

COMMENTARY

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

GEORGE D. BRONF*

I. INTRODUCTION—IDEOLOGICAL AND NONIDEOLOGICAL 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 issues 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 *Report*, *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*, 159 U.S. 171, 300 F.2d 1009 (1962).

Report Of The Federal Courts Study Committee

Ying-Ying Zheng



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Table of Contents Report Of The Federal Courts Study Committee

1. Understanding the eBook Report Of The Federal Courts Study Committee
 - The Rise of Digital Reading Report Of The Federal Courts Study Committee
 - Advantages of eBooks Over Traditional Books
2. Identifying Report Of The Federal Courts Study Committee
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Report Of The Federal Courts Study Committee
 - User-Friendly Interface
4. Exploring eBook Recommendations from Report Of The Federal Courts Study Committee

- Personalized Recommendations
- Report Of The Federal Courts Study Committee User Reviews and Ratings
- Report Of The Federal Courts Study Committee and Bestseller Lists
- 5. Accessing Report Of The Federal Courts Study Committee Free and Paid eBooks
 - Report Of The Federal Courts Study Committee Public Domain eBooks
 - Report Of The Federal Courts Study Committee eBook Subscription Services
 - Report Of The Federal Courts Study Committee Budget-Friendly Options
- 6. Navigating Report Of The Federal Courts Study Committee eBook Formats
 - ePub, PDF, MOBI, and More
 - Report Of The Federal Courts Study Committee Compatibility with Devices
 - Report Of The Federal Courts Study Committee Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Report Of The Federal Courts Study Committee
 - Highlighting and Note-Taking Report Of The Federal Courts Study Committee
 - Interactive Elements Report Of The Federal Courts Study Committee
- 8. Staying Engaged with Report Of The Federal Courts Study Committee
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Report Of The Federal Courts Study Committee
- 9. Balancing eBooks and Physical Books Report Of The Federal Courts Study Committee
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Report Of The Federal Courts Study Committee
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Report Of The Federal Courts Study Committee
 - Setting Reading Goals Report Of The Federal Courts Study Committee
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Report Of The Federal Courts Study Committee

- Fact-Checking eBook Content of Report Of The Federal Courts Study Committee
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
- Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
- Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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