearings,⁴ and extensive research from a battery of consultants and advisors.⁵ The Report is an important document. Many of the recommendations—such as the virtual abolition of diversity jurisdiction⁶ and the reallocation of most drug cases from federal to state courts⁷—would surely have an impact on the operation of the federal courts. Yet for all that, something is missing, at least to the academic reader. The Report is largely silent on what law school courses treat as the major issue of federal jurisdiction.

Particularly striking is the almost total lack of discussion of the method of Supreme Court decisions in the area and of the doctrines they develop.⁸

* Professor of Law, Boston College Law School, A.B. 1961, Harvard; LL.B. 1967, Harvard Law School.

1. *Report of the Federal Courts Study Committee* (1980). Available from the Federal Courts Study Committee, 22705 United States Courthouse, Independence West Plaza, 600 Market Street, Philadelphia, PA 19106-1712 [Executive Center].

2. Federal Courts Study Committee, *Press Release*, April 2, 1980 ("Unprecedented Study of Federal Courts Released Today").

3. The Committee's fifteen members include five federal judges, one state judge, members of Congress, practitioners, and a former Solicitor General of the United States.

4. See Brown, *supra* note 1, at 12-15 (describing hearings and other sources of public input).

5. *Id.* at 199-201 (listing advisors and consultants).

6. *Id.* at 58-61.

7. *Id.* at 34-36.

8. The major exception is the recommendation that the rules regarding removal parties be changed. See *id.* at 42-46. This would involve extending *Flakey v. United States*, 189 U.S. 171, 200 (1903).

Report Of The Federal Courts Study Committee

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United States Code United States,2001 **Commission on Structural Alternatives for the Federal Courts of Appeals** United States. Commission on Structural Alternatives for the Federal Courts of Appeals,1998

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