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House Authorizes Appellate Court Study Commission

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by Carl Tobias

The 105th Congress has an excellent opportunity to approve a national commission that would, for the first time in 25 years, study the federal appeals courts. The Commission on Revision of the Federal Court Appellate System (Hruska Commission) performed the last comprehensive analysis of the appeals courts in the 1970s, a period when the circuits were first beginning to experience the dramatic rise in appeals that continues to the present.

The ongoing controversy over the possible division of the U.S. Court of Appeals for the Ninth Circuit led to the introduction of several legislative proposals for analyzing the federal appellate courts. The proponents of two major study proposals reached agreement about the evaluation, and in early June the House passed a bill authorizing a study.

Shortly after the 105th Congress convened in January 1997, Senators Dianne Feinstein (D-Cal.) and Harry Reid (D-Nev.) introduced S. 248 that would have authorized a national study of the appellate courts. Soon thereafter, and in apparent response, Senator Conrad Burns (R-Mont.) and Representative Rick Hill (R-Mont.) introduced identical study commission proposals (S. 283 and H.R. 639), which differed somewhat from the bill introduced by Senators Feinstein and Reid. In March, Representative Howard Coble (R-N.C.) and Representative Howard Berman (D-Cal.) introduced the Feinstein-Reid proposal (H.R. 908) in the House.

Later that month, a number of senators who represent states in the Pacific Northwest sponsored S. 431, which would split the Ninth Circuit. The measure would divide the court by placing Alaska, Idaho, Montana, Oregon, and Washington in a new Twelfth Circuit and by leaving Arizona, California, Hawaii, Nevada, Guam, and the Northern Mariana Islands in the Ninth Circuit.

The proposals

The Feinstein-Reid and Burns-Hill study measures were analogous in numerous ways but differed in several significant respects. The Feinstein-Reid and Burns-Hill proposals included identical or similar provisions for compensation, personnel, the information the commission can collect, and congressional consideration of the entity's recommendations. The two measures also made identical prescription for certain commission functions: to "study the present division of the United States into the several judicial circuits" and to "study the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit."

Each study proposal included a third function that differed in wording. Each measure required the commission to make such recommendations on changes in circuit boundaries or structure as may be appropriate "for the expeditious and effective disposition of the caseload of the federal Courts of Appeal, consistent with fundamental concepts of fairness and due process."

The measures prescribed dissimilar commission membership. The Feinstein-Reid proposal called for 12 members and authorized the president, the chief justice, the Senate majority and minority leaders, the House speaker, and the House minority leader to appoint two members each. The Burns-Hill measure included eight members and empowered the president and the chief justice to name one member apiece and the Senate majority leader and the House speaker to appoint three each. The proposals also differed in the time provided for completion of the study. The Feinstein-Reid measure required the commission to report "no later than two years following the date on which its seventh member is appointed." The Burns-Hill proposal mandated that the commission report "no later than one year after the date of enactment...or June 30, 1998, whichever occurs first."

The measures also differed over the funding that Congress would appropriate. The Feinstein-Reid measure would have allocated $1.3 million while the Burns-Hill proposal would have authorized $500,000, which meant that no new funding would be required because this amount had been authorized during the 104th Congress.

In March, the House Judiciary Subcommittee and Committee expeditiously approved the Coble-Berman measure. However, members of the House from the Northwest, including Representative Hill and Representative Don Young (R-Alaska), deferred a floor vote because they disagreed with the Coble-Berman approach and because a satisfactory compromise agreement on a commission proposal could not be reached.

Attention then focused on attempts to develop a compromise in the Senate. Meetings between staff for Senators Burns and Feinstein led to consensus in several areas of difference. They agreed that the commission would have 10 members, that

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the appointments would be identical to those provided in the Feinstein-Reid measure, except that the president and the chief justice would have one appointment each, and that the commission would have 18 months to conduct its work.

In early June the House passed an amended version of H.R. 908, which reflected numerous compromises struck in both chambers. The proposal includes the original Feinstein-Reid provision for the commission's third function and the Feinstein-Burns compromise on commission membership, provides that the commission will report 18 months from the date of appointment of its sixth member, and authorizes $900,000 for the work of the commission. H.R. 908 awaits Senate action, and it remains unclear whether, and when, the Senate will consider it.

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Noteworthy

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standing the human psychology involved in the resolution of a dispute is the most important feature of our adversarial process. Reflecting on his own career as a trial lawyer and federal judge, he offers advice for those interested in the law.

Lovegrove, **The Framework of Judicial Sentencing: A Study in Legal Decision Making** (Cambridge University Press, 110 Midland Ave., Port Chester, N.Y. 10573. 914-937-9600. 1997. $59.95). This study examines the sentencing of offenders appearing for multiple offenses, and how judges, having fixed a prison sentence for each offense, determine an overall sentence for each offender. It offers, first, a model of judicial sentencing in the form of a decision strategy comprising working rules deduced from the responses of judges as they attempted to apply sentencing law. On the basis of empirical data, the author determines the nature and the place of intuition in sentencing and how the cumulation of sentences can be integrated into a system of proportionality related to the seriousness of single offenses.

Seron, **The Business of Practicing Law** (Temple University Press, Broad and Oxford Streets, Philadelphia, Pa. 19122. 215-204-1099. 1996. $49.95 cloth, $22.95 paper). This study of the boundary between professionalism and commercialism in practicing law examines the work lives of solo and small-firm attorneys, in contrast to large corporate firms, and considers how the small legal entrepreneur must balance professionalism with commerce. Through interviews with over 100 attorneys, the author also explores gender differences in practicing law, acquiring business, getting promotions, and balancing personal and professional lives.