

Reporter's Draft for the Working Group on Principles to Use When Considering the Federalization of Civil Law

by
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Introduction

Although much more attention has focused on issues concerning the federalization of what previously had been state law crimes, there are important issues concerning the federalization of civil matters. There has been an enormous growth of civil cases in federal court and this has been, in part, a result of federal courts hearing types of matters that traditionally had been dealt with in state courts.

Many of the issues concerning federalization are the same whether the focus is on criminal or civil cases. For example, developing federal law in areas that traditionally have been handled at the state level raises important federalism issues whether the law is civil or criminal.

There are, however, unique issues that arise in the civil context. The creation of a federal crime necessarily entails federal court jurisdiction to hear the matter. In contrast, the creation of a federal cause of action has a more uncertain effect on the federal docket because state courts generally have concurrent jurisdiction over civil claims and sometimes are the only forum even for federal claims. Simply put, in the civil area, unlike the criminal area, there are two interre-

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lated, but distinct questions concerning federalization: should there be federal law or state law or both; and should there be federal court jurisdiction or state court jurisdiction or both. In the criminal area, only the former question arises.

Part I of this Report presents statistics on the federal civil docket and provides a basis for assessing the trend towards federalizing civil matters. Part II suggests possible principles for determining issues concerning the federalization of state law matters. This Part describes the alternative models for the relationship of federal and state law and federal and state courts. Part II also discusses what considerations should guide decisions concerning which civil matters should be covered by federal law and/or heard in federal courts. Finally, Part III presents suggestions to be considered in evaluating the federalization of state law.

II. Statistics on the Civil Docket

There has been an enormous growth in the number of civil cases heard in federal courts. In 1992 there were approximately 230,509 civil cases filed in federal court.¹ This compares with approximately 47,298 criminal cases filed in federal court in 1992.² The number of civil cases commenced in a year has almost doubled in the past seventeen years. In 1975 a total of 117,320 civil cases were filed.³ This, itself, was a doubling of civil cases over a fifteen-year period. In 1960 a total of 59,284 civil cases were initiated in federal court.⁴ In other words, there are four times more civil cases filed each year now than was the case 30 years ago.

Although there has been a great increase in civil cases in federal court over the past few decades, there actually has been a slight decrease since the mid-1980s. The high point for civil filings was in 1985 when 273,670 civil cases were filed.⁵ One of the likely explanations for the dip in civil case filings is the increase in the amount-in-contro-

1. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1992 ANNUAL REPORT OF THE DIRECTOR 175 tbl. C-1.

2. *Id.*

3. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1977 ANNUAL REPORT OF THE DIRECTOR 82 tbl. 11.

4. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1980 ANNUAL REPORT OF THE DIRECTOR 55 tbl. 13.

5. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1985 ANNUAL REPORT OF THE DIRECTOR 276 tbl. C-1.

versy requirement in diversity cases, from in excess of \$10,000 to in excess of \$50,000, in 1988.⁶

Another explanation for the drop in cases in the mid-1980s is a change in the government's policy in Social Security cases. The number of Social Security cases increased dramatically from about 10,000 in 1980 to almost 30,000 by 1984 and then down to 15,000 by 1986 and to 7,500 in 1990.⁷ In the early 1980s the Social Security Administration under the Reagan Administration discontinued benefits to almost 200,000 individuals.⁸ A large number of lawsuits were filed and the Social Security Administration changed its policy after Congress adopted legislation to end the disqualifications.

The number of civil cases filed per year only tells part of the story because the number of federal district court judges also has increased. Therefore, a crucial statistic in analyzing the civil caseload is the number of filings per judge. In 1992 slightly over 355 civil cases were commenced per judge;⁹ compared to a low of 300 in 1975 and a high of 476 per judge in 1985.¹⁰

Not all types of civil filings have increased at the same rate. This is especially important because different types of cases vary in complexity and occupy differing amounts of court time and resources. For example, as has been widely noted, there has been a large growth in the number of prisoner cases filed. In 1965, 7,888 prisoner petitions were filed in federal court.¹¹ By 1975 this had increased to 19,307 prisoner cases¹² and by 1985 the number was 33,468.¹³ In 1992, 48,423 prisoner petitions were commenced in federal court.¹⁴

Another area of great growth has been civil rights suits brought under 42 U.S.C. § 1983. In 1961 there were only 287 section 1983

6. 28 U.S.C. § 1332.

7. See William W. Schwarzer & Russell R. Wheeler, *On the Federalization of Civil and Criminal Justice*, 23 *STETSON L. REV.* 651, 697 (1994).

8. *Schweiker v. Chilicky*, 487 U.S. 412, 416 (1988).

9. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1992 ANNUAL REPORT OF THE DIRECTOR 61 tbl. 5.

10. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORTS OF THE DIRECTOR FOR 1975, 1985, AND 1992.

11. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1981 ANNUAL REPORT OF THE DIRECTOR 211 tbl. 20.

12. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1977 ANNUAL REPORT OF THE DIRECTOR 98 tbl. 19.

13. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1985 ANNUAL REPORT OF THE DIRECTOR 281 tbl. 16.

14. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1992 ANNUAL REPORT OF THE DIRECTOR 182 tbl. C-2A.

cases brought in federal court.¹⁵ By 1985 not counting prisoner petitions, the number was over 17,000,¹⁶ and by 1992 the number was over 20,000.¹⁷

Many factors account for the dramatic increase in civil cases filed in federal court. In part, the growth must be understood in the context of a general increase in civil litigation in the United States. For example, a careful empirical analysis by Professors Eisenberg and Schwab revealed that the increase in section 1983 suits, again not counting prisoner petitions, paralleled the growth in civil filings in state and federal courts throughout the country.¹⁸

Why society is more litigious, and whether this is good or bad, is beyond the scope of this Report. A myriad of explanations are offered ranging from the desirable, more people who suffer injuries are now receiving redress, to the undesirable, people turn to the courts to resolve disputes that previously were handled elsewhere and that should be resolved in nonjudicial arenas.

Another explanation for the increase in the number of civil filings has been the creation of new civil causes of action. For example, in the 1960s, Congress adopted many civil rights statutes such as those prohibiting discrimination in employment, voting, and housing. Since then, Congress has adopted additional civil rights laws, such as those that prohibit age discrimination in employment and the more recent Americans with Disabilities Act. There is no doubt that these laws have added a large volume of complex cases to federal court. However, in most instances, these laws did not federalize matters that previously had been handled in state courts; relatively few states had laws that systematically protected civil rights in the manner of the federal civil rights laws.

Environmental law is another area where federal statutes have created new causes of action that previously were not heard in any court. A myriad of federal environmental protection laws, dealing with issues such as air pollution, water pollution, and toxic waste disposal have been adopted. Again, the result has been the addition of a substantial number of highly complex cases to the federal courts' docket.

15. THEODORE EISENBERG, *CIVIL RIGHTS LEGISLATION: CASES AND MATERIALS* 86 (2d ed. 1987).

16. *Id.* at 86.

17. Schwarzer & Wheeler, *supra* note 7, at 697.

18. Theodore Eisenberg & Stuart Schwab, *The Reality of Constitutional Tort Litigation*, 72 *CORNELL L. REV.* 641 (1987).

In some instances, federal law has created civil causes of action that supplement or even supplant traditional state remedies. Perhaps the most notable example is the federal RICO statute, which makes a pattern of state law fraud actionable in a federal civil suit.¹⁹ Another illustration is the federal ERISA law—the Employee Retirement Income Security Act—which regulates pensions and broadly preempts state law.²⁰

Judicial interpretation of federal statutes also has at times greatly contributed to the growth in the federal courts' civil caseload. For example, the great rise in section 1983 suits followed the Supreme Court's decision in *Monroe v. Pape*,²¹ which held that a cause of action exists under section 1983 for random and unauthorized government actions that violate constitutional rights even in instances where state law provides an adequate remedy.

Finally, the rise in litigation often reflects other social phenomena. For example, although the amount of prisoner litigation has increased markedly, this must be placed in the context of a substantial increase in the number of prisoners throughout the country. Controlling for the growth in prison populations, the number of prisoner cases has been less than the increase for non-civil rights cases in federal court.²²

In conclusion, there is no single explanation for the rise in the federal courts' civil caseloads. It should be kept in mind, however, that concern over burgeoning federal dockets is not new. In 1925 Professor Charles Warren complained of "[t]he present congested condition of the dockets of the Federal Courts and the small prospect of any relief to the heavily burdened federal judiciary."²³ In 1959 Chief Justice Earl Warren complained of "the constant upward trend in total volume" of cases filed in federal court and spoke of how "it is essential that we achieve a proper jurisdictional balance between federal and state court systems, assigning to each system those cases most appropriate in light of the basic principles of federalism."²⁴ Thus, the current effort to define the proper spheres for federal and state courts is part of an ongoing struggle that began with the first Judiciary Act and will continue as long as there is a United States.

19. The civil RICO statute is found at 18 U.S.C. § 1964.

20. 88 Stat. 829 (1974).

21. 365 U.S. 167 (1961).

22. Eisenberg & Schwab, *supra* note 18, at 667.

23. Charles Warren, *Federal Criminal Laws and the State Courts*, 38 HARV. L. REV. 545 (1925).

24. Quoted in Schwarzer & Wheeler, *supra* note 7, at 656.

II. Principles for Determining the Federalization of State Law Matters

A. Importance of the Issue

There is a widespread perception of a caseload crisis in federal courts.²⁵ At the March 7, 1994 Conference, *Overlapping and Separate Spheres: A Three-Branch Roundtable on State and Federal Jurisdiction*, federal district court judges repeatedly expressed great concern about the size of their dockets.²⁶ Concern also was voiced about substantial delays in the holding of civil trials.²⁷

There are only three ways of dealing with docket problems: increase the number of judges; increase the efficiency of the courts; and decrease the number of cases in federal court. There is great disagreement over the optimal size of the federal judiciary and the desirability of creating a substantial number of additional federal judgeships.²⁸ The Civil Justice Reform Act has mandated that each federal judicial district consider ways of improving efficient handling of civil cases, but the overall impact of these reforms is uncertain.

Therefore, if there is not going to be a substantial increase in the number of federal judges and if there are limits as to how much efficiency can be increased, federal court jurisdiction must be regarded as a scarce resource. As such, it would be very useful to have criteria as to those matters that are best heard in federal courts and those that are best left to the states to handle.

Even apart from concerns over docket pressures, there are important issues of federalism at stake in the allocation of judicial business between federal and state courts. The "system of constitutional federalism recognizes a division of jurisdiction between the state courts and the federal courts that is consistent with the role of the states within the federal structure."²⁹

25. See, e.g., Report of the Federal Courts Study Committee (1990).

26. Transcript of Proceedings, see, e.g., Comments of Judge Stanley Marcus 28-29.

27. *Id.* at 105-06 (comments of Judge Ann Williams).

28. The Federal Courts Study Committee recommended against a substantial increase in the number of Article III federal judges. Report of the Federal Courts Study Committee at 7. For a critique of these arguments, see Erwin Chemerinsky & Larry Kramer, *Defining the Role of the Federal Courts*, 1990 B.Y.U. L. REV. 67, 70; Mark Tushnet, *Revision of Federal Jurisdiction: A Political Analysis*, 22 CONN. L. REV. 621 (1990).

29. Schwarzer & Wheeler, *supra* note 7, at 659.

B. Models for Allocating Judicial Business Between Federal and State Courts

In considering the federalization of civil law matters, it is important to note that there are important differences between the criminal and civil areas. The creation of a federal criminal law inherently means that cases under it will be tried in federal court. Civil cases are different. A federal civil cause of action can be heard exclusively in federal court, or more commonly in both federal and state courts, or exclusively in state courts.

In other words, in the civil area, there are two interrelated, but distinct, questions: Should the matter be dealt with in federal law or state law or both? Should the matter be heard in federal court or state court or both?

Understanding issues concerning the federalization of civil matters requires careful consideration of the models available for dealing with these questions and of allocating judicial business between federal and state courts. There are six basic ways in which these questions are currently answered, although this is by no means an exhaustive list of the potential models that might be developed.

1. The matter is totally left to the states—there is no federal law and federal courts may not hear the matter even in diversity cases. The most notable example of this is domestic relations matters where the Supreme Court recently reaffirmed that federal courts may not hear matters such as divorce, alimony, and child custody cases.³⁰

2. The matter is left to state law, but federal courts may hear the cases via diversity jurisdiction. For example, in traditional common law areas such as tort and contract cases, federal courts can exercise diversity jurisdiction, but since *Erie Railroad v. Tompkins*,³¹ federal courts have applied state law.

3. The matter is left to state law, but there are “uniform” state laws that have been promulgated to increase consistency among the states. This might involve either no federal court jurisdiction even in diversity cases or, more commonly, allowing federal courts to hear diversity cases. A prominent illustration is the Uniform Commercial Code, which federal courts apply in diversity cases where the Code is a part of the state law to be followed.

4. The matter is covered by federal law, but federal courts cannot hear the matter except in diversity jurisdiction. There are hundreds of

30. *Ankenbrandt v. Richards*, 112 S. Ct. 2206 (1992).

31. 304 U.S. 64 (1938).

federal laws that do not create a federal cause of action.³² The Supreme Court has made it very difficult to infer a private right of action, except where it is clearly intended by Congress.³³ These federal laws might be used to provide the standard of care in state law tort suits, but there is not federal question jurisdiction because the federal law does not create a cause of action.³⁴

5. The matter is covered by federal law, and perhaps also by supplemental state laws, and federal and state courts have concurrent jurisdiction. This, of course, is the norm for most federal laws that authorize federal jurisdiction. For instance, federal and state courts both have jurisdiction to hear suits under section 1983 and states may have their own laws protecting constitutional rights from government infringement. The Supreme Court has made it clear that the presumption is in favor of concurrent federal and state court jurisdiction.³⁵

6. The matter is covered exclusively by federal law and federal courts have jurisdiction exclusive of state courts. Patent law is a notable example of this.

Each of these models is undoubtedly appropriate in some areas and inappropriate in others. The issue of federalization of civil law is largely about when each of these models is appropriate.

It also must be noted that once it is decided that a civil matter should be heard in federal court, there are choices about what type of federal court should hear the cases. Criminal cases are generally heard by Article III federal judges, but civil cases are often handled by Article I judges who lack life tenure. The most notable example is the federal bankruptcy courts. Other examples include civil matters heard by federal magistrate judges, the Tax Court, the Claims Court, and federal administrative agencies. Thus, in the civil area, a choice must be made as to whether the matter should be heard in an Article I or an Article III court.

There are, however, constitutional limits on the use of Article I courts. Most notably, in 1982, the Supreme Court declared unconsti-

32. See PETER LOW & JOHN C. JEFFRIES, JR., *FEDERAL COURTS AND THE LAW OF FEDERAL-STATE RELATIONS* 995 (2d ed. 1989).

33. See ERWIN CHEMERINSKY, *FEDERAL JURISDICTION* 356-64 (2d ed. 1994).

34. See *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986) (federal standard used as the standard for the duty of care in a tort suit is not the basis for federal question jurisdiction).

35. See *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820 (1990); *Taffin v. Levitt*, 493 U.S. 455 (1990).

tutional the bankruptcy courts as they then existed.³⁶ Article I courts are allowed in cases involving the military, federal territories, disputes between the federal government and individuals, private disputes that are closely related to government regulatory activity, and as an adjunct of an Article III court.³⁷

C. Considerations that Should Guide Decisions About What Civil Matters Should Be Covered by Federal Law and/or Heard in the Federal Courts

At the Conference on Overlapping and Separate Spheres, Professor Kathleen Sullivan and Judge Stanley Marcus suggested criteria for allocating judicial business between federal and state courts.³⁸ From their remarks and other comments made at the Conference, there are five major areas where federal court jurisdiction is especially important.

First, federal courts should hear matters when the federal government is directly involved. For example, federal courts have jurisdiction to hear civil suits brought by the federal government and the federal government may remove cases to federal court when it is named as a defendant in state court proceedings. However, as mentioned above, there is still the choice to have the matter heard initially in an Article I court. For example, one proposal is to shift judicial review in Social Security Disability cases to an Article I court.³⁹

Second, federal courts should hear matters where uniformity in the interpretation and enforcement of federal law is important. This has been a traditional justification for having exclusive federal court jurisdiction in patent and copyright cases. However, important doubts about this rationale have been expressed; does federal jurisdiction necessarily create more uniformity than would exist without it? If there is not exclusive federal court jurisdiction, then having both federal and state jurisdiction might decrease uniformity.

Even creating exclusive federal jurisdiction does not necessarily mean that there will be more uniformity. There are more than ninety federal districts. Are they more likely to be uniform than the fifty state courts? Even as to the thirteen federal circuit courts of appeals,

36. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

37. See CHEMERINSKY, *supra* note 33, at 207-45.

38. See Transcript, *supra* note 26, at 20-23 (remarks of Professor Kathleen Sullivan), 31-33 (remarks of Judge Stanley Marcus).

39. Report of the Federal Courts Study Committee at 55.

as to most difficult issues, they may divide among two or three different approaches until there is a resolution by the United States Supreme Court. It is likely that state courts also would divide among two or three approaches, meaning that in either event the country is divided among several legal options.

At the Conference on March 7, it was suggested that uniform state laws might be a better way of encouraging uniformity.⁴⁰ However, it also was noted that in some areas, such as parental kidnapping, uniform state laws have failed.

Third, federal courts should hear matters where efficiency-based considerations favor federal jurisdiction. For example, it often is desirable to have federal courts hear and decide interstate matters. The federal interpleader statute is a classic example of this and thus only requires minimal diversity.⁴¹ Environmental litigation is another example where interstate concerns are seen as justifying federal jurisdiction because pollution crosses state borders.

Some propose that there be greater access to federal courts in mass tort litigation because of the efficiency gains in having the matters heard in a more centralized and managed manner.⁴² However, interstate effects are not sufficient, by themselves, to justify federal court jurisdiction. Almost all of the participants at the March 7 Conference felt that there should not be increased federal jurisdiction to hear child custody cases even when they have an interstate dimension, such as with child kidnapping across state boundaries.

Fourth, federal courts should hear matters where there are reasons to believe that the federal courts, overall, will do better than the state courts. This has been the traditional justification for federal court diversity jurisdiction: the fear of state court bias against out-of-staters. This also was the justification for the adoption of 42 U.S.C. § 1983 and more generally federal court jurisdiction in civil rights cases.

There is, however, a large disagreement as to when, if at all, federal courts should be perceived as better than state courts at handling particular matters. Often referred to as the "parity debate," there is a voluminous scholarly literature arguing all sides of the issue.⁴³

40. Transcript, *supra* note 26, at 259.

41. 28 U.S.C. § 1397.

42. See, e.g., Linda Mullenix, *Class Resolution of the Mass Tort Case: A Proposed Federal Procedure Act*, 64 TEX. L. REV. 1039 (1986).

43. See, e.g., Paul Bator, *The State Courts and Federal Constitutional Litigation*, 22 WM. & MARY L. REV. 605 (1981); Erwin Chemerinsky, *Parity Reconsidered: Defining a*

Fifth, federal courts should be available to hear civil cases under federal laws where Congress believes that it is important to allow a choice of forums. In most areas where federal courts have jurisdiction to handle civil cases, state courts have concurrent jurisdiction. Thus, Congress has implicitly decided that it is desirable to allow litigants the option of having a federal court decide the federal law issue.

These five areas represent a large area of current federal court civil jurisdiction. Additional matters should be added to federal jurisdiction only if the subject matter fits into one of these areas.

III. Suggestions in Considering the Federalization of State Law

Three major suggestions were advanced at the Conference and by members of the Working Group. One set of suggestions focused on removing matters from the federal courts. A second set of proposals concerned areas for greater federal-state cooperation in civil litigation. Finally, there are suggestions for Congress, in enacting new laws, to systematically provide more guidance as to federal court jurisdiction. Each of these proposals is addressed in turn.

A. Suggestions for Removing Matters from the Federal Courts

There may be areas that are now handled in federal court that would be better dealt with in state courts. For example, Jones Act cases are often identified as a type for which federal court jurisdiction is unnecessary. Also, there is the perennial debate over whether diversity jurisdiction should continue to exist. Several participants at the Conference urged that, at the very least, diversity jurisdiction be limited by preventing an in-state plaintiff from bringing a diversity action in federal court. Others expressed opposition to any curtailment of diversity jurisdiction.

Another way of removing cases from Article III federal courts is to have them heard by an Article I judge. This, of course, does not address federalism concerns because the matter continues to be decided at the federal level. But docket pressures in federal district courts can be reduced somewhat if cases are shifted to other forums. Prominent examples mentioned include having an Article I court con-

Role for the Federal Judiciary, 36 UCLA L. REV. 233 (1988); Burt Neuborne, *The Myth of Parity*, 90 HARV. L. REV. 1105 (1977); Michael Wells, *Behind the Parity Debate: The Decline of the Legal Process Tradition in the Law of Federal Courts*, 71 B.U. L. REV. 609 (1981).

duct judicial review of Social Security issues and the increased use of magistrate judges. Any such expansion of Article I courts requires careful consideration of constitutionality and of whether it would be desirable to decrease the participation of Article III federal judges.

B. Suggestions for Greater Federal-State Cooperation

Several judges, both state and federal, expressed the desire for more cooperation between state and federal courts in civil litigation. Several important possibilities were mentioned.

One option is joint settlement opportunities. Often there are cases simultaneously in federal court and in state court over the same dispute. Creating a mechanism for comprehensive settlement negotiations, allowing resolution of both federal and state claims would be beneficial.

Another example for better cooperation is shared jury lists. Although the territory of a federal district court is likely to be different from that of a state court, they are likely to draw on some of the same jurors. Therefore, shared jury lists might be more efficient and also better facilitate juries representing a cross-section of the community.

Other resources, too, might be shared between federal and state courts. For instance, translator resources might be shared, reducing costs and enhancing efficiency.

When cases pending in state court overlap with matters pending in federal court, joint discovery likely would be very desirable. Joint discovery might lessen the burden on the parties and make it unnecessary for courts at both levels to be involved in discovery battles.

Finally, and perhaps most importantly, it would be desirable to have clearer rules as to how matters should be handled when they are simultaneously pending in both federal and state courts. The general rule is that federal courts are not to abstain in such circumstances.⁴⁴ Nor are state courts required to abstain. The result is that the same matter can be litigated at both levels, but whichever court decides first will preclude a ruling by the other because of rules of preclusion. This is wasteful and might be dealt with by a federal statute. The law might provide, for example, that whichever court acquired the case first should hear the litigation and the other should stay its proceedings.

44. See *Moses H. Cone Memorial Hospital v. Mercury Construction Co.*, 460 U.S. 1 (1983) (generally there should not be abstention when there is pending litigation over the same matter in federal and state courts).

Although these suggestions would not substantially lessen docket pressures, they would enhance the efficiency of the federal courts and help facilitate a positive working relationship between federal and state court judges.

C. Suggestions for Clearer Congressional Guidance as to Civil Litigation

A consistent complaint from federal judges is the lack of guidance from Congress as to how it wants federal courts to handle particular statutes. Thus, it was suggested that a checklist be created and that, to the greatest extent possible, Congress must address each item in adopting a law. The following are some of the items suggested for inclusion in the checklist:

- What is the appropriate statute of limitations to be applied?
- Is a private right of action contemplated?
- Is preemption of state law intended?
- Are the provisions of the law severable?
- Does the law repeal or otherwise circumscribe, displace, impair, or change the meaning of existing federal statutes?
- What types of relief are available under the law?
- Is retroactive application of the federal law intended?
- Under what conditions, if any, may attorneys' fees be awarded?
- Is exhaustion of administrative remedies a prerequisite to any civil action authorized?
- Are any administrative proceedings intended to be formal or informal?

If Congress answered such questions for every new law, a great deal of uncertainty would be eliminated. The result would be much less litigation over these questions and a substantial savings of time for courts and litigants.

Conclusion

Although there are many areas of disagreement, there also is substantial consensus within the Working Group on many topics. For example, there is a widespread view that federalization is a topic of great importance in the civil area and that there is a need for clearer criteria as to what types of civil matters should be in federal court. No formula ever will be developed, but much more careful consideration can be given before federalizing civil matters in the future.

