Preface

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A high proportion of the cases which come before the Supreme Court of the United States are “governmental.” Close to half of them involve the United States, or its officers or agencies. In a considerable portion of the remaining cases, a state or one of its subdivisions is involved.

The conduct of the litigation involving the United States is centralized as the responsibility of the Solicitor General of the United States. His office is in Washington, and he has a small but able and experienced staff who handle all of the cases, in appropriate consultation with officers and agencies of the government which are immediately affected.

The litigation of the states before the Supreme Court, however, is fragmented. In some states, it is the responsibility of the attorney general. A few states have an officer known as the solicitor general. In still other states, litigation is handled by the legal officer of the particular agency involved. In other states, it is the responsibility of the local county prosecuting officer to handle the case all the way through, even in the Supreme Court of the United States, and even though a basic principle, affecting the interests of the whole state, or indeed, of all of the states, is involved.

The problem of devising an effective acceptable means for the better handling of state litigation before the Supreme Court has been an intractable one. As far as centralized control is concerned, there are legal, practical, and political difficulties. No one is in favor of centralized control, anyway. Nevertheless, there ought to be a better way of coordinating the litigation of the states and their divisions, and of providing assistance to their legal officers.

Sporadic efforts to accomplish this have been made in the past, but they have foundered on one difficulty or another. Thanks largely to the efforts of Stewart A. Baker, this problem is being explored again with renewed enthusiasm and insight. The articles in this issue of the Catholic University Law Review focus on this question, and discuss its problems and potentialities. If an office for coordinating litigation can be established, it
will be of great assistance to the states, and also to the Supreme Court of the United States when it decides federal constitutional questions involving the powers and interests of the states.

Such an office need not control state litigation in any sense. The control would, of course, remain with the appropriate officers of the state or subdivision. Such an office could, however, provide expertise and experience which should be of great assistance to the states. The office should be in a position to provide whatever legal service the state officers think would be helpful to them. In some instances, this could involve briefing and arguing cases before the Supreme Court. In other cases, the office could make available materials and suggestions for the consideration of state officials.

In addition to work done in cases pending before the Supreme Court, the office could perform a great service by keeping the legal officials of the states informed of current developments before the Supreme Court. It could advise the officers of all of the states of new petitions filed in the Supreme Court which affect state interests. It could offer its services in cases where amicus participation by some of the states would be appropriate and helpful. It could provide a weekly or monthly bulletin which could contain information about the decisions of the Supreme Court, and could provide up-to-date and well-informed commentary on many pending problems of interest to state legal officers.

The discussions in this symposium represent a strong first step towards an arrangement which may be of great significance in the development of our constitutional law, and in the maintenance of our federal system. We are all much indebted to Mr. Baker and his associates for their initiative and to the Catholic University Law Review for its help with these articles.