

Below are three recommendations, supported by the ABA, from the Long Range Plan for the Federal Judiciary followed first by comments in the Long Range Plan for the Federal Judiciary and next by comments of the ABA Standing Committee on Federal Judicial Improvements on those recommendations that were contained in the background report that went to the House of Delegates when it adopted policy in August 1995.

Recommendation 1 of the Long Range Plan for the Federal Judiciary:

Defining and Maintaining A Limited Federal Jurisdiction

Recommendation #1: Congress should be encouraged to conserve the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests, leaving to the state courts the responsibility for adjudicating all other matters.

The recommendations that follow are efforts to implement this overarching principle; in that sense, achieving the goals of this first recommendation absolutely depends on implementing those more specific recommendations. Nonetheless, the goal of a limited federal court jurisdiction is doomed unless Congress embraces the fundamental philosophy described above.

Comments on Recommendation #1 of the Standing Committee on Federal Judicial Improvements in its background report to the House of Delegates:

This Plan Recommendation, general in tone and broad in its reach, serves as a recapitulation of the Introduction to Chapter 4 and the goals therein articulated to preserve a sound federal judicial federalism: “sensible limitations,....cooperative federalism in which the federal government and the states work together... carefully-controlled growth,....improvement to state justice systems, which may require significant federal financial assistance.” The Plan Recommendation is directed to Congress as a statement of fundamental philosophy respecting the federal courts.

This Position is in line with existing ABA policy statements emphasizing “limited jurisdiction” of the federal courts in certain areas, and with traditional ABA support for adequate justice system funding.

Recommendation 6 of the Long Range Plan for the Federal Judiciary:

Civil Proceedings

Recommendation #6: Congress should be encouraged to exercise restraint in the enactment of new statutes that assign civil jurisdiction to the federal courts and should do so only to further clearly defined and justified interests. Federal court jurisdiction should extend only to civil matters that—

(a) arise under the United States Constitution;

There is no serious debate that the federal courts should be charged with the core duty of enforcing and interpreting the federal constitution. One of the federal courts' principal roles is to articulate the nation's fundamental structure of government and its underlying values, including the preservation of individual rights and liberties found in the Bill of Rights and subsequent amendments. Another similar role is the federal courts' protection – through the writ of habeas corpus – of persons held in violation of the Constitution or federal law.

(b) deserve adjudication in a federal judicial forum because the issues presented cannot be dealt with satisfactorily at the state level and involve either (1) a strong need for uniformity or (2) paramount federal interests;

A significant percentage of the federal courts' docket involves claims arising under federal statutes. This part of the docket has grown steadily over the years, due in large part to the tendency of Congress to create additional federal causes of action and to provide a federal judicial forum. This criterion identifies two general circumstances in which federal statutory law should provide an Article III forum.

The “strong need for uniformity” standard encourages Congress to be cautious in “federalizing” every matter that captures the nation's attention. It calls for Congress to do so only when uniform resolution is required on an issue that has not been, and clearly cannot be, resolved satisfactorily at the state level. The burden to satisfy this showing should be a high one if the core values of the federal courts are to be preserved. Cases brought under the patent, trademark, and copyright laws are just a few examples of categories of cases satisfying this high standard.

The “paramount interest” standard is intended to account for those areas in which the justification for a federal judicial forum is tied, not so much to a need for uniformity, but to the critical importance our federal government attaches to certain societal values.

Legislation protecting the environment and the free market system and authorizing federal court jurisdiction has arisen in response to the nation's strong interest in these matters. Legislation protecting fundamental rights and liberties also falls within this category. For example, the federal courts have played a vital role in promoting civil rights and in eliminating invidious discrimination in all parts of society. This role

should continue. At the same time, Congress should recognize that all state judges take an oath to uphold the U.S. Constitution and the supremacy of federal law. Absent a showing that state courts cannot satisfactorily deal with an issue, Congress should be hesitant to enact new legislation enforceable in the federal courts, and should not do so in any event without a concomitant reduction of federal jurisdiction in other areas.

(c) involve the foreign relations of the United States;

Foreign policy is the prerogative of the federal government, and the federal courts should be the exclusive tribunal for resolving disputes that touch upon relations of the United States with other countries.

(d) involve the federal government, federal officials, or agencies as plaintiffs or defendants;

A sovereign may always sue in its own courts. Providing a forum for resolving all disputes involving the federal government is consistent with the policy of protecting the interests of the federal government as a sovereign. Federal courts also have always had jurisdiction over actions brought by or against agencies and federal officers arising out of their official duties. Exercise of that jurisdiction over such actions ensures that those arms of the federal government can be confident of a forum for the uniform interpretation and application of federal law.

(e) involve disputes between or among the states; or

Absent a neutral forum for resolving disputes between or among the states, state governments occasionally might be tempted to retaliate against each other when a decision in one state's court system had a significant negative impact on the other. In order to promote the solidarity of our union, a federal forum is necessary to resolve controversies between and among the states.

(f) affect substantial interstate or international disputes.

Just as the federal government and its court system should be involved in the criminal prosecution of significant multistate or international activities, it is appropriate for the federal courts to resolve and adjudicate civil matters significantly affecting interstate and international commerce. For example, federal common law jurisdiction over disputes relating to navigable waters derives from the federal government's legitimate interest in substantial interstate activities. Inasmuch as one of the purposes of the federal government is to foster and regulate interstate activity, the federal court system is an appropriate forum for resolving civil disputes over those kinds of activities.

Comments on Recommendation #6 of the Standing Committee on Federal Judicial Improvements in its background report to the House of Delegates:

The text of Plan Recommendation 6 has been modified from the November 1994 version so that now it does not read as necessarily implicating the diversity issue. The text now urges Congress to “exercise restraint” in enacting new statutes that assign civil jurisdiction to the federal courts. It also states that federal civil jurisdiction should extend only to civil matters (a) that arise under the Constitution; (b) that cannot be dealt with at the state level because of a strong need for uniformity or paramount federal interests; (c) that involve foreign relations; (d) disputes among the states; or (e) affect substantial interstate or international disputes.

Recommendation 13 of the Long Range Plan for the Federal Judiciary:

Confronting the Effects of Allocating Jurisdiction

Impact of Legislation

Recommendation #13: When legislation is considered that may affect the federal courts directly or indirectly, Congress should be encouraged to take into account the judicial impact of the proposed legislation, including the increased caseload and resulting costs for the federal courts.

New criminal legislation inevitably imposes financial and other burdens on the judicial branch associated with the investigation, prosecution, resolution, and punishment of those offenses. While judges feel these burdens directly, it is other parts of the judicial system – probation and pretrial services officers, public defenders and panel attorneys, and court reporters, interpreters, and clerks – who are most affected. Likewise, the enactment of new civil causes of action produces additional costs to the courts when litigation is brought to assert or defend newly created rights.

Although some of the increases in workload are also attributable to interpretations of legislation by the courts themselves, the ultimate policy making authority lies with Congress. If the same institution that provides a budget for the federal courts takes the costs associated with jurisdictional and procedural changes into account, workload may be allocated to the federal courts in a more reasoned, responsible manner.

Beyond jurisdictional expansions, Congress has imposed specific deadlines for judicial action and other procedural or reporting requirements – e.g., the Speedy Trial Act of 1974 and the Civil Justice Reform Act of 1990 – that require the courts to shift priorities, hold additional hearings or other proceedings, and alter methods of case management. Although these statutory mandates do not create new workload as such, they profoundly affect the allocation of judicial time and other resources.

Since 1991, the Administrative Office of the United States Courts has supplied Congress with judicial impact statements on legislation potentially affecting federal court workload and budgets. This process should be continued in the hope that reminding legislators of the cost of their policy initiatives will result in fewer and more tailored expansions of federal jurisdiction, and a recognition that the courts cannot carry new

burdens without concomitant resources or the reduction of jurisdiction in other areas. This principle applies also with respect to the possible impact of federal legislation on state judiciaries (see Recommendation 14 *infra*).

Comments on Recommendation #13 of the Standing Committee on Federal Judicial Improvements in its background report to the House of Delegates:

Requiring a judicial impact assessment of proposed legislation is central to the several recommendations that urge restraint in expanding federal jurisdiction. The ABA has previously adopted policy urging the use of judicial impact statements (8/91) and justice system impact statements (8/92).