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Congressional Limits on Federal Court Jurisdiction - Editor' Preface

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Numerous bills are presently pending in Congress which would, in one form or another, limit the jurisdiction of the federal courts. Some of these proposals would divest only lower federal court jurisdiction, others would divest both lower federal court and Supreme Court jurisdiction and others would divest only the Supreme Court of jurisdiction. These proposals were not born of a desire to remedy procedural deficiencies, such as a crowded federal docket. Instead, these jurisdiction limiting bills are reactions by a hostile or frustrated Congress to perceived over-reaching by the judiciary in such politically controversial areas as public school prayer, racial discrimination and abortion.

Attempts to limit the jurisdiction of federal courts are not unique to the present Congress. In the past, the lower federal courts have been divested of jurisdiction over certain classes of cases. Legislation divesting the Supreme Court of jurisdiction to hear particular cases was enacted once, in 1867. However, the constitutionality of such legislation is far from certain.

In an effort to examine this important issue the Villanova Law Review dedicated its 1982 Symposium to an exposition of the topic. The Symposium panel consisted of four constitutional and federal court scholars, Paul M. Bator, Charles E. Rice, Martin H. Redish and Leonard G. Ratner, and the Chief Counsel, Dr. James McClellan and Minority Counsel, Kenneth R. Kay* of the United States Senate Separation of Powers Subcommittee. The

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Symposium participants represented the full continuum of legal and political views on the topic.

In a Symposium last March at the Villanova Law School, each panelist presented the article which appears in this issue. Following these presentations, the Honorable Dolores K. Sloviter of the United States Court of Appeals for the Third Circuit moderated a discussion between the panelists. An audience question and answer period followed. The six articles focus primarily on the Supreme Court’s jurisdiction, although Professor Bator does examine issues of lower court jurisdiction in some detail. The far reaching and spirited proceedings, however, deal extensively with issues of lower court jurisdiction.

The role and power of the federal courts, especially that of the Supreme Court have been debated throughout our history. However, the present jurisdiction limiting bills have spawned a more extensive and intensive debate than ever before. Whatever the outcome of the Congress’ attempt to divest the federal courts of jurisdiction, the intensity of the current effort will have caused a reevaluation of the fundamental role played by the federal courts in the American system of government.

The Symposium edition of the Villanova Law Review endeavors to provide a forum for the detailed scholarly analysis of the major issues involved in federal court limiting legislation within the confines of a single issue of a law review. On behalf of the Law Review, I want to again thank the participants in this year’s Symposium and those who attended the oral presentation. I also want to thank Dean O’Brien and the faculty of the Villanova Law School for their advice, and willing help with all aspects of the Symposium. Additionally, I want to thank the Staff of the Law Review for the many hours of work they did in making this Symposium possible.

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* Kenneth R. Kay attended the Symposium Proceedings and co-authored an article with the Honorable Max Baucus, United States Senator (D. Mont.).