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Reforming the Federal Judiciary

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REFORMING THE FEDERAL JUDICIARY*

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I. INTRODUCTION

THE federal judiciary recently has been studied by a prestigious commission headed by Senior Circuit Court Judge Joseph Weis. The report of that commission has been prepared[1] and is presently being studied by the Judicial Conference of the United States and the Congress of the United States for the purpose of determining which of the many recommendations should be implemented.[2]

As a federal judge I am interested in assuring that the federal court system is working efficiently and effectively. I do believe that many of the Weiss Commission recommendations are worthy of careful consideration. There are, however, some that I must disagree with such as the recommendation to eliminate diversity jurisdiction[3] which I will say more about later.

My mission is not to detail the findings and recommendations of the Weis Commission. Rather, I would like to talk about the federal judiciary on a broader scale and discuss some of the problems presently facing the federal judiciary and how we should deal with them.

While the independence of the federal judiciary has always been its great strength, unfortunately, it has also been one of its major weaknesses. Until the Weis Commission studied the federal judiciary this past year, very little attention has been paid to it. This was in keeping with our tripartite system of government in which it is both the written and unwritten rule that each of the branches leaves the other branches alone.

There have been certain exceptions to this general rule, particularly where one branch has imposed its will on another. Where that has happened, real

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1. The Federal Courts Study Committee [hereinafter Weiss Commission] was responsible for undertaking "a complete study of the courts of the United States and of the several states." Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702. The outcome of this study is THE REPORT OF THE FEDERAL COURTS STUDY COMMISSION, Report 115, 101st Cong., 2d Sess. (Apr. 2 1990) [hereinafter FCSC REPORT].

2. *See, e.g.*, Civil Rights and Womens Equity in Employment Act of 1991, H.R. REP. No. 40, 102d Cong., 1st Sess. (1991); Technical Amendments to Laws Relating to the Court, H.R. REP. No. 322, 102d Cong., 1st Sess. (1991); District of Columbia Judicial Reorganization Act of 1992, H.R. REP. No. 975, 102d Cong., 2d Sess. (1992); Report of the Activities of the Committee on the Judiciary during the 101st Congress, S. REP. No. 17, 102d Cong., 1st Sess. (1991); Federal Courts Study Committee Implementation Act, S. REP. No. 342, 102d Cong., 2d Sess. (1992).

3. FCSC REPORT, *supra* note 1, at 39-42.

problems have developed. When Congress has perceived that the judiciary has not been performing adequately, it has acted to correct the problems disclosed.[4] Congress has acted at times, however, without paying much attention to what their so called reform measures would do to the overall functioning of the judiciary.

Some years back, when Congress concluded that criminal defendants were not being accorded a speedy trial as required by the Sixth Amendment to the Constitution, Congress passed the Speedy Trial Act[5] which essentially decreed that all criminal defendants must be tried within seventy days of indictment.[6] Although a few more judges over the years have been added to the federal judiciary, prior to enactment of the Speedy Trial Act little planning actually went into determining what impact such a laudatory provision would have on the federal judiciary.[7]

Congress also acted several years ago to reform the procedures for sentencing wrongdoers. Beginning in November of 1987, the concept of sentencing guidelines has been imposed on the federal judiciary.[8] The problems this law has wrought on the federal judiciary are indeed substantial. We now have what has been termed "sentencing by the numbers."[9] Some believe certain objective values can be assigned to the many federal crimes and, along with an evaluation of the defendant's past criminal conduct, a court can arrive at a just sentence to be imposed on the defendant. Under the guidelines, sentencing has taken on some bizarre characteristics. The computer has done most of the job. A judge actually has little leeway in imposing the proper sentence. At times I feel like the executioner who is told this is what he must do. I have little discretion in deviating from these adopted norms. Sentencing guidelines have had a severe adverse impact on some of our federal judges. Indeed, one has recently resigned because of them.

Whatever little discretion trial judges have under the guidelines has been completely removed by the advent of the mandatory minimum sentence. These are statutes that specifically prescribe that a violator of the statute can not receive a sentence below a certain number of years.[10]

The unfortunate part about the sentencing guideline concept is that it is not achieving its stated purpose of producing uniformity in sentencing.[11] In

4. *See* FEDERAL COURTS STUDY COMMITTEE WORKING PAPERS AND SUBCOMMITTEE REPORTS (1990); 28 U.S.C. § 331 (Supp. 1992).

5. Speedy Trial Act of 1974, Pub. L. No. 93-619, 88 Stat. 2076 (codified as amended at 18 U.S.C. § 3161 (1988)).

6. 18 U.S.C. § 3161(c)(1) (1988).

7. This law has had a tremendous impact on the functioning of the federal judiciary. This is particularly so at the present time because of the very aggressive law enforcement program that has been adopted to deal with the drug crisis.

8. Sentencing Reform Act, 18 U.S.C. §§ 3351-3625 (1988). *See* U.S. SENTENCING COMM'N, FEDERAL SENTENCING GUIDELINES MANUAL (1992) [hereinafter USSC].

9. *See, e.g.*, United States v. Restrepo, 946 F.2d 654, 667 (9th Cir. 1991); *Sentencing by the Numbers Isn't Always Fair*, NEWSDAY, Aug. 22, 1989, at 60; Barry Bearak, *New Sentencing Rules Mean Life for First Offender*, L.A. TIMES, Aug. 17, 1989, at 7.

10. 18 U.S.C. § 3553(b) (1988); *See* USSC, *supra* note 8, ch. 2.

11. *See* United States v. Harrington, 947 F.2d 956, 964 (D.C. Cir. 1991) (Edwards, J., concurring) (sentencing "guidelines do not, by any stretch of the imagination ensure uniform-

fact, sentencing guidelines may have exacerbated the problem.[12] I need only to ask you to compare the sentences imposed on an eighteen year old first time drug offender sentenced to a period of incarceration of ten years with the white collar criminals who have received sentences as low as three months even though their actions have almost brought this nation's economic system to its knees.[13]

I submit to you there is still no parity or equity in sentencing. It certainly has been argued by some that we still treat the underclass criminal in a much more stringent way than we treat the upper class offender.[14] Maybe someday those who are behind this ill-conceived concept will admit the error of their ways and return the much needed discretion to our federal judges.

Although I have criticized the sentencing guidelines, I do not want my words to be taken to mean that the federal judiciary is perfect and is not in need of reform. To the contrary, the federal judiciary has severe problems that need to be addressed.

If there has been an institution that has resisted change, it is the federal courts. We still try cases the old fashioned way, and while the profession is becoming more and more specialized, our judges are going the other way and are becoming more generic. But not only do we expect our judges to know every conceivable field of the civil law, they also must be criminal specialists. Now, how many of you would ever dare to venture into a criminal court without first making sure that your malpractice insurance has been doubled or tripled? You might ask, "What is the solution? Do we need more judges? Should we establish specialty courts as we now have with respect to taxes and international trade? Or do we need to resort more to the arbitration process or other forms of privatization?" I might also ask, "Should we curtail access to our Federal courts by further limiting federal jurisdiction?"

The Weiss Commission has addressed a number of these issues. Specifically, it has expressed concern about the judiciary's ever-increasing case load.[15] While recognizing that an increase in the number of judges could alleviate the problem temporarily, the Weiss Commission noted that continuing to add to the number of judges would eventually become counter productive and be detrimental to the stature of the third branch of government.[16] The study pointed out that there will come a time when the federal judiciary will exceed its optimal size.[17] In 1990, the federal judiciary

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ity in sentencing"); *see also* Albert W. Alschuler, *The Failure of Sentencing Guidelines: A Plea for Less Aggregation*, 58 U. CHI. L. REV. 901, 915-24 (1991).

12. *Restrepo*, 946 F.2d at 667 (sentencing guidelines despite their aura of objectivity, produce results that vary with the attitudes and judgments of human beings who interpret, and often misinterpret, them).

13. Compare for example, robbery sentence lengths in the Northern District of California (83 months) with those in the Northern District of Georgia (164 months). U.S. SENTENCING COMM'N 1990 ANNUAL REPORT app. B.

14. *See, e.g.*, Alschuler, *supra* note 11, at 917.

15. FCSC REPORT, *supra* note 1, at 1.

16. *Id.* at 7.

17. *Id.*

numbered less than one thousand.[18] Even though this nation has had enormous growth over the past several decades, the other two branches of government have not attempted to meet their increased work loads by becoming bigger. We still have one President, one Vice President and the same number of Congressmen and Senators that we have had since Hawaii and Alaska became states some thirty-one years ago.

More judges, in my view, is not the answer. Instead, we must take measures that will make the federal judiciary more effective and efficient. Let us look at some ways to bring abut this desired objective. To begin with, I believe we can make our trial judges between twenty-five and thirty-three percent more productive by a simple change in one of the Federal Rules of Civil Procedure.

II. CHANGES NEEDED TO IMPROVE PRODUCTIVITY

A. ELIMINATION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Rule 52 of the Federal Rules of Civil Procedure requires that in all non-jury trials the judge must make findings of fact and conclusions of law.[19] My suggestion is to do away with this requirement and instead require that non-jury cases be treated the same as ones tried before a jury. This would mean that a judge, when acting in the dual role of judge and jury, would render his or her verdict from the bench at the conclusion of the trial. There would be no post trial proceedings and no cases would be taken under submission to allow the judge to ponder his or her decision for sometimes months and even years. This would not mean that a judge would be precluded from writing an opinion. It would strictly be up to the judge. But, if the judge desired to write an opinion, he or she would not be able to delay the time of appeal and the case would proceed forward to its ultimate conclusion.

The amount of time this proposal would save could be easily measured. The time a judge spent in court would in effect almost be one hundred percent. While such a proposal might place an added strain on our appellate courts, it should not be that appreciable because few of this nation's lower court decisions are appealed. What is more, if the appellate courts adopted certain changes in their own procedures, they could actually alleviate their own case loads.

While the "no findings" suggestion is the centerpiece of my reform program, there are other changes that could prove helpful in streamlining the federal judiciary. I now turn to some of these other measures.

B. USER FEES FOR PROLONGED CIVIL LITIGATION

Our court system is probably one of the best bargains that society offers. Litigants pay little if anything for utilization of this valuable service that is

18. *See* John O'Newman, *Size of the Federal Judiciary Threat to Quality*, CONN. L. TRIB., Nov. 4, 1991, at 3.

19. FED. R. CIV. P. 52.

offered to this nation's citizens free of charge.[20] I believe that up to a point this is as it should be. But what is particularly troubling is when two well-heeled litigants think nothing of utilizing the court's scarce resources for months and sometimes years without cost. Therefore, I suggest that litigants that exceed a certain amount of court time be assessed the costs for their over utilization of the court's resources. It reminds me of the story that is told of the great trial lawyer, Edward Bennett Williams, who, when he was operating the Washington Redskins, reportedly had a run-in with his great coach George Allen. The story goes that Williams had given Allen an unlimited budget to manage the Redskins and that Allen had exceeded it.

By exacting costs for prolonged trials I believe litigants will have every incentive to pare down their cases and only present to the trier the most pressing and important issues. In my view this "free lunch" must stop after a reasonable period of litigation time.

C. COURTS SHOULD BE GIVEN GREATER LEEWAY TO DISPOSE OF FRIVOLOUS OR NOT GERMANE CAUSES OF ACTION

At this time our federal system is clogged with anywhere between ten to twenty percent of a case load that should be summarily dismissed. There are an inordinate number of pro se and prisoner habeas corpus cases that are totally without merit, but nevertheless require a judge's attention and consideration before they can be dismissed.[21] Let me explain some of the cases that fall into this category. There was one litigant who sought to recover millions of dollars from the government because he claimed he conceived of the idea that resulted in this nation's lend lease program after the Second World War. When I told the litigant that this program actually cost our nation a great deal of money and that he would not be able to prove any damages and that he might have to pay damages if a counterclaim was filed, the light finally dawned on him and he gave up his cause.

In other cases we get numerous prisoner complaints concerning their inability to use their prison law libraries or telephones as much as they would like.[22] While these grievances may well be real, they are certainly not the stuff to demand the attention of a federal court. While I realize the types of cases I just described can be dealt with under our present system, they require an inordinate amount of judicial time.[23] What is needed is a screening mechanism that would allow these cases to be summarily dismissed where a legitimate claim for relief has not been set forth.

D. SCREENING MECHANISM FOR NEW ENTITLEMENT LITIGATION

It has been my experience that many of the cases brought pursuant to new

20. *See, e.g.*, Thomas D. Rowe, Jr., *ALI Study on Paths to a "Better Way": Litigation, Alternatives, and Accommodation: Background Paper*, 1989 DUKE L.J. 824, 874 (1989).

21. *See* Stephen M. Feldman, *Indigents in the Federal Courts: the In Forma Pauperis Statute: Equality and Frivolity*, 54 FORDHAM L. REV. 413, 414-15 (1985).

22. *See, e.g.*, Greer v. District of Columbia, 134 F.R.D. 1, 1-2 (D.C. 1991).

23. *See* Feldman, *supra* note 21, at 414-15.

entitlement rights granted by the Congress are not litigation worthy. It is indeed unfortunate that Congress has been unable to define its new entitlement initiatives so that they are made available only to those in whose favor the legislation was enacted. Far too many of these cases have proven to be totally inconsistent with the purposes of the legislative authorization.

There are several ways to deal with this problem. First, Congress must be more precise in defining the class that it seeks to protect. When Congress is unable to do this, it should provide the federal judiciary with the discretion to dismiss cases that do not meet the purposes of the legislation. This kind of screening device is workable, and I believe necessary, to eliminate the ill-founded cases.[24] I am sure other judges have spent weeks trying cases that clearly were not what Congress had in mind when it enacted the law. If any judge abuses this power then, of course, an appellate court can correct the error.

E. DIVERSITY JURISDICTION SHOULD BE MAINTAINED WITH CERTAIN MODIFICATIONS

There is a movement to rid the federal courts of diversity jurisdiction.[25] While this movement has been with us for many years, it now has new impetus because it has been repackaged as a reform measure capable, by itself, of down sizing the growing federal case load.[26]

In my view it would be a mistake to eliminate diversity jurisdiction. Diversity cases represent some of the most meaningful and challenging cases that make up the case load of the federal courts. Certain recent disputes have demonstrated beyond question that the original reasons for giving federal courts diversity jurisdiction still exist. It is unfortunate that some of our

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24. See, for example, Section 501(b) of the Labor-Management Reporting and Disclosure Act, which requires that no proceeding permitted by that section shall be brought except upon leave of the court:

> [w]hen any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. *No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.*

29 U.S.C. § 501(b) (emphasis added).

25. U.S. CONST. art. III, § 2, cl.1. The basis for diversity jurisdiction is found in 28 U.S.C. § 1332 (1992). Congress has introduced legislation to abolish diversity jurisdiction. *See* H.R. 3689-3693, 98th Cong. 1st Sess. (1979); H.R. 2202, 96th Cong., 1st Sess. (1979); H.R. 130, 96th Cong., 1st Sess. (1979).

26. *See, e.g.*, Howard C. Bratton, *Diversity Jurisdiction—An Idea Whose Time has Passed*, 51 IND. L.J. 347 (1976); Robert K. Kastenmeier & Michael J. Remington, *Court Reform and Access to Justice: A Legislative Perspective*, 16 HARV. J. LEGIS., 301 (1979) (listing the critics of diversity jurisdiction to include Roscoe Pound, Felix Frankfurter, and Robert H. Bork); Harry Phillips, *The Expansion of Federal Jurisdiction and the Crisis in the Courts*, 31 VAND. L. REV. 17 (1978).

state judicial systems have still not been removed from politics. Until this is done and our state judges are freed from having to be elected to their positions, their perception of fairness can not be ingrained in the system. Even if our state judicial systems were de-politicized, diversity jurisdiction should still be retained by our federal courts at least with respect to certain cases.

We are today a very mobile nation. State boundaries provide little impediment to commerce. Since commerce has blurred state boundaries, it makes little sense to erect them where interstate disputes need resolution. The dispute resolution machinery that has been erected in the federal system allows for the prompt resolution of disputes on a national basis. The discovery mechanism can not be duplicated on a state by state basis.

While I agree that diversity jurisdiction as it now exists could stand certain changes, such as increasing the amount in controversy and requiring the amount to be in real and meaningful dollars[27] to insure that the case has a real impact on interstate commerce, I would not, however, go much beyond that in tinkering with this basis for federal jurisdiction.

F. THE DESIRABILITY OF MATCHING CERTAIN SPECIALTIES IN THE LAW WITH JUDGES PROFICIENT IN THOSE SPECIALTIES

On the trial level, I would like to see a way found to make use of our judges who have special training and talent. While some have urged the introduction of more specialized courts, I think we could achieve some of the benefits of such a system by a better method of case assignment. This would try to match up cases in a particularly specialized field with judges who have a proficiency in that field.

G. CREATION OF SPECIALIZED ARTICLE I[28] COURTS TO DEAL WITH CERTAIN CASES THAT ARE UNDULY FLOODING OUR ARTICLE III[29] COURTS

There are certain kinds of cases that are presently overloading our system. Freedom of Information Act[30] cases, Title VII[31] cases and Social Security review cases[32] present three such areas. These are important areas to our citizens and should be allocated resources to effectively deal with them. I think that the best way to do so would be by the establishment of specialized courts.

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27. In fact, Congress has increased the required amount in controversy from $10,000 to $50,000. *See* Vistor Flango, *How Would the Abolition of Federal Diversity Jurisdiction Affect State Courts?*, 36 JUDICATURE 35 (1990).

28. U.S. CONST. art. I, § 8, cl. 9. *See* American Ins. Co. v. Cantor, 26 U.S. 511 (1828).

29. U.S. CONST. art. III, § 1.

30. *See* Patricia M. Wald, *The Freedom of Information Act: A Short Case Study in the Perils and Paybacks of Legislating Democratic Values*, 33 EMORY L.J. 649, 660 (1989) (costs of administering FOIA requests increased from $50,000 in 1966 to $47 million in 1979).

31. *See* Laura R. Hillock, Comment, *Arbitration of Title VII and Parallel State Discrimination Claims: A Proposal*, 27 CAL. W. L. REV. 179 (1990-91).

32. *See* 130 CONG. REC. 511, 460 (daily ed. Sept. 19, 1984) (statement of Senator Sasser) (over 50,000 S.S.A. appeals pending in federal courts).

H. COURTS OF APPEAL NEED TO STREAMLINE THEIR REVIEW PROCESSES

There have been several suggestions for reforming the review of initial determinations whether they emanate from an administrative finding or an Article I or Article III court decision.[33] Most of these suggestions involve the establishment of additional layers of review. One suggestion would create a super court of appeals consisting of judges from each of the federal courts of appeal.[34] At this point, while the suggestion has some surface appeal, I would not support it without first experimenting with some less radical suggestions. In my view, adding more layers of review before a case or controversy can be finally resolved is the wrong tack to take.

What must be first determined is what we want our system of dispute resolution to deliver to our citizens. In the majority of cases, litigants want a prompt decision of their dispute. Society is required to provide this benefit to its citizens. A review mechanism to assure uniformity and a proper application of the law is also a necessary ingredient to this nation's system of jurisprudence. Based upon the Weiss Commission's study, there is evidence that the review process is overwhelming our courts of appeal. It is for this reason that suggestions have been made for more judges and possibly more review courts. What the Weiss Commission did not study is the manner and ways individual appellate judges decide cases and whether certain alterations of that process could alleviate their case loads or provide them with the ability to more expeditiously process their cases. A number of our appellate courts have adopted processes for settling cases on appeal.[35] This is a rather new phenomenon in most circuit courts, although the 2nd Circuit has had this process for many years. Where it has been tried it has been relatively successful.[36] While these new processes or mechanisms are helpful, I want to suggest a somewhat different tack to alleviate the appellate case load or at least provide a way for more expeditiously disposing of cases on appeal. In my view, while the law is quite clear that a certain amount of deference is to be paid to the initial decision maker,[37] I sometimes wonder if, in fact, that

33. *See, e.g.*, Robert Bork, *Dealing with the Overload in Article III Courts*, 70 F.R.D. 231, 232 (1976); RICHARD POSNER, THE FEDERAL COURTS: CRISIS AND REFORM 65, 80 (1985).

34. Frank M. Coffin, *Research for Efficiency & Quality: Review of Managing Appeals in Federal Courts*, 138 U. PA. L. REV. 1857, 1864 (1990).

35. JAMES B. EAGLIN, FEDERAL JUDICIAL CENTER, THE PRE-ARGUMENT CONFERENCE PROGRAM IN THE SIXTH CIRCUIT COURT OF APPEALS, AN EVALUATION 6 (1990); Donald P. Lay, *A Blueprint for Judicial Management*, 17 CREIGHTON L. REV. 1047, 1062-67 (1983-84) (discussion of Eight Circuit's case management); Robert W. Rack, Jr., *Pre-Argument Conferences in the Sixth Court of Appeals*, 15 TOL. L. REV. 921 (1984); Irving R. Kaufman, *The Pre-Argument Conference: An Appellate Procedural Reform*, 74 COLUM. L. REV. 1094 (1974).

36. EAGLIN, *supra* note 35, at 8, 9; MANAGING APPEALS IN FEDERAL COURT 5 (M. Tony & R. Kutzman eds. 1988) [hereinafter MANAGING APPEALS]; Irving R. Kaufman, *Must Every Appeal Run the Gamut—The Civil Appeal Management Plan*, 95 YALE L.J. 755 (1986); Kaufman, *supra* note 35.

37. Abuse of discretion is the primary standard applied to review trial court decisions. *See* Pennsylvania v. Delaware Valley Citizen's Council for Clean Air, 478 U.S. 546, 569 (1986) (Blackmun, J., concurring in part, dissenting in part); Walters v. National Assoc. of Radiation Survivors, 473 U.S. 305, 336 (1985).

occurs as much as it should. I do not want my remarks to be misinterpreted because I am an inferior court judge who is subject to appellate review. I am trying to be perfectly objective. But because I am a trial judge I will only suggest at this time that a study be made to see if the perception I have is a correct one.

As a reader of an untold number of appellate cases, I sometimes get the view that courts of appeal are sometimes over reviewing matters and writing opinions in areas where the case law is well settled. In most cases it would seem that the role of the appellate judge is to determine whether the litigants have received a fair trial and whether the results comport with the law. A trial need not be perfect, nor in my view need the relief ordered be that which the reviewing judge would have decreed had that judge tried the case. What really should be strived for is a determination whether the lower court decision falls within the range of acceptable limits.

Whether my perception is correct is not of critical importance. What needs to be done is a study of the way in which cases are reviewed and whether reforms can be made to help in the more expeditious review of cases. This kind of study could result in changes allowing more cases to be disposed on a per curiam basis when the appellate court holds that, after a review of the lower court record, the decision should stand. This would not be very different from the decision made by an instant replay referee that a field official's call should not be disturbed.

I realize that various circuit courts have processes for the summary review of cases[38] and have adopted some important measures for expediting certain kinds of cases.[39] I am suggesting that virtually the entire appellate case load should be subject to this kind of review. In effect the appellate court would go into the two minute drill for much of its case load.

Streamlining the federal judiciary is a subject whose time has come. In my view, the key to modernizing our Article III court system is to make it operate on a real time basis and to assign to it only the most significant and meaningful cases.

III. CONCLUSION

It is important for the judiciary itself and those in the legal profession to determine what modifications of the system are required and to implement necessary reform measures. This introspection is necessary both because it is the right thing to do and because it is necessary. If change does not come from within the judicial system, change will be imposed upon the judiciary

38. *See, e.g.*, United States v. Stemm, 835 F.2d 732 (10th Cir. 1987) (adopting rules for expedited review of criminal cases); Groendyke Transport, Inc. v. Davis, 406 F.2d 1158 (5th Cir. 1969), *cert. denied*, 394 U.S. 1012 (1969) (allowing summary review in cases involving public policy concerns in administrative action challenges); Magnesium Casting Co. v. Hoban, 401 F.2d 516 (1st Cir. 1968), *cert. denied*, 393 U.S. 1065 (1969) (applying summary review to challenges to administrative action); Page v. United States, 356 F.2d 337 (9th Cir. 1966) (applying rules of expedited review of criminal cases); *see also* MANAGING APPEALS, *supra* note 36, at 5.

39. *Id.*

by congressional action without the judiciary having much say on its own destiny. Just as that ad for a certain brand of motor oil says "you either pay a small price now or you will pay a bigger price later." We in the judiciary may well pay a much bigger price later if we do not take certain sensible measures now.

Comments