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Foreword.

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REMARKS BY BARBARA BADER ALDAVE*

In observance of the two hundredth anniversary of the federal courts, the editors of *St. Mary's Law Journal* are publishing in this issue recent speeches by two jurists whose views may significantly influence future developments in the federal court system. Both speeches—one by Chief Justice William H. Rehnquist, and one by Senior United States Circuit Judge Joseph F. Weis, Jr.—propose methods of easing the workload problems faced by the federal judiciary. Chief Justice Rehnquist endorses both a particular limitation on the diversity jurisdiction of the federal courts, and unspecified limitations on the civil RICO actions that can be filed in these courts. Judge Weis surveys the work of the Federal Courts Study Committee, which he chairs, and suggests a novel approach to reducing the intercircuit conflicts that burden the Supreme Court's docket.

The Chief Justice does not claim novelty for his ideas. Indeed, his proposal to bar a plaintiff who resides in the forum state from bringing a diversity action against a nonresident defendant echoes a recommendation made by the American Law Institute more than two decades ago, upon the completion of its Study of the Division of Juris-

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diction Between State and Federal Courts.[1] That an idea has been around for a long time does not, of course, necessarily indicate that it lacks merit. The ALI recommendation has proven extremely controversial, however, and its endorsement by Chief Justice Rehnquist is unlikely to end the debate.

Plenty of ink has been spilled, too, on the questions of whether and how civil RICO should be curtailed. The Chief Justice correctly notes that "[v]irtually everyone . . . agrees that civil RICO is now being used in ways that Congress never intended when it enacted the statute in 1970."[2] Yet, as the Chief Justice concedes, each of the last three Congresses has declined to enact legislation to limit private actions under RICO. Calling for reforms to ensure that civil RICO actions "have some . . . reason for being in federal court"[3] is easy. Securing agreement on what reforms should be adopted is not.

Judge Weis explicitly recognizes that proposals for court reform give many of us a sense of déjà vu. Nevertheless, he introduces a fresh approach when he argues that perhaps the federal circuit courts ought not to be regarded as semi-independent or autonomous regional forums, free to disagree with each other on issues of national law, but instead should be viewed as divisions of a single unified Federal Court of Appeals. The decision in one division, he proposes, "would have national effect and would not be confined to that division."[4] Although the system envisioned by Judge Weis would reduce conflicts among federal appellate tribunals, and thus would ease the Supreme Court's task of ensuring the uniformity of federal law, I have considerable difficulty with the notion that the first of the appellate courts to decide a national issue should set the rule for all. A better idea, I think, is that the Supreme Court should exercise greater control over its own workload by choosing wisely and carefully which cases involving intercircuit conflicts it will review.[5]

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1. *See* American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts, Official Draft, 1969, § 1302(a).

2. Address by Chief Justice William Rehnquist, Eleventh Seminar on the Administration of Justice, sponsored by the Brookings Institution (April 7, 1989), *reprinted in* 21 ST. MARY'S L.J. 5, 9 (1989).

3. *Id.* at 13.

4. Address by Honorable Joseph F. Weis, Jr., Eleventh Seminar on the Administration of Justice, sponsored by the Brookings Institution (April 8, 1989), *reprinted in* 21 ST. MARY'S L.J. 15, 20 (1989).

5. *See generally* Sturley, *Observation on the Supreme Court's Certiorari Jurisdiction in Intercircuit Conflict Cases*, 67 TEX. L. REV. 1251 (1989).

Given the difficulty of the problems faced by the federal courts and the lack of a consensus about how to solve these problems, we all can applaud Congress' decision to establish the Federal Courts Study Committee, which has been asked to develop a long-range plan for the federal judiciary. Judge Weis' speech describes the early work of the Committee, which was formed on January 1, 1989, and is scheduled to file its final report on April 2, 1990. One hopes that the Committee's report will prove valuable to those to whom it will be directed—the Judicial Conference of the United States, the President, the Congress, the Conference of Chief Justices, and the State Justice Institute—as they seek to devise structures, laws, and policies that will enable the federal courts to continue to serve us well.