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SYMPOSIUM: Reinventing Civil Litigation: Evaluating Proposals for Change

The Editors

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SYMPOSIUM

REINVENTING CIVIL LITIGATION: EVALUATING PROPOSALS FOR CHANGE

FOREWORD

On December 1, 1993, substantial and controversial amendments to the Federal Rules of Civil Procedure became effective, Congress having failed to legislate otherwise. Included among the most debated changes to the Rules were provisions requiring mandatory disclosure during discovery and the second revision of Rule 11 in a decade. These are in sharp contrast to several of the 1991 amendments, which included changing the terms "JNOV" and "directed verdict" to "Judgment as a Matter of Law." The many judges, academics and practitioners who support the recent amendments long have criticized the civil litigation system as a failure in need of drastic reform, branding it costly, slow and ineffective. But others see the amendments as yet another instance in a growing trend to reduce access to the federal courts, particularly for the disenfranchised, who arguably have the greatest need for access. The articles in this Symposium consider the civil litigation system today—its present state, its

problems and its future.

The Symposium took place at Brooklyn Law School on May 7-8, 1993, before the 1993 amendments took effect. The participants are diverse in their backgrounds, careers, areas of interest and viewpoints. They include two federal judges, many distinguished law professors who frequently write on issues of civil procedure and have co-authored case-books on procedure, professors and practitioners who have served on various committees, advisory groups and task forces relating to civil justice reform, a former consultant to many stock exchanges and a present member of the New York Stock Exchange Panel of Arbitrators, lawyers with extensive litigation experience, several scholars and practitioners who have devoted considerable time to the study and resolution of mass torts, and the director of the American Bar Foundation.

The lead article of the Symposium sets the terms of the reform debate by dividing the opposing sides into "Reformers" and "Preservationists." It analyzes whether the "open courts" paradigm of adjudicatory procedure and the litigation reform paradigm have shifted. The articles that follow discuss whether in fact the civil litigation system is in a state of crisis and, if so, what remedies are required. They also consider more narrow issues, such as the effect of the Civil Justice Reform Act and trends in local procedure, the problems of mass tort litigation, various mechanisms for alternative dispute resolution, the unique problems of securities arbitration, the role of professional ethics and responsibilities and how civil procedure can and should be taught to first-year law students in this time of seemingly constant change. In addition, the Symposium concludes with a panel discussion that considers the problems that the civil litigation system will confront as it enters the twenty-first century.

As this Symposium makes clear, the civil litigation system is in a state of flux, and a great many issues must be resolved. With the continued operation of the Civil Justice Reform Act and the new Federal Rules of Civil Procedure, the system is arguably at a turning point. Some would contend that we must seize the moment and follow through with a much needed overhaul, while others caution us to avoid making drastic changes to a system that is not in crisis. It remains to be seen whether the recent changes will resolve some of the issues and

problems that have been discussed in recent years; perhaps they will raise even new, unanticipated issues and problems. In any event, it is doubtful that the changes represent the end of the debate. This Symposium assesses the current system and defines the issues for future discussion.

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