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Introduction

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INTRODUCTION

Federal practice continues to be a subject of constant change and development. Some general observations can be made. On the legislative front, the Senate is considering the long awaited proposals of the American Law Institute on the Division of Jurisdiction Between State and Federal Courts.¹ On the rules side, in the fall of 1971 the draft of the Federal Rules of Evidence was submitted to the Supreme Court for its consideration.² From the judicial administration perspective, new court executives are beginning to take their posts after training at the Denver Institute of Court Management.³ And from the Supreme Court, significant new decisions appear to signal a trend toward restricting federal court remedies against state officials.⁴ Other important developments, too numerous to catalogue, are also having their impact. Of special importance, however, have been the many recent decisions construing the new rules on discovery and class actions,⁵ the movement toward the six-man jury,⁶ experience developing with the panel on complex and multi-district litigation,⁷ and the implementation of expanded powers in the United States magistrates.⁸

Along with these developments, the following articles and student work represent a good sampling of important current aspects of federal practice. Professor Charles Blackmar,⁹ in "Traps in Requests and Exceptions: How To Avoid Them" presents analysis of the current cases in the area of jury instructions both from the point of view of counsel and of the court. His common-sense proposals for form requests and the encouragement of diligence in taking exception to errors of the court are well worth consideration.

Mr. Bernard Nussbaum, as an experienced Chicago trial attorney, offers practical insights to one of the most difficult areas of federal practice in his article on "Temporary Restraining Orders and Preliminary Injunctions." Anyone who will be faced with pursuit or defense of preliminary relief in federal court should read Mr. Nussbaum's article before the emergency arises.

Dean Donald Weckstein continues his previous work on diversity jurisdiction¹⁰ by focusing on "Citizenship for Purposes of Diversity Jurisdiction," in which he analyzes the recent conflict of laws and domicile cases in the federal

¹ Senator Burdick of North Dakota introduced the Senate Bill on May 11, 1971. S. 1876, 92d Cong., 1st Sess. (1971); see Burdick, *Diversity Jurisdiction Under the American Law Institute Proposals: Its Purpose and Its Effect on State and Federal Courts*, 48 N.D.L. REV. 1 (1971).

² Revised Draft of Proposed Rules of Evidence, March 1971, 51 F.R.D. 315 (1971). Minor amendments to the Federal Rules of Civil and Appellate Procedure were adopted by the Supreme Court to become effective July 1, 1971.

³ 4 THE THIRD BRANCH No. 3, Mar. 1972, at 1.

⁴ *Younger v. Harris*, 401 U.S. 37 (1971), and five companion cases.

⁵ See FEDERAL RULES SERVICE, CURRENT RELEASES (1972).

⁶ Zeisel, . . . *And Then There Were None: The Diminution of the Federal Jury*, 38 U. CHI. L. REV. 710 (1971).

⁷ See, e.g., *Allegheny Air Lines, Inc. v. LeMay*, 448 F.2d 1341 (7th Cir.), cert. denied, 404 U.S. 1001 (1971).

⁸ 28 U.S.C. § 636 (1970).

⁹ Professor Blackmar is co-author with Chief Judge Edward J. Devitt of the United States District Court of Minnesota of the treatise FEDERAL JURY PRACTICE AND INSTRUCTIONS (2d ed. 1970).

¹⁰ Dean Weckstein has co-authored sections on diversity jurisdiction in MOORE'S FEDERAL PRACTICE.

courts. Dean Weckstein is also critical of the American Law Institute proposals on limiting diversity jurisdiction.¹¹

Professor John Kennedy and Mr. Paul Schoonover undertake an analysis of "Federal Equitable and Declaratory Relief under the Burger Court." In this article the authors examine the current interplay between exhaustion of state remedies, abstention, comity, and the anti-injunction statute, and conclude that the Supreme Court's decision in *Younger v. Harris*¹² should not be expanded to authorize refusal of federal court remedies in other areas.

Highly interesting student work probes the process of convening three-judge courts in the Fifth Circuit,¹³ and also explores the role of the federal court in granting appropriate relief in light of the trend to grant defeated government bidders standing to contest awards of government contracts.¹⁴ Casenotes have picked up significant decisions applying the federal rules on commencement of an action¹⁵ and counterclaims in the face of contrary state law.¹⁶ They have also noted other significant decisions concerning estoppel in patent litigation,¹⁷ the appropriate use of a federal declaratory judgment even though an injunction is barred by the anti-injunction statute,¹⁸ and the use of summary judgment to dismiss for lack of jurisdictional amount.¹⁹

*James Wm. Moore**

¹¹ I have criticized some of the American Law Institute's proposals, particularly those dealing with diversity jurisdiction, in an article to be published in the fall of 1972 in the first issue of the Florida State Law Review.

¹² 401 U.S. 37 (1971).

¹³ *The "Two-Judge Federal Court": The Chief Judge's Discretion in Three-Judge Court Convocation.*

¹⁴ *Judicial Review for Disappointed Bidders on Federal Government Contracts.*

¹⁵ *Chappel v. Rouch*, 448 F.2d 446 (10th Cir. 1971).

¹⁶ *Avondale Shipyards, Inc. v. Propulsion Systems, Inc.*, 53 F.R.D. 341 (E.D. La. 1971).

¹⁷ *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971).

¹⁸ *Thiokol Chemical Corp. v. Burlington Industries, Inc.*, 437 F.2d 1328 (3d Cir. 1971), *cert. denied*, 92 S. Ct. 684 (1972).

¹⁹ *Nelson v. Keefer*, 451 F.2d 289 (3d Cir. 1971).

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