



*The Chief Justice of the United States  
requests the pleasure of your company  
at the closing reception of  
“Overlapping and Separate Spheres:  
A Three-branch Roundtable  
on State and Federal Jurisdiction”  
Monday, March 7, 1994  
6:00 to 8:00 p.m.  
Supreme Court of the United States  
Washington, D. C.*

*R.S.V.P.  
card enclosed*

*Business Suit*



U.S. Department of Justice

Office of the Associate Attorney General

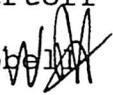
The Associate Attorney General

Washington, D.C. 20530

February 17, 1994

MEMORANDUM

TO: Jo Ann Harris  
Drew Days, III  
Walter Dellinger  
Frank Hunger  
Merrick Garland  
Sheila Anthony  
Eleanor Acheson  
Jim Turner  
Louis Freeh  
Kathy Hawk  
Mary Jo White  
Michael Chertoff

FROM: Webster Hubbell 

SUBJECT: Attorney General's Three-Branch Roundtable on State and Federal Jurisdiction

As many of you know, the Attorney General is sponsoring a Three-Branch Roundtable on State and Federal Jurisdiction on March 7, 1994, to discuss issues arising from the expansion of federal jurisdiction that has occurred in recent years. This expansion has changed the roles of the federal and state courts and the relationships among the legislative, executive, and judicial actors concerned with the legal system.

Representatives of all three branches of both state and federal government will be invited to attend the conference and to offer their perspectives on the impact of the current trend to federalize criminal law and civil remedies. Prominent academics will also be invited to assist in leading the discussions. Conference attendance will be limited to approximately 50, creating an atmosphere conducive to a frank exchange of ideas.

**Please mark this day on your calendars.**

The Attorney General hopes that the conference will begin a productive dialogue that will enable the civil and criminal justice systems to function effectively within the evolving legal and political landscape.

Attached is an agenda for the conference prepared in consultation with representatives from nearly each of the

participating groups. Also attached are two hypothetical pieces of proposed legislation. The criminal legislation was prepared by Professor Sara Beale of Duke and the civil legislation was prepared by Professor Erwin Chemerinsky of the University of Southern California.

I hope you can attend.

#### Attachments

cc: Ron Klain  
Nancy McFadden  
Paul Friedman  
Irv Nathan  
Paul Bender  
Jeff Powell  
Dawn Johnsen  
Michael Sussman  
Cindy Lebow  
Bob Brink  
Jeff Robinson  
Maria Olsen  
Howard Shapiro  
Harry Litman  
Mark Fabiani  
Chris Schroeder  
Laurie Robinson

TENTATIVE AGENDA

OVERLAPPING AND SEPARATE SPHERES:

A THREE-BRANCH ROUNDTABLE  
ON STATE AND FEDERAL JURISDICTION

March 7, 1994  
The Madison Hotel  
Washington, D.C.

Morning Session

- 8:30 a.m. Continental Breakfast
- 9:00 a.m. Welcome  
Attorney General Reno
- 9:10 a.m. **Introduction: A legal theorist's perspective**  
  
Speaker: Professor Kathleen Sullivan,  
Stanford University School of Law
- 9:25 a.m. **Roundtable Discussion: How is the  
federalization of state civil and criminal  
law affecting the justice system?**  
  
Moderator: Eleanor Acheson, Assistant  
Attorney General for the Office of Policy  
Development
- 11:00 a.m. Break
- 11:15 a.m. **Roundtable Discussion: What is the mission  
of the federal judiciary?**  
  
Moderator: Professor Kathleen Sullivan
- 12:15 p.m. **Lunch/Keynote**  
Attorney General Janet Reno

Afternoon Session

- 1:30 p.m.      **Roundtable Discussion: Is there a set of principles to use when considering the federalization of state law?**
- (a) With respect to criminal issues:**
- Moderator: L. Scott Harshbarger,  
                  Massachusetts Attorney General
- Putting the principles to the test:  
                  Consideration of the proposed criminal statute:**
- Moderator: Professor Sara Beale, Duke  
                  University School of Law
- 2:45 p.m.      Break
- 3:00 p.m.      **(b) With respect to civil issues:**
- Moderator: Justice Shirley Abrahamson,  
                  Wisconsin Supreme Court
- 3:30 p.m.      **Putting the principles to the test:  
                  Consideration of the proposed civil statute:**
- Moderator: Professor Erwin Chemerinsky,  
                  University of Southern California Law Center
- 4:15 p.m.      **Wrap Up: What mechanisms exist or should exist for federal-state cooperation?**
- Moderator: Mary Jo White, United States  
                  Attorney Southern District of New York
- 5:45 p.m.      Depart en route Supreme Court
- 6:00 p.m.      Reception at the Supreme Court

### HYPOTHETICAL

Recent crimes against foreign tourists in Florida and elsewhere have received extensive publicity in other countries. There is some evidence that both foreign tourism and international business related travel have been negatively impacted. Accordingly, the following two bills have been proposed:

#### Bill A

(a) Whoever engages in conduct that--

(1) is a crime of violence in the State where the conduct occurs; and

(2) is directed at an individual who is an international traveler;

shall be guilty of a like offense against the United States, and subject to a like punishment in a Federal prosecution.

(b) As used in this section, the term "international traveler" includes any person who is not a citizen of the United States so long as that person does not reside in the United States.

(c) As used in this section, the term "State" includes the District of Columbia.

#### Bill B

(a) Whoever engages in conduct that --

(1) would constitute murder, assault, robbery, or an attempt to commit any of these crimes in the state where the conduct occurred; and

(2) is directed at an individual who is an international traveler;

shall be guilty of the offense of violence against an international traveler.

(b) Any person guilty of violence against an international traveler shall be sentenced to a term of imprisonment which may be not less than 10 years and which may be up to life imprisonment, provided however that in the case of the intentional killing of an international traveler the sentence shall be life imprisonment.

(c) As used in this section, the term "international traveler" includes any person who is not a citizen of the United States so long as that person does not reside in the United States.

(d) As used in this section, the term "State" includes the District of Columbia.

## HYPOTHETICAL

Federal courts traditionally have refused to exercise jurisdiction over child custody disputes. Even where there is diversity jurisdiction, the Supreme Court has concluded that there is an exception that precludes federal courts from hearing child custody matters. Ankenbrandt v. Richards, 112 S.Ct. 2206 (1992). Critics maintain that state courts often are very parochial in inter-state custody fights, favoring in-state residents over out-of-staters.

Moreover, it is argued that parental kidnapping -- when a parent, without authorization, takes the child and removes the child to another state -- needs a federal judicial solution. The Parental Kidnapping Prevention Act of 1980, 28 U.S.C. §1738A, was meant to address the kidnapping problem by imposing a duty on states to enforce a child custody determination entered by a court of another state if the determination is consistent with the provisions of the Act. In Thompson v. Thompson, 108 S.Ct. 513 (1988), the Supreme Court ruled that there is not an implied cause of action in federal court to enforce the Act. There is concern that the Act is failing to achieve its objective because state courts have not adequately followed the law and have tended to favor in-state residents.

Therefore, the following is proposed:

(1) 28 U.S.C. §1332 is amended to add the following:  
"Federal courts shall not refuse to exercise jurisdiction when the requirements of diversity jurisdiction are met if the case presents a dispute over child custody. Such jurisdiction shall be exercised regardless of the amount in controversy."

(2) 28 U.S.C. §1738A, the Parental Kidnapping Prevention Act of 1980, is amended to add the following:  
"Any person who alleges a violation of this Act may sue in federal court for such relief as is appropriate, including for a resolution of conflicting custody determinations from two or more states."<sup>1</sup>

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<sup>1</sup> Section 1738A requires that every State shall enforce and shall not modify, except as specifically provided in the law, a valid custody determination made by another State. The law specifies requirements that must be met for a child custody determination to be enforceable through the law. For example, the court issuing the order must have jurisdiction under its law and there must be a clear connection between the child and the state, such as, the child residing in the state or other evidence that the parents and child have substantial ties to the State.

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TO: CONFERENCE PARTICIPANTS

DATE: FEBRUARY 9, 1994

SUBJECT: WORKING GROUPS

As mentioned in Attorney General Janet Reno's invitation letter, she is asking conference participants to continue the work begun at the conference by joining and actively contributing to one of four working groups. Below is a brief description of each of the working groups. The Attorney General asks that you choose which working groups you would prefer to join before the conference so that working group members can become acquainted at the conference and schedule their next conversation.

Each of the topic areas around which the four working groups are formed will be raised for discussion at the conference. (Please see enclosed agenda). It will be the work of the groups to produce a brief written work on the group's topic, incorporating the ideas and points raised at the conference, to be presented to the Attorney General, Chief Justice William H. Rehnquist, Senator Joseph R. Biden, Jr., Senator Orrin Hatch, Congressman Jack Brooks, and Congressman Fish. A working group reporter has been selected to coordinate the efforts of each group.

The working groups and their tasks are as follows:

(1) The Mission of the Federal Courts: (Reporter: Renee Landers, Deputy Assistant Attorney General for Office of Policy Development). With the federalization of state law, the nature and scope of the work performed by federal courts has changed. Some would contend that the role of the federal courts has been altered so substantially that the mission of the courts as envisioned by the nation's founders is no longer pertinent. This working group will articulate a current mission statement for the federal courts in light of the trend to federalize certain matters traditionally left to state law. By necessity, this working group will also address the role of the state courts today.

(2) A Set of Principles to Use when Considering the Federalization of Criminal Law: (Reporter: Professor Sara Beale, Duke University School of Law). The federalization of criminal law has had a substantial impact on the federal courts, bringing the civil docket in some courts to a standstill. As another result of the federalization of criminal law, state and federal law enforcement officers find themselves with concurrent jurisdiction over the same criminal conduct. While there is frequently no clear legislative guidance for allocating prosecutorial resources in these situations, the jurisdictional overlap gives rise to legitimate societal expectations that state and federal governments will each bear responsibility for prosecution. This working group will attempt to articulate a set of principles for legislators to use when deciding whether to federalize state criminal law, taking into consideration such issues as the prosecution of criminal aliens, drugs, violent crime (including domestic violence and hate crime), guns, sentencing issues, and prisons.

(3) A Set of Principles to Use when Considering the Federalization of Civil Law: (Professor Erwin Chemerinsky, University of Southern California Law Center). The federalization of state civil remedies has similarly blurred the jurisdictional lines between federal and state courts. Federal courts are entering into areas previously handled by state courts, and state courts sense that they are being sent a message that they are not performing adequately. The creation of more civil remedies increases the federal court civil docket which, as mentioned, is already not getting sufficient attention in some districts. This working group will attempt to state a set of principles for legislators to use when deciding whether to federalize state civil remedies, taking into consideration issues presented in areas such as tort reform, environmental law, civil rights, clinic access, and family law.

(4) Mechanisms for Federal-State Cooperation: (Reporter: Harry Litman, Deputy Assistant Attorney General for the Office of Policy Development). In a number of districts, federal and state governmental officials have begun to work together in resolving the issues that arise from overlapping federal and state jurisdiction for criminal law and civil remedies. These partnerships are formal in some cases and informal in others. This working group will seek to identify the particular areas in which cooperation between federal and state governments would be useful, what mechanisms already exist for federal-state cooperation, and what mechanisms should exist for such cooperation.

Please indicate on your registration form your top three choices of working groups in order of preference. You will be informed of your working group membership before the date of the conference. Should you have any questions about conference registration or the working groups, please feel free to call Joan Silverstein at (202) 514-6725 or Renee Landers at (202) 514-4582.

February 11, 1994

Dear :

Expansion of federal jurisdiction has accelerated in recent years, partially in response to evolving public perceptions of criminal and civil law enforcement needs. These changes in the nature and range of matters placed before the justice system at the federal and state levels give rise to the need to examine the roles of courts and the relationships among the legislative, executive and judicial actors concerned with the legal system.

To begin to work on these, and related, issues, Chief Justice William H. Rehnquist, Senator Joseph R. Biden, Jr., Chair of the Senate Judiciary Committee, and Senator Orrin G. Hatch, Ranking Minority Member of the Senate Judiciary Committee join me in inviting you and other public policy decisionmakers to participate in a day-long conference entitled "Overlapping and Separate Spheres: A Three-Branch Roundtable on State and Federal Jurisdiction" in Washington, D.C., on Monday, March 7, 1994. Conference participants will include representatives from the Department of Justice, the federal judiciary, Congress, the state judiciary, state attorneys general, state legislators, corrections officials, and local prosecutors. As conference attendance will be limited to approximately 50, participants will be able to express their views and to hear the perspectives of others in an atmosphere conducive to a frank exchange of ideas.

The conference will begin with remarks by Stanford Law Professor Kathleen Sullivan, who will lay the historical and intellectual groundwork for the conversation by describing the current trend to federalize criminal law and civil remedies, and by suggesting some principled bases for allocating state and federal responsibility to respond to social concerns. We hope to encourage participants not only to identify their legal and practical concerns arising from federalization of traditionally state spheres of law, but also to work toward resolving some of these concerns.

In the afternoon session, the participants will be asked to consider the appropriate mission of the federal judiciary, to develop a set of principles to guide decisions about whether to federalize areas of state law, and to consider mechanisms for cooperation among the three branches of the state and federal governments.

I hope that this conference will begin a productive dialogue that will enable the civil and criminal justice systems to function effectively within the evolving legal and political landscape. For that reason, I am asking conference participants to continue the work begun at the conference by actively contributing to one of a series of working groups for several months following the conference. The enclosed conference materials list these working groups. The groups will develop concrete recommendations of principles to use when considering the federalization of areas of criminal law, principles to use when considering whether to federalize areas of civil law, a statement articulating the appropriate mission for the federal judiciary, and a description of existing or desirable mechanisms for federal-state cooperation. The work of these groups will be useful to the Department of Justice, the judiciary, and the Congress in the development of policies in areas implicating federalism concerns.

Registration information and an agenda for the conference are enclosed. Additional materials to assist you in preparing for the conference will be sent under separate cover.

I am very excited about the possibility of working with you to articulate principled and thoughtful approaches to the complex legal landscape current conditions have generated. I look forward to seeing you on March 7.

Sincerely,

Janet Reno