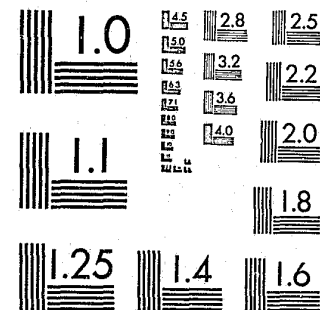


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

7-7-83

**FEDERAL COURT ORGANIZATION AND
FIFTH CIRCUIT DIVISION**

HEARING
BEFORE THE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 6060, H.R. 7665, and Related Bills

FEDERAL COURT ORGANIZATION AND FIFTH CIRCUIT
DIVISION

AUGUST 22, 1980

Serial No. 64



Printed for the use of the Committee on the Judiciary

83/22

FEDERAL COURT ORGANIZATION AND FIFTH CIRCUIT DIVISION

OCT 12 1981

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(II)

CONTENTS

Ainsworth, Hon. Robert A., Jr., Judge, U.S. Court of Appeals for the Fifth Circuit.....	Page 56
Prepared statement	58
Anderson, Hon. Glenn, a Representative in Congress from the State of California	109
Prepared statement	111
Barton, Joan C., special assistant, Assistant Attorney General, Department of Justice	175
Bell, Hon. Griffin B., former Attorney General of the United States, representing the American Bar Association	2
Prepared statement	6
Bowen, Hon. David R., a Representative in Congress from the State of Mississippi.....	18
Coleman, Hon. James P., Chief Judge of the U.S. Court of Appeals for the Fifth Circuit	20
Prepared statement	21
Hinson, Hon. Jon, a Representative in Congress from the State of Mississippi..	59
Johnson, Hon. Frank M., Jr., Circuit Judge, Fifth Circuit Court of Appeals	24
Prepared statement	52
Lott, Hon. Trent, a Representative in Congress from the State of Mississippi ..	19
Macklin, James E., executive assistant director, Administrative Office of the U.S. Courts	74
Prepared statement	75
Montgomery, Hon. G. V. (Sonny), a Representative in Congress from the State of Mississippi.....	19
Patterson, Hon. Jerry M., a Representative in Congress from the State of California.....	65
Prepared statement	67
Rient, Peter F., Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice, Department of Justice.....	175
Prepared statement	176
Seiberling, Hon. John F., a Representative in Congress from the State of Ohio.....	166
Prepared statement	166
Simmons, Althea T. L., director, Washington Bureau, National Association for the Advancement of Colored People.....	10
Prepared statement	13
Stennis, Hon. James C., a U.S. Senator from the State of Mississippi.....	2
Whitten, Hon. Jamie L., a Representative in Congress from the State of Mississippi	18

ADDITIONAL MATERIAL

Brown, Hon. George E., Jr., a Representative in Congress from the State of California, prepared statement	115
Brown, Hon. John R., circuit judge, U.S. Court of Appeals, letter dated August 13, 1980, to Hon. Robert W. Kastenmeier	48
Clemon, Hon. U. L., U.S. District Court, Northern District of Alabama, letter dated August 18, 1980, to Hon. Frank M. Johnson, Jr., U.S. Court of Appeals for the Fifth Circuit, Montgomery, Ala.....	52
Hatchett, Hon. Joseph W., U.S. Court of Appeals for the Fifth Circuit, letter dated August 12, 1980, to Hon. Frank Johnson, Jr., U.S. circuit judge, Montgomery, Ala.....	52

(III)

IV

APPENDIXES

APPENDIX 1.—ADDITIONAL STATEMENTS AND LETTERS

	Page
Hon. Jerome A. Ambro, a Representative from the State of New York.....	209
Hon. Tony Coelho, a Representative from the State of California.....	217
Hon. Frank J. Guarini, a Representative from the State of New Jersey.....	219
Hon. Sam Hall, a Representative from the State of Texas.....	234
Hon. Tom Harkin, a Representative from the State of Iowa.....	234
Hon. Harold Hollenbeck, a Representative from the State of New Jersey.....	235
Hon. Daniel A. Mica, a Representative from the State of Florida.....	241
Hon. Stephen L. Neal, a Representative from the State of North Carolina.....	243
Hon. Harold L. Volkmer, a Representative from the State of Missouri.....	245
Hon. Robert S. Walker, a Representative from the State of Pennsylvania.....	251
Hon. Charles Wilson, a Representative from the State of Texas.....	254
Hon. John C. Culver, a Senator from the State of Iowa.....	260
Hon. Warren E. Burger, Chief Justice of the United States.....	264
Hon. Morey L. Sear, District Judge, Eastern District of Louisiana.....	266
Thomas G. Lilly, president, Federal Bar Association.....	268

APPENDIX 2.—PENDING BILLS

1. H.R. 4961, 96th Cong., 1st sess. (1979).....	271
2. H.R. 6703, 96th Cong., 2d sess. (1980).....	272
3. H.R. 5691, 96th Cong., 1st sess. (1979).....	273
4. H.R. 2062, 96th Cong., 1st sess. (1979).....	276
5. H.R. 3673, 96th Cong., 1st sess. (1979).....	277
6. H.R. 5890, 96th Cong., 1st sess. (1979).....	278
7. H.R. 1513, 96th Cong., 1st sess. (1979).....	279
8. H.R. 6060, 96th Cong., 1st sess. (1979).....	280
9. H.R. 5924, 96th Cong., 1st sess. (1979).....	281
10. H.R. 7456, 96th Cong., 2d sess. (1980).....	282
11. H.R. 7967, 96th Cong., 2d sess. (1980).....	283
12. H.R. 5966, 96th Cong., 2d sess. (1980).....	284
13. H.R. 2079, 96th Cong., 1st sess. (1979).....	287
14. H.R. 4435, 96th Cong., 1st sess. (1979).....	290
15. H.R. 5690, 96th Cong., 1st sess. (1979).....	292
16. H.R. 6971, 96th Cong., 2d sess. (1980).....	294
17. H.R. 2432, 96th Cong., 2d sess. (1980).....	296
18. H.R. 5697, 96th Cong., 1st sess. (1979).....	298
19. H.R. 7951, 96th Cong., 2d sess. (1980).....	300
20. H.R. 6708, 96th Cong., 2d sess. (1980).....	302
21. H.R. 7615, 96th Cong., 2d sess. (1980).....	304
22. H.R. 3714, 96th Cong., 1st sess. (1979).....	306
23. H.R. 2505, 96th Cong., 1st sess. (1979).....	309
24. H.R. 3806, 96th Cong., 1st sess. (1979).....	312
25. H.R. 7947, 96th Cong., 2d sess. (1980).....	314
26. H.R. 7665, 96th Cong., 2d sess. (1980).....	317
27. H.R. 7625, 96th Cong., 2d sess. (1980).....	322
28. H.R. 7645, 96th Cong., 2d sess. (1980).....	327

APPENDIX 3.—MAPS OF STATES INVOLVED BY PROPOSED LEGISLATION

1. California.....	332
2. Iowa.....	334
3. Michigan.....	336
4. Missouri.....	338
5. New Jersey.....	340
6. New York.....	342
7. North Carolina.....	346
8. Ohio.....	348
9. Pennsylvania.....	351
10. Texas.....	354

APPENDIX 4.—HISTORY OF COURTS AFFECTED BY LEGISLATIVE PROPOSALS

1. Surrency, Erwin C., Federal District Court Judges and the History of their Courts, 40 F.R.D. 139.....	357
----------------------------------------------------------------------------------------------------------	-----

V

APPENDIX 5.—LEGISLATIVE HISTORY OF PUBLIC LAW 96-462 (DISTRICT COURT ORGANIZATION ACT OF 1980)

	Page
1. H.R. 8178, 96th Cong., 2d sess. (1980).....	396
2. H.R. 8178, Union Calendar No. 864, 96th Cong., 2d sess. (1980).....	401
3. H. Rep. No. 96-1417, 96th Cong., 2d sess. (1980).....	406
4. Act of Oct. 15, 1980, Pub. L. No. 96-462, 94 Stat. 2053.....	419

APPENDIX 6.—LEGISLATIVE HISTORY OF PUBLIC LAW 96-452 (SPLITTING THE FIFTH CIRCUIT)

1. S. 2830, 96th Cong., 2d sess. (1980).....	421
2. H.R. 7665, Union Calendar No. 846, 96th Cong., 2d sess. (1980).....	426
3. H. Rep. No. 96-1390, 96th Cong., 2d sess. (1980).....	432
4. Act of Oct. 14, 1980, Pub. L. No. 96-452, 94 Stat. 1994.....	444

APPENDIX 7.—MATERIALS RELATING TO THE NORTHERN DISTRICT OF OHIO

1. Provided by James Macklin.....	448
2. Letter from Hon. Robert W. Kastenmeier to Hon. George Clifton Edwards, Jr. (Sept. 17, 1980).....	456
3. Letter from Hon. George Edwards to Hon. Robert W. Kastenmeier (October 21, 1980).....	459

FEDERAL COURT ORGANIZATION AND FIFTH CIRCUIT DIVISION

FRIDAY, AUGUST 22, 1980

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COURTS,
CIVIL LIBERTIES, AND ADMINISTRATION OF JUSTICE OF
THE COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2337, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Danielson, Gudger, Carr, and Sawyer.

Also present: Michael J. Remington, counsel; Joseph V. Wolfe, associate counsel; and Audrey K. Marcus, staff clerk.

Mr. KASTENMEIER. The subcommittee will come to order.

Without objection, the committee will permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast, and/or still photography, pursuant to rule V of the committee rules.

This morning the subcommittee will hear testimony on a wide variety of bills, all relating to the geographic organization of the Federal courts.

There are five categories of bills currently pending in the committee: One, places of holding court proposals; two, bills relating to divisions within districts, three, bills affecting district boundaries; four, bills creating new districts and, five, bills creating new circuits.

From the substantive legislative perspective, the bills in the first and second category are easiest to process, and bills in the remaining categories increasingly difficult.

Rather than reading the titles of the bills presently on the table, I would ask unanimous consent, without objection, to insert into the record a list of these bills with the actual text of the legislative proposals attached to the list. (See app. 1 at p. 268.)

Mr. KASTENMEIER. Because of its very great importance, I have scheduled testimony to begin on the proposed division of the fifth judicial circuit into two autonomous circuits.

In this regard, I am privileged to observe in the room the senior Senator from Mississippi, the Honorable John Stennis.

We are honored and pleased to have Senator Stennis here.

If he cares to make any comment or participate in any way, we would be pleased to hear from him.

**TESTIMONY OF HON. JAMES C. STENNIS, A U.S. SENATOR
FROM THE STATE OF MISSISSIPPI**

Senator STENNIS. Let me say it is an honor to be here to witness you gentlemen carrying on. It is an important policy to deal with the courts.

I am a former judge. I thank you very much.

Mr. KASTENMEIER. We are honored to have the Senator present, and this attests to the importance of the matters before us.

I am also especially privileged to call forward our first witness, the Honorable Griffin B. Bell, of Atlanta, Ga., who will be representing the views of the American Bar Association.

Judge Bell needs no further introduction other than for those of us on the committee to observe that no person has served more honorably than he as Attorney General of the United States.

He served 3 years in that capacity. Previously, he also served as a judge on the fifth circuit, which is the subject in fact of this hearing.

In addition, he has had a long term and enduring interest in improving the administration of justice generally in this country.

It is a pleasure to see you again, Judge Bell. You may proceed as you wish.

**TESTIMONY OF HON. GRIFFIN B. BELL, FORMER ATTORNEY
GENERAL OF THE UNITED STATES, KING & SPALDING, AT-
LANTA, GA., REPRESENTING THE AMERICAN BAR ASSOCI-
ATION**

Judge BELL. Thank you, Mr. Chairman and members of the committee.

As you said, I am Griffin Bell of Atlanta.

I appear before you today on behalf of the American Bar Association at the request of its president, W. Reece Smith of Florida.

The association strongly supports the split of the fifth circuit as proposed in H.R. 7665 and similar bills, and I am here to urge your prompt and favorable action on this important legislation.

The American Bar Association's Board of Governors, on June 6, 1980, adopted the following resolution:

Be it resolved, That the American Bar Association supports the enactment of legislation dividing the presently existing Fifth Circuit into two completely autonomous circuits, one to be composed of the States of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the States of Alabama, Florida, and Georgia, with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit.

This resolution, while of very recent origin, reflects a longstanding ABA view that the fifth circuit should be split. In October 1973, and again in February 1977, the association adopted resolutions calling for the split.

Seven years have passed since the ABA first called for the split, and the problems which led to the adoption of that 1973 resolution have grown enormously in the intervening period.

I would like to interpolate here, I am a member of the board of regents of the American College of Trial Lawyers, and that organization has also taken a position that the fifth circuit ought to be divided into two parts. If you have not been notified, the committee will be notified of that action. It was taken out in Honolulu at the meeting just recently.

If prompt action is not taken to split the fifth circuit, the nearly 40 million citizens of this region will be relegated to an inadequate system of justice. The rapid population and caseload growth in this region has created a circuit of unworkable size.

For the year ending June 30, 1979, the fifth circuit had 3,854 filings and 3,402 terminations of cases, both figures more than 25 percent higher than our respective figures for the second most active circuit in our Nation.

In fact, only 2 of the 10 circuits had even half as many filings during that year as did the fifth circuit. Thus, even after a split, both new circuits would be larger than most of the currently existing circuits.

To meet this burgeoning caseload, which increased 9.9 percent in the year preceding June 30, 1979, alone, the circuit has been increased in size by the 1978 Omnibus Judgeship Act to 26 judgeships. It is now the largest appellate circuit in the history of our Republic.

When I had the privilege of serving as a judge on the fifth circuit, we had only 15 authorized judgeships. Even at that level, many of the problems being wrestled with today were very much in evidence. Increasing the number of judges, an action that was absolutely essential, has greatly exacerbated these problems of administration of justice.

One of the foremost problems is the preservation of consistency and predictability in the decisional process. Most of the work of the circuit courts is carried out by three-judge panels.

The number of possible combinations of 3-judge panels formed from among 26 judges is enormous. Each additional panel in a circuit greatly increases the likelihood of intracircuit conflicts. Such conflicts are inevitable in even much smaller circuits, but the number of instances of conflict increases geometrically with the number of panels.

The solution to intracircuit conflicts, of course, is to hold en banc proceedings. The fifth circuit, by virtue of both its heavy caseload and its number of panels, now has the largest en banc caseload which any Federal appellate court has had. A 26-judge en banc hearing is a jurist's nightmare. It was hard enough when I was on the bench and we had 15 judges sitting in en banc hearings.

Affording all 26 judges the opportunity to participate fully in the hearing and in the subsequent conference discussions on each and every one of the cases in the largest-ever caseload, and seeing that the rest of the cases in the circuit's docket are dealt with in a judicious and expeditious manner, are proving to be inconsistent and perhaps unobtainable goals.

A further problem is that the caseload of the circuit has expanded to the point that almost 2,000 opinions are being rendered by judges of the circuit each year. This is important. It is becoming increasingly difficult for the judges of the circuit to remain current with respect to the law in their own circuit.

The results of these factors are obvious: Inconsistent decisions within the same circuit; delays in resolving matters; the use of a far-from-ideal mechanism for resolving intra-circuit conflicts; and eventually, the loss of public confidence in the ability of the justice system to render decisions promptly and fairly.

We cannot tolerate these results, and we do not have to. The proposed legislative split of the fifth circuit would produce two circuits of large but manageable proportions. Intracircuit conflicts would be greatly reduced. The en banc panels once again would be of workable size. Delays would be minimized.

The administrative division of the circuit which will take effect 10 days from now is a step in the right direction. Incidentally, that is done on a provision of the 1978 Omnibus Judgeship Act. But it is a temporary, stop-gap response which, in our view, does not deal adequately with the en banc hearing issue and which does not provide the necessary permanence.

The present circuit alinement amounts to a denial of equal access to justice for the citizens in the fifth circuit. The solution, the splitting of the fifth circuit, is long overdue.

We urge you to approve this important legislation promptly so that enactment may be brought about yet this year.

That concludes my statement on behalf of the American Bar, and I would like to make a short statement on behalf of myself as a citizen and as a lawyer.

This is a letter that I wrote to all of the members of the Georgia Congressional House delegation asking them to cosponsor this legislation.

I pointed out what it would do to divide the circuit. This division is an absolute necessity, I said, due to the heavy caseload where the number of opinions rendered is so large as to make it impossible to have a stable legal system, the variables possible from three-judge decisions in a court of 26 judges makes it necessary to have en banc consideration of many cases, so as to maintain consistency in the decisional process.

It is obvious to all that an en banc court of 26 judges is virtually impossible. It was hard enough with 15 judges when I served on the court. The result will be very few en banc courts at a time when more are needed.

I do not know of a single impartial person, and I say this with respect, knowledgeable in the field of appellate courts who would attempt to refute the need to divide the circuit.

To fail to do so will simply relegate the people of our State, this is what I was saying to our Congressman about an inadequate justice system, whether they have need to be in Federal court as plaintiffs or defendants, whether they are from business or labor, as Government agencies or claimants against the Government, the public will suffer from an uneven administration of criminal justice. Those seeking vindication of civil rights also will suffer from a lack of uniformity in the administration of the law, and will especially miss the en banc courts where so many of the landmark civil rights decisions have been made in the past.

I have seen the resolution of the NAACP, and I want to say something, not so much about the resolution but my own efforts as Attorney General, to allay the fears of the NAACP, that they were not receiving equal protection under the law, and that the court system did not appear, because of the lack of black judges, as a court system which would render equal protection of the laws.

This is a footnote to history maybe, but I was called to the White House one day in 1977 to meet with a group of southern black leaders.

The President told me to come there and when I got there, I found among the leaders Dr. Martin Luther King, Sr., Mrs. Martin Luther King, Sr., Joe Reed from Alabama, a number of others, maybe 15, 20 at the most, and they said:

"Mr. President, we came here to see about getting some black judges in the South." We talked, and the President told me to find at least one judge for every Southern State.

He was charging me with that responsibility. As you can imagine, it took me a long time to work that out, and I had to do a lot of trading, had to create vacancies in some instances by people being promoted to the courts of appeal.

I want to read you the result, because I think it is a very honorable chapter in the history of our country.

In Arkansas, a black judge by the name of George Howard, his nomination is now pending in the Senate; he has had a hearing so it is just awaiting a vote; Texas, Gabrielle McDonald is already on the bench; Louisiana, Judge Collins is on the bench; Tennessee, Judge Horton; in Alabama Judge Clemon has been sworn in, and I assume he has already assumed his duties; Georgia, Judge Ward is on the bench; South Carolina, Judge Perry is on the bench; North Carolina, Judge Erwin has had his hearing in the Senate and is only awaiting the vote of the full Senate to be confirmed; Virginia, Judge Sheffield's hearing is scheduled for next Tuesday; Maryland, Judge Howard; Florida, Judge Hastings is already on the bench.

The only State where we do not have a black judge is Mississippi. Senator Stennis is in the room; he knows I met with him and we discussed a black lawyer in Jackson by the name of Fred Banks, who is a distinguished lawyer. There has been no vacancy where Mr. Banks lives.

Senator Stennis is not committed to recommend or assist in having Mr. Banks appointed, but he has said he would take a very careful look at him. He has an open mind and he says he has a high regard for him. That is the only State out of all those States where we have not been able to get somebody on the bench, or that we have got them pending in the Senate.

Two of the three that are pending in the Senate have had their hearings. Incidentally, during the Carter administration, 34 black judges have been appointed out of 252 appointments, and there were only 19 black judges when President Carter became President.

One other thing I did, and this was important and it addresses a concern of the NAACP directly. There has not been one Federal judge appointed in America since President Carter became President where that appointee was not screened by the National Bar Association, which is the association of black lawyers.

The American Bar has always had a role since the Eisenhower administration in the selection of judges, in screening judges. I brought in the National Bar Association and asked them to screen all appointees, possible appointees, on whether or not they thought these judges that we were appointing were biased. If there is a

biased judge on the bench they have gotten through this screening in some way.

I did that so that the black people of America would feel that they had a role in the system and that the justice system was a fairer system. We not only appointed judges but gave the National Bar Association a role in the appointment. The NAACP seems to be worried because they don't know what will happen. I can understand that. I have an emotional feeling but an emotional feeling is not really a reason.

I have a sort of an emotional feeling about the fifth circuit, because as a young lawyer I argued a case in the fifth circuit before I ever argued a case in the State appellate system. I hate to think about Georgia being in the eleventh circuit.

It won't seem right but, on the other hand, I would rather have a good system of justice, and I know you can't unless you can have en banc hearings when you need to have en banc hearings. You cannot have a good court system where the judges say we can't handle any more en banc hearings, we don't have time to have those long sessions where it takes all day to go around the table to let each person comment on the case which is en banc.

Emotionally I would prefer that we always have the fifth circuit, but we can't. What I would hope is that the committee would do what I have done; that is, do everything we can to allay the fears of the NAACP. If they take a look at the system as it operates, as it forms between now and the time it would actually take effect, they would become reassured, I believe.

What we have done in the past is enough reassurance, but after they study it and think about it some more, I believe they will be reassured.

This is a time when we have been through 3 years of healing in our country, and I don't know of anybody on the bench in public life today who is not aware of the fact that we needed to heal our country because of this situation between sections of the country.

We have had a good 3 years or more now in that process, and I don't know of anyone who wants to turn the clock back.

Thank you very much.

[The statement of Griffin B. Bell follows:]

PREPARED STATEMENT OF GRIFFIN B. BELL, ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee, I am Griffin B. Bell of Atlanta, Georgia. I appear before you today on behalf of the American Bar Association at the request of its President, W. Reece Smith of Florida. The Association strongly supports the split of the Fifth Circuit as proposed in H.R. 7665 and similar bills, and I am here to urge your prompt and favorable action on this important legislation.

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This resolution, while of very recent origin, reflects a long-standing Association view that the Fifth Circuit should be split. In October 1973, and again in February, 1977, the Association adopted resolutions calling for the split. Seven years have passed since the ABA first called for the split, and the problems which led to the adoption of that 1973 resolution have grown enormously in the intervening period.

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To meet this burgeoning caseload, which increased 9.9 percent in the year preceding June 30, 1979, alone, the Circuit has been increased in size by the 1978 Omnibus Judgeship Act to 26 judgeships. It is now the largest appellate circuit in the history of our Republic. When I had the privilege of serving as a judge on the Fifth Circuit, we had "only" fifteen authorized judgeships. Even at that level, many of the problems being wrestled with today were very much in evidence. Increasing the number of judges—an action that was absolutely essential—has greatly exacerbated these problems of administration of justice.

One of the foremost problems is the preservation of consistency and predictability in the decisional process. Most of the work of the circuit courts is carried out by three-judge panels. The number of possible combinations of three-judge panels formed from among 26 judges is enormous. Each additional panel in a circuit greatly increases the likelihood of intra-circuit conflicts. Such conflicts are inevitable in even much smaller circuits, but the number of instances of conflict increases geometrically with the number of panels.

The solution to intra-circuit conflicts, of course, is to hold en banc proceedings. The Fifth Circuit, by virtue of both its heavy caseload and its number of panels, now has the largest en banc caseload which any federal appellate court has had. A twenty-six judge en banc hearing is a jurist's nightmare. It was hard enough when I was on the bench and we had fifteen judges sitting at en banc hearings. Affording all twenty-six judges the opportunity to participate fully in the hearing and in the subsequent conference discussions on each and every one of the cases in the largest ever caseload, and seeing that the rest of the cases in the Circuit's docket are dealt with in a judicious and expeditious manner, are proving to be inconsistent and perhaps unobtainable goals.

A further problem is that the caseload of the Circuit has expanded to the point that almost 2,000 opinions are being rendered by judges of the Circuit each year. It is becoming increasingly difficult for the judges of the Circuit to remain current with respect to the law in their own circuit.

The results of these factors are obvious: inconsistent decisions within the same circuit; delays in resolving matters; the use of a far-from-ideal mechanism for resolving intra-circuit conflicts; and eventually, the loss of public confidence in the ability of the justice system to render decisions promptly and fairly.

We cannot tolerate these results and we do not have to. The proposed legislative split of the Fifth Circuit would produce two circuits of large but manageable proportions. Intra-circuit conflicts would be greatly reduced. The en banc panels once again would be of workable size. Delays would be minimized.

The administrative division of the circuit which will take effect ten days from now is a step in the right direction. But it is a temporary, stop-gap response which, in our view, does not deal adequately with the en banc hearing issue and which does not provide the necessary permanence.

The present circuit alignment amounts to a denial of equal access to justice for the citizens in the Fifth Circuit. The solution—the splitting of the Fifth Circuit—is long overdue. We urge you to approve this important legislation promptly so that enactment may be brought about yet this year.

Mr. KASTENMEIER. Thank you, Judge Bell, for that very helpful statement.

Let me refer to a couple of reservations, and you have referred to one by the NAACP. The NAACP's written resolution stated in part that in 1978: "Senator Eastland proposed legislation to divide the Fifth Judicial Circuit in order to lessen the impact of the court's decision in civil rights litigation."

The reason I raise that statement is because if that appeared to be the purpose or even if it were not the purpose, if it had that effect, one could well understand why an organization such as the

NAACP would have very strong reservations about the proposed legislation.

Of course, Senator Eastland is not here to speak for himself, but I wondered whether you were aware of that.

Judge BELL. I am aware that Senator Eastland for many years was active in the legislation to divide the fifth circuit, and the perception was that he was doing that to divorce Mississippi from Louisiana and Texas. That is a big difference, though. Under this legislation, Mississippi is with Louisiana and Texas.

After Senator Eastland retired and new judges came on the court, Judge Coleman and Judge Clark of Mississippi went along with a unanimous vote of the fifth circuit to put Mississippi in with Louisiana and Texas rather than being with Georgia, Alabama, and Florida, so that is a big difference.

That was not ever in any of the proposals of Senator Eastland. I don't say that he was doing that to lessen the impact of the court's decisions, as this resolution said. I don't admit that. I didn't mean that, but I know that somebody could have had that perception, and the NAACP may well have had that perception.

That was actually, without going into details, I think that back in those days it was felt there were some judges on the court who were essential to the court rendering sound decisions in civil rights cases.

Some of those judges have retired. Years have gone by, life continues on and there is another set of judges on the court now. That has something to do with back in those days. I think that is a bygone, though, because of those two judges from Mississippi, Judges Coleman and Clark. They have bitten the bullet and said, Mississippi will have to go with Louisiana and Texas.

Mr. KASTENMEIER. Let me ask you a different type of question relating to a reservation, perhaps less emotional, that has been brought to the subcommittee's attention. That is, it is argued by some that we ought not split the fifth circuit because what we really need is something in the order of a Hruska Commission to look at the entire Federal judicial system.

After all, the ninth circuit also has an enormous problem when it sets en banc. The problem in that circuit are equal to those which confront the fifth circuit alone. Accordingly, Congress should take some clearer and broader look at the question and defer action on this particular division.

You, having been Attorney General and having in many capacities been interested in this matter from a broader perspective, how do you respond to that?

Judge BELL. As the chairman knows, the Hruska Commission was a great failure. Like all commissions, they made recommendations. Nothing ever came of it. What they ran into was the natural bent of American minds to leave things alone if nothing is wrong, and most of the circuits are well satisfied and they don't want to give up some States or move States and the State bars would not want to move.

For example, during that time they were trading and trafficking around, at one point, they were going to move Georgia into the fourth circuit and somebody up in Washington called me in Atlanta and asked me what I thought about it.

I said it was all right with me. Georgia used to be in the fourth circuit before the Civil War. I learned though that the Georgia lawyers didn't want to do it. They didn't know the law in the fourth circuit. Nationwide realignment will not happen. The ninth circuit is quite a different matter. There are only two circuits in the country that have problems, the ninth and the fifth.

The ninth does need dividing, and to divide it they would have to divide the State of California. You would have part of California in one circuit and part in another, and the provision for administrative units in the 1978 omnibus bill was written by me and written for the ninth circuit, because I never could figure out how they were going to divide a State.

Some day, maybe 50 years from now, maybe New York would be in the same shape, but it would be a long time before we have a State that gets large enough to be divided into two circuits, so that is a problem in the ninth.

In the ninth I would suggest that they have a different character of caseload. If you will look at the statistics, they have very few en banc courts. Maybe they need to have more. They don't have the civil rights caseload that you have in the fifth, but whatever the reason, they have very few en banc decisions and so they could get by with an administrative unit court for a while. It doesn't have to be now.

The fifth circuit is where the problem is.

Mr. KASTENMEIER. Thank you, Judge Bell.

I have about 20 or 30 other questions on other matters I would like to ask you, but I will pass up the opportunity and yield to my colleague from California, Mr. Danielson.

Mr. DANIELSON. Thank you, Judge Bell, for appearing this morning and for giving us the benefit of your opinion. I am not going to belabor your testimony.

Chairman Kastenmeier has asked all of the important questions and made the comments that are significant.

I only want to add that you did a great job as Attorney General, an absolutely great job, and I thank you for the effort and the contribution you made to help us resolve some of our problems.

I can only think of that 26-judge panel up there. Can you imagine the terror in a heart of an attorney appearing before them? It would be like arguing to the Tabernacle Choir.

Mr. KASTENMEIER. The gentleman from North Carolina, Mr. Gudger.

Mr. GUDGER. I want to thank Judge Bell again for appearing before a committee here on this very important topic. I can neither add nor subtract from this very excellent brief. If each of these new appointees mentioned are equally in caliber to Richard Erwin of North Carolina, we will be adding greatly to the quality of our bench.

I have known him as a member of the State of North Carolina in which I served with him, and also as a very active leader in the North Carolina State Bar, and I would like to get it on record that he is truly an outstanding recommendation for appointment to the district court.

Judge BELL. In the middle district, Greensboro.

Mr. GUDGER. I wanted to say this, that my concern right now is the numbering of this new division, because as a practitioner and as a permanent member of the fourth circuit, I find it very difficult to conceive of having to fly over or leap over an eleventh circuit to get to a fifth circuit, and I notice that you mention that as a little bit disturbing to you, too.

In any event, we will miss having the fifth circuit as a neighbor, if this becomes the pattern of the future.

Judge BELL. I am glad you brought that up because I consider it to be a shame to take the fifth away from us but, apparently, the judges themselves are satisfied with it. I don't want to stir up any sleeping dogs.

Mr. GUDGER. Thank you very much.

Mr. KASTENMEIER. On that point, I addressed the ninth circuit recently, and I confess that somewhat facetiously I suggested we ought to rename the circuits, take the numbers away and give them names like the Golden Gate circuit or like some of the rock groups and professional teams have. We could have a circuit known as the Liberty Bell, and so forth.

That would be much more attractive than continuing the practice of assigning ever growing numbers to the circuits.

Mr. DANIELSON. On the same point, I can give you some comfort, Judge Bell. You know congressional districts are reapportioned every 10 years following the census, and in a growing State like California, every reapportionment has brought in more districts and more numbers.

People become attached to their number, and it is like your emotional attachment to the fifth designation.

A predecessor from part of my district was Chet Hollifield who was in the 19th District from California. As the State grew, he stayed there 21 years.

Chet Hollifield held on to number 19 until he quit, even though it was an island in the middle of other districts, and it really should have been the 32d. Since then I have talked with Chet many times, and he says nothing was like the old 19th, so you can be a part of the alumni association of the old fifth.

Mr. KASTENMEIER. The gentleman from Michigan will not be asking any questions. I am sorry to have missed him.

That really concludes our questions, and we thank you very much for your appearance.

Judge BELL. It is good to be back before you here again.

Thank you very much.

Mr. KASTENMEIER. Next the Chair would like to call Althea T. L. Simmons, who is director of the Washington Bureau of the National Association for the Advancement of Colored People.

Thank you for agreeing to appear, and you may proceed in any way you wish.

TESTIMONY OF ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mrs. SIMMONS. Thank you, Mr. Chairman and members of the subcommittee.

I am Althea T. L. Simmons, director of the Washington Bureau of the National Association for the Advancement of Colored People.

I appear today on behalf of the more than one-half million members in 1,800 local branches, youth councils, and college chapters in the 50 States and the District of Columbia and the 38 State and area conferences of the NAACP.

We appreciate this opportunity to share our views regarding the proposed division of the Fifth Circuit Court of Appeals.

The NAACP, Mr. Chairman, has remained firm in its opposition to a split in the fifth circuit since the issue was raised during consideration of the omnibus judgeship bill.

At that time, our opposition centered around the real possibility that such a split would create a Deep South circuit of the States of Alabama, Florida, Georgia, and Mississippi, which might prove insensitive to civil rights issues and a new eleventh circuit consisting of only Louisiana and Texas.

Although the motivation for the split in the circuit is different in the instant petition, the NAACP reaffirms its opposition to the proposed division for somewhat different reasons than we advanced in 1978.

The NAACP is not unmindful of, nor insensitive to, the problems addressed in the current petition, many of which were raised during the 95th Congress, regarding the increased size of the court and the projected increase in workload.

Our continued concern is occasioned because we believe that no one can tell, at this juncture, the impact of the enlarged judiciary and a period of time is necessary to allow the system an opportunity to settle in its own tracks after the addition of new judges at the district and appellate levels.

If, at some reasonable time, after observing the impact of the present additions to the circuit, it appears that additional flexibility is needed, a first avenue of change might be expansion of the administrative structure, for example, the use of administrative law judges. Such an approach would provide much needed time to consider whether a more permanent change is needed and, more importantly, any changes could then be effected with some experience based on the increase in workload.

The court might also consider using the existing authority built into the Omnibus Judgeship Act that Judge Bell has mentioned in his testimony, which allows the court to, under certain circumstances, constitute itself into administrative units to perform its en banc functions.

Mr. Chairman, the NAACP believes that any changes in the judiciary should not be undertaken in piecemeal fashion or, for that matter, out of political consideration. It occurs to us that the Congress may wish to view the impact of changes already made before grafting on new ones, and may well consider exploring whether or not there should be additional kinds of adjustments in the means by which we settle disputes or comprehensive changes within the several circuits.

The expansion of the judiciary may raise the public's expectation that previous delays will no longer prevail, and a probable impact may well be an increase in the number of cases filed because counsel will now think that settlement prior to filing is no longer

necessary as there is a greater chance that their cases will be heard in a timely fashion.

The Congress, and those of us similarly concerned, need to know what the impact is of the transformation that has already occurred before undertaking to change the change.

I believe an equally important argument against the proposed division is that such a split of the circuit would substitute two completely new entities with unknown performance toward major constitutional issues for the present high quality court with a known and impressive track record. For the past two decades, a majority of civil rights cases have been heard before the fifth circuit, and blacks and other minorities, disenchanted at the local and/or district level, have looked to the fifth circuit for justice.

The fifth circuit has been a citadel in the civil rights arena. Its forthright approach to the issues has gained the respect of blacks and other minorities and most of its decisions in the civil rights area have been upheld by the U.S. Supreme Court.

I need not tell you, blacks are becoming increasingly sensitive to the importance of the composition of the courts as many blacks harbor deep reservations regarding the administration of justice. This has been unfortunately highlighted by the recent civil disorders in a number of cities over the past several months.

Additionally, the present status of those black judicial nominees now before the Congress, coupled with a failure to receive a fair share of judicial nominations, is seen by a number of blacks as a concerted effort to retreat from any forward thrust in civil rights.

The NAACP is not only concerned with the possibility of the reality of insensitive courts in the South, it also fears that a change in the circuit will be perceived by blacks as an attempt to erode civil rights gains. We believe that any action at this time may well lend credence to such perception.

The NAACP has seen sharply increased activity by its units in connection with judicial nominations, and our local units have raised strenuous objections to the nomination and confirmation of judicial nominees whose past performance is conservative toward civil rights. That has been seen in our activity on the Hill in the past year or two with reference to the nominees coming up under the Omnibus Judgeship Act.

Mr. Chairman, the uncertainties of such a proposed move could have a devastating effect on the ability of civil rights litigants and their counsel to rely on precedents established by the present court.

In June of this year, delegates to the NAACP's 71st Annual National Convention addressed the issue of division of the fifth circuit in the following resolution:

That 50-person Resolutions Committee, composed of persons elected from all across the country, urged the NAACP, rather mandated us, to oppose legislation dividing the circuit for the following reasons:

1. It is apprehensive about exchanging a court of known quality for two of unknown quality;
2. It believes the change is unwise in that the full membership of the court and the district courts under its jurisdiction has not as yet been determined;
3. It has not as yet had an opportunity to evaluate the performance of the newly appointed judges on the expanded court;
4. Since the same problems affecting the fifth circuit also exist elsewhere, it should not be considered in isolation but as a part of comprehensive legislation and,

of course, our convention resolved that we urge the Congress to reject at this time any proposal to divide the fifth circuit.

Mr. Chairman and members of the subcommittee, in summary, the NAACP believes that a split in the fifth circuit is premature at this time and that a more feasible approach would be to observe the functioning of the enlarged court to ascertain whether a change is necessary and, if so, what kind, for the efficient and fair administration of justice.

We wish to thank the committee for affording us this opportunity to be heard on this important matter.

[The statement of Althea T. L. Simmons follows:]

PREPARED STATEMENT OF ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Subcommittee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. I appear today on behalf of the more than one-half million members in 1800 local branches, youth councils and college chapters in the 50 states and the District of Columbia and the 38 state and area conferences of the NAACP.

We appreciate this opportunity to share our views regarding the proposed division of the Fifth Circuit Court of Appeals.

The NAACP has remained firm in its opposition to a split in the Fifth Circuit since the issue was raised during consideration of the Omnibus Judgeship Bill. At that time, our opposition centered around the real possibility that such a split would create a Deep South circuit of the States of Alabama, Florida, Georgia and Mississippi which might prove insensitive to civil rights issues and a new eleventh circuit consisting of only Louisiana and Texas. Although the motivation for the split in the circuit is different in the instant petition, the NAACP reaffirms its opposition to the proposed division for somewhat different reasons than we advanced in 1978.

The NAACP is not unmindful of, nor insensitive to, the problems addressed in the current petition (many of which were raised during the 95th Congress), regarding the increased size of the court and the projected increase in workload. Our continued concern is occasioned because we believe that no one can tell, at this juncture, the impact of the enlarged judiciary and a period of time is necessary to allow the system an opportunity to "settle in its own tracks" after the addition of new judges at the district and appellate levels.

If, at some reasonable time, after observing the impact of the present additions to the circuit, it appears that additional flexibility is needed, a first avenue of change might reasonably be expansion of the administrative structure e.g., the use of administrative law judges. Such an approach would provide much-needed time to consider whether a more permanent change is needed and, more importantly, any changes could then be effected with some experience based on the increase in workload.

The court might also consider using the existing authority built into the Omnibus Judgeship Act which allows the court to, under certain circumstances, constitute itself into administrative units to perform its en banc functions.

Mr. Chairman, the NAACP believes that any changes in the judiciary should not be undertaken in piecemeal fashion or, for that matter, out of political consideration; therefore it occurs to us that the Congress may wish to view the impact of changes already made before grafting on new ones and may well consider exploring whether or not there should be additional kinds of adjustments in the means by which we settle disputes or comprehensive changes within the several circuits.

The expansion of the judiciary may raise the public's expectation that previous delays will no longer prevail and a probable impact may well be an increase in the number of cases filed because counsel will now think that settlement prior to filing is no longer necessary as there is a greater chance that their cases will be heard in a timely fashion. The Congress and those of us similarly concerned, need to know what the impact is of the transformation that has already occurred before undertaking to "change the change".

An equally important argument against the proposed division is that such a split of the circuit would substitute two completely new entities with unknown performance toward major constitutional issues for the present high quality court with a known and impressive track record. For the past two decades, a majority of civil rights cases have been heard before the Fifth Circuit, and blacks and other minorities, disenchanted at the local and/or district level, have looked to the Fifth Circuit

for justice. The Fifth Circuit has been a citadel in the civil rights arena. Its forthright approach to the issues has gained the respect of blacks and other minorities and most of its decisions in the civil rights area have been upheld by the U.S. Supreme Court.

Blacks are becoming increasingly sensitive to the importance of the composition of the courts as many blacks harbor deep reservations regarding the administration of justice. This has been unfortunately highlighted by the recent civil disorders in a number of cities over the past several months.

Additionally, the present status of those black judicial nominees now before the Congress, coupled with a failure to receive a "fair share" of judicial nominations, is seen by a number of blacks as a concerted effort to retreat from any forward thrust in civil rights. The NAACP is not only concerned with the possibility of the reality of insensitive courts in the South, it also fears that a change in the circuit will be perceived by blacks as an attempt to erode civil rights gains. Any action, at this time, may well lend credence to such perception.

The NAACP has seen sharply increased activity by its units in connection with judicial nominations and our local units have raised strenuous objections to the nomination and confirmation of judicial nominees whose past performance is conservative toward civil rights.

Mr. Chairman, the uncertainties of such a proposed move could have a devastating effect on the ability of civil rights litigants and their counsel to rely on precedents established by the present court.

In June of this year, delegates to the NAACP's 71st Annual National Convention addressed the issue of division of the Fifth Circuit in the following resolution:

Whereas, in 1978, Senator Eastland proposed legislation to divide the Fifth Judicial Circuit in order to lessen the impact of the court's decision in civil rights litigation; and;

Whereas, the Fifth Circuit has been the best Federal Court of Appeals on civil rights issues in the nation, not only from the standpoint of the NAACP, but on its record of being upheld by the Supreme Court; and,

Whereas, it is again proposed to divide the Circuit, albeit along somewhat different lines;

Now therefore be it resolved, that the NAACP opposes legislation dividing the Circuit for the following reasons: (1) it is apprehensive about exchanging a court of known quality for two of unknown quality; (2) it believes the change is unwise in that the full membership of the court and the district courts under its jurisdiction has not as yet been determined; (3) it has not as yet had an opportunity to evaluate the performance of the newly-appointed judges on the expanded court; and (4) since the same problems affecting the Fifth Circuit also exist elsewhere, it should not be considered in isolation, but as a part of comprehensive legislation.

Be it further resolved, that we urge the Congress to reject any proposal to divide the Fifth Circuit at this time.

Mr. Chairman and members of the Subcommittee, in summary, the NAACP believes that a split in the Fifth Circuit is premature at this time and that a more feasible approach would be to observe the functioning of the enlarged court to ascertain whether a change is necessary, and if so, what kind, for the efficient and fair administration of justice.

We wish to thank the Committee for affording us this opportunity to be heard on this vital issue.

Mr. KASTENMEIER. Thank you, Ms. Simmons. part of your resolution is high praise indeed where you say,

Whereas, the fifth circuit has been the best Federal court of appeals on the civil rights issues in the Nation, not only from the standpoint of the NAACP, but on its record of being upheld by the Supreme Court.

That is a pretty nice compliment. Does it follow that by dividing the court you would dilute that record of protection and quality?

Ms. SIMMONS. We are saying, for example, all the slots are not filled on the circuit as yet, and there are judicial nominees who are still unconfirmed who hopefully will sit on district court that make up the jurisdiction of the fifth circuit; so we are saying it seems to us premature to divide the court at this time.

Mr. KASTENMEIER. Wouldn't the argument have to be that an existing judge's record is clear? The problem is the appointment of new judges there and elsewhere in the Nation, since they are all of

unknown quality as far as what their record may subsequently be. Therefore, one really ought to argue against the appointment of new judges, not division of a court, the record of which is already well known.

Ms. SIMMONS. We think there is a need for new judges and also any time you put an unknown into a known quantity, that in itself has the opportunity to affect the known quantity.

We are not saying at some other time it won't be necessary to do that, but we are saying right now, because you do have these various elements, that the circuit is not firm yet. The district bench is not firm yet. Maybe we ought to see how the expanded court works and then make a decision.

If you will note in our resolution, we said that, we don't close the door because we don't know. We just don't think at this time that anyone has knowledge as to how the new judges will affect the decisions of the courts because of the other appointments to be made at both levels.

Mr. KASTENMEIER. Well, I think in terms of the compelling nature of the case to be made or your resolution, it is unfortunate they are based on an apprehension of unknown expectations and, fears rather than on substantive reasons.

We confronted similar questions when we curtailed the use of three-judge courts while we reduced the necessity to resort to three-judge courts and preserve only part of the function, it did seem that the NAACP's position at that time also was based on ancient fears rather than current realities.

Ms. SIMMONS. I think you have to deal with back history.

I see, for example, a lot of parallels between reconstruction in the 1800's, when we had the 13th, 14th, 15th amendments passed, and we thought surely that black rights were going to move and then we saw the erosion through the courts, so that when we express our fears they are based on what has happened in the past, and because no one knows whether or not the additional judge to the circuit court will have the power to persuade the other jurists in terms of civil rights. You won't know that until he gets on the bench.

The same thing is true with the district courts, NAACP tries to be responsible, and for us to sit here and make a firm statement that we believe division of the court will not cause changes would be irresponsible in the highest degree. That is why NAACP goes by past history and articulates its fears and in a number of instances our fears have not been groundless.

Mr. KASTENMEIER. Let me say this committee considers many things and there are those in the room who will not agree with this statement, but in terms of the effect of anything this subcommittee might do as far as the Federal judicial branch is concerned, yesterday we considered a proposal, S. 450, which would deny the Supreme Court of the United States and any and all Federal courts, including the gentlemen from the fifth circuit sitting behind you, jurisdiction to deal with a matter involving voluntary school prayer, a constitutional issue. If adopted, from the standpoint of precedent, this would mean that Congress could by sheer statute, if upheld, could permit the denial of almost any question to be litigated, to be remedied in the Federal courts of this country.

That, I would think, is far more ominous for civil liberties than the expectation of a composition of a new court or a circuit. Nonetheless, I respect you, Mrs. Simmons, and certainly the organization you represent with whom over the years I have shared many battles.

Ms. SIMMONS. Yes.

Mr. KASTENMEIER. I yield to the gentleman from California.

Mr. DANIELSON. Thank you, Mr. Chairman.

I am looking up and down the bench, Mr. Chairman, hoping I am not going to be depriving someone else of a chance to talk with Ms. Simmons.

I thank you too and commend you on the tremendous benefits which you personally as well as your organization have conveyed upon our country in recent years in this and other matters.

I sit with my good friend Bob Kastenmeier on this same subcommittee on other matters, and I was also thinking of the school prayer issue, which if you think this is emotional, you should try that one.

I understand the tenor of your statement, I have read it and listened and heard these responses. Do you have a specific objection to a factually existing situation in this eleventh, fifth circuit proposed division to which you could address yourself?

I have this in mind; are there any judges whom you are particularly concerned about? Is there any geographical problem of access to justice that would be created? Is there anything specific other than your fear that the fifth circuit will be weakened in its civil rights posture and we would be going on to something that you know nothing of in the new eleventh circuit.

Ms. SIMMONS. No problem with access to justice, no problem with that at all. We do realize that the majority of civil rights cases come through the fifth circuit.

Our counsel has litigated in that circuit extensively and, as a matter of fact, we feel that this has been the "bastion for civil rights," and we just don't know, just as any other person would have fears against the unknown, but we feel that with the known quality in that fifth circuit that blacks who appear have no hesitancy about realizing they are going to get justice.

I don't know if that will still be true.

Mr. DANIELSON. Thank you; that is a very forthright and responsive answer. It reinforces the impression that I got from your statement, and that is; namely, that your resistance to the change is based upon the contemplation of an unknown, at least partially to replace a known.

I would like to remind the gentle lady of something you state in your resolution, "The fifth circuit has been the best Federal Court of Appeals on civil rights issues in the Nation" is excellent. I wish when I hang up my gloves, somebody could say something comparable about me.

That is excellent.

Ms. SIMMONS. We believe that firmly.

Mr. DANIELSON. I am for that; with that background, how do we know that the creation of the new eleventh circuit will not result in two bastions of civil rights rather than just one?

I was checking while you were talking, in the proposed division of this circuit, we are not just dividing geography, but also the judges. The Texas judge will stay in Texas, for example. A Mississippi judge will stay in Mississippi, I assume, and Georgia, et cetera.

So we have this magnificent nucleus of a fifth circuit we will divide into two courts. Remember when your mother used to bake bread and she saved a little of the yeast and used it for tomorrow? My mother did that. What is there that causes your fear, because that leavening isn't going to exist in two new circuits?

I think the probabilities are higher that that would happen than the probability that it would not happen; I really believe that.

Ms. SIMMONS. We don't foresee that.

Mr. DANIELSON. Well, you are really on my side.

Ms. SIMMONS. The bench is not complete as yet.

Mr. DANIELSON. Thank you very much for bringing that up.

How can we complain? In your No. 3 point, we have not yet had an opportunity to evaluate the performance of the newly appointed judges on the expanded circuit.

I respectfully submit, how can you ever evaluate the performance of a judge who has not yet performed as a judge?

Ms. SIMMONS. That is why we are saying wait until after the bench is complete until the members have had an opportunity to perform as judges.

Mr. DANIELSON. Even in the personal affairs of mankind, how do you know that the husband and the wife are going to work out until after they become husband and wife?

Ms. SIMMONS. You really don't.

Mr. DANIELSON. No, but we try to evaluate them. This filtering process for Federal judges is the finest sieve on earth. That is pretty good.

Point 2, NAACP believes the change is unwise and that the full membership of the court and the district courts under its jurisdiction have not yet been determined. Of course, it has not. How can you determine the membership of a court when the judges have not been appointed yet?

Ms. SIMMONS. That is exactly our point.

Mr. DANIELSON. We are getting around to the old hen and egg situation. One of them has to come first. It's the hen and the egg, but I respectfully submit that if we are going to ever make progress, if we are ever going to appoint more judges and ever going to handle our judicial load, we have to move forward. To resist that is just like saying we are not going to have it tomorrow, because today is good, and you can't stop that, Ma'am.

What we have got to do is try to be sure that tomorrow will also be good.

Ms. SIMMONS. The other comment I would like to make is we are talking in terms of the judges authorized under the Omnibus Judgeship Act. We think that those judges should be confirmed before a decision is made as to whether or not there should be a split in the fifth circuit so that does limit it.

Mr. DANIELSON. Would you do this; as these judges are named and assuming this does go through, look at the prospective judges

carefully, put them under your microscope carefully and give your contribution to the Senate which has to pass on them.

I don't think we will have any trouble. I wish you well.

Mr. KASTENMEIER. Thank you, Ms. Simmons.

Ms. SIMMONS. Thank you so much for letting us appear.

Mr. KASTENMEIER. Next is my special pleasure and honor to call forward a distinguished group of judges from the fifth circuit, and I would like to call on our colleagues.

I note the fact that the chairman of the Appropriations Committee, Mr. Whitten, is here.

We are very honored to have him here. David Bowen, also our colleague, is here. They may either wish to make a short comment or introduce the chief judge of the circuit and, unfortunately, Gillis Montgomery has just left the room, but he would have liked to have been here for the purpose of presenting Judge Coleman.

May I call on Congressman Whitten?

TESTIMONY OF HON. JAMIE L. WHITTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WHITTEN. I appreciate the recognition and welcome the chance to be here.

I have seen Judge Coleman. I want to say that the delegation, and I don't speak for them, we are in favor of the proposal here.

The objections that I have heard don't go to the merits of the situation whatsoever, in my opinion, because we have the same judges operating in the same way, and with the unbearable workload that makes it impossible for us to have the same attention to the problems of the area that they have in other areas, so without going into any great detail, we are in favor of the proposal, I am.

We appreciate your courtesy and your consideration and feel that we are right in asking you to approve the proposal.

Mr. KASTENMEIER. We are pleased to hear from you.

Congressman Bowen?

TESTIMONY OF HON. DAVID R. BOWEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. BOWEN. I appreciate your hospitality in giving me an opportunity to introduce one of my distinguished constituents.

Judge Coleman is chief judge of the U.S. Court of Appeals for the Fifth Circuit. He has publicly held more important positions of public service in our State than anyone, going all the way back to one of his most outstanding, being a staff member here in the U.S. House of Representatives.

He has served as a district attorney of Mississippi, in the State legislature, as a State circuit judge, and in the Mississippi Supreme Court. He was elected attorney general of Mississippi and he has served as certainly one of our most distinguished State Governors. He was offered a Cabinet position in the administration of John F. Kennedy, and chose to stay in Mississippi and serve the people of our State.

In 1965, President Lyndon Johnson appointed Judge Coleman to the U.S. Court of Appeals, and he became the chief judge last September. Earlier this month Chief Justice Burger appointed him

to the Executive Committee of the Judicial Conference of the United States.

It is noticeable that having achieved this lofty position as chief judge, that now Judge Coleman is prepared to give up this lofty domain over which he is presiding with his circuit and see it is providing prompt and equal justice for all the citizens of the area.

Judge Coleman.

Mr. KASTENMEIER. We are very pleased to have you introduce Judge Coleman and thank our colleague for making that introduction.

I would like to greet Judge Coleman, together with his distinguished colleagues, Judge Robert Ainsworth and Judge Frank Johnson.

I will say to the colleagues here that I am sorry I did not notice that Trent Lott of Mississippi is also here. Before the judges proceed, I should like to call on Congressman Lott.

TESTIMONY OF HON. TRENT LOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. LOTT. I will be brief, but I want to express my support also of this proposed legislation, and this verifies the fact that it is a bipartisan effort, and I think it is something that desperately needs to be done.

As a young lawyer, I practiced in that circuit. I was on this subcommittee briefly. I have had a long interest in this.

I support this legislation and it is a great pleasure for me to be here with these distinguished judges and particularly Chief Judge Coleman.

Mr. KASTENMEIER. We must now regretfully announce to our distinguished panel a recess for 10 minutes to make a vote, and we will return forthwith.

[A short recess was taken.]

Mr. KASTENMEIER. The committee will come to order.

Before we proceed with our distinguished panel of judges of the Fifth Circuit Court of Appeals, I would like to inquire of our colleague, Congressman Montgomery, if he would care to make any comments.

TESTIMONY OF HON. G. V. (SONNY) MONTGOMERY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. MONTGOMERY. Thank you for having this hearing. I am coauthor of this bill and I certainly hope, as Judge Coleman testifies, that action could be taken on the bill. I appreciate the opportunity to be here today.

Mr. KASTENMEIER. Thank you, Congressman Montgomery.

After that stirring introduction of Judge Coleman, it behooves me to say not only do we welcome him but this committee is familiar with both of his colleagues.

Judge Robert Ainsworth has been not only a witness before this committee but he and I have attended more than one conference on judicial matters and have had opportunities to discuss other aspects of judicial administration.

Judge Frank Johnson too has called on the Congress in the past and has a very distinguished record, so I am pleased to greet them both again.

Both Judge Ainsworth and Judge Johnson are former district judges and are now serving on the circuit court. They are aware of the needs of poor people, minorities and, generally, those who need to receive due process and equal protection in our society. In any event, all three judges are all well qualified to speak on the needs of the fifth circuit.

Chief Judge Coleman, I will let you proceed and you may preside.

**TESTIMONY OF HON. JAMES P. COLEMAN, CHIEF JUDGE OF
THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Judge COLEMAN. Mr. Chairman, members of the committee, I have known for a long time that the most precious thing Congress has is time, the scarcest commodity of all, and because of the great demand made on you we will certainly try to be as brief as possible. On behalf of the 24 other judges on our court in the fifth circuit, who have unanimously petitioned the Congress to divide the circuit along the lines which have been indicated, I want to thank this committee and the Congress.

The Senate has already acted in their prompt response to our unanimous cry of need.

I also want to thank all of the members of the Mississippi delegation for their presence this morning and for the fine introduction by my Congressman, Congressman David Bowen. Congressman Montgomery was in the State senate when I was Governor and the people quickly promoted him to Congress.

Chairman Whitten is here. Congressman Lott was born and raised in the old district where I served as State trial judge many years ago. I want to express my appreciation to everybody, to Senator Stennis and particularly to Judge Griffin Bell. Had he not resigned from the court, Judge Bell would have been the chief judge of this court when Judge Brown retired, I would not have had this responsibility, and it would have been in much better hands.

He decided to go into the law practice and it was a good thing because he thereby became the Attorney General of the United States, which otherwise would never have happened.

I am pleased to have here with me this morning Judge Frank Johnson. Judge Johnson was appointed U.S. judge in 1955. He has served actively on the Federal bench in the fifth circuit longer than any other person. His credentials need no endorsement from me or from any other person. They are well known to the Congress and the citizenship at large.

On my left, Judge Ainsworth has been sitting with me in the fifth circuit since 1956. He is one of the workhorses of the court. I propose, if it is agreeable with the committee, and I understand it will be, that I yield now to Judge Johnson for such statements as he might like to make. He is the designated representative of the judges.

I am here as the chief. Judge Ainsworth will speak and after Judge Ainsworth I will make a few very brief remarks.

Mr. KASTENMEIER. Fine; as a matter of fact, the statements of each of you have already been received by the committee and will be made part of the record at an appropriate point.

[Judge Coleman's statement follows:]

PREPARED STATEMENT OF CHIEF JUDGE JAMES P. COLEMAN

Mr. Chairman and members of the subcommittee, my name is James P. Coleman. On June 22, 1965 I was nominated by President Lyndon B. Johnson to be a Judge of the United States Court of Appeals for the Fifth Circuit. Since December 10, 1979, I have served as the Chief Judge of the Court.

If it were solely a matter of personal preference, our Judges would not wish to see the Fifth Circuit divided. While differences of opinion often occur among conscientious judges about the correct resolution of a legal or factual issue, the personal relationships on our Court are excellent—unsurpassed, I think. We were appointed by five different Presidents but we like one another. We really enjoy working together. There are no personal enmities, no discourtesy or backbiting or bickerings or recriminations. We are warm friends, so we naturally dislike the idea of being separated.

After operating together as the largest group of judges ever known on a court in the history of American jurisprudence, we have unanimously come to the conclusion that our personal preferences must yield to the public good. We recognize that the resolution of the matter rests with the Congress, but we have come to the unanimous conviction that the effectiveness of the Court as a Judicial Institution requires the division proposed by the legislation which you now have under consideration. By formal resolution, again unanimously adopted, our Court has petitioned the Congress to divide the Circuit, three States to be included in each of the Circuits thus to be created. We express our deep appreciation to the Congress for its prompt response to our call for help, help that only the Congress for its prompt response to our call for help, help that only the Congress can provide. We are here today to say, in utmost seriousness, that the sooner Congress grants this relief, the sooner we shall be able to accomplish the desired levels of efficiency and effectiveness.

The situation in which the Court presently finds itself comes as no surprise. In 1971, nearly ten years ago, after the Court for several years had been operating with fifteen judges, the Court by formal resolution, unanimously adopted, informed the Congress that it opposed expanding the size of the Court beyond fifteen judges because such an expansion "would diminish the quality of justice in the Circuit and the effectiveness of this Court".

Such highly experienced Judges as Chief Judge John R. Brown, who yet remains on active service, Judge John M. Wisdom, Judge Griffin B. Bell, and Judge Homer Thornberry joined in this unanimous statement to the Congress.

The problem is solely one of numbers and logistics. It is a matter of management and efficiency, which can be accomplished by courts consisting of a more nearly normal complement of Judges.

In the year 1948, the year that Chairman Rodino was chosen for his first term in Congress, the Court of Appeals for the Fifth Circuit received 398 appeals. Indeed, in all the Circuit Courts of the Nation there were only 2,758 appeals in 1948. The Fifth Circuit then had six Judges. The Second Series of the Federal Reporter stood at Volume 167.

In the Court year just ended, with twenty-six Judges authorized and twenty-five on board, the Fifth Circuit received 4236 appeals, up 418 from the year before. The Second Series of the Federal Reporter stands at Volume 621.

On June 30, 1980, we had 484 cases already under submission, that is, they were in the bosom of the Court awaiting decisions and in which no Court opinion had been rendered. On that date, we had 615 cases briefed and ready for disposition except that the Court had not been able to put them on the calendar for disposition. Consequently, it is correct to say that as of June 30, 1980, we had 1,099 cases ready for decision but yet undecided. These delays are to be regretted and they give us much concern. More than that, we had 2,929 cases docketed and on the road toward the calendar. This gives us 4,028 cases in the judicial pipeline as of June 30, 1980. During this coming year the appeals will no doubt increase because Congress, of necessity, has given us 35 new District Judges who will be trying cases and generating appeals. If there were no increase during this Court year we should nevertheless be faced with a total of over 8,000 cases in some stage of development. In the meantime, of course, we shall be deciding cases by the hundred and chopping away at this caseload.

All this points inexorably to the reason for your being here today.

Regardless of the number of judges, a Court is a Judicial Institution and has no function as such. We have the judicial manpower to put eleven panels, of three judges each, on the Bench on any given day. These panels, sitting simultaneously, could hear 220 cases in any one Court week. However, deciding those cases, formulating an opinion which decides them, and obtaining a majority vote for all aspects of the decision is quite a different matter. No panel can change the existing law of the Circuit; only an *en banc* Court can do that. Therefore, every Judge faces the duty of reading the numerous panel opinions as they are released through the efforts of a grand total of 34 Judges. At the same time, he, or she, must write the opinions assigned to him or her and obtain their approval. This is often a difficult, prolonged process. While doing that he must handle correspondence, telephone calls, legal memoranda, proposed opinions, and suggested revisions from his colleagues. This often consumes the entire day and carries over into the next day, with the result that a Judge may get to do no judicial work of his own for days at a time. The time for serious thought, reflection, and independent legal research, so vital to the judicial process, is painfully reduced if not altogether extinguished. The only way to reduce this logjam is to reduce the number of those participating in the process.

After we have navigated these shoals and a panel opinion has been released the process is by no means over, for the *en banc* process is next in line. Any litigant can ask for rehearing *en banc* and any judge can ask for a poll on rehearing *en banc*. A request from a judge automatically results in a poll. Last year, we had 302 petitions for rehearing *en banc*, one for every working day. The Judges have to read these petitions. We had 37 polls. By a majority vote of the Court, twenty-four rehearing *en banc* were granted. We have thirty-seven petitions for rehearing *en banc* pending at this time.

I recall that when our Court was composed of nine judges there was a whole year in which we had no rehearsals *en banc*. With only nine judges involved in the process at that time, three of whom had already sat on the case, differences could frequently be resolved without the necessity of an *en banc* meeting, argument, and opinion writing, participated in by all the judges.

The disposition of an *en banc* case indispensably necessitates a conference of all the judges. In such a conference, each and every judge is permitted to express his views, without interruption and without time limit. No one can stop him, and that is as it should be. On occasion, I have seen a judge take two hours for the presentation of his views. On a 26 person court, however, if each and every judge were to limit himself, or herself, to 10 minutes, it would take 4 hours and 20 minutes to go around the table in the exploratory phase of the discussion. Once the discussion has found its way to an end, a vote is next in order. Quite frequently, a case involves several serious issues and a number of votes must be taken. Quite often, a vote in a certain direction necessitates more discussion before the Court can move to a vote on the other issues. Of course, all votes are tentative, pending the drafting and submission of the proposed majority opinion. Frequently, there are many concurrences or dissents—the greater the number of participating judges the greater the potential for this to occur. Judges take their duties seriously. They feel that they have a duty to make their positions a matter of record, with reasons assigned.

I must say to the Committee that of the *en banc* cases which we heard last January, eight months ago, a number have not yet resulted in a published opinion. The litigants are simply having to mark time until they can hear what is to be done with them. With 25 judges the problem is to generate a majority vote for the decision of each and every dispositive issue in the case. Obviously, the potential for differences of opinion increases in direct ratio to the number of those who are participating in the process. It is clear that the composition of the *en banc* court in the Fifth Circuit must be reduced to a more effective size.

Even if Congress approves the proposed division, both the Fifth Circuit and the newly established Eleventh Circuit will each have more judges than are now deciding cases on the Supreme Court of the United States, cases of nationwide impact.

When Congress increased the number of judges in active service on our Court from 15 to 26 it made an effort to ameliorate this *en banc* dilemma in two ways. First, it was provided that senior Circuit Judges would no longer participate in the *en banc* process. Next, it was provided that the Court could exercise its *en banc* authority with less than the full number of active judges on board. Our Court has devoted much thought, discussion, and study toward the implementation of that particular authority. We have found that it is simply impossible for us to do it. If a panel of less than 26 were to be drawn by chance for every quarterly sitting of the *en banc* Court, we would run the hazard of throwing the predictability of the law into serious disarray. A randomly drawn *en banc* Court in June could well overturn that which had been thought to have been settled at an *en banc* session the previous January. Therefore, a majority of the Court has declined to adopt this approach.

If the nine judges with the longest service on the Court, or the nine with the least service, are to constitute the *en banc* Court, then seventeen judges, of equal authority and responsibility, are denied participation in the *en banc* process. If such a procedure were fair, it might be held unconstitutional as depriving the omitted judge of his office without impeachment and removal by the Senate.

It is obvious that the only reasonable way to solve this dilemma is to reduce the size of the Court to manageable proportions, in which every judge would have an equal voice in the decisions to be rendered.

Another aspect of this matter is that in order to have oral arguments *en banc*, we have had to bridle the Judges on the Bench. In order to assure counsel any really useful time for oral argument we have had to restrict questions from the Bench to an amount which, averaged, would allow each Judge 45 seconds for one question and answer. What happens, of course, is that out of appropriate politeness for one's Colleagues a Judge rarely ever gets a chance to ask a question of counsel on oral argument, however important that question might have been to the correct resolution of the case. In turn, counsel is guaranteed only twenty minutes without interruption.

Many Members of Congress have seen distinguished service at the Bar. On behalf of the lawyers, I must say that I can understand their discomfiture when they stand in the presence of 25 black-robed individuals simultaneously peering down upon them from the two-tiered Bench. Water consumption at the podium has noticeably increased, which I thoroughly understand.

It should not be forgotten that the proposed division of the Circuit would give 12 Circuit Judges in active service in the States of Alabama, Florida, and Georgia, while there would be 14 Judges in active service in the States of Texas, Louisiana, and Mississippi. The new Fifth Circuit, with these 14 Judges, will have only one judge less than it had prior to 1978. It will still be nearly twice the normal size of appellate courts. The Eleventh will have a third more than the usual number.

I have tried hard to make this statement as brief as possible, but there is one more point which I believe the Committee would wish to know about. We have implemented the authority which Congress gave us in the Omnibus Judgeship Act of 1978 by dividing the Circuit into two Administrative Units. Unit A is composed of the States of Louisiana, Mississippi, and Texas, headquartered in New Orleans. Unit B is composed of Alabama, Florida, and Georgia, headquartered in Atlanta. This will result in substantial savings of travel time and expense for judges, their staffs, and court staff. It will certainly save travel time and expense of counsel for the litigants. It will, I hope and believe, bring the Court closer to the people it has been established to serve.

These Administrative Units, however, do not and cannot alter the present necessity for 26 persons in the *en banc* process. They cannot alter the 26 person Judicial Council for the entire Circuit, governing the great mass of administrative detail which Congress quite properly has seen fit to require of our Court and which I do not here have time to describe. The Unit approach does not and cannot relieve us of the annual Circuit Judicial Conference, which has grown to such a large attendance as to be difficult to manage.

The Unit approach cannot get at the basic difficulties. Only Congress can do that for us. We are most grateful for your consideration. In the meantime, as in the past, we Judges of the Fifth Circuit will continue to do our utmost with what we have to do with. That is the American tradition.

The message which I wish to leave with you for your consideration is:

If we 26 Judges on active duty in the Fifth Circuit could each be relieved of half our correspondence, half our telephone calls which are now unavoidably necessary, half the judicial memoranda which we receive every day, half the slip opinions which inexorably must be read nearly every day, half the *en banc* petitions which we must consider, and half the time now spent in the *en banc* process, while still maintaining a court of more than normal size, the time thus saved for the exercise of the judicial function concerning the remainder of the judicial caseload would be DOUBLED. The time element in the disposition of cases would be proportionately improved.

With all the logistical problems necessitated by the use of such a large judicial army, our Court has been hard at work. We decided 3,884 cases in the year ending June 30, 1980. The inescapable logistical problems are emphasized by the fact that during the Court year ending June 30, 1979, before we received an additional ten Judges, the Fifth Circuit decided 3,402 cases. What it comes down to is that while we had a 66% increase in Judge power in Court year 1980, we had only a 14.2% increase in decided cases.

Mr. KASTENMEIER. Judge Johnson?

**TESTIMONY OF HON. FRANK M. JOHNSON, JR., CIRCUIT JUDGE,
FIFTH CIRCUIT COURT OF APPEALS**

Judge JOHNSON. Mr. Chairman, members of the committee, as Chief Judge Coleman has indicated, I have been a Federal judge in the fifth circuit for a quarter of a century.

During this time I have had an opportunity to become thoroughly familiar with the functions and the operations of the Fifth Circuit Court of Appeals, as a district judge for most of this time but as a district judge watching, necessarily watching, the action of the Fifth Circuit Court of Appeals; sitting by designation with the fifth circuit; upon many occasions sitting as a member of a three-judge panel on numerous occasions involving constitutional questions, practically all of which went on to the Supreme Court of the United States.

I am therefore thoroughly familiar with the functions and operations of the fifth circuit.

I did not volunteer for being here today. I was selected and designated as one spokesman for the Fifth Circuit Council. I do welcome, however, the opportunity to present what I consider to be compelling, supporting reasons for the legislation that we have requested of Congress and is now under consideration by this subcommittee.

To put what I have to say in the proper perspective, I believe it is appropriate to state that I actively oppose each of the several previous attempts to divide the fifth circuit, going back 10 or 12 years when a division was first advanced. When the division was originally proposed, the basis for my opposition was a firm belief that the proposal would have a substantial adverse effect on the disposition of cases in the fifth circuit that involved civil and constitutional rights.

The last proposal immediately before the one now under consideration in 1977, I believe, was for a 4-2 division of our six-State circuit. I did not then believe, and I continue to think I was correct, that such a division was either philosophically or geographically in the best interests of the Federal judicial system or the litigants that litigated and were required to litigate in the fifth circuit.

At the time I came on the fifth circuit court, a little over a year ago, I had some reservations as to the implementation of section 6 in the Omnibus Judgeship Act which authorized the Council to create administrative divisions within the circuit. In September of 1979, the first Council meeting after I came on as a circuit judge, I, along with several other members of the court, requested the Council to delay creating the administrative divisions until we had more experience in attempting to function as a 26 or, at that time, 23-judge court.

The Council deferred to those requests and we took no administrative action at that time in attempting to administratively divide the circuit.

By the spring of this year, it had become evident to me, and later it developed it had become evident to every member on the Fifth Circuit Court of Appeals, that a complete division was necessary if we were going to achieve effectiveness and efficiency in our operations.

Therefore, in May of this year the judges of the fifth circuit, as has been stated, unanimously adopted a petition requesting the Congress to divide the presently existing circuit, not as it had previously been proposed on a 2-4 basis but as proposed by the Hruska Commission on a 3-3 basis. We ask further that those circuits be separate and autonomous.

Mr. Chairman, I request permission of this committee to enter into the record a copy of the petition of the Fifth Circuit Court of Appeals and a summary of the reasons as advanced by the Council that in our judgment justify this requested legislation.

Mr. KASTENMEIER. Without objection, that request is agreed to. [The information follows:]

PETITION TO THE CONGRESS

The undersigned judges in regular active service of the United States Court of Appeals for the Fifth Circuit respectfully petition the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous circuits, one to be composed of the states of Louisiana, Mississippi and Texas with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the states of Alabama, Florida and Georgia with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit;

By separate documents we will, at an appropriate time provide to the Congress a summary of the problems that occasion this petition and of the justification for the proposed legislation.

This 5th day of May, 1980.

Respectfully submitted,

James F. Coleman
Chief Judge

Henry A. Ruiz

Robert A. Armstrong

Thomas J. Johnson

William C. Cason

Walter J. Murphy

Samuel B. Bessard

Edward J. Tipton

Paul H. Roney

Edward J. Fay

Thomas J. Blanton

Robert A. Vance

Raymond J. Day

Orville L. Smith

James L. Hill

Samuel M. Johnson

Herbert L. Allen

John W. Henthorn

Thomas A. Clark

Thomas M. Reardon

Thomas A. Clark

R. J. Anderson

J. H. T. Lee

PROPOSED DIVISION OF THE FIFTH CIRCUIT COURT OF APPEALS

As indicated in the formal petition of all the judges in regular active service of the United States Court of Appeals for the Fifth Circuit, we respectfully submit to the Congress the following summary of the problems that occasioned the petition and that justify the requested legislation.

The Court of Appeals for the Fifth Circuit is presently authorized twenty-six active judges. In addition, it has ten senior judges who are active in the work of the Court. This makes the Fifth Circuit the largest appellate court in the history of the Republic. The size of the Court itself now creates problems which make unduly burdensome, and in the opinion of many of us seriously impair, the effective administration of justice within the Circuit.

Geographically, the Fifth Circuit, composed of six states, is huge in size extending from El Paso, Texas, to Miami, Florida. The total population will likely reach 40,000,000 in the current 1980 census. Prior to the passage of the recent Omnibus Judgeship Bill, the Court had 15 judges which number was increased to an authorized 26 judges, almost double the previous number. This number of judges, as the Congress determined, was fully justified by the tremendous increase in the amount and nature of the litigation filed annually with the Court.

The numerical size of the Court tends to diminish the quality of justice. Citizens residing in the states of the Fifth Circuit, and especially litigants and lawyers, are entitled to know with a maximum degree of reliability what the law of the Circuit is. The federal government now finds itself involved more and more in litigation in the federal courts. Thus, predictability in the law of the Circuit is most essential. Accordingly, there must be uniformity

in the application of the law by the Court, especially since it does not generally sit as a body en banc but only in panels of three judges. As the Court now approaches 2,000 opinions per year, it becomes even more difficult to preserve uniformity in the law of the Circuit. The possibility of intra-circuit conflicts is extremely great and, in spite of all our efforts, occurs with regularity. The only sanction for such conflicts is resort to en banc consideration. With a twenty-six judge court this is a most cumbersome, time consuming and difficult means of resolving lawsuits.

Increasingly, the members of the bar are petitioning the Court for en banc consideration of panel decisions.^{1/} Likewise, the judges of the Court, who are charged with the duty of preserving the rule of law in the Circuit, are required to study and absorb all of the production of all of the judges, that is, their written opinions for the Court.^{2/} This in itself is a tremendous task. Additionally, each member of the Court must examine all of the petitions for rehearing en banc, a chore of real magnitude but a vitally necessary one.

^{1/} Almost 12 percent of the cases decided by panels in 1979 were reviewed by the entire Court to determine if en banc consideration was to be had. At the present time, our en banc case load is the largest ever pending before a federal appellate court.

^{2/} This will approach approximately 10,000 pages this year.

The impact of this great volume of work on the district judges is also serious. The 125 district judges of the Fifth Circuit are required to keep abreast of the law of the Circuit. It is now virtually impossible for a

district judge to read and consider the opinions of our Court while, at the same time, keeping the functions of the district court current.

Thus, the time and efforts of the Fifth Circuit judge are used to the utmost. An ordinary working day is impossible since hours must also be spent by the judges at home, on the weekends and holidays merely to keep abreast of what is going on in the Court. While the quality of the decisions of the judges is very high, it is inevitable that the quality will eventually diminish if no relief is granted by the Congress. However, it must be emphasized that the compelling necessity for dividing the Fifth Circuit into two courts is found, not for the benefit or convenience of the judges, but for the benefit of the citizens, attorneys, and litigants within the Circuit.

For example:

First, there are obvious savings of unnecessary expense that will come from smaller geographical areas, and shortened lines of communications and transportation. The federal treasury will be saved the expenses of transporting judges and their staffs all over the Circuit from West Texas to South Florida. The cost of appeals to litigants now includes the time and expenses of their counsel traveling far distances for the purpose of presenting oral arguments. As a matter of record, practically every state bar association within the Circuit has adopted a resolution recommending a division of the Circuit.

Second, there will be a savings from eliminating the number of copies of everything that is done. At the present time the writing of one letter or the sending of a document by a judge must, in many instances, necessitate copies to twenty-four other judges.

Third, savings will occur from eliminating duplication on the en banc function. A court of twenty-six judges, each with three law clerks, involves over 100 highly paid people, all of whom are generally involved to some extent in monitoring the law of the Circuit, and in requesting and voting on cases to go en banc. To cut the load into two halves would cut the duplication in half.

PROPOSED DIVISION

The Court is sensitive to the concerns expressed in the Congress on the prior occasion when consideration was given to a proposal to divide the Circuit in a manner different from that as now proposed.

We represent without reservation that as now constituted the Court can be divided into two three-state circuits without any significant philosophical consequences within either of the proposed circuits.

The Congress, if it acts favorably on the proposal of the Court, will not be creating two small circuit courts. After division, each circuit's filings will be as great as any circuit in the country other than the Ninth.^{3/}

^{3/} The cases filed in Texas, Louisiana and Mississippi (the proposed Fifth Circuit) for 1979 were 2203. The number of judges will be 14.

The cases filed in Alabama, Georgia and Florida (the proposed Eleventh Circuit) for 1979 were 1910. The number of judges will be 12.

The impact on the Circuit Court's workload from 35 additional district judges must be considered. The known and anticipated increase of 40 new appeals per each new district judgeship is based upon the national as well as the Fifth Circuit average of appeals per district judge. During the judge's first year our experience-based estimate is 10 new appeals per new judgeship, 20 during the second year and 40 during the third year. This means that by 1982 filings of appeals with our Court will increase by 30.8% over 1979 filings:

1979	-	4113
1980	-	4330
1981	-	4680
1982	-	5380

The Congress, anticipating that size and numbers would be a problem, attempted to provide some means of relief for the Fifth Circuit in the Omnibus Judgeship Bill of 1978. The Court has taken advantage of the authority conferred

by the Congress (in Sec. 6) in that Bill. However, the administrative action taken by the Court is completely inadequate and in our judgment no remedy can be effected by administrative means.

We have now unanimously concluded that the Commission on Revision of the Federal Court Appellate System was right when in December, 1973, it recommended to Congress that the Fifth Circuit be divided into two separate and autonomous circuits.

There will, of course, be problems incident to the separation of a whole into two parts, but no unsolvable difficulty is anticipated. There is now available in Atlanta a building ideally suited, with some renovation,^{4/} for the headquarters of the Eastern Circuit Court as proposed.

^{4/} This renovation will be required whether utilized as a court building or for some other purposes.

While the Congressional conferees (on the Omnibus Judgeship Bill) recommended that a status report be filed with the Congress within one year after all judges authorized had entered on duty, we would be remiss if we did not bring our plight to the attention of Congress at this time.

What we now ask is a solution to the problems herein outlined through the cooperative efforts of Congress and the Court. These branches of government are separate, but they exist together in a symbiotic relationship. We are mindful of the concerns of Congress and we believe that our petition, adopted

unanimously by the Court, gives full consideration to those concerns. We

know that the Congress is mindful of the needs of the administration of

justice and will act for the best interests of all of the citizens and

institutions of this vast and important part of the country.

Judge JOHNSON. As all of us are aware, by statute the Judicial Council is composed of all of the circuit judges within a given circuit in regular active service. Under this section, the Council is responsible for, in the words of the statute, "the effective and expeditious administration of the business of the courts within its circuit."

Necessarily, then, the Council must be intimately familiar with all of the affairs of the court of appeals as well as the affairs of the various district judges and district courts within the circuit. Year in and year out the Judicial Council performs its duty of oversight of the Fifth Circuit Court of Appeals and the various district courts.

We have concluded that the size of the fifth circuit—authorized 26 judges with 25 judges on duty at this time—the size of the court creates problems which makes it unduly burdensome, and then in the opinion of many members of the Council, seriously impairs the effective administration of justice within the circuit.

As has been stated, geographically the fifth circuit is composed of six States extending from El Paso, Tex., to Miami, Fla. A total population of the fifth circuit will most likely reach 40 million in the current 1980 census. The numerical size of the court tends to diminish the quality of justice.

Citizens residing within the States of the fifth circuit and especially the litigants and lawyers are entitled to know, with a maximum degree of reliability, what the law of the circuit is. The Federal Government now finds itself involved more and more in litigation in the Federal courts in the fifth circuit. Thus, predictability in the law of the circuit is most essential. That means this, there must be uniformity in the application of the law by the courts, especially since it does not generally sit as a body en banc but only in panels of three judges.

As the fifth circuit now approaches 2,250 written opinions per year, it becomes even more difficult to preserve uniformity in the law of the circuit. For the 12-month period ending June 30, 1980, our court filed 2,243 written opinions. The balance of the cases, over 4,000, were disposed of on the summary calendar with many of those on the summary calendar involving intricate legal questions but not necessitating extensive treatment by written opinion.

That means it becomes evident to everyone familiar with litigating in appellate courts that the possibility of intracircuit conflict is extremely great, and in spite of all of the efforts we have made, the best efforts that we know how, the conflicts occur with regularity. The only sanction for such conflicts is to resort to en banc consideration.

With a 23-26 judge court, and as Judge Coleman expressed to me last night, with 26 robed judges sitting in two tiers peering over

their glasses, as he says, "perched" on the bench, this is a most cumbersome and a most time-consuming and difficult means of resolving lawsuits that include constitutional questions and most always involving numerous legal questions.

It takes all day for the judges to express the way they feel about a question before we ever get to a vote on it.

Increasingly, the members of the bar not only in the fifth circuit but throughout the country are petitioning the court for the en banc consideration of panel opinions. For instance, almost 12 percent of the cases decided by the panels in 1979 in the fifth circuit were reviewed by the entire court to determine if en banc consideration was to be had. At the present time, our en banc caseload in the fifth circuit is the largest ever pending before a Federal appellate court.

The size of our court is inextricably involved with its en banc function. The court performs its highest duty when it sits en banc in cases of exceptional importance involving decisional conflicts between its panels or significant issues of national policy.

We find that it is virtually impossible to carry out our en banc function with 24 members. Our 25th member has been sworn in but he has not yet sat with us on an en banc proceeding. Inevitably, and I don't know what theory is applicable, but as the size of the court grew, the need for en banc consideration grew also.

There have been suggestions that the present statutes allow en banc consideration by a court constituted of only part of the judges on the court. I submit this suggestion cannot be equitably implemented. I also submit that the NAACP would be the first organization that you would hear from if the fifth circuit started hearing en banc cases with judges selected from less than the full members of the court. Any such arrangement will create one group of elite judges and another group of, I guess, second-class judges, not permitted to sit on those cases of exceptional import.

Mr. KASTENMEIER. Wouldn't it also be the case with the increased number of Federal district judges, authorized and put in place, probably with increased general Federal jurisdiction, with increased powers of newly appointed magistrates and with the new bankruptcy judges in place, that all of this will tend to generate more and more appellate caseloads for the circuit eventually?

In fact, we face this in terms of the Supreme Court.

Judge JOHNSON. There is no question but that with the jurisdiction of the magistrates being increased and the bankruptcy judges being enlarged, the addition of 35 new district judges in the fifth circuit of whom it is estimated—and reliably estimated—that when they get in full swing they generate 40 appeals from each judge a year.

By 1982, with those considerations in mind and without feeding any appellate work in from the magistrates and the bankruptcy judges, our appellate load will be 5,380 cases a year as opposed to 1979, when we had 4,113. In 1980 we had 4,330. In the last 2 years, Mr. Chairman, since the Omnibus Judgeship Act was passed, we have had a 21.3-percent increase in figures in the fifth circuit.

Our increase in filings for just the last statistical year which ended June 30, 1980, was 11 percent. The impact on the circuit

court's workload and the 35 additional district judges must be considered, as you indicated.

The proposed division of the fifth circuit now under consideration has extensive support throughout the circuit. Among those groups that have unanimously endorsed the division of the fifth circuit are the American Trial Lawyers Association—one that I did not know about until Judge Bell made his presentation this morning—and the attorneys general in the States, within the geographical boundary of the circuit.

Every circuit judge within the fifth circuit has endorsed and supports this proposed division. That is historic in itself.

The U.S. magistrates unanimously support the proposed division. The bankruptcy judges of the fifth circuit all support it. The entire delegation of lawyers and judges to the Judicial Conference this year from each of the six States support the proposed division. The district judges, 125 of them, support the division of the fifth circuit as proposed. The board of governors and the American Bar Association and the American Trial Lawyers Association also support the proposal.

Mr. Chairman, I request unanimous permission of this committee to enter copies of the resolutions as passed by these organizations supporting this division into the record.

Mr. KASTENMEIER. Without objection, those statements will be received.

[The information follows:]

R E S O L U T I O N

WHEREAS, the United States Fifth Circuit Court of Appeals is the largest in the history of the Republic with a complement of 26 authorized active and ten senior judges;

WHEREAS, the geographical scope of the circuit is vast, linking six states between El Paso, Texas, and Miami, Florida;

WHEREAS, the population in the circuit is expected to reach 40 million in the 1980 decennial census;

WHEREAS, the number of opinions rendered by the court is approaching 2,000 a year, and each of the active judges will face 10,000 pages of reading this year to stay current with the circuit's judicial decisions;

WHEREAS, the Fifth Circuit's en banc caseload is the largest ever pending before a federal appellate court because of intracircuit legal conflicts resulting from the size of the circuit;

WHEREAS, the size of the court itself now constitutes a problem, making its administration unduly cumbersome and expensive, and impairing the delivery of justice;

WHEREAS, the conditions specified herein, left uncorrected, will make inevitable a lesser quality of justice rendered to citizens, lawyers and litigants of the Fifth Circuit;

WHEREAS, on its own authority, the court has found it necessary to divide the circuit into two parts effective July 1, 1980, to ease its administrative difficulties;

WHEREAS, the 24 active judges of the Fifth Circuit Court of Appeals also have formally petitioned the Congress of the United States for legislation dividing it into two autonomous judicial circuits of three states each, with headquarters in New Orleans and Atlanta which proposal is contained in S. 2830;

WHEREAS, division of the court as proposed by its judges and endorsed by the Judicial Council for the Fifth Circuit will create two districts each with as many filings as any in the nation except the Ninth;

WHEREAS, attention to proper court management, fiscal efficiency and continued public access to the channels of appeal in the federal system compel this division.

NOW, THEREFORE, BE IT RESOLVED by the Attorneys General of the States within the geographic boundaries of the Fifth Circuit:

1. That the Congress of the United States is urged to enact S. 2830 dividing the Fifth Circuit into two circuits, the Fifth with headquarters in New Orleans and composed of the states of Louisiana, Mississippi and Texas, and the Eleventh with headquarters in Atlanta and composed of the states of Alabama, Florida and Georgia.

2. That a copy of this resolution be sent to each member of the Congressional delegation of the states hereinafter designated and to each of the judges of the Circuit.

Dated this 11 day of July, 1980.

Charles A. Graddick
CHARLES A. GRADDICK
Attorney General of Alabama

Resolutions

It is hereby resolved:

The U.S. Magistrates in attendance at the 1980 Judicial Conference of the Fifth Circuit representing all Judicial Districts within the circuit do hereby unanimously support the position of the Circuit Judges of the Fifth Circuit requesting the division of the circuit and the formation of a new Eleventh Circuit Court of Appeals comprised of the states of Alabama, Georgia and Florida.

This the 21st day of May 1980

John M. Roper
Fifth Circuit Director
National Council of U.S. Magistrate

RESOLUTION

WHEREAS the Judicial Council of the United States Court of Appeals for the Fifth Circuit on May 5, 1980 approved, by unanimous vote of twenty-four circuit judges in active service, a resolution petitioning the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous judicial circuits, one to be composed of the States of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, to be known as the Fifth Circuit; the other to be composed of the States of Alabama, Florida, and Georgia, with headquarters in Atlanta, to be known as the Eleventh Circuit; and

WHEREAS the bankruptcy judges of the Fifth Circuit consisting of forty-one judges in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas met at the Circuit Judicial Conference on May 21, 1980 at which thirty-six bankruptcy judges were present and unanimously voted in favor of a resolution to strongly support and endorse the concept of dividing the presently existing Fifth Circuit as proposed by our Judicial Council for reasons well known to the bench and bar of our region of the nation for a number of years; and

WHEREAS, we find it in the public interest to urge the Congress to pass legislation to effectuate the division;

BE IT RESOLVED that we hereby approve the division of the presently existing Fifth Circuit as proposed by the Judicial Council of the United States Court of Appeals for the Fifth Circuit and we join with our circuit judges to request and petition the Congress of the United States to enact appropriate legislation for the accomplishment of such division as soon as practicable.

Unanimously adopted at Dallas, Texas, this 21st day of May, 1980.

A. D. Kahn
A. D. KAHN, Chief Judge
United States Bankruptcy Court
for the Northern District of Georgia
and at the Request of the Bankruptcy
Judges of the Fifth Judicial Circuit

RESOLUTION

BE IT RESOLVED by the delegates to the 1980 Fifth Circuit Judicial Conference assembled in Dallas, Texas, that:

WHEREAS, the Judicial Council of the Fifth Circuit has unanimously petitioned the Congress of the United States to divide the Circuit into two circuits, one to be made up of the states of Mississippi, Louisiana, and Texas to be known as the Fifth Circuit and the other to be made up of the states of Florida, Georgia, and Alabama to be known as the Eleventh Circuit;

WHEREAS, it has become necessary to the effective administration of justice in the vast area presently making up this Circuit that this division be accomplished,

NOW, THEREFORE, the delegates to this conference both judges and attorneys do hereby endorse the petition of the Council and urge that the Congress act favorably upon it.

THIS May 21st, 1980.

RESOLUTION

WHEREAS the Judicial Council of the United States Court of Appeals for the Fifth Circuit on May 5, 1980, approved, by unanimous vote of twenty-four circuit judges in active service, a resolution petitioning the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous judicial circuits, one to be composed of the States of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, to be known as the Fifth Circuit; the other to be composed of the States of Alabama, Florida, and Georgia, with headquarters in Atlanta, to be known as the Eleventh Circuit; and

WHEREAS, the District Judges Association of the Fifth Circuit consisting of one hundred and ten district judges in the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas strongly support and endorse the concept of dividing the presently existing Fifth Circuit as proposed by our Judicial Council for reasons well known to the bench and bar of our region of the nation for a number of years; and

WHEREAS, we find it in the public interest to urge the Congress to pass legislation to effectuate the division;

BE IT RESOLVED that we hereby approve the division of the presently existing Fifth Circuit as proposed by the Judicial Council of the United States Court of Appeals for the Fifth Circuit and we join with our circuit judges to request and petition the Congress of the United States to enact appropriate legislation for the accomplishment of such division as soon as practicable.

BE IT FURTHER RESOLVED that this Resolution be forwarded to the President, the Attorney General, the Chairmen of the House and Senate Judiciary Committees, and all members of the House and Senate from the States of Alabama, Florida, Georgia, Louisiana, Mississippi and Texas.

Unanimously adopted at Dallas, Texas, this 21st day of May 1980.

Attest: /s/ William S. Sessions
Secretary

/s/ William C. O'Kelley
President
Fifth Circuit
District Judges Association

RESOLUTION ADOPTED BY THE BOARD OF GOVERNORS
OF THE AMERICAN BAR ASSOCIATION
MONTEREY, CALIFORNIA -- JUNE 6-7, 1980

BE IT RESOLVED, That the American Bar Association supports the enactment of legislation dividing the presently existing Fifth Circuit into two completely autonomous circuits, one to be composed of the states of Louisiana, Mississippi and Texas with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the states of Alabama, Florida and Georgia with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit.

RESOLUTION

The lawyers and judges comprising the Alabama delegation to the Fifth Circuit Judicial Conference, now in session in Dallas, Texas, unanimously endorse the division of the Fifth Judicial Circuit of the United States into two autonomous circuits in accordance with the resolution and petition to Congress adopted by the Fifth Circuit Judicial Council on May 5, 1980.

Dated at Dallas, Texas, this 20th day of May, 1980.

Osley Mellen Jr.
President
Alabama State Bar

R E S O L U T I O N

Be it known to all concerned that the attorneys and delegates from the State of Florida to the Fifth Circuit Judicial Conference, now being held in Dallas, Texas, unanimously and enthusiastically endorsed the proposed division of the Fifth Judicial Circuit of the United States into two separate and autonomous circuits in accordance with that resolution and petition to Congress adopted unanimously by the Judicial Council of the Fifth Circuit on May 5, 1980.

May 20, 1980

William F. Denlap
Secretary Pro Tem

R E S O L U T I O N

WHEREAS the Judicial Council of the United States Court of Appeals for the Fifth Circuit on May 5, 1980 approved, by unanimous vote of twenty-four circuit judges in active service, a resolution petitioning the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous judicial circuits, one to be composed of the States of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, to be known as the Fifth Circuit; the other to be composed of the States of Alabama, Florida, and Georgia, with headquarters in Atlanta, to be known as the Eleventh Circuit; and

WHEREAS the Delegates from the State of Georgia to the Fifth Circuit Judicial Conference in Dallas, Texas, May 18-21, 1980, unanimously support and endorse the concept of dividing the presently existing Fifth Circuit as proposed by the Circuit's Judicial Council for reasons well known to the bench and bar of our region of the nation for a number of years; and

WHEREAS, we find it in the public interest to urge the Congress to pass legislation to effectuate the division;

BE IT RESOLVED that we hereby unanimously approve the division of the presently existing Fifth Circuit as proposed by the Judicial Council of the United States Court of Appeals for the Fifth Circuit and we request and petition the Congress of the United States to enact appropriate legislation for the accomplishment of such division as soon as practicable.

BE IT FURTHER RESOLVED that this Resolution be forwarded to the President, the Attorney General, the Chairman of the House and Senate Judiciary Committees, and all members of the House and Senate from the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

Unanimously adopted at Dallas, Texas, this 20th day of May, 1980.

Mr. Stelly Winn Plummer
State Bar of Georgia
delegation

R E S O L U T I O N

WHEREAS the Judicial Council of the United States Court of Appeals for the Fifth Circuit on May 5, 1980 approved, by unanimous vote of twenty-four circuit judges in active service, a resolution petitioning the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous judicial circuits, one to be composed of the States of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, to be known as the Fifth Circuit; the other to be composed of the States of Alabama, Florida, and Georgia, with headquarters in Atlanta, to be known as the Eleventh Circuit; and

WHEREAS the Delegates from the State of Louisiana to the Fifth Circuit Judicial Conference in Dallas, Texas, May 18-21, 1980, unanimously support and endorse the concept of dividing the presently existing Fifth Circuit as proposed by the Circuit's Judicial Council for reasons well known to the bench and bar of our region of the nation for a number of years; and

WHEREAS, we find it in the public interest to urge the Congress to pass legislation to effectuate the division;

BE IT RESOLVED that we hereby unanimously approve the division of the presently existing Fifth Circuit as proposed by the Judicial Council of the United States Court of Appeals for the Fifth Circuit and we request and petition the Congress of the United States to enact appropriate legislation for the accomplishment of such division as soon as practicable.

BE IT FURTHER RESOLVED that this Resolution be forwarded to the President, the Attorney General, the Chairman of the House and Senate Judiciary Committees, and all members of the House and Senate from the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

Unanimously adopted at Dallas, Texas, this 20th day of May, 1980.

Austin P. Brantley
President Elect, State Bar of Texas

THE ATTORNEYS FROM MISSISSIPPI AND DELEGATES TO THE FIFTH CIRCUIT JUDICIAL CONFERENCE, NOW IN SESSION IN DALLAS, TEXAS, UNANIMOUSLY ENDORSE THE DIVISION OF THE FIFTH JUDICIAL CIRCUIT OF THE UNITED STATES INTO TWO AUTONOMOUS CIRCUITS IN ACCORDANCE WITH THE RESOLUTION AND PETITION TO CONGRESS ADOPTED BY THE FIFTH CIRCUIT JUDICIAL COUNCIL ON MAY 5, 1980.

Jack Travis
Pres., Miss. Bar Ass'n
May 20, 1980

The attorneys from Texas and delegates to the Fifth Circuit Judicial Conference, now in session in Dallas, Texas, unanimously endorse the division of the Fifth Judicial Circuit of the United States into two autonomous circuits in accordance with the Resolution and Petition to Congress adopted by the Fifth Circuit Judicial Council on May 5, 1980.

Franklin Jones
President Elect State Bar of Texas

Judge JOHNSON. I would like to say this with regard to the opposition that has been presented by a representative of a most honorable and effective organization, the NAACP. With due regard to the representative of that organization, Ms. Simmons, I submit that the opposition that she presents is based upon unfounded fears. The support that we lend to the proposed division of the fifth circuit is based upon experience and actuality and not some speculative fears.

I would like to deal for a few minutes with the first part of the resolution that is advanced by the NAACP opposing this legislation. It says that the organization is apprehensive about its changing a court of known quality for two of unknown quality.

There are two fallacies in that statement: First, the fifth circuit, as it is presently constituted, is not the fifth circuit to which she makes reference, having in the 1960's and in the early 1970's such a magnificent record insofar as civil rights and the constitutional litigation is concerned.

I don't mean by that to infer that the fifth circuit as it is presently constituted would not be just as sensitive to constitutional questions as the old one to which she referred, but I would emphasize that the fifth circuit, as it is presently constituted, is not made up of unknown quantities or qualities.

They know, to use their words, the track record of the court as it was composed prior to the addition of the judges under the omnibus bill. Of the judges authorized by that bill that are now on the fifth circuit court of appeals, three of them are Federal district judges with long experience, and all know their track record.

If the NAACP knows the judicial performance of any judge in the United States, they must be aware of mine, and I am one of the judges that recently went on the fifth circuit.

Others characterized as unknown qualities are Renalda Garza from Brownsville, Tex., a Federal judge for 15 years; Albert Henderson, a Federal district judge from Georgia and there are four judges that came on within the first year that were State supreme court justices, Tom Reavley, a State supreme court justice from the State of Texas; Joe Hachett came on the fifth circuit from the Supreme Court of Florida; Albert Tate, Supreme Court of Louisiana; and Sam Johnson came from the Supreme Court of Texas, and so they know what the performance of those judges has been, and there is no basis for believing it will be any different on the fifth circuit than it was from the positions that they came from.

They should also know the recent performance of the judges that had no previous judicial experience, five of them, including one that just came on.

Another objection of the NAACP is to the effect that it is unwise to divide the circuit because the full membership of the court and the district courts under its jurisdiction has not as yet been determined. To this objection I would point out that 25 of the 26 judges authorized on the fifth circuit are onboard. There is only one vacancy to be filled. There is a nomination for that vacancy, a black judge from Texas, but he has not yet been confirmed.

Of the 35 district judges that were added by the omnibus bill all are onboard except 3, and that means there is 0.03 percent not filled of the district judges that were authorized. So there is no

factual basis for the contention that no action should be taken by this Congress until the full membership of the court and the district courts has been determined.

You will not find a time except when some judge has taken senior status and some new judge is coming on; so the circuit at this time is as full as it is ever going to be.

The final objection of the NAACP is that the same problems affecting the fifth circuit also exist elsewhere and should not be considered in isolation but as part of comprehensive legislation.

I think we all agree that there is only one other circuit in the country that has problems even remotely similar to the problems in the fifth circuit. I submit to this committee that the criteria for dividing a circuit should be, first, a critical need. I think we have demonstrated that that exists as far as the fifth circuit is concerned. We must agree that it has also been demonstrated as far as the ninth circuit is concerned. The second criteria should be that there should be a consensus as to how the circuit should be divided, a consensus between or among the organized bar, a consensus insofar as the judges on the court that are affected are concerned, and a consensus among the political representatives from the circuit being affected.

In the fifth circuit we have a consensus insofar as the organized bar is concerned. We have a consensus among the judges on the fifth circuit. We have a consensus insofar as the political representatives of the fifth circuit are concerned. I submit that the ninth circuit does not have a consensus in either of these areas.

Therefore, I say that action should be taken by the Congress on the proposed division of the fifth circuit.

Ex-Chief Judge John R. Brown opposed the division of the fifth circuit, during the same period of time that I opposed it, as a judge of the circuit. Chief Judge John R. Brown asked me to present to this committee a letter where he wholeheartedly endorses the division of the fifth circuit as it is presently proposed.

Mr. KASTENMEIER. We will be pleased to receive that letter and make it part of the record.

[The letter follows:]

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

JOHN R. BROWN
CIRCUIT JUDGE
HOUSTON, TEXAS 77008

August 13, 1980

Honorable Robert W. Kastenmeier
United States House of Representatives
Room #2232, Rayburn Office Building
Washington, D. C. 20510

Split of the Fifth Circuit

My dear Congressman Kastenmeier:

I am sending you this letter through Judge Frank M. Johnson, Jr., who is one of the principal spokesmen for the Judges of the Fifth Circuit, for use in his presentation before your Committee now scheduled for August 22, 1980.

Because of my long service on the Court (now nearly 25 years, including 12 1/2 years as Chief Judge) I am hoping that my views might be helpful as Congress considers the bills (one already passed in the Senate with several nearly identical bills in the House) calling for restructuring the present Fifth Circuit into two Circuits, the "new" Fifth and the new Eleventh.

The problem of the size of the Fifth Circuit and the split of the Fifth Circuit has been around since 1961. From the very beginning along with five or six other Judges I have strongly opposed any such split. I have appeared many times before Congressional committees of both the Senate and the House, the last of these being the hearings before Chairman Rodino's committee, and I took a very active part in the hearings of the Commission on Revision of the Circuits.

Despite these years of persistent opposition, I have not only changed my views, but I have joined enthusiastically with all of the other active Fifth Circuit Judges in unanimously requesting that the Congress establish two completely autonomous separate Circuit Courts for the six states now served by the Fifth.

We have had almost a years experience now in the operation of a Court consisting of from 20 to 25 active Judges. This has been a helpful and productive experience. Against the clamor of those who thought a Court of nine Judges was the maximum, I had long championed the view that, as Chief Judge, I thought I would be able to lead a Court of as many Judges as needed by our workload. But from this experience I can now see, as have all the others, that by the nature of our work there comes a point when diminishing effectiveness sets in, both in the physical inability of handling the work, but more importantly, in its quality. The output of published opinions has increased very substantially. This poses the serious problem of monitoring this output by each Judge who must continue to bear the responsibility that collectively, but through separate independent panels, we speak with a single voice to pronounce the law of the Circuit.

The numerosity of Judges and opinions thus leads naturally to a significant increase in the en banc process, needed not only to eliminate conflicts, but more important to adopt and then announce the rule for the Circuit on continuously expanding important new areas.

This covers two parts. The first is the consideration each day of the flood of pink slip requests -- I received 12 of the "pinkies" today -- and the processing and voting for or against en banc. The second is the preparation for, and participating in, the hearing of cases voted for en banc (with or without oral argument) and the adoption of opinions. This is expensive in travel/subsistence costs, extravagant in the consumption of judicial manpower, and frequently not very workable.

Twenty-five Judges (with an accompanying minimum staff) meet three times a year for a five day session to consider and decide 10 to 15 en banc cases. During that same period of a week, 8 panels (3 x 8 = 24) could hear 160 cases. Worse, the decision is just the beginning as the Judge named to write the en banc opinion struggles to write, and then attain, a majority. Inevitably this produces four, five or six partial concurrences/dissents, in whole or in part, with the final outcome depending on what comes in on the morning mail.

Nor can these problems be avoided by a continuation of the Unit "A" or Unit "B" structure we have adopted pending a Congressional split. Under § 6 (Omnibus Judgeship Act) it is

clear that the Circuit must speak as one. Every Judge in each division remains responsible for the output of all the Judges whether in or out of his/her Unit. And of course, the en banc process remains as described.

Apart from the pride which all of us, new and old, feel from being an active member of, and participating in, the work of the Fifth Circuit as it is known to the bench and bar, scholars and students, and the disappointment that this rich tradition will end, there are, in my judgment, no reasons which outweigh these factors which have such an immediate impact on the quality and quantity of our production. There is, of course, the spectre of what a split, rather than an expanded Court would do in socially sensitive areas in which the Fifth Circuit has spoken so plainly. This has been raised every time the question of the split of the Fifth Circuit has come up. At the last hearings before Chairman Rodino, Judge Wisdom, a distinguished senior Judge of this Circuit, answered Congressman Wiggins emphatically that this was a false issue. Subsequently, Judge Godbold acting for all of the Judges of the Fifth Circuit filed with the Committee my formal statement in which I once again asserted that there is no basis for this charge in any way.

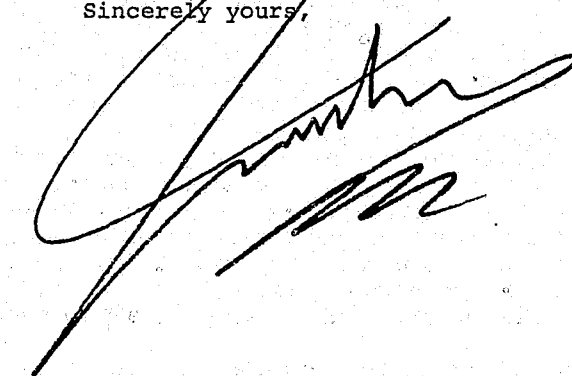
Of the 26 Judges authorized we now have 25, everyone of whom comes from diverse backgrounds, business and professional experience, learning and ideologies. For those who try to catalog the actions of each of these Judges -- either alone or in conjunction with new or so-called older Judges, or a mixture of both, in panels or in en banc cases -- indicate no single bent except -- and the exception is a very important one -- each is an independent Judge sworn to do the Judge's duty as each Judge sees it. Unless Judges are to be picked by the pre-announcement of their decisions -- and I know of no one who would responsibly contend for this -- whether the Court ought or ought not to be divided into two separate circuits should not depend upon the so-called performance or action of anyone or more or all of them in any particular type of case during a supposed trial period.

To the suggestion that this is not really a regional problem of the Fifth Circuit but is a national one calling for national resolution I would only remind the Committee that this was the principal function of the Circuit Revision Commission. After two years they found problems only in the two circuits of the

Fifth and the Ninth. All of the Judges of the Fifth Circuit now agree that the hope expressed in § 6 cannot be attained and there seems to be little reason why the attainment of justice under law of high quality for the nearly 40,000,000 people of the Fifth Circuit should be delayed while considering the diverse and unique problems of the Ninth Circuit.

Years later, but not too late, I support enthusiastically the proposal to legislatively divide us. I encourage the Committee's full support of our unanimous request.

Sincerely yours,



JRB:nj

Judge JOHNSON. Circuit Judge Joe Hatchett, the black judge to whom I made reference a few moments ago, has presented to me as a courier for him a letter supporting the division of the fifth circuit.

I would like to emphasize one portion of that letter and ask permission to enter it in the record. He wrote:

"I join those who are deeply concerned about creating a new fifth circuit court of appeals without any black Representatives. I support the plan, however, because this is a matter that can be", and I might add should be, "addressed outside the framework of our proposal to split the present Circuit."

He continues: "While I understand the apprehension caused by some persons by two 'new courts,' I do not believe their fears are well-founded. The two courts that will emerge from this division will probably be no different from the existing fifth circuit".

And then finally, a new U.S. district judge, a black judge, U. W. Clemon, Birmingham, Ala., writes and asks I request permission to enter his letter in the record. He says in part, "I was one of the vigorous opponents of the proposed split of the fifth circuit court of appeals as embodied in Senate bill 11. In my capacity as president of the Alabama Black Lawyers Association, I testified before the subcommittee opposing that measure." He says, "I am now equally convinced that the division of the circuit, as embodied in the pending legislation, will not adversely impact on civil rights cases in either of the proposed new circuits."

I request permission to enter those letters in the record.

Mr. KASTENMEIER. Without objection, those two letters will be received.

[The letters follow:]

U.S. COURT OF APPEALS, FIFTH CIRCUIT,
Tallahassee, Fla., August 12, 1980.

Hon. FRANK JOHNSON, Jr.,
U.S. Circuit Judge,
Montgomery, Ala.

DEAR JUDGE JOHNSON: I have been informed that hearings on the proposed division of the Fifth Circuit Court of Appeals will be conducted on August 22. It is good to know that we may get approval of this matter before Congress adjourns.

I have reviewed the reasons which prompted the court to petition Congress for a division, as outlined in the court's submissions to Judiciary Committee Members, and find those reasons as valid today as on the date I joined the court in its unanimous decision to take this much needed action. If anything, my further experiences with the court, over the last three months, convince me that it is in the best interest of the people of the southern region of the United States to have this division completed as soon as possible.

I have given attention to some of the objections that have arisen to the division. I join those who are deeply concerned about creating a new Fifth Circuit Court of Appeals without any black representation. I support the plan, however, because this is a matter that can be addressed outside the framework of our proposal to split the present circuit. While I understand the apprehension caused some persons by two "new courts," I do not believe their fears are well founded. The two courts that will emerge from this division will probably be no different from the existing Fifth Circuit.

Although I will not be able to attend the hearings, please feel free to state my position on this matter.

Sincerely,

JOSEPH W. HATCHETT.

U.S. DISTRICT COURT,
NORTHERN DISTRICT OF ALABAMA,
Birmingham, Ala., August 18, 1980.

Hon. FRANK M. JOHNSON,
Judge, U.S. Court of Appeals for the Fifth Circuit,
Montgomery, Ala.

DEAR JUDGE JOHNSON: You will probably recall that roughly three years ago, I was one of the vigorous opponents of the proposed split of the Fifth Circuit Court of Appeals as then embodied in Senate Bill 11. In my capacity as President of the Alabama Black Lawyers Association, I testified before the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee in opposition to the measure. At that time, the Alabama Black Lawyers Association was deeply troubled by the proposed manner of dividing the circuit—with two states (Texas and Louisiana) comprising one circuit and four states (Mississippi, Alabama, Georgia, and Florida) comprising another. We felt that the proposed split would adversely affect the cause of civil rights and civil rights enforcement in the states of the Deep South.

I am now equally convinced that the division of the circuit, as embodied in the pending Senate Bill by Senator Heflin, will not adversely impact on civil rights cases in either of the proposed new circuits. Indeed, the current proposal for division, if implemented, will likely have the salutary effect of reducing the two-year time lag between the filing of a notice of appeal and the disposition of the appeal; minimizing intra-circuit conflicts; and obviating the nightmarish administrative problems of convening an *en banc* court of twenty-six judges. The judgment which I express herein is based on my experience as a civil rights lawyer with substantial practice in the Fifth Circuit during the past three years.

Please feel free to communicate my views to the appropriate committees of the Congress.

Very truly yours,

U. W. CLEMON.

Judge JOHNSON. That concludes my presentation and I welcome any questions from the committee.

[Judge Johnson's statement follows:]

PREPARED STATEMENT OF FRANK M. JOHNSON, JR.

I am Frank M. Johnson, Jr., of Montgomery, Alabama. I have been a member of the United States Court of Appeals for the Fifth Circuit since July 1979. I served as

a United States District Judge from 1955 to 1979. This means that I am now completing a quarter of a century as a Federal Judge in the Fifth Circuit. During this twenty-five years sitting as a district judge, as a member of three-judge courts, by designation with the Court of Appeals, and as a Fifth Circuit Judge, I have had the opportunity to and have become thoroughly familiar with the functions and the operations of the Fifth Circuit Court of Appeals. My presence here today is as one of the designated representatives of the Judicial Council of the Fifth Circuit to present to this Committee, and through this Committee to the Congress, the Council's views on pending legislation concerning a division of the Fifth Circuit and the creation of two separate and autonomous circuits.

I express to Chairman Rodino, Congressman Kastenmeier and the other members of this Committee the appreciation of the Judicial Council for permitting its official position to be put before you through its designated spokesmen.

As all of us are aware, this is not the first time a proposal to divide the Fifth Circuit has been considered by the Congress. To put what I have to say at this time in proper perspective, I believe it is appropriate to state that I have actively opposed each of the several previous attempts to divide the Circuit. When a division was originally proposed, several years ago, the basis for my opposition was a firm belief that the proposed division would have a substantial adverse effect on the disposition of cases in the Fifth Circuit that involved civil and constitutional rights. The last proposal immediately before the one now under consideration (in 1977) was for a 4-2 division of the six states comprising the circuit. I did not believe such a division was either philosophically or geographically in the best interest of the federal judicial system or the litigants in the Fifth Circuit. At the time I came on the Fifth Circuit I had reservations as to the implementation of Section 6 of the Omnibus Judgeship Act which, as you know, authorized the Council to create administrative divisions within the Circuit. In September, 1979, I, along with several of the other members of the court, requested the Council to delay creating the administrative divisions until we had more experience at attempting to function as a twenty-six (or twenty-four at that time) judge court. By spring of this year it had become evident to all of the members of the Council that, for several substantial reasons, a complete division of the Circuit was necessary.

This being clearly evident to all, in formal Council meeting on May 5, 1980, the judges of the Fifth Circuit—them twenty-four in number—unanimously joined in a petition to the Congress as follows:

PETITION TO THE CONGRESS

The undersigned judges in regular active service of the United States Court of Appeals for the fifth Circuit respectfully petition the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous circuits, one to be composed of the states of Louisiana, Mississippi and Texas with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the states of Alabama, Florida and Georgia with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit;

Mr. Chairman, I request permission to enter a copy of this petition, and a summary of the reasons, as advanced by the Council, that justify the requested legislation.

As you are aware, under 28 U.S.C. § 332, the Judicial Council is composed of all circuit judges of the Circuit in regular active service, and under this section it is responsible for "the effective and expeditious administration of the business of the courts within its circuit." Necessarily the Council is intimately familiar with all affairs of the Court of Appeals. Year in and year out the Council performs its duty of oversight of the Courts of the Fifth Circuit, including the Court of Appeals.

The Court of Appeals for the Fifth Circuit is presently authorized twenty-six active judges. In addition, it has ten senior judges who are active in the work of the Court. This makes the Fifth Circuit the largest appellate court in the history of the Republic. The size of the Court itself now creates problems which make unduly burdensome, and in the opinion of many of us seriously impair, the effective administration of justice within the Circuit.

Geographically, the Fifth Circuit, composed of six states, is huge in size extending from El Paso, Texas, to Miami, Florida. The total population will likely reach 40,000,000 in the current 1980 census. Prior to the passage of the recent Omnibus Judgeship Act, the Court had 15 judges which number was increased to an authorized 26 judges, almost double the previous number. This number of judges, as the Congress determined, was fully justified by the tremendous increase in the amount and nature of the litigation filed annually with the Court.

The numerical size of the Court tends to diminish the quality of justice. Citizens residing in the states of the Fifth Circuit, and especially litigants and lawyers, are

entitled to know with a maximum degree of reliability what the law of the Circuit is. The federal government now finds itself involved more and more in litigation in the federal courts. Thus, predictability in the law of the Circuit is most essential. Accordingly, there must be uniformity in the application of the law by the Court, especially since it does not generally sit as a body en banc but only in panels of three judges. As the Court now approaches 2,250 opinions per year, it becomes even more difficult to preserve uniformity in the law of the Circuit.¹ The possibility of intra-circuit conflicts is extremely great and, in spite of all our efforts, occurs with regularity. The only sanction for such conflicts is resort to en banc consideration. With a twenty-six judge court this is a most cumbersome, time consuming and difficult means of resolving lawsuits. Increasingly, the members of the bar are petitioning the Court for en banc consideration of panel decisions.²

The size of our Court is inextricably involved with its en banc function. The Court performs its highest duty when it sits en banc in cases of exceptional importance, involving decisional conflicts between its panels or significant issues of national policy. We find that it is virtually impossible to carry out our en banc function with twenty-four members.³ Inevitably, as the size of the Court grew the necessity for en banc consideration grew too.

There have been suggestions that present statutes allow an en banc court constituted of only part of the judges on the Court. Such suggestion cannot be equitably implemented. Any such arrangement will create one group of elite judges and another group of second class judges—not authorized to sit on the most important cases coming before the court.⁴

Likewise, the judges of the Court, who are charged with the duty of preserving the rule of law in the Circuit, are required to study and absorb all of the production of all of the judges, that is, their written opinions for the Court.⁵ This in itself is a tremendous task. Additionally, each member of the Court must examine all of the petitions for rehearing en banc, a chore of real magnitude but a vitally necessary one.

The impact of this great volume of work on the district judges is also serious. The 125 district judges of the Fifth Circuit are required to keep abreast of the law of the Circuit. It is now virtually impossible for a district judge to read and consider the opinions of our Court while, at the same time, keeping the functions of the district court current.

Thus, the time and efforts of the Fifth Circuit judge are used to the utmost. An ordinary working day is impossible since hours must also be spent by the judges at home, on the weekends and holidays merely to keep abreast of what is going on in the Court. While the quality of the decisions of the judges is very high, it is inevitable that the quality will eventually diminish if no relief is granted by the Congress. However, it must be emphasized that the compelling necessity for dividing the Fifth Circuit into two courts is found, not for the benefit or convenience of the judges, but for the benefit of the citizens, attorneys, and litigants within the Circuit. For example:

First, there are obvious savings of unnecessary expense that will come from smaller geographical areas, and shortened lines of communications and transportation. The federal treasury will be saved the expense of transporting judges and their staffs all over the Circuit from West Texas to South Florida. The cost of appeals to litigants now includes the time and expenses of their counsel traveling far distances for the purpose of presenting oral arguments. As a matter of record, practically every state bar association within the Circuit has adopted a resolution recommending a division of the Circuit.

Second, there will be a savings from eliminating the number of copies of everything that is done. At the present time the writing of one letter or the sending of a document by a judge must, in many instances, necessitate copies to twenty-four other judges.

Third, savings will occur from eliminating duplication on the en banc function. A court of twenty-six judges, each with three law clerks, involves over 100 highly paid

¹ For the twelve month period which ended June 30, 1930, the Court of Appeals for the Fifth Circuit filed 2,243 written opinions. The balance of the cases were disposed of on the Summary Calendar—with many of these involving intricate legal questions but not necessitating extensive treatment by written opinions.

² Almost 12 percent of the cases decided by panels in 1979 were received by the entire Court to determine if an en banc consideration was to be had. At the present time, our en banc caseload is the largest ever pending before a federal appellate court.

³ We have not have an en banc court since the twenty-fifth member of the Court was confirmed and sworn in last month.

⁴ A parallel problem exists with respect to the Judicial Council.

⁵ This will approach approximately 10,000 pages this year.

people, all of whom are generally involved to some extent in monitoring the law of the Circuit; and the judges in requesting and voting on cases to go en banc. To cut the load in two halves would cut the duplication in half.

The Court is sensitive to the concerns expressed in the Congress on the prior occasion when consideration was given to a proposal to divide the Circuit in a manner different from that as now proposed.

We represent without reservation that as now constituted the Court can be divided into two three-state circuits without any significant philosophical consequences within either of the proposed circuits.

The Congress, if it acts favorably on the proposal of the Court, will not be creating two small circuit courts. After division, each circuit's filings will be as great as any circuit in the country other than the Ninth.⁶

The Congress, anticipating that size and numbers would be a problem, attempted to provide some means of relief for the Fifth Circuit in the Omnibus Judgeship Act of 1978. The Court has taken advantage of the authority conferred by the Congress (in Section 6) in that Act. However, the administrative action taken by the Court is completely inadequate and in our judgment no adequate remedy can be effected by administrative means.

As stated earlier, we have now unanimously concluded that the Commission on Revision of the Federal Court Appellate System was right when in December, 1973, it recommended to Congress that the Fifth Circuit be divided into two separate and autonomous circuits.

The proposed division now under consideration has extensive support throughout the Circuit.⁷ Among those groups that have unanimously endorsed the division of the Fifth Circuit are the Attorneys General of the states within the geographic boundaries of the Circuit, the United States Magistrates of the Fifth Circuit, the Bankruptcy Judges of the Fifth Circuit, the entire delegation (lawyers and judges) to the 1980 Fifth Circuit Judicial Conference, from each of the six states comprising the Fifth Circuit.

Mr. Chairman, I request permission to enter copies of these resolutions in the record.

There will, of course, be problems incident to the separation of a whole into two parts, but no unsolvable difficulty is anticipated. There is now available in Atlanta a building ideally suited, with some renovation,⁸ for the headquarters of the Eastern Circuit Court (11th) as proposed.

What we now ask is a solution to the problems herein outlined through the cooperative efforts of Congress and the Court. These branches of government are separate, but they exist together in a symbiotic relationship. We are mindful of the concerns of Congress and we believe that our petition, adopted unanimously by the Court, gives full consideration to those concerns. We know that the Congress is mindful of the needs of the administration of justice and will act for the best interests of all of the citizens and institutions of this vast and important part of the country.

Mr. KASTENMEIER. Thank you.

First, I think you have covered the subject quite thoroughly. I don't think I have any questions personally to ask of you other than if this does become law wouldn't you have some feeling of

⁶ The cases filed in Texas, Louisiana and Mississippi (the proposed Fifth Circuit) for the 12 month period which ended June 30, 1980, were 2,301. The number of judges will be 14.

The cases filed in Alabama, Georgia and Florida (the proposed Eleventh Circuit) for the 12 month period which ended June 30, 1980, were 1,919. The number of judges will be 12.

It should be noted that in the last two years and since the Omnibus Judgeship Act was passed, we have had a 21.3 percent increase in filings. Our increase in filings for just the last statistical year (which ended June 30, 1980) was 11 percent.

The impact on the Circuit Court's workload from 35 additional district judges must be considered. The known and anticipated increase of 40 new appeals per each new district judgeship is based upon the national as well as the Fifth Circuit average of appeals per district judge. During the judge's first year our experience-based estimate is 10 new appeals per new judgeship, 20 during the second year and 40 during the third year. This means that by 1982 filings of appeals with our Court will increase by 30.8 percent over 1979 filings: 1979, 4,113; 1980, 4,330; 1981, 4,680; and 1982, 5,380.

⁷ As you are aware, the Senate in S. 2830 has unanimously approved the three-three division that the Fifth Circuit Council requests. The Senate Bill provides that the "... Act shall become effective on October 1, 1980." We note that H.R. 7665 provides that the effective date be July 1, 1981.

The Council respectfully suggests that October 1, 1980, is a preferable date.

⁸ This renovation will be required whether utilized as a court building or for some other purposes.

guilt abandoning Judge Coleman and Judge Ainsworth to the tender mercy of the Texans, separating yourself from them?

Judge JOHNSON. I don't think the guilt will be any more on my part than it is Judge Coleman's and the judges in Texas, because they favor this division as strongly as I do, Mr. Chairman.

Mr. KASTENMEIER. Oh, I understand that. Judge Ainsworth?

TESTIMONY OF HON. ROBERT A. AINSWORTH, JR., JUDGE OF THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Judge AINSWORTH. I thank you for the opportunity of appearing here today.

Judge Johnson has made a magnificent statement, a compelling one, and its logic is irresistible.

I would fill in a few spaces here and there and not try to repeat what he has said, because I endorse everything that he said.

I have been a Federal judge for 19 years, 14 on the circuit court and 5 on the district court.

Nine years ago in March 1971, the Judicial Conference of the United States approved for transmittal to Congress a recommendation of its Committee on Court Administration, of which I was then Chairman, to establish a commission to study the division in the United States of the various circuits.

The Commission was appointed, four members by the President, four from the House, four from the Senate, and four by the Chief Justice. Numerous hearings were held resulting in a report which I hold in my hand, and which recommended geographical division of only two circuits, the fifth and the ninth.

It said of our circuit that the case for realignment of the geographical boundaries is clear and compelling. Its prime recommendation for division of the fourth circuit was the same as is contained in the bill pending before you today. Two circuits should be constituted of the present States of the fifth circuit in the manner shown in your bill.

It was pointed out by the Commission in its report from which I quote:

Serious problems of administration and of internal operation inevitably result with so large a court, particularly when the judges are as widely dispersed geographically as they are in the fifth circuit.

So we have had the recommendation of the Commission since 1973, which began by a study made by the Committee on Court Administration on the subject 9 years ago.

The need is much more acute today than it was then. The geographical alinement of the fifth circuit is obsolete and must yield to the realities of great change. When the courts of appeals were established in 1891 as an intermediate appellate system, there were only about 8 million people in the fifth circuit, and now you have heard the figure estimated at 40 million, 5 times as many people in the circuit. Of course, great economic growth has gone along with the population increase.

The fifth circuit is the largest of the Federal appellate courts, and has one-fifth of the total cases of the 11 circuits.

It is obvious that the geographic alinement of 1891 is not suited to the needs of 1980, and that it is in the public interest to divide the fifth circuit into two separate circuits.

I won't repeat what Judge Johnson has stated so well that we will be a more efficient and effective court by a division, since it seems almost self-evident. The difficulty of managing a 26-judge court in the vast territory of the fifth circuit should be apparent.

You have heard the reference to the intracircuit conflicts in the fifth circuit. You would have to sit in one of our en banc conferences on, for example, a simple matter involving a search and seizure in a narcotics case, and realize when you have 26 judges to speak, if you gave them 10 minutes apiece, add that up and see how long the discussion will last on a single case.

As Judge Johnson said, we can't cut a judge off in conference. We can't tell him when to stop. A judge couldn't be told that.

The most important thing from the viewpoint of litigants and the bar, is that there is no stability and predictability in the law. The importance of the Federal courts of appeal as courts of last report is likewise important. The Supreme Court of the United States reviews only 2 or 3 percent of the decisions of the Federal courts of appeal and, that being true, as judges of the largest of those courts, we believe it is imperative that this division of the circuit occur without delay.

The bill pending before the committee is a good one, much desired and the strong support which it has is virtually unanimous, with the exception of the opposition of the NAACP.

Let me briefly comment about our friends of the NAACP. Naturally, we are proud to have an organization of this prominence say that we are the best Federal court of appeals on civil rights issues in the Nation, and we view this as a recognition of our court being especially sensitive to individual rights.

I know in my own case that I am glad to say that when I was up for confirmation of my appointment by President Kennedy, to the district court and later by President Johnson to this court, I always had the active support of the Louisiana council for the NAACP, and the late Mr. A. P. Tureau, its attorney, who was my good friend.

We feel that the resolution of the organization opposing the division of the circuit is misguided and based on misapprehension. So we would say to those who regard our court so highly that they should reciprocate by trusting us.

Good relationships are built on trust. We urge that you trust our judgment that the quality of justice is now diminished in the present large court, that it is extremely difficult to carry on under present conditions, and that the people in the best position to know this are the judges of the court themselves.

Our judgment should be trusted that the judicial philosophy of the two courts after the division will not differ from what it is today and that there will be no loss of sensitivity to constitutional rights. We think we have merited the trust of those who do business with the court and that trust can best be exemplified by supporting the existing legislation.

[Judge Ainsworth's statement follows:]

PREPARED STATEMENT OF JUDGE ROBERT A. AINSWORTH, JR.

I am Robert A. Ainsworth, Jr., Judge of the United States Court of Appeals for the Fifth Circuit for the past 14 years. Prior to that time I was a United States District Judge in New Orleans for 5 years. I appear on behalf of H.R. 7665, which is supported by all of the active judges of my court.

More than 9 years ago on March 16, 1971, the Judicial Conference of the United States approved for transmittal to Congress, a recommendation of its Committee on Court Administration of which I was then Chairman, to establish a commission to study the division in the United States of the several judicial circuits. Congress passed the bill pursuant to which a distinguished group was appointed to the new Commission on Revision of the Federal Court Appellate System. The Commission was composed of sixteen persons, four appointed by the President, four members of the Senate appointed by the President pro tempore of the Senate, four members of the House of Representatives appointed by the Speaker, and four members appointed by the Chief Justice. After numerous public hearings the Commission made its written report to Congress on December 18, 1973. The Commission found, among other things, that "[T]he case for realignment of the geographical boundaries of the Fifth Circuit is clear and compelling." Thus its prime recommendation as to the Fifth Circuit was that it be divided into two circuits, one to be composed of the states of Texas, Louisiana, and Mississippi and the other of Alabama, Georgia, and Florida. The Commission also pointed out that "Serious problems of administration and of internal operation inevitably result with so large a court, particularly when the judges are as widely dispersed geographically as they are in the Fifth Circuit." The Commission's recommendation that the Fifth Circuit be divided into two separate and autonomous circuits was eminently correct and that division is now long overdue. The unanimous view of all of the active judges of the Fifth Circuit is to the same effect. The members of the Court, intimately acquainted with its affairs, and aware of the problems of a very large court, are in the best position to know what should be done to alleviate a deteriorating situation.

The geographical alignment of the Fifth Circuit is obsolete and must yield to the realities of great change. When the United States Courts of Appeals were created in 1891 as an intermediate appellate court system, the geographic alignment was based on then existing conditions. The 1890 census showed that there were about eight million people residing in the six deep south states of the circuit. Now, 89 years later, we learn that there are five times as many people in the circuit, with accompanying large economic growth.

The Fifth Circuit is the largest of the federal appellate courts in the nation, having approximately one-fifth of the total filings of appeals in the eleven circuits. It is obvious that the geographic alignment of 1891 no longer relates to the needs of the public in 1980.

It is in the public interest to divide the fifth Circuit into two separate circuits. There will be a resultant gain in efficiency and effectiveness. The difficulty of managing a 26 judge court, in the vast territory of the Fifth Circuit, is apparent. Intra-circuit conflicts between decisions of panels of the court are becoming more numerous, requiring en banc consideration by the court as a whole. It is difficult to obtain a consensus of views in a 26 judge court with so many voices speaking to the issue of law involved. Doctrinal stability and predictability in the law of the circuit, so essential to the interest of the public, is threatened.

Judges realize that there is a limit to the number of judges which a court can accommodate and still function properly. Despite the division of the court, the characteristics of national courts are retained since there will still be two large circuit courts—the Fifth and the Eleventh—under the proposed legislation.

The importance of the federal courts of appeals is well known. For most litigants in the federal courts, the court of appeals is the court of last resort since the Supreme Court considers relatively few of the decisions of the federal circuit courts. Only two or three percent of the decisions of the circuit courts are ultimately reviewed by the Supreme Court. That being true, we, as judges of the largest of these courts, believe it is imperative that the long needed division of the Fifth Circuit occur without further delay. Our interest in this regard is primarily the interest of the public.

The bill pending before the committee is a good one and much desired. The strong support which the pending bill has from all of the active judges of the court and from the unanimous views of the bar of the Fifth Circuit and many others clearly demonstrates the importance of passing this legislation in the House of Representatives at the earliest possible date.

Mr. KASTENMEIER. Thank you, Judge.

Let me acknowledge the presence of our colleague from the State of Mississippi, the Honorable Jon Hinson.

TESTIMONY OF HON. JON HINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. HINSON. Thank you very much for recognizing me.

I am one of the sponsors of this legislation, and I want to go on record as being in strong support of it.

Obviously, the problem with the court is not the quality of the judges as witnessed by the people testifying here today, but the quality of justice as they perceive it to be, which is based largely on administrative and mechanical problems.

I support the legislation and strongly urge the committee to approve it.

Mr. KASTENMEIER. We thank our colleague for his comments.

Judge COLEMAN. Mr. Chairman and members of the committee, I think that my colleagues have by their commentary covered the important aspects of this question. In the interest of time I am going to stand on the written statement which I have filed with the committee and which the committee has very graciously ordered printed as a part of the record in this case.

I have brought along with me a list of the judges who are presently serving on the fifth circuit.

There are not going to be any changes for a long time to come. We have Judge John R. Brown appointed by President Eisenhower in 1955, who served as chief judge of our court until last year when the age of 70 rule required him to give up the chief judgeship, but not his membership on the court.

We have 3 judges appointed by President Johnson, myself, Judge Ainsworth, and Godbold; 4 appointed by President Nixon, 3 appointed by President Ford, and 15 appointed by President Carter. Out of the 25 judges presently serving on this court, 15 were appointed just within recent times by the President of the United States.

Now, if there is a division, as proposed and which we think is needed, the States of Mississippi, Louisiana, and Texas would have 14 judges. That is nearly as many as we had before the omnibus judgeship bill was passed. I would like to remind the committee that 10 years ago, in 1971, the judges of the court at that time, including Judge Wisdom and many others who had served for years, informed the Congress in a formal resolution—Judge Ainsworth participated in that—that we did not wish to have any more than 15 judges on our court from an operational standpoint.

If a division does come about, and we do have 14 judges on the old fifth, 9 of them will have been appointed by President Carter, 9 out of the 14. We shall have 12 judges in the eleventh circuit of which Judge Johnson will be a member. President Carter will have appointed 7 of the 12 on that court. I think it is only fair to say that the Congress is dealing here with a well-defined, established entity. For future reference I would like to offer this list for the record, where it will be available as to the identity of the judges.

Mr. KASTENMEIER. Without objection.
[The information follows:]

ELEVENTH CIRCUIT AS PROPOSED

John C. Godbold	Johnson
Paul H. Roney	Nixon
Gerald B. Tjoflat	Ford
James C. Hill	Ford
Peter T. Fay	Ford
Robert S. Vance	Carter
Phyllis A. Kravitch	Carter
Frank Johnson, Jr.	Carter
Albert J. Henderson	Carter
Joseph W. Hatchett	Carter
R. Lanier Anderson, III	Carter
Thomas A. Clark	Carter

7 of 12

FIFTH CIRCUIT AS PROPOSED

John R. Brown	Eisenhower
James P. Coleman	Johnson
Robert A. Ainsworth, Jr.	Johnson
Charles Clark	Nixon
Thomas G. Gee	Nixon
Alvin B. Rubin	Carter
Reynaldo G. Garza	Carter
Thomas M. Reavley	Carter
Henry A. Politz	Carter
Carolyn Dineen Randall	Carter
Albert Tate, Jr.	Carter
Sam D. Johnson	Carter
Jerre S. Williams	Carter

8 of 13

1 vacancy

Appointed by President Eisenhower	- 1955 -	John R. Brown
Appointed by President Johnson	- 1955 -	James P. Coleman
	1966 -	R. A. Ainsworth, Jr.
	1966 -	John C. Godbold
Appointed by President Nixon	- 1969 -	Charles Clark
	1970 -	Paul H. Roney
	1973 -	Thomas G. Gee
Appointed by President Ford	- 1975 -	Gerald B. Tjoflat
	1976 -	James C. Hill
Appointed by President Carter	- 1976 -	Peter T. Fay
		Alvin B. Rubin
		Robert S. Vance
		Phyllis A. Kravitch
		Frank Johnson, Jr.
		Reynaldo G. Garza
		Albert J. Henderson
		Thomas M. Reavley
		Henry A. Politz
		Joseph W. Hatchett
		R. Lanier Anderson, III
		Carolyn Randall
		Albert Tate, Jr.
		Sam D. Johnson
		Thomas A. Clark
		Jerre Williams

(15)

Judge COLEMAN. I would like to say two or three words about something I had not intended to mention.

In the past, Mississippi preferred to be alined with Alabama, Georgia, and Florida. That was not because we were opposed to being with Louisiana and Texas; it just so happened that Mississippi is east of the Mississippi River. We didn't want to go across the Mississippi, and no other State in any other circuit does.

The Mississippi River is the boundary for the sixth, seventh and eighth circuits. Besides, Mississippi and Alabama were both once part of the State of Georgia. We are daughters of Georgia. Atlanta is really the headquarters for all commercial activities in our State, and in fact headquarters for all our Federal governmental activities are in this city, except one or two. So, on this basis we preferred to stay east of the river.

But it became obvious that so many people were convinced that really it should be a 3 to 3 division, and that the only way it could be done was to put Mississippi with Louisiana and Texas. Because the need was so great, and the opinion to that effect was so strong, Judge Clark and myself agreed that we would sign the unanimous petition to this Congress to divide it on a 3 to 3 basis.

It is significant, and I am forever proud and grateful for it, that although it has been Mississippi's position in the past that we would prefer to be with our sister States east of the river just as a matter of preference. This morning you have seen every member of the Mississippi delegation in Congress come over and endorse the position that Judge Clark and I finally thought we should take in the interest of the court. We are now working just as hard for the 3 to 3 division as we were once for the 4 to 2.

The division has been needed for all the reasons that have been stated this morning. The 4 to 2 division is water over the dam. We are up to the point of shall we divide this circuit and divide it 3 to 3. Mississippi endorses it 100 percent.

I say to the committee everything that I have said in my written statement. Judge Johnson, in his very fine effective way, has already pointed out why we have to have so many en banc cases. When I came to the fifth circuit we had only nine judges. I served on the Supreme Court of Mississippi. There, we had nine judges. When we had only a nine-judge court, we would go a year at a time without the necessity of any en banc court. Why? Because a smaller number could hammer out their differences without the necessity of going to a larger group.

You have already been told that as a matter of fact we have the largest number of pending en banc cases of any court in the United States. We had an en banc court in January with about 24 judges sitting. I am sorry to tell the committee that the decisions in many of those cases have not come down yet. I can't tell you when they will come down.

We have been unable to formulate a majority of 13 judges on all of the issues involved in the various cases because judges have individual views and they believe that they are correct, and they would be useless if they didn't stand up for their opinions. One of the most serious things about all of it is that one panel cannot, overrule a prior panel in fifth circuit practice, I suppose it is true in every circuit, one panel cannot overrule the entire panel opin-

ion. We may think it was mistakenly decided by another panel but a subsequent panel cannot touch it. The reason is to have some uniformity and predictability in the law. If the law bounced back and forth we would be in a serious situation.

Two different panels had the same question of law before them 6 months ago. Both were considered by the judges. Neither panel knew what the other one had. One opinion was filed with the clerk and went to the West Publishing Co. Our decisions are effective on the day they are released from the clerk's office.

One day the opinion was released from the panel which said the law went North, or whichever way you want to put it. The very next day the other opinion came down from the other panel and said the law goes South. The opinion that came down first was the law of the circuit, and the second opinion was of no effect. How do you unravel these conflicts? En banc court, 26 judges. I enjoy having every one of them, but I suppose nearly every member of this committee is a lawyer and has had legal experience, and if you ever sat around a table for all of 1 day to decide one case, allowing each judge maybe 10 minutes to talk, you would see why we are up here today asking to cut it down. There will be the same judges but we will not have the paper flow.

I appreciate very much the consideration which the committee has shown us.

Mr. KASTENMEIER. Thank you, Judge Coleman, Judge Ainsworth, and Judge Johnson.

May I commend you all for your presentations.

Personally, I don't think I have any questions, and at this point I would like to yield to Mr. Danielson.

Mr. DANIELSON. I have no questions and yield back my time.

Mr. KASTENMEIER. The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. I just have one question, and it is probably more just for my own curiosity.

Where is the seat of the fifth circuit?

Judge COLEMAN. Presently in New Orleans, and under the newly proposed legislation the capital would remain in New Orleans, but the capital of the new eleventh circuit, composed of Alabama, Georgia, and Florida would be in Atlanta.

That wouldn't be any great jar, because Atlanta has always been a very important meeting point for the fifth circuit for panel sessions. We never had the facilities there for an en banc court.

Mr. SAWYER. In the sixth circuit, which is the one with which I am familiar, all the panels sit in Cincinnati, although there may have been rare exceptions.

Do all your panels sit in New Orleans or different places?

Judge COLEMAN. No, sir; we have such a large number of judges. For example, this week we have had a panel sitting in Atlanta and New Orleans and maybe one in Jackson, Miss. As the fifth circuit is presently constituted, we sit in Atlanta; Jacksonville, Fla.; Montgomery, Ala.; Jackson, Miss.; New Orleans, La.; Houston, Dallas, and Fort Worth, Tex.

It is amazing. I know about the sixth circuit, because I am a very good friend of some of the judges on the sixth circuit who tell me about their operations, and they have such an easy time administratively compared to what we have.

Mr. SAWYER. Thank you very much.

Mr. KASTENMEIER. The gentleman from Virginia.

Mr. HARRIS. I have just one question. The bulk of your case is that you would like to avoid intracircuit differences in the law, so I would ask you, why are intracircuit differences in the law so much worse than intercircuit differences in the law?

Judge COLEMAN. Intracircuit cut conflict is only one small part of the problem. For example, in my written testimony you have the paper flow across your desk from 24 other judges.

Mr. HARRIS. We are going to have to vote in just a minute.

Why do you feel the intracircuit differences that occur in such a large circuit is so much worse than having differences between your circuits in the law?

Judge COLEMAN. We have to keep one law in the circuit and only one, and that is the law in that circuit, although it may be different in the sixth circuit. That is the way Congress set it up.

Mr. HARRIS. I would like to think we are one Nation of laws rather than a nation of 10, 11 circuits myself, but this is the part that bothers me a little bit.

If we have that much difference between the circuits, maybe we should just have one circuit. Did you want to comment?

Judge JOHNSON. Yes; we have the Supreme Court to eliminate the conflicts between the several circuits. We have the en banc court in each circuit to eliminate the conflicts among the various panels. With the 26-judge court, I believe we have over 2,600 variables insofar as membership on the panels is concerned, but we sit in panels of 3 and litigants do not know and judges themselves do not know the judges that will constitute the panels on a given date. They are drawn by lot, and so that gives rise to innercircuit conflicts.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from Michigan, Mr. Carr.

Mr. CARR. No questions, Mr. Chairman.

Mr. KASTENMEIER. On behalf of the committee, we desire to thank this distinguished panel of justices for their presentation and for the information they have shared with us about the fifth circuit.

We will now recess for a vote, following which we will return to look at other matters in the Federal judiciary, including California's situation.

The subcommittee will stand in recess for 10 minutes.

[A short recess was taken.]

Mr. KASTENMEIER. The committee will come to order.

Now that we have essentially concluded testimony on the question of the fifth circuit, we will look at other matters. To introduce our next witnesses this morning I would like to call on our distinguished colleague from California, the Honorable Jerry Patterson.

TESTIMONY OF HON. JERRY M. PATTERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PATTERSON. Thank you very much, Mr. Chairman and members of the subcommittee.

I greatly appreciate the honor of being here this morning, particularly on a matter that I have had some interest in for the past

10 years, previously as the mayor of the city of Santa Ana and now as a Member of Congress, and I am also pleased to indicate to the subcommittee I will not offer my testimony again.

It is in writing and has been offered to you.
[The statement of Jerry Patterson follows:]

Testimony by Congressman Jerry M. Patterson Before the House Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee In Support of HR 6060, August 22, 1980.

Mr. Chairman:

I sincerely appreciate your willingness to consider my bill, HR 6060 as a part of this hearing on federal court reorganization proposals. I certainly understand the limited time this Subcommittee has to review HR 6060 and I will therefore keep my arguments brief and answer any questions you may have.

HR 6060 would amend Section 84 (c) of Title 28 of the United States Code to provide that the United States District Court for the Central District of California shall be held at Santa Ana, California in addition to the place currently provided by law (Los Angeles). I would like to briefly summarize the history of this legislation and the need for a "place of holding" in Santa Ana.

This proposal has a long history dating back to 1970 when the local bar association undertook an earnest effort to bring a federal court to Orange County. My own involvement stems from my personal experiences as a practicing attorney and former Mayor of Santa Ana. My predecessor in Congress initially introduced legislation on this issue, and I have either sponsored or cosponsored legislation to that end since my election to Congress in 1974.

Two major studies have been conducted on this issue. The first was a study by the Orange County Bar Association completed in 1975. The second and most recent was a study completed last year by the Administrative Office of the Courts pursuant to Public Law 95-573. Permit me to relay some of the key facts brought out in these studies which

argue in favor of a second place of holding within the Central District.

The U.S. District Court for the Central Judicial District of California is, by population, the largest jurisdiction within the United States Court system. The district covers seven counties (Los Angeles, Orange, Riverside, San Bernadino, San Luis Obispo, Santa Barbara and Ventura), has a population of approximately 11,000,000 people and is 30% larger than the second largest judicial district. In terms of geographic size the Central District contains 39,921 square miles.

HR 6060 would establish a place of holding in Santa Ana, Orange County to serve a tri-county area consisting of Orange, San Bernadino and Riverside Counties. If established this tri-county area would consist of over three million people an area still larger than 66 of the 90 districts in the United States. The service area would cover 28,100 square miles making it larger than 57 of the 90 districts in the United States. To quote from the Administrative Office of the Courts Report: "If districts were created on the basis of population alone, there would be no area in the country more deserving of additional districts than the area presently contained within the Central District of California."

There is no question that the need on the basis of population will only increase in the future. For example, population projections for the combined tri-county area indicates that approximately 4,500,000 people are anticipated to live in this area by the year 2000. Furthermore, Orange County is expected to experience approximately 34% of the population growth in all of Southern California. Therefore, Santa Ana, the county seat of Orange County, is ideally suited to responding to this evergrowing need for a place of holding in the Central District.

As you know, population is not the only criteria for establishing a place of holding. A caseload large enough to justify more than one judge is generally used as a test for the relative need. The Bar Association Report projected a tri-county case load of 1,200 cases by 1980 and 1,500 by 1985. The Administrative Office of the Courts as a part of their study reviewed a sampling of cases filed during the period of July 1, 1977 to December 31, 1971 (18 months). The sample revealed that during this period the tri-county area accounted for 13.7% of all criminal cases in the district, 15.8% of all civil cases, and 30% of all bankruptcy cases. From this data, they concluded that the tri-county area would have an estimated 1,030 cases per year. This caseload would make the proposed service area larger than 41 of the 90 districts and easily justify two or three judges.

A most critical problem resulting from only one place of holding is the traveling time to Los Angeles from this large and populous tri-county area. The attached chart exhibits the excessive amount of time now required to get to the Los Angeles court and the amount of mileage that would be cut by establishing a place of holding in Santa Ana.

Location	Mileage	Roundtrip	
1. Downtown Santa Ana	31	62	
2. Downtown Riverside	58	116	
3. Downtown San Bernardino	60	120	
Mileage to Proposed Place of Holding Court in Santa Ana			
1. Downtown Santa Ana	0	0	
2. Downtown Riverside	35	70	
3. Downtown San Bernardino	47	94	
Comparison	Roundtrip Los Angeles	Roundtrip Santa Ana	Difference Mileage
1. Downtown Santa Ana	62	0	62
2. Downtown Riverside	116	70	46
3. Downtown San Bernardino	120	94	26

In addition to distances involved, traffic congestion, the lack of mass transit and difficulty in parking in downtown Los Angeles compound a litigants' problem.

In the final analysis, the purpose of our United States Court system is to serve the ends of justice. This is achieved in part by making court facilities reasonably accessible to litigants, jurors, attorneys, etc. I have recounted the exorbitant caseload; the growing population of the Orange, Riverside and San Bernardino area; and the extreme travel distances involved within the central district. I would now like to dwell on certain social and economic benefits that would inure to the public and enhance the dispensation of justice by the federal courts in our area if a place of holding is created, as follows:

A. Reduction in costs for attorney fees necessitated by travel to Los Angeles and return to the Orange, Riverside, and San Bernardino County area. (A minimum of three additional hours in attorney's time is calculated for each appearance in Los Angeles. Creation of a place of holding would help alleviate this problem.)

B. Those prospective jurors who live more than 40 miles from the courthouse are often excused from jury duty if they so request. The travel to and from Los Angeles is just as onerous for a prospective juror as for a litigant, and accordingly, excuse from jury duty is very frequently sought and obtained. According to the Central District, more than 70% of all prospective jurors residing over 40 miles from the courthouse request not to serve jury duty for travel reasons. Thus, the vast majority of jurors who serve in central district court reside within the Los Angeles metropolitan area. The inconvenience and foregoing of jury duty, in practical effect, amounts to a disenfranchise-

ment and raises questions of fairness to criminal defendants and civil litigants. Creation of a place of holding would help alleviate this problem.

C. Transportation costs for those who do serve on jury duty from the Orange, Riverside and San Bernardino County area are inordinately high. Creation of a place of holding would help alleviate this problem.

I am delighted with the tremendous support that now exists for a place of holding in Santa Ana. When the Administrative Office of the Courts held hearings on this issue on April 19, 1979 over 30 witnesses testified in favor of a federal court in Santa Ana. Over 250 letters of support from attorneys, bar associations, legal aid foundations and others were placed into the record. Local chambers of commerce, labor unions, police chiefs and mayors have gone on record in support. We now enjoy the support of the judges of the Central District, which along with a conclusion by the Administrative Office of the Courts that there is in fact a need for a place of holding, should set the stage for passage of HR 6060.

I respectfully ask that this Subcommittee act favorably today on by bill so that we can achieve enactment of HR 6060 in this Congress. Thank you for your time. I will be happy to answer any questions you may have.

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JERRY M. PATTERSON
38TH DISTRICT OF CALIFORNIA

Congress of the United States

House of Representatives

Washington, D.C. 20515

August 27, 1980

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ADDITIONAL DATA RELATIVE TO HR 6060, A BILL TO ESTABLISH A PLACE OF HOLDING WITHIN THE CENTRAL DISTRICT IN SANTA ANA, CALIFORNIA SUBMITTED BY CONGRESSMAN JERRY M. PATTERSON TO THE HOUSE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE.

Dear Chairman Kastenmeir:

As you know, I submitted testimony at the August 22 Subcommittee hearing on HR 6060 setting forth the major arguments in support of this bill. As a result of some of the questions raised at this hearing I would like to submit the following additional data for the Subcommittee's consideration.

The issue was raised as to the future population of the tri-county area that would be served by a place of holding in Santa Ana. According to a 1978 population report prepared by the Southern California Area Governments Association (SCAG) the 1976 population of this tri-county area (Riverside, San Bernadino and Orange Counties) was estimated to be 2,949,826.

The population of this region in the year 2000 is projected by SCAG to be 4,522,000. The area will therefore grow by an additional 1.6 million people in the next twenty years further demonstrating a need to have a federal court in this fast-growing region of the country.

More specifically, the issue was raised as to where within this tri-county area is the population concentrated and where will the future growth occur. The chart shown below (prepared by SCAG) exhibits the population figures for 1976 and 2000 and the percentage of growth expected for each county.

	1976 Population	2000 Population	% Change
Orange	1,722,083	2,696,000	64%
Riverside	531,679	866,000	61%
San Bernadino	696,064	960,000	72%

As you can see Orange County has over one million more people than the next largest county (San Bernadino). With over 50% of

this region's population currently living in Orange County, and the fact that the percentage of growth to the year 2000 will be relatively equal in each of the three counties, Orange County will continue to be the most populous area. Clearly, this population data points to the county seat of Orange County, Santa Ana as the most logical place to hold Court within this area, now and in the future.

This data is backed up by the views of attorneys who practice within the Central District. The Administrative Office of the Courts in their 1976 study surveyed attorneys and others as to the idea of a federal court serving this tri-county area and where it should be located. 285 attorneys practicing in the seven counties of the Central District were asked whether they would prefer to have the Court located in the cities of Santa Ana, Riverside or San Bernadino. These attorneys practicing in the Central District expressed a 3 to 1 preference for Orange County over Riverside and San Bernadino counties. The chart below shows actual responses:

City	Preference	%
Santa Ana	152	49
Riverside	29	9
San Bernadino	27	9
Other	77	33
	285	100%

These arguments plus those presented in my previous testimony provide an overwhelming case, I believe, for the establishment of a place of holding to serve the tri-county area and the location of that place of holding in Santa Ana.

I thank the Chairman and members of the Subcommittee for their continuing interest in this issue.

Sincerely,

Jerry Patterson
JERRY M. PATTERSON
U.S. Congressman

JMP/yd

Mr. PATTERSON. I will merely remain here to answer any questions you might have.

I do have the honor of introducing this morning a gentleman accompanying me, Mr. James E. Macklin, Executive Assistant Director, Administrative Office of the U.S. Courts, and from the Ninth Circuit of Appeals, the Honorable Richard H. Chambers.

He is the circuit judge. He was the chief judge of the Ninth Circuit Court of Appeals from 1959 to 1976. He was first appointed to the U.S. circuit court of appeals on April 30, 1954. He was a member of the Judicial Conference of the United States from 1959 to 1976.

As a distinguished and respected and knowledgeable member of the ninth circuit regarding matters of this sort, he has availed himself today to answer questions in regard to the creation of a new place of holding court in the second district.

With that, I yield to Mr. Macklin.

TESTIMONY OF JAMES E. MACKLIN, EXECUTIVE ASSISTANT DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ACCOMPANIED BY WILLIAM WELLER

Mr. MACKLIN. I appreciate the opportunity to appear today along with Congressman Patterson and Judge Chambers.

I am also accompanied by Mr. William Weller of our office.

I have filed a written prepared statement and I would ask at this time, in the interest of conservation of time, that it be admitted into the record so I may limit my comments to only a few points.

Mr. KASTENMEIER. Without objection, your statement will be received.

[Mr. Macklin's statement follows:]

PREPARED STATEMENT

OF

**MR. JAMES E. MACKLIN, JR.
EXECUTIVE ASSISTANT DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS**

**ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES**

**BEFORE THE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**H.R. 7625, H.R. 7645, H.R. 7665, AND S. 2830
(BILLS TO REALIGN THE U.S. COURT OF APPEALS
FOR THE FIFTH JUDICIAL CIRCUIT)**

AND

**MULTIPLE BILLS TO REVISE THE
GEOGRAPHICAL OR ORGANIZATIONAL CONFIGURATION
OF INDIVIDUAL JUDICIAL DISTRICTS**

**FRIDAY
AUGUST 22, 1980**

Mr. Chairman, I appear before your subcommittee today in place of Judge Elmo B. Hunter, Chairman of the Committee on Court Administration of the Judicial Conference of the United States. Judge Hunter is unable to be here today due to a previously scheduled trial in the Western District of Missouri, where he serves as a United States District Court Judge.

My statement is designed to provide the views of the Judicial Conference on a large number of bills which would revise existing sections of Chapter 5 of title 28, United States Code, that chapter which controls the organization and general administration of the district courts. All of those bills would amend existing provisions in Chapter 5 to implement changes in the organizational or geographical configuration of existing federal judicial districts. The proposed revisions would: (1) create completely new judicial districts or substantially realign existing judicial districts; (2) create new divisions within districts, or realign existing divisions; and (3) authorize additional places at which regular sessions of court "shall be held," or eliminate presently existing "statutorily designated locations." At the request of subcommittee staff, I will try to comment upon all bills which have similar objectives together, after commenting upon

the statutory provisions which, in general, control the implementation of Chapter 5 provisions and the policies which, in general, govern the Judicial Conference's formulation of comments upon bills such as those before you today.

BILLS TO REALIGN THE U.S. COURT OF APPEALS
FOR THE FIFTH JUDICIAL CIRCUIT

Before doing so, however, let me briefly comment upon the legislation pending before you which would "divide" the existing Fifth Judicial Circuit and create two circuits from the jurisdictions presently encompassed within it. In March of 1971 the Judicial Conference approved the transmission to Congress of a draft bill "to establish a commission whose function would be to study the present division of the United States into several judicial circuits and to recommend such changes as may be appropriate for the expeditious and effective disposition of judicial business." In subsequent years, of course, the Commission on Revision of the Federal Court Appellate System -- "the Hruska Commission" -- was created by Congress, and its final recommendations strongly influenced the development of the series of legislative proposals which have directly preceded the four bills now before you (H.R. 7625, H.R. 7645, H.R. 7665, and S. 2830). Of significance to this statement is the fact that not since that action in March of 1971 has the Conference formally commented upon any of the legislative proposals recommending realignment of existing judicial circuits which have resulted from the Hruska Commission

recommendations. In all instances the Conference has deferred to the opinions of the members of the Courts of Appeals which would be impacted by the proposed bills. It continues to follow that policy today. A panel of judges from the Court of Appeals for the Fifth Circuit will testify at these hearings, and the Judicial Conference will defer to the views which they present.

CHAPTER 5 OF TITLE 28

Designed to govern the basic organization and general administration of the ninety-one presently existing "non-territorial" Article III United States district courts, Chapter 5 of title 28 consists of sixty-four individual sections (81 - 144), fifty-one of which establish the organizational structure of the ninety-one judicial districts (81 - 131). Other sections, which concern the creation of the courts *per se*, the number of judges serving each one, their tenure, residence, salaries, and precedential order, the general distribution of business among them, vacant judicial seats, and recusals for bias or prejudice (sections 132 - 137, 143, and 144), are not of direct concern in this hearing today. Five sections, however (138 - 142) are, I believe, of direct relevancy to this hearing. Four of them deal directly with the *scheduling* of court sessions, and one substantially and significantly controls the provision of "*quarters and accommodations*" -- courtrooms, chambers, and court office space -- a matter which has historically influenced the introduction of bills similar to several of those before you today.

§§138 - 141

Read in conjunction with each other, sections 138 through 141 confer upon each district court extensive *scheduling* flexibility. Formal *terms* of court are not only not required, they are prohibited under section 138. When Congress enacted section 138, as well as sections 139 through 141, in 1963, its objective was:

...to provide that the district courts shall be always open..., to abolish terms of court and to regulate the sessions of the courts....

Formal *terms* were abolished because, "[u]nder common law the phrase 'formal terms of court' had very definite significance with respect to pleading, practice, and procedure" which restricted a court's ability to mold its schedules to its workloads. See H. Rep. No. 96, 88th Cong., 1st Sess., 1 - 2 (1963).

As a result of Congress' action in 1963, federal district courts today sit in either "regular" or "special" *sessions*. Under section 139 "regular" sessions of court are fixed by the local rules of each court in locations "statutorily designated" in the organizational sections of Chapter 5 (81 - 131), and such "regular" sessions *may* be set as "continuous" sessions, which run year-long. Almost all district courts are today setting "continuous" sessions in several communities. Under section 140 each individual court may, upon its own order, adjourn a "regular" session at a given location "for insufficient business or other good cause." With approval of the judicial council which oversees

the administration of its business (See 28 U.S.C. §332) a district court can also, under section 141, "pretermite" any regular session for the same reasons. In this context, the court's action constitutes a literal suspension of activity at a given location, either indefinitely or for a time certain. Finally, section 141 fully authorizes a district court to schedule "special" sessions at *any* location, if the business before the court requires such a session, and expressly provides that "any business" may be transacted at a "special" session which might be transacted at a "regular" session.

In summary, a district court, subject only to the oversight of its circuit council and Congress, is authorized to sit when and where it believes best in order to properly manage its workload. In reality the *scheduling* of sessions of court in a given community is *not* contingent upon that community being "statutorily designated" in sections 81 through 131 of Chapter 5 at all. Why, then, are significant numbers of bills introduced in almost every Congress to "statutorily designate" specific communities as "places" at which "court shall be held"? Section 142 provides the answer to that question.

§142

Section 142 provides, in pertinent part, that:

Court shall be held only at places where Federal quarters and accommodations are available, *or suitable quarters and accommodations are furnished without cost to the United States.* The foregoing restrictions shall

not, however, preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available *at places where regular terms of court are authorized by law to be held*, but only if such court quarters and accommodations have been approved as necessary by the judicial council of the appropriate circuit.

(emphasis added)

In essence then, *statutorily designating* a community in sections 81 - 131 of Chapter 5 is *not* a necessary prerequisite to a court *sitting* in a community; it is however, a very definite prerequisite to building a courthouse there or leasing commercial space for courtrooms, chambers, and offices.

When Judge Hunter testified before this subcommittee during the Ninety-fifth Congress, on legislation similar to many of the bills before you today, he stated the case in language I would not try to rephrase:

Frankly, the statutory designation of a location very often yields only one benefit while generating two pragmatic problems. A Member of Congress,

petitioned by his constituents to obtain a statutory designation for a community, can easily "get himself off the hook" by having the statute amended. At that point he has served his community, and the decision to sit in that community or not falls squarely upon the shoulders of the court.

Frequently, the first problem arises immediately: The local bar begins petitioning the court to visit the community for a regular session. When the court fails to do so because enough business does not exist to justify the session, the next problem arises: Suggestions emerge that if only a new courthouse were constructed, a regular judicial presence would be achieved.

While there is no absolute evidence that a large expensive courthouse, in and of itself, attracts judicial business, if that is true, I would suggest that, given today's caseload burdens, the last thing our courts need are additional courthouses generating additional business.

Regrettably, courthouses once built do occasionally "draw business." More regrettable, however, may be the fact that many of them do not draw *enough* to justify their existence; and busy courts cannot afford to spend judges' time there when the work exists elsewhere. Then the Administrative Office is called before the Appropriations or Public Works Committees of Congress to explain why a courthouse the judiciary never wanted is not being "properly utilized." The Administrative Office is now engaged in the second "space utilization survey" in a decade, designed to provide Congress with a full list of all facilities we know are "underutilized" and can be "surveyed" by G.S.A. When the first such study was completed in 1972, we identified eight facilities as "underutilized," and the district courts and circuit councils acted to "pretermite" indefinitely regular sessions of court there. Our present study, although far from complete now, indicates that more than eight facilities are today "underutilized." Judge Hunter's testimony during the Ninety-fifth Congress hearing discussed this problem in greater detail. For purposes of this statement today, I would only reiterate the obvious fact that not building an unnecessary courthouse, and not leasing unneeded commercial space is an ever-more essential saving of taxpayer dollars, and frequently the cost can be most easily avoided by simply not "statutorily designating" the community -- unless there is strong evidence of a great deal of court work to be done there. The purpose of section 142 should not be frustrated by prolifically amending sections 81 - 131.

THE JUDICIAL CONFERENCE POLICY WHICH
GOVERNS EVALUATION OF THESE BILLS

When Judge Hunter appeared before this subcommittee in June of 1978, he explained the full history of the policy which the Judicial Conference has developed since 1959 -- when former House Judiciary Committee Chairman Emmanuel Celler urged the Conference to act -- to evaluate proposals such as those before you today. I will not repeat that history in this statement. The Conference has, over the years, been guided by its full recognition of one basic goal -- the duty to carefully balance the needs and convenience of litigants, the bar, and the public in a given geographical area against the impact upon "the orderly administration of justice" in that and contiguous geographical areas. As a direct result of this subcommittee's hearing in June of 1978, the Conference revised its policy, to expressly require consideration of views from United States Attorneys in impacted districts, and in October of 1978 the Director of the Administrative Office transmitted the revised policy to all judges and courts. A copy of the Director's transmittal is attached to this statement as Appendix "A."

The Conference's method for formulating views on proposals such as those pending here today obviously relies heavily upon the opinions expressed by the district courts themselves and by the judicial councils of the circuits. The judges of the individual district courts know their district best. The members

of the judicial councils of the circuits are statutorily responsible for "the effective and expeditious administration of the business of the courts" within their circuits. You will note that the Court Administration Committee will not even review a proposal unless the district court and the judicial council have *both* approved it. That consensus of approval does not always guarantee final approval, however; although the Court Administration Committee and the Conference usually defer extensively to the "local expertise" of the district courts and judicial councils, on at least one occasion in the past twenty years, the Conference refused to support a proposal approved by the district court and its judicial council because the facts would not justify approval.

In addition, as Judge Hunter noted in his testimony two years ago, over time certain patterns of reaction have clearly emerged and "presumptions" have developed which support what Judge Hunter called "rules of thumb" generally applicable to proposals such as those now before you. Generally, additional "statutorily authorized" places of holding court are *not* approved. They are all examined on their own merits, but an overwhelming number of them over the years have simply not been justifiable in terms of workload at the designated locations. As a result of this subcommittee's interest in recent years, as well as increased requests for data from the Public Works and Appropriations Committees, we have developed a

CONTINUED

1 OF 6

computerized capability for "annually tabulating" the counties of origin of all cases filed in district courts. The program commenced on July 1 of this year. Shortly after the end of our "statistical management year" next June 30, we will have a tabulation of the number of cases arising from every county during that year. It will certainly help us -- and you -- in evaluating proposals to authorize additional "places at which court shall be held."

In general, proposals for the creation of new *divisions* within districts have not been approved over the years. During your 1978 hearings the Justice Department provided an excellent explanation of the history of Congressional creation of divisions and their historical purposes. It is adequate therefore today, I believe, to merely state that they are usually not of significant *administrative* value today. All proposals are evaluated on their own merits by the courts, and certainly in districts where divisions are an administrative asset -- or merely not a liability -- minor adjustments are often justifiable and worthwhile. Over the years, however, the Conference has *generally* disapproved proposals creating *new* divisions and approved proposals to consolidate, or eliminate entirely, existing divisions.

That general record of disapproval of proliferation and approval of consolidation has also been associated with proposals regarding the creation of new districts and the merger of existing districts. In areas where population growth and

community development have justified creation of new districts, the Conference has approved such proposals. In relatively recent years Florida and California have both needed new districts and the Conference has supported their creation. Nevertheless, there is a real need to limit proliferation to the most compelling situations. We now have ninety-one Article III district courts rendering decisions which generate appeals for terribly overworked courts of appeals -- in part because real or perceived "conflicts" arise between opinions rendered in different districts. As with any other institutional structure, proliferation of core units generates more work and at least a little confusion. Congress itself has had direct experience with growth problems in the last decade. This subcommittee knows only too well the problems the courts have confronted. If an error is to be made in regard to creating a new district, better to err by not creating it; if the justification is not overwhelming, if the case is "a judgment call," better to delay the decision. Abolition is always far more difficult than creation.

BILLS TO CREATE NEW DISTRICTS
OR TO REALIGN EXISTING DISTRICTS

California -- H.R. 2505 and H.R. 2806

Both bills would amend 28 U.S.C. §84, the organizational section in Chapter 5 for California, to create a new "Southwest District" consisting of Orange, San Bernardino, and Riverside counties, which are now included within the existing Central District of California. Both the District Court for the Central District and the Judicial Council for the Ninth Circuit have recommended that neither bill be enacted. Both have recommended that alternative approaches be taken to providing a "judicial presence" in the named counties, which they believe constitute a more desirable balance between the interests of litigants, the bar, and the public and the administrative responsibilities of the courts. See discussion of H.R. 5924 and H.R. 6060, *infra*.

Under the mandate of Section 5 of Public Law 95-573, drafted by this subcommittee two years ago, the Administrative Office conducted "a comprehensive study of the judicial business of the Central District of California," during which public hearings were held in the district, and filed with Congress a full report concerning the need for the creation of a new district from counties in that district. In that report, filed on October 22, 1979, we recommended that a new divisional office be authorized in a location which would conveniently serve the population and geographical centers of Orange, Riverside, and

San Bernardino counties. We concluded that the creation of a new judicial district would not be justifiable at present. Copies of the report have been filed with this subcommittee.

New York - H.R. 3714

This bill would amend 28 U.S.C. §112, the organizational section in Chapter 5 for New York, to create a new "Southeastern District" consisting of Nassau and Suffolk counties, which are now included within the existing Eastern District of New York. Both the District Court for the Eastern District and the Judicial Council for the Second Circuit have recommended that the bill not be enacted.

Section 5 of Public Law 95-573, which mandated the study in Central California, also mandated a study of Eastern New York. Just as in the California study, public hearings were conducted in the Eastern District of New York, and a full report was filed with Congress on October 22, 1979. Copies have been filed with this subcommittee. Our report recommended against creation of a new district. We concluded that relocation of the existing "statutorily designated" place of holding court on Long Island, which is now Westbury/Hempstead, to a more centrally located community on the island would be an appropriate response to the need for a more convenient court location for litigants, the bar, and the public in Nassau and Suffolk counties.

North Carolina -- H.R. 6708 and H.R. 7615

H.R. 6708 would amend 28 U.S.C. §113, the organizational section in Chapter 5 for North Carolina, to incorporate the Federal Correctional Institution located at Butner, North Carolina completely into the Eastern District. Today that institution "straddles" the dividing line between the Eastern and Middle Judicial Districts of North Carolina. The bill is deliberately designed to obviate problems concerning jurisdictional issues which may arise in relation to criminal prosecutions and prisoner petitions, and to insure that all such actions shall be handled by one court. Both of the district courts and the Circuit Council for the Fourth Circuit have recommended that H.R. 6708 be enacted.

H.R. 7615 would also amend 28 U.S.C. §113 to (1) transfer Alleghany, Ashe, Watauga, and Wilkes counties from the Middle District into the Western District of North Carolina, and (2) both eliminate Rockingham and Salisbury as statutorily designated places of holding court in the Middle District and authorize Wilkesboro as a statutorily authorized place of holding court in the Western District. Both district courts have reviewed H.R. 7615 and recommended that it be enacted as introduced. The Judicial Council for the Fourth Circuit has reviewed the bill and recommended that it be enacted *only* if amended to also eliminate Wilkesboro as a statutorily designated place of holding court. That amendment would consist of merely striking lines 7 and 8

at page 2 of the bill. The circuit council has recommended against establishing Wilkesboro as a statutorily designated place because there is today simply not enough workload to justify having permanent staff located there. In calendar year 1979 only 41 cases originated from the counties which would be served by that location, a workload which could easily be handled by a "special session," which Judge McMillan of the District Court for the Western District estimates would require approximately a two-week judicial presence at Wilkesboro. For many years the cases arising in the subject counties were largely criminal cases involving the illegal distillation and sale of whiskey. In 1969 a federal courthouse was constructed in Wilkesboro. Shortly thereafter changes in prosecutorial policies -- and, perhaps, the increasing cost of sugar -- resulted in a sharp decline in "moonshine" cases. In 1977 the court released the courthouse facilities to G.S.A. because there was literally not enough work to warrant the cost of maintaining facilities at the location. Certainly, if in future years caseloads grow, the Wilkesboro facility could be reactivated. At present, however, maintaining standing facilities there cannot be justified.

BILLS TO CREATE NEW DIVISIONS
OR TO REALIGN EXISTING DIVISIONS

California -- H.R. 5697 and H.R. 5789

Both bills would amend 28 U.S.C. §84 to create two divisions in the existing Central District of California, a "Tri-County Division" consisting of Orange, Riverside, and San Bernardino counties, and a "Los Angeles Division," consisting of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura counties. Both the District Court for the Central District and the Judicial Council for the Ninth Circuit have recommended that neither bill be enacted. As noted *supra* in comments on H.R. 2505 and H.R. 2806, both the district court and the circuit council believe that H.R. 6060, a bill to statutorily authorize Santa Ana as a place at which court shall be held, is a more desirable bill. While the report filed by the Administrative Office in October of last year recommends the same objective which H.R. 5697 and H.R. 5789 would achieve, the Judicial Conference, upon recommendation of the Court Administration Committee, specifically approved H.R. 6060 and specifically disapproved H.R. 5697 and H.R. 5789 in March of this year.

Missouri -- H.R. 6971

This bill would amend 28 U.S.C. §105 to transfer two counties, Audrain and Montgomery, from the eastern division into the northern division of the Eastern District of Missouri. It is identical to S. 2432, which passed the Senate on May 14, 1980. Both the district court and the Judicial Council for the Eighth Circuit agree with the

Senate's belief that this transfer of counties will achieve "added convenience to parties, prospective jurors, and attorneys" and will not impair the efficient administration of the business of the district court. Both the district court and the judicial council recommend enactment of the proposal.

New York -- H.R. 5690

This bill would amend 28 U.S.C. §112 to create two new divisions within the Eastern District of New York, a "City Division," consisting of Kings, Queens, and Richmond counties, and a "Long Island Division," consisting of Nassau and Suffolk counties. Both the district court and the Judicial Council for the Second Circuit have studied the bill; neither has yet formulated an opinion of approval or disapproval.

Ohio -- H.R. 1883 and H.R. 4435

H.R. 1883 would amend 28 U.S.C. §115 to rearrange counties in the Northern District of Ohio into three divisions instead of two. The bill would also *legislatively* require the "full-time assignment" of "at least one active judge" in each division *unless* such assignments had to be altered to "bring about an equitable allocation of caseloads among the judges...to the end that cases may be tried in the division in which such cases originate." Both the district court and the Circuit Council for the Sixth Circuit have recommended that H.R. 1883 not be enacted.

Both believe that transforming the two divisions into three will, in itself, serve no useful purpose; the same places of holding court will exist in either case. Both also believe that the proposed language concerning judicial assignments may well contravene Congress' deliberate conferral of assignment authority upon district judges under 28 U.S.C. §137 and upon the judicial council for the circuit under 28 U.S.C. §§134, 137, and 332. Situations do arise in which cases are not most conveniently triable in the division in which they originate (i.e., are filed). The residences of parties and witnesses may be just as important considerations as the situs of the clerk's office. In any situation where the assignment of cases is believed to be a problem, parties may -- and should -- notify the circuit council of the problem and request that it exercise its authority under 28 U.S.C. §332.

H.R. 4435 would also amend 28 U.S.C. §115 to arrange counties in the Northern District of Ohio into three divisions instead of two. The configuration of the proposed new divisions is slightly different from that embodied in H.R. 1883. H.R. 4435 would also require "full-time assignments" of judges similar to those required by language in H.R. 1883 for the same purposes. For the same reasons they have recommended that H.R. 1883 not be enacted, the district court and the Judicial Council for the Sixth Circuit have recommended that H.R. 4435 not be enacted.

Texas -- H.R. 2079 and H.R. 5966

Both bills would amend 28 U.S.C. §124 to transfer Polk and Trinity counties from the Southern District of Texas into the Eastern District of Texas and rearrange the six existing divisions in the Eastern District into seven divisions, creating a new "Lufkin division." In effect, because divisions within the Eastern District are basically the framework for establishing statutorily designated places at which court shall be held, the creation of a "Lufkin division" is equivalent to simply authorizing Lufkin as a place of holding court. Both district courts have approved both bills; both would recommend enactment of either. The Judicial Council for the Fifth Circuit, however, while recommending that Polk and Trinity counties be transferred from the Southern to the Eastern District, has recommended that those two counties simply be added to the existing Tyler division. Because the circuit council and district courts have long been unable to reach a consensus of opinion concerning the "division issue," the views of the Fifth Circuit Council were only adopted and conveyed to the Administrative Office in late June. The Court Administration Committee has not evaluated either bill. Regrettably we can be of little help to this subcommittee in its evaluation of these two proposals.

BILLS TO STATUTORILY AUTHORIZE
ADDITIONAL PLACES AT WHICH COURT
SHALL BE HELD

California -- H.R. 5924 and H.R. 6060

Both bills would merely amend 28 U.S.C. §84 to add Santa Ana as a statutorily authorized place of holding court. As previously noted the District Court for the Central District of California, the Judicial Council of the Ninth Circuit, the Court Administration Committee, and the Judicial Conference have all expressed full approval for either bill as the most desirable alternative to better serve the litigants, bar, and public in the Central District.

Michigan -- H.R. 6703

This bill would add Mount Pleasant as an additional place for holding court in the Eastern District of Michigan. The district court recommends that the bill not be enacted because present case-loads will not justify permanent facilities at the location. Since January of 1978 only nine cases have been filed in which either the plaintiff or defendant resides in Isabella County, in which Mount Pleasant is located. The U.S. Attorney in the Eastern District of Michigan has also advised the court that he does not believe the bill can be justified by workload. Although the Judicial Council for the Sixth Circuit has not met since the district court filed its opinion, the presiding officer of that council, Chief Judge Edwards of the U.S. Court of Appeals for the Sixth Circuit has

advised us that he would personally recommend against enactment of the bill given current caseload figures. Bay City, a presently authorized place of holding court, is less than sixty miles from Mount Pleasant.

New York -- H.R. 5691

This bill would amend 28 U.S.C. §112 to authorize an additional statutory location at which court shall be held in the Eastern District of New York which would be "not more than five miles from the boundary of Nassau and Suffolk counties." It would also legislatively preserve sessions of court at the presently existing facilities in Westbury until facilities become available at a newly authorized site. Although both the district court and the Judicial Council for the Second Circuit have studied the bill, neither has yet formulated an opinion of approval or disapproval.

New Jersey -- H.R. 1513, H.R. 2062, H.R. 3673, and H.R. 5890

Each of these bills would authorize additional places of holding court in the District of New Jersey by amending 28 U.S.C. §110. Today Camden, Newark, and Trenton are statutorily authorized places at which court shall be held in New Jersey. These bills would add Hackensack (H.R. 1513), Paterson (H.R. 2062), Morristown (H.R. 3673) and Jersey City (H.R. 5890) to those three presently authorized locations.

Both the district court and the Judicial Council for the Third Circuit have reviewed and disapproved all four bills. They do not believe that permanent court facilities at any of the locations are administratively or financially justifiable. The following views, which Chief Judge Fisher of the United States District Court for New Jersey filed with the Court Administration Committee have been fully endorsed by the judicial council:

The District of New Jersey is divided into three vicinages, each of which embraces roughly seven of the twenty-one counties. The court at Newark serves the highly industrialized counties of Essex, Hudson, Passaic, Bergen and Union, and two rural counties; the court at Camden serves the highly industrialized counties of Camden and Burlington and five rural and residential counties; the court at Trenton serves the highly industrialized counties of Mercer and Middlesex and five rural and residential counties. Each of the courts is located in the largest city in the area which it serves.

Recent population figures reveal that the northernmost seven counties, including the counties in which the proposed cities are situated, have suffered a decrease in population, while substantial gains were made in southern New Jersey, especially Ocean and Burlington Counties.

In terms of mileage, Hackensack is only 14 miles from Newark; Morristown and Paterson are approximately 20 and 15 miles from Newark. The majority of lawyers

in Bergen, Passaic and Morris Counties practice in the cities just mentioned. All public transportation (rails, bus) connect with Newark.

....

The cost factor is another reasonable deterrent to establishing new court facilities within 20 miles of existing facilities. In addition to making provision for a judge and his staff, provision must be made for the supporting personnel of the court - Clerk's Office, Bankruptcy Office, Probation Office, Magistrate's Office, Court Reporters - and from the Justice Department, the United States Attorney's Office and the Marshal's Office.

It is the firm belief of the Court that it is still not administratively feasible nor desirable to establish another place of holding court anywhere in New Jersey.

We have made contact with the Office of the United States Attorney in the District and are advised that they deem the proposals to add additional places of holding court to be expensive, and they feel that it would unnecessarily fragment their office.

Pennsylvania -- H.R. 4961

This bill would amend 28 U.S.C. §118 to add Lancaster as a statutorily authorized place of holding court in the Eastern District of Pennsylvania. Today §118 provides that court shall be held in that district at Allentown, Easton, Reading, and Philadelphia. Both the district court and the Judicial Council for the Third Circuit have recommended that H.R. 4961 not be enacted because, at present, they do not find a "clear and compelling need" for permanent facilities at that location. In recent years caseloads have not required the court to schedule "special sessions" at that location, and there is presently no reason to believe that such sessions will be needed in the near future. If they are, they can easily be arranged. At the present time, however, there is not enough of a workload to justify a "regular session" and permanent staff at Lancaster.

CONCLUSION

In concluding, I would like to submit several observations for this subcommittee's consideration. Conditions change with the passage of time in most judicial districts -- just as they change in most Congressional districts. There is no doubt that shifting populations and community developments create a need for new districts and new

"statutorily authorized locations." Twenty years of Judicial Conference experience, however, have indicated that the need for new districts develops very gradually. That same period of experience indicates that too many "place" bills are more the consequence of a desire for a permanent federal *facility* than the manifestation of real need.

The Judicial Conference is not criticizing community pride. Nor is it unresponsive to situations in which the needs of justice are clearly evidenced; if the caseload is there, the court belongs there. Yet the courts -- and the nation's taxpayers -- can no longer afford to provide a permanent facility in a locality which does not have a significant caseload -- simply to provide a convenient place at which attorneys can file their papers. If community involvement is the issue, "special sessions" of court, fully authorized by Chapter 5 are the answer. Judge Hunter discussed "showing the flag" here two years ago; judges know it is necessary. The Eighty-eighth Congress had just that objective in mind when it provided for special sessions. With our ability to provide more accurate data on case filings by county of origin, we may be able to assess legislative proposals more by "fact" and less by "feel"; and we may be able to make your subcommittee's task a little easier.

In the final analysis we do need to reduce the number of locations at which we spend money for "underutilized" space, we need to do so while nevertheless "taking the court to the people",

and we need to rely upon the "common sense" of our judges and the Congress in doing so. Existing statutory authorization for "special sessions," improved information concerning the origin of case filings, and pragmatic assessments by Congress are the essential elements in providing truly adequate "judicial services" without incurring unjustifiable federal expenditures. This subcommittee has, for almost a full decade, been both supportive of the courts and instrumental in encouraging their better performance. We all know more now about the issues involved in this hearing than we knew ten years ago, and the Judicial Conference will work with you to learn more in the future.

**ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS**
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

October 12, 1978

MEMORANDUM TO ALL CIRCUIT COURT JUDGES
DISTRICT COURT JUDGES
CIRCUIT EXECUTIVES

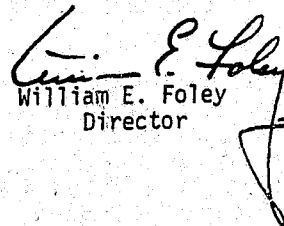
The Judicial Conference of the United States, after a review of its policy governing the evaluation of legislative proposals to authorize locations as statutorily designated places of holding court or to implement changes in the organizational or geographical configuration of individual judicial districts, approved at its September 1978 meeting the following clarified statement of policy:

The Judicial Conference reaffirms its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after a showing of strong and compelling need. Therefore, whenever Congress requests the Conference's views on bills to:

1. create new judicial districts;
2. consolidate existing judicial districts within a state;
3. create new divisions within an existing judicial district;
4. abolish divisions within an existing judicial district;
5. transfer counties from an existing division or district to another division or district;
6. authorize a location or community as a statutorily designated place at which "court shall be held" under Chapter 5 of title 28 of the United States Code; or
7. waive the provisions of Section 142 of title 28, United States Code respecting the furnishing of accommodations at places of holding court --

the Director of the Administrative Office shall transmit each such bill to both the chief judge of each affected district and the chief judge of the circuit in which each such district is located, requesting that the district court and the judicial council for the

circuit evaluate the merits of the proposal and formulate an opinion of approval or disapproval to be reviewed by the Conference's Court Administration Committee in recommending action by the Conference. In each district court and circuit council evaluation, the views of affected U. S. Attorneys offices, as representative of the views of the Department of Justice, shall be considered in addition to caseload, judicial administration, geographical, and community-convenience factors. Only when a proposal has been approved both by the district courts affected and by the appropriate circuit council, and only after both have filed a brief report summarizing their reasons for their approval, with the Court Administration Committee, shall that Committee review the proposal and recommend action to the Judicial Conference.


William E. Foley
Director

Mr. MACKLIN. As I have noted in the statement, the Judicial Conference has consistently followed the policy of deferring to individual circuit court's views on all proposals with regard to realigning circuits.

I, therefore, don't have any comments from the Judicial Conference with regard to the proposals to split the fifth circuit.

I might add that from my point of view, within the Administrative Office of the U.S. Courts, a split such as that as now proposed before you would certainly increase and improve the efficiency of administration of cases within the circuit.

In regard to those bills which would revise existing geographic or organizational configurations of individual judicial districts, my prepared remarks do not address four bills which are presently pending before you. Unfortunately, we did not notice the introduction in late May of H.R. 7436, a bill to authorize Long Beach, Calif., as a statutorily designated place of holding court.

As a consequence, we have not as yet requested the views of either the district or the circuit court involved. We will, however, do so very shortly.

We are also unable to comment on three other bills which have been introduced this week, H.R. 7947, which would create an additional judicial district in the State of Michigan, H.R. 7951, a bill to transfer two counties from one division to another in the Southern District of Iowa, and H.R. 7967, a bill which would designate the Modesto metropolitan area as a statutorily authorized place of holding court in the Eastern District of California.

We will request the views of both the districts and circuits involved regarding each of those three bills, and will be prepared shortly, I hope, to address those bills.

Mr. KASTENMEIER. Now, just to be clear, you mentioned four bills relating to districts, and you mentioned H.R. 7456, and three other bills introduced more recently. Those are the four bills?

Mr. MACKLIN. Yes, sir; we are not prepared to address ourselves to those four bills at the present moment, because we do not know the views of the courts concerned.

Mr. KASTENMEIER. Thank you.

Mr. MACKLIN. In my prepared remarks, I have in response to your staff's request explained how relevant statutory provisions in chapter 5 of title 28 of the United States Code govern matters which are the subject of this hearing, and how the Judicial Conference evaluates proposals such as those before you today.

Appendix A to my prepared statement fully states the policy which governs the Judicial Conference in evaluating this kind of legislative proposal. Among the observations filed with your subcommittee by Judge Hunter in June 1978 and those submitted in the prepared statement which I have filed, I would like to emphasize only one.

The statutory designation of a community as a place of holding court is literally not necessary as a prerequisite to a district court's actually sitting or holding a session in that community. As explained in greater detail in the statement, while regular sessions of courts are set only in statutorily designated locations, special sessions can be set at the court's discretion in any community.

During the past 20 years in reviewing proposals to add statutorily designated locations, the Judicial Conference has noted with concern the large number of proposals which are not justifiable in terms of the volume of court business arising in the proposed community.

Too frequently a proposal to establish a place statutorily is really designed as a response to section 142 of title 28 of the United States Code, which has a requirement that facilities shall be maintained only in locations at which regular sessions of court are held.

In other words, the statutory designation, which is a prerequisite to construction of a courthouse, or the leasing of governmental or commercial space, is motivated by a desire to have Federal facilities in the community. Given the Code's authorization of special sessions, the statutory designation is not necessary to guarantee judicial process. It is necessary to assure a permanent facility. Now, my prepared statement specifically addresses 17 individual proposals.

I will not readdress them now. However, I will attempt to answer any questions you may have concerning the views expressed in my statement.

Mr. KASTENMEIER. Did you wish to add anything, Mr. Weller?

Mr. WELLER. No.

Mr. KASTENMEIER. I think for the purpose of reference, I would ask you to very briefly note the various bills, what they would do and what your recommendation is, just so that we have a working laundry list.

Mr. MACKLIN. Yes, sir. With regard to those bills which create new or realine existing districts, we first treat the California central district. There are two bills there, H.R. 2505 and H.R. 2806.

These would create a new southwestern district consisting of Orange, San Bernadino, and Riverside Counties. Both the District Court of the Central District of California and the circuit court have recommended disapproval of those bills. Under the policy set

down by the Judicial Conference of the United States for those bills which they will consider, therefore, the Judicial Conference itself has taken no position with regard to either of those bills since they will treat only those bills where both the district and the circuit have approved.

Mr. KASTENMEIER. In other words, the Judicial Conference does not take a position with respect to the bills unless they are approved at a lower level?

Mr. MACKLIN. By both the district and the circuit council.

Mr. KASTENMEIER. Accordingly, your nontreatment is sort of a denial, an affirmation of the disapproval of the—

Mr. MACKLIN. Yes, sir; that is correct in effect. Next we have the Eastern District of New York, H.R. 3714, which would create a new southeastern district carving out two counties, Nassau and Suffolk from the present Eastern District of New York.

Again, both the district and the circuit court have recommended disapproval of this bill and, consequently, the Judicial Conference has not taken a position.

Mr. KASTENMEIER. Both of these proposals, the California and the New York proposal, I seem to recall that the study concerning those proposals was mandated by action of the last Congress?

Mr. MACKLIN. Correct, sir.

Mr. KASTENMEIER. Accordingly, there presumably has been an adequate survey of the question?

Mr. MACKLIN. Yes, sir; the Administrative Office did conduct a study in both of these districts and in each instance recommended against the creation of a new district as not being justifiable based on the workload that was there.

Mr. KASTENMEIER. Thank you.

Mr. MACKLIN. Next, there are two bills concerning North Carolina. H.R. 6708 would move the Federal correctional institution at Butner, which is now situated on the border between two districts, the Eastern and Middle Districts of North Carolina, entirely into the Eastern District of North Carolina.

Both of the districts concerned here, as well as the circuit council, recommend approval of that particular move. However, as of the moment, the Judicial Conference has not been able to express an opinion. The comments of the district and the circuit have come in since the last meeting of the Judicial Conference.

The second bill is H.R. 7615, which first would transfer four counties from the Middle District of North Carolina to the Western District of North Carolina. Second, it would eliminate Rockingham and Salisbury as being places of holding court in the Middle District of North Carolina, but would designate Wilkesboro as a place of holding court.

The middle district does approve of this particular bill as does the circuit council with one exception. The circuit council holds the opinion that Wilkesboro is not justified; that is, the business of the court that would be held in Wilkesboro does not justify establishment of Wilkesboro as a place of holding court.

There are a number of bills which would create new divisions within a district or realine existing divisions. Two of those appear in the Central District of California, H.R. 5697, and H.R. 5789.

These bills would create a tricity division of Orange, Riverside, and San Bernadino Counties.

Once again, the district and circuit court concerned have recommended disapproval of those bills and, consequently, the Judicial Conference would also recommend disapproval, although they have not even reviewed the bills.

I beg your pardon; I am reminded that the Judicial Conference did address those two bills in the last session in March, and they did recommend disapproval of those two bills.

Next is H.R. 6971, dealing with the Eastern District of Missouri. That bill would transfer two counties from the Eastern to the Northern Division of the Eastern District of Missouri.

The district and circuit courts concerned have recommended approval of this bill. The Court Administration Committee of the Judicial Conference has already reviewed this bill and recommends approval and will be so recommending to the Judicial Conference when next it meets in September.

As regards H.R. 5690, dealing with the Eastern District of New York, this bill provides for the division of the Eastern District of New York into two divisions, one being a city division and the other being a Long Island division.

Unfortunately, I have no responses at the moment from either the district or the circuit concerning this bill. However, the Administrative Office in its report recommended against dividing this particular district into two divisions.

The next bills deal with the Northern District of Ohio, H.R. 1883, and H.R. 4435. These bills would realine the counties presently located within that district and create three divisions instead of two divisions, and statutorily mandate that at least one judge be located in each of those three divisions.

Court would be held, however, in the same places. Both the district court and the circuit council have recommended disapproval of these two bills, contending that such a division would serve no useful purpose.

Next, dealing with the Eastern and Southern Districts of Texas, H.R. 2079 and H.R. 5966, those bills would transfer two counties from the Southern District of Texas into the Eastern District of Texas, and realine the divisions of the Eastern District of Texas to create seven divisions, the new division being the Lufkin division with the same places of holding court as before.

Both district courts have recommended approval of those bills. The circuit council on the other hand, has recommended approval of the two bills with one exception. It's the circuit council's opinion that a new division, a Lufkin division, is not necessary and should not be created, but suggests that the two Counties be placed within the present existing Tyler division of that district.

I will next turn to those bills which designate additional places for holding court.

First, California Central, H.R. 5924 and H.R. 6060. Both of these bills would designate Santa Ana as a place of holding court within California Central. The district, the circuit council and the Judicial Conference have recommended approval of those bills.

Mr. KASTENMEIER. In approving those bills, do you recall whether the Administrative Office considered the recommendation man-

dated by Public Law 95-573, that Congress study in detail the ideal location for a court facility?

Mr. MACKLIN. The Administrative Office's study did not address the question of an ideal location other than to suggest that such a study might be conducted by the Congress. In our study, however, of this particular district, we recommended rather than a place of holding court, a separate division. That study that we were directed to conduct was completed prior to the time that we had heard from either the district or the circuit and prior to the time that the Court Administration Committee of the Judicial Conference had considered the matter.

Our report thus was available to the district, to the circuit council, and to the Court Administration Committee before they made their recommendation which, as you know, is to designate an additional place of holding court.

I might point out that we have received assurances—that is we in the Administrative Office—have received assurances as I guess the Court Administration Committee did also that a judge would be assigned to that place of holding court.

Turning now to Michigan Eastern and H.R. 6703, which is a bill that would designate Mount Pleasant as a place of holding court in Michigan Eastern, the district court recommended disapproval based on the fact that Bay City, which is a statutory place of holding court, is located only 60 miles away, and since January of 1978, only nine cases had arisen within that particular area. The U.S. attorney, as well as the circuit council, have recommended disapproval also.

With regard to New York Eastern, H.R. 5691 would designate a place of holding court not more than 5 miles from the border of the two counties of Nassau and Suffolk. Neither the district nor the circuit court have made a recommendation with regard to this bill.

The Administrative Office study, however, recommends approval of a place of holding court in virtually the same location.

Next for New Jersey, there are four separate bills, H.R. 1513, H.R. 2062, H.R. 3673, and H.R. 5890.

These bills would add four more places of holding court within the district of New Jersey, added to the present three places of holding court. Both the district and the circuit courts have recommended disapproval as not being justified since each of these four places is already close enough to a place that is designated as a place of holding court.

Lastly, the Eastern District of Pennsylvania, H.R. 4961 which would add the city of Lancaster to the present four places of holding court within that district. Both the district and the circuit have recommended disapproval as not being justified in view of the small caseload involved.

So far as I know, with the exception of the four bills that I indicated earlier that I could not address, those are all of the bills before you right now.

Mr. KASTENMEIER. Thank you very, very much, Mr. Macklin.

I am afraid the committee is going to have to recess again because of a final vote on the housing bill, and the second bells have already rung.

I hope the witnesses can be patient and bear with us; but we will recess for 10 minutes.

Accordingly, the committee stands in recess.

[A brief recess was taken.]

Mr. KASTENMEIER. The committee will come to order.

Thank you, Mr. Macklin, for your summary for us in terms of discussing the proposals.

On the four bills you commented on that are newly introduced, when might we expect some sort of decision?

Mr. MACKLIN. One of the problems we have is to get the recommendations. Circuit councils rarely hold special sessions. The way in which those meetings are scheduled, it may be some while.

Mr. KASTENMEIER. The reason I ask, to place everybody on notice, is that we would like to prepare a single bill embodying those recommendations that the subcommittee cares to make to the full committee and ultimately to the Congress. Very likely, we will propose a separate bill for the fifth circuit split, but for all other changes we would like to incorporate into a single bill. Therefore, we would need to know whether a proposal is noncontroversial or not. To accomplish this we would like to have some recommendations if possible. If not possible, we can always understand that. There always will be another time, another year for many of the proposals. It is possible that the subcommittee could act without advice on these matters, but nonetheless, we would have heavy preference for recommendations as a basis for our own.

Mr. MACKLIN. We will act as fast as we can. However, as indicated in the New York eastern situation, we do not always get a rapid response from the district or the circuit. Under the ground rules, normally we do not see new districts created unless the business justifies it, nor do we like to see an increase in the number of divisions or places of holding court unless the business seems to justify such.

I can only say we will do our utmost to get an answer for you as soon as possible. I am sure Mr. Weller will get on the phone and contact the courts concerned as soon as he can.

Mr. KASTENMEIER. A number of the recommendations relate to California. In connection with that, I would like to yield to my colleague, Mr. Danielson, to pursue any other matters he may care to pursue. We are going to have to rely on Mr. Danielson and Mr. Moorhead as far as legislation for California is concerned. Our colleague, Glenn Anderson, of California may have a piece of legislation, too, that he would like to discuss.

TESTIMONY OF HON. GLENN ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ANDERSON. May I have a couple of minutes before you adjourn?

Mr. KASTENMEIER. Yes.

Mr. ANDERSON. First, Mr. Chairman, I have remarks that I would like to have made a part of the record, but I would like to extemporize if I could.

Judge, good to see you again.

Mr. Macklin a moment ago mentioned that he did not notice or they did not notice our bill, H.R. 7456, which would provide court

be held in Long Beach. We introduced that in May. I introduced it back in 1977, also. We have been working on it for a long time.

I do represent Long Beach. It is the biggest city in the Nation, and does not have a Federal court sitting. It is an area of tremendous growth. You may not be aware of it, but I represent the Port of Long Beach and the Port of Los Angeles, that are actually sister ports right together. They are second only to New York in total capacity, and in some capacities are bigger, and they tell us in the next 20 years, growth will be 350 percent, and will be the biggest port complex in the Nation involving Federal legislation.

The Navy is big; we have the names of 29 ships and 34 are coming to us, that will be almost all Federal litigation. The city has told me they will provide space for it in the new city hall complex or the convention complex.

The coast of California reaches as far as from Maine to South Carolina. Seven of our courts are in the north and only two in the south. Long Beach needs one. It is a great inconvenience to take this 25-plus miles every time they want to go down there and back. We are not opposed to any of the other sittings, but we think Long Beach is an unusual situation.

Just recently, we got approval for a new world trade center which will contain a million square feet of office. I have the merchant marine activity there; much of that is Federal. As I see, we are second only to New York, and probably will soon pass it. There are just so many reasons why Long Beach should be considered. I want you to take a good look at it. Next year I want to make sure it gets to you. The people down there, the president of the bar, Jim Ackerman, is working with us to get it, and the big law firms are working on this with us, the city attorney, not just this time, but when I introduced the bill 2 years ago, Mr. Parkland, the city prosecutor, was working on it. Now he is city attorney. The people change, but we do have their support.

Mr. DANIELSON. Can Mr. Anderson's written statement be inserted into the record and made a part of the record.

Mr. KASTENMEIER. Without objection, as well as the statement of our colleague, George Brown.

[The statements of Hon. Glenn M. Anderson and Hon. George Brown follow:]

TESTIMONY OF CONGRESSMAN GLENN M. ANDERSON
before the Judiciary Subcommittee on Courts,
Civil Liberties, and the Administration of Justice

August 22, 1980

Mr. Chairman and members of the Subcommittee, I appreciate having this opportunity to let you know of the need for my legislation; H.R. 7456.

H.R. 7456 amends title 28 of the United States Code to provide that the U.S. District Court for the Central District of California may be held in Long Beach. With a population of about 350,000, Long Beach is the largest city in the nation which does not currently have this authority.

One might easily surmise that this has not been the result of some past oversight. Rather, it is the result of the City's proximity to Los Angeles, its neighbor 25 miles to the north. Los Angeles is the exclusive home of California's Central District. As befits such a large city, Los Angeles has been the home of many government services utilized by nearby cities. And this may have, at one time, been appropriate with respect to the federal courts. It is so no longer.

As you may know, the City of Long Beach is growing tremendously. Its growth as a commercial and trade center can only be characterized as explosive. New construction has drastically increased the size of its business community. Today, Long Beach has become a center of international commerce in its own right. And growth of this type will continue.

Sometime in the next few months, the Port of Long Beach (which, unlike 15 or 20 years ago is now a major port) is expected to approve the construction of a new World Trade Center which will contain about 1 million square feet of office space.

I need not tell you that this type of commercial growth, domestic and international, increases the potential for federal litigation.

Additionally, the United States Navy has decided to homeport between 27 and 30 ships in Long Beach over the next five years. They estimate that this will mean the assignment of 9,000 Naval personnel in the City, indicating a local need for expanded federal judicial resources.

And, of course, the area's sizeable and significant merchant marine industry is centered in an area much closer to downtown Long Beach than to the courthouse in Los Angeles. The parties involved in federal litigation dealing with this industry work here, live here, and could be much more conveniently served by a Federal court here.

It was based on these needs that I introduced H.R. 7456 earlier this year, and H.R. 12698 in the 95th Congress. And I did so with the support of the Long Beach legal community. Mr. Robert W. Parkin, formerly the City Prosecutor and now the City Attorney of Long Beach, has expressed his support for my legislation. His replacement as City Prosecutor, Mr. John Vander Lans, also enthusiastically supports this effort.

Other supporters of my legislation include Mr. James H. Ackerman, President of the Long Beach Bar Association; Mr. Richard Wilson, of Allen, Wilson and George; and Mr. Joseph Ball, senior partner of Ball, Hunt, Hart and Brown. These individuals, senior and respected members of our local and national legal communities, have all attested to the heavy caseload of federal litigation which is generated in Long Beach, and to the great need for the enactment of H.R. 7456.

The City of Long Beach has expressed its support by indicating that it is prepared to work to have the Court located in its beautiful new City Hall, or in the spacious Convention Center, both conveniently located downtown. Once located in excess space in either of these facilities, the cost to the federal tax-payer, of course, would not be a penny.

City fathers and those engaged in the practice of law in Long Beach know there is not another city in California's Central District, outside of Los Angeles, which generates so much federal litigation. Certainly, by any measure, Long Beach is the largest city in the District not presently authorized to hold Federal Court.

One possible mark against Long Beach stems from the understanding that there is not a county or parish in the nation in which two cities are so authorized. I would point out, though, that there are cases of cities - in different counties - which are located as closely together as Los Angeles and Long Beach that do have statutory authorizations. In California's Northern District, for example, court is held in Oakland, 20 minutes from San Francisco, and in San Jose, which is less than an hour from both. These three cities, despite their proximity to one another, are each located in different counties. During our gold rush days, counties in the San Francisco Bay area needed to be very small so that every fellow who struck gold would be close to a county courthouse where he could stake his claim. So, we have the situation in which these three cities are in different counties, and based on some need, are all homes to Federal judges. In Southern California, we have densely populated counties that are as large and larger as entire states. And the need is there for more than one city in a county to hold court. An historic anomaly peculiar to California must not be allowed to preclude Long Beach as a site for holding Federal Court.

Finally, subsequent to staff discussions between my office and the Administrative Office of the Courts, it has become my understanding that that office is not prepared to make any recommendations with respect to H.R. 7456. Apparently, there was some confusion between the Judiciary Committee and the Administrative Office of the Courts, which resulted in their being unaware of the existence of my bill.

I think it would be most unfortunate if any decisions made by the Committee on the new authorization of any city as a place where Federal court might be held - based in part on recommendations of the Administrative Office of the Courts - were interpreted as negatively impacting upon the desirability of Long Beach's also being so designated.

So, should the Committee recommend that some other city be authorized, I believe it must be emphasized that such a decision has no bearing on the City of Long Beach also being designated, either during the 96th Congress, or in the future.

I believe that this Subcommittee should favorably report to the full Committee, the content of H.R. 7456. Long Beach should be statutorily authorized as a setting for the Central District Court in California. The need is there. Indeed, I would posit that the need is greater there than any other city in the country. And, had the Administrative Office of the United States Courts studied the matter, I believe they would have arrived at the same determination.

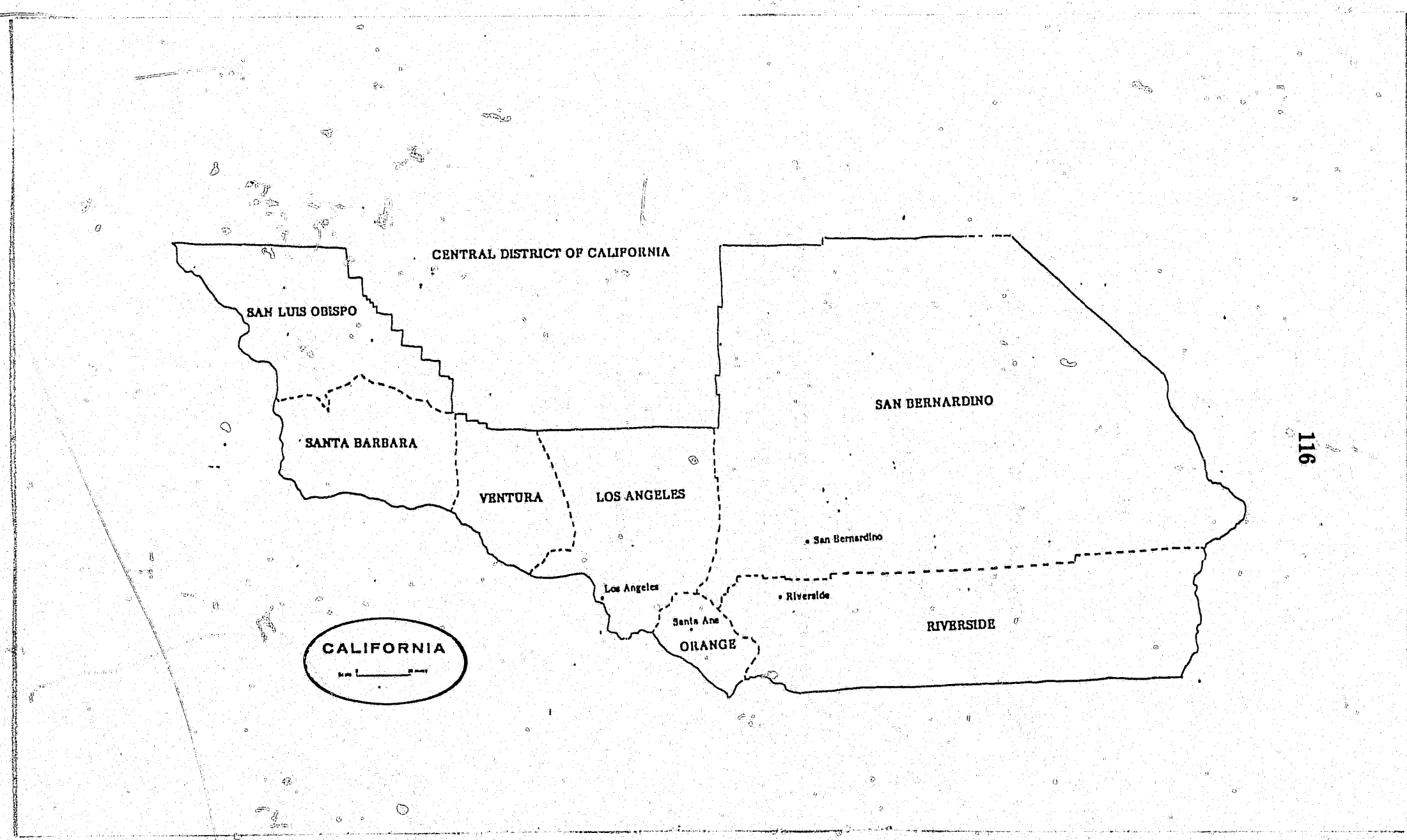
TESTIMONY OF

CONGRESSMAN GEORGE E. BROWN, JR.

BEFORE

THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

October 22, 1980



CENTRAL DISTRICT OF CALIFORNIA

SAN LUIS OBISPO

SANTA BARBARA

VENTURA

LOS ANGELES

SAN BERNARDINO

• San Bernardino

Los Angeles

Santa Ana

ORANGE

• Riverside

RIVERSIDE

CALIFORNIA

Scale 1 inch = 100 miles

116

Thank you for the opportunity to speak on behalf of H.R. 5789, to establish a new division in the Central District of California for the United States District Court. I have been asked to specifically address four questions relating to my proposal; (1) the need for such legislation; (2) anticipated costs of my proposal; (3) availability of alternatives; and (4) support and/or opposition for my legislation and any controversy that may surround it.

NEED: The idea of a federal court facility to serve the inland counties of the Central District of California has been in existence for many years. In the 95th Congress, Congressman Charles Wiggins sponsored H.R. 3972 to establish the counties of Orange, Riverside, and San Bernardino as a separate judicial district. I was a sponsor and a supporter of this bill.

Considered as part of a comprehensive federal district court reorganization (P.L. 95-573) this proposal was the basis for the mandating of a study by the Administrative Office of the United States Courts on the need for the creation of a new federal judicial district.

This study, issued in August of 1979, revealed evidence of a need to create a separate judicial district for Orange, Riverside, and San Bernardino counties. There was substantial evidence that the current provision for a single location for holding court in the Central District is "inconvenient for a substantial portion of the population" and "inaccessible to many residents."

This study presented a sound case for the establishment of a new federal court facility to serve the inland counties.

A review of the population statistics then available revealed that, were a new federal district to be created in this area, it would be a district larger in population than all but 24 current judicial districts. The study also revealed that this population, estimated at approximately 2.9 million people had increased by 14.3 percent between 1970 and 1975, a rate of increase far above national and state averages.

While this population currently comprises about 27 percent of the total in the Central Judicial District, at these rates of growth it is plain to see that this percentage is increasing dramatically.

In terms of geography, the study reported that this Tri-county area presently comprises over 70 percent of the present judicial district and, if it were to be separated into a single entity, the area would still be greater than all but 33 federal judicial districts in the nation.

This study presents compelling evidence, based upon the travel time for litigants and attorneys, convenience, etc., that some facility should be established to serve the inland counties of the Central Judicial District of California. I ask that this study which I have included in the index of my testimony be inserted and made part of today's record. (See insert 1)

The more obvious question posed by H.R. 5789 is the need for a new facility in the city of Riverside as opposed to some other city or location in the tri-county area. On this question

no specific study has been made, despite the recommendations that "Congress conduct a detailed study to determine the ideal location" for a new facility contained in the report I have cited.

A glance at a map of the central judicial district and the tri-county area (see front insert) reveals that the proposed Santa Ana site is located at the western tip of this vast geographical area. In discussions with many attorneys from the local bars in San Bernardino and Riverside counties, they inform me that a drive to Santa Ana would be no less inconvenient than the present drive to Los Angeles.

The caseload distribution throughout the tri-county area seems to justify a more careful consideration of location. The study made by the Administrative Offices of the Courts reveals that even now almost half of the civil and criminal cases arise out of the Riverside and San Bernardino counties. (See tables 1 and 3 of insert 1) With the present growth trends in these two counties, I can only see an increase in this percentage.

The growth trends in the Riverside and San Bernardino counties are dramatic. The Administrative Office study, which was based on 1975 Census data, indicated that "significant future population growth in the eastern counties of Riverside and San Bernardino will tend to shift the population center east, away from Santa Ana."

A study by the Southern California Association of Governments (SCAG) which was based on more recent data brings home this point.*

* SCAG - 1978 Growth Forecast Policy, 1979.

This study, which forecasts the population growth and overall development of the Southern California area, estimated that Riverside County would experience an 80 percent increase in population and San Bernardino County a 72 percent increase by the year 2000. Orange County, on the other hand, is projected to experience a 60 percent increase over the same period.

Another important element that should be considered is the number of federal facilities and federal interests in the Riverside and San Bernardino counties. The federal government is the major employer, with military installations comprising more than 50 percent of total employment. the major military installations in these two counties are:

- March Air Force Base
- Norton Air Force Base
- Fort Irwin Training Center
- Twentynine Palms Marine Depot
- George Air Force Base
- Norco Naval Ordnance Station
- Barstow Marine Depot

Federal land and Indian reservation land comprise a large majority of the total land area in these two counties. The Soboba and Morongo Indian reservations also provide a basis for jurisdiction under the federal court system.

The statistics I have described above are subject to change with the 1980 Census. I believe the trends that I have discussed will confirm that (1) San Bernardino and Riverside counties are the fastest growing counties in population, and (2) that these counties are growing as separate

and independent economic entities.

These conclusions and the evidence I have presented does not present an overwhelming case that a new facility for the federal district court should be located in Riverside, but it does raise questions as to the logic of locating such a court facility without giving to these and other considerations that would naturally be raised by a study.

ANTICIPATED COSTS: The cost of establishing a new district as proposed in H.R. 5789, is unknown, at this time. The study of the Administrative office estimated that the creation of a new district court would be an initial \$2 million for relocation costs with annual operating expenses estimated at \$575,000. I assume the establishment of a division would be less than that.

The establishment of a new federal court facility is a major expense no matter where the court is located. These expenses must be weighed against the benefits that will result and to whom they will accrue.

It is my understanding that the purpose of this new facility is to serve the entire inland county area of the Central Judicial District of California, which includes Orange, Riverside and San Bernardino counties. Thus, in my mind, the benefits will outweigh the costs, no matter what the costs, if all the residents of the entire area are better served by such a facility. Let me remind this panel that their decision where to locate this new court facility will be final for the next decade and quite possibly through the year 2000. Thus, the costs should be weighed against the future needs as well as present expediencies.

I would like to point out that Riverside is in the process of building a federal building which, I am sure, could be modified to include court facilities. Again, my concern is for the convenience and accessibility of the court to the residents of the area served more than the existence of an available courtroom or appointed judge.

AVAILABLE ALTERNATIVES: As I have previously stated, I am willing to accept the most efficient means of establishing a federal court facility to serve the entire inland county area of the Central District of California.

I am willing to accept a "place of holding court" as opposed to a new division to serve this area. As a matter of fact, I am willing willing to accept Santa Ana as the specific place of holding court over Riverside provided a study is made by Congress to determine whether, in fact, that is the ideal location considering costs and convenience to the population served, both now and in the future.

SUPPORT: There is widespread support in San Bernardino and Riverside counties for the location of a federal court facility within the Tri-County area. I understand that some of the attorneys in these counties support or would support the location of such a facility in Santa Ana, especially if the court could not be located closer to their place of business.

After discussing this matter with the local bars in these two counties and with other organizations, I have encountered much support for a study to determine the ideal location for a new federal court to serve this area. I have included

some of the correspondence I have recieved supporting this approach (See insert 2)

I understand that the State Bar as well as 9th Circuit Judicial Council have expressed their support for the Santa Ana location. While they have not contacted me, nor I them, I believe that these bodies would not object to a study of the ideal location for a new federal district court.

SUMMARY: H.R. 5789 is a bill intended to raise before this subcommittee the question of the ideal location of a new federal district court facility in the Central Distric of California to serve the inland counties of Orange, Riverside, and San Bernardino.

A study by the Administrative Offices of the U.S. Courts recommended, in the context of a new federal district, that "Congress conduct a detailed study to determine the ideal location" for a federal court. While the context of the study has since been superceded, the question raised therein, where in fact is the ideal location for a court, has yet to be answered.

I have presented evidence in support of my bill to locate that facility in Riverside. My evidence is not conclusive that Riverside is the ideal location. However, I believe it is sufficient to support the notion that a further study is necessary.

If such a study is made, I will gladly accept the findings and recommendations embodied therein. And, if Santa Ana is determined to be that ideal location I will support the establishment of that facility in Santa Ana. My feeling is that a study would not so conclude.

RECOMMENDATIONS: I recommend to this subcommittee that a decision on the location of a new federal district court facility in the Central District of California be deferred until such time as Congress can study in detail the ideal location. I believe that the 1980 Census will provide data important to this determination and, therefore, the decision should be deferred until the relevant Census data is made available.

Thank you for your time and consideration.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE
OF THE UNITED STATES COURTS
ON THE NEED FOR CREATION OF A NEW
FEDERAL JUDICIAL DISTRICT IN CALIFORNIA
(PURSUANT TO PUBLIC LAW 95-573)

INSERT 1.

TABLE OF CONTENTS

	PAGE
I. Report Requirements	1
II. Components of the Administrative Office Study	1
III. Factors Relating to the Need for Creating a New Judicial District	1
A. District Characteristics	1
B. Court Organization and Judicial Administration	3
1. Court Organization	3
2. Judicial Administration	4
a. District Judges	4
b. Magistrates, Bankruptcy Judges, Probation and Pretrial Services	5
c. U.S. Attorney	6
d. Public Defender's Office	6
e. Summary	7
C. Caseload	7
1. Criminal Cases	8
2. Civil Cases	9
3. Bankruptcy Cases	15
4. Summary	15
D. Consideration of Views of the Local Community	15
1. Questionnaires	15
a. Attorneys	16
b. Jurors	17
c. Witnesses and Litigants	18
2. Public Hearings	19
E. Probable Costs of Creating a New District	22
F. Review of Judicial Conference Policy with Regard to Creating New Districts	24
IV. Summary of Relevant Factors	26
V. Recommendations	27

TABLE OF CONTENTS (CONTINUED)

Appendix 1	Attorney Questionnaire and Summary of Responses
Section 1.	Juror Questionnaire and Summary of Responses
Section 2.	Litigant and Witness Questionnaires and Summary of Responses.
Section 3.	
Appendix 2.	
Section 1.	Notifications of Public Hearings
Section 2.	Responses to Hearing Notifications
Section 3.	Transcript of Public Hearings in Santa Ana, California, April 19, 1979
Section 4.	Written Submissions in Response to Hearing Notification
Section 5.	Letters of Support Submitted through Congressman Jerry M. Patterson's Office.

REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE
OF THE UNITED STATES COURTS
ON THE NEED FOR CREATION OF A NEW
FEDERAL JUDICIAL DISTRICT IN CALIFORNIA
(PURSUANT TO PUBLIC LAW 95-573)

I. Report Requirements. This report is submitted in accordance with provisions of Section 5, Public Law 95-573, November 2, 1978. The law requires that the Director of the Administrative Office of the United States Courts conduct a comprehensive study of the judicial business of the Central District of California and make a recommendation to Congress with respect to the need for creation of a new judicial district from portions of the existing district or immediately surrounding judicial districts.

II. Components of the Administrative Office Study. To satisfy the requirements of Public Law 95-573 the Administrative Office conducted a six part study:

- A. A review of the current district's characteristics including county make-up, population, area, and population density.
- B. A review of the current court organization and consideration of the impact of creating a new district on the judicial administration of the current district.
- C. Estimation of the current district's civil, criminal, and bankruptcy caseload generated from each of its counties.
- D. Consideration of the views of the local community including litigants, witnesses, jurors, and attorneys and geographical factors influencing the court's service to the community and the community's access to the court.
- E. Development of the probable costs of creating a new district.
- F. A review of the policy of the Judicial Conference of the United States with regard to creation of additional judicial districts.

The Administrative Office study focused on the proposed district realignment contained in H.R. 3972, 95th Congress. This bill, referenced in House Report No. 95-1763 accompanying P.L. 95-573, would create a new judicial district consisting of Orange, Riverside, and San Bernardino counties with the remaining counties continuing as the Central District of California.

III. Factors Relating to the Need for Creating A New Judicial District.

- A. District Characteristics. The Central District of California comprises the counties of Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura. This district is the most populous of the 90 judicial districts (excluding the territorial districts) with nearly 10.8 million residents, 3 million more than the next most populous district (based on data for 1975 from the 1977 edition of the County and City Data Book, Bureau of Census). The Central District ranks 22nd among all districts in area with 39,921 square miles and 14th in population density with nearly 270 residents per square mile.

If a new district were created from Orange, Riverside and San Bernardino counties, (the Tri-County area), the population of the district would be approximately 2.9 million people. This population is greater than all but 24 of the current judicial districts. The 2.9 million population (based on 1975 estimates of the Bureau of Census) is 14.3% above the 1970 population. This compares with a 4.8% increase nationwide and a 6.0% increase statewide in California during the same period.

The population growth rate, while still on the rise in the Tri-County area, has slowed substantially since the 1960's. Between 1960 and 1970, the population of this area grew by 93% while that of the entire state grew by 27%.

The following table depicts the population growth of all counties in the Central District of California during the period 1970 - 1975:

County	1970 Population	1975 Population	Percent Change
Los Angeles	7,041,980	6,986,898	-0.8
Orange	1,421,233	1,699,666	19.6
Riverside	456,916	529,074	15.8
San Bernardino	682,233	695,871	2.1
San Luis Obispo	105,690	129,154	22.2
Santa Barbara	264,324	279,693	5.8
Ventura	378,497	437,853	15.7
Tri-County Area	2,560,382	2,925,611	14.3

If the population of the Tri-County area continues to grow at the 1970 - 1975 rate, the 1980 population will reach 3.3 million.

While the Tri-County area contains 27% of the total population of the Central District of California, its area accounts for more than 70%. The 28,100 square miles of the Tri-County area is greater than all but 33 of the current federal judicial districts and its population density, at 104 persons per square mile would exceed all but 36. By far, the greatest portion of the land mass in the Tri-County area is in San Bernardino County, which accounts for more than 20,000 square miles or 71% of that area.

If the new Tri-County district were created, the remaining four counties of the Central District of California would cover approximately 11,900 square miles and contain approximately 7.8 million residents. This area would rank 70th among the current federal judicial districts and the population, even after removing that of Orange, Riverside and San Bernardino counties would still rank first among all judicial districts. The population density of the four counties would be nearly 660 persons per square mile, 9th among the present federal judicial districts.

If districts were created on the basis of population alone, there would be no area in the country more deserving of additional districts than the area presently contained within the Central District of California. On the basis of the nationwide population per district, which is approximately 2.4 million, the area would justify more than four separate districts.

On the basis of area there is also a strong argument in favor of creating additional districts from the current Central District of California. The area covered by the three counties under consideration for a new district exceeds the area of 57 of the current districts and the area of the remaining four counties exceeds 20 of the current districts.

The combined population and area of the current Central District of California make a strong case for splitting the district. However, the unique nature of the area and distribution of the population make a logical division difficult. One of the seven counties, Los Angeles, accounts for 65% of the total population and one county, San Bernardino, accounts for 50% of the area. The only way to evenly distribute population between two districts would be to split Los Angeles County and the only way to evenly distribute the area would be to split San Bernardino County.

B. Court Organization and Judicial Administration

1. Court Organization: The United States District Court for the Central District of California has no statutory divisions. Title 28 United States Code, Section 84c establishes the city of Los Angeles as its only place of holding court. The court's 17 authorized judgeships and three senior judges are all headquartered in Los Angeles as is the entire staff of the clerk's office. Los Angeles is the only court location where civil and criminal cases can be filed.

The court has six authorized full time magistrates, all located in Los Angeles and eight part-time magistrates located as follows:

San Bernardino	Santa Barbara
San Luis Obispo	Oxnard
Santa Ana	Barstow
Long Beach	Twenty-nine Palms

One additional part time magistrate is located in Lancaster, but most of his work is generated from Edwards Air Force Base located in the Eastern District of California.

The Bankruptcy Court consists of 12 bankruptcy judges, eight in Los Angeles, two in San Bernardino, and two in Santa Ana. The judges in San Bernardino handle all cases arising in Riverside and San Bernardino counties and the judges in Santa Ana handle all cases arising in Orange County. The eight judges located in Los Angeles handle cases arising in the remaining counties with one judge frequently traveling to Santa Barbara, San Luis Obispo, and Ventura counties to hold court.

The U.S. Probation Office for the Central District of California consists of 108 officers including the chief probation officer plus supporting staff. These officers are distributed

throughout the Central District on the basis of workload as follows:

Office	Number of Officers
Los Angeles	42 (including the Chief)
Long Beach	10
Panorama City	9
San Bernardino	6
Santa Ana	10
Santa Barbara	3
Santa Fe Springs	9
South Bay	10
Ventura	2
West Covina	7

The Pretrial Services Agency, established under Title II, Speedy Trial Act of 1974, operates under the supervision of the chief probation officer. All 18 pretrial services officers and their supporting staffs are headquartered in Los Angeles.

2. Judicial Administration. To gauge the impact of creating a new district on the current judicial administration, personal interviews were conducted with district judges, magistrates, bankruptcy judges, personnel of the probation office, the U.S. Attorney's Office, and the public defender's office. These interviews centered on each individual's opinion of the need for a new district and the effect such a move would have on their operations. The interview portion of this study concentrated on the opinions of the district judges with all other interviews conducted as time permitted.

- a. District Judges. Interviews were conducted with 17 district judges (14 of the 16 active judges and the three senior judges). Only two of the judges favor the creation of a new district consisting of Orange, Riverside and San Bernardino counties. The reasons for their support of a new district include:

- (1) Population of the Tri-County area is more than enough to support a separate district.
- (2) Because of the lack of public transportation, it is extremely inconvenient for attorneys, litigants and jurors to travel to the courthouse in Los Angeles.
- (3) Creation of a new district requiring less travel time and distance would be consistent with the national energy program.
- (4) There seems to be sufficient business generated from the Tri-County area to support a district court.

- (5) The present court of 17 authorized judgeships has become too large for collegiality; therefore, two smaller courts would be more cohesive.

Of the remaining 15 judges, three held no strong opinion for or against creating a new district. Twelve were opposed to the creation of a separate district for the Tri-County area. Reasons for their opposition were as follows:

- (1) More work would be generated for the federal courts by the presence of a separate district in the Tri-County area - cases which are now and should continue to be filed in state courts.
- (2) Attorneys and litigants do not travel to federal court often enough to make travel inconvenient.
- (3) Distance to the federal court from the Tri-County area is not great nor is the time required to travel that distance.
- (4) Splitting the existing district into two new districts would result in less efficient courts than the existing one.
- (5) The costs of establishing a new district could not be justified by either caseload or convenience.
- (6) Creation of a new district so close to the existing one could result in "judge shopping" between districts.

The majority of the judges in the Central District of California have formally adopted a position in opposition to creation of a new district or any place of holding court other than Los Angeles. This position is contained in Exhibit 1, a letter of January 22, 1979, from Chief Judge Albert L. Stephens to Mr. William E. Foley, Director of the Administrative Office.

- b. Magistrates, Bankruptcy Judges, Probation and Pretrial Services. Interviews were conducted with three of the full-time magistrates in Los Angeles, four bankruptcy judges, and the chief of the probation and pretrial services office. These interviews were conducted as time permitted between interviews with district judges to obtain a better understanding of the organizational components of the court and to assess the impact on them should a new district be created.

Generally the magistrates saw no direct impact on their operations if a new district were created. Since magistrate positions are authorized, in part, on the basis of the district judges' workload, creation of a new district would impact on the magistrates in much the same manner as on the district judges.

Interviews with the bankruptcy judges resulted in responses similar to those obtained from magistrates. The bankruptcy judges saw little, if any, impact on their operations since the bankruptcy court is presently organized on a division or county basis. Creation of a new district would, therefore, have little effect on the bankruptcy court.

The chief of the probation and pretrial services office also saw little, if any, impact on the operation of that office if a new district were created. The probation office is organized on a divisional basis with officers and clerical staff distributed according to caseload. Because of this organization there would be no significant change in the operation of the probation or pretrial services office if a separate Tri-County district were created.

- c. U.S. Attorney. The views of the U.S. Attorney's Office in Los Angeles were obtained through a personal interview with the U.S. Attorney and the assistants in charge of the civil and criminal divisions. The U.S. Attorney's Office opposes creation of a new district for the following reasons:

- (1) The cost of establishing a district would be enormous and could not be justified by the caseload generated from the Tri-County area.
- (2) Creation of a separate district with a separate U.S. Attorney's Office may generate the type of criminal caseload which the Department of Justice wishes to divert to state court.
- (3) There is more and more need for specialization in the U.S. Attorney's Office. This can be accomplished in a large office such as the current district's but not in a small office such as the one which would result from creation of a Tri-County district.
- (4) The mere presence of a separate federal court would generate workload which can just as easily be handled in state court.
- (5) Downtown Los Angeles is more easily accessible by public transportation than any other city within the existing district.

- d. Public Defender's Office. The interview with the Public Defender resulted in comments similar to those obtained from the magistrates and bankruptcy judges. Creation of a new Tri-County district would probably have no effect on the Public Defender's Office. However, there may be some effect on representation in the Tri-County area if the new district does not have sufficient caseload to justify a separate public defender's office.

- e. Summary. If a new district were created in the Tri-County area, there would be some effect on the various organizational components of the court. Since there are no judges or clerk's office staff located anywhere other than Los Angeles, there would be a requirement to transfer an appropriate number to the new district. This would also apply to the U.S. Attorney's Office. This transfer of personnel along with all necessary records would result in some initial inconvenience for those involved. However, after the court was operational there would be little, if any, effect on the judicial personnel remaining in Los Angeles. Creation of a separate district would have no substantial effect on the remaining components of the court since most of these are already established on a divisional basis.

A new district would also require a new chief judge position, clerk of court, chief probation officer, U.S. Attorney, and possibly a public defender. However, the creation of new top level positions should not substantially affect the judicial administration within the area now covered by the Central District of California.

If a divisional office or place of holding court were established for the Tri-County area, the district judges, clerk's office and the U.S. Attorney's Office, again, would be the ones most affected. Judges would either have to transfer and sit full time at the location or travel between Los Angeles and the Tri-County area to hear cases originating in the area. The clerk's office would be required to assign staff in the area and, thus, maintain a branch office; the same is true of the U.S. Attorney. This requirement would result in some initial inconvenience to the present clerk's office in establishing and maintaining space, facilities, and records management in two locations. There would also be some possible loss of efficiency in having to split the current operation. However, the use of this divisional concept is not unusual among federal district courts as a means to provide more convenience to the residents. In fact, among districts with comparable geographic area, the Central District of California is the only district with a single place of holding court.

- C. Caseload. A major factor in determining the need for a new judicial district is the potential workload of the area being considered as a new district. In order to compile an estimate of this potential workload a sample time period was selected for review of cases filed during that period. The excessive time required to analyze case files dictated that the sample period be as brief as possible but of sufficient length to minimize the effects of seasonal changes or uncharacteristic occurrences. A time frame of 18 months was selected as sufficient to minimize the detrimental effects without creating collection problems. The 18-month period selected for the study was from July 1, 1977 through December 31, 1978.

For the purpose of this analysis, the proposed new district in California, consisting of Orange, Riverside and San Bernardino counties, will be designated as the Tri-County area. The potential workload for the new district will therefore be comprised of Tri-County cases which include: (1) any criminal defendant who allegedly committed one or more crimes in the Tri-County area; (2) any civil case where one or more of the plaintiffs or defendants resides in the Tri-County area; and (3) any bankruptcy case where the bankrupt individual or company resides in the Tri-County area.

It should be noted that the number of cases identified as Tri-County cases includes some which involve residents of the remaining four counties of the Central District of California. If a new district were created these cases could be filed in either the Central District or the new Tri-County district. The data provided in this study represent the maximum number of cases currently filed in the Central District which could be filed in the new Tri-County District.

1. Criminal Cases. Case files for all criminal cases commenced during the 18-month sample period were reviewed to identify the following data for each defendant:

- ... County of residence of the defendant
- ... Name and address of the defendant's attorney (this information was recorded for every fifth case for possible use in the distribution of questionnaires to a random sample of attorneys)
- ... The "offense county" (the county where the crime occurred as specified in the indictment)

The address of the defendant and the defendant's attorney were readily obtained from the documents in the case files. However, the occurrence of multiple counts in the indictment often created difficulty in designating one county as the offense county for a given defendant. In the situation where multiple counts were identified in the indictment as occurring in different counties, the following rules were used to identify the "offense county":

- ... If any crime charged in the indictment was committed in either Orange, Riverside or San Bernardino county, the first such county indicated in order of specification in the indictment was designated as the "offense county".
- ... If no crimes occurred in Orange, Riverside, or San Bernardino counties, the first of either Los Angeles, San Luis Obispo, Santa Barbara, or Ventura counties indicated in order of specification in the indictment was designated as the "offense county".
- ... If none of the crimes occurred in the seven counties of the district, the "offense county" was designated as "other".

There were 2,542 defendants identified in 2,131 criminal cases

in the Central District of California, during the 18-month period under study. Of the total defendants, 349 or 13.7% were classified as Tri-County defendants. Table 1 provides a distribution of all defendants by county of residence and offense county. Table 2 provides a breakdown of the Tri-County defendants by major offense category. On the basis of the 18-month period, the estimate of the potential annual criminal caseload for a district consisting of Orange, Riverside, and San Bernardino counties is approximately 230 defendants.

2. Civil Cases. Case files for all civil cases commenced during the 18-month sample period of the study were reviewed to identify the following data:

- ... The county of residence of the plaintiff
- ... The name and address of the plaintiff's attorney (this information was recorded for every fifth case for possible use in distributing questionnaires to a random sample of attorneys)
- ... The county of residence of the defendant
- ... The name and address of the defendant's attorney (this information was recorded for every fifth case for possible use in distributing questionnaires to a random sample of attorneys)

In cases where multiple plaintiffs and/or defendants resided in different counties, the following procedures were used in determining the county of residence for the plaintiff and the defendant:

- ... If any plaintiff/defendant resided in either Orange, Riverside, or San Bernardino counties, the first such county indicated in order of the specification in the civil complaint was designated as the county of residence for the plaintiff/defendant.
- ... If no plaintiff/defendant resided in Orange, Riverside, or San Bernardino counties, the first of either Los Angeles, San Luis Obispo, Santa Barbara, or Ventura counties indicated in the order of specification in the complaint was designated the county of residence for the plaintiff/defendant.
- ... If none of the persons resided in any of the seven counties of the district, the county of residence was designated as "other".

During the 18-month period from July 1, 1977 through December 31, 1978 a total of 7,571 civil cases were filed in the Central District of California. Of this number 1,197 or 15.8% were designated as Tri-County cases. A breakdown of the total civil caseload by county of residence of the plaintiff and defendant is provided in Table 3. Table 4 provides a distribution of the Tri-County cases by basis of jurisdiction and nature of suit. On the basis of the 18-month period in this study, the estimate of the potential yearly civil caseload for a district consisting of Orange, Riverside, and San Bernardino counties is approximately 800 civil cases.

Table 1
Tri-County Criminal Defendants

Defendant County of Residence	County Where Crime Occurred								Total
	Los Angeles	Orange	Riverside	San Bernardino	Santa Barbara	Ventura	San Luis Obispo	Other	
Los Angeles	1,499	33	8	13	8	8	-	173	1,742
Orange	50	123	-	-	-	1	-	26	200
Riverside	13	1	30	5	1	1	-	6	57
San Bernardino	5	3	4	73	1	-	-	10	96
Santa Barbara	8	-	2	-	88	-	-	3	101
Ventura	12	1	1	-	-	22	-	3	39
San Luis Obispo	2	-	-	-	-	-	11	-	13
Other	211	25	13	14	9	1	-	21	294
Total	1,800	186	58	105	107	33	11	242	2,542

137

Table 2
Criminal Defendants Commenced, By Major Offense,
In Orange, Riverside and San Bernardino Counties* of the
Central District of California For the 18 Month Period From
July 1, 1977 - December 31, 1978

Nature of Offense	Total	Nature of Offense	Total
Total	349	Auto Theft	11
General Offenses		Forgery and Counterfeiting, Total	34
Homicide Total	-	Transportation of Forged Securities.....	1
Murder 1st Degree	-	Postal Forgery	1
Murder 2nd Degree.....	-	Other Forgery	11
Manslaughter	-	Counterfeiting	21
Robbery, Total	65	Sex Offenses, Total	-
Bank	-	Rape	-
Postal	65	Other	-
Other	-	Drug Abuse Prevention and Control Act, Total ...	27
Assault	-	Marihuana	6
Burglary—Breaking and Entering, Total	-	Drugs	11
Bank	-	Controlled Substances.....	10
Postal	-	Miscellaneous General Offenses, Total	53
Interstate Shipments.....	-	Bribery	-
Other	-	Drunk Driving and Traffic.....	5
Larceny and Theft, Total	63	Escape.....	8
Bank	1	Extortion, Racketeering, and Threats.....	3
Postal	7	Gambling and Lottery.....	-
Interstate Shipments.....	12	Kidnapping.....	2
Other U.S. Property	41	Perjury	-
Transportation, Etc., of Stolen Property...	2	Weapons and Firearms	32
Other	-	Other	3
Embezzlement, Total	28	Special Offenses	
Bank	15	Immigration Laws.....	14
Postal	-	Liquor, Internal Revenue.....	-
Other	13	Federal Statutes, Total.....	5
Fraud, Total.....	49	Agricultural Acts	-
Income Tax	11	Antitrust Violations	-
Lending Institution	6	Food and Drug Act.....	-
Postal	9	Migratory Bird Laws	-
Veterans and Allotments	-	Motor Carrier Act	-
Securities and Exchange	-	National Defense Laws	-
Social Security	-	Civil Rights	2
False Personation	-	Contempt	1
Nationality Laws	-	Customs Law	1
Passport Fraud	1	Postal Laws	1
False Claims and Statements.....	14	Other	1
Other	8		

*Includes any criminal defendant charged with one or more counts where the crime occurred in Orange, Riverside or San Bernardino Counties.

Table 3
Tri-County Civil Cases

Plaintiff County of Residence	Defendant County of Residence									Total
	Los Angeles	Orange	Riverside	San Bernardino	Santa Barbara	Ventura	San Luis Obispo	U.S.	Other	
Los Angeles	1,496	93	43	13	15	12	2	1,189	883	3,746
Orange	68	121	2	3	1	2	-	101	98	396
Riverside	7	2	41	5	1	-	-	40	32	128
San Bernardino	33	1	3	37	-	-	-	45	45	164
Santa Barbara	8	1	-	-	15	1	-	149	34	208
Ventura	5	-	-	-	1	20	-	24	26	76
San Luis Obispo	2	1	-	-	-	-	10	7	59	79
U.S.	1,056	153	38	58	37	45	10	-	41	1,438
Other	569	84	19	6	5	3	7	105	538*	1,336
Total	3,244	456	146	122	75	83	29	1,660	1,756	7,571

*Includes 316 air crash related cases in Multi-District Litigation

TABLE 4
CIVIL CASES COMMENCED, BY BASIS OF JURISDICTION AND NATURE OF SUIT
IN ORANGE, RIVERSIDE AND SAN BERNARDINO COUNTIES* OF THE CENTRAL DISTRICT OF CALIFORNIA
FOR THE 18 MONTH PERIOD FROM JULY 1, 1977 - DECEMBER 31, 1978

Nature of Suit	Total	U.S. Cases		Private Cases	
		Plaintiff	Defendant	Federal Question	Diversity of Citizenship
Total Cases	1,197	249	186	558	194
Contract Actions, Total	290	125	6	28	131
Insurance	50	-	1	-	49
Marine	10	-	-	10	-
Miller Act	17	-	-	17	-
Negotiable Instruments	25	17	-	-	8
Recovery of Overpayments and Enforcement of Judgements	62	61	1	-	-
Other Contract Actions	126	47	4	1	74
Real Property Actions, Total	40	8	7	10	15
Condemnation of Land	12	5	4	3	-
Foreclosure	20	1	-	7	12
Rent, Lease, and Ejectment	-	-	-	-	-
Torts to Land	4	2	2	-	-
Other real property actions	4	-	1	-	3
Tort Actions, Total	133	2	43	41	47
Personal Injury:					
Airplane	5	-	4	-	1
Assault, Libel, and Slander	8	-	2	-	6
Employers' Liability Act	31	-	-	31	-
Marine	6	-	3	3	-
Motor Vehicle	22	-	8	2	12
Medical Malpractice	1	-	1	-	-
Other Personal Injury	33	-	21	-	12
Personal Property Damage:					
Fraud including Truth In Lending	8	1	-	-	7
Other Personal Property Damage	19	1	4	5	9
Actions Under Statutes, Total	728	114	130	484	-
Antitrust	20	-	-	20	-
Bankruptcy Suits:					
Trustee	3	-	-	3	-
Transfer (915 B)	-	-	-	-	-
Appeal (801)	24	-	-	24	-
Banks and Banking	2	-	-	2	-
Civil Rights:					
Voting	1	-	-	1	-
Jobs	47	-	4	43	-
Accommodations	1	-	-	1	-
Welfare	1	-	-	1	-
Other Civil Rights	110	-	10	100	-
Commerce (ICC Rates, Etc.)	11	1	-	10	-
Narcotic Addict Rehabilitation Act	-	-	-	-	-
Economic Stabilization Act	-	-	-	-	-
Environmental Matters	2	1	-	1	-

TABLE 4
CIVIL CASES COMMENCED, BY BASIS OF JURISDICTION AND NATURE OF SUIT
IN ORANGE, RIVERSIDE AND SAN BERNARDINO COUNTIES* OF THE CENTRAL DISTRICT OF CALIFORNIA
FOR THE 18 MONTH PERIOD FROM JULY 1, 1977 - DECEMBER 31, 1978

Nature of Suit	Total	U.S. Cases		Private Cases	
		Plaintiff	Defendant	Federal Question	Diversity of Citizenship
Deportation	2	-	2	-	-
Prisoner Petitions:					
Motions to Vacate Sentence	1	-	1	-	-
Parole Commission Review	-	-	-	-	-
Prison Officials - Habeas Corpus	38	-	5	33	-
Prison Officials - Mandamus, Etc.	-	-	-	-	-
Civil Rights	22	-	-	22	-
Forfeiture and Penalty:					
Agricultural Acts	1	1	-	-	-
Food and Drug Act	3	3	-	-	-
Liquor Laws	-	-	-	-	-
Railroad and Trucking Regulations	-	-	-	-	-
Air Traffic Regulations	3	3	-	-	-
Occupational Safety and Health Act	-	-	-	-	-
Other Forfeiture and Penalty Suits	40	40	-	-	-
Labor Laws:					
Fair Labor Standards Act	16	13	1	2	-
Labor Management Relations Act	46	12	-	34	-
Labor Management Reporting and Disclosure Act	4	-	-	4	-
Railway Labor Act	-	-	-	-	-
Other Labor Litigation	14	1	3	10	-
Protected Property Rights:					
Copyright	59	-	-	59	-
Patent	33	-	-	33	-
Trademark	43	-	-	43	-
Securities, Commodities, and Exchanges	20	1	-	19	-
Social Security Laws:					
Black Lung Cases	-	-	-	-	-
Other	57	-	57	-	-
State Reapportionment Suits	51	35	16	-	-
Tax Suits	-	-	-	-	-
Customer Challenge	-	-	-	-	-
Freedom of Information Act Of 1974	1	-	1	-	-
Other Statutory Actions	52	3	30	19	-
Other Actions, Total	6	-	-	6	-
Domestic Relations	-	-	-	-	-
Insanity	-	-	-	-	-
Probate	-	-	-	-	-
Suits Involving Local Officials	6	-	-	6	-
Other	-	-	-	-	-

*Any civil cases where at least one of the plaintiffs or one of the defendants resided in the counties of Orange, Riverside or San Bernardino.

3. Bankruptcy Cases. The potential bankruptcy workload for the proposed district was based on the number of bankruptcy cases filed during the 18-month period where the county of residence of the bankrupt individual or company was identified as Orange, Riverside or San Bernardino county. The county of residence of the bankrupt was obtained from the routine data collected on each bankruptcy case by the Administrative Office of the U.S. Courts.

During the 18-month sample period there were 18,565 bankruptcy cases filed in the Central District of California, of which 5,581 or 30.1% involved residents of the Tri-County area. On the basis of the 18-month period, the estimate of potential annual bankruptcy case filings for a district consisting of Orange, Riverside and San Bernardino counties is 3,720 cases.

4. Summary. The estimate of combined civil and criminal yearly case filings generated from Orange, Riverside and San Bernardino counties is approximately 1,030 cases (800 civil, 230 criminal). This is equal to or greater than 41 of the current federal districts. Since there are no standards for the number of cases which would justify a separate district court, such justification must be on the basis of the minimum number of judges required for efficient court operation. There is general agreement that a multi-judge court has the potential to be more efficient than a single judge court. Because of this, it is undesirable to create additional districts unless the new district's workload can support at least two judges. There is no doubt that the Tri-County workload would support at least two and probably three judgeships.

The estimate of 1,030 case filings per year does not necessarily represent the actual number of cases which would be filed if a new court were created. This Tri-County figure includes a number of cases involving residents of the remaining counties of the Central District which could be filed in the court at Los Angeles. On the other hand, some cases currently filed in state court would in all likelihood be filed in a new federal court in the Tri-County area. Because of the uncertain volume of these cases, this study identifies only the maximum number of cases currently filed in the Central District which could be filed in the new Tri-County court and makes no attempt to predict an exact caseload for the new court.

D. Consideration of Views of the Local Community

1. Questionnaires. To assess the impact of creating a new judicial district on segments of the local population regularly involved in the federal courts, information was solicited from available attorneys, jurors, witnesses and litigants. Because these groups involve a significantly large number of persons, the most effective means of obtaining their views was to distribute questionnaires. The questionnaire developed for distribution to attorneys attempted to draw on their experience in the operation of the court, while the

questionnaire developed for distribution to jurors, witnesses and litigants focused more on convenience and public access to the federal court. Copies of the questionnaires developed for each group are provided at Appendix 1.

- a. Attorneys. Based on the listing of attorneys obtained in the civil and criminal case identification process described above, a random sample of 1,000 attorneys was selected. A questionnaire requesting information on their experience in the federal courts and seeking their views on the creation of a new district was mailed to each attorney. Return envelopes were provided to facilitate submitting completed questionnaires. Of the random sample of 1,000 attorneys, 339 (33.9%) submitted completed questionnaires. A summary of their responses is provided in Appendix 1 to this report.

The questionnaire distributed to attorneys in the Central District of California was designed to obtain information in four areas: (1) whether or not the attorney favors the creation of a new district; (2) what counties should be included if a new district were created; (3) what advantages/disadvantages the attorney sees in creating a new district/divisional office; and (4) what location the attorney favors for any new district/divisional office/place of holding court.

Of the 339 attorneys responding to the questionnaire, 50.1% indicated that they favor creating a new district. It should be noted that of the 1,000 attorneys asked to submit questionnaires more than 700 have offices outside the Tri-County area.

Approximately one-fourth of the attorneys responding indicated from 1 to 5 years experience in the Central District. This group expressed a slightly higher degree of preference (61%) for a new district than the more experienced groups. All the remaining groupings based on experience were evenly divided.

On the basis of workload in the last 12 months, 62% of the attorneys responding handled 5 cases or less in the district and an additional 20% handled from 6 to 10 cases. Of the attorneys handling 1 to 5 cases, 53% were in support of a new district; of the group of attorneys with caseloads of 6-10 cases per year only 46% favor the creation of a new district. The remaining groups were evenly divided.

On the question of which counties should be included in any new district, 47% of the attorneys responding indicated that a new district should include Orange, Riverside and San Bernardino. Approximately 11% of the respondents indicated that Santa Barbara, San Luis Obispo, and Ventura counties should be made into a new district. Finally, approximately 8%

felt that Orange County alone should be established as a separate district.

Attorneys receiving questionnaires were also asked to list advantages and disadvantages of creating a new district. The majority of the responses relate to increased convenience and access to the court, speedier disposition of cases and a reduction in backlog. These advantages are more directly related to the number of court locations and the number of judges and other court personnel than to whether the area should be a separate district or not. Unless otherwise dictated, a new district created from the current Central District would be composed mainly of personnel transferred from the current district and only minimal increases in personnel would be experienced.

A final area addressed by the questionnaire to attorneys was their preference on the location of a new district, divisional office, or place of holding court. While the attorneys specified recommended locations for each of these places, the responses were remarkably similar. The most popular locations in the Tri-County area in order of preference were Santa Ana, Riverside, and San Bernardino. Santa Ana is located in Orange County, Riverside in Riverside County, and San Bernardino in San Bernardino County. Santa Ana represents more or less the current population center of the Tri-County area, while the other two locations are closer to the geographical center of the area. At such time as a new district, division or place of holding court is approved, a more extensive analysis should be undertaken to determine the most desirable location.

- b. Jurors. As one of the major groups required to travel to the federal courts, the views of potential jurors called for jury service in the Central District of California were also solicited. A random sample of 1,000 jurors called for service was obtained from the court files. Questionnaires were mailed to each juror in the sample and return envelopes were provided to facilitate submitting responses. Of the 1,000 jurors asked to complete questionnaires, 604 (60.4%) submitted responses. A summary of the responses is provided in Appendix 1.

The questionnaire distributed to jurors in the Central District solicited information related to convenience in three areas: (1) travel distance to the court; (2) travel time to the court; and (3) availability and use of public transportation in traveling to the court. Of the 604 jurors submitting questionnaires, 146 were submitted by Tri-County area residents.

The responses of the 146 Tri-County jurors indicated that 78.8% live between 20 and 50 miles from the Los Angeles courthouse, while an additional 15.8% (mostly Riverside and San Bernardino county residents) live more than 50 miles away.

Perhaps a more effective measure of convenience is the travel time from home to the court. Approximately 64 percent of the Tri-County jurors indicated a travel time of 1 to 2 hours; only 7.5 percent reported travel times of more than 2 hours.

Another factor affecting convenience is the availability and use of public transportation. With the exception of a limited bus system, the Los Angeles metropolitan area has little available public transportation. The responses received from Tri-County area jurors indicate that only 54.8% have available public transportation to the courthouse. This lack of public transportation is somewhat compensated for by the fact that Los Angeles has one of the most extensive freeway systems in the world. The majority of travel in the Southern California area is by automobile, as evidenced by the fact that 84.9% of the jurors traveled to court by automobile. Despite the excellent freeway system, travel in this area is still extremely difficult due to the excessive traffic congestion throughout Southern California, especially during rush hours.

From this data it appears that many of the Tri-County jurors are somewhat inconvenienced by having to travel between 20 and 50 miles on a highly congested freeway system to get to the courthouse in Los Angeles*. However, it is not necessary to create a separate district to improve the situation. Among the alternative solutions is the creation of a divisional office in the Tri-County area, with a jury plan developed to minimize the inconvenience to jurors.

- c. Witnesses and Litigants. Two additional groups whose views are considered to be extremely important in determining the need for a new district are witnesses and litigants. Unlike attorneys, whose addresses were generally on record, and jurors, whose names and addresses are computerized at the court, witnesses and litigants were considerably more difficult to poll. Therefore, with the aid of the personnel in the clerk's office each witness and litigant participating in a trial in the Central District of California during the period April 16 through May 11, 1979 was given a questionnaire to be completed and forwarded to the Administrative Office. During this period 450 questionnaires were distributed to witnesses and litigants.

*See the Public Hearings Section of this report (page 21) for a detailed discussion of the jury plan for the Central District of California and its effects on prospective jurors from the Tri-County Area.

Due to the fact that only 14 of the approximately 450 witness and litigant questionnaires distributed by the court were returned to the Administrative Office, the responses are insufficient to draw conclusions on the convenience in travel time and distance to the court. The extent to which witnesses and litigants are inconvenienced by the current structure of the Central District is probably consistent with the analysis of jurors' inconvenience noted above.

2. Public Hearings. Two days of public hearings were scheduled in the Central District of California to: 1) obtain the views of the local community on the need for creating a new federal judicial district and 2) develop background on the geographical factors influencing the court's services to the community and the community's access to the court.

Notification of hearings scheduled in Los Angeles on April 17, 1979 and Santa Ana on April 19, 1979, was published on March 30, April 1 and 2, 1979 in the LOS ANGELES TIMES and in the LOS ANGELES JOURNAL (See Appendix 2).

Within the time limits specified in the hearing notification, there were no requests to appear at the Los Angeles hearings. However, after the deadline of April 6, 1979, two Los Angeles attorneys filed written requests to appear. When no additional requests for appearance in Los Angeles were received by Friday, April 13, the hearing was cancelled (See cancellation notice, Appendix 2). The two Los Angeles attorneys who requested to appear were interviewed by staff of the Administrative Office and their position with regard to creation of a new district is discussed below.

The April 19, 1979 hearing in Santa Ana generated substantial interest as nearly 30 individuals requested to make an appearance. The hearing was conducted as scheduled with Judge Howard B. Turrentine, U.S. District Judge, Southern District of California, presiding. All who requested to appear were given an opportunity to present their views. The transcript of the hearings and all written material submitted for consideration are attached at Appendix 2.

There was substantial support at the public hearings for the creation of a separate federal judicial district. Each speaker was in favor of splitting the current Central District of California into a Tri-County district consisting of Orange, Riverside, and San Bernardino counties with the remaining Central District consisting of Los Angeles, Santa Barbara, San Luis Obispo, and Ventura counties. Reasons most commonly stated as justifying a separate district for the Tri-County area were:

- a. The counties of Orange, Riverside, and San Bernardino are among the fastest growing counties in the United States and the need for a separate district court will continue to exist.
- b. The round trip distance to the federal court in Los Angeles from the Tri-County area averages between 62 and 120 miles.

This distance through the very congested freeway system in and around Los Angeles is much too far and inconvenient to travel.

- c. There are certain social and economic benefits to be gained by creating a new district for the Tri-County area:
 - (1) There would be reduced attorney fees due to a reduction in travel time.
 - (2) Many of those who are now excused from jury duty because of the 40 mile limit would have an opportunity to serve if a separate district were created for the Tri-County area. Presently, there is a concentration of jurors in the federal court from Los Angeles County with very few from the surrounding counties. This situation raises questions of fairness to defendants and litigants generally.
 - (3) The transportation costs for those who are required to serve as jurors will be greatly reduced if a separate district were created in the Tri-County area.
- d. There is a need to provide better and more centrally located services to the nearly 3 million people residing in the Tri-County area.
- e. For criminal cases prosecuted in the federal court which county law enforcement officials jointly investigate with the FBI, many of the state witnesses are required to travel to court in Los Angeles to testify. Since the federal court in Los Angeles is so far away, these witnesses cannot remain on call until the last minute but remain in Los Angeles even though their testimony may be very brief. This situation results in considerable inconvenience to the local law enforcement agencies in each of the counties and also to the personnel in the prosecuting attorney's offices.
- f. Population growth in the Tri-County area will exceed by a large margin the population of the state of California as a whole.
- g. Major employers with all their attendant problems and potential federal cases have demonstrated a fondness for locating in the Tri-County area.
- h. Issues arising in the Tri-County area involve the jurisdiction of the federal courts at least to the extent of other areas of similar size now served by separate court facilities.
- i. The lack of public transportation within the Central District of California makes it virtually impossible for the poor people of the area to go to the federal court in Los Angeles.

- j. Virtually all the population growth expected in Orange County in the coming years will be in the southern part of the county, that part furthest from the court in Los Angeles.
- k. The distance to the federal court in Los Angeles deprives a large segment of the population of the opportunity to serve as jurors.
- l. There are substantial benefits in energy savings to be derived from locating a federal court in the Tri-County area.
- m. The Tri-County area generates sufficient caseload to warrant the creation of a separate federal court.

The two Los Angeles attorneys interviewed by the Administrative Office staff oppose the creation of a separate federal judicial district in the Tri-County area for the following reasons:

- a. It is undesirable to divide into two districts an area which is now a geographically unified metropolitan area.
- b. There is an apparent lack of statistical justification for creating a separate judicial district in the Tri-County area.
- c. If such a district is created, there will be unnecessary expense accompanying such a change.
- d. Having a small district in close proximity to the Central District within the single metropolitan area could result in forum shopping.

The predominant theme of those speaking in favor of creation of a separate Tri-County district was the accessibility of the court for the nearly 3 million residents of Orange, Riverside, and San Bernardino counties and the tremendous inconvenience to attorneys, litigants, jurors and witnesses who must travel through a very congested freeway system in and around Los Angeles to get to the federal court.

Most of the problems raised with regard to the inconvenience of those who must travel to the federal court in Los Angeles and to the inaccessibility of the court relate to court location rather than organization. Most, if not all, of the problems raised during the public hearings and in written materials submitted to the Administrative Office can be solved without creating a separate federal judicial district. There is little doubt that having only one court location within an area as large as the current Central District of California creates problems of convenience and accessibility for the large number of residents of the counties surrounding Los Angeles.

Because of the provisions in the jury plan, most of the jurors who serve in the Central District of California are from Los Angeles County. The jury plan for the Central District of California provides

that jurors can be excused from service if they live more than 40 miles from the courthouse in Los Angeles. Most parts of the surrounding counties are beyond the 40 mile radius and many of the prospective jurors exercise their option to be excused. In the past, it has not been particularly inconvenient for most jurors serving in the Central District of California because of this factor. However, with enactment of the Jury Reform Act of 1978, a fixed distance can no longer be used as an excuse from jury duty. Therefore, many of those individuals who have previously been excused on the basis of distance will now be required to travel to Los Angeles to serve as jurors. Because of the distance involved, this will create an additional hardship on those prospective jurors who will no longer have an automatic excuse from service on a federal jury.

All of the problems raised with the current organization of the Central District of California and with the convenience to the residents of the Tri-County area can be solved without creating a separate federal judicial district. Establishment of a divisional office in the Tri-County area with adequate facilities for at least two judges and all support services, would solve all the problems of inconvenience and accessibility to the courts. A separate jury plan could be established for a Tri-County division to insure that the residents would only be required to serve in the Tri-County divisional office. Creation of a separate and distinct judicial district would do nothing more than add some unnecessary expense to the operation and maintenance of the United States District Court for that area.

Another subject addressed frequently in the hearings was the location of any new court created for the Tri-County area. The predominant location suggested for the court is the City of Santa Ana. While Santa Ana may currently be considered near the population center of the Tri-County area, the establishment of the court at this location may create some future problems for the new court. Any significant future population growth in the eastern counties of Riverside and San Bernardino will tend to shift the population center east, away from Santa Ana. Therefore, considerable thought should be given to locating any court in the Tri-County area in a place as close as possible to the geographical and future population center of the area.

- E. Probable Costs of Creating a New District. Following is an estimate of the additional costs to the judiciary of establishing and operating a new federal district court covering the counties of Orange, Riverside, and San Bernardino. The estimates are based on the assumption that much of the costs of operating a new district would be offset by corresponding reductions in the costs of operating the court in Los Angeles.

Table 5
COST OF CREATING A NEW DISTRICT IN CENTRAL CALIFORNIA

		No. Pos.	Salaries and Expenses Nonrecurring	Recurring
A. Compensation and Benefits				
1.	District Court Judges and Staff. It is estimated that the caseload of the proposed district will be about 1,030 case filings per year. Given approximately 350 case filings per judgeship, it is anticipated that three judges and their staffs would be transferred from the present district to the proposed district.....	(15)	\$ ---	\$ ---
2.	Clerk of Court and Staff. The proposed district would be eligible for a clerk of court, JSP-15, and a chief deputy clerk, JSP-14. This will result in a new position for the clerk and an upgrading of an existing position for a chief deputy.....	1	---	52,000
	Based on the standard ratio of 100 filings per deputy, the proposed district would be eligible for eleven positions. An additional four positions are provided for equivalent workload, including naturalization, check writing, and other work not directly related to filings. There would be an offset by a comparable reduction in positions in the Central California District Court clerk's office.....	(15)	---	---
3.	Probation. The new district will require a new chief probation officer at JSP-14 and a secretary at JSP-5.....	2	---	47,000
	The 16 probation officers and five clerks presently located in the same geographic area as the proposed district will remain.....	(21)	---	---
4.	Magistrates. There are two part-time magistrates in San Bernardino and one part-time magistrate in Santa Ana. It is anticipated that the part-time magistrate at Santa Ana would be made full time and provided with staff after the proposed district will be established.....	3	---	67,600
5.	Bankruptcy Court. Bankruptcy case filings for Central California totaled 12,375 during a recent 12 month period. It is estimated approximately 3,700 of those filings will originate in the proposed district. Presently four of the 11 bankruptcy judges in Central California are located in the area of the proposed district (San Bernardino and Santa Ana). Given the number of estimated filings, it is likely that the four bankruptcy judges and their staffs of 28 clerks and secretaries would remain.....	(33)	---	---
	With four bankruptcy judges in the proposed district, the bankruptcy court would be eligible for a clerk of court at JSP-15 and a chief deputy at JSP-14. This would result in a new position for the clerk and an upgrading of an existing position for the chief deputy.....	1	---	52,000
6.	Federal Public Defender. With an estimated criminal caseload of 310 cases, it is believed that the office of Federal Public Defender will be created in the proposed district with the new positions of public defender and secretary.....	2	---	61,000
	Given this estimated caseload, the office will also require two assistant public defenders, an investigator, and an additional secretary. These positions would be offset by a comparable reduction in the position of the defender's office in Los Angeles.....	(4)	---	---
B. Miscellaneous Expenses				
1.	The miscellaneous expenditures are for the nine additional personnel required by the district court, the probation office, the magistrate's office, the public defender's office and the bankruptcy court of the proposed district. The expenditure includes travel, communications and utilities, supplies, security investigations, equipment, and libraries.....	---	92,000	27,400
C. Relocation Expenses				
1.	Of the 94 positions which are identified for the new district, 21 probation personnel and 33 bankruptcy personnel are already located in the area. Relative to the remaining positions, it is contemplated that some of the personnel, particularly the judges, persons on their staffs, and some the deputy clerks in Los Angeles will be given the opportunity to be relocated in the best interest of the Government. It is estimated that twelve persons will be relocated at an approximate cost of \$10,000 each....	---	120,000	---
D. Furniture and Space				
1.	Estimated furniture requirements for the new personnel and the personnel who transfer to the proposed district.....	---	268,000	---
2.	General Services Administration estimates that the construction of a new facilities for judgeships costs approximately \$450,000 each. An additional \$150,000 is provided for major space alterations for the magistrate's and clerk's offices. Although the proposed district will receive somewhat the space situation in Los Angeles, it is likely that existing judges' chambers and courtrooms will be retained for visiting judges and other future use....	---	1,500,000	268,000
TOTAL ADDITIONAL COSTS.....			\$ 2,000,000	\$ 575,000

() Non-add

- F. Review of Judicial Conference Policy With Regard to Creating New Districts. During the last 30 years the Judicial Conference of the United States has periodically reviewed its policy with regard to creation of additional federal judicial districts. Generally the Judicial Conference has opposed creation of additional judicial districts except where circumstances demonstrate a compelling need.

In September 1948 the Conference adopted the following resolution:

Be it resolved, That, henceforth, the Judicial Conference of the United States will definitely oppose the creation of any additional judicial district; and, where it is found that additional judicial service is necessary, it will recommend that such service be provided by the creation of additional judgeships within the then existing judicial districts.

This position was reaffirmed in September 1955 and again at the Judicial Conference of March 1961.

In September 1961 the Conference reviewed its procedure for the consideration of additional district legislation referred to it by Congress. The Conference directed that any such bill "...be submitted by the Director of the Administrative Office first to the Judicial Council of the Circuit involved for its consideration and recommendation, which shall then be transmitted by the Director to the Committee on Court Administration for its consideration and report to the Judicial Conference".

In September 1967, when voting its disapproval of legislation to create an additional district in the State of Louisiana at Baton Rouge, the Conference took note of its policy on creating new judicial districts. At that time the Conference stated that no new districts should be created "...unless required by emergent circumstances such as large increases in population".

Five years later in October 1972 the Judicial Conference approved a recommendation of its Committee on Court Administration and reaffirmed its position that:

"...no new place of holding court shall be approved in the absence of a showing of a strong and compelling need; further, when a Congressional or other request is received and before referral to a committee of the Conference, the Administrative Office shall first seek the views of the chief judge of the district involved and of the judicial council of the circuit as to the merits of the proposal. Only if the proposal meets with the approval of both and supporting data are provided shall the proposal be referred to the committee of the Conference."

This policy was expanded in September 1975 to include proposals for the establishment of new districts or new divisions within existing districts.

At the last regular session of the Conference in September 1978 the following resolution was approved:

The Judicial Conference reaffirms its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after showing of strong and compelling need. Therefore, whenever Congress requests the Conference's views on bills to:

1. create a new judicial district;
2. consolidate existing judicial districts within a state;
3. create new divisions within an existing judicial district;
4. abolish divisions within an existing judicial district;
5. transfer counties from an existing division or district to another division or district;
6. authorize a location or community, including facilities, as a statutorily designated place at which "court shall be held" under Chapter 5 of title 28, United States Code; or
7. waive the provisions of Section 142 of title 28, United States Code, respecting the furnishing of accommodations at places of holding court -

the Director of the Administrative Office shall transmit each such bill to both the chief judge of each affected district and the chief judge of the circuit in which each such district is located, requesting that the district court and the judicial council for the circuit evaluate the merits of the proposal and formulate an opinion of approval or disapproval to be reviewed by the Conference's Court Administration Committee in recommending action by the Conference. In each district court and circuit council evaluation, the views of affected U.S. Attorney's office, as representative of the views of the Department of Justice, shall be considered in addition to caseload, judicial administration, geographical, and community-convenience factors. Only when a proposal has been approved both by the district court affected and by the appropriate circuit judicial council, and only after both have filed a brief report with the Court Administration Committee summarizing the reasons for their approval shall that Committee review the proposal and recommend action to the Judicial Conference.

While this study of the need for a new federal judicial district in California is the result of a Congressional mandate, it was designed to be consistent with the factors specified in the September 1978 resolution of the Judicial conference.

IV. Summary of Relevant Factors. A new federal judicial district consisting of Orange, Riverside, and San Bernardino counties would have approximately 2.9 million residents and 28,000 square miles. This area generates approximately 1,030 civil and criminal cases per year or 17% of the total caseload of the existing Central District of California. The only place of holding court in the current district is Los Angeles. There are no other districts with comparable population, caseload, and area which have only one place of holding court.

All district judges, clerk's office personnel, and U.S. Attorney's Office personnel are located in Los Angeles while the other components of the court are organized on a divisional basis. Creation of a separate district would have little effect on the current judicial administration other than the initial inconvenience of transferring personnel and records. Establishment of a divisional office or place of holding court would create the same initial inconvenience and may also result in some loss of efficiency and continuing inconvenience. This is especially true in the clerk's office, which would be required to maintain two separate locations within one district.

The area in and around Los Angeles is sufficiently congested to make travel by automobile very time consuming. Travel by public transportation, especially for those residents who live outside the city of Los Angeles, is nearly impossible because of the almost total lack of public transportation facilities.

There is substantial support among the residents of the Tri-County area for creation of a separate federal judicial district. The distance and inconvenience in traveling to the federal court in Los Angeles is the reason most often cited as justification for a separate district. While inaccessibility and inconvenience to the federal court are reasons for location of a court facility in the area, they are not compelling reasons for separating the area from the existing district.

Since convenience and accessibility are a function of court location rather than organization, a thorough study should be conducted to determine the ideal location for any new court in the Tri-County area. At a minimum the study should examine (1) population trends, (2) geographic factors, and (3) availability of public transportation.

Assuming that creation of a district for Orange, Riverside, and San Bernardino counties would not require substantial additional personnel, the cost of yearly operation over and above the present cost would run approximately \$575,000. There would be a one-time cost of approximately \$2,000,000 for relocation expenses, furnitures requirements, and construction cost for the facility which would be located in the Tri-County area. These cost figures are for the judiciary only.

V. **Recommendations.** This study revealed no compelling evidence of a need to create a separate judicial district for Orange, Riverside, and San Bernardino counties. There was substantial evidence that the current single location for holding court in the Central District is inconvenient for a substantial portion of the population of that area and because of the lack of public transportation throughout the area, the court is inaccessible to many of its residents. However, the problems of inconvenience and inaccessibility can be solved by means other than creating a separate federal judicial district.

The Administrative Office, therefore, recommends:

- A. That a Tri-County divisional office be established in the Central District of California and located in an area convenient to the population and geographic centers of Orange, Riverside, and San Bernardino counties.
- B. That Congress appropriate funds to provide adequate facilities for this divisional office as well as all related services including a detention facility for criminal defendants and space for a branch U.S. Attorney's office.
- C. That Congress take steps to insure that sufficient judicial manpower is assigned to this divisional office so that cases originating in the Tri-County area will in fact be tried in the Tri-County divisional office.
- D. That Congress conduct a detailed study to determine the ideal location for a Tri-County divisional office.

Riverside County Bar Association

3765 TENTH STREET • RIVERSIDE, CALIFORNIA 92501
TELEPHONE: (714) 682-7820

BARTON C. GAUT
PRESIDENT
RALPH EVAN BROWN
PRESIDENT-ELECT
GERALD D. POLIS
VICE PRESIDENT
ROBERT J. HANNA
SECRETARY
ROBERT A. MCCARTY
TREASURER
WILLIAM CUNNINGHAM
EXECUTIVE DIRECTOR

MAR 10 1980

February 15, 1980

RESOLUTION

WHEREAS, the administration offices of the United States courts has recommended a Tri-County Divisional Office within the Central District of California, within which a federal district court would sit to hear a matter of a federal nature arising in Orange, Riverside and San Bernardino Counties; and

WHEREAS, there has been no location established for that division of the federal district court; and

WHEREAS, the Riverside County Bar Association believes that the administrative offices of the United States courts should undertake a detailed study of the best location for such a division based upon the geography and population in the Tri-County Division now, and its projected future growth.

NOW, THEREFORE, the Riverside County Bar Association hereby resolves as follows:

1. That a Tri-County Division of the Central District of California be established in an area convenient to the population centers of Orange, Riverside and San Bernardino Counties;

2. That congress appropriate sufficient funds for the administrative office to study the demographics of the proposed Tri-County Division as they now exist and as they are projected in the future and on the basis of such study, locate the court in the area most centrally located for the geography and present and future population within the area.

BE IT FURTHER RESOLVED that the officers of the Riverside County Bar Association be directed to send this resolution to the representatives for the Riverside area and the senators from the State of California as well as to other individuals and entities they may deem appropriate.



RIVERSIDE COUNTY BAR ASSOCIATION

INSERT 2.



COUNTY OF RIVERSIDE

August 19, 1980

Hon. George E. Brown
Representative, 36th District
Post Office Box 71
Riverside, California 92502

Dear Mr. Brown:

The Riverside County Board of Supervisors strongly supports your efforts to locate a new Federal Court in Riverside as is proposed in your bill H.R. 5789. We believe that all of the demographic data confirms the fact that a new court should be located in this community. Riverside is rapidly becoming the regional center of many important Federal services and programs, and locating a new Federal Court here would be highly consistent with the development that has already occurred.

Should you in any way require our assistance on H.R. 5789 please do not hesitate to call on us.

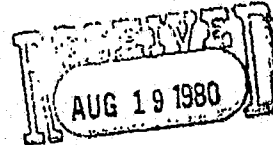
Sincerely,

A. A. McCandless
A. A. McCANDLESS
Chairman, Board of Supervisors

COUNTY ADMINISTRATIVE CENTER • FOURTEENTH FLOOR • 4080 LEMON STREET • RIVERSIDE, CALIFORNIA 92501

BOARD OF SUPERVISORS

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787-2440
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787-2450



CITY OF *Riverside* CALIFORNIA 92522 • 714/787-7551 •



AB BROWN
Mayor

August 7, 1980

Congressman George E. Brown
2342 Rayburn Building
Washington, D.C. 20515

Just a note, George,

to let you know that the City Council at their meeting of July 29 went on record as strongly supporting Bill HR 5789 which would establish a new division of the Central Judicial District of California and locate federal court facilities in the Riverside area. This would indeed increase the level of services to the western portion of Riverside and San Bernardino Counties.

The City Council and I sincerely hope our support will help to insure the success of the HR 5789 Bill. If we can be of any further help, please let us know.

Sincerely,

AB
Ab Brown
Mayor

SISTER CITIES



SENDAI, JAPAN



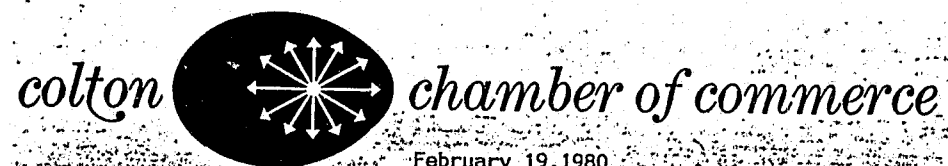
CUAUTLA, MEXICO



SAN BERNARDINO, CALIFORNIA



ENSENADA, MEXICO



February 19, 1980

FEB 20 1980

Congressman George E. Brown, Jr.
United States Congress
2342 Rayburn House Office Building
Washington, D.C. 20515

Dear George:

At the last meeting of the Colton Chamber of Commerce Board of Directors, it was unanimously approved to support your bill, HR5789, concerning a United States District Court for this area.

This board requests that congress conduct a detailed study to determine the ideal location for this tri county divisional office. At the present rate businesses and industries are moving into San Bernardino and Riverside Counties, we feel this area should be looked at seriously as a site for a district court.

Sincerely,

Frank M. Rebollo
Frank M. Rebollo
Manager

620 N. LA CADENA DRIVE • COLTON, CALIFORNIA 92324 • PHONE (714) 825-2222



SAN BERNARDINO AREA CHAMBER OF COMMERCE

P.O. BOX 658 • 546 W. 6TH STREET • SAN BERNARDINO, CALIF. 92402 • (714) 885-7515

RESOLUTION OF THE SAN BERNARDINO AREA CHAMBER OF COMMERCE BOARD OF DIRECTORS

AT A REGULAR MEETING ON FEBRUARY 21, 1980, THE BOARD OF DIRECTORS OF THE SAN BERNARDINO AREA CHAMBER OF COMMERCE ADOPTED THE FOLLOWING RESOLUTION PERTAINING TO THE CONSTRUCTION OF A NEW FEDERAL COURT, HR 6060.

WHEREAS, a Federal Court in the area would be very advantageous to the Inland Empire and

WHEREAS, the population is shifting into the Riverside, San Bernardino area and

WHEREAS, a new Census will be taken this year and

WHEREAS, Congressman Jerry M. Patterson of Orange County has authored HR 6060 to have the new Federal Court located in Santa Ana and

WHEREAS, the reasoning for this bill is based on the 1970 Census data,

THEREFORE LET IT BE RESOLVED that the San Bernardino Area Chamber of Commerce opposes HR 6060 and would support the initiation of an objective study to look at future siting of Federal Courts taking into consideration the growth and trends of the San Bernardino-Riverside areas.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the San Bernardino County Bar Association, Congressmen George E. Brown, Jr. and Jerry Lewis.

DATED: *February 21, 1980*

SIGNED: *Charles D. Obershaw*
Charles D. Obershaw, President

ATTEST *Dave Bolick*
Dave Bolick, Secretary

RESOLUTION NO. 80-35

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GRAND TERRACE, CALIFORNIA, SUPPORTING HR 5789 (BROWN), LEGISLATION TO ESTABLISH A NEW DIVISION OF THE CENTRAL JUDICIAL DISTRICT OF CALIFORNIA IN RIVERSIDE.

WHEREAS, the only place of holding Federal Court in the Central Judicial District of California is in Los Angeles; and

WHEREAS, the area in and around Los Angeles is sufficiently congested to make travel by automobile very time consuming and travel by public transportation, especially for those residents who live outside the City of Los Angeles, is nearly impossible because of the almost total lack of public transportation facilities; and

WHEREAS, the Administration Office of the United States Courts has recommended a Tri-County Divisional Office within the Central District of California, within which a Federal District Court would sit to hear a matter of a federal nature arising in Orange, Riverside, and San Bernardino counties; and

WHEREAS, population studies show that Riverside and San Bernardino counties are the two fastest growing counties in the State, according to the State Department of Finance; and

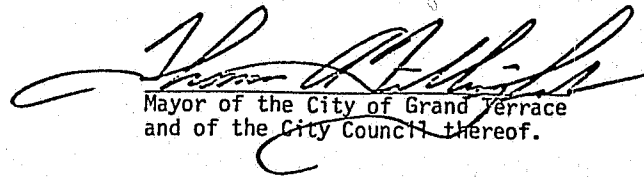
WHEREAS, while Orange County also shows increases in their population, consideration should be given to the accessibility and convenience of residents of outlying areas, such as Palm Springs, 29 Palms, Coachella, and others:

NOW, THEREFORE, the City Council of the City of Grand Terrace DOES RESOLVE THE FOLLOWING:

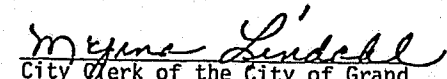
1. That a Tri-County Division of the Central District of California be established in an area convenient to the population centers of Orange, Riverside, and San Bernardino counties;
2. That Congress appropriate sufficient funds for the Administrative Office to study the demographics of the proposed Tri-County Division as they now exist and as they are projected in the future; and, on the basis of such study, locate the court in the area most centrally located for the geography and present and future population within the area.

BE IT FURTHER RESOLVED that the City Clerk be directed to send this Resolution to Representatives George Brown, Jr., and Jerry Lewis, Senator Alan Cranston, and Senator S. I. Hayakawa.

ADOPTED this 7th day of August, 1980.


Mayor of the City of Grand Terrace
and of the City Council thereof.

ATTEST:


City Clerk of the City of Grand
Terrace and of the City Council
thereof.

Approved as to form:

/s/ Ivan Hopkins
City Attorney

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.
CITY OF GRAND TERRACE }

I, MYRNA LINDAHL, City Clerk of the City of Grand Terrace,
DO HEREBY CERTIFY that the foregoing Resolution was duly adopted
by the City Council of said City at a regular meeting of the City
Council held on the 7th day of August, 1980, and
that it was so adopted by the following vote:

AYES: Councilmen Grant, Petta, Nix, Rigley;
Mayor Tillinghast.
NOES: None
ABSENT: None

Myrna Lindahl
City Clerk of the City of Grand
Terrace and of the City Council
Thereof.

(SEAL)

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.
CITY OF GRAND TERRACE }

I, MYRNA LINDAHL, City Clerk of the City of Grand Terrace,
DO HEREBY CERTIFY that the above and foregoing is a full, true and
correct copy of Resolution No. 80-35 of said City Council, and
the same has not been amended or repealed.

DATED: August 7, 1980

Myrna Lindahl
City Clerk of the City of Grand
Terrace and of the City Council
thereof.

(SEAL)

Mr. KASTENMEIER. I would trust if for any reason it is not in-
cluded, the Santa Ana inclusion would not prejudice the Long
Beach case.

Mr. ANDERSON. I might tell you one thing: 130 years ago, when
the States had the gold rush, and George can tell you all about
this, we had to form a lot of counties that were in 1 day's walking
time from where the guy found the gold claim to the county seat,
so we had 40 counties in the north and none in the south. In the
north we have 42 counties. So you may say, since they are in the
same parish, Long Beach should not have one, but it is unusual
that we have these big parishes in some parts of the State. But it is
still farther from Long Beach to Los Angeles than it is from San
Francisco to Oakland, where you already have seatings.

Mr. DANIELSON. Mr. Anderson said I could tell you about the
gold rush. I want to make one correction. Frankly, I got there just
after the gold rush.

Mr. KASTENMEIER. I will ask Mr. Danielson to take the chair.

Mr. DANIELSON (presiding). Mr. Patterson, do you have a presen-
tation?

Mr. PATTERSON. I have submitted a statement, which I previously
asked to be inserted in the record, and I will yield to questions.

Mr. DANIELSON. I am pleased my chairman had to leave the
room for a moment, because that passes the baton to me, and I will
call upon the Hon. Richard Chambers, a senior circuit judge of the
Ninth Circuit Court of Appeals. He is a senior judge carrying a full
workload and enjoys the confidence of the chief judge, to the point
where they have him do all the hard work of the circuit by taking
care of matters such as this administrative matter.

Judge Chambers, I appreciate your having come back to partici-
pate in this hearing, because I know you have spent a great deal of
time on this.

We have two bills, one which I introduced and another which
Congressman Patterson introduced, both of which provide that
Santa Ana should be designated as an additional place for holding
court. Can you speak briefly to the need, touching on such points
as does the population distribution of Orange County justify the
selection, will it serve a genuine need, will it relieve pressures on
judges, litigants in terms of travel? And can you tell us what the
probably effect may be on caseload, disposition of cases?

Judge CHAMBERS. Well, thank you for inviting me to come, Mr.
Danielson. I think in discussing this thing, I have found, maybe it
adds confusion, I do not think so, to refer to "place of holding
court" as a rule division. That means the court prescribes within
its district the boundaries of cases that will normally be heard at
the place of holding court. Then, of course, there is the statutory
division prescribed by the Congress, and within the statutory divi-
sion Congress will prescribe places of holding court. You can have
rule divisions within a statutory division. Then there is the district.

Now I want to make one thing clear. There is a little confusion
here. The administrative office mandated by Congress turned in a
report recommending a statutory division. The district court recom-
mended a place of holding court, in my language, a rule division.
We followed that recommendation. We were aware at all times—I
do not mean the first day, but as they were finishing their work—

we were aware what they were going to recommend, and you notice the report deduction where the statutory place of holding court should be located.

Let me say that, had they made a recommendation, they were in a no-win situation. I know the question may be asked, were we aware of what they were doing, did we consider it? Sure we considered the factors, and we bit the bullet, after buying it, and recommended Santa Ana.

I am very distinctly under the impression that one factor in recommending a statutory division by the administrative office may have been that sometimes the rule division does not work out very well. For instance, Oakland has been a place of holding court for 14 years, according to the statute. During that time, we have not had a single judge from Oakland on that court, and they have just now gotten one. In my vernacular, that did not accomplish much, because we had no one that loved Oakland. Excuse my impertinence. I think Oakland got into the statute because everybody wanted to tip their hat on that 1966 bill to the Chief Justice whose whole career started in Oakland. But they now have one from Oakland appointed, and you will see that begin to work.

Santa Ana is unique in that Orange County has two active and one retired in it now, Mr. Weller, is that right?

Mr. WELLER. Yes.

Judge CHAMBERS. And there are two or three that have beach houses in Orange County who would like to sell their house in town and move down there.

Mr. DANIELSON. I gather, sir, you do not think it will be difficult to find a district judge from the central district who will be willing to canvass that area.

Judge CHAMBERS. The problem it will present is who does not get to go. That is unique in the history of the ninth circuit.

But another thing, they have formally resolved, in fancier language, by opening it up as a place of holding court, that it will not be a dead letter, that they will faithfully try to make it work and will make it work. Some reference has been made to cost of facilities. Well, of course, some day it means a new Federal courthouse there. But I foresee that it will start off about like our move to Pasadena. First, the county gives facilities in Pasadena for nothing for a year and a half. Then they grow and they do not have room for us at the courthouse there. So, we go over to the city and they rent us their council chambers to hold court in. Eventually we will have our building there.

One very serious problem at Los Angeles is what on earth they are going to do for more courtrooms at Los Angeles. They obviously are going to inherit one from us, but where do they get any more? So, anything we can get in an outlying district is good transferred out there.

Now, I will not go fully into it, but one of the fears I have, not my personal fear, but one we collectively have, is, we do not want to get 30 branches of our court in the city of Los Angeles, in the county of Los Angeles. But that is not before you, except the Long Beach matter. When a place gets as big as Orange County has, it reaches a point where you have to give them Federal service. I do not think with a place of holding court, which I call rule division,

initially will mean employment of more than one single deputy clerk, but you would find it would grow percentagewise much faster than Los Angeles would. So, as business builds up out there, it would be very easy to say look how much Santa Ana costs. But the answer to that is, so what? If it had not gone to Santa Ana, it would have gone to the city of Los Angeles.

If you will excuse me for this impudence of always opposing judiciary waste of Government money, I have always gone to ceremonial occasions at my own expense, and things like that, but we get the judiciary, this is a three-legged Government, and we get less than 1 percent of the national budget. So, something the judiciary needs is not going to get all out of hand.

Let me say this, we have not precluded taking any stand that San Bernardino and Riverside never should have a court, but we think the county seat of the biggest county ought to be the initial one.

I do not know whether I have answered your question.

Mr. DANIELSON. If I may, sir, I believe you have. To recapitulate, you do favor the bill which would provide for Santa Ana as an additional place for holding court.

Judge CHAMBERS. The council does.

Mr. DANIELSON. This has been approved by the administrative office of the U.S. court, the Judicial Conference of the United States, the U.S. District Court for the Central District of California, the Circuit Council for the Ninth Circuit, the Orange County Bar Association, the Los Angeles Bar Association. Can you think of any other entity I may have omitted?

Judge CHAMBERS. No. Can I comment on the Los Angeles Bar Association, that is a pretty unusual thing. The reason for that is that they see it as we do, that that courthouse there is going to be overrun pretty soon.

Mr. DANIELSON. Yes, I certainly agree with you, Judge Chambers, to have the Los Angeles Bar Association endorse a place of holding court in a different court is probably the most eloquent evidence of a place for holding court.

I can see Mr. Patterson has something he wants to add.

Mr. PATTERSON. In somewhat additional response to your question, the central judicial district of the ninth circuit court covers seven counties, some 11 million populace. The judge has indicated the rule provisions established by the court upon approval by Congress of the place of holding in Santa Ana, the three counties would be Orange County, Riverside, and San Bernardino, which would comprise a population of over 3 million people and an area still larger than 66 of the 90 districts in the United States. It would serve some 28,100 square miles.

The administrative office report, they noted if districts were created on the basis of population, there would be no area more deserving of additional districts than in the area presently contained in the central district of California.

In the caseload situation, the administrative office indicates over 11,000 cases a year would be filed in the Santa Ana place of holding which would support three judges. Of course we know the interest from Judge Chambers of judges serving in that area. The administrative office also had a survey of attorneys who practice in

the court in Los Angeles. In response to that survey, overwhelmingly the attorneys selected Santa Ana as the place of holding. In other words, more than half, 54 percent preferred that particular area, when they had options of Riverside, San Bernardino, and Los Angeles, in addition to Orange County.

Mr. DANIELSON. I do thank you for your comments. I will state that Congressman George Brown, who represents the district lying to the east, San Bernardino, Riverside, et cetera, did leave some questions on this point to be addressed, but they have been covered in the testimony that is already before us. So rather than go through them all over again, I will simply without objection allude to them in the record. They have already been covered, such items as cost, need, et cetera.

Thank you, Judge Chambers, Mr. Patterson.

Glenn Anderson, your written statement is in the record, your written as well as your contemporaneous. I think that covers the California situation.

Judge Chambers.

Judge CHAMBERS. If you would indulge me this.

Mr. DANIELSON. Certainly.

Judge CHAMBERS. The omnibus judgeship bill of 3 years ago, which has really just been filled up this last year in every large circuit, there are two or three districts that fall off the bandwagon. In our circuit, the two districts that did not get enough judgeships were the western district of Washington and the central district of California. So that will be compensated of course in the next omnibus judgeship bill, and irrespective of whether we create no further places of holding court or more. So, I do not want us to get into the box that we have to have all these new judges, because we, you, the Congress, created another place for holding court. They will not have any relationship.

Mr. DANIELSON. I do not think that is a problem here. I think the problem is that the caseload has grown. When I first started practicing in California, California had two judicial districts. The northern district portion went from San Francisco to Chowchilla. Now there are three districts, and we are putting up another court.

Thank you, Judge Chambers and Mr. Patterson.

Now we will move to the great State of Ohio.

TESTIMONY OF HON. JOHN F. SEIBERLING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. SEIBERLING. I will give you copies of my written statement, and I have a copy for the record. I do not know whether you are planning to admit additions into the record, but I have some additional data for either the record or your files.

[The information follows:]

PREPARED STATEMENT OF REPRESENTATIVE JOHN SEIBERLING

Mr. Chairman, thank you for this opportunity to testify on behalf of HR 4435, a bill I introduced to establish a new Central Division of the United States District Court for the Northern District of Ohio. The Northern District is currently comprised of only two divisions, the Eastern and the Western. The proposed Central Division would be comprised of fourteen counties which are currently part of the Eastern Division. The Western Division would not be affected by this bill.

HR 4435 requires that the court for the new Central Division be held in Akron and Youngstown, with two active judges sitting full-time in Akron and one active

judge sitting full-time in Youngstown. The bill is, however, flexible on this point in that the Chief Judge may make an alternative assignment of judges in the district in order to equitably allocate the caseload and still try cases in the division in which such cases originate.

Mr. Chairman, there is a critical need in the Northern District of Ohio for the creation of a new Central Division. A brief history of the court situation in Akron may help explain why.

Akron was designated as a site for holding Federal court in the early 1950's. However, because no facilities existed in Akron for actually operating a court, it did not become an active court site for many years. A Federal building and courthouse were finally constructed, pursuant to an Act of Congress, and the Akron court began operation on June 1, 1975. From that time until June 1, 1978, all cases filed in Akron were automatically assigned to Judge Leroy J. Contie, Jr., the only U.S. District Judge presiding in Akron. He alone handled cases from ten of the nineteen counties which make up the Eastern Division. The cases filed in Cleveland were divided among the five judges sitting there.

From the outset of the functioning of the Akron court, Judge Contie's caseload was overwhelming. He quickly had a caseload larger than any other District judge in northern Ohio. For example, in the first five months of 1978, Judge Contie had twice as many cases assigned to him as some of the full-time Cleveland judges.

Judge Contie was very successful in making the Akron court work effectively. He certainly helped bring about a clearer understanding of the Federal system in the Akron legal community. However, he was truly overworked. Despite his diligence and "overtime," he could not keep up with his ever-growing caseload. Recognizing that justice delayed is justice denied, Judge Contie urged a solution to the unmanageable caseload problem. Unfortunately, the answer arrived at created many problems of its own.

In an effort to equalize the caseload assignments, a system was set up whereby the cases filed in Cleveland and Akron would go into a common pool and be assigned to judges by lottery. Judge Contie would draw and hear cases filed in either Akron or Cleveland, and the Cleveland judges would do likewise. Under this system, an Akron case had only one chance in six of being heard in Akron. This system proved to be extremely inconvenient, costly, and time-consuming to the Akron bar and to the Akron public. Therefore, to minimize these problems and bring more cases back to Akron, Judge Contie arranged with the other Federal judges in Cleveland to trade cases in certain categories. Without going into details, this arrangement allows Judge Contie and a Cleveland judge to trade a Cleveland-filed case for an Akron-filed case on a sort of "pay-back" system. While this has alleviated the problem in part, a significant number (20 percent to 25 percent) of Akron-filed cases are still being transferred to Cleveland. In 1979, 548 cases were filed in Akron. Of these, 103 were sent to Cleveland or Toledo. Four hundred forty-five of those cases were retained for trial in the Akron one-judge court, which was 101 cases more than the average number of cases received by each U.S. District Judge, according to the Akron Court Clerk's office. Although the agreement among the judges to trade cases does seem to be working, it can be cancelled at any time. Also, the two new judges who joined the court pursuant to the enactment of the omnibus judgeship bill in 1978 and who preside in Cleveland have not become part of these agreements. Moreover, the reallocation of the District caseload to accommodate the new judges has resulted in the transfer of more cases from the Akron docket back to Cleveland. Patent and antitrust cases are not considered "swappable" categories, and therefore most of those cases end up in Cleveland. Finally, and perhaps most important, the Chief Judge of the Northern District, Judge Frank Battisti, has indicated that when Judge Contie retires he does not intend to assign a judge to the Akron court. Therefore, without HR 4435, the disappearance of the Federal Court in Akron is an unhappy but very real possibility.

The Akron area needs and deserves the additional judges that would be assigned as a result of HR 4435. Akron serves as the headquarters for four large multinational rubber companies—The Goodyear Tire & Rubber Company, The Firestone Tire & Rubber Company, B. F. Goodrich Company and The General Tire & Rubber Company. In the rubber business, a great deal of patent litigation is generated. But as mentioned above, most patent cases now must be tried in Cleveland.

The proposed Central Division area also serves as home for a wide variety of other corporate headquarters or large industrial plants, including Roadway Express, Inc.; Goodyear Aerospace Corp.; the Timken Co.; the Hoover Company; Diebold, Inc.; GMC-Lordstown; the McNeil Corp.; PPG; and Ohio Edison, the second largest electric utility in the State. It is also the headquarters of two major labor unions: the United States Rubber, Cork, Linoleum & Plastic Workers of America, and the International Chemical Workers. Also located in the region are two Federal en-

claves, the Cuyahoga Valley National Recreation Area, one of the largest urban parks in the country; and the Berlin Reservoir. This Federal presence, plus the concentration of major businesses and industries in the proposed new division, guarantees that there will continue to be produced a great deal of Federal litigation in the areas of labor law, equal employment, patent and copyright law, product liability, and contract law, in addition to Federal criminal cases or constitutional issues that may arise.

The proposed Central Division is a highly populated area. According to the 1970 Census, Summit County, where Akron is located, has a population of 553,371. The population density is 1,350 per square mile. Mahoning County, where Youngstown is located, has a population of 304,545 and a population density of 734 per square mile. The fourteen counties which make up the proposed Central Division have a population of 2,212,201 and a population density of 328 per square mile. The five counties comprising the new Eastern Division proposed by H.R. 4435 have a population of 2,336,092 and a population density of 2,289 per square mile. Mr. Chairman, I have a tabulation showing the population, square miles and population density of the counties making up the proposed new Central and Eastern Divisions, as well as the Western Division, which I would like to include in the record at the end of this testimony.

In 1979, a total of 936 cases were filed in the counties that would comprise the proposed Central Division. With three full-time judges, this would indicate a caseload of 312 cases per judge. The national average was 344 cases per Federal District judge for the year 1979. If, in fact, the caseload per judge in the Division should turn out to be less than the average for the other judges in the District, the bill provides that the Chief Judge may make an alternative assignment of judges to bring about an equitable caseload, subject to the guiding principle that cases be tried in the division in which they originate.

Mr. Chairman, downtown Cleveland is almost forty miles from Akron, seventy miles from Youngstown and sixty miles from Canton. The driving time from downtown Akron to the Cleveland courthouse is about an hour, and about two hours from downtown Youngstown to the Cleveland courthouse. In inclement winter weather, which northeast Ohio suffers from frequently, the driving time is often much greater. Consider how inconvenient this is to lawyers and their clients, who must spend four hours driving just to spend three to five minutes in the courtroom for status calls.

The time, distance and extra cost involved are more than a burden to lawyers, litigants, witnesses and jurors. Indeed, the situation imposes a real barrier to the delivery of justice in the Akron-Canton-Youngstown area. Courts exist to serve the public, but the public in Akron and Youngstown and many other cities in northern Ohio are surely being disserved by the current arrangement. That H.R. 4435 would rectify this imbalance of justice is apparent by the number of supporters this bill has garnered. Two major advocates of the bill are Judge Paul C. Weick of the United States Court of Appeals for the Sixth Circuit and Judge Leroy J. Contie of the United States District Court for the Northern District of Ohio. Both of these distinguished jurists have provided invaluable assistance in the drafting of the bill and in laying out a case for it. They have both recently written me on behalf of H.R. 4435 and I ask that their letters be printed in the record. (See appendix.)

Another major supporter of the bill has been the Akron Beacon Journal, and I ask that several of the articles and editorials advocating passage of H.R. 4435 also be printed in the record.

Other important supporters include the Akron Bar Association; the Mahoning Bar Association; the Trumbull County Bar Association; Peter Bommarito, International President of the United Rubber Workers; Alexander Teodosio, Chairman of the Summit County Democratic Party; and many prominent members of the Akron business community. I have copies of letters that some of these supporters have written to me or to Chairman Kastenmeier in support of H.R. 4435, and I ask that they too be printed in the record.

There are also a number of supporters of this bill to Congress. The cosponsors include Rep. Ralph Regula, who represents the Canton area, Rep. Lyle Williams, who represents Youngstown, and Representatives Jack Brooks, Don Edwards, John Conyers, George Danielson, Robert Drinan, Elizabeth Holtzman, Romano Mazzoli, William Hughes, Lamar Gudger, Harold Volkmer, Herb Harris, Mike Synar, Michael Barns, and Hamilton Fish.

The bill is opposed by Judge Battisti, basically on the ground of administrative (i.e., judicial) inconvenience. On the other hand, I am advised that it is supported by the Department of Justice.

The additional cost of this bill should be negligible, if any. This bill adds no judges, it would simply relocate them. Therefore, little or no additional staff would

be needed; in fact, in Akron it might be possible for Judge Contie and the reassigned Akron judge to share staff and therefore provide a greater cost benefit to the taxpayers. An elaborate Federal courtroom and the Clerk's office already exist in Youngstown; thus the expense of setting up court there would be minimal. As Judge Contie points out in his letter, this bill would actually save the money now spent on travel costs of Akron jury members.

Mr. Chairman, I strongly believe that passage of H.R. 4435 will be a positive change, improving the system of justice in the Northern District of Ohio, and I urge the Subcommittee to act quickly and favorably on this legislation.

POPULATION OF COUNTIES IN THE PROPOSED REALINEMENT OF DIVISIONS FOR THE NORTHERN DISTRICT OF OHIO AS TO THE 1970 CENSUS

Location	Population	Square miles	Density
Eastern division:			
Ashtabula.....	98,237	700	140
Cuyahoga.....	1,720,835	456	3,774
Geauga.....	62,977	407	155
Lake.....	197,200	231	854
Lorain.....	256,843	495	519
Total eastern division.....	2,336,092	2,289	1,021
Central division:			
Ashland.....	43,303	424	102
Carroll.....	21,579	390	55
Crawford.....	50,364	404	125
Holmes.....	23,024	424	54
Medina.....	82,717	425	195
Portage.....	125,868	495	254
Richland.....	129,997	496	262
Stark.....	372,210	576	646
Summit.....	553,371	410	1,350
Tuscarawas.....	77,211	569	136
Wayne.....	87,123	561	155
Columbiana.....	108,310	534	203
Mahoning.....	304,545	415	734
Trumbull.....	232,579	615	378
Total central division.....	2,212,201	6,738	328
Western division:			
Allen.....	111,144	410	271
Auglaize.....	38,602	400	97
Defiance.....	36,949	412	90
Erie.....	75,909	264	288
Fulton.....	33,071	407	81
Hancock.....	61,217	532	115
Hardie.....	30,813	467	66
Henry.....	27,058	416	65
Huron.....	49,587	497	100
Lucas.....	483,551	343	141
Marion.....	64,724	405	160
Mercer.....	35,558	454	78
Ottawa.....	37,099	258	144
Paulding.....	19,329	417	46
Putnam.....	31,134	486	64
Sandusky.....	60,983	409	149
Seneca.....	60,696	551	110
VanWert.....	29,194	409	71
Williams.....	33,669	421	80
Wood.....	89,722	619	145
Wyandot.....	21,826	406	54
Total western division.....	1,431,835	8,983	159
Total population of all divisions.....	5,980,128		
Total population of eastern and central divisions.....	4,548,293		

Mr. SEIBERLING. I will not attempt to read my statement. Some of the distinguished members of the Federal judiciary in the fifth district support this bill. They have told me they would be glad to come down here, as would members of the various bar associations and corporate officers and others supporting it, but I told them the committee did not desire to have a full-press type of hearing, and that is why they are not here.

But let me just try to summarize the situation. The northern district of Ohio is presently comprised of two divisions, one in Toledo, which is on the western side of the district, about 120 miles from Cleveland and Akron, and the other comprising Cleveland, Akron, Canton. This bill would take the eastern area and divide it into two divisions. The central would be comprised of 14 counties currently part of the eastern division. The western division would not be affected.

The central district would include Akron, Youngstown, and the city of Canton. All in all, 14 counties. Those three cities are comparable in size to the city of Cleveland, which would be the core of the new eastern division.

Now, the bill would also require that the court for the new central division be held in Akron and Youngstown. But it would also provide that the chief judge may make an alternative assignment of judges in the district in order to equitably distribute the workload.

I would like to emphasize, this bill is a last resort, after all other efforts to solve the problem on a permanent basis have failed. I have spent untold hours meeting with Chief Justice Battisti, the chief judge in northern Ohio, in an attempt to find a solution to the problem by reason of the fact that a large number of cases originate in the Akron court, where there is only one judge.

The procedure was simply to assign the surplus cases to Cleveland or as far west as Toledo, 120 miles away. This was unsatisfactory to the litigants and the communities involved, and a temporary solution was arrived at by having Judge Contie, who is the sitting judge in Akron and the judges in Cleveland. So if a case was filed in Akron and assigned in Cleveland, the judge could trade it with a judge to whom it would normally be assigned. But this is not a satisfactory arrangement, either. It produces uncertainty in such cases as patent cases, which are automatically tried in Cleveland.

Judge Battisti has made it clear, upon the retirement of Judge Contie, he will insist all the judges in the eastern division sit in Cleveland.

This is a case which I think is all too common in the courts, being administered for their convenience rather than that of the public.

From the outset of the Akron court, Judge Contie's caseload was overwhelming. He presently has a caseload greater than 1978. He had twice as many cases assigned to him as the full-time Cleveland judges. It was on this basis that this committee approved two additional judges in the omnibus bill of 1978, instead of the one

sought by the Judicial Conference, because Judge Contie had just had open-heart surgery and we thought it unfair to continue the situation.

The chief judge, Battisti, could not have been more grateful for the extra judge Congress gave him over and above what the Judicial Conference approved. But his subsequent position has really not indicated the principal motivation for giving him that additional judge, for relieving the load on the one judge in the Akron court, which was recognized as being necessary.

So both of the two new judges who will be joining the staff will be in Cleveland. Canton and Youngstown need the additional judges. Akron is the headquarters of four multibillion dollar industrial corporations, the four major rubber companies. There are also many other major corporate headquarters in the proposed central division. It is the international headquarters of the United Rubber Workers and United Chemical Workers. Also located in the region are two Federal enclaves, the Cuyahoga Valley National Recreation Area, one of the largest urban parks in the country, and the Berlin Reservoir. This Federal presence, plus the concentration of major businesses and industries in the proposed new division, guarantees that there will continue to be produced a great deal of Federal litigation in the areas of labor law, equal employment, patent and copyright law, product liability, and contract law, in addition to Federal criminal cases or constitutional issues that may arise.

In short, it is a very busy area. It also is a highly populated area. It has approximately 2,212,000 people in it, whereas the 5 counties comprising the proposed new eastern district have 2,336,000—roughly both equal in population.

I have a population tabulation showing the actual population of the counties, and will submit it with my statement.

There is one other important statistic. In 1979, a total of 936 cases were filed in the counties that would comprise the proposed central division. With 3 full-time judges, this would indicate a caseload of 312 cases per judge. The national average was 344 cases per Federal district judge for the year 1979. If, in fact, the caseload per judge in the division should turn out to be less than the average for the other judges in the district, the bill provides that the chief judge may make an alternative assignment of judges to bring about an equitable caseload, subject to the guiding principle that cases be tried in the division in which they originate. That is not for the convenience of the public, rather for that of the judges, which was the criterion. It is obvious where you have to travel long distances it will be inconvenient.

Judge Weick and Judge Leroy Contie, who sits in Akron, both support this bill, and indeed helped me in drafting it. They have both written me, and I supply their letters for your record.

The Akron Beacon-Journal has been strongly supportive of this bill, and I submit several of their articles and editorials for the record.

All the 14 bar associations in the counties that would be in the central district support retaining the court in the Akron-Youngstown orbit. I have letters from the principal ones, which I will submit, as well as resolutions, which I will submit. I do not have them all with me at the moment.

The only opposition to this bill as far as I know, in addition to Chief Judge Battisti and his colleagues in Cleveland, is the Judicial Conference. It is in the sixth circuit, and I only found that out today. Naturally, they oppose it; if their constituent judges oppose it in the northern district, a majority of them, so will they.

Judge Weick is a judge in the sixth circuit who supports the bill. As of yesterday I was advised the Justice Department would support it. But an end run has been done because they have found the Judicial Conference now proposes a study of the problem, and the Justice Department suggests waiting until next year when the study is supposed to be complete. You can imagine on the basis of the record so far what that study will find. It will find toward the Judicial Conference, who want to consolidate. I think we ought to do as we did with the extra two judges in spite of the Judicial Conference. It will result in no additional cost that I can see, because there are already courthouses in Youngstown, there are already staff. In fact, it will save the cost of transporting jurors and litigants.

I appreciate very much having this opportunity, and I hope you will give this your full consideration. I know you will.

Let me just say, in addition to quite a number, 15 members of this committee who are sponsors or cosponsors of this bill, Congressmen Williams of Youngstown and Regula of Canton are also cosponsors of it.

Mr. KASTENMEIER [presiding]. I see you have introduced two bills which are not identical.

Mr. SEIBERLING. The more recent bill is the one I would hope you would consider. In conversation with Judge Weick and Judge Contie and in an effort to make sure that we do not create problems for the district court administratively, we revised the original bill to provide sufficient flexibility. We also took into account the Youngstown situation to a greater degree. So, H.R. 4435 is the bill I am now requesting be considered.

Mr. KASTENMEIER. The comment was originally made by the Administrative Office of the U.S. Courts that the first recommendations derived from the fact referring to the circuit court and Council, that transforming the two districts into three will serve no useful purpose.

Mr. SEIBERLING. The space will be there, but there will be no judge, because Judge Battisti, both in writing to Senator Metzenbaum and in a letter to me, indicated he and his colleagues have decided they will have all the judges sitting in Cleveland; and the only reason they are allowing a judge to sit in Akron now is because it is at Judge Contie's request. Upon his retirement, that will be the end of it as far as they are concerned.

Mr. KASTENMEIER. I do not know whether this is preceded or unprecedented, inasmuch as the Justice Department says there should be a judge assigned to each division, notwithstanding.

Mr. SEIBERLING. Actually, if the division has no business, the bill makes it clear no judge would have to sit there. If the business fell off considerably, the judge could sit elsewhere. But it establishes the principle that cases should be tried in the division in which they originate as a matter of general policy, rather than have them assigned in accordance with the place the judges happen to find it most convenient to sit.

It should not really be necessary to have this bill at all if the court would exercise its flexibility to assign judges to carry it to that end.

Mr. KASTENMEIER. It is recommended that the assignment of cases is believed to be the problem and that the parties may and in fact should notify the Circuit Council of the problem and request it to exercise its authority under the existing statute. Have parties petitioned the Council?

Mr. SEIBERLING. It has been brought to the attention of the court; I do not know if it has gone to the Council. But the majority of the members of the circuit voted to go along with the district judges in Cleveland. And that is the nature of the problem. I am not sure they ever did actually vote on the matter. I think they, in some way, handled it in the Judicial Conference or in the Administrative Office, expressing their opinion on the proposed legislation. I would have to check that out. But I know Circuit Judge Paul White was very concerned, and even threatened at one point to have the circuit court order the district court judges to assign an adequate number of judges to Akron. But I get the impression judges are reluctant to dictate to other judges as to how to run their court.

Mr. KASTENMEIER. In any event, as you pointed out, of all those other users of the northern district court, consisting of over 2 million, which constitutes the new central division, leaving over 2 million in the eastern division, there is some concern.

I am wondering whether other redresses are possible, since they ought to have very considerable influence with the Judicial Council.

Mr. SEIBERLING. I will ascertain the precise actions that have been taken with regard to the Judicial Council's concern, and write a letter to the committee and inform you of what we have learned.

Mr. KASTENMEIER. We appreciate that. We, too, will take polls to see if enactment of legislation is the only recourse.

Mr. SEIBERLING. I ought to make another comment. People look at a map and see because Akron and Cleveland are less than 40 miles apart, that therefore, they are just one big urban area. However, that is not the case. Some years ago HUD made that mistake and ordered a seven-county areawide coordination agency to be set up, which included Akron, two adjoining counties, as well as two counties in the Cleveland area. I told them at the time it would not work. It did not work, and ultimately it was scrapped. Now the Akron-Canton area and Cleveland area are separate metropolitan areas. The reason is they are different. Cleveland is a regional shipping and financial center; Akron is the center of a worldwide industry. They have different history, economic outlooks, and view

themselves as different communities. Therefore, there is a logical reason why the type of Federal jurisdiction that might be called into play would be different.

The fact is, the lawyers in the communities involved are very concerned, obviously because if the Federal court is going to meet in Cleveland, people will be more inclined to use counsel in Cleveland. But that is not what concerns us. What does concern us is, there is a tremendous amount of Federal litigation originated in this area because of the presence of these large corporations, labor unions, and it only makes sense from the standpoint of overall savings of cost and convenience to the public that they have ready access to the Federal court. I know the chief counsel of the large rubber companies have told me it is extremely important to them and it is of importance to the communities themselves in continuance of their viability as an industrial urban center.

So, there are a lot of intangibles here which are very hard to put down in terms of numbers, yet they are very, very important. I think the Federal—I think the Congress ought to take that into account. If that conflicts with some policy which the Congress has laid down in the past, I can only say the Congress giveth and the Congress taketh away. We should try to adjust the judicial structure to the realities of the present and not just reflect the past.

Mr. KASTENMEIER. I have no further questions.

Mr. SEIBERLING. I appreciate it. If you are as hungry as I am, maybe you want to adjourn.

Mr. MACKLIN. With regard to a study in the area, to my knowledge there is no study planned. As a matter of fact, the Justice Department refers to the collection of statistical data in the next year. I believe they have reference to a system we have instituted throughout the system, requiring the courts to report counties of origins so we will have a better idea of seeing where cases arise. We have not been planning to do a specific study.

Mr. SEIBERLING. You have all the statistical data you need right now. In fact, I have already mentioned the 1979 data. It seems to me that is just a dodge to try to postpone this thing.

Mr. KASTENMEIER. I am preempting the following two witnesses' testimony, but I would like to refer to their prepared statement. It goes as follows:

We strongly support legislative action which would be responsive to the needs of this district. As the needs are presently constituted, one judge has substantially heavier caseloads than other judges in the district. Attempts to rectify this situation have not proven satisfactory. We would hope an effective resolution of this problem could be found to provide guidance, and we would be willing to await results of the study.

That is the testimony. I might ask you to comment on that.

Mr. MACKLIN. As I just mentioned, we are not conducting any specific study with regard to this particular district. We are collecting data as to origin of cases. This will be made available to the district and the circuit.

Mr. KASTENMEIER. Do you take any exception to the observation of the Justice Department, as represented by the prepared statement, that a substantially heavier caseload and attempts to rectify the situation have not proved satisfactory?

Mr. MACKLIN. I have not read the statement until this morning myself, and am not able to answer the question. We will get the information for you. [See app. 7.]

Mr. KASTENMEIER. At least the Justice Department is an independent objective source. Normally we think the same of the U.S. courts, except to the extent they reflect the attitudes and biases of some sitting judges.

Mr. MACKLIN. If you care to, we will get the workloads of the judges in those districts.

Mr. KASTENMEIER. See what information you can presently collect while you look at the other four bills mentioned before, so we can make an assessment.

Mr. SEIBERLING. I do not think there is any dispute that the caseload Judge Contie has and has continued to have has been far heavier than other judges. Judge Battisti agrees. We do not want Judge Contie to have a heart attack or some other catastrophe arise.

Mr. KASTENMEIER. Maybe in matters of this type, they turn out to be a test of wills where the chief judge decides he is going to conduct the business of his court, and not a Congressman. Sometimes, unfortunately, the situation is not resolved objectively. That may be the situation here; I do not know. But we will certainly look at that situation.

Have you any other comments in conclusion?

Mr. MACKLIN. No. I thank you very much for giving us this opportunity. We have nothing further, unless you have further questions.

Mr. KASTENMEIER. Our last witnesses will be Joan C. Barton, special assistant, Assistant Attorney General, and Peter F. Rient, Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice, U.S. Department of Justice.

I understand you have an extensive statement as to matters discussed. I understand you are willing to submit your statement for the record.

TESTIMONY OF PETER F. RIENT, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JOAN C. BARTON, SPECIAL ASSISTANT, AND LESLIE H. ROWE, ATTORNEY-ADVISED

Mr. RIENT. Yes. I am Peter Rient, Deputy Assistant Attorney General. With me is Joan Barton, Executive Assistant, and Leslie Rowe, Executive Office of the U.S. Attorney.

We appreciate the opportunity to comment on these bills affecting Federal court jurisdiction. Our views are set forth in the written statement. We would simply ask that it be received for the record.

[The information follows:]

CONTINUED

2 OF 6



Department of Justice

STATEMENT

OF

PETER F. RIENT
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE

AND

JOAN C. BARTON
SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL
OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE
ADMINISTRATION OF JUSTICE
HOUSE OF REPRESENTATIVES

CONCERNING

COURT REORGANIZATION

ON

AUGUST 22, 1980

Mr. Chairman, thank you for this opportunity to present the views of the Department of Justice on a number of proposals now before the subcommittee with regard to federal court organization. The legislative proposals concern; (1) changes in the boundaries or places of holding court in federal judicial districts; and splitting the Fifth Circuit Court of Appeals. The first of these categories -- changes in district court organization -- presents a variety of complex considerations, and the bulk of this testimony will be devoted to bills related to this subject.

Changes in the organizational structure of the federal courts would affect a broad range of the operations and programs of the Department of Justice. For example, the United States Code requires the Executive Branch to appoint a United States Attorney and a United States Marshal, with their deputies and assistants, for each judicial district. 28 U.S.C. §§ 541-43, 561-62. The Bureau of Prisons must provide a capability for detaining federal prisoners both before and during trial either through its own facilities or by contract or local law enforcement agencies. In addition, federal investigators and expert witnesses must be available wherever court is held.

But the Department must have a perspective on legislation affecting the courts that is broader than just our direct interests. As the nation's largest litigator, we are in a special position to see the problems of our justice system. As a result, we share with the other two branches of government the responsibility of insuring that the courts are effective. This is a responsibility we owe not just to the government as a client but to all consumers of justice.

Certainly it is easy to understand that changes in the substantive law or procedural rules will affect the quality of justice received by our citizens. Changes in the organizational structure of the federal courts also will have an impact on the overall effectiveness of our justice system. Consequently, we would urge the Subcommittee to scrutinize these proposals carefully to assure that any changes are consistent with the long-term needs and goals of the federal judicial system as a whole.

I. DISTRICT COURT ORGANIZATION

During the last Congress, Paul Nejelski, who was then Deputy Assistant Attorney General for the Office for Improvements in the Administration of Justice, testified before this Subcommittee on behalf of the Department with regard to setting the boundaries and locations of federal trial courts. As he pointed out, the organization of the federal district courts has evolved over time in an ad hoc manner rather than as a response to a reasoned pattern or an overall design.

Federal trial courts are organized in terms of districts, divisions of districts, and places of holding court. There are 95 district courts, including three in federal territories (Guam, the Virgin Islands and the Northern Mariana Islands).¹ Within the United States, individual states are composed of between one and four districts. Although the majority of districts have not been partitioned into divisions, 34 of the 95 district courts have two or more divisions, for a total of 148 statutorily authorized divisions in 17 states and one territory. In addition to these organizational units, there are also 435 authorized places of holding court.

To some extent, this organizational pattern has resulted from the pressures of an expanding population. Particularly in recent years, however, local requirements as they were perceived at a given time have generally been a more influential factor. The impetus for additional organizational units of the federal courts often has come from bar associations desiring a convenient federal clerk's office or preferring a court located in the suburbs to one in a central city, and from Chambers of Commerce or other local groups pressing for the presence of continuing federal activity as a means of guaranteeing the vitality of their community. Authorities on the federal court system recognize that "[t]he formation within a state of districts, and of divisions within districts, has not been an entirely rational process." Wright, Law of Federal Courts, § 2, p.7 (1976).

A number of the proposals before this subcommittee would change district court organization by: (1) creating new districts; (2) altering district boundaries; (3) changing certain divisions of districts; or (4) adding places of holding court. We will summarize the variations among proposals in each of these categories, and will provide the subcommittee with some historical information concerning how these categories developed.

In his testimony before the 95th Congress, Mr. Nejelski stressed the idea that the existing crazy-quilt pattern of district court organization should be reassessed, and he suggested several criteria to guide this reconsideration. These general guidelines warrant restating so they can be used to evaluate the extent to which they are met by several of the pending bills.

A. Historical Background

(1) Creation of New Districts

The general court of original jurisdiction in the federal system is the United States District Court. Chapter 5 of title 28, United States Code, creates the federal judicial districts. The district courts were first established by the Judiciary Act of 1789, which created a single court with one judge in each state. The specific statutes establishing these courts provided for their sessions in no more than two cities within the state. Surrency, Federal District Court Judges and the History of Their Courts, 40 F.R.D. 139, 140 (1967). As new states were admitted to the Union, they were organized into single districts with a single judge, regardless of size, population, or former political status of the district. Only Oklahoma was organized into two judicial districts when it was admitted. Act of June 16, 1906, § 13, 34 Stat. 275. Previously, however, the Congress had divided North Carolina into three districts and Tennessee into two districts for purposes of holding court. Act of April 29, 1802, §§ 7, 16, 2 Stat. 162, 165. The new districts had no additional judges, and it appears that they were created solely to provide additional cities in which the existing court might sit so that litigants would not have to travel long distances to attend sessions of the federal courts. Surrency, supra at 148.

The first partition of a state into two districts with a separate judge for each was made in New York in 1814. Id., citing Act of April 9, 1814, 3 Stat. 120. Gradually, additional states were divided into districts, and, in many districts, additional judges were appointed. Id. at 147-52. With a single exception, districts do not

extend across state lines.² For the most part, district judges are appointed to a single district, although a few have been appointed as "floaters" to two or more districts within a single state.³

Retaining single-district states has the advantage of promoting the prospects of homogeneity in the interpretation of federal law throughout a state. On the other hand, there sometimes are administrative reasons to partition states with large populations, diverse conditions, or extensive area into more manageable units. It is noteworthy, however, that once the geographical expansion of our nation stabilized, Congress has been reluctant to divide the states into further districts, preferring to authorize additional judgeships for an existing district and to specify added places of holding court, where needed. Restricting the number of district courts has advantages of economy and ease of administration and budgeting. As a result, during the past 50 years, only four states have been further divided.⁴

The decision to create a new district court is portentous. It requires that a full range of personnel and facilities be provided the new district, including judges, a United States Attorney and United States Marshal, clerks, reporters, bailiffs, probation personnel, and supporting staff, as well as chambers and offices. Despite the importance of this decision, the historical materials do not reveal that any clear criteria have been developed for use in creating a new district or in determining the nature of the ideal district. See, e.g., Surrency, supra; F. Frankfurter & J. Landis, The Business of the Supreme Court (1928).

In Mr. Nejelski's testimony before the last Congress, the Department recommended that "new districts be created only in the most compelling cases, where required to equalize the weighted caseloads of existing courts, lessen delays for litigants, and provide for new States and Territories." The Department continues to support this basic principle.

We are aligned in this position with the Judicial Conference of the United States, the policy-making body of the federal judiciary, which traditionally has opposed the creation of new districts. Two years ago the Conference "reaffirmed[ed] its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after a showing of strong and compelling need." Report of the Proceeding of the Judicial Conference of the United States, September 21, 22, 1978, at 45.

(2) Alteration of District Boundaries

At least two of the bills pending before this Subcommittee, H.R. 7615 and H.R. 6708, would change the boundaries of existing districts within a state. Legislation of this nature is certainly justified in the presence of a compelling rationale. Altering district boundaries generally involves considerably less expense than creating a new federal court. Changing boundaries does, however, present technical questions concerning the handling, transferring, and coordinating of cases that had been previously filed in one or more of the affected districts, and these changes should not be made unless there are sound reasons for doing so.

(3) Divisions of Districts

The practice of subdividing districts into divisions appears to have originated in 1838, when the Northern District of New York was broken into three divisions. Act of July 7, 1838, 5 Stat. 295. This action was evidently intended to provide for more convenient selection of juries, permitting them to be drawn from smaller areas than the entire district. See Surrency, *supra*, at 149. Although the divisions in New York were later abolished, the system was used again in 1858 when Iowa was separated into divisions. *Id.*

Today, 34 of the 95 districts have two or more statutorily-established divisions. Congress, however, has not been consistent in partitioning districts on a divisional basis. For example, there are ten divisions in the District of South Carolina, 5 but the majority of districts have no divisions. 6

Establishment of internal divisions within a district court neither expands nor contracts the geographic reach of the district court as a whole; indeed, the primary reason for the creation of divisions generally has been simply to prescribe the place where regular sessions of the court must be held. Some venue provisions, however, are related to divisions, when they exist, rather than to districts. For example, venue for purposes of transferring a case under 28 U.S.C. §§ 1404 through 1406 is related to divisions rather than districts. But title 28 references to venue do not consistently relate to divisions. For example, the basic venue statute, 28 U.S.C. § 1393, is so drafted that inconsistent results occur for different parties. The statute says:

- (a) Except as otherwise provided, any civil action, not of a local nature, against a single defendant in a district containing more than one division must be brought in the division where he resides.
- (b) Any such action against defendants residing in different divisions of the same district or different districts in the same State, may be brought in any of such divisions.

Thus, an action against a single defendant in a district with divisions must be brought in the division where the defendant resides. But this limitation does not apply if there are multiple defendants, even if all but one of them reside in the same division. Moreover, the divisional limitations on venue do not apply where venue is defined by plaintiffs' residence or to situations in which venue is determined by where the claim arose. If an action is brought in the wrong division under 28 U.S.C. § 1393, the court may dismiss the case pursuant to 28 U.S.C. § 1406, but more often it will transfer the case to a division with proper venue. See 15 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction and Related Matters § 3809 (1976).

The traditional justification for divisions of districts, i.e., easing problems of jury selection, has been adequately addressed for all districts by the jury-plan authority conferred by 28 U.S.C. §§ 1863-66, which allows each district court to draw up a plan for jury selection without regard to internal divisions. Furthermore, designating a new situs for holding court is a more straightforward way to establish a place where court must be held than through the creation of divisions. Moreover, the district courts have

authority, through their rulemaking power, to establish administrative units if this appears desirable for managerial purposes.⁷ There would thus appear to be little need in modern times to create new divisions by statute.

On the other hand, establishing divisions by statute encourages unnecessarily fragmented judicial administration and necessitates the increased expense of securing or establishing additional places of holding court; it also fosters venue limitations that treat parties inconsistently and do not reflect the realities of modern conditions. In Mr. Nejelski's testimony during the last Congress, he concluded that "[n]ew divisions should not ordinarily be considered, and existing ones should be re-examined in light of today's faster communication and travel time." The existing system cannot be revised without further study and the development of means of accommodating the venue provisions of existing statutes. However, we would urge the Congress to refrain from subdividing districts for minor local reasons and to add divisions only if this appears to be the most desirable step from the perspective of the nationwide system.

(4) Places of Holding Court

Aside from implications concerning proper venue, there is little statutory or practical difference between an internal division of a district court and a provision that simply authorizes court to be held in one or more places within a district. As presently drafted, Title 28 of the United States Code gives the judiciary considerable flexibility with regard to the locations where federal court may be held.

During the last Congress, 28 U.S.C. § 142 was amended. As the statute was revised, it authorizes a federal court to sit "only at places where Federal quarters and accommodations are available, or suitable quarters and accommodations are furnished without cost to the United States." (As amended Nov. 19, 1977, Pub. L. No. 95-196, 91 Stat. 1420.) This restriction does not "preclude the Administrator of General Services, at the request of the Director of the Administrative Office of the United States Courts, from providing such court quarters and accommodations as the Administrator determines can appropriately be made available at places where regular terms of court are authorized to be held, . . . if such court quarters and accommodations have been approved . . . by the judicial council of the appropriate circuit." *Id.* This clause is consistent with a 1962 amendment to the statute which allowed the Director of the Administrative Office, upon the approval of a circuit council, to request the General Services Administration to provide accommodations. Pub. L. No. 87-764, 76 Stat. 762.

In addition, under 28 U.S.C. § 141 the federal courts are empowered to hold special sessions in locations other than those that have been explicitly authorized. Although special sessions are held only in extraordinary circumstances, case law indicates that a hearing may occur away from the place where court normally sits if the interests of justice will be served. See, e.g., *United States v. Addonizio*, 451 F.2d 49, 67 (3d Cir. 1971) (special session in hospital when witness was close to death); *Lasky v. Quinlan*, 406 F. Supp. 265, 267 (S.D.N.Y. 1976) (hearing on jail conditions 80 miles from court because most witnesses worked or resided where jail was located).

These two statutes, in combination, thus provide the federal courts with the power to hold court in convenient locations when immediate local conditions require it. In general, therefore, the Department recommends against the establishment by statute of additional places of holding court. During his testimony in the last Congress, Mr. Nejelski concluded that "[n]ew places of holding court should be evaluated in terms of balancing their expected benefits in convenience and expanded access to litigants against expected costs of new facilities, salaries, and the travel time of federal judges." The Department continues to support vigorously this cost/benefit approach.

B. Criteria to Guide District Court Reorganization

In his testimony in the last Congress, Mr. Nejelski suggested certain criteria to consider in determining whether to change the boundaries or places of holding court in federal judicial districts. He began by raising four questions:

- (1) Does the proposed change provide a genuinely needed service to the public or significantly improve public access to the federal courts?
- (2) What is the expected impact of the proposed change on the operations and administration of the court system itself? Is it possible to take advantage of economies of scale?
- (3) Are the expected benefits of organizational change worth the expected costs?
- (4) Would the changes raise any special considerations of federalism and constitutional law?

In addition to these questions, the testimony suggested that the Congress should consider certain specific criteria in evaluating changes in boundaries and locations of federal courts. The first of these were area characteristics, particularly population and transportation patterns; patterns of industry and commerce, especially those which might cause federally actionable claims; and the presence of a major federal enclave or military base or a border area, any of which could contribute a comparatively greater number of cases to the federal court system. The second criterion was the functioning of the court system: What would be the probable effect of the change on caseload and the means and speed of disposition of cases? Would it be possible to have a multi-judge district rather than a single-judge district so as to take advantage of economies of scale in facilities? In order to simplify organization, would it be possible to authorize a new place of holding court rather than to create a division within a district? In what ways could technology be used to increase the efficiency of the court? The third criterion was government costs, that is, costs to the judiciary and the Department of Justice in furnishing additional personnel and facilities for the court. It must be remembered that, in general, federal quarters and accommodations must be available, or suitable accommodations that have been furnished without cost to the United States. Also, in larger districts, both the judiciary and the Department of Justice may be able to take advantage of economies of scale in personnel.

C. Application of Criteria

(1) Creation of New Districts

At least three of the bills before this Subcommittee would create an additional district within a state. H.R. 3714 would establish a separate judicial district for Nassau and Suffolk Counties in New York. H.R. 2505 would establish an additional federal judicial district in California and recommends that court be held at Santa Ana, Riverside, and San Bernardino. H.R. 2806 is similar to the preceding bill, but it recommends that court be held only in Santa Ana. The Department opposes each of these bills.

H.R. 3714. At the direction of the Congress, the Administrative Office of United States Courts recently conducted a thorough study of the Eastern District of New York which included an evaluation of the need for new divisions or a new district. The United States Attorney, along with many others in the community, submitted comments to the study panel. The conclusion of the study group was that no new division or district was needed. We concur with that report.

The Eastern District is relatively small, comprising only Long Island, about 60 miles total length. The two outer counties (Nassau and Suffolk) are residential communities lacking any commercial center. They account for less than 15 percent of the present District's criminal docket (an amount not equal to one full-time judge) and virtually none of its civil docket.

Federal jurisdiction is not a function of population. It is commercial activity, port of entry, and federal facilities (military,

customs, V.A., etc.) which generate federal cases. Those types of cases are generated in Brooklyn, not the island counties. Under the most liberal interpretation there is not now the existence, or potential for, enough federal case work to justify the proposed new district.

H.R. 2505. The Department also opposes the creation of a fifth judicial district in California. No present federal facilities exist for U.S. Attorney operations in any of the three cities where the new district court would sit. The expense of acquiring space, furnishing, equipping and providing a law library and other essential services in Santa Ana, San Bernardino, and Riverside would be approximately \$350,000. In general, the United States Attorney's office accounts for 5% to 10% of the total cost of a federal court. Thus, the initial cost of setting up a new judicial district in California could be from \$3,500,000 to \$7,000,000. The foreseeable possible benefits do not justify such expenditures at this time.

In addition to the direct fiscal costs, a price would be paid in the quality of litigation. Large U.S. Attorney's offices have a greater proven ability to master complex areas of litigation and deal with long term investigations and trials. In a small office (based on the caseload originating in the area, the new office would be small) each Assistant U.S. Attorney must be jack-of-all-law, expert in none. In an office of ten attorneys the ability to take three (30%) Assistant U.S. Attorneys and assign them to a long-term investigation and trial is much more limited than in the present district where that is only 3% of the staff. The public is better served where

the U.S. Attorneys' office is large enough to develop skill in depth, and then able to apply that skill to the arduous cases that the federal government is most able, and most appropriate, to handle.

Santa Ana and Riverside are each within forty-five minutes, via modern freeway, of the present courthouse. The caseload coming from those countries does not presently justify the cost of moving the court and its supporting agencies. Present access to the court is convenient and no hardship to litigants.

H.R. 2806. Although this bill would be less costly than the preceding proposal since it would designate only Santa Ana as a place where court would be held, the Department opposes it on the ground that there is insufficient federal case work in this area to justify the expense of establishing a new district court.

(2) Alteration of District Boundaries

Two of the bills before the Subcommittee would alter existing boundaries of a district court. The Department takes no position on H.R. 7615, which would reorganize the middle and western districts of North Carolina.

H.R. 6708. The Department of Justice strongly supports this bill, which would place the Federal Correctional Institute at Butner, North Carolina, entirely within the Eastern District of North Carolina. Under 28 U.S.C. § 113, Durham County falls within the Middle District of North Carolina and Granville County falls within the Eastern District. The line dividing Durham and Granville counties -- and, therefore, the Middle and Eastern Districts -- also divides the Federal Correctional Institution at Butner, North Carolina, into two segments. As a result, approximately one-half of the

institution is located within the jurisdiction of the Middle District; the remaining one half lies within the Eastern District.

This jurisdictional division raises potentially serious problems, particularly with respect to criminal prosecutions and habeas corpus actions. For example, the site of a criminal violation may be hard to determine and challenges to the court's jurisdiction may depend on the reliability of a surveyor's line or a few feet disagreement as to where events occurred. Prisoner suits concerning conditions may shift from district to district, as an inmate moves about within the institution. Finally, conflicting rulings about running the institution may issue from the two courts. We urge the Congress to take swift action on H.R. 6708 to rectify this situation.

(3) Divisions of Districts

A number of the bills before the Subcommittee would either create a new division or change division lines within a district. The Department takes no position with regard to H.R. 6971, which would provide for the inclusion of Audrain and Montgomery Counties in the Northern Division of the Eastern District of Missouri.

H.R. 5966. This bill, which is the same as H.R. 2079, would establish a Lufkin Division in the Eastern District of Texas. It would move two counties, Polk and Trinity, from the Southern District of Texas to the new Lufkin Division in the Eastern District. It would also place several counties from the Tyler and Beaumont Divisions in the new Lufkin Division. Although in general

the Department is not in favor of new divisions, we have no opposition to this bill. We firmly believe there is no justification for partitioning a district where divisions do not exist; however, where a district has already been divided, the divisions should reflect contemporary conditions.

Since the time the present alignment of the affected counties was established, Lufkin has developed as the major commercial and legal center of the area that would form the new division. According to the Executive Office of United States Attorneys, a significant portion of the present business of the Eastern District of Texas -- on the order of 30% to 40% of the cases -- are generated in those counties that would constitute the new Lufkin division. Despite this condition, many residents presently must drive over 100 miles in order to gain access to a federal court. Lufkin would be much more convenient for litigants and jurors in most of the counties to be included in the proposed Lufkin Division and would permit the federal court system to meet the needs of the residents of this area more effectively.

H.R. 4435. This bill, which is similar to H.R. 1883, would make changes in divisions within the Northern District of Ohio. We strongly support legislative action that would be responsive to the needs of this district. As the divisions are presently constituted, one judge has a substantially heavier caseload than other judges in the district, and attempts to rectify this condition have not proven entirely satisfactory. We would hope that that an effective resolution to this problem could be adopted quickly. We

understand, however, that the Administrative Office of United States Courts is planning to collect statistical data during the next year that could provide guidance with regard to the most useful way to restructure the district, and we would be willing to await the results of this study.

H.R. 5690. The Department opposes this bill, which would divide the Eastern District of New York into two divisions. As we noted above with respect to H.R. 3714, the Administrative Office of United States Courts conducted a study of that District and concluded that no new division was needed.

H.R. 5697. The Department also opposes this bill which would establish two divisions for the Central District of California. None of the districts of California has been partitioned into divisions. As we have noted, the creation of divisions complicates court management. We see no justification for it here.

(4) Places of Holding Court

Several bills before this Subcommittee would create new places of holding court within a district.

H.R. 4961. This bill would establish Lancaster, Pa., as a place of holding court. The Department is opposed to this legislation. No courthouse or other federal facility presently exists there and no caseload exists, or is contemplated, that would justify the creation of a new place of holding court in Lancaster.

H.R. 6703. This bill would establish Mt. Pleasant, Mich., as a place of holding court. We strongly recommend that Congress

not pass this bill. The Eastern District of Michigan already has five places of holding court: Detroit, Flint, Bay City, Port Huron and Ann Arbor. The last, Ann Arbor, was opposed by the Department because there was no perceived workload there at all. Nonetheless, a substantial federal courthouse is now under construction in that city, even though no future need for it has yet been found. The addition of Mount Pleasant to an already long list of places of holding court is unnecessary. The very limited caseload originating from Mount Pleasant is adequately handled in the nearby communities of Flint and Bay City.

H.R. 5691. This bill would permit the Eastern District of New York to hold court "at a site no more than five miles from the boundary of Nassau and Suffolk Counties." The bill also would permit the Eastern District of New York to hold special session of the court at Westbury while the federal courthouse at Hempstead is undergoing renovations. The temporary relocation of the court at a suitable location just 7 miles from the courthouse has the Department's full support. From our perspective, however, there is not sufficient federal business in Nassau and Suffolk Counties to justify an additional place of holding court in that area of the Eastern District.

H.R. 2062; H.R. 3637; H.R. 5890; and H.R. 1513. These bills would establish Paterson, Morristown, Jersey City, and Hackensack, New Jersey, as places of holding court. The Department opposes each of these bills.

Morristown (Pop. 17,000) and Hackensack (Pop. 40,000), are not large enough either in population or amount of federal litigation to justify the expense of constructing and staffing federal court facilities. Paterson (Pop. 136,000) and Jersey City (242,000), are larger but, like the other two cities, are within a thirty minute drive of the federal court in downtown Newark.

The State of New Jersey is already served by three permanent, fully staffed, federal court centers, i.e., a federal court with judges and supporting personnel, United States Attorney, United States Marshal, probation office, clerk, etc., located in Newark, Trenton, and Camden. Those three locations adequately cover the major population centers of this compact state, well provided with modern expressways and other convenient transportation. The creation of four new places of holding court (all within a 30 minute radius of Newark) would be redundant of facilities and skills already available. Any convenience those bills might provide to members of the local suburban legal community must be carefully weighed against the significant and unnecessary additional expense to the courts and all federal agencies, an expense which is borne by the taxpayers of all jurisdictions. Creation of suburban federal courts in an area already served adequately by Newark is an unnecessarily costly and inefficient use of scarce resources.

H.R. 6060. This bill would establish Santa Ana, California, as a place of holding court. Since the beginning of this Congress, the Department has opposed efforts to create a new judicial district in California or to divide the existing districts. In commenting on H.R. 2505 last year, the Department noted the high cost that would be

involved and suggested that "if the pressure for a new district, or a greater federal presence in the area is heavy," a possible compromise would be to have Santa Ana designated as a place of holding court. We adhere to this position.

II. SPLITTING THE FIFTH CIRCUIT

Three bills before the Subcommittee, H.R. 7665, H.R. 7625, and H.R. 7645, would divide the existing United States Court of Appeals for the Fifth Circuit into two autonomous circuits. One circuit would be composed of Louisiana, Mississippi, and Texas, with headquarters in New Orleans, and would be known as the Fifth Circuit. The other would be composed of Alabama, Florida, Georgia, and the Canal Zone, with headquarters in Atlanta, and would be known as the Eleventh Circuit. As you know, a similar bill, S. 2830 (which is identical to H.R. 7645), passed the Senate in May.

If the existing Fifth Circuit is divided, it will be the first time a new circuit has been created since 1929 when the Tenth Circuit was organized.⁸ The boundaries of the other circuits have remained unchanged since the nineteenth century. Obviously, court reorganization of this nature should not be undertaken except for the most compelling reasons.

Compelling reasons now do exist. The fact is that the Fifth Circuit, with 26 active judges, has become too large to function effectively as a court.

Observers of the courts and judges themselves have recognized that there is a limit to the number of judgeships a court can accommodate and still function effectively and efficiently. In 1971

the Judicial Conference of the United States concluded that a court of more than 15 judges would be "unworkable".

There are a number of sound reasons for this conclusion. We would like to emphasize two significant negative consequences that occur when appellate courts grow beyond the optimum size.

First, large appellate courts increase intra-circuit conflicts. The larger the number of judgeships, the larger the number of panels and therefore the larger the opportunity for inconsistent decisions. This is so not only because more judges mean a higher probability of divergent views but also because a court operating with several panels gravely hinders the ability of its judges to review all of the decisions handed down by each of the panels in their court. Collegiality is nearly impossible to maintain in circuits with numerous judges. Because of these intra-circuit conflicts, the desired uniformity of the national law will not be achieved and evils such as forum-shopping, unequal treatment of litigants who are similarly situated, and legal uncertainty are fostered.

Second, a large court makes the en banc procedure, as traditionally conceived for an appellate court, unworkable. We pity the unfortunate attorneys who must persuade the court through oral argument by maintaining eye contact with, and answering questions of, some two dozen judges! More seriously, convening this many judges presents logistical problems with regard to scheduling and requires large expenditures for travel arrangements. An even more important consideration, however, is that the decision-making process

of a large appellate court sitting en banc is bound to be impaired. The en banc hearing traditionally has been used for exceptional cases, where the unified voice of the circuit is particularly important. The necessity of circulating an opinion among numerous judges -- and of achieving a majority who can agree on a rationale by which to decide a controversial issue -- will inevitably delay the final decision of a case. Furthermore, because of the greater chance of disagreement among judges of a large appellate court, opinions on cases are likely to acquire more concurring or dissenting views and be rendered therefore less persuasive. Because of these factors, a large circuit may be reluctant to convene the en banc court even when it is conceded that a matter should be decided by this procedure.

Thus, the large size of an appellate court threatens its effectiveness as an institution and may ultimately diminish the quality of justice that the court administers.

The judges of the present Fifth Circuit sat en banc in January. Following that experience, they have unanimously supported splitting the Circuit. The Department of Justice also strongly endorses these proposals to split the Fifth Circuit. There have been a number of suggestions in recent years with regard to how, specifically, the circuit should be divided. All proposals appear to have some advantages and some drawbacks. The bills before this Subcommittee all present a viable plan.⁹ The important point is that the proposal should be speedily implemented. We urge the Congress, in the interests of justice, to take immediate action on this important legislation.

CONCLUSION

The effectiveness of our federal courts in dispensing justice will not be fully realized unless the administrative organization of those courts reflects the actual needs and conditions of our time. We urge the Subcommittee to weigh the long-term goals and needs of the justice system at least as heavily as you do currently perceived local requirements. Changes in the existing system should be made only in the presence of compelling reasons. But when those reasons do exist, the Congress should act immediately and positively.

FOOTNOTES

1. Aside from the Supreme Court, which is mandated by Article III, section 2, of the United States Constitution, all federal courts are created by Congress. The territorial courts are similar to other federal courts, except that they derive their jurisdictional authority solely from statutes promulgated by Congress under Article I of the Constitution instead of from the independent judicial power of Article III. Territorial courts are thus "legislative" rather than "constitutional" courts. *See American Insurance Co. v. Canter*, 1 Peters 511, 546 (1828).

Although the jurisdiction of Article III courts is limited to "cases and controversies" as defined by Article III, section 2, of the Constitution, the territorial courts exercise all of the jurisdiction authorized by Article III courts and may exercise some local jurisdiction as well. *See Glidden v. Zdanok*, 370 U.S. 530, 544 (1962). The principle for this authority is that, in the absence of an independent state government in the territories, the federal courts assume responsibility as the final interpreter of local law. *Id.*

An additional difference between territorial and Article III courts is that territorial judges serve for a term of years and are not covered by the Article III guarantees of life tenure in office and undiminished salary during good behavior.

2. The District Court for the District of Wyoming includes all of that state plus the portions of Yellowstone National Park that are in Montana and Idaho.

3. "Floating" judges now serve in Arkansas, Iowa, Kentucky, Missouri, Oklahoma and West Virginia. 28 U.S.C. § 133. The multi-district judgeships provide added flexibility in states where the volume of federal business may be too great for the existing court system, but where an additional judgeship for each district may not be justified.

4. Indiana (1928); Florida (1952); California (1966); and Louisiana (1971).

5. 28 U.S.C. § 121.

6. A majority of the districts have not been partitioned into districts. 28 U.S.C. §§ 81-131.

7. See Note, The Local Rules of Civil Procedure in the Federal District Courts - A Survey, 1966 Duke L.J. 1011, 1021 n.27 (1966) (Citing N.D. Fla. R.1; D. Mont. R.2; E.D.N.C. (Gen.) R. 2(B); M.D.N.C. R. 3(b); F.D. Va. R. 3.) The authority of these local rule divisions for purposes of resolving questions of proper jurisdiction and venue is unclear. See 15 Wright, Miller, & Cooper, Federal Practice and Procedure: Jurisdiction and Related Matters § 3809 (1976); Note, supra.

8. Under the Judiciary Act of 1789, the United States was divided into three federal judicial circuits: Southern, Middle, and Eastern. Territorial expansion of the nation caused the

number of circuits to grow to six in 1802 and to nine in 1866, where it remained until 1893 when Congress created the District of Columbia Circuit. Fish, The Politics of Federal Judicial Administration 4 (1973).

9. We note that some adjustments need to be made in the bill with regard to the Canal Zone.

Mr. RIENT. Generally speaking, we favor only those proposals for which there is a clear justification in terms of the long-range needs of the justice system. Rather than take up any more of the subcommittee's time, I will defer to my colleagues.

TESTIMONY OF JOAN C. BARTON

Ms. BARTON. I would like to summarize very briefly the principles which we believe the subcommittee should consider in evaluating these bills. First, new district courts should be created only in the most compelling circumstances. Second, districts that have not been subdivided into divisions should not be so partitioned, and existing divisions should reflect contemporary needs. Third, new places of holding court should be established only where caseload and other conditions give evidence of the need, where the benefits in convenience and expanded access to litigants outweigh the costs that are involved. And certainly a matter as crucial to our Federal system as splitting the fifth circuit should be evaluated from all perspectives.

Changes should come slowly and should be made only in the presence of compelling reasons. But when those reasons do exist, Congress should act.

I would like to mention two proposals on which the Department would especially like to see action by the subcommittee. The first, of course, is the splitting of the fifth circuit. With 26 active judges, that circuit has become too large to function effectively as a judicial institution. We hope that the proposed split of the circuit will be speedily enacted.

The second is H.R. 6708, the proposal that would place the Federal Correctional Institute at Butner, N.C. entirely within the Eastern District of North Carolina. The line between the Eastern and Middle Districts of the State also divides the prison into two segments. Which court has jurisdiction in a criminal prosecution may depend on the reliability of a surveyor's line or on the resolution of a few feet disagreement among witnesses as to where events occurred. And jurisdiction over prisoner suits concerning conditions may shift from district to district, as an inmate moves about within the institution. Conflicting rulings about the institution may issue from the two courts. The administration of the courts and the prison would be improved by placing the Butner Institution entirely in a single district. We urge the Congress to take swift action on H.R. 6708.

We will be happy to answer any questions. But before doing so, I would like to mention briefly one matter that has been under

discussion this afternoon, the matter of the Northern District of Ohio.

The Department of Justice, on behalf of the Federal Government, appears in courts throughout the Nation and is the country's largest litigator. We appear in the courts in the Northern District of Ohio, and we are certainly aware that those courts have problems as they are currently operating.

That is the reason we say in our statement that we strongly support a legislative approach to this problem. Other approaches have not been successful. Let me emphasize that in pointing to the Administrative Office statistics that are available, we do not mean that we oppose in any sense the bill that Mr. Seiberling has introduced. We simply want to be sure that any decision is based on all available information.

We certainly believe that something must be done to clear up the problems in the northern district of Ohio.

Mr. KASTENMEIER. Is it just a sheer objective analysis? Why is the problem so difficult to rectify?

Mr. ROWE. The Department has a basic objection to the creation of divisions because they tend to complicate and burden the administrative process. Unless there are some overriding needs for a new division, we would normally oppose it.

It is this basic objection that causes the hesitancy with regard to this bill on the northern district of Ohio. It is different, for example, from the situation in Texas Eastern where we favor the creation of a new division because that would resolve long term permanent problems.

The problem of Ohio tends to be a temporary one in the sense that it dwells in the courthouse among the judges. It is difficult for us to take a side in that we hate to recommend a specific legislative solution when there may in fact be a judicial solution, and when it goes against our basic tenet of no new divisions. Yet we also recognize there is a very serious problem in that the Akron court is heavily overburdened and the people in the eastern side of northern Ohio are receiving a lesser standard of Federal justice than the people on the western side.

Mr. KASTENMEIER. As you obviously looked at the question, why do you conclude there is an inability on the part of the Court of the Northern District of Ohio to remedy that situation?

Mr. ROWE. The chief judge there has strongly stated his own personal desire with regard to the manner in which the court should be operated, and unless he is directed either by the circuit or by the Congress to change, that would be the system that remains in place, the assignment of the judges, the hearing schedules and dates, and the manner in which the cases are treated.

Mr. KASTENMEIER. Is it possible that some application to the judicial council of the circuit could find some redress?

Mr. ROWE. Yes; there is that possibility.

Mr. KASTENMEIER. As I say, I am surprised that that particular court or the chief judge cannot respond to the situation, that he is so inflexible that he is not able to respond in any other way than just to resist any change.

We are also told, however, by the Administrative Office of the U.S. Courts, that merely creation of a new third division in and of

itself, rather than a second division, will not constitute a change in assignments.

You would have to include in the bill a special direction, and I am not sure of the extent that that is either preceded or unprecedented with respect to assignment of judges to divisions. If you do not include that, then the mere creation of a division in and of itself would be meaningless.

Mr. ROWE. Well, there are two other pressures that could come into play. The first is that Congress would have spoken to the problem, and that should have an impact. The other is that juries will be chosen by division, and in the process of choosing those juries from physically different places, the judges will be drawn there.

Mr. KASTENMEIER. At least that would be a difference.

Mr. ROWE. Let me contrast the Ohio situation to the problem in the eastern district of Texas where we favor the bill to create a new division and to move two counties, Tyler and Polk, from the southern district of Texas up into the eastern district. There, we have a large national preserve, 84,000 acres of land, of which 85 percent is presently in the eastern district. The other 15 percent is in those two counties, Tyler and Polk, which are in the southern district of Texas.

It would be a great relief to all of the landowners and the private litigants and the Government, as well as the expert witnesses to have cases involving the preserve consolidated in a single district. It presents a long term problem.

You may have noticed that several exceptions have been made for the special law enforcement problems that exist in national parks, such as Yellowstone. In any area in which we can incorporate all of the Federal law enforcement problems of the national parks or preserves within one judicial district we have done the courts and the litigants a great favor.

Furthermore, the people that live in the two counties of Tyler and Polk are much closer to Lufkin than they are to Houston. The area contains agricultural and ranching counties, and commercial and other centers are more appropriately aligned with Lufkin than they are with Houston.

For these reasons, there is a long term need for change in the Texas case which is a little more clearly seen than the Ohio one.

Ms. BARTON. If you like, we can either proceed by answering any questions, or if you prefer I will briefly go through all of the bills and state the Department's position on them.

Mr. KASTENMEIER. What I would like to ask you to do is to indicate where your recommendation differs from that of the Administrative Office of the U.S. Courts as previously expressed by Mr. Macklin.

To that extent, that difference is of interest to the committee.

Ms. BARTON. I hope now that I will have the position of the Administrative Office down accurately enough so I don't misrepresent their position.

Let me state initially that we, similarly to the Administrative Office, did not receive prior to this hearing four bills: H.R. 7456 concerning a place of holding court in Long Beach, and also the three that were introduced this week, 7947, with regard to Michi-

gan, 7951, concerning Iowa, and 7907, which concerns Modesto, Calif. We would like the chairman to know that as soon as we have obtained copies of those bills, within a day or so after we have the bills, we will be able to give you some specific responses to each of those proposals.

There are three bills that set up new districts H.R. 3714, which establishes a new southeastern district in New York is opposed both by the Department and the Administrative Office. Then there is H.R. 2505, concerning a fifth district for California, and H.R. 2806, which is slightly different but also establishes a new judicial district in California. The Administrative Office has taken no position on those bills. We oppose both of them.

Mr. KASTENMEIER. Although the Administrative Office takes no position because they are apparently opposed to the lower level of review, so their position would not be different than yours?

Ms. BARTON. I'm just not sure about that.

The second category of bills is those that alter district boundaries. H.R. 7615 would reorganize the middle and western districts of North Carolina. The Administrative Office apparently favors a slightly different version of that proposed. We have no position on that bill.

H.R. 6708, the bill concerning the Federal correctional institution at Butner, we strongly favor. The Administrative Office also supports it.

There are five basic proposals concerning divisions of districts. H.R. 6971 concerns the eastern district of Missouri. The Administrative Office favors this bill. The Department simply has no position on it. H.R. 5697, which is similar to 5789, would create two divisions for the central district of California. Both the Administrative Office and the Department oppose.

H.R. 5966, which is similar to H.R. 2079, concerns a new Lufkin, Tex., division. The Administrative Office has no position on this proposal because there is a slight difference of opinion between the district courts and circuit council on that bill. We favor it as Mr. Rowe has already indicated.

H.R. 4435 and 1883 concern changes in the divisions of the northern district of Ohio. We would favor some kind of change. The Administrative Office opposes legislation.

The Department opposes H.R. 5690, which would create divisions in the eastern district of New York, which includes Long Island. We would note that the Administrative Office conducted a study of the district and concluded no new division was needed, but no position has been taken by the Judicial Conference.

Several bills before the subcommittee would create new places of holding court. Both the Administrative Office and the Department of Justice oppose H.R. 6703, which would establish a place of holding court at Mt. Pleasant, Mich., and H.R. 4961 which would do the same in Lancaster, Pa.

The Department also opposes H.R. 5691, which would establish a site of holding court 5 miles from the boundaries of Nassau and Suffolk Counties in New York. The Department is opposed to this bill because the area is primarily residential. We simply do not see the kind of activity in that area that creates a substantial Federal caseload. We, therefore, feel that there is no need for a new place

of holding court. I believe, although I may be wrong, that the Administrative Office opposes this also, although they have received no comment from the courts involved.

The four bills which would establish new places of holding a court in New Jersey, H.R. 2062, H.R. 3673, H.R. 5890 and H.R. 1513, are opposed by both the Administrative Office and Department of Justice.

H.R. 6060, and H.R. 5924, which is similar, would establish a place of holding court at Santa Ana in California. This bill is favored by the Administrative Office. The Department of Justice has some reservations about the need for a new place of holding court there. At least for the time being, it would have a negative impact to some degree on the effectiveness with which the office of the U.S. attorney would operate in the area. There would have to be a branch office in Santa Ana, and that office probably would not function as well or get as large a degree of really significant Federal cases as a larger office would. At the same time, though, it would draw some resources from a larger office where they could be used more efficiently.

Mr. Rowe, you may have more to say to this.

We are certainly not completely opposed to this. We just think that the subcommittee should be aware that there is going to be some lessening of prosecutorial effectiveness and some expense to the Department that may be involved that I don't think has been mentioned before. In all of the talk about there being a real need, we recognize a lot of population there but we have some reservations about the real operational effectiveness of a new place of holding court.

Mr. ROWE. There is an array of bills dealing with California. This is the least undesirable of the lot, and if in fact the bill is passed, we can quickly through the Executive Office of U.S. Attorneys set up a branch office in Santa Ana. We would put two lawyers and three support staff in there.

As a practical matter, 2 years from now if I were to go and look at the docket in that office, I would find that while the people there worked very hard and diligently and did a great many small things, they would not have made the types of cases that we want the Federal U.S. attorneys' office in California Central to make, and our experience has been that this causes a dispersion of valuable resources when we have to set up branch offices of this nature. We like to avoid that.

Ms. BARTON. That concludes our testimony unless you have any questions.

Mr. KASTENMEIER. I appreciate that summary. That is very useful.

It perhaps would be easier for the Administrative Office of the U.S. Courts to indicate the net cost of any of these changes. Maybe you are able to do that. You could go to the office of the U.S. attorney and point out different aspects of it, it may be well. Let us do this.

I am not sure which way to proceed in terms of requesting this of you, but I would have counsel get together with your panel, and with Mr. Weller and Mr. Macklin. Then we could see which of you can give us some estimates on costs because, as you pointed out,

some of these changes entail far more costs than others, and some entail virtually no cost.

It is for us to understand that as we deal with them and as we mark them up for inclusion or exclusion or specifically exclude them. That would be a factor, but I think other than that you have satisfied my superficial curiosity about those various proposals, and I think you took care of it very nicely, and I appreciate your patience.

You have listened to more than I have on the matter, and so I express my appreciation to all witnesses and, accordingly, the committee is now adjourned.

[Whereupon, at 2:20 p.m. the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on the Judiciary, adjourned.]

APPENDIXES

APPENDIX 1.—ADDITIONAL STATEMENTS AND LETTERS

Hon. Jerome A. Ambro, A Representative from the State of New York.
 Hon. Tony Coelho, A Representative from the State of California.
 Hon. Frank J. Guarini, A Representative from the State of New Jersey.
 Hon. Sam Hall, A Representative from the State of Texas.
 Hon. Tom Harkin, A Representative from the State of Iowa.
 Hon. Harold C. Hollenbeck, A Representative from the State of New Jersey.
 Hon. Daniel A. Mica, a Representative in from the State of Florida.
 Hon. Stephen L. Neal, A Representative from the State of North Carolina.
 Hon. Harold L. Volkmer, A Representative from the State of Missouri.
 Hon. Robert S. Walker, A Representative from the State of Pennsylvania.
 Hon. Charles Wilson, A Representative from the State of Texas.

CONGRESS OF THE UNITED STATES,
 HOUSE OF REPRESENTATIVES,
 Washington, D.C., August 20, 1980.

Hon. ROBERT W. KASTENMEIER,
 Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: I appreciate this opportunity to submit testimony to the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Committee on the Judiciary on my bills, H.R. 5691, H.R. 5690, and H.R. 3714. These pieces of legislation call for the creation of a new place of holding court, the creation of a Nassau-Suffolk Division of the present Eastern Federal Judicial District, and the separation of Nassau and Suffolk Counties into their own Judicial District apart from the Eastern District, respectively.

While the division concept and the additional place of holding court have long been suggested alternatives to the present difficult situation with respect to Long Island vis-a-vis the Brooklyn-based Eastern District, I consider them to be insufficient solutions and prefer the creation of an independent District. At this time, I would like to submit, for inclusion in your official record, a copy of a lengthy, and thorough statement that I delivered at a public hearing on May 4, 1979 conducted by the Administrative Office of the United States Courts on the subject of creating a separate Judicial District for Long Island. I believe that it details all of the arguments for such an action.

In addition, you have requested that I supply the Subcommittee with information dealing with the anticipated costs of such a proposal. In the October, 1979 report that the Administrative Office of the United States Courts submitted to the Congress pursuant to Public Law 95-573, several tables were included which detail those anticipated costs. As I have no reason to quarrel with the Administrative Office on this aspect of their report, I am including these tables as part of this testimony.

On April 27, 1979, the Administrative Office conducted a public hearing in Brooklyn on the Question of separating Nassau and Suffolk Counties from the existing Eastern District. Five people—all attorneys—asked to testify, and all, save one—the present United States Attorney—strongly supported separation. On May 4, a similar hearing was conducted in Hauppauge, Long Island. Twenty-five people—attorneys, planners, educators, business and community leaders—appeared before Chief Judge Howard T. Markey, and all strongly supported an independent Long Island Judicial District. In addition, nine written statements were submitted for the record, and seven favored separation, one (from a group of New York City-based attorneys) opposed it, and one took no position pending further study. Many of these written statements, I might add, came from local associations of attorneys. I am attaching a list of all of those who appeared at the two hearings or who submitted testimony for

the information of the Subcommittee. Unfortunately, I cannot provide you with a list of the literally hundreds of people—mostly attorneys who practice in Federal Court—who have contacted my office in support of my bills creating a new Judicial District for Nassau and Suffolk Counties.

Along similar lines, it should be noted that the Administrative Office, in its study polled attorneys and jurors. Of the 155 attorneys responding to the questionnaires, 63 percent indicated they favor creating a new district. The questionnaire distributed to potential jurors solicited information related to convenience and travel time. Responses from 139 Long Island jurors indicated that approximately 72 percent had to travel from one to two hours to serve in the Brooklyn courthouse.

Finally, I would like to take this opportunity to present some direct quotations from the study prepared by the Administrative Office, because I believe that they support my quest for a separate district rather than that agency's recommendation against it:

"If a new district were created from Nassau and Suffolk Counties the population of the district would be approximately 2.7 million people. This is greater than the population of all but 27 percent of the present federal judicial districts . . . If the basis for creation of new federal judicial districts were population alone, there would be no doubt that Nassau and Suffolk counties would justify a separate district.

"A major factor in determining the need for a new judicial district is the potential workload of the area being considered as a new district . . . The estimate of combined civil and criminal yearly case filing generated from Nassau and Suffolk counties is approximately 700 cases (640 civil, 55 criminal). This is *equal to or greater than* 24 of the current federal district courts and would, using the current national average of filing per judgeship, justify two authorized judgeships if a Long Island District were created. There are no standard for the number of cases which would justify a separate district court. However, there is general consensus that districts should not be created, if at all possible, when the workload does not support a multi-judge court. If, in fact, that were the only criteria for establishing a district, the two Long Island counties would certainly justify a separate district since the volume of work would justify more than one judgeship [emphasis added].

"The estimate of 700 case filings per year does not necessarily represent the number of cases which would be filed if a new court were created. As population and the business community grow on Long Island, there will no doubt be a corresponding increase in the potential federal court caseload. In addition, the existence of a separate court, conveniently located on Long Island will attract business which is now taken to state courts . . ."

Mr. Chairman, as I have indicated to you in the past, it seems to me that the objective facts contained in the Administrative Office's study clearly indicate the need for the creation of a new Judicial District for Nassau and Suffolk Counties, and it is only their built-in bias against such a development, going back thirty years, that leads to a negative conclusion from that agency.

I appreciate the opportunity to present the foregoing testimony to you and the Members of the Subcommittee on Courts, Civil Liberties and the Administration of Justice.

With kindest wishes, I am
Very truly yours,

JEROME A. AMBRO,
U.S. Congressman.

Enclosures.

Congressman AMBRO. Your honor, as you have said, I am Congressman Jerome A. Ambro from New York's Third Congressional District here on Long Island, and the sponsor in the United States Congress of Legislation to create a new federal judicial district in Nassau and Suffolk Counties, the authority for which flows from the Judicial Act of 1789, one Statute 73, and from Congress' decision in 1814 to divide New York into two judicial districts, the Northern and Southern Districts, the latter district court to be held in New York City.

First, I'd like to thank you for taking time away from other judicial responsibilities to conduct this proceeding and for considering this matter of such importance to all Long Islanders and, indeed, all residents of the Eastern District. I'd like to thank, as well, your learned colleagues on the federal bench and the staff of the Administrative Office of the United States Courts in Washington, who have rendered such invaluable assistance in arriving at a fair and speedy determination of the merits of the proposal under consideration.

In the next several hours, your Honor, I will be followed by more than two dozen witnesses from legal, judicial, governmental, business, academic and public interest

sectors, whose time, energy and interest is most appreciated. Most of those knowledgeable people will be presenting a body of information and a series of arguments in support of a separate Nassau-Suffolk federal judicial district. I will attempt to avoid duplicating specific points which I believe they will be developing in depth, based on their background and experience, and will instead move immediately to what I consider to be the fundamental question before us today; and that is the need for the separation of Nassau and Suffolk Counties from the Eastern District and the creation of an independent district for these three million residents of Nassau and Suffolk.

Initially, I'd like to read into the record excerpts from an editorial in support of creating a new Long Island Judicial District which appeared in The New York Times, that most respected of newspapers:

"It is essential that justice follow the crowd. The activities in Washington, new programs, new legislative mandates, new laws, require greater responsibility from the federal courts. Travel time can hope to be shortened."

Now, these are salient points and many of the witnesses today will be expanding upon them. In my opinion, the New York Times' editorial position was well taken, but it was a position, your Honor, taken on February 27, 1865, two days after the Congress, by joint resolution, created the present Eastern District of New York.

I wonder if I could break off for a second, Judge Markey. Do you have a copy of this? I have many copies if you'd like to follow it.

Chief Judge MARKEY. I'd be glad to have a copy to follow it.

(Handed to Chief Judge Markey)

Chief Judge MARKEY. Thank you.

Congressman AMBRO. I asked you that, your Honor, because I'm going to skip over a number of statistics in the center of this presentation, and maybe ask you to insert those for the record later on.

Chief Judge MARKEY. All right.

Congressman AMBRO. Now, as I said, that editorial was written on February 27, 1865, two days after the Congress, by joint resolution, created the present Eastern District of New York. The resolution declared in part:

"The Counties of Kings, Queens, Suffolk and Richmond, in the State of New York, are hereby constituted a separate judicial district of the United States, to be styled The Eastern District of New York. District and circuit courts for the trial of cases shall be held in the City of Brooklyn on the first Wednesday of every month."

A great many things have changed, Judge Markey, since Congress passed that resolution.

Suffolk was divided into two counties in 1899 and now includes Nassau County, and has, for the entirety of the 20th century. Brooklyn has not been a city unto itself in this century, but part of a larger megalopolis; and it has been an awfully long time since trials were restricted to the first Wednesday of every month. The combined populations of Nassau and Suffolk Counties then were less than 70,000, mostly farmers. These counties are now rapidly approaching three million people. Abraham Lincoln was president and he signed the Joint Resolution, and he'd be assassinated in a few days. Thirty five years later, in 1900, the Eastern District tried 14 civil cases from Nassau-Suffolk, and only six criminal cases the entire year.

A great deal has changed but a great deal has remained the same, as evidenced by the New York Times editorial. At the close of the Civil War, the New York Metropolitan area was experiencing population growth of monumental proportions. Burgeoning immigration had swollen Manhattan and the population was spilling over to Brooklyn and, to a lesser degree, into Queens. In terms of the administration of justice, the Southern Judicial District was overwhelmed. Judges from that district expressed deep concern about their inability to administer justice following the passage of a spate of new laws which they could no longer manage. A Brooklyn based federal court made sense and a new district was created.

The Congress and the federal judiciary were sensitive to a need which existed in the real world and that need was met for decades by the Eastern District. It was a fair and equitable solution to a problem; but those ingredients and those forces which gave rise to the problem did not end with the creation of the new judicial district. Population continued to increase. Business and commerce, schools and housing, transportation and roads and a host of attendant requirements of population growth continued to march eastward across the Long Island land mass for the next 115 years up to today. It continues to spread to Long Island's eastern most forks. Yet the judicial district created 43 days before General Lee surrendered to General Grant at Appomattox Court House remains the administrative unit of federal justice for "Kings, Queens, Suffolk and Richmond," and for a population that has grown 3,750 percent.

The Eastern District of New York is now the third most populous in the entire nation. Of the 94 other districts, only two serve a greater constituency than the 7.4 million people of the Eastern District. The Eastern District also claims the second fastest growing caseload of the Second Circuit. The Judicial Council of the Second Circuit Report dated September 1977 tells us that and some other things. The district services a major port of entry and naturalizes more Americans than any other court in the nation. The volume and complexity of its criminal caseload requires its judges to devote more time to criminal cases than other districts. During the past ten years, total filings in the Eastern District have increased an incredible 96 percent. The District's activity is tremendous. Civil filings in the past ten years increased 102 percent, criminal 78 percent, the report indicated.

According to Chief Judge Kaufman's Second Circuit record, "An outstanding characteristic of the Eastern District is its heavy criminal caseload. During the past ten years, the attention required by the criminal caseload, coupled with the rise in civil filings, has caused the civil pending caseload nearly to double."

Even more revealing is the fact that in calendar 1978, civil cases pending at the conclusion of business on December 31st increased from 3,501 in 1977 to 3,844, an increase of 11.45 percent over the previous year.

In the just-completed judicial term ending December 31, 1978, the criminal caseload pending which had remained static for years increased 4.3 percent, the first time in this decade that there has been a significant criminal case backlog on the docket at the close of a calendar year. The 731 cases pending at that time surpassed the 705 cases pending in the more active Southern District and represents one of the highest criminal backlogs in the nation.

On January 3, 1975, the Speedy Trial Act became law, defining precisely criminal defendants' rights to a speedy trial and setting forth specific time limits permitted between arraignment and trial. Under the act, the Eastern District, as all other U.S. courts, must now bring a defendant to a trial within 80 days of arraignment. Your Honor, in February of this year, 96 cases were pending on the criminal docket of the Eastern District. An alarming 44 of them had not been adjudicated within the 80-day time period prescribed by law. In other words, Judge Markey, 45 percent of the Eastern District's criminal backlog—and this, I might add parenthetically, is exclusive of excludable delay—in February were pending in violation of federal law. From January 1st to the end of last month, the percentage of criminal cases pending in excess of the 80-day period has averaged 40 percent. This means two out of every five defendants awaiting justice in the Eastern District this year were denied their constitutional right to a speedy trial as defined by existing law.

On July 1st of this year, the permitted time period between indictment and arraignment will be reduced to 60 days as specified by the 1975 Speedy Trial Act. One can only conjure up the horrors that will occur when this overburdened district is forced to meet this tougher, tighter time constraint.

I'd like to ask your Honor if I can include the remainder of page 5, all of page 6 and a portion of page 7 in the record.

Chief Judge MARKEY. Absolutely.

Congressman AMBRO. Thank you. And I'd like to drop to the second paragraph on page 7.

Long Island, as a social and economic entity, has long been beyond the interest and firm control of the United States Attorney's office in Brooklyn. The considerable extent to which federal grants, projects and contracting authority totaling billions of dollars annually have been awarded to both Nassau and Suffolk Counties creates a fertile but woefully unexplored field for corruption for those aware of the inability of the federal authorities meaningfully and aggressively to pursue their misdeeds.

Although difficult to perceive at first, perhaps it would not be inappropriate to apply cost-benefit analysis to the creation of a separate judicial district on Long Island, considering the amount of federal monetary involvement with the bicounty region.

I realize that there are some who see no distinction between Nassau and Suffolk and the rest of the Eastern District, some who would lead us to believe that this is simply one contiguous, homogeneous land mass; yet, that view flies in the face of a series of official designations dating back to 1972, recognizing the unique and distinct identity of Nassau and Suffolk. For example, in 1972, the United States Department of Commerce granted Nassau and Suffolk Counties separate status as a standard metropolitan statistical area. In 1977, the United States Office of Management and Budget granted Nassau and Suffolk Counties separate federal aid clearing house status for purposes of A-95 review, splitting those two counties away from the New York City-based Tri-State Regional Planning Commission.

In 1977, the United States Environmental Protection Agency granted Nassau and Suffolk Counties status as a sole source aquifer region qualifying for special environmental protection, and that is split from Brooklyn and Queens even though Brooklyn and Queens share the same land mass. What I mean by that, your Honor, and I might add to the text, is that, from Coney Island in Brooklyn to the eastern forks of Long Island, we sit on the same geological substructure. There was a time when Brooklyn and Queens retrieved its potable drinking water from its underground aquifers. By virtue of development, paving over, those aquifers collapsed and now Brooklyn and Queens import their water from the upper reaches of the United States and Canada. But Nassau and Suffolk continue to provide drinking water to their populations from their underground aquifer wells and so this designation is most significant.

And last March, your Honor, the Commerce Department announced that Nassau and Suffolk Counties would be designated an economic development district, the first exclusively suburban region of this kind in the nation. The New York State Department of Transportation cut Nassau and Suffolk away from New York City and created a separate transportation region for the two suburban counties. New York City and Long Island are not a single entity separated by an invisible and artificial line, and both the State and Federal Governments recognize that fact.

Your Honor, the time has come to sift out the unimportant and self-serving criteria that have been offered time and again in opposition to the creation of this district. The situation on Long Island represents the most compelling arguments one could imagine in favor of the creation of a Southeastern Judicial District in the State of New York. A new district would clearly equalize the caseloads of the existing district, lessen delays for litigants, eliminate the ever increasing case backlogs and provide greater strides (sic) to that coveted belief in equal justice for all. Access to justice, if it is to have a true meaning, must include timely and affordable adjudication by fair and efficient courts. Our Long Island is entitled to no less.

In the opinion of the present United States Attorney for the Eastern District, a new district would not be capable of attracting personnel sufficiently sophisticated to handle the large cases that a United States Attorney is responsible for. This sort of attitude, infested by that tainted belief in suburban and rural professional inferiority, is an unfortunate misconception that is often offered as bait to the unknowing and unsuspecting. In fact, no less than five of the honorable judges serving on the bench of the Eastern District currently reside in either Nassau or Suffolk Counties.

Surely, this is not the example of the lack of professional sophistication the United States Attorney fears.

Courts are not to be created nor denied existence to suit the pleasures of lawyers or judges. We recognize that. The essential element in the creation of any government facility is to serve the needs of the people, and this proposal is no exception. The ever changing demographic characteristics of the area have created a transportation system altogether incapable of insuring accessibility to the U.S. Court System for many, if not most of the Nassau-Suffolk residents. For example, average round-trip commuting time to the Brooklyn Court location from random points on Long Island during off-off-peak hours reveal unacceptable travel time, and there follows a little chart of that data. The Brooklyn-Queens-Nassau Corridor is now the most congested, maddening and infuriating traffic morass in the nation. Western Suffolk, at least, if not the whole county, is rapidly joining the transportation logjam which characterizes the three other counties. Traveling from even close-in Nassau County to the Brooklyn Federal Court Complex is at best an all-day affair.

Recognizing the Long Island area as a transportation entity fraught with problems, the State of New York has, as I indicated earlier, designated Nassau and Suffolk Counties as a separate transportation district. Considering the transportation complexities above, it is quite evident that nearly three million residents of Nassau and Suffolk do not enjoy reasonable accessibility to the United States Courts.

The issue before you is one which will only become even more pressing with time. The fact that the average population served per court location nationally is 503,700, and that the Eastern District serves an incredible 3.7 million persons per location, is only one indicator in a list of many which mandates immediate remedial action. Recognition of Long Island's autonomy from the dense metropolitan New York City region has been recognized by industry, commerce, and academicians for years by a variety of federal agencies, but not yet by the United States Federal Court System.

The pressure of population and growth has been inexorable. It now rests with you to assure these people that the doors of justice have followed them eastward.

In conclusion, I want to sum up with the observation that all of the foregoing is just lengthy exposition of the inescapable fact that, for many Long Islanders, the lack of a separate federal judicial district with suitable court and attendant func-

tions, most notable a U.S. Attorney's office, magistrates and ancillary agencies, have meant and will continue to mean the denial of equal justice under the Constitution and laws of the United States.

I have no doubt that the overwhelming weight of evidence, the facts, the figures, the arguments, are all on the side of separation, and I have no doubt that you and your colleagues will see the justice and the wisdom in separating Nassau and Suffolk Counties from the Eastern District in line with H.R. 2714. Thank you, your Honor.

Chief Judge MARKEY. Thank you, Congressman Ambro. The Administrative Office—and I have the honor of speaking for them—is deeply indebted to you, not only for the thoroughly researched but scholarly paper and presentation made here this morning. While you were, I think, overly modest in saying that your statement forms merely a background for other statements we'll be hearing here today, I think it clearly spells out the nature of the problem. All of the considerations, as you indicated, leaving out some of the statistics, the portions you recommended to be inserted in the record will certainly be inserted.

There is no question that I would put to you at this time, Congressman Ambro, because it is not a type of situation in which we're going to try to reach a decision here today, as you know so well. The witnesses were heard on April 27th in Brooklyn and will be heard here today. Written statements have been received from people who will not be appearing in person. All those will be put together, a recommendation will be made back to the Congress, of course.

I cannot say more to thank you for taking the time from your busy schedule. Lord knows the pressures on anybody in Washington, and particularly on a Congressman these days, are heavier than they have ever been. I thank you immensely for your coming. I thank you for your statement. It will be given thorough and complete consideration as the representative of the people here who are facing the problem. Thank you.

TABLE 5.—COST OF CREATING A NEW DISTRICT WITH COURTHOUSE LOCATED AT HEMPSTEAD, N.Y.

	Number of positions	Salaries and expenses	
		Nonrecurring	Recurring
A. Compensation and benefits:			
District court judges and staff. It is estimated that the caseload of the proposed district will be about 695 case filings per year, 640 civil and 55 criminal. Given approximately 350 case filings per judgeship, it is anticipated that 2 judges and their staffs would be required, 1 judge and staff transferring from Brooklyn, New York and the other judge and staff transferring from Westbury, N.Y.....	10		
Clerk of court and staff. The proposed district would be eligible for a clerk of court, JSP-14, and a chief deputy clerk, JSP-13. This will result in a new position for the clerk and an upgrading of an existing position for a chief deputy.....	1		\$45,000
Based on the standard ratio of 100 filings per deputy, the proposed district would be eligible for 7 positions. An additional 3 positions are provided for equivalent workload, including naturalization, check writing, and other work not directly related to filings. Of the 10 positions, 2 are to be transferred from Westbury and 8 are to be transferred from Brooklyn.....	10		
Probation. The new district will require a new chief probation officer at JSP-14 and a secretary at JSP-5.....	2		47,000
The 6 probation officers and 3 clerks presently located in the same geographic area as the proposed district will remain.....	9		
Magistrates. There are 3 full-time magistrates in Brooklyn and 1 part-time magistrate in Patchogue. It is anticipated that 1 new full-time magistrate and his supporting staff would be required for the proposed district.....	3		84,000
Bankruptcy court. Bankruptcy case filings for eastern New York with 6 bankruptcy judges totaled 3,300 during a recent 12-month period. It is estimated approximately 1,400 of those filings will originate in the proposed district. The 3 bankruptcy judges and supporting staff presently located in the same geographic area as the proposed district would remain.....	19		

TABLE 5.—COST OF CREATING A NEW DISTRICT WITH COURTHOUSE LOCATED AT HEMPSTEAD, N.Y.—Continued

	Number of positions	Salaries and expenses	
		Nonrecurring	Recurring
With 3 bankruptcy judges in the proposed district, the bankruptcy court would be eligible for a clerk of court at JSP-15 and a chief deputy at JSP-14. This would result in a new position for the clerk and an upgrading of an existing position for the chief deputy.	1		52,000
B. Miscellaneous expenses: The miscellaneous expenditures are for the 7 additional personnel required by the district court, the probation office, the magistrate's office, and the bankruptcy court of the proposed district. The expenditure includes travel, communications and utilities, supplies, security investigations, equipment, and libraries.		\$29,000	21,000
C. Relocation expenses: Of the 55 positions which are identified for the new district, 1 judge and his staff, 2 deputy clerks, 9 probation personnel and 19 bankruptcy personnel are already located in the area. Relative to the remaining positions, it is contemplated that some of the personnel, particularly the judges, their staff, and some of the deputy clerks in Brooklyn will be given the opportunity to be relocated in the best interest of the Government. It is estimated that 5 persons will be relocated at an approximate cost of \$10,000 each.		50,000	
D. Space and facilities: The construction presently underway in Hempstead for a large divisional office of the Eastern District would adequately house the personnel of the proposed district. Funds for this purpose as well as for furniture and furnishings have already been budgeted.			
Total additional costs	7	79,000	249,000

¹ Non-add.

TABLE 6.—COST OF CREATING A NEW DISTRICT WITH COURTHOUSE LOCATED OTHER THAN HEMPSTEAD, N.Y.

	Number of positions	Salaries and expenses	
		Nonrecurring	Recurring
A. Compensation and benefits:			
District court judges and staff. It is estimated that the caseload of the proposed district will be about 650 case filings per year, 595 civil and 55 criminal. Given approximately 350 case filings per judgeship, it is anticipated that 2 judges and their staffs would be required, 1 judge and staff transferring from Brooklyn, New York and the other judge and staff transferring from Westbury, N.Y.....	10		
Clerk of court and staff. The proposed district would be eligible for a clerk of court, JSP-14, and a chief deputy clerk, JSP-13. This will result in a new position for the clerk and an upgrading of an existing position for a chief deputy.....	1		\$45,000
Based on the standard ratio of 100 filings per deputy, the proposed district would be eligible for 7 positions. An additional 3 positions are provided for equivalent workload, including naturalization, check writing, and other work not directly related to filings. Of the 10 positions, 2 are to be transferred from Westbury and 8 are to be transferred from Brooklyn	10		
Probation. The new district will require a new chief probation officer at JSP-14 and a secretary at JSP-5.....	2		47,000
The 6 probation officers and 3 clerks presently located in the same geographic area as the proposed district will remain.....	9		
Magistrates. There are 3 full-time magistrates in Brooklyn and 1 part-time magistrate in Patchogue. It is anticipated that 1 new full-time magistrate and his supporting staff would be required for the proposed district.....	3		84,000

TABLE 6.—COST OF CREATING A NEW DISTRICT WITH COURTHOUSE LOCATED OTHER THAN HEMPSTEAD, N.Y.—Continued

	Number of positions	Salaries and expenses	
		Nonrecurring	Recurring
A. Compensation and benefits—Continued			
Bankruptcy court. Bankruptcy case filings for eastern New York with 6 bankruptcy judges totaled 3,300 during a recent 12-month period. It is estimated approximately 1,400 of those filings will originate in the proposed district. The 3 bankruptcy judges and supporting staff presently located in the same geographic area as the proposed district would remain	19		
With 3 bankruptcy judges in the proposed district, the bankruptcy court would be eligible for a clerk of court at JSP-15 and a chief deputy at JSP-14. This would result in a new position for the clerk and an upgrading of an existing position for the chief deputy.....	1		52,000
B. Miscellaneous expenses: The miscellaneous expenditures are for the 7 additional personnel required by the district court, the probation office, the magistrate's office, and the bankruptcy court of the proposed district. The expenditure includes travel, communications and utilities, supplies, security investigations, equipment, and libraries.....		\$29,000	21,000
C. Relocation expenses: Of the 55 positions which are identified for the new district, 1 judge and his staff, 2 deputy clerks, 9 probation personnel and 19 bankruptcy personnel are already located in the area. Relative to the remaining positions, it is contemplated that some of the personnel, particularly the judge, his staff, and some of the deputy clerks in Brooklyn will be given the opportunity to be relocated in the best interest of the Government. It is estimated that 8 persons will be relocated at an approximate cost of \$10,000 each.....		80,000	
D. Furniture and space:			
Estimated furniture requirements for the new personnel and the personnel who transfer to the new district.....		60,000	
General Service Administration estimates that the construction of new facilities for judgeships cost approximately \$450,000 each.....		900,000	
Total additional costs	7	1,069,000	249,000

¹ Non-add.

WITNESS LIST.—PUBLIC HEARING ON NEW FEDERAL JUDICIAL DISTRICT, BROOKLYN, N.Y., CHIEF JUDGE HOWARD T. MARKEY, PRESIDING

- 10:30 Jerome Bauer, Patent and Trademark Specialist, Mineola, N.Y.
 10:45 George O'Haire, Chairman, Federal Courts Committee, Nassau County Bar Association, Former Supervisory Assistant U.S. Attorney.
 11:00 Edward R. Korman, U.S. attorney, eastern district of New York.
 11:15 Bernard S. Feldman, attorney at law, Melville, N.Y.
 11:30 Stephen Behar, Assistant State Special Prosecutor, Suffolk County.

WITNESS LIST.—PUBLIC HEARING ON NEW FEDERAL JUDICIAL DISTRICT, HAUPPAUGE, N.Y., CHIEF JUDGE HOWARD T. MARKEY, PRESIDING, MAY 4, 1979

MORNING SESSION

- 9:30 Congressman Jerome A. Ambro, U.S. Congressman, third district of New York.
 10:00 Eugene Wishod, president, Suffolk County Bar Association.
 Edwin Freedman, president, Nassau County Bar Association.
 10:10 Richard C. Cahn, third vice president, Suffolk County Bar Association.
 10:20 Judge George C. Pratt, U.S. district judge, eastern district of New York.
 10:40 Justice William R. Geiler, Supreme Court of New York State.
 10:50 Lewis Yevoli, chairman, New York State Assembly Subcommittee, on the Improvement of Long Island Economy.
 11:00 Dr. T. Alexander Pond, acting president, State University of New York at Stony Brook.
 11:10 Desmond O'Sullivan, chairman, Federal Courts Committee, Suffolk County, Bar Association.

- 11:20 James P. Catterson, Board of Directors, Criminal Bar Association of Suffolk County.
 11:30 George C. Pezold, General Counsel, Shippers National Freight Claim Council.
 11:40 Joseph Giacalone, Chairman, Long Island Mid-Suffolk Businessmen's Action Committee.
 11:50 Lee Koppelman, director, Suffolk County Department of Planning.
 12:00 Joseph Ryan, liaison director with Federal Courts Committee, Nassau County Bar Association.
 12:10 William Goldman, bankruptcy law specialist.

AFTERNOON SESSION

- 1:30 John Regan, dean, Hofstra Law School.
 1:40 Harry Rains, chairman, Nassau County Bar Labor Law Committee.
 1:50 Vincent J. Hand, president, Nassau-Suffolk Trial Lawyers Association.
 2:00 Kenneth Anderson, president, Long Island Chapter, NAACP.
 2:10 Ms. Margie Johnson-Speights, president, South Shore Chapter, National Organization for Women.
 2:20 Richard Bornstein, Huntington Township Chamber of Commerce.
 2:30 Thomas McElligott, Suffolk County trial attorney.
 2:40 Kenneth Rohl, criminal law specialist.
 2:50 Paul S. Beeber, attorney at law.
 3:00 Gregory W. Carman, city councilman, Oyster Bay, N.Y.
 3:10 Jerome Wallin, Assistant town attorney, Huntington, N.Y.

WRITTEN SUBMISSIONS IN RESPONSE TO THE HEARING NOTIFICATIONS

- John L. Juliano.
 John F. Bogut, office of the town attorney, Town of Oyster Bay.
 Raymond A. Fleck, Jr., executive vice president, The Catholic Lawyer's Guild of the Diocese of Rockville Centre.
 Jerome S. Ventra, corresponding secretary, Criminal Courts Bar Association of Nassau County, Inc.
 Owen B. Walsh.
 Martin R. Morris, U.S. probation officer, U.S. District Court, Eastern District of New York.
 Hon. William Carney, Member of Congress.
 John J. Regan, dean, Hofstra University, School of Law.
 Douglas S. MacKay, chairman, QBA Federal Courts Committee.
 Daniel R. Murdock, Federal Bar Council, Committee on Second Circuit Courts.

CONGRESS OF THE UNITED STATES,
 HOUSE OF REPRESENTATIVES,
 Washington, D.C., July 25, 1980.

CHAIRMAN ROBERT KASTENMEIER,
 Subcommittee on Courts, Civil Liberties and the Administration of Justice,
 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am attaching a copy of a letter from Edward Dean Price, U.S. District Judge of the Eastern District of California concerning the designation of an additional place of holding court for the Eastern District.
 In order to allow an additional place to be designated, it would require amending sub-section (b) of Section 84, 28 U.S.C.A. By amending Title 28, I feel there would be a definite improvement to the administration of justice in the Eastern District of California. I would appreciate your reviewing Judge Price's letter and provide your comments and suggestions as to how such a change could be effected.
 I appreciate your attention to this matter, and I look forward to hearing from you.

Sincerely,

TONY COELHO,
 Member of Congress.

U.S. DISTRICT COURT,
EASTERN DISTRICT OF CALIFORNIA,
Fresno, Calif., February 25, 1980.

Hon. TONY COELHO,
House of Representatives,
Federal Building, Fresno, Calif.

DEAR TONY: This will confirm our previous conversations concerning the above-entitled matter.

Section 84 of Title 28, United States Code Annotated, divides the State of California into four judicial districts. The concluding sentence of each sub-division designates the places where court shall be held in each district. The concluding sentence of sub-section (b) pertaining to the Eastern District of California presently reads as follows:

"Court for the Eastern District shall be held in Fresno, Redding and Sacramento."

I would respectfully suggest that it would be of benefit to the District and a definite improvement to the administration of justice if sub-section (b) of Section 84, 28 U.S.C.A. were amended to read as follows:

"The Eastern District comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba.

"Court for the Eastern District shall be held at Fresno, the Modesto-Ceres metropolitan area, Redding and Sacramento."

Arguments in favor of such an amendment are as follows:

1. The Eastern District of California geographically constitutes one of the largest single geographic federal court districts within the continental United States. It extends from the Oregon border on the North, to the southern boundry of Kern County on the South. Its westerly boundries coincide with the westerly boundries of the counties that constitute the great Central Valley of California, and its easterly boundary is the California-Nevada state line. Apparently litigants must travel great distances to attend the sessions of court, and this travel will become increasingly burdensome as fuel costs and public transportation costs increase. There is presently a federal court facility in the designated region, namely, the Bankruptcy Court that is located in Ceres. Arrangements could be made for one of the judges in the Eastern District to call periodic law and motion calendars and short cause calendars, etc. at the Ceres facility, and thus save many miles and hours of travel by litigants and their counsel.

2. The Eastern District of California sits as a single court, and has not divided itself into territorial divisions. When the additional judgeship was created for Fresno, the appropriate congressional committees considering the matter indicated a strong desire for a commitment from the sponsors of the bill that the Fresno judge would, if fact, help the Sacramento judges deal with the problems of the Sacramento calendar. As I understand the matter, a firm commitment in that regard was made.

The physical situation at the Sacramento courthouse requires some explanation. Presently, there are three full time judges and two senior judges stationed in Sacramento. Judge Raul Ramirez has been nominated by President Carter to be the fourth judge in Sacramento. His confirmation hearing is pending presently, and is expected momentarily.

At present there are four courtrooms in Sacramento, three of which are assigned to full time judges, the extra courtroom being used by the senior judges, both of whom carry on an active calendar and have a nearly full docket. Hence, the scheduling of cases in the Sacramento courthouse before a District Judge sitting in Fresno at present would be most difficult, and when Judge Ramirez comes aboard, practically impossible.

The undersigned has, due to the lightness of his calendar, already undertaken to try some cases previously venued in Sacramento. In each instance, he felt compelled to move the case to Fresno for trial. If a facility located in approximately the central portion of the District, such as Modesto-Ceres, were available, the interested parties, i.e., witnesses, counsel and litigants, would have been saved approximately 200 miles of travel in reaching the Courthouse.

Although the Eastern District is not divided into divisions, for the convenience of counsel and obtaining uniformity in filing, it is divided into service districts. Currently, the service district for the Fresno courthouse includes Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus and Tulare counties. Formerly, Stanislaus was included in the Sacramento service district. It is hoped by the inclusion of the additional county into the Fresno service area, that this will aid in the equalization of the caseload between the two courthouses. However, if litigants in Stanislaus

County, as well as Mariposa, Merced and southern San Joaquin had available to them an alternate courthouse in the Modesto-Ceres metropolitan area, the travel distance and time in reaching the Federal Court facility would be cut in half.

It is not contemplated that any criminal matters involving defendants in custody pending trial or who may be committed to the custody of the United States Attorney for the purposes of imprisonment would be handled in the proposed additional facility. However, misdemeanor matters and matters in which no imprisonment is contemplated could well be handled in the newly-designated facility.

When you have a moment, would you kindly go over the foregoing and please pass on to me any additional suggestions for inclusions or deletions that might occur to you. I have no particular pride of authorship.

Further, I would like to have your honest opinion as to whether or not copies of this should be forwarded to the Senators from California as well as to any of the other Congressmen who are representing portions of the Eastern District.

Kindest personal regards,

Very truly yours,

EDWARD DEAN PRICE,
U.S. District Judge.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 20, 1980.

Hon. ROBERT KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I very much appreciate this opportunity to comment in support of my bill, H.R. 5890, and I thank you and the members of the Subcommittee for taking this time to hold a hearing on H.R. 5890 and similar legislation.

The State of New Jersey is located in the Third Circuit. Presently, federal court is held in three New Jersey cities: Camden, Trenton and Newark. It is my contention that a fourth location, Jersey City, should be added to this list and I will endeavor to provide the Subcommittee with information to support this view.

POPULATION TO BE SERVED

Jersey City is located in Hudson County in the northern part of the State. According to 1970 United States Bureau of the Census statistics, Hudson County has a population in excess of 600,000. By virtue of its population, Hudson County is one of the three northern New Jersey counties classified as a first class county.

Jersey City, according to 1970 Bureau of the Census figures, has a population of 260,350. Due to its size, Jersey City is designated by the state as a first class city. The only other city in New Jersey to enjoy a similar distinction is Newark.

The Northern portion of New Jersey is the most populous area of the State. The three counties with the greatest population—Bergen, Essex and Hudson—are all contiguous. In addition, counties with such sizable populations as to be classified by the state as second class counties surround these first three counties concentrically. They include Union, Passaic and Middlesex counties. Further to the west, the counties of Morris, Sussex and Warren add to the total population of northern New Jersey by nearly 600,000 persons. All told, these counties comprise a population of 3,922,225 which is more than 50% of the total New Jersey population of 7,348,943.

A review of the map of New Jersey which is enclosed shows that more than half of the population of the State is served by only one court house, the facility at Newark.

The northern part of New Jersey is highly developed with significant concentrations of industrial and educational facilities. It is the location of numerous major corporations, both domestic and international in scope.

The location of a corporation is important in determining federal court jurisdiction and venue. Jurisdiction in diversity cases is determined by residency with a corporation deemed to be a resident of the state in which it is incorporated, licensed to do business or is doing business. On the other hand, venue properly lies within the judicial district where all the plaintiffs or all the defendants reside or where the claim arose.

Given that substantial numbers of corporations are located in northern New Jersey, there is the likelihood that at some point they may require access to federal court, only one court house being easily accessible, the court house at Newark.

CASELOAD

Perhaps the most compelling reason for permitting court to be held at Jersey City is the significant change in caseload activity in the State.

An analysis of the Newark court's caseload by Deputy Clerk Minnie Del Polito is forthcoming. However, I would like to comment on the increased caseload generally in New Jersey.

Although the federal court caseload has risen nationwide, I believe that the increase in New Jersey is unique. Over the last nine years, 1971-1979, there has been a 60 percent increase in the number of cases filed in the federal courts in New Jersey. In 1971, a total of 2,617 civil and criminal cases were filed. By 1979, that number had risen to 4,427 cases filed. Although the number of criminal cases filed declined from 746 in 1971 to 642 in 1979, the number of civil cases actually doubled with 3,785 filed in 1979 compared with 1,871 filed only nine years before. (See Appendix A)

A review of the criminal cases pending indicates that while fewer in number than in 1971, a substantial portion comprised offenses in which lengthy trials could be anticipated. More than 60 percent of the cases involved serious felonies. (See Appendix B)

In recognition of the increased caseload, I would note that New Jersey is slated to receive two additional judgeships pursuant to the provisions of the Omnibus Judgeship Act of 1978, now Public Law 95-486.

NATURALIZATION PETITIONS

There has been a constant filing of petitions for naturalization in the Third Circuit. This is counter to a national trend which saw naturalization petitions decrease 2 percent in 1978 while the numbers of aliens naturalized increased by only 1.4 percent. For the year ending June 30, 1979, the federal courts in New Jersey received 3,264 petitions for naturalization and naturalized 5,667 aliens, more than 60 percent of the total of the Third Circuit.

In view of the recent admission of Cuban refugees, more than 10,000 of whom are expected to arrive in Hudson County, as well as the significant numbers of resident aliens who are presently living in northern New Jersey, I would expect that this trend will continue over time. (See Appendix C)

MAGISTRATE ACTIVITIES

In the year ending June 30, 1979, New Jersey magistrates handled a disproportionate share of the cases disposed of by all magistrates in the Third Circuit. Specifically, the magistrates in New Jersey handled 81 percent of the minor offenses other than petty offenses and 72 percent of the petty offenses in the Third Circuit.

The federal magistrates in New Jersey had three times the immigration caseload of any other district. They also disposed of more than 80 percent of the traffic offenses, 83 percent of the food and drug cases, 60 percent of the thefts, 90 percent of the trespass offenses and 74 percent of the drunk and disorderly cases.

Among minor offenses other than petty offenses, New Jersey magistrates handled 98 percent of the fraud cases, 64 percent of the thefts, 100 percent of the food and drug cases, 55 percent of the mail cases and 50 percent of the traffic cases. (Appendix D)

PROBATION ACTIVITIES

In the year ending June 30, 1979, 1,735 persons were received for supervision under the Federal probation system in New Jersey. Although 1,092 individuals were removed from supervision during that time, there remained 1,603 persons still requiring supervision at year's end, a fairly constant 30 percent of the workload of the Third Circuit. (Appendix E)

ACCESSIBILITY OF JERSEY CITY

Having discussed in some detail the increased caseload in New Jersey courts, I would like to outline the reasons for selecting Jersey City as a fourth site at which federal court may be held.

As I have indicated earlier in my statement, Jersey City is one of the two largest cities in the state. It is located in one of the most populous counties in the state and is adjacent to other major population centers which together account for more than 50 percent of the entire population of the State of New Jersey.

Jersey City is ideally located in the midst of a transportation network which includes access to New York City just across the Hudson River via the PATH train. The PATH station is just a few blocks from the court house.

Jersey City is easily accessible via the New Jersey Turnpike and other major thoroughfares to adjacent communities to the north, south and west. Major rail connections are also located in Hudson County and Newark Airport is approximately 20 minutes away by automobile.

ENDORSEMENTS

I am very pleased that I have received the endorsement of the Hudson County Bar Association for H.R. 5890. The Association's letter is included at the conclusion of my statement.

In addition, I have been assured of the endorsement of the New Jersey State Bar Association and I am particularly pleased to note that the Hon. Lawrence Whipple, Senior Judge of the Federal District Court in Newark, has indicated to me that his letter of support will also be forthcoming shortly.

COURT HOUSE FACILITIES

I would anticipate that costs for holding federal court at Jersey City would be minimal. A new court house would not be needed since the Hudson County court house provides suitable facilities.

CONCLUDING REMARKS

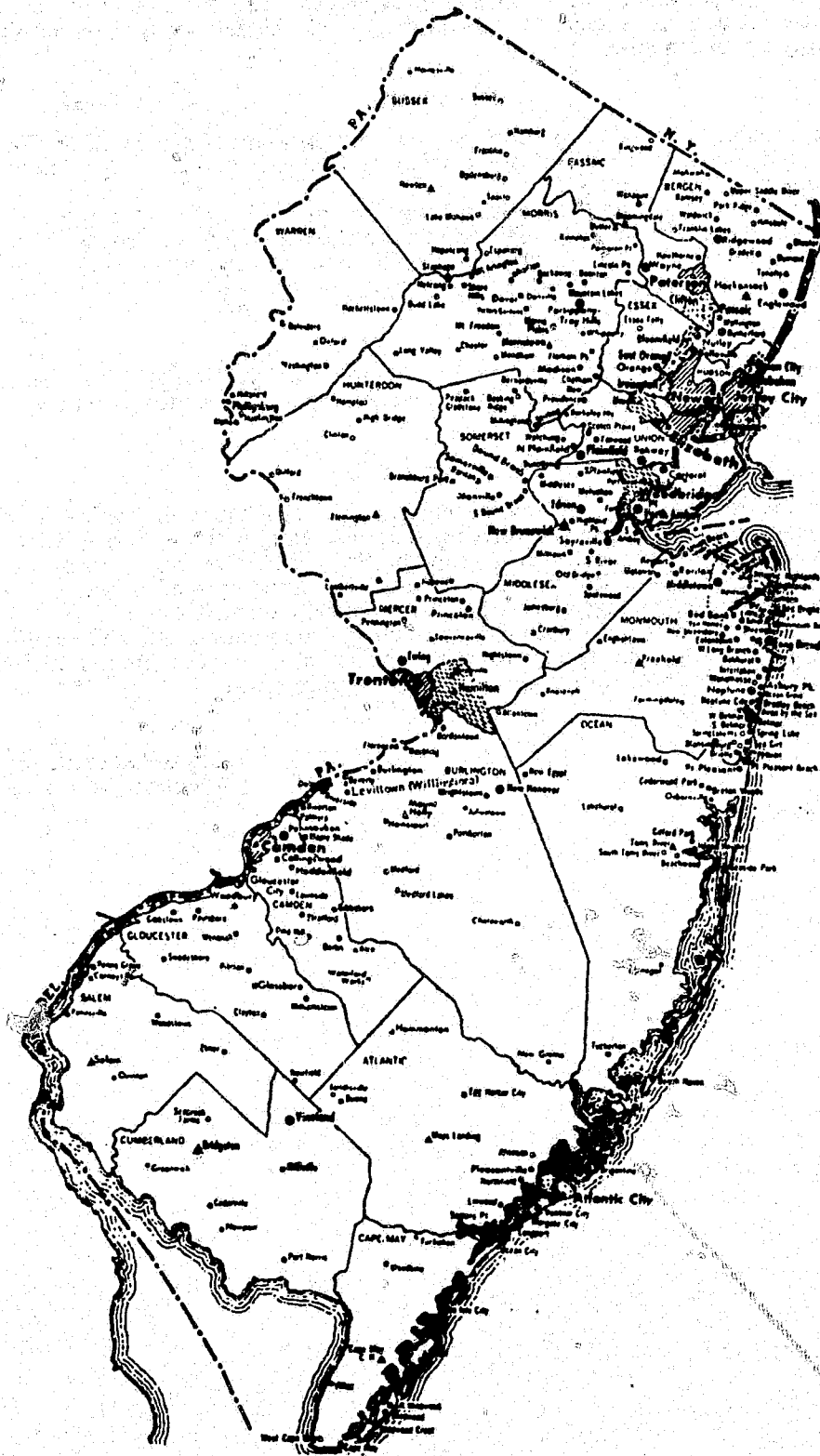
In conclusion, let me reiterate my conviction that the cause of justice in New Jersey would be well served by permitting federal court to sit at Jersey City. By virtue of its location in the northern part of the State where more than half of the population is concentrated, its accessibility and the existence of adequate court facilities, Jersey City is the logical fourth location at which court should sit.

Again, Mr. Kastenmeier, let me thank you and the members of the subcommittee for permitting me this opportunity to comment on a proposal which, I am convinced, would improve the administration of justice in my State.

With kindest regards,
Sincerely,

FRANK J. GUARINI,
Member of Congress.

Attachments.



HUDSON COUNTY BAR ASSOCIATION

JAMES E. FLYNN
PRESIDENT
601 BROADWAY
BAYONNE, N. J. 07002
201 - 456-1478

JAY LIEBMAN, PRES.-ELECT
JOHN P. DORAN, 1st VICE-PRES.
GERALD BAKER, 2nd VICE-PRES.

WASH., D.C. OFFICE
FRANK J. GUARINI, MC

HEADQUARTERS
AND LIBRARY
200 MAGNOLIA AVENUE
JERSEY CITY, N. J. 07306
201 - 332-9669

LEO I. MCGOUGH, RECORDING SEC.
MAURICE J. GALLIPOLI, MEMBERSHIP SEC.
JOSEPH S. E. VERGA, TREAS.

REPLY TO:
#601 Broadway
Bayonne, New Jersey

August 11, 1980

Honorable Frank J. Guarini, M.C.
United State House of Representatives
1530 Longworth House Office Building
Washington, D.C. 20515

Re: H.R. 5890

Dear Congressman Guarini:

I consulted with our Officers and Trustees in response to your letter of August 6, 1980 concerning our Association's position on your Bill, H.R. 5890. I can report to you that we strongly favor the concept of having the United States District Court sit at Jersey City, New Jersey.

If we can provide any further help to you in regards to the above, please advise us.

Very truly yours,

JAMES E. FLYNN
President

JEF:jml



NEW JERSEY
STATE BAR ASSOCIATION

Headquarters 172 WEST STATE STREET, TRENTON, N. J. 08608
609-394-1101

August 18, 1980

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Executive Director
DALTON W. MENHALL

The Honorable Frank J. Guarini
U.S. House of Representatives
1123 Longworth Building
Washington, D.C. 20515

Dear Congressman Guarini:

The Executive Committee of the New Jersey State Bar Association at a meeting held on August 14, 1980 passed a resolution supporting your Bill H.R. 5890 to permit the United States District Court for the Judicial District of New Jersey to be held at Jersey City, New Jersey.

At the present time, the United States District Court for the Judicial District of New Jersey sits in three New Jersey cities, Camden, Trenton and Newark. Because of the United States District Court's jurisdiction of diversity of citizenship cases, the United States District Court for the Judicial District of New Jersey hears many cases involving litigants who live in New York. Jersey City is in the northern part of New Jersey and is geographically very close to New York City. Aside from Newark, Camden and Trenton are very inconvenient locations for litigants from Northern New Jersey and from New York.

We think that if your Bill H.R. 5890 is adopted, it would provide a genuine needed service to the public and will significantly increase and improve public access to the federal courts. For these reasons, the Executive Committee of the New Jersey State Bar Association supports your Bill H.R. 5890 which would permit a United States District Court for the Judicial District of New Jersey to be held at Jersey City.

Very truly yours,

Marie L. Garibaldi

MLG:MF

APPENDIX A

Table X-3.
United States District Courts, Civil and Criminal Cases Filed by District, 1971 to 1976

Circuit and District	1971			1972			1973			1974		
	Total	Civil	Criminal ¹	Total	Civil	Criminal	Total	Civil	Criminal ¹	Total	Civil	Criminal
Total All Districts	124,000	92,304	41,208	140,916	96,173	67,043	128,917	90,500	49,347	161,197	102,130	27,657
District of Columbia	3,000	3,000	3,000	3,670	3,607	3,603	4,132	3,011	1,321	2,011	3,007	604
First Circuit	5,437	4,400	937	7,354	5,730	1,316	7,300	6,000	601	7,012	7,134	778
Maine	363	364	140	361	337	134	365	310	55	364	339	85
Massachusetts	3,320	3,003	887	4,704	4,001	814	4,444	4,001	353	5,115	4,943	353
New Hampshire	774	700	74	261	279	72	350	293	66	413	367	66
Rhode Island	340	293	73	423	313	111	492	393	100	431	361	120
Puerto Rico	1,321	1,050	171	1,524	1,199	391	1,441	1,193	240	1,580	1,363	170
Second Circuit	12,974	9,854	3,220	12,659	9,891	3,768	15,426	9,940	3,405	13,132	10,361	2,009
Connecticut	977	787	270	1,067	750	319	1,187	883	334	1,471	1,131	310
New York	607	541	246	814	633	200	966	876	231	730	561	169
Northern	2,052	1,600	500	3,170	1,700	1,371	3,031	1,930	1,004	3,030	1,930	600
Southern	3,213	2,012	1,302	7,210	4,748	1,444	6,062	3,990	1,102	4,724	3,523	1,000
Western	820	645	103	891	648	232	1,211	844	807	937	635	302
Vermont	604	344	90	397	355	122	434	330	80	471	336	123
Third Circuit	11,778	9,546	3,230	11,392	9,978	3,214	10,887	8,000	2,146	11,303	9,294	2,101
Delaware	340	373	75	404	378	126	413	360	105	240	334	91
New Jersey	3,617	3,071	746	2,850	2,160	692	3,336	1,995	641	2,410	1,961	450
Pennsylvania	4,740	3,960	774	3,630	3,040	591	3,811	3,000	801	3,542	2,173	669
Middle	941	801	140	956	774	186	945	732	213	1,155	901	254
Western	1,742	1,400	372	1,567	1,274	313	1,860	1,371	360	1,687	1,365	342
Virgin Islands	1,390	1,190	272	1,049	1,335	313	1,802	1,583	200	1,646	1,590	266
Fourth Circuit	10,066	7,653	2,153	11,403	7,064	3,537	11,318	8,004	3,231	10,006	6,887	3,306
Maryland	1,970	1,907	603	3,062	3,063	599	1,981	1,373	606	2,967	1,319	658
North Carolina	730	583	243	870	530	340	936	617	309	965	603	355
Eastern	614	300	300	607	345	262	750	367	371	771	431	340
Middle	663	377	300	705	423	282	701	549	212	724	470	254
Western	1,572	1,300	303	1,911	1,436	472	1,993	1,614	309	2,070	1,641	430
South Carolina	3,000	2,150	850	3,031	2,077	853	2,734	1,947	847	3,001	1,960	921
Virginia	702	531	232	931	716	215	810	606	230	1,105	839	240
Western	363	233	120	370	250	111	335	201	105	607	370	170
Northern	730	540	190	740	504	164	730	777	101	647	733	170
Southern	3,000	2,150	850	3,031	2,077	853	2,734	1,947	847	3,001	1,960	921
West Virginia	363	233	120	370	250	111	335	201	105	607	370	170
Northern	730	540	190	740	504	164	730	777	101	647	733	170
Southern	3,000	2,150	850	3,031	2,077	853	2,734	1,947	847	3,001	1,960	921
Fifth Circuit	11,970	9,267	10,311	10,180	7,330	15,000	22,103	22,107	5,964	25,410	24,318	6,701
Alabama	1,633	1,064	569	1,812	1,212	600	1,560	1,192	368	1,684	1,270	415
Northern	730	510	210	722	502	220	830	520	310	745	570	175
Middle	730	645	80	621	506	110	850	820	131	843	823	121
Southern	1,600	1,060	540	1,812	1,212	600	1,560	1,192	368	1,684	1,270	415
Florida	2,902	1,901	701	3,000	1,930	1,070	2,024	1,000	600	2,220	1,011	600
Northern	850	560	290	810	500	310	800	430	370	700	470	230
Middle	1,902	1,241	661	2,190	1,430	760	1,814	1,000	600	2,220	1,011	600
Southern	2,902	1,901	701	3,000	1,930	1,070	2,024	1,000	600	2,220	1,011	600
Georgia	2,000	1,000	500	2,000	1,000	500	2,000	1,000	500	2,000	1,000	500
Northern	870	370	500	800	400	570	800	410	390	840	400	440
Middle	630	200	200	700	300	400	600	300	300	670	300	370
Southern	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Louisiana	4,700	4,100	600	4,500	3,900	600	4,000	3,500	500	4,111	3,500	611
Eastern	-	-	-	-	-	-	-	-	-	-	-	-
Middle E.	-	-	-	-	-	-	-	-	-	-	-	-
Western	1,500	1,113	370	1,770	1,190	580	1,771	1,114	657	1,513	1,100	413
Mississippi	500	420	150	400	300	100	400	300	100	400	300	100
Northern	500	400	100	400	300	100	400	300	100	400	300	100
Southern	500	400	100	400	300	100	400	300	100	400	300	100
Texas	2,330	1,700	630	2,330	1,600	730	2,700	2,100	600	2,771	2,111	660
Northern	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110
Eastern	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110
Southern	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110
Western	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110	1,110	1,000	110
Canal Zone	547	500	147	712	647	506	600	600	600	700	600	600

APPENDIX B

TABLE D-8 CASES, U.S. DISTRICT COURTS
ALL CRIMINAL CASES PENDING ON JUNE 30, 1979 BY MAJOR OFFENSE AND DISTRICT

CIRCUIT AND DISTRICT	TOTAL	GENERAL OFFENSES						
		HOMICIDE	ROBBERY	ASSAULT	BURGLARY	LARCENY	EMBEZ- ZLEMENT	FRAUD
TOTAL ALL DISTRICTS..	18,124	70	480	223	61	1,038	473	2,229
DISTRICT OF COLUMBIA..	244	2	18	8	1	18	5	36
FIRST CIRCUIT.....	563	-	9	3	1	100	29	97
MAINE.....	59	-	1	-	-	20	3	7
MASSACHUSETTS.....	309	-	6	-	-	72	23	55
NEW HAMPSHIRE.....	21	-	1	-	-	1	1	7
RHODE ISLAND.....	48	-	-	1	-	3	-	16
PUERTO RICO.....	125	-	1	2	-	4	2	12
SECOND CIRCUIT.....	1,721	1	51	8	1	188	75	334
CONNECTICUT.....	94	-	5	-	-	7	10	30
NEW YORK NORTHERN.....	100	-	-	1	-	2	10	14
NEW YORK EASTERN.....	668	1	27	4	1	72	20	89
NEW YORK SOUTHERN.....	640	-	10	3	-	70	27	132
NEW YORK WESTERN.....	141	-	-	-	-	15	8	54
VERMONT.....	77	-	2	-	-	2	-	5
THIRD CIRCUIT.....	743	9	33	20	5	80	28	185
DELAWARE.....	20	-	2	-	-	1	1	3
NEW JERSEY.....	228	-	10	6	1	21	9	89
PENNSYLVANIA EASTERN.....	171	-	8	4	-	18	8	42
PENNSYLVANIA MIDDLE.....	59	-	-	-	-	2	3	15
PENNSYLVANIA WESTERN.....	120	-	3	-	-	10	5	30
VIRGIN ISLANDS.....	145	9	10	10	7	30	4	6
FOURTH CIRCUIT.....	993	6	68	20	2	90	45	173
MARYLAND.....	335	1	16	10	-	28	7	62
NO. CAROLINA EASTERN.....	99	2	1	1	-	2	11	18
NO. CAROLINA MIDDLE.....	52	-	13	-	-	6	4	7
NO. CAROLINA WESTERN.....	81	1	15	2	-	8	2	11
SOUTH CAROLINA.....	114	2	4	-	1	9	7	22
VIRGINIA EASTERN.....	187	-	8	5	-	30	6	25
VIRGINIA WESTERN.....	51	-	4	2	-	4	4	7
W. VIRGINIA NORTHERN.....	28	-	-	-	-	1	1	5
W. VIRGINIA SOUTHERN.....	65	-	1	-	1	5	3	14
FIFTH CIRCUIT.....	3,028	4	51	28	16	198	78	366
ALABAMA NORTHERN.....	100	-	3	-	-	19	4	16
ALABAMA MIDDLE.....	43	-	1	-	-	2	2	4
ALABAMA SOUTHERN.....	27	-	1	-	-	1	1	6
FLORIDA NORTHERN.....	59	-	5	1	-	2	4	7
FLORIDA MIDDLE.....	164	-	12	2	-	9	11	15
FLORIDA SOUTHERN.....	721	1	12	7	-	12	11	30
GEORGIA NORTHERN.....	180	2	3	1	-	8	5	37
GEORGIA MIDDLE.....	49	-	4	-	-	3	1	11
GEORGIA SOUTHERN.....	32	-	1	-	-	3	1	7
LOUISIANA EASTERN.....	128	-	4	1	-	11	4	18
LOUISIANA MIDDLE.....	25	-	1	-	-	1	3	6
LOUISIANA WESTERN.....	53	-	-	-	-	9	2	11
MISSISSIPPI NORTHERN.....	24	-	-	1	-	1	1	3
MISSISSIPPI SOUTHERN.....	34	-	-	1	-	1	1	12
TEXAS NORTHERN.....	193	-	5	2	-	13	8	44
TEXAS EASTERN.....	51	-	6	4	-	11	21	41
TEXAS SOUTHERN.....	738	-	2	4	-	13	4	29
TEXAS WESTERN.....	346	-	1	3	14	22	2	8
CANAL ZONE.....	99	-	-	-	-	-	-	-

TABLE B-2 FELONY CASES, U.S. DISTRICT COURTS
FELONY CRIMINAL CASES PENDING ON JUNE 30, 1975 BY MAJOR OFFENSE AND DISTRICT

CIRCUIT AND DISTRICT	TOTAL	GENERAL OFFENSES							
		HOMICIDE	ROBBERY	ASSAULT	BURGLARY	LARCENY	REMBE- ZLEMENT	FRAUD	AUTO THEFT
TOTAL ALL DISTRICTS..	12,982	89	489	182	89	848	421	1,881	208
DISTRICT OF COLUMBIA..	238	2	18	8	1	18	4	34	4
FIRST CIRCUIT.....	486	-	9	2	1	67	18	81	4
MAINE.....	81	-	1	-	1	19	2	4	-
MASSACHUSETTS.....	247	-	6	-	-	41	10	48	3
NEW HAMPSHIRE.....	18	-	1	-	-	1	1	8	-
RHODE ISLAND.....	41	-	-	-	-	2	-	11	1
PUERTO RICO.....	69	-	1	2	-	4	2	12	-
SECOND CIRCUIT....	1,869	1	81	8	1	138	59	362	7
CONNECTICUT.....	83	-	8	-	-	7	10	39	1
NEW YORK NORTHERN.....	87	-	-	-	-	1	8	12	-
NEW YORK EASTERN.....	573	1	27	3	1	42	11	89	1
NEW YORK SOUTHERN.....	610	-	10	3	-	68	28	123	2
NEW YORK WESTERN.....	134	-	7	-	-	18	6	83	1
VERMONT.....	72	-	2	-	-	2	-	4	-
THIRD CIRCUIT.....	685	9	33	14	2	78	24	133	7
DELAWARE.....	29	-	2	-	-	1	1	3	-
NEW JERSEY.....	165	-	10	3	1	16	6	48	3
PENNSYLVANIA EASTERN.....	189	-	8	2	-	18	6	38	2
PENNSYLVANIA MIDDLE.....	58	-	-	-	-	10	2	14	-
PENNSYLVANIA WESTERN.....	113	-	3	-	-	10	8	24	2
VIRGIN ISLANDS.....	142	8	10	8	7	30	4	8	-
FOURTH CIRCUIT....	798	6	88	11	2	82	44	146	30
MARYLAND.....	234	1	16	3	-	12	7	64	7
NO. CAROLINA EASTERN.....	89	2	8	1	-	2	11	16	2
NO. CAROLINA MIDDLE.....	82	-	13	-	-	8	2	17	1
NO. CAROLINA WESTERN.....	89	-	15	2	-	8	2	11	3
SOUTH CAROLINA.....	108	2	4	-	1	9	6	18	8
VIRGINIA EASTERN.....	129	-	6	3	-	10	6	29	1
VIRGINIA WESTERN.....	47	-	-	-	-	2	4	7	7
W. VIRGINIA NORTHERN.....	24	-	-	-	-	1	3	3	-
W. VIRGINIA SOUTHERN.....	88	-	1	-	1	8	3	12	1
FIFTH CIRCUIT.....	2,836	4	89	23	16	134	74	322	83
ALABAMA NORTHERN.....	96	-	3	-	-	10	4	19	11
ALABAMA MIDDLE.....	28	-	1	-	-	1	2	4	3
ALABAMA SOUTHERN.....	27	-	1	-	-	1	2	4	1
FLORIDA NORTHERN.....	88	-	-	1	-	2	1	7	-
FLORIDA MIDDLE.....	193	-	5	2	-	9	4	28	2
FLORIDA SOUTHERN.....	763	-	12	5	-	11	11	75	7
GEORGIA NORTHERN.....	148	-	3	1	-	8	6	33	3
GEORGIA MIDDLE.....	31	-	4	-	-	3	1	3	2
GEORGIA SOUTHERN.....	23	-	2	1	-	1	1	1	1
LOUISIANA EASTERN.....	108	-	3	1	-	8	3	18	1
LOUISIANA MIDDLE.....	28	-	1	-	-	1	2	5	1
LOUISIANA WESTERN.....	44	-	1	-	1	7	2	8	3
MISSISSIPPI NORTHERN.....	22	-	-	-	-	-	1	2	-
MISSISSIPPI SOUTHERN.....	27	-	-	-	-	-	-	-	-
TEXAS NORTHERN.....	196	-	5	2	-	13	9	38	1
TEXAS EASTERN.....	89	-	-	-	-	11	-	8	3
TEXAS SOUTHERN.....	739	-	2	4	-	13	20	49	8
TEXAS WESTERN.....	313	-	2	1	14	13	4	22	2
CAMAL ZONE.....	98	-	1	-	-	13	3	8	-

APPENDIX C

TABLE P-1.—U.S. district courts, passport applications, petitions for naturalization and aliens naturalized during the 12-month period ended June 30, 1979

Circuit and district	Passport applications processed by U.S. district courts	Other agencies processing passport applications			Petitions for naturalization	Aliens naturalized
		U.S. Postal Service	U.S. State Department	State courts		
Total.....	31,801				137,624	141,963
District of Columbia.....		No.....	Yes.....	No.....	887	716
First Circuit.....	77				6,804	8,221
Maine.....		Yes.....	No.....	Yes.....	175	186
Massachusetts.....		Yes.....	Yes.....	No.....	4,696	6,174
New Hampshire.....		Yes.....	No.....	Yes.....	92	62
Rhode Island.....	77	Yes.....	No.....	No.....	568	476
Puerto Rico.....		No.....	Yes.....	No.....	1,273	1,331
Second Circuit.....	1,374				33,323	33,786
Connecticut.....	184	Yes.....	No.....	No.....	2,798	3,416
New York:		Yes.....	No.....	No.....		
Northern.....		Yes.....	Yes.....	Yes.....	19,697	19,979
Eastern.....		Yes.....	Yes.....	No.....	9,164	9,481
Southern.....		Yes.....	No.....	Yes.....	789	769
Western.....		Yes.....	No.....	Yes.....	97	127
Vermont.....	1,370	Yes.....	No.....	No.....		
Third Circuit.....	5,887				7,691	9,387
Delaware.....	1,261	Yes.....	No.....	No.....	236	294
New Jersey.....		No.....	No.....	Yes.....	3,265	5,687
Pennsylvania:		Yes.....	Yes.....	No.....	2,641	1,982
Eastern.....		Yes.....	No.....	No.....	243	238
Middle.....		Yes.....	No.....	Yes.....	576	578
Western.....		No.....	No.....	No.....	789	636
Virgin Islands.....	4,426					
Fourth Circuit.....	3,003				6,788	7,380
Maryland.....		Yes.....	No.....	No.....	2,782	3,439
North Carolina:		Yes.....	No.....	No.....	421	437
Eastern.....		Yes.....	No.....	Yes.....	198	212
Middle.....	68	Yes.....	No.....	No.....	186	179
Western.....		Yes.....	No.....	No.....	332	458
South Carolina:		Yes.....	No.....	No.....		
Eastern.....	1,952	Yes.....	No.....	Yes.....	2,307	2,159
Western.....	50	Yes.....	No.....	Yes.....	137	56
West Virginia:		Yes.....	No.....	Yes.....	74	128
Northern.....	105	Yes.....	No.....	Yes.....	143	133
Southern.....	831	Yes.....	No.....	Yes.....		
Fifth Circuit.....	6,472				20,123	19,292
Alabama:		Yes.....	No.....	No.....	201	185
Northern.....		Yes.....	Yes.....	Yes.....	113	116
Middle.....	3	Yes.....	No.....	No.....	69	64
Southern.....	27	Yes.....	No.....	No.....		
Florida:		Yes.....	No.....	No.....	418	341
Northern.....	5	Yes.....	No.....	No.....	1,775	1,415
Middle.....	31	Yes.....	Yes.....	Yes.....	9,726	9,478
Southern.....		Yes.....	No.....	No.....		
Georgia:		Yes.....	No.....	No.....	588	708
Northern.....		Yes.....	No.....	No.....	286	167
Middle.....	154	Yes.....	No.....	No.....	239	92
Southern.....		Yes.....	No.....	No.....		
Louisiana:		Yes.....	Yes.....	No.....	694	728
Eastern.....		Yes.....	No.....	No.....	114	78
Middle.....		Yes.....	No.....	Yes.....	347	193
Western.....	1,357	Yes.....	No.....	No.....		
Mississippi:		Yes.....	No.....	Yes.....	66	33
Northern.....		Yes.....	No.....	No.....	193	201
Southern.....		Yes.....	No.....	No.....		
Texas:		Yes.....	No.....	Yes.....	1,385	968
Northern.....	1,785	Yes.....	No.....	No.....	284	148
Eastern.....	522	Yes.....	Yes.....	No.....	1,520	1,688
Southern.....	313	Yes.....	No.....	No.....	2,576	2,679
Western.....	2,073	Yes.....	No.....	No.....		
Great Lakes.....		No.....	No.....	No.....		

APPENDIX D

TABLE M-1.—U.S. district courts, minor offense cases—defendants
the 12-month period

Circuit and district	Total all defend- ants	Minor offenses other than petty offenses									
		Total	Traffic	Theft	Food/ drug	Weapon- s	Tres- pass	Mail	Assault	Fraud	Other
Total.....	100,267	12,807	8,302	1,875	431	81	102	388	172	676	780
District of Columbia ..	179	83	2	35	23	2		6		11	4
First Circuit.....	1,347	210	2	71	26	2		5	2	80	22
Maine.....	32	1									1
Massachusetts.....	963	153	2	62		2		1		71	15
New Hampshire.....	23										
Rhode Island.....	33	13		8				1		3	1
Puerto Rico.....	276	43		1	26			3	2	6	5
Second Circuit.....	1,285	431		240		1		161	2	16	11
Connecticut.....	5	3						1			2
New York:											
Northern.....	137	8		3				2	2		1
Eastern.....	614	293		135				156			2
Southern.....	280	5									5
Western.....	217	122		102		1		2		16	1
Vermont.....	32										
Third Circuit.....	3,362	325	2	64	2		1	43	4	174	35
Delaware.....	165	17		1				15	1		
New Jersey.....	2,410	266	1	41	2			24		171	27
Pennsylvania:											
Eastern.....	340	22		15				3		3	3
Middle.....	240	7		6							
Western.....	107	13	1	3			1	1	3		4
Virgin Islands.....											
Fourth Circuit.....	25,033	3,029	1,826	623	205	23	29	21	28	35	239
Maryland.....	9,824	1,438	1,034	256	110	12	7	11	3	1	2
North Carolina:											
Eastern.....	2,792	152	64	14	14		4		3	4	47
Middle.....	91	3	1			1				1	
Western.....	358	32		5	5			4	6	8	4
South Carolina.....	104	13	1	2				1		7	2
Virginia:											
Eastern.....	12,114	1,377	721	341	76	10	18	4	16	18	173
Western.....	456	6		5							1
West Virginia:											
Northern.....	2										
Southern.....	52	8	1					1			6
Fifth Circuit.....	25,880	5,319	4,492	231	95	33	32	64	105	43	218
Alabama:											
Northern.....	1,025	163	149	2		1		1			10
Middle.....	1,322	106	61	49							9
Southern.....	31										
Florida:											
Northern.....	775	8	1						3	2	2
Middle.....	527	29	1					2		5	12
Southern.....	323	40		12	1			24		2	1
Georgia:											
Northern.....	799	94	43	13	7		3	6	3	11	8
Middle.....	1,082	964	954	8			1				1
Southern.....	3,829	3,731	3,278	65	80	29	34		94	8	143
Louisiana:											
Eastern.....	277	19		5				6	2	3	3
Middle.....	74	1						1			
Western.....	1,764	16	1	15							
Mississippi:											
Northern.....	257	3	3								
Southern.....	639	43		9		1		14	1	2	16
Texas:											
Northern.....	365	9		4	2	2				1	
Eastern.....	145	3			2				1		1
Southern.....	5,706	24		8				7	1	1	7
Western.....	6,998	75	1	30	3			3	1	8	

*disposed of by United States magistrates, by nature of offense for
ended June 30, 1979*

Petty offenses										Circuit and district
Total	Traffic	Immigration	Food/drug	Mail	Drunk/disorderly	Hunt/fish/comp	Trespass	Theft	Other	
87,460	59,970	13,364	894	1,279	1,929	5,356	1,352	817	2,499	Total.
96	10	4	5	72				5		District of Columbia
1,137	942	44		18	4	93	3	4	29	First Circuit.
51	40	7		1		2				Maine
810	708	2		3		75	3		19	Massachusetts.
23	4				1	16			2	New Hampshire.
20	6			15					1	Rhode Island.
233	184	35		1	3			4	6	Puerto Rico.
854	569	83	29	117	12	23	2	4	15	Second Circuit.
2	1			1						Connecticut.
129	32	49	14	22		10		1	1	New York:
321	315				3	3				Northern.
275	166		15	69	8	4	1	3	9	Eastern.
95	49	12		25	1	4			3	Southern.
32	4	21				5			2	Western.
2,937	2,077	36	24	296	115	127	185	23	54	Vermont.
148	97			18	12	7	7		7	Third Circuit.
2,144	1,689	27	20	78	85	40	168	14	23	Delaware.
318	163	9	2	117	6	5	1	6	9	New Jersey.
233	109		1	25	10	65	8	3	1	Pennsylvania:
94	19		1	58	2	10	1		5	Eastern.
										Middle.
										Western.
										Virgin Islands.
22,004	20,047	6	174	185	236	549	186	62	559	Fourth Circuit.
7,586	7,292		12	23	63	53	53	1	89	Maryland.
2,640	2,378		70	9	31	45	4	34	69	North Carolina:
88	13		7	11		53		2	2	Eastern.
366	132		36	5	58	33	9	11	82	Middle.
91	25			24		23	1	2	16	Western.
10,737	9,966	6	20	66	57	187	117	7	291	South Carolina.
450	221		29	7	25	154	1	5	8	Virginia:
2				2						Eastern.
44				38	2	1	1		2	Western.
20,561	7,900	9,232	175	279	460	1,418	260	314	443	West Virginia:
										Northern.
										Southern.
863	771		2		7	58		2	22	Fifth Circuit.
1,216	1,183			12	2	6	4		9	Alabama:
31	27					3			1	Northern.
767	443			2	59	182	34	24	23	Middle.
507	309	1	5	12	61	5	9	94	11	Southern.
283	157			7	49	61	6		3	Florida:
705	384		4	116	19	51	31	18	82	Northern.
38				17	3	11			7	Middle.
90				14	8	66	2	2	4	Southern.
258	57	3		30	13	135	1	11	8	Louisiana:
73	9			7		56		1		Eastern.
1,750	864		10		15	697	43	46	75	Middle.
354	210		2		9	4	2		27	Western.
616	545	7	8		29	17	4	1	7	Mississippi:
356										Northern.
356	209	1	2		33	4	77	1	29	Southern.
142	81	1	3	3	3	16	2	2	31	Texas:
5,682	146	5,434	57	10	6	13			16	Northern.
6,923	2,587	3,785	82	49	144	31	45	112	88	Eastern.
										Southern.
										Western.

APPENDIX E

TABLE E-1 FEDERAL PROBATION SYSTEM
PERSONS RECEIVED FOR AND REMOVED FROM SUPERVISION,
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1979

CIRCUIT AND DISTRICT	PERSONS UNDER SUPERVISION JULY 1, 1978	RECEIVED FOR SUPERVISION										REMOVED BY TRANSFER
		TOTAL RECEIVED	TOTAL LESS TRANSFERS	COURT PROBATION	PRE-TRIAL DIVERSION	U.S. MAGISTRATE PROBATION	PAROLE	HANDS-ON RELEASE	MILITARY PAROLE	SPECIAL PAROLE		
TOTAL ALL DISTRICTS...	80,375	41,063	33,839	14,094	2,235	5,202	4,829	3,222	95	2,142	8,024	
DISTRICT OF COLUMBIA...	1,945	1,113	944	405	-	125	295	85	-	34	167	
FIRST CIRCUIT.....	1,776	1,214	1,044	495	193	152	108	40	2	54	149	
MAINE.....	113	66	71	33	7	2	8	-	-	1	9	
MASSACHUSETTS.....	1,121	772	679	300	147	113	94	25	1	27	92	
NEW HAMPSHIRE.....	81	63	44	20	6	1	5	-	1	1	19	
RHODE ISLAND.....	132	91	78	39	2	17	11	6	-	3	13	
PUERTO RICO.....	331	208	174	73	31	19	28	9	-	14	34	
SECOND CIRCUIT.....	5,324	3,770	3,117	1,508	247	428	384	279	11	239	632	
CONNECTICUT.....	510	263	211	124	10	5	38	24	1	17	52	
NEW YORK NORTHERN.....	234	162	134	73	17	33	11	3	2	5	36	
NEW YORK EASTERN.....	2,150	1,394	1,048	533	78	214	189	112	4	88	225	
NEW YORK SOUTHERN.....	2,040	1,404	1,297	734	148	60	127	117	3	108	197	
NEW YORK WESTERN.....	411	367	343	153	-	134	21	21	2	10	14	
VERMONT.....	92	68	54	29	4	-	6	2	1	2	14	
THIRD CIRCUIT.....	9,995	2,842	2,432	1,087	123	478	403	158	5	144	445	
DELAWARE.....	231	113	96	35	17	11	13	7	-	5	17	
NEW JERSEY.....	1,739	960	748	257	36	221	103	48	2	42	212	
PENNSYLVANIA EASTERN.....	2,496	943	838	347	43	155	129	61	1	92	113	
PENNSYLVANIA MIDDLE.....	338	156	104	45	4	19	26	5	-	3	34	
PENNSYLVANIA WESTERN.....	951	518	475	242	18	62	92	40	2	19	43	
VIRGIN ISLANDS.....	244	170	169	123	5	-	42	-	-	1	1	
FOURTH CIRCUIT.....	6,736	3,937	3,369	1,213	114	1,104	614	152	7	85	548	
MARYLAND.....	1,587	1,126	1,028	284	-	371	179	46	2	24	100	
N. CAROLINA EASTERN.....	757	467	444	144	12	178	57	7	-	6	61	
N. CAROLINA MIDDLE.....	709	361	220	90	15	22	63	15	2	13	61	
N. CAROLINA WESTERN.....	635	443	398	156	19	137	68	14	1	11	45	
SOUTH CAROLINA.....	1,035	470	388	214	22	32	74	18	-	10	85	
VIRGINIA EASTERN.....	1,024	702	566	381	12	140	123	35	1	14	126	
VIRGINIA WESTERN.....	447	221	174	104	17	27	14	5	-	3	45	
W. VIRGINIA NORTHERN.....	159	61	45	26	2	2	11	3	1	-	16	
W. VIRGINIA SOUTHERN.....	305	164	142	68	15	15	29	11	-	4	28	
FIFTH CIRCUIT.....	15,232	10,101	8,832	3,465	497	1,378	1,453	814	24	396	2,465	
ALABAMA NORTHERN.....	997	573	507	238	36	14	124	58	2	15	66	
ALABAMA MIDDLE.....	380	153	126	46	-	22	39	10	1	8	27	
ALABAMA SOUTHERN.....	340	155	126	72	-	-	32	13	-	7	31	
FLORIDA NORTHERN.....	243	109	129	33	1	34	34	10	1	12	65	
FLORIDA MIDDLE.....	1,229	659	604	240	28	61	169	42	1	44	231	
FLORIDA SOUTHERN.....	1,301	782	562	214	16	21	114	61	2	114	270	
GEORGIA NORTHERN.....	1,185	757	612	199	40	152	122	68	2	37	145	
GEORGIA MIDDLE.....	544	226	188	48	23	42	82	24	-	7	46	
GEORGIA SOUTHERN.....	371	283	243	83	13	108	21	11	-	7	48	
LOUISIANA EASTERN.....	853	469	420	162	44	58	90	42	2	38	95	
LOUISIANA MIDDLE.....	179	93	74	34	7	6	25	12	-	-	19	
LOUISIANA WESTERN.....	536	311	241	92	54	42	27	19	-	5	70	
MISSISSIPPI NORTHERN.....	210	111	80	44	2	13	13	8	-	1	21	
MISSISSIPPI SOUTHERN.....	379	160	124	43	5	31	27	11	-	7	36	
TEXAS NORTHERN.....	1,632	1,175	935	324	94	14	268	132	3	84	349	
TEXAS EASTERN.....	377	245	170	92	22	4	19	25	2	6	115	
TEXAS SOUTHERN.....	2,304	1,914	1,641	733	45	329	251	139	8	134	278	
TEXAS WESTERN.....	1,646	1,292	1,144	241	45	428	250	98	2	90	246	
CANAL ZONE.....	262	216	214	121	20	5	35	15	-	15	2	

TABLE E-1 FEDERAL PROBATION SYSTEM
PERSONS RECEIVED FOR AND REMOVED FROM SUPERVISION,
DURING THE TWELVE MONTH PERIOD ENDED JUNE 30, 1979

REMOVED FROM SUPERVISION										PERSONS UNDER SUPERVISION JUNE 30, 1979	CIRCUIT AND DISTRICT
TOTAL DE-MOVED	TOTAL LESS TRANS-FERS	COURT PROBATION	PRE-TOTAL DIVER-SION	U.S. MAGIS-TRATE PROBATION	PAROLE	HANDS-ON RELEASE	MILITARY PAROLE	SPECIAL PAROLE	REMOVED BY TRANSFER-FR		
44,040	33,832	14,790	2,202	5,202	4,829	3,198	145	1,794	8,197	84,007	TOTAL ALL DISTRICTS...
1,120	1,053	367	1	292	367	79	-	31	87	1,936	DISTRICT OF COLUMBIA...
1,179	1,014	522	129	187	134	48	4	72	363	1,913	FIRST CIRCUIT.....
89	64	43	0	3	0	2	1	2	19	188	MAINE.....
749	463	341	94	45	90	27	1	47	84	1,144	MASSACHUSETTS.....
88	36	25	3	3	4	-	-	1	19	89	NEW HAMPSHIRE.....
108	89	65	4	17	13	5	-	2	19	113	RHODE ISLAND.....
162	160	75	14	19	20	4	3	39	22	357	Puerto Rico.....
2,472	2,733	1,524	143	216	394	238	28	194	719	5,876	SECOND CIRCUIT....
393	274	180	8	4	61	32	-	11	27	479	CONNECTICUT.....
103	140	74	29	21	14	3	-	3	33	239	NEW YORK NORTHERN.....
1,189	967	454	38	129	188	88	2	3	87	2,466	NEW YORK EASTERN.....
1,468	1,110	664	85	33	519	111	2	103	222	2,079	NEW YORK SOUTHERN.....
247	202	122	1	19	27	15	2	14	45	331	NEW YORK WESTERN.....
92	64	39	2	-	8	1	1	2	18	78	VERMONT.....
3,356	2,094	1,338	174	697	464	145	9	127	462	8,381	THIRD CIRCUIT.....
162	139	34	14	35	24	3	-	3	23	182	DELAWARE.....
1,411	1,269	384	23	394	197	45	3	40	152	1,603	NEW JERSEY.....
201	169	100	94	472	133	30	3	68	142	2,026	PENNSYLVANIA EASTERN.....
344	495	234	39	65	80	40	2	1	41	293	PENNSYLVANIA MIDDLE.....
124	121	91	1	-	29	-	-	12	69	288	PENNSYLVANIA WESTERN.....
6,148	3,389	1,497	140	950	584	169	23	54	759	6,525	FOURTH CIRCUIT....
3,139	2,821	240	-	474	122	55	4	14	204	1,574	MARYLAND.....
471	348	180	14	114	47	6	2	1	103	753	NO. CAROLINA EASTERN.....
292	339	192	26	20	70	18	1	3	53	598	NO. CAROLINA MIDDLE.....
455	349	103	19	102	45	16	1	2	88	703	NO. CAROLINA WESTERN.....
493	421	227	29	43	86	18	8	10	72	1,012	SOUTH CAROLINA.....
739	587	248	9	151	115	42	6	14	152	804	VIRGINIA EASTERN.....
239	205	121	29	19	13	2	-	6	33	450	VIRGINIA WESTERN.....
69	55	35	1	4	13	1	-	1	13	146	W. VIRGINIA NORTHERN.....
173	134	71	11	10	28	11	-	3	39	294	W. VIRGINIA SOUTHERN.....
8,248	8,077	3,402	312	1,342	1,489	889	92	475	2,171	13,085	FIFTH CIRCUIT.....
388	300	280	23	22	187	54	4	12	82	988	ALABAMA NORTHERN.....
241	194	94	3	27	51	13	3	3	45	292	ALABAMA MIDDLE.....
171	132	75	-	1	34	12	-	3	39	324	ALABAMA SOUTHERN.....
179	125	42	4	10	38	18	-	15	50	237	FLORIDA NORTHERN.....
623	463	314	20	68	198	63	3	39	191	1,713	FLORIDA MIDDLE.....
844	742	295	9	37	137	71	3	110	140	1,248	FLORIDA SOUTHERN.....
371	318	194	23	169	68	2	1	78	184	1,896	GEORGIA NORTHERN.....
314	249	114	5	48	38	15	1	3	54	419	GEORGIA MIDDLE.....
477	401	170	33	28	19	9	3	3	63	340	GEORGIA SOUTHERN.....
124	99	34	14	18	25	46	2	19	74	845	LOUISIANA EASTERN.....
362	275	106	2	34	27	10	1	3	57	146	LOUISIANA MIDDLE.....
109	99	54	75	48	27	30	3	3	27	363	LOUISIANA WESTERN.....
896	586	46	8	11	9	2	2	4	20	212	MISSISSIPPI NORTHERN.....
3,801	3,055	325	67	87	168	126	4	3	48	3,607	MISSISSIPPI SOUTHERN.....
244	178	65	4	3	23	6	-	28	34	1,775	TEXAS NORTHERN.....
1,401	1,245	384	34	8	22	32	4	3	93	2,743	TEXAS EASTERN.....
8,398	660	229	51	283	280	114	4	39	424	1,466	TEXAS WESTERN.....
104	174	93	13	8	22	14	-	17	18	292	CANAL ZONE.....

PREPARED STATEMENT OF HON. SAM B. HALL, JR.

Mr. Chairman, I want to thank you and the Members of this Subcommittee for scheduling a hearing on the proposal to divide the Fifth Circuit into two autonomous circuits. This is a long overdue proposition in view of the size of the Fifth Circuit and the need to expedite the administration of justice and I am pleased to give it my wholehearted support.

A quick glance at the map will indicate the nature of our problem. The Fifth Circuit is our largest appellate court. It extends from the westernmost portion of Texas to the southern tip of Florida, a distance of nearly 1850 land miles, with a population approaching 40 million people. Not only is the Fifth Circuit the largest federal appellate court, but last year it handled over 20 percent more cases than the second most active appellate court, the Ninth.

The Fifth Circuit now has 125 district judges and 26 authorized appellate judges as a result of passage of the Omnibus Judgeship bill, Public Law 95-486. With the court handing down some 2,000 opinions each year, obviously it is difficult, if not impossible, for an individual district judge to keep current with every opinion of the court.

I realize that opposition to a split in the Fifth Circuit in previous years was based on concerns of civil rights groups regarding litigation in the courts embraced by the Fifth Circuit. However, civil rights legislation and court decisions are well in place and the law of the land is clear. A division of the Fifth Circuit will not imperil the rights of our citizens, regardless of race.

What we are seeking to do is streamline justice and allow litigants an opportunity to have their day in court without unnecessary delay. This is exactly what the highly respected Commission on Revision of the Federal Court Appellate System recommended in 1973 when it called for a division of the Fifth Circuit.

Furthermore, I feel that we can save the taxpayers money by dividing the circuit. Right now, the cost of sending judges and their administrative personnel over six large States is tremendous. Litigants are subjected to huge expenses when their attorneys must travel to present oral arguments. With a crowded court docket, saving time for judges and attorneys is absolutely necessary.

There is unanimous agreement on the part of the judges of the Fifth Circuit to facilitate this division and this in itself is a most convincing argument. In addition, the President of the State Bar of Texas, the Honorable Franklin Jones, Jr., has contacted me strongly supporting this legislation and advising me that the Board of Directors of the State Bar is unanimously supporting the position of the Judicial Council of the Fifth Circuit Court of Appeals.

As a Member of the House Judiciary Committee and a resident of a State within the current Fifth Circuit, I urge support of legislation to divide the Fifth Circuit. There is much talk these days about streamlining our courts and cutting down on the time when cases can be assigned and adjudicated. We now have an opportunity to do just that, and I think the overwhelming majority of the legal community will applaud such affirmative action.

PREPARED STATEMENT OF CONGRESSMAN TOM HARKIN

Mr. Chairman, I strongly urge the Subcommittee to approve H.R. 7951 which moves the Iowa counties of Page and Fremont to the Western Division of the Southern Judicial District in Iowa.

I introduced the bill to remedy a long standing inconvenience to Iowa attorneys and litigants in these counties. Currently the appropriate court for cases from Page and Fremont Counties is held in Des Moines. Court for the Western Division is held in Council Bluffs which is several hours closer to these counties than is Des Moines. The resulting waste of time and money incurred in travel to and from Des Moines needlessly discourages Iowans from pursuing legitimate claims in federal district court or levies an unwarranted extra "tax" on citizens who choose to litigate federal disputes.

This bill makes only a minor modification of existing law. It does not alter the jurisdiction of either the United States District Courts for the Northern or Southern District of Iowa. It merely transfers two counties currently in the Southern Division of the Southern Judicial District to the Western Division of that same District. This has the effect of moving cases arising out of Page and Fremont Counties from Des Moines to Council Bluffs.

This measure has the full support of United States District Judge Donald E. O'Brien who would be responsible for trying the affected cases. Judge O'Brien expressed his views in a letter to Senator Culver which I understand has been submitted to the Subcommittee. I can also report that Richard W. Peterson, the

United States Magistrate for the Southern Judicial District in Iowa feels that the bill is logical, sensible and poses no administrative problems. I have attached a letter from Mr. Peterson to Senator Culver dated August 15, 1980, which further explains his support.

Mr. Chairman, I have spoken with lawyers practicing throughout the southwest Iowa region and know of no one who opposes this change. On the contrary, I am convinced that the bill remedies a needless inconvenience to citizens of Page and Fremont Counties and poses no problems regarding court administration or case dockets in the Southern District.

U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF IOWA,
Council Bluffs, Iowa, August 15, 1980.

HON. JOHN CULVER,
Russell Senate Office Building,
Washington, D.C.

DEAR JOHN: This is to urge your support for a redistricting proposal involving the U.S. District Court for the Southern District of Iowa. The Southern District is subdivided, as you know, into several divisions, one of which is the Western Division which is my particular duty station. Geographically, Fremont and Page Counties, in the eastern SW corner of the Southern District, are contiguous and close to Council Bluffs. For some historical reason, it appears that these eastern SW counties have been assigned to the central division which is headquartered in Des Moines. Proposal is currently being made that these two counties be reassigned and become a part of the western division. This is logical, sensible and merits your support.

Although my jurisdiction as magistrate extends to the entire southern district, I find that many matters generate here in the western division and can be properly and readily handled in Council Bluffs. Both for the district attorney and defendants, matters that originate in Fremont and Page Counties that must be handled in Des Moines are inconvenient and burdensome for those involved. Although I am not as familiar with the matter of civil case filings, I am reliably advised that it would be very advantageous to all concerned if these two counties would be detached from the central division and attached to the western division where, as noted above, they geographically and properly belong. I urge your support of this proposal as a distinct improvement in the administration of justice in the Southern District of Iowa.

With thanks, I am
Very truly yours,

RICHARD W. PETERSON,
U.S. Magistrate.

PREPARED STATEMENT OF HON. HAROLD C. HOLLENBECK

Mr. Chairman and Members of the Subcommittee, I welcome this opportunity to testify before the Subcommittee on H.R. 1513, legislation I have sponsored to provide for the presence of the U.S. District Court in Hackensack, Bergen County, New Jersey.

Mr. Chairman, I believe a practical and more equitable distribution of access to the Federal Judiciary in the District of New Jersey is required in order to properly serve the needs of the individual citizens, business, labor, government agencies and local governments in Bergen, Hudson, Passaic, Sussex and Warren Counties. These five counties, of which Hackensack is the transportation and commercial hub, are often referred to as the northern tier, have experienced a steady overall growth in population and commerce since establishment of the present locations for holding the Federal Court in New Jersey. The northern tier's population has been estimated as being nearly 2,000,000 of the 7,400,000 people in New Jersey's 21 counties. The growth of the private sector in the area has accounted for the addition of thousands of white collar employees and a rapid increase in membership in the blue collar labor force. Property tax rates for Bergen County alone new total \$18,334,924,251, the highest of any county in the State. This rapid influx of people and business interests is present in the entire northern tier and have made it the industrial and commercial center of the entire state. Parenthetically, I would note that areas in which the seats of the present Federal Courts in the State are located have stagnated or grown at a much slower pace.

The people, businesses and interests in the northern tier are, I believe entitled to have better access to Federal Justice. The citizens of this region should have a chance to litigate or seek justice in reasonable proximity to their homes and places

of business, an opportunity that is presently unavailable. Currently, litigants from the northern tier have to travel several hours to Trenton or even further to Camden to attend their cases. This unfortunate situation has arisen in response to the overcrowded facilities at the nearest Federal Courthouse in Newark, and because of the underutilization of the facilities in Camden and Trenton.

I have included a map of New Jersey to indicate the location of the northern tier and the ease of transportation access to it, and as the location of the other Courts. Bergen County is an acknowledged leader in the State for civic achievement. It is the home to many of the nation's largest corporations. Within its boundaries are the burgeoning Hackensack Meadowlands Development Area and the New Jersey Sports Complex, the Hartz Mountain Industrial and Living Complex and the huge Mall areas—the Garden State Plaza, the Bergen Mall, Riverside Square and Paramus Park Mall, all with adjacent commercial developments. And the Federal government already has a substantial commitment and presence in Bergen County and the northern tier. This presence includes major postal facilities, Internal Revenue Service regional offices and Social Security regional offices.

The outstanding record of the State Courts sitting in Bergen County demonstrates the areas commitment to creating an atmosphere for the prompt and efficient administration of justice. While statistics show the average time for disposition for federal litigation, civil or criminal, in the District of New Jersey is somewhat longer than other districts throughout the country, the disposition time of cases in the state system in Bergen County has consistently been among the best in the State. I believe Bergen's historic commitment to the prompt and efficient disposition of cases, partly through its facilities and environment, would spill over to the federal system.

Of extreme importance is the fact that residents from the five-county area have easy and quick access to the Courthouse in Hackensack, New Jersey. The Palisades Interstate Parkway, Route 9W, Route 17, Route 4, Route 46, Interstate Route 80, the Garden State Parkway and the New Jersey Turnpike are all at least four lane roads, and can be used to reach Hackensack from anywhere in the region. In addition, unlike other Court locations, and this includes Trenton, Camden, Newark and northern county seats such as Paterson, Morristown and Jersey City, there is ample parking and easy access thereto in Hackensack.

The citizens of the northern tier through formal resolutions; editorial support in local newspapers and letters to their elected officials have voiced near unanimous support for this proposal. In the New Jersey State Senate a Resolution has been introduced to memorialize Congress to allow the Federal District Court to regularly sit at the Bergen County seat in Hackensack. In addition to the New Jersey State Bar Association, and the Bergen County Bar Association, the idea to hold a U.S. District Court in Bergen County has the support of the Bergen County Board of Chosen Freeholders, the Central Trades and Labor Council and numerous banks and local businesses.

The commitment to bring at long last the Federal Court system to the northern tier led to the establishment of a Committee representing nearly every facet of the citizenry of this region. Called the "Leadership Group for a Federal Court," this organization has over the last three years volunteered their services and worked towards this end.

I urge the Committee to take into account the tremendously important factor that there is ample space in the present county court building in Hackensack for a federal judicial system. The Freeholders of Bergen County have indicated a strong willingness to make available adequate space in county buildings together with ample and convenient parking facilities for court personnel, litigants and jurors. As a result, new construction is not necessary, thus requiring only very minimal expenditures. Clearly, holding Federal Court in Bergen County will avoid expensive overhead costs and at the same time provide fewer delays for litigants by decreasing their travel time and increasing access to justice.

In sum, Mr. Chairman, the citizens of the populous northern tier are entitled to serve as jurors without the inconvenience attendant upon serving in other parts of the state. They are entitled to litigate their cases in reasonable proximity to their homes and places of work. Finally, they are entitled to an expeditious disposition of their cases. A fair distribution of Federal judicial power in the District of New Jersey requires that a U.S. District judge sit in the Federal courtroom located in Bergen County.

I feel strongly on this matter. This is not a parochial matter—it is a proposal based on sound evidence. Population figures, density, demographics, transportation facilities, commercial growth, physical facilities available when compared to existing Court locations or any other proposal dictate the need for passage of this bill.

I urge my colleagues on the committee and in the House of Representatives to consider favorably legislation which will make this expectation on my part a reality. I will be happy to supply additional information on any of the matters raised in this testimony.

96TH CONGRESS
1ST SESSION

H. R. 1513

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Hackensack, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

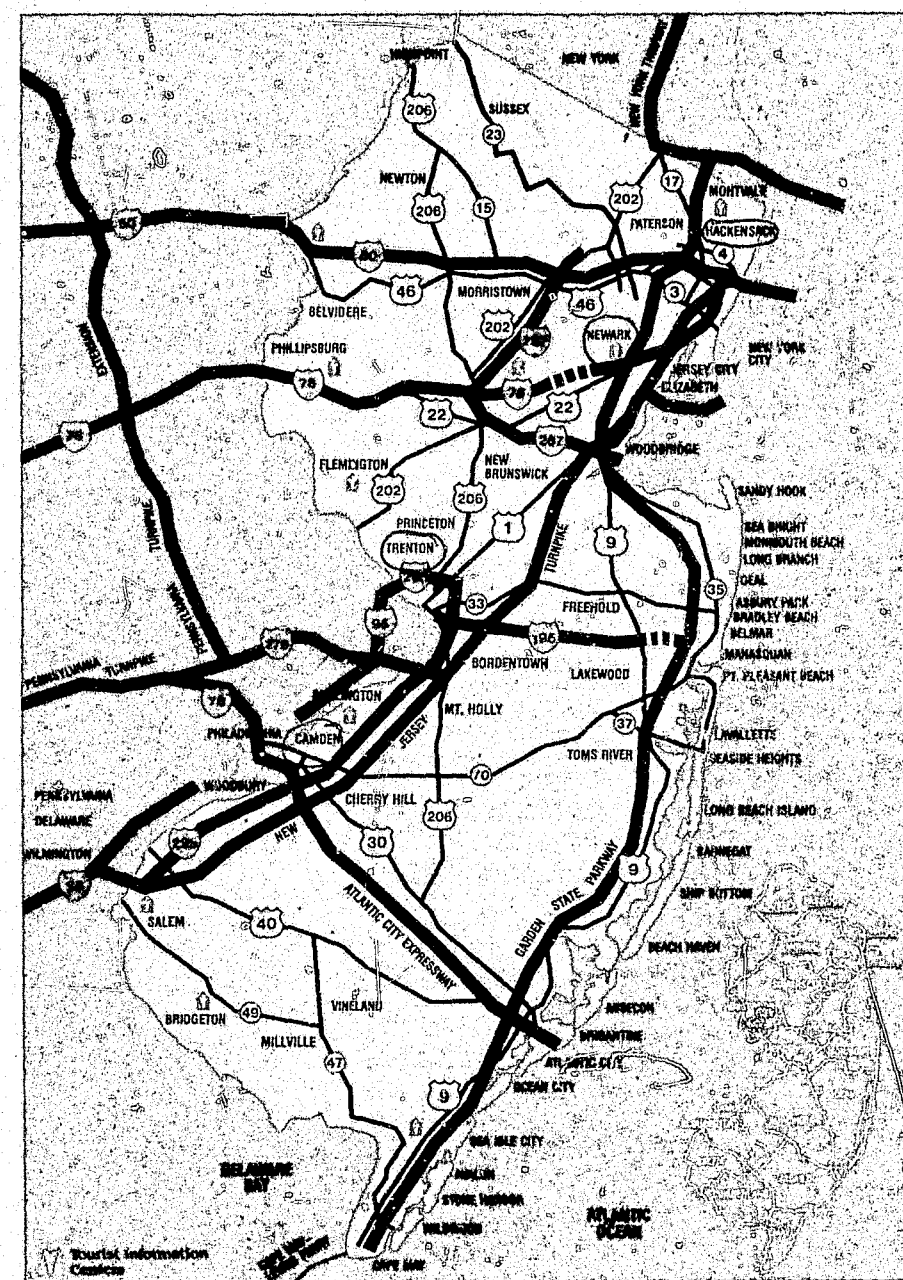
JANUARY 25, 1979

Mr. HOLLENBECK (for himself and Mr. MAGUIRE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Hackensack, New Jersey, in addition to those places currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the last sentence of section 110 of title 28, United
- 4 States Code, is amended to read as follows: "Court shall be
- 5 held at Camden, Hackensack, Newark, and Trenton."





Amtrak



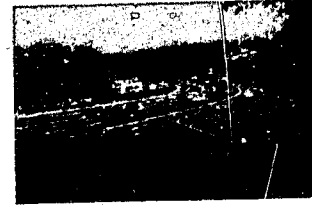
PATCO



Newark International Airport



Garden State Parkway



New Jersey Turnpike



Newark International Airport



CONRAIL

THE PORT AUTHORITY
OF NY & NJ

Air Service

Newark International Airport,
Exit 14—New Jersey Turnpike, Newark 07114

Airline	Terminal	Phone Number
American	B	(201) 643-0340
Braniff	A	(201) 621-6411
Commuter	A	(800) 847-1780
Continental	A	(800) 525-0260
Delta	E	(201) 622-2111
Eastern	B	(201) 621-2121
Empire	B	(518) 768-7811
Hall	A	(518) 869-2218
National	B	(201) 624-1300
Northwest	A	(201) 643-8555
Piedmont	A	(201) 624-0311
Princeton	A	(609) 921-3100
Trans World Airways	A	(201) 643-7650
U.S. Air	B	(201) 622-3201
United	A	(201) 624-1500

Bader Field,

Route 40, Atlantic City 08401
U.S. Air Commuter—(609) 344-7104

Cape May County Airport,

Erma 08242
U.S. Air Commuter—(609) 886-1500

Mercer County Airport,

Exit 2, North I-95, Scotch Road, West Trenton 08628
U.S. Air Commuter—(800) 428-4253

Monmouth County Airport,

Route 34, Wall Township 07719
Ocean Airways—(800) 243-4400

Princeton Airport,

Airport Drive, Route 206, Princeton 08540
Princeton Airlines—(609) 921-2606

Resort Bus Service

Transport of New Jersey, 180 Boyden Avenue,
Maplewood 07040 (800) 772-2222
Asbury Park-New York Transit Corporation,
401 Lake Avenue, Asbury Park 07712
(201) 774-2727Atlantic City Transportation Company, Main and
Casplan Avenue, Atlantic City 08323
(609) 345-3201Bayview Bus Lines, Inc., 107 Stevens Street,
South Amboy 08879 (201) 721-0407
07701 (201) 741-0567Boro Buses Company, P.O. Drawer B.C., Red Bank
07701 (201) 741-0567Coast Cities Coaches, Third Avenue, Route 35,
Neptune City 07753 (201) 775-1441Domenico Bus Company, New Hook Access Road,
Bayonne 07002 (201) 339-6000Five Mile Beach Electric Railway Company,
P.O. Box 4, Wildwood 08260 (609) 522-7721Lincoln Transit, First Street and Lexington
Avenue, Lakewood 08701 (201) 363-1616Mercer Metro, 1152 East State Street, Trenton
08609 (609) 396-9171Greyhound, Penn Station and Market Street,
Newark 07102 (201) 642-8205New York-Keansburg-Long Branch Company,
50 State Highway 36, Leonardo 07757
(201) 291-1500Trailways Bus System, 1171 Raymond Blvd.,
Newark 07102 (201) 642-0505Starr Transit Co., 2531 East State Street
Extension, Trenton 08619 (609) 587-0626Ferry Service
Cape May-Lewes Ferry, P.O. Box 827, North Cape
May 08204 (609) 886-2718
Lewes Terminal, Lewes, Delaware 19958
(302) 645-6346

Rail Service

Amtrak, Penn Station, Raymond Plaza West,
Newark 07102Newark (201) 643-1770
Trenton (609) 594-2604
New York City (212) 736-4545
Philadelphia (215) 824-1600New Jersey (800) 525-5700
New York State
Delaware
Maryland

Conrail, 1100 Raymond Boulevard, Newark 07102

New Jersey (800) 242-0212
New York City (212) 736-6000
Philadelphia (215) 387-6600Bergen County Line, Boonton, Norristown,
North Jersey Coast, Passaic Valley, Raritan
Valley, Trenton-New Brunswick, West TrentonPATCO, Benjamin Franklin Bridge Plaza Building,
Camden 08102 (609) 963-8300Atlantic City, Cape May, Lindenwood High
Speed, Ocean CityPATH, One PATH Plaza, Jersey City 07306
(201) 622-6600Jersey City, Grove Street, Exchange Place,
Pavonia—Christopher Street, 9th St., 14th St.,
23rd St., 33rd St.Newark, Harrison, Journal Square, Grove
Street, Exchange Place—World Trade CenterRoadways
New Jersey Turnpike Authority, Box 1121,
New Brunswick 08903 (201) 247-0900Garden State Parkway, New Jersey Highway
Authority, Woodbridge 07095 (201) 442-8600Atlantic City Expressway, N.J. Expressway
Authority, P.O. Box 299, Atlantic City 08404
(609) 348-3174New Jersey Department of Transportation,
1035 Parkway Avenue, Trenton 08625
(609) 292-7212

PREPARED STATEMENT OF REPRESENTATIVE DANIEL A. MICA

I am pleased to have the opportunity to present to the members of this Subcommittee my comments regarding H.R. 7625, a bill I introduced to divide the Fifth Judicial Circuit into two completely autonomous circuits.

The United States has had Circuit Courts ever since it became a country. Back then, though, there were only three circuits and their size was determined by how far a judge could be expected to ride on horseback. Congress adopted the present system of ten judicial circuits with the Evert Act of 1891. Needless to say, much has changed since 1891.

The Circuit Courts primarily hear appeals from District Courts. The Fifth Circuit has 19 Districts and 125 District Judges—more than any other circuit. The Circuit Courts heap appeals on interstate actions and deal with cases where federal regulations are involved, such as oil price rates, civil rights, taxes and the National Labor Relations Board.

The Fifth Circuit Court has established a fine record on the issue of civil rights. Its rulings have brought about the desegregation of the Universities of Alabama and Mississippi and the Jefferson County School System. A case currently pending before the Fifth Circuit Court deals with the Haitian influx in South Florida. Judge King of the Southern Florida District Court has ruled that the United States cannot deport Haitian refugees. The Federal Government is appealing this ruling to the Fifth Circuit Court.

By any measure the size of the Fifth Circuit is huge. Geographically, it spans from El Paso to Key West, covering 533,175 square miles. In 1978 over 36 million people lived within these boundaries, comprising 17 percent of the nation's population. No other circuit contains as many people (See Table 1). Experts predict that by 1985 the population of the Fifth Circuit will surpass 41 million.

With all those people, the fifth circuit is bound to generate a large amount of legal activity—and it does. In fiscal year 1979, a total of 3,854 cases commenced in the Fifth Circuit Court, more than in any other circuit. In fact, this is nearly one fifth of all the 20,219 cases commenced in all ten circuits (see Table 2). More cases were brought before the Fifth Circuit than the Seventh, Eighth and Tenth combined. The amount of cases filed with the Fifth Judicial Circuit in fiscal year 1979 is more than six times greater than those filed with the First Circuit. Preliminary reports indicate that the number of cases that commenced in the Fifth Circuit in fiscal year 1980 will rise to 4,236.

In 1978, the Congress moved to lessen the tremendous case load on the Fifth Circuit judges by authorizing eleven additional judges for the circuit, raising the total from 15 to 26 (see Table 3). This move, while bringing the case load of each judge down to just below the national average, did not remove some of the other problems faced by the circuit. A court the size of the Fifth Circuit Court is unprecedented in U.S. history. The United States Supreme Court has only nine members. In 1973, the judges of the Fifth Circuit stated that to increase the number of judges beyond the 15 would "diminish the quality of justice."

The reason for this is simple. With 26 judges the likelihood of a varying and inconsistent judicial philosophy coming from the court greatly increases. To prevent this the judges must convene en banc on numerous occasions. In fiscal year 1979, the Fifth Circuit Court met in this forum for 13 cases, which is 25 percent of all the en banc conferences held in all ten circuits last year. The en banc case load presently pending before the Fifth Court is the largest ever before a federal appellate court.

In January, 1980, the judges of the Fifth Judicial Circuit held yet another en banc conference. The Federal Government paid for 24 judges and 60 law clerks to travel to New Orleans and then paid for their food and lodging. The judges spent two full days in hearings and another three days in conferences. The en banc also required that the judges spend the week before the conference in preparation and the week after the conference debriefing. In short, in the time it took the judges to hear 14 cases en banc, they could have been hearing 160 appeals in three member panels. This constitutes a terrible waste of time and money.

In addition, the individual judges face a tremendous burden in trying to keep current in the law of the court. The more than 2,000 written opinions of the Fifth Circuit Court in 1980 take up nearly 10,000 pages. This does not include the petitions for rehearing en banc and the circuit correspondence that the judges must also examine.

In the final analysis, the extensive time taken up by the judges in reading opinions and conferring en banc, the variance of opinion that is inevitable with a 26 member court, and the lost time in travel of the judges and the attorneys practicing before the court create a situation that the judges of the Fifth Judicial Circuit feel "seriously impairs the effective administration of justice".

To combat these problems the Fifth Circuit judges unanimously resolved that the Fifth Judicial Circuit should be split into two separate circuits. The Fifth Circuit will consist of Texas, Louisiana, Mississippi and the canal zone with the headquarters remaining in New Orleans. The new Eleventh Circuit will contain Georgia, Florida and Alabama with its headquarters in Atlanta. The Fifth Circuit will have 14 judges and the Eleventh will have 12.

This proposal has the strong support of the lawyers and judges working in the Fifth Circuit. At this point, Mr. Chairman, I ask unanimous consent that the attached letters of support from members of the legal community of South Florida be included as part of my testimony and be made a part of the hearing record.

To continue, this division of the circuits would greatly reduce the amount of time spent by the judges in travelling, reading opinions and correspondence, and conferring en banc. Thus, more time will be given to hearing cases.

Even with 14 and 12 judges respectively, both the Fifth Circuit Court and the proposed Eleventh Circuit Court will be larger than any other circuit court except the Ninth. If the division had occurred in fiscal year 1979, the Fifth Court would have heard 1712 appeals from District Courts and the Eleventh would have heard 1607 appeals. This would have given the Fifth Circuit Court the second highest number of appeals from District Courts, and the Eleventh Court the fifth highest number. This only serves to underscore the need for separating the circuit (see Table 4).

According to the OMB, the only cost involved in the division of the Fifth Judicial Circuit will be administrative salary adjustments estimated at no more than \$250,000. The Fifth Circuit already has an office building in Atlanta that could become the headquarters of the new Eleventh Circuit Court.

The administrative costs involved will easily be made up in reduced transportation, communication, and duplication expenses, not to mention the savings in time. In addition, the citizens, attorneys, and litigants of each circuit will find their expenses reduced, their courts more accessible, and justice more effectively administered.

Again, Mr. Chairman, let me emphasize that the proposed division of the Fifth Judicial Circuit has been met with overwhelming support from state bar associations, the legal community and the 25 Members of Congress from those states directly affected by it who have co-sponsored this legislation.

TABLE 1 - POPULATION OF THE U.S. JUDICIAL CIRCUITS IN 1978

CIRCUIT	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
POP. (in thousands)	11,421	21,334	19,660	19,637	36,804	27,793	21,296	19,112	34,459	10,841

Source: Statistical Abstract 1980

TABLE 2 - CASES COMMENCED IN THE U.S. COURT OF APPEALS FY 1975-1979

YEAR	TOTAL	D.C.	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
1975	16,658	1,113	477	1,739	1,392	1,319	3,292	1,436	1,170	1,009	2,731	980
1976	18,408	1,260	564	1,898	1,621	1,464	3,629	1,628	1,247	1,080	2,907	1,110
1977	19,118	1,175	563	2,063	1,729	1,656	3,563	1,827	1,386	1,123	2,995	1,128
1978	18,918	1,193	563	1,801	1,667	1,644	3,507	1,795	1,480	986	3,099	1,183
1979	20,219	1,415	599	2,058	1,702	1,925	3,854	1,889	1,603	970	3,010	1,194

TABLE 3 - NUMBER OF JUDGES AUTHORIZED FOR EACH CIRCUIT IN 1980*

CIRCUIT	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
JUDGES	4	11	10	10	26	11	9	9	23	8

TABLE 4 - APPEALS FROM DISTRICT COURTS HEARD IN CIRCUIT COURTS IN FY 79*
(Includes proposed 11th Circuit Court)

CIRCUIT	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
APPEALS	490	1,664	1,402	1,672	1,712	1,600	1,353	851	2,331	979	1,607

Source for Tables 2-4: Annual Report of the Director of the U.S. Courts, 1979

PREPARED STATEMENT OF HON. STEPHEN L. NEAL

Mr. Chairman and members of the subcommittee. It is an honor for me to appear today to discuss a bill affecting a number of areas within the Fifth Congressional District of North Carolina which I represent.

Mr. Chairman, I am pleased to comment on H.R. 7615, a bill to reorganize the Middle and Western Judicial Districts of North Carolina. The counties affected by the proposed reorganization are Alleghany, Ashe, Watauga and Wilkes. These four counties currently fall under the jurisdiction of the Middle Judicial District. My proposal would move them to the Western District. Also affected by the legislation are several locations of court. Wilkesboro, which is in Wilkes County, would be a newly designated court of the Western District while Rockingham and Salisbury would be dropped as locations of court in the Middle District. The Judicial Council for the Fourth Judicial Circuit recently approved the release of these three court facilities because of the lack of utilization. I have attached a map which would help in visualizing the proposed reorganization.

In terms of population, the realignment would correct an obvious imbalance. According to the 1970 population data, there were 1,433,181 people in the Western District and 1,707,400 in the Middle District. The transfer of these four counties would add 100,633 people (the population of the four counties) to the Western District thus bringing the population of each district more into balance.

The Clerk of the Western District has done a preliminary study of the caseload for the four counties. During a twelve-month period, the four counties generated forty-one cases. The counties of Avery, Alexander, Caldwell, and Mitchell, which would probably be joined under the realignment to form a new division, had forty-five cases from the area. The Clerk estimates that under the new realignment, they could reasonably expect approximately one hundred case filings per year if such a division was formed.

The Wilkesboro courthouse, which is one of the finest facilities in the state and which has been grossly underutilized, would then be available to take on an additional caseload, should the judges in the area and the Judicial Council see the need. It is difficult at this time to gauge exactly how much the Wilkesboro courthouse would be used; that would depend on the court filings for the area. It would make far better sense, both economically and logistically, to have the option of using the Wilkesboro courtroom. The highways within many of these counties are two-lane, rural roads that make travel difficult. For example, a person living in Boone, which is in Watauga County, now must travel approximately 85 miles one way to reach the closest place of court, Winston-Salem. This trip can take two hours or more.

The designation of Wilkesboro as a statutory location of court would not require the General Services Administration to spend any money. The court facility is already located in the federal building there. Federal dollars would not have to be used to build, lease or renovate any property. What the designation would do is leave open the option of utilizing this fine facility which was built for the purpose of holding federal court. The final decision to reopen the Court facility should be made by the Judicial Council of the Fourth District after it developed the necessary data.

Regarding the deletion of Salisbury and Rockingham as statutory locations of court, my proposal would put into law what has already taken place. Federal court has not been held in Salisbury or Rockingham in more than a year. In fact, the Judicial Council for the Fourth Circuit approved the release of the courtrooms for other purposes. It is important to note that this action would not prevent court from ever being held in these towns. Court can be held in any place the Judges of the district deem appropriate.

Mr. Chairman, I am unaware of any opposition to this proposal. With the Chairman's permission, I would like to include for the Record copies of resolutions adopted by the bar associations within the affected counties in support of the realignment. I have worked closely with the Members of the North Carolina Congressional Delegation, local bar associations, and with the Chief Justices of the Middle and Western Districts, Eugene Gordon and Woodrow A. Jones. The reaction to this proposal has been very positive. The Judicial Council of the Fourth District, although expressing reservations about designating Wilkesboro as a place of court, was also supportive of the proposal. I believe this realignment is consistent with the goals of the subcommittee. These changes clearly are needed to lessen the inconvenience on those who live in these areas. A quick glance at the map will show that these four counties should be a part of the other mountain counties surrounding Wilkesboro. Finally, the addition of these counties to the Western District could generate enough cases to justify the reopening of the Wilkesboro courthouse, in which the government has a substantial investment.

Thank you again for allowing me to speak on behalf of this proposal. I would be more than happy to answer any questions.

PREPARED STATEMENT OF HON. HAROLD L. VOLKMER, NINTH DISTRICT, MISSOURI

Mr. Chairman and honorable members of the subcommittee, I am pleased to have this opportunity, today, to provide testimony on behalf of H.R. 6971, which will place two counties within the 9th Congressional District of Missouri, into the Northern Division of the Eastern District Federal Court.

Last March, Mr. Chairman, it was brought to my attention by a former colleague of yours, William L. Hungate, that the citizens and members of the bar in two counties of Missouri, Audrain and Montgomery, were facing continual inconvenience and hardship with their relations with the Eastern Division of the Eastern District.

Most residents of these two counties live approximately 100 miles from the Eastern Division court in St. Louis. Ironically, these residents live only 50 miles from the Northern Division, sitting in Hannibal. The transfer of these counties to the Northern Division, as provided for in H.R. 6971, would appear to be in the public interest.

Judge Hungate has provided me with an example of the difficulties currently faced. During one seven-day trial in St. Louis, a woman serving on the jury, was required to drive 97 miles each way for each day of the trial. During another five day trial, one gentleman from Montgomery county drove 80 miles each way each day. Another juror from Wellsville, Missouri, drove about 90 miles a day each way. These hardships could easily be remedied by the simple transfer of Audrain and Montgomery Counties into the Northern Division Court.

I have supplied the Committee with written documents from the local bar associations from both counties, expressing their total support for such a transfer.

I have also supplied to the committee a letter from the Honorable Donald P. Lay, Chief Judge of the Eighth Circuit Court of Appeals, advising us that the circuit council has unanimously approved the request of Chief Judge H. Kenneth Wangelin, of the United States Federal District Court of Eastern Missouri, to transfer Audrain and Montgomery Counties to the Northern Division.

Finally, at the request of Judge Williams L. Hungate, I am pleased to submit a statement in support of H.R. 6971, provided by him, and correspondence between his office and mine, which provides details of the demography of the judicial lines and the counties affected by this legislation.

I urge the Subcommittee's approval of this legislation, which has total support from the bench and bar of my State, as well as the citizens having affairs before the Federal Court system.

Thank you very much for this opportunity.

246

DONALD P. LAY
CHIEF JUDGE
P. O. BOX 338
OMAHA, NEBRASKA 68101

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

April 3, 1980

APR 7 1980 REC'D

The Honorable H. Kenneth Wangelin
Chief Judge
United States District Court
St. Louis, Missouri

Dear Judge Wangelin:

I am pleased to inform you that the circuit council has unanimously approved your request concerning the transfers of the two designated counties now in the Eastern Division of the Eastern District of Missouri to the Hannibal Division.

The council has also unanimously recommended that the judges of the Eastern District of Missouri explore the advisability of abolishing the divisions in the district. Of course once the divisions are abolished then you would be able to control by court order the definitions of your geographical area for selection of juries as well as the places of court.

If you desire any further action from me indicating our council approval to representatives in Congress, I would be happy to supply it. Please let me know if we can be of any service to you in this regard.

Sincerely yours,

Donald P. Lay.

Cc: Judge William L. Hungate.

247

MCQUIE AND DEITER
ATTORNEYS AT LAW
MONTGOMERY CITY, MISSOURI 63301
TELEPHONE 434-2111

WALTER D. MCQUIE, JR.
LANCE W. DEITER
DAVID P. DOWLING

February 29, 1980

MAR 3 1980 REC'D

Hon. William L. Hungate, Judge
United States District Court
Eastern District of Missouri
1114 Market Street
St. Louis, Missouri

Dear Judge Hungate:

Will you be so kind as to present Judge Wangelin with the enclosed petition signifying the unanimous wish of the Montgomery County lawyers to be in the Northern Division of the Eastern District?

We appreciate very much any efforts that can be expended in this behalf by you and Judge Wangelin.

Very truly yours,

[Handwritten signature]

7

248

To: Honorable Kenneth H. Wangelin,
Chief Judge, United States District Court
Eastern District of Missouri

Dear Judge Wangelin:

The undersigned, being all the members of the Montgomery
County Bar Association, do hereby respectfully petition for
inclusion of Montgomery County, Missouri, within the boundaries
of the Northern Division of the Eastern District of Missouri.

C. K. L., Wellsville, Missouri

ADM. Dine, Montgomery City, Mo.

Dee Dine, Montgomery City, Mo.

W. K. Louie, Montgomery City, Mo.

James J. Hargrove, Montgomery City, Missouri

W. H. H., Montgomery City, Mo.

C. J. Hargrove, Montgomery City, Mo

249

EDWARDS, SEIGFREID, RUNGE & LEONATTI

FRANK B. EDWARDS
JEROME W. SEIGFREID
G. ANNEY RUNGE
LOUIS J. LEONATTI
MICHAEL J. FORHEIMER

MEXICO, MISSOURI 65265

COPY

A

MAP 1980 REC'D

TELEPHONE
(116) 501-2211

March 3, 1980

The Honorable Harold L. Volkmer
United States Representative
House Office Building
Washington, DC 20515

Dear Congressman Volkmer:

I have been speaking with members of your staff with regard to
the removal of Audrain County, Missouri from the Eastern Division
of the United States District Court for the Eastern District of
Missouri at St. Louis to the Northern Division at Hannibal, Missouri.
This proposal has been endorsed unanimously by the Audrain County
Bar Association. We have also spoken with The Honorable William
Hungate, Judge of the United States District Court for the Eastern
District of Missouri with regard to this. Copies of my correspond-
ence with him are enclosed.

As President of the Audrain County Bar Association, I can state to
you emphatically that the members of the Audrain County Bar
Association would appreciate every effort you could make to have
Audrain County placed in the Northern Division of the United States
District Court for the Eastern District of Missouri.

With best regards, I am

Very truly yours,
ORIGINAL SIGNED BY
LOUIS J. LEONATTI
ATTORNEY AT LAW
LOUIS J. LEONATTI

LJL/lc

Enclosure

cc: The Honorable William Hungate

PREPARED STATEMENT OF JUDGE WILLIAM L. HUNGATE, U.S. DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI, St. Louis, Mo.

Mr. Chairman and other distinguished members of the committee, H.R. 6971, introduced by Congressman Volkmer, and S. 2432, introduced by Senators DeConcini, Eagleton, and Danforth, are identical bills. Their purpose is to transfer two counties (Audrain and Montgomery) from the Eastern Division to the Northern Division of the Eastern Judicial District of Missouri.

The request for this transfer has been unanimously approved by the Bar Associations of each of the two counties involved with the proposed transfer.

The Eighth Circuit Judicial Council has unanimously approved transfer of the two designated counties (Audrain and Montgomery) now in the Eastern Division of the Eastern District of Missouri to the Northern (Hannibal) Division.

The Eastern Division sits in St. Louis; the Northern Division sits in Hannibal, Missouri. Most residents of these two counties live approximately 100 miles from the Eastern Division court in St. Louis, but only about 50 miles from the Northern Division court in Hannibal. The transfer would be a considerable convenience both to the public in these two counties, especially those chosen for jury service, and counsel residing in those counties. The total population of the two counties is approximately 36,000, so there is no major population shift involved.

Your consideration of this legislation is appreciated.

U.S. DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, Mo., August 1, 1980.

Mr. SCOTT CLARKSON,
c/o Congressman Harold L. Volkmer,
Longworth House Office Building, Washington, D.C.

DEAR SCOTT: Enclosed is a copy of a brief statement I prepared earlier on the question of transferring Audrain and Montgomery Counties from the Eastern to the Northern Division. I hope my third paragraph dealing with the unanimous approval we received from the Eighth Circuit Judicial Council is the further information you wished.

I am also enclosing a copy of the letter from Judge Lay as well as the letters from the officers of the Audrain and Montgomery County Bar Associations urging this transfer.

As to your questions concerning costs, I believe the cost estimate statement from the Congressional Budget office dated May 7, 1980, and included in the Senate Report on S. 2432 remains accurate and no additional cost to the government should be incurred as a result of enactment of this bill. That report also indicates the committee found no increase in the cost of regulation or paperwork would result from enactment of this bill.

I think paragraph 2 of my letter to Judge Lay dated March 13, 1980 (copy enclosed), will provide some relevant information.

The total population involved would be approximately 36,000 (Montgomery County—11,000, and Audrain County—25,000). As you can see, this is no major population shift. The general effect would be to place the respective counties substantially nearer the place in which court would be held. For example, the major city in the two counties is Mexico (population 11,600), which is 120 miles from St. Louis, but only 55 miles from Hannibal. Similar savings in distance are present in Montgomery County.

Relevant statistics are that in the year 1977, 46 cases were filed in the Northern Division, in the year 1978, 37 cases were filed, and in the year 1979, 43 cases were filed. While statistics are not separately maintained for these two counties in the Eastern Division, investigation and conference with the leading and most active law firms in the two counties indicates the annual number of federal cases filed, over the same period of 1977, 1978, and 1979, would range from 15—30 cases per year total for the two counties, i.e., had these two counties been in the Northern Division in 1979, the number of cases docketed there would have been some 65 instead of 43.

Thus, the substantial savings in decreased mileage and related expenses for counsel, jurors and litigants could fully justify the slight increase in the number of cases docketed in the Northern Division.

Thanks again for your constant attention to this situation. Best wishes.

Yours sincerely,

WILLIAM L. HUNGATE.

Enclosures.

U.S. DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, Mo., March 13, 1980.

Hon. DONALD P. LAY,
Chief Judge, U.S. Court of Appeals for the Eighth Circuit,
Omaha, Nebr.

DEAR CHIEF JUDGE LAY: I am writing concerning the proposed transfer of Audrain and Montgomery Counties, Missouri, from the Eastern Division of the Eastern District at St. Louis to the Northern Division of said District at Hannibal.

The total population involved would be approximately 36,000 (Montgomery County—11,000, and Audrain County—25,000). As you can see, this is no major population shift. The general effect would be to place the respective counties substantially nearer the place in which court would be held. For example, the major city in the two counties is Mexico (population 11,600), which is 120 miles from St. Louis, but only 55 miles from Hannibal. Similar savings in distance are present in Montgomery County.

Both the Audrain and Montgomery County Bar Associations have voted unanimously in favor of the transfer to the Northern Division. (See A and B attached.) While the transfer would considerably facilitate the public's access to the place of holding court, there is no increased requirement of court personnel.

Relevant statistics are that in the year 1977, 46 cases were filed in the Northern Division, in the year 1978, 37 cases were filed, and in the year 1979, 43 cases were filed. While statistics are not separately maintained for these two counties in the Eastern Division, investigation and conference with the leading and most active law firms in the two counties indicates the annual number of Federal cases filed, over the same period of 1977, 1978, and 1979, would range from 15—30 cases per year total for the two counties, i.e. had these two counties been in the Northern Division in 1979, the number of cases docketed there would have been some 65 instead of 43.

Thus, the substantial savings in decreased mileage and related expenses for counsel, jurors and litigants could fully justify the slight increase in the number of cases docketed in the Northern Division.

Should further information be required, please advise.

Very truly yours,

WILLIAM L. HUNGATE.

PREPARED STATEMENT OF HON. ROBERT S. WALKER

Mr. Chairman, I appreciate the opportunity to submit this statement to you and the Members of your Subcommittee for your consideration in connection with H.R. 4961. As you are aware, this legislation which I introduced in the 95th Congress and again on July 25, 1979, would designate Lancaster as a place of holding court in the Eastern District of Pennsylvania.

Under existing legislation, Federal Court Stations have previously been established in Reading staffed by two judges and in Allentown staffed with one judge. The local Rules adopted by the District Court provide that in any case where the Plaintiff or Defendant resides in, or the accident, incident or transaction occurred in Lancaster County shall be assigned or reassigned for trial and pre-trial procedures to a judge stationed in Reading or Allentown, who shall unless otherwise directed by the Court, conduct all trials and pre-trial procedures with respect to same in either Reading or Allentown. There are no interstate highways which connect Lancaster directly to either Reading or Allentown. There is sporadic bus transportation to both places, but no rail connections other than through Philadelphia. Lancaster is connected directly to Philadelphia by interstate highways, bus, and rail transportation. On the other hand, both Berks county (Reading) and Lehigh County (Allentown) are smaller than Lancaster County in both population and area. They are both closer to Philadelphia by a considerable distance on interstate highways. As a result, citizens of Lancaster County who might otherwise resort to the Federal Court system for resolution of their disputes many times forego this right because of the difficulties in transportation, fees and other costs. In the past, these difficulties were in connection with transportation, fees, and other costs to Philadelphia. The same has now been exacerbated by even greater difficulties in cases assigned especially to the station at Allentown. Lancaster County residents are prejudiced in criminal cases since they are only arraigned in Philadelphia.

Since the new Bankruptcy Code became effective October 1, 1979, the filings in the Eastern District are up over 150 percent when compared to the filings in the same period last year. All Lancaster County cases in bankruptcy are assigned to the Honorable Thomas M. Twardowski, Bankruptcy Judge, who is stationed in Reading.

I previously submitted for the record a detailed letter from Charles M. Golin, Esquire, dated July 17, 1980, concerning events at the First Meetings of Creditors on July 10, 1980. I am including herewith a copy of hearings scheduled to be conducted by Barry A. Solodky, Esquire, Trustee. Mr. Solodky, a Lancaster attorney, will have to travel to Reading, approximately 70 miles roundtrip, and preside at 18 hearings in which 17 persons are represented by Lancaster attorneys, and most if not all the cases, involve Debtors who reside in Lancaster County. Since the Bankruptcy Court now has jurisdiction under the new Bankruptcy Code to hear all matters which touch upon the bankruptcy, many cases which formerly were tried either in the State Court or the District Court will now be tried before the Bankruptcy Judge. This will include trial. There is no reason, in my opinion, why these cases should not be tried in Lancaster as most of them will be arising out of Causes of Action in which the venue is, in fact, Lancaster County.

Nationwide, an ever increasing number of cases are being filed in the Federal Court—Civil and Administrative. Since Lancaster County is fast growing area, and its population is becoming more litigious, it is reasonable to believe that as the population grows, need for a Station in Lancaster will increase.

At the present time, the costs should be minimal as there is no intent to set up detailed office facilities as are now available in Reading. It is intended that the facilities in Lancaster be similar to the facilities previously available in Allentown and Easton as space would be provided in the existing Lancaster County Courthouse complex.

At some future date as the work load increases and as expanded access to the Federal Courts is provided to citizens (rather than the limited opportunity as at present of traveling to Philadelphia, Reading or Allentown), Lancaster may become a full-fledged Station. Trials may be transferred to Lancaster in the same way as they are presently transferred from Philadelphia for trials conducted at the Federal Court Stations in Allentown and Reading.

Under Section 341 of the new Bankruptcy Code, concerning Meetings of Creditors, since the Court may not preside at and may not attend any meetings conducted under this Section, there is no reason, under most circumstances, to compel Lancaster County residents to travel to either Philadelphia or Reading to attend these meetings. If Lancaster were designated as a Federal Court Station so that the Bankruptcy Court could hold Meetings of Creditors in Lancaster, it is my understanding that there would be no cost to the government and would, in fact, result in substantial savings to the attorneys and the parties and creditors involved in the Bankruptcy proceeding.

Under the state of the present law, there are no alternatives except to travel to either Philadelphia, Reading, or Allentown, depending on the circumstances. The Lancaster Bar Association has endorsed this measure and discussion of the legislation in the community has disclosed no opposition to its passage.

Mr. Chairman, I would like to express my appreciation to you, the Members of the Subcommittee, and your staff for this opportunity and to reiterate my sincere hope that H.R. 4961 will receive favorable consideration during the session of the Congress.

1102 EAST SHORE OFFICE BUILDING, 45 SOUTH FRONT ST.
READING, PA 19602

THURS. AUGUST 21, 1980

Barry A. Solodky, Esq.
Trustee

- 9:30 A.M. 1 80-00402T (7) - Everett W. Slider, Evelyn Slider, ind. & as tenants by the entireties J. Leonard, Jr.
- 2 80-01277T (7) - Samuel A. Shockley, Deborah A. Shockley h/w - J. Leonard, Jr.
- 3 80-01472T (7) - Peter Marone - J. Leonard, Jr.
- 10:00 A.M. 4 80-00796T (7) - Miguel A. Roman, Darylana Roman D. Krank
- 5 80-00491T (7) - John Dickey, Jr., Donna Kathleen Dickey t/d/b/a Roberts & Dickey Electronics John Dickey, Jr., Donna Kathleen Dickey Jtly. & individually - R. Umbenauer
- 6 80-01513T (7) - Theresa Kay Swift a/k/a Theresa Kay Butt (former married name)-R. Umbenauer
- 7 80-00521T (7) - Theodora Sult, Suzanne L. Sult, husband and wife, both individually and jointly K. Howard
- 11:00 A.M. 8 80-00617T (7) - Barbara A. McGee formerly Barbara A. Tonsager - P. McFarland
- 9 80-00663T (7) - Kenneth C. Laukhuff a/k/a Kenneth J. Laukhuff - W. Boyd
- 10 80-00881T (7) - Carla Elaine Kling - J. Kearney
- 1:00 A.M. 11 80-01378T (7) - Maris Victor Ziedonis - H. Miller
- 12 80-01283T (7) - Jere Howard Nunemaker, Carol Ann Nunemaker - H. Miller
- 13 80-01449T (7) - George R. Nunemaker, Jacqueline A. Nunemaker - H. Miller
- 14 80-01284T (7) - Richard W. Sarge - P. Glazier
- 2:00 A.M. 15 80-01285T (7) - Charles P. VanPelt - J. Gruber
- 16 80-01400T (7) - Donald E. Wesley, Anna Mae Wesley P. Glazier
- 17 80-01370T (7) - Dennis V. Fanone, Dawn Louise Fanone also known as Dawn Louise Raichard individually and jointly as husband and wife - J. Mongiovi
- 18 80-01377T (7) - Lynn-Marc, Inc. - A. Dubroff

PREPARED STATEMENT OF HON. CHARLES WILSON, U.S. CONGRESSMAN FROM THE
STATE OF TEXAS

Thank you, Mr. Chairman, for the opportunity to testify in support of H.R. 5966 to establish a Lufkin Division of the United States District Court in the Eastern District of Texas.

Within the Eastern District of Texas there presently exists a large geographic area with a heavy and increasing concentration of population, which is not easily accessible to the Judicial Divisions assigned to that area. This geographic area is centered around Lufkin, Angelina County, Texas. The area which is not being adequately served by the existing divisions is located within the Tyler Division and the Beaumont Division. I wish to briefly set forth facts demonstrating conclusively that the citizens of the area in question are being deprived of reasonable access to the Federal Courts.

The last division created in the Eastern District of Texas was seventy-seven years ago, that being the Texarkana Division which was created March 2, 1903. With the creation of the Texarkana Division, six divisions were established and they have remained without change. The first division was created in Tyler, Texas on February 21, 1857, the Jefferson Division on February 24, 1879, the Paris Division on March 6, 1889 and March 1, 1895 (by treaty with the Indians which was ratified on the latter date), the Sherman Division on February 19, 1901 and Texarkana on March 2, 1903. Since frontier days the locations of the Courts have not changed though increases in population and litigation have soared.

The Eastern District of Texas contains forty-one counties covering 30,956 square miles. The Tyler and Beaumont Divisions, out of which the Lufkin Division would be created, contains a total area of 18,610 square miles. This means sixty percent of the area of the entire district is located within two of the six divisions. The counties within the Proposed Lufkin Division cover 5,434 square miles or 17.7 percent of the area of the Eastern District. This new division would cover approximately one-fifth of the area of the Eastern District, leaving six divisions to serve the other approximate 80 percent. In addition, two counties, Polk and Trinity, would be added to the Lufkin Division.

Since the Tyler Division and Beaumont Division were created in 1857 and 1897, respectively, the 1900 census is the closest relevant beginning population statistic. For growth purposes, the 1970 census is the last official count.

The Eastern District had a population in 1900 of 843,278 and in 1970 had grown to 1,476,321 or an increase of 633,043 people. Where did this increase occur?

By comparison, the combined population of the Beaumont and Tyler Divisions in 1900 was 381,411. This had increased in 1970 to 919,782 or an increase of 538,371. Percentage-wise, 85 percent, or approximately five out of six people representing the increase, reside in the Tyler and Beaumont Divisions.

Stated another way, in 1970 the Tyler and Beaumont Divisions being 33 percent of the divisions, had responsibility for 60 percent of the geographic area and 62 percent of the population.

Population estimates for December 31, 1978 as reported in Sales and Marketing Management Magazine show that the Tyler and Beaumont Divisions have increased their populations from 919,782 in 1970 to 1,034,600 at the end of 1978. This means that between 1900 and 1978, the Tyler and Beaumont Divisions experienced a growth (653,789) in excess of what the entire division grew between 1900 and 1970 (633,043).

The population studies of the counties to be included in the Lufkin Division show that after its creation, that of the seven divisions it would be the second greatest in area size and the fourth greatest in population.

The availability of the Federal Courts to the citizens they purport to serve is directly related to the distance that such citizens must travel in using the Court. To demonstrate the comparative inaccessibility of the Courthouse to the citizens of the Beaumont and Tyler Divisions, a study was made as to the distance from the County Courthouse of the counties in the Lufkin Division to the Federal Courthouse where those citizens are now presently required to attend. Such average distance for the residents of the Lufkin Division is now 89.8 miles. If those same citizens were allowed to attend Federal Court in a Lufkin Division, the average distance they would travel would be 38 miles. This would result in a net savings of more than one-half in time, distance and travel expense.

Statistics on case loads are unavailable. However, I believe you will agree that there is a definite relationship between population and litigation. The concentration of population has been demonstrated above. Further, the total volume of litigation in the Tyler and Beaumont Divisions has been astronomical. Tremendous backlogs have occurred. A large volume of civil rights type litigation exists in the Eastern District of Texas and nearly every political subdivision has been a party defendant,

either now or in the past. Within the immediate past, for instance, the National Forest Service was a party defendant in an environmental type case. It required seven weeks of total trial in Tyler. None of the National Forests in Texas are closer than 100 miles to Tyler. Practically all of the witnesses for those cases resided in Lufkin or further south and the time and travel for the various witnesses, the intervening industries, and other interested personnel was astronomical. Without relief granted to the Tyler and Beaumont Divisions, their case loads can only become more burdensome.

There are now four Judges to preside over the six divisions in the Eastern District of Texas. Two reside in Beaumont. These Judges hold court in other divisions located in far north Texas. The closest Federal Courthouse to Beaumont, Texas is Tyler, 192 miles. Whether the Judge lives in Tyler or Beaumont, the minimum travel is 192 miles. Lufkin is approximately midway between Tyler and Beaumont.

The cost of locating a Federal Court in Lufkin is minimized by the fact that a building is presently available for conversion to that purpose. This is the old Post Office building, now being used by the United States Forest Service. The United States Forest Service will be vacating the premises upon completion of a new Federal Building. The old Post Office building was originally designed, with elevator shaft installed, for the erection of a third story floor. Plans are available and have been previously submitted showing that the completion of a courtroom facility could be made with minimum expense.

If established, of the seven divisions, the Lufkin Division would be the second largest in size, fourth largest in population, would reduce average mileage from 89 to 38 for the citizens involved, would remove litigation from the already overburdened Tyler and Beaumont Divisions and could be established at a minimum of cost. No known opposition exists to the creation of this Court.

That concludes my presentation in support of the Lufkin District Court. I have attached to my written statement various tables and computations showing the source material for the computations used above. If there are any questions or you need additional information, I will be pleased to provide it.

EASTERN DISTRICT OF TEXAS

County	1900	1970	1975 estimate
Anderson	28,015	27,789	31,244
Angelina	13,481	49,349	54,019
Bowie	26,676	67,813	69,918
Camp	9,146	8,005	7,908
Cass	22,841	24,133	26,170
Cherokee	25,154	32,008	33,597
Collin	50,087	66,920	94,613
Cooke	27,494	23,471	26,106
Delta	15,249	4,927	4,717
Denton	28,318	75,633	97,410
Fannin	51,793	22,705	23,246
Franklin	8,674	5,291	6,180
Grayson	63,661	83,225	78,831
Gregg	12,343	75,929	81,798
Hardin	5,049	29,996	34,085
Harrison	31,876	44,841	44,359
Henderson	19,970	26,466	30,675
Hopkins	27,950	20,710	21,662
Houston	25,452	17,855	17,932
Jasper	7,138	24,692	26,587
Jefferson	14,239	244,773	241,246
Lamar	48,627	36,062	38,221
Liberty	8,102	33,014	38,441
Marion	10,754	8,517	7,638
Morris	8,220	12,310	13,130
Nacogdoches	24,663	36,362	42,519
Newton	7,282	11,657	11,892
Orange	5,905	71,170	75,190
Panola	21,404	15,894	16,628
Rains	6,127	3,752	4,412
Red River	29,893	14,298	14,742
Rusk	26,009	34,102	36,403
Sabine	6,394	7,187	7,461

EASTERN DISTRICT OF TEXAS—Continued

County	1900	1970	1975 estimate
San Augustine.....	8,434	7,858	8,179
Shelby.....	20,452	19,672	20,704
Smith.....	37,370	97,096	107,597
Titus.....	12,292	16,702	18,594
Tyler.....	11,899	12,417	13,758
Upshur.....	16,266	20,976	23,757
Van Zandt.....	25,481	22,155	27,252
Wood.....	21,048	18,589	21,196
Total.....	843,278	1,476,321	1,599,017

BEAUMONT AND TYLER DIVISIONS

County	1900	1970	1975 estimate
Anderson.....	28,015	27,789	31,244
Angelina.....	13,481	49,349	54,019
Cherokee.....	25,154	32,008	33,597
Gregg.....	12,343	75,929	81,798
Henderson.....	19,970	26,466	30,675
Hardin.....	5,049	29,996	34,085
Harris.....	25,452	17,855	17,932
Houston.....	7,138	24,692	26,587
Jasper.....	14,239	244,773	241,246
Jefferson.....	8,102	33,014	38,441
Liberty.....	24,663	36,362	42,519
Nacogdoches.....	7,282	11,657	11,892
Newton.....	5,905	71,170	75,190
Orange.....	21,404	15,894	16,628
Panola.....	6,127	3,752	4,412
Rains.....	26,009	34,102	36,403
Rusk.....	6,394	7,187	7,461
Sabine.....	8,434	7,858	8,179
San Augustine.....	20,452	19,672	20,704
Shelby.....	37,370	97,096	107,597
Smith.....	11,899	12,417	13,758
Tyler.....	25,481	22,155	27,252
Van Zandt.....	21,048	18,589	21,196
Wood.....	381,411	919,782	982,815
Total.....			

Population estimates,¹ Federal court divisions; eastern district of Texas

County	Population
Sherman division:	110,800
Collin.....	26,000
Cooke.....	102,200
Denton.....	83,900
Grayson.....	322,900

Division population.....

Paris division:	4,400
Delta.....	23,200
Fannin.....	22,200
Hopkins.....	

	Population
Lamar.....	39,200
Red River.....	13,900

Division population..... 102,900

Texarkana division:

Bowie.....	72,900
Franklin.....	6,600
Titus.....	19,000

Division population..... 98,500

Marshall division:

Camp.....	8,500
Cass.....	26,700
Harrison.....	45,900
Marion.....	8,300
Morris.....	14,100
Upshur.....	25,700

Division population..... 129,200

Tyler division:

Anderson.....	34,100
Angelina.....	57,100
Cherokee.....	33,800
Gregg.....	88,200
Henderson.....	32,000
Houston.....	18,000
Nacogdoches.....	43,900
Panola.....	18,700
Rains.....	4,600
Rusk.....	39,000
Shelby.....	20,800
Smith.....	113,300
Van Zandt.....	28,800
Wood.....	23,400

Division population..... 555,700

Beaumont division:

Jasper.....	26,900
Jefferson.....	248,400
Hardin.....	38,100
Liberty.....	41,900
Newton.....	12,800
Orange.....	80,200
Sabine.....	7,400
San Augustine.....	8,500
Tyler.....	14,700

Division population..... 478,900

Population of eastern district of Texas 1,688,100

¹ Population Estimates Dec. 31, 1978, Sales and Marketing Management magazine.

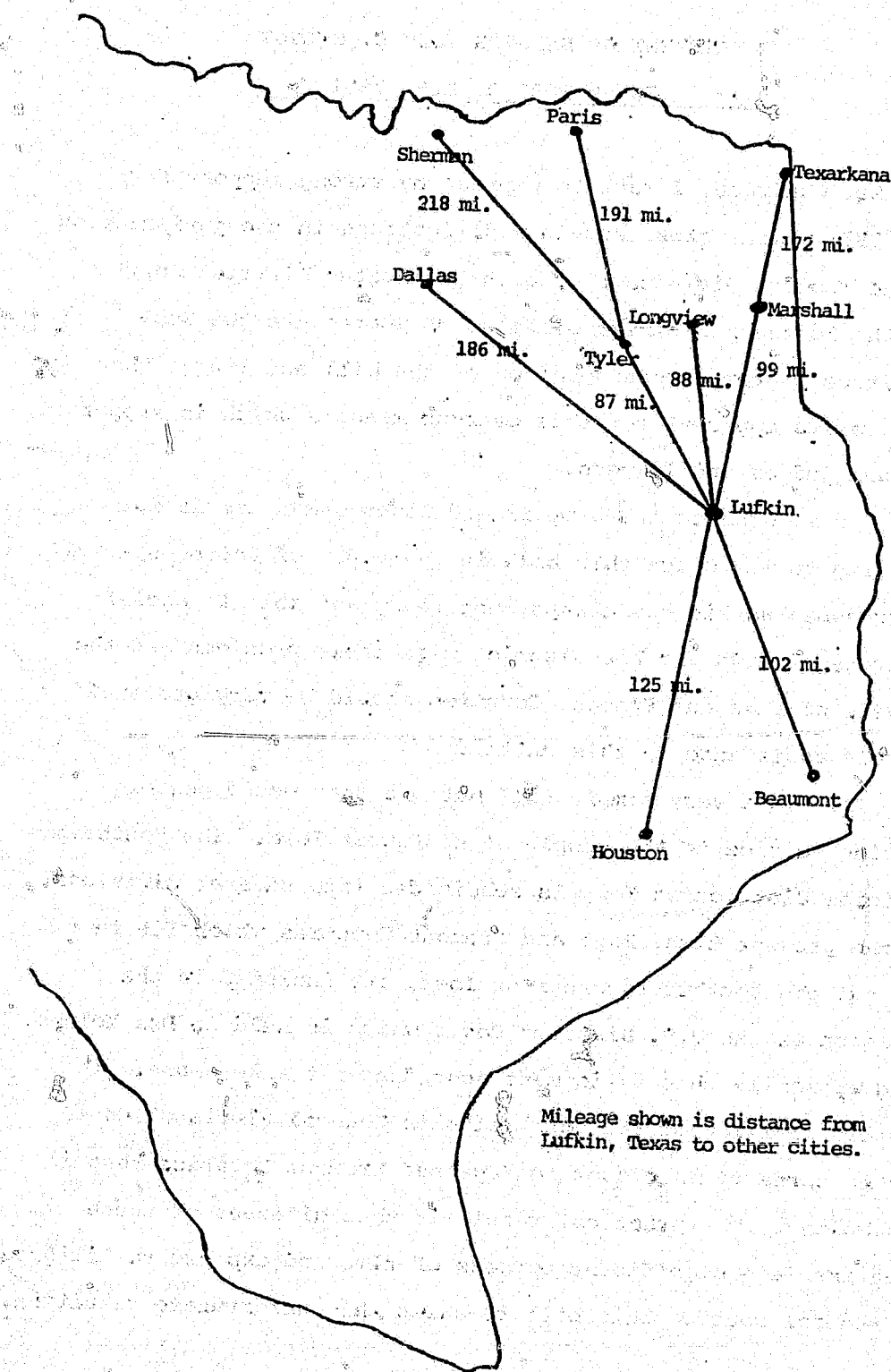
Population estimates¹ Federal court divisions Tyler, Beaumont and proposed Lufkin

County	Population
Tyler division:	
Anderson.....	34,100
Cherokee.....	33,800
Gregg.....	88,200
Henderson.....	32,000
Panola.....	18,700
Rains.....	4,600
Rusk.....	39,000

Population estimates¹ Federal court divisions Tyler, Beaumont and proposed Lufkin—
Continued

County	Population
Tyler division:	
Smith.....	113,300
Van Zandt.....	28,800
Wood.....	23,400
Division population.....	415,900
Beaumont division:	
Jasper.....	26,900
Jefferson.....	248,400
Hardin.....	38,100
Liberty.....	41,900
Newton.....	12,800
Orange.....	80,200
Division population.....	448,300
Proposed Lufkin division:	
Angelina.....	57,100
Houston.....	18,000
Nacogdoches.....	43,900
Polk.....	19,300
Sabine.....	7,400
San Augustine.....	8,500
Shelby.....	20,800
Trinity.....	7,900
Tyler.....	14,700
Division population.....	197,600
Population of Tyler, Beaumont and proposed Lufkin.....	1,061,800

¹ Population Estimates Dec. 31, 1978, Sales and Marketing Management magazine.



STATEMENT OF SENATOR JOHN C. CULVER

IN SUPPORT OF H.R. 7951

Mr. Chairman, I want to express my strong support for H.R. 7951 which makes certain modifications in the jurisdiction of the Western Division of the United States District Court for the Southern District of Iowa. I appreciate the Subcommittee's prompt consideration of the bill and I urge that it give its approval for this overdue measure which is supported by Iowa judges and lawyers.

I also wish to thank my friend Congressman Harkin for agreeing to introduce this bill in the House of Representatives. Congressman Harkin has always been ready and able to assist citizens of Iowa and his district with their problems and the lawyers of Page and Fremont Counties should be very grateful for his assistance in this matter.

This is a very simple bill but one that would perform a genuine service to the people of southwest Iowa. The Southern Judicial District in Iowa is subdivided into several divisions. At the present time, Page and Fremont Counties which lie in the extreme southwest corner of Iowa, are included in the division of the U.S. District Court which is held in Des Moines. Geographically this assignment just does not make sense. The Western Division of the court sits in Council Bluffs which is two to three times closer to Page and Fremont Counties than is Des Moines. The practical result is that citizens of these counties face significant burdens of time and expense to litigate in federal court. This bill remedies this unfortunate situation.

H.R. 7951 is supported by Hon. Donald E. O'Brien, the Judge for the United States District Court in Iowa who serves both the Northern and Southern Districts. Judge O'Brien is the only judge who now goes to Council Bluffs. In a letter to me dated August 15, 1980, Judge O'Brien expressed his support for the transfer of Page and Fremont Counties to the Western Division. I have attached Judge O'Brien's letter to my statement and request that it be entered into the Subcommittee hearing record.

Support was also expressed by Richard W. Peterson, United States Magistrate for the Southern Judicial District of Iowa. In his letter of August 15, 1980, submitted for the record by Congressman Harkin, Mr. Peterson states that, "[b]oth for the district attorney and defendants, matters that originate in Page and Fremont Counties that must be handled in Des Moines are inconvenient and burdensome for those involved." He concludes that the removal of Page and Fremont County cases to the Council Bluffs court would be "a distinct improvement in the administration of justice in the Southern District of Iowa."

This measure also has the strong support of Iowa lawyers. On August 19th, the Southwest Iowa Bar Association unanimously adopted a resolution of support for this bill. In addition, a statement of support was signed by every law firm in Page and Fremont Counties on August 18, 1980. Copies of this material have been mailed to my office and as soon as it is received, I will forward it to the Subcommittee for inclusion in the record.

Mr. Chairman, the Administrative Office of the United States Courts was notified about this bill but did not have sufficient time to formally solicit and receive the comments of Iowa judges. I understand, however, that this measure is entirely consistent with the policy of the Administrative Office regarding similar bills. With the strong statements of support I have received from Judge O'Brien, Mr. Peterson, the U.S. Magistrate, the Southwest Iowa Bar Association, and all the law firms in the two affected counties, I firmly believe there is an adequate record on which the Subcommittee may base its decision.

Again, Mr. Chairman, I want to thank the Subcommittee for considering H.R. 7951 in such a prompt fashion and am confident that the Subcommittee will favorably report the bill to the full Judiciary Committee.

UNITED STATES DISTRICT COURT
NORTHERN AND SOUTHERN DISTRICTS OF IOWA
SIOUX CITY, IOWA 51102

CHAMBERS OF
JUDGE DONALD E. O'BRIEN

August 15, 1980

Senator John Culver
Senate Office Building
Washington, D. C.

Dear Senator:

Re: Fremont and Page Counties

As you know, I am a swing judge covering both the Northern and Southern Districts of Iowa. By agreement with Chief Judge Stuart of the Southern District, I am the only judge that now goes to Council Bluffs. In visiting with the members of the bar in Council Bluffs, they pointed out to me the fact that Fremont County and Page County, which as you know are on the Missouri border close to Council Bluffs, are by law required to file all federal lawsuits in the Central Division of the Southern District at Des Moines. The historical reason for this is not really clear, but the effect has been that all lawsuits from Page and Fremont Counties have been for many years last past filed in Des Moines. As you know, Shenandoah, for example, is about 55 miles from Council Bluffs and two or three times that far from Des Moines. The practical result is that lawyers in Page and Fremont Counties use the federal court only when they absolutely have to.

I have visited with a committee of the Southwest Iowa Bar Association who have informed me that these counties would like very much to be made a part of the Western Division of the Southern District and be permitted to use the court at Council Bluffs.

It is my further understanding that the Senate Judiciary Committee may well take up this matter in the next few days. Please consider supporting the transfer of these two counties from the Central Division to the Western Division.

Best regards,

Don O'Brien
Donald E. O'Brien

AD FRAC
S. 8/18
D. 8/22

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

September 19, 1980

Re: S. 2830 and H.R. 7665

Dear Chairman Rodino:

More than ten years ago I first advocated the division of the Fifth Circuit and the Ninth Circuit. I based this on a number of factors, one of them being that long experience had established in the minds of most experienced judges the proposition that an appellate court of more than nine members produced unnecessary internal administrative difficulties. At the time I first made this proposal, the Fifth Circuit had 15 Circuit Judges and the Ninth Circuit had 13 Circuit Judges.

I write you now to make it clear that I strongly support the enactment of the pending legislation to divide the Fifth Circuit into two separate Circuits. I do so notwithstanding the fact that since I originally made the proposal, division into two circuits has in reality become virtually obsolete. The Fifth Circuit at full strength will have 26 judges in active service. The Ninth will have 23. Neither in terms of general administration of such a circuit involving as it does a vast geographical area and the internal management, particularly in connection with en banc hearings, is this feasible. This was illustrated in the Fifth Circuit on the first case which was heard en banc. At that time there were only 24 judges qualifying and participating. I am informed that it took four and one-half hours for all of these judges to express their views on a single case. This harsh reality was not unanticipated, but I am informed that its actual realization brought about the support in the Fifth Circuit for the division. Inevitably, the whole matter will have to be considered within a relatively few years, but the division of the Fifth Circuit should not wait on that factor. It should be made at once. Ultimately, however, these Circuits must be divided into three units but we should not wait.

Later we can address the problem of the Ninth Circuit where the Court has already taken some steps to anticipate the problems of administration. It has divided the Circuit into three divisions for some purposes. This, of course, does not meet the problem of an en banc hearing. An en banc hearing with 23 judges is nothing short of an absurdity. This is especially so when we remember that when the first Congress of the United States met, and for a long time afterward, there were only 26 members of the United States Senate. For a legislative-deliberative body such numbers are feasible; for a judicial tribunal it is unworkable. I have no doubt that on the division of the Fifth Circuit and the anticipated division of the Ninth Circuit, all of the judges of each of those Circuits will honor the precedents of the predecessor court. The fears expressed on this score by some are without real foundation.

Judge Frank Johnson of the Fifth Circuit, a judge of great experience both as a trial judge and an appellate judge, sent me a copy of his September 5 letter addressed to you. I am in accord with his letter.

Cordially yours,

Wm. E. Burger

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

CONTINUED

3 OF 6

United States District Court
 Eastern District of Louisiana
 500 Camp Street
 New Orleans 70130

Chambers of
 Morey L. Sear
 District Judge

July 25, 1980

Honorable Peter W. Rodino, Jr., Chairman
 House of Representatives Committee on
 the Judiciary
 House of Representatives
 Washington, D.C. 20515

Dear Congressman Rodino:

In the absence of a permanent judge for the District of the Canal Zone, I have been designated judge in charge of the District by Honorable James P. Coleman, Chief Judge of the United States Court of Appeals for the Fifth Circuit.

H.R. 7565, which would divide the Fifth Judicial Circuit into a Fifth Circuit composed of the states of Mississippi, Louisiana, and Texas and an Eleventh Circuit composed of the states of Alabama, Georgia, Florida, and the Canal Zone, is pending before the House Committee on the Judiciary.

Article XI of the Panama Canal Treaty provides a transition period of thirty calendar months which began on entry in force of the treaty October 1, 1979, and will end March 31, 1982, during which the United States must conclude all cases of a private civil nature instituted and pending prior to the entry in force of the treaty. Cases tried during the remainder of this transition period would be appealable to the new Eleventh Circuit under the pending legislation.

On the other hand, Section 1416 of Public Law 96-70, the Panama Canal Act of 1979, requires actions on claims against the Panama Canal Commission subsequent to October 1, 1979 be brought in the United States District Court for the Eastern District of Louisiana which will remain in the Fifth Circuit.

Chief Judge Coleman has instructed me to bring the foregoing inconsistency to your attention and to discuss the matter with Judge Frank M. Johnson, Chairman of the Legislative Committee of the Circuit Council. Judge Johnson has asked that I inform you that his committee recommends that the District of the Canal Zone be maintained in the Fifth Circuit and he, Chief Judge Coleman and I offer our assistance in any manner you deem appropriate.

Very truly yours,

Morey L. Sear
 Morey L. Sear

MLS:lag

cc: Honorable James P. Coleman,
 Chief Judge
 Honorable Frank M. Johnson
 Mr. Michael Remington
 Honorable John C. Godbold

Federal Bar Association

National Headquarters: 1815 H Street, N.W., Washington, D.C. 20006 • (202) 638-0252



September 5, 1980

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the membership of the Federal Bar Association I am privileged to express its support of the legislation (H.R. 7625, S. 2830) to amend Title 28, U.S. Code, to divide the U.S. Court of Appeals for the Fifth Circuit into two separate circuits, and to urge approval by the Committee on the Judiciary.

The association has noted with concern the growing case load of the Fifth Circuit, to the extent that it handled more than 3,800 cases last year, a far greater case load than that of any other circuit. We are pleased to join all 24 of the judges of the circuit in recommending that this imbalance be corrected by enactment of the pending legislation.

Kindest regards,

Sincerely,

Thomas G. Lilly
Thomas G. Lilly
President

APPENDIX 2—PENDING BILLS

There are six categories of bills currently pending in the Subcommittee: (1) bills relating to administrative adjustments necessitated by prior district reorganization; (2) places of holding court proposals; (3) bills relating to divisions within districts; (4) bills affecting district boundaries; (5) bills creating new districts; and (6) bills to split the fifth district.

From a substantive viewpoint, bills in the first and second category are the easiest to process, and bills in the remaining categories increasingly difficult.

A. Bills relating to administrative adjustments necessitated by prior district reorganization

1. H.R. 2301 (Kastenmeier, Railsback, O'Brien)—to amend the Federal District Court Organization Act of 1978 with respect to certain administrative matters arising from the redrawing of the Federal judicial districts of Illinois. Signed by the President, March 30, 1979—P.L. 96-4.

B. Bills to create new places of holding court within a district

1. H.R. 4961 (Walker)—Lancaster, Pa.
2. H.R. 6703 (Albosta)—Mt. Pleasant, Mich.
3. H.R. 5691 (Ambro)—Brooklyn, N.Y.; Hempstead, N.Y.
4. H.R. 2062 (Roe)—Paterson, N.J.
5. H.R. 3673 (Fenwick, Courter)—Morristown, N.J.
6. H.R. 5890 (Guarini)—Jersey City, N.J.
7. H.R. 1513 (Hollenbeck, Maguire)—Hackensack, N.J.
8. H.R. 6060 (Patterson, Danielson, Edwards of California, Moorhead of California)—Santa Ana, Calif. [same as H.R. 5924 (Danielson, Moorhead of California)]
9. H.R. 7456 (Anderson of California)—Long Beach, Calif.
10. H.R. 7967 (Coelho)—to provide that the United States District Court for the Eastern District of California shall be held in the Modesto-Ceres Metropolitan area.

C. Bills to either create a division, eliminate a division, or change division lines within a district

1. H.R. 5966 (Charles Wilson of Texas)—to establish a Lufkin Division in the Eastern District of Texas. [same as H.R. 2079]
2. H.R. 4435 (Seiberling, Williams)—to make changes in divisions within the Northern District of Ohio. [same as H.R. 1883 (Seiberling)]
3. H.R. 5690 (Ambro)—to divide the Eastern District of New York into two divisions.
4. H.R. 6971 (Volkmer)—to provide for inclusion of Audrain and Montgomery Counties in the Northern Division of the Eastern District of Missouri. (Cf. S. 2432, passed May 14, 1980)
5. H.R. 5697 (Patterson)—to establish two divisions for the central judicial district of California. [same as H.R. 5789 (Brown)]
6. H.R. 7951 (Harkin)—to provide that the counties of Fremont and Page shall be in the Western Division of the Southern Judicial District of Iowa.

D. Bills to change judicial districts within the state

1. H.R. 6708 (Kastenmeier, Gudger)—to place the Federal Correctional Institution at Butner, N.C., entirely within the Eastern District of N.C.
2. H.R. 7615 (Neal)—to reorganize the middle and western judicial districts of North Carolina.

E. Bills to establish an additional district within a state or territory

1. H.R. 3714 (Ambro)—to establish a separate judicial district for Nassau and Suffolk Counties in New York.
2. H.R. 2505 (Patterson)—to establish an additional federal judicial district in California. (similar to H.R. 2806, but recommends that court be held at Santa Ana, Riverside and San Bernardino)
3. H.R. 2806 (Dannemeyer, Brown of California, Badham, Lloyd)—to establish an additional U.S. court in California. (similar to H.R. 2505, but recommends that court be held in Santa Ana only)
4. H.R. 7947 (Carr)—to establish an additional Federal Judicial district in the State of Michigan

F. Splitting of Fifth District

1. H.R. 7665 (Rodino, Brooks, Kastenmeier, Edwards of California, Boggs, Bowen, Long of Louisiana, Mica, Moore)—to divide the fifth judicial circuit into two circuits. (similar to H.R. 7625, H.R. 7645 and S. 2830, passed May 14, 1980)

2. H.R. 7625 (Mica)—to remove Alabama, Florida and Georgia from the fifth judicial circuit, and then create an additional circuit comprising Alabama, Florida and Georgia. (similar to H.R. 7665, H.R. 7645 and S. 2830, passed May 14, 1980)

3. H.R. 7645 (Edwards of Alabama)—to remove Alabama, Florida and Georgia from the fifth judicial circuit, and then create an additional circuit comprising Alabama, Florida and Georgia. (same as S. 2830, passed May 14, 1980; similar to H.R. 7665, H.R. 7625)

96TH CONGRESS
1ST SESSION

H. R. 4961

To amend section 118(a) of title 28, United States Code, to provide for the holding of court for the Eastern District of Pennsylvania at Lancaster, Pennsylvania.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1979

Mr. WALKER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 118(a) of title 28, United States Code, to provide for the holding of court for the Eastern District of Pennsylvania at Lancaster, Pennsylvania.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the second paragraph of section 118(a) of title 28,
- 4 United States Code, is amended by inserting after "Easton,"
- 5 the following: "Lancaster,".

96TH CONGRESS
2D SESSION

H. R. 6703

To provide that the United States District Court for the Eastern District of Michigan shall be held at Mount Pleasant, Michigan, in addition to the places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1980

Mr. ALBOSTA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Eastern District of Michigan shall be held at Mount Pleasant, Michigan, in addition to the places currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the second sentence of section 102(a)(2) of title 28,
- 4 United States Code, is amended by inserting "and Mount
- 5 Pleasant" immediately after "Bay City".

96TH CONGRESS
1ST SESSION

H. R. 5691

To amend title 28, United States Code, to move the place for holding court for the district court of the Eastern District of New York to Brooklyn and Hempstead, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1979

Mr. AMBRO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to move the place for holding court for the district court of the Eastern District of New York to Brooklyn and Hempstead, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the second paragraph of section 112(c) of title 28,
- 4 United States Code, is amended to read as follows:
- 5 "Court for the Eastern District shall be held at Brook-
- 6 lyn and Hempstead (including the village of Uniondale) and

1 at a site not more than five miles from the boundary of
2 Nassau and Suffolk Counties.”.

3 SEC. 2. The United States District Court for the East-
4 ern District of New York, by order made anywhere within its
5 district, may pretermitt the regular session of court at Hemp-
6 stead until Federal quarters and accommodations are availa-
7 ble and ready for occupancy, except that for the entire period
8 and such pretermission, a special session of the court shall be
9 held at Westbury. Pretermission may be ordered without
10 regard to the provisions of section 140(a) of title 28, United
11 States Code.

12 SEC. 3. Notwithstanding the provisions of section 142
13 of title 28, United States Code, the Administrator of General
14 Services, at the request of the Director of the Administrative
15 Office of the United States Courts, shall continue to provide
16 existing quarters and accommodations at Westbury for the
17 duration of the special session held pursuant to section 2 of
18 this Act. Appropriations to the judicial branch of Government
19 shall be available to the Director to make necessary disburse-
20 ments for such quarters and accommodations, and to pay user
21 charges as required by section 210 of the Federal Property
22 and Administrative Services Act of 1949, as amended (40
23 U.S.C. 490), at rates otherwise authorized by law.

24 SEC. 4. Notwithstanding the provisions of section 456
25 of title 28, United States Code, and judge, and any officer or

1 employee of the judicial branch, whose official station is, on
2 the day before the date of enactment of this Act, Westbury,
3 may maintain that official station for the duration of the spe-
4 cial session held pursuant to section 2 of this Act.

5 SEC. 5. The Director of the Administrative Office of the
6 United States Courts may pay travel and transportation ex-
7 penses in accordance with subchapter II, chapter 57 of title
8 5, United States Code, to any officer or employee of the judi-
9 cial branch whose official station changes as a consequence of
10 this Act and who relocates his residence incident to such
11 change of official station.

96TH CONGRESS
1ST SESSION

H. R. 2062

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Paterson, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979

Mr. ROE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Paterson, New Jersey, in addition to those places currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the last sentence of section 110 of title 28, United
- 4 States Code, is amended to read as follows: "Court shall be
- 5 held at Camden, Paterson, Newark, and Trenton."

96TH CONGRESS
1ST SESSION

H. R. 3673

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Morristown, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 1979

Mrs. FENWICK (for herself and Mr. COURTER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Morristown, New Jersey, in addition to those places currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the last sentence of section 110 of title 28, United
- 4 States Code, is amended to read as follows: "Court shall be
- 5 held at Camden, Morristown, Newark, and Trenton."

96TH CONGRESS
1ST SESSION

H. R. 5890

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Jersey City, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 1979

Mr. GUARINI introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Jersey City, New Jersey, in addition to those places currently provided by law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the last sentence of section 110 of title 28, United
4 States Code, is amended to read as follows: "Court shall be
5 held at Jersey City, Trenton, Camden, and Newark."

96TH CONGRESS
1ST SESSION

H. R. 1513

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Hackensack, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1979

Mr. HOLLENBECK (for himself and Mr. MAGUIRE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Hackensack, New Jersey, in addition to those places currently provided by law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the last sentence of section 110 of title 28, United
4 States Code, is amended to read as follows: "Court shall be
5 held at Camden, Hackensack, Newark, and Trenton."

96TH CONGRESS
1ST SESSION

H. R. 6060

To provide that the United States District Court for the Central District of California shall be held at Santa Ana, California, in addition to the place currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 1979

Mr. PATTERSON (for himself, Mr. DANIELSON, Mr. EDWARDS of California, and Mr. MOORHEAD of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Central District of California shall be held at Santa Ana, California, in addition to the place currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 84(c) of title 28 of the United States Code is
- 4 amended by inserting "and Santa Ana" immediately after
- 5 "Los Angeles"

96TH CONGRESS
1ST SESSION

H. R. 5924

To provide that the United States District Court for the Central District of California shall be held at Santa Ana, California, in addition to the place currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 1979

Mr. DANIELSON (for himself and Mr. MOORHEAD of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Central District of California shall be held at Santa Ana, California, in addition to the place currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 84(c) of title 28 of the United States Code is
- 4 amended by inserting "and Santa Ana" immediately after
- 5 "Los Angeles".

96TH CONGRESS
2D SESSION

H. R. 7456

To amend title 28 of the United States Code to provide that the United States District Court for the Central District of California may be held at Long Beach.

IN THE HOUSE OF REPRESENTATIVES

MAY 29, 1980

Mr. ANDERSON of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide that the United States District Court for the Central District of California may be held at Long Beach.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 84 of title 28 of the United States Code is
- 4 amended by inserting "Long Beach and" after "Court for the
- 5 Central District shall be held at".

96TH CONGRESS
2D SESSION

H. R. 7967

To provide that the United States District Court for the Eastern District of California shall be held at the Modesto-Ceres metropolitan area, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 20, 1980

Mr. COELHO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide that the United States District Court for the Eastern District of California shall be held at the Modesto-Ceres metropolitan area, in addition to those places currently provided by law.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the second sentence of section 84(b) of title 28, United
- 4 States Code, is amended by inserting "the Modesto-Ceres
- 5 metropolitan area," immediately after "Fresno,".

96TH CONGRESS
1ST SESSION

H. R. 5966

To amend title 28 of the United States Code to establish a Lufkin Division in the Eastern District of Texas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 27, 1979

Mr. CHARLES WILSON of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to establish a Lufkin Division in the Eastern District of Texas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 124(b)(2) of title 28, United States Code, is
4 amended by striking out "Polk," and "Trinity,".

5 (b) Section 124(c) of such title is amended to read as
6 follows:

"EASTERN DISTRICT"

8 "(c) The Eastern District comprises seven divisions.

2

1 "(1) The Tyler Division comprises the counties of
2 Anderson, Cherokee, Gregg, Henderson, Panola,
3 Rains, Rusk, Smith, Van Zandt, and Wood.

4 "Court for the Tyler Division shall be held at
5 Tyler.

6 "(2) The Beaumont Division comprises the coun-
7 ties of Hardin, Jasper, Jefferson, Liberty, Newton, and
8 Orange.

9 "Court for the Beaumont Division shall be held at
10 Beaumont.

11 "(3) The Sherman Division comprises the counties
12 of Collin, Cooke, Denton, and Grayson.

13 "Court for the Sherman Division shall be held at
14 Sherman.

15 "(4) The Paris Division comprises the counties of
16 Delta, Fannin, Hopkins, Lamar, and Red River.

17 "Courts for the Paris Division shall be held at
18 Paris.

19 "(5) The Marshall Division comprises the counties
20 of Camp, Cass, Harrison, Marion, Morris, and Upshur.

21 "Court for the Marshall Division shall be held at
22 Marshall.

23 "(6) The Texarkana Division comprises the coun-
24 ties of Bowie, Franklin, and Titus.

1 "Court for the Texarkana Division shall be held
2 at Texarkana.

3 "(7) The Lufkin Division comprises the counties
4 of Angelina, Houston, Nacogdoches, Polk, Sabine, San
5 Augustine, Shelby, Trinity, and Tyler.

6 "Court for the Lufkin Division shall be held at
7 Lufkin."

8 SEC. 2. The amendments made by the first section of
9 this act shall become effective one hundred and eighty days
10 after the date of enactment of this Act.

H. R. 2079

To amend title 28 of the United States Code to establish a Lufkin Division in the Eastern District of Texas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979.

Mr. CHARLES WILSON of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to establish a Lufkin Division in the Eastern District of Texas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 124(b)(2) of title 28, United States Code, is
4 amended by striking out "Polk," and "Trinty,"

5 (b) Section 124(c) of such title is amended to re
6 follows:

7 "Eastern District

8 "(c) The Eastern District comprises seven divisions.

1 “(1) The Tyler Division comprises the counties of
2 Anderson, Gregg, Henderson, Panola, Rains, Rusk,
3 Smith, Van Zandt, and Wood.

4 “Court for the Tyler Division shall be held at Tyler.

5 “(2) The Beaumont Division comprises the coun-
6 ties of Hardin, Jefferson, Liberty, and Orange.

7 “Court for the Beaumont Division shall be held at
8 Beaumont.

9 “(3) The Sherman Division comprises the counties
10 of Collin, Cooke, Denton, and Grayson.

11 “Court for the Sherman Division shall be held at Sher-
12 man.

13 “(4) The Paris Division comprises the counties of
14 Delta, Fannin, Hopkins, Lamar, and Red River.

15 “Court for the Paris Division shall be held at Paris.

16 “(5) The Marshall Division comprises the counties
17 of Camp, Cass, Harrison, Marion, Morris, and Upshur.

18 “Court for the Marshall Division shall be held at Mar-
19 shall.

20 “(6) The Texarkana Division comprises the coun-
21 ties of Bowie, Franklin, and Titus.

22 “Court for the Texarkana Division shall be held at Tex-
23 arkana.

24 “(7) The Lufkin Division comprises the counties
25 of Angelina, Cherokee, Houston, Jasper, Nacogdoches,

1 Newton, Polk, Sabine, San Augustine, Shelby, Trinity,
2 and Tyler.

3 “Court for the Lufkin Division shall be held at Lufkin.”.

4 SEC. 2. The amendments made by the first section of
5 this Act shall become effective one hundred and eighty days
6 after the date of enactment of this Act.”

96TH CONGRESS
1ST SESSION

H. R. 4435

To amend title 28 of the United States Code to make certain changes in the divisions within the Northern District of Ohio.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 1979

Mr. SEIBERLING (for himself and Mr. WILLIAMS of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to make certain changes in the divisions within the Northern District of Ohio.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 115(a) of title 28, United States Code, is
4 amended to read as follows:

5 "(a) The Northern District comprises three divisions:

6 "(1) The Eastern Division comprises the counties
7 of Ashtabula, Cuyahoga, Geauga, Lake, and Lorain.

8 "Court for the Eastern Division shall be held at
9 Cleveland.

1 "(2) The Central Division comprises the counties
2 of Ashland, Carroll, Columbiana, Crawford, Holmes,
3 Mahoning, Medina, Portage, Richland, Stark, Summit,
4 Trumbull, Tuscarawas, and Wayne.

5 "Court for the Central Division shall be held at
6 Akron and Youngstown.

7 "(3) The Western Division comprises the counties
8 of Allen, Auglaize, Defiance, Erie, Fulton, Hancock,
9 Hardin, Henry, Huron, Lucas, Marion, Mercer,
10 Ottawa, Paulding, Putnam, Sandusky, Seneca, Van
11 Wert, Williams, Wood, and Wyandot.

12 "Court for the Western Division shall be held at
13 Lima and Toledo."

14 SEC. 2. The judges of the district court for the Northern
15 District of Ohio, as comprised by the amendment made by
16 this Act, shall be assigned so that the Central Division shall
17 have two active judges sitting full time in Akron and one
18 active judge sitting full time in Youngstown, unless upon
19 action by the chief judge of such district court, an alternative
20 assignment of judges of such district court is authorized
21 which will bring about an equitable allocation of caseloads
22 among the judges of such district court, to the end that cases
23 may be tried in the division in which such cases
24 originate.

96TH CONGRESS
1ST SESSION

H. R. 5690

To amend section 112 of title 28 of the United States Code to divide the eastern judicial district of New York into two divisions.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1979

Mr. AMBRO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 112 of title 28 of the United States Code to divide the eastern judicial district of New York into two divisions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 112(c) of title 28 of the United States Code is
4 amended to read as follows:

5 "Eastern District

6 "(c) The Eastern District comprises two divisions:

7 "(1) The City Division comprises the counties of Kings,
8 Queens, Richmond, and concurrently with the Southern Dis-

1 trict, the waters within the counties of Bronx and New York.

2 "Court for the City Division shall be held at Brooklyn.

3 "(2) The Long Island Division comprises the counties of
4 Nassau and Suffolk.

5 "Court for the Long Island Division shall be held at an
6 appropriate location within such division not more than five
7 miles from the boundary of Nassau and Suffolk Counties."

96TH CONGRESS
2D SESSION

H. R. 6971

To amend title 28 of the United States Code to provide that the counties of Audrain and Montgomery shall be in the Northern Division of the Eastern Judicial District of Missouri.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 1980

Mr. VOLKMER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide that the counties of Audrain and Montgomery shall be in the Northern Division of the Eastern Judicial District of Missouri.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 105(a) of title 28, United States Code, is
4 amended—
5 (1) in paragraph (1), by striking out "Audrain,"
6 and by striking out "Montgomery,"; and

(2) in paragraph (2), by inserting "Audrain," immediately after "Adair," and by inserting "Montgomery," immediately after "Monroe,".

SEC. 2. The amendments made by this Act shall apply to any action commenced in the United States District Court for the Eastern District of Missouri on or after the date of enactment of this Act, and shall not affect any action pending in such court on such date of enactment.

96TH CONGRESS
2D SESSION

S. 2432

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1980

Referred to the Committee on the Judiciary

AN ACT

To amend title 28 of the United States Code to provide that the counties of Audrain and Montgomery shall be in the Northern Division of the Eastern Judicial District of Missouri.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 105(a) of title 28, United States Code, is
4 amended—

5 (1) in paragraph (1), by striking out "Audrain,"
6 and by striking out "Montgomery,"; and

7 (2) in paragraph (2), by inserting "Audrain," im-
8 mediately after "Adair," and by inserting "Montgom-
9 ery," immediately after "Monroe,".

2

1 SEC. 2. The amendments made by this Act shall apply
2 to any action commenced in the United States District Court
3 for the Eastern District of Missouri on or after the date of
4 enactment of this Act, and shall not affect any action pending
5 in such court on such date of enactment.

Passed the Senate May 14 (legislative day, January 3),
1980.

Attest:

J. S. KIMMITT,

Secretary.

96TH CONGRESS
1ST SESSION

H. R. 5697

To amend title 28 of the United States Code to establish two divisions for the central judicial district of California.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1979

Mr. PATTERSON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to establish two divisions for the central judicial district of California.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 84(c) of title 28 of the United States Code is
4 amended to read as follows:

5 "Central District

6 "(c) The Central District comprises two divisions.

7 "(1) The Tri-County Division comprises the coun-
8 ties of Orange, Riverside, and San Bernardino.

2

1 Court for the Tri-County Division shall be held at
2 Santa Ana, and may be held at Riverside and San
3 Bernardino.

4 "(2) The Los Angeles Division comprises the
5 counties of Los Angeles, San Luis Obispo, Santa Bar-
6 bara, and Ventura.

7 Court for the Los Angeles Division shall be held
8 at Los Angeles."

96TH CONGRESS
2D SESSION

H. R. 7951

To amend title 28 of the United States Code to provide that the counties of Fremont and Page shall be in the Western Division of the Southern Judicial District of Iowa.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 19, 1980

Mr. HARKIN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide that the counties of Fremont and Page shall be in the Western Division of the Southern Judicial District of Iowa.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 95(b) of title 28, United States Code, is
4 amended—

5 (1) in paragraph (3), by inserting "Fremont," im-
6 mediately after "Cass," and by inserting "Page," im-
7 mediately after "Montgomery,"; and

2

1 (2) in paragraph (4), by striking out "Fremont,"
2 and by striking out "Page,".

3 SEC. 2. The amendments made by this Act shall apply
4 to any action commenced in the United States District Court
5 for the Southern District of Iowa on or after the date of the
6 enactment of this Act, and shall not affect any action pending
7 in such court on such date.

96TH CONGRESS
2D SESSION

H. R. 6708

To place the Federal Correctional Institution at Butner, North Carolina, entirely within the Eastern District of North Carolina.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1980

Mr. KASTENMEIER (for himself and Mr. GUDGER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To place the Federal Correctional Institution at Butner, North Carolina, entirely within the Eastern District of North Carolina.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 113(a) of title 28, United States Code, is
4 amended by adding after the word "Wilson." the following
5 new sentence: "The Eastern District also comprises that
6 portion of Durham County encompassing the Federal
7 property of the Federal Correctional Institution, Butner,
8 North Carolina."

2

1 SEC. 2. Section 113(b) of title 28, United States Code,
2 is amended by adding, after the word "Durham", the follow-
3 ing: "(excluding that portion of Durham County encompass-
4 ing the Federal Correctional Institution, Butner, North
5 Carolina)".

96TH CONGRESS
2D SESSION

H. R. 7615

Amending section 113 of title 28, United States Code, to reorganize the middle and western United States district court judicial districts of North Carolina.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1980

Mr. NEAL introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

Amending section 113 of title 28, United States Code, to reorganize the middle and western United States district court judicial districts of North Carolina.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) section 113(b) of title 28, United States Code, is
- 4 amended—
- 5 (1) by striking out "Alleghany, Ashe,"
- 6 (2) by striking out "Watauga, Wilkes," and
- 7 (3) by striking out "Rockingham, Salisbury,
- 8 Wilkesboro,".

- 1 (b) Section 113(c) of title 28, United States Code, is
- 2 amended—
- 3 (1) by inserting "Alleghany," after "Alexander,"
- 4 (2) by inserting "Ashe," after "Anson,"
- 5 (3) by inserting "Watauga, Wilkes," after
- 6 "Union," and
- 7 (4) by striking out "and Statesville" and inserting
- 8 in lieu thereof "Statesville, and Wilkesboro".

96TH CONGRESS
1ST SESSION

H. R. 3714

To amend title 28 of the United States Code to establish a separate judicial district for the counties of Nassau and Suffolk, New York.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 1979

Mr. AMBRO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to establish a separate judicial district for the counties of Nassau and Suffolk, New York.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 112 of title 28 of the United States Code is
4 amended—

5 (1) in subsection (c), by striking out subsection (c)
6 and the heading of such subsection, and inserting in
7 lieu thereof the following:

"Southeastern District

"(c) The Southeastern District comprises the counties of Nassau and Suffolk.

"Court for the Southeastern District shall be held at a suitable site within such district not more than five miles from the boundary of Nassau and Suffolk Counties.

"Eastern District

"(d) The Eastern District comprises the counties of Kings, Queens, and Richmond.

"Court for the Eastern District shall be held at Brooklyn"; and

(2) by redesignating the subsection relating to the Western District as subsection (e).

SEC. 2. (a) Section 133 of title 28 of the United States Code is amended by inserting in lieu thereof the following:

"Southeastern 5
"Eastern 6".

(b) The district judges of the Eastern District of New York holding office on the day immediately before the effective date of this Act whose official duty stations are in Nassau or Suffolk Counties on such date shall on and after such date be district judges of the Southeastern District. All other district judges of such Eastern District holding office on the day immediately before the effective date of this Act shall remain district judges for the Eastern District of New York. The President shall appoint, by and with the advice and con-

1 sent of the Senate, such additional judges as are necessary to
 2 fill the remaining additional judgeships created for the South-
 3 eastern and Eastern Districts by the amendment made by
 4 subsection (a) of this section.

5 (c)(1) Nothing in this Act shall in any manner affect the
 6 tenure of office of the United States attorney and the United
 7 States marshal for the Eastern District of New York who are
 8 in office on the effective date of this section.

9 (2) The President shall appoint, by and with the advice
 10 and consent of the Senate; a United States attorney and mar-
 11 shal for the Southeastern District of New York.

H. R. 2505

To establish an additional Federal judicial district in the State of California.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1979

Mr. PATTERSON introduced the following bill; which was referred to the
 Committee on the Judiciary

A BILL

To establish an additional Federal judicial district in the State of
 California.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That section 84 of title 28 of the United States Code is
 4 amended—

5 (1) in the first sentence, by striking out "four"
 6 and inserting "five" in lieu thereof;

7 (2) in the first sentence, by striking out "and
 8 Southern" and inserting "Southern, and Southwest-
 9 ern" in lieu thereof;

I—E

1 (3) in subsection (c), by striking out "Orange,
2 Riverside, San Bernardino,"; and

3 (4) by adding at the end of such section the fol-
4 lowing:

5 "Southwestern District

6 "(e) The Southwestern District comprises the counties
7 of Orange, Riverside, and San Bernardino.

8 "Court for the Southwestern District shall be held at
9 the city of Santa Ana, the city of Riverside, and
10 the city of San Bernardino."

11 SEC. 2. The table in section 133 of title 28 of the
12 United States Code is amended by adding immediately after
13 the line relating to the Southern District of California the
14 following:

15 "Southwestern 2"
16 SEC. 3. (a) Nothing in section 134(b) of title 28 of the
17 United States Code shall be construed to require any person
18 who is a judge of the United States District Court for the
19 Central District of California to change, because of the estab-
20 lishment of the Southwestern District of California, the dis-
21 trict in which such judge resides.

22 (b) Subsection (a) shall apply only to such individuals
23 whose respective appointments to the office of United States
District Court judge for the Central District of California are

1 confirmed by the Senate on or before the effective date of this
2 Act.

3 SEC. 4. The provisions of this Act shall take effect on
4 July 1, 1980.

96TH CONGRESS
1ST SESSION

H. R. 2806

To establish an additional United States District Court in the State of California.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1979

Mr. DANNEMEYER (for himself, Mr. BROWN of California, Mr. BADHAM, and Mr. LLOYD of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an additional United States District Court in the State of California.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 84 of title 28 of the United States Code is
4 amended—

5 (1) by striking out "four" in the first sentence and
6 inserting "five" in lieu thereof;

7 (2) by striking out "and Southern" in the first
8 sentence, and inserting in lieu thereof the following:

9 "Southern, and Southwestern";

I—E

2

1 (3) in subsection (c), by striking out "Orange,
2 Riverside, San Bernardino,"; and

3 (4) by adding at the end of such section the fol-
4 lowing:

5 "Southwest District

6 "(e) The Southwest District comprises the counties of
7 Orange, San Bernardino, and Riverside.

8 "Court for the Southwest District shall be held at the
9 city of Santa Ana."

10 SEC. 2. The table in section 133 of title 28 of the
11 United States Code is amended by adding immediately after
12 the item relating to the Southern District of California the
13 following new item:

"Southwestern..... 2."

14 SEC. 3. The establishment of the Southwest District
15 shall not be construed to require the relocation of the resi-
16 dence of any United States district judge presently sitting in
17 the Central District of California.

96TH CONGRESS
2D SESSION

H. R. 7947

To amend section 102 of title 28, United States Code, to establish an additional Federal judicial district in the State of Michigan.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 19, 1980

Mr. CARR introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 102 of title 28, United States Code, to establish an additional Federal judicial district in the State of Michigan.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Michigan District Court
4 Organization Act of 1980".

5 SEC. 2. Section 102 of title 28, United States Code, is
6 amended to read as follows:

1 "§102. Michigan

2 "Michigan is divided into three judicial districts to be
3 known as the Eastern, Northern, and Western Districts of
4 Michigan.

5 "Eastern District

6 "(a) The Eastern District comprises the counties of
7 Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe,
8 Oakland, Saint Clair, Sanilac, Washtenaw, and Wayne.

9 "Court for the Eastern District shall be held at Ann
10 Arbor, Detroit, Flint, and Port Huron.

11 "Northern District

12 "(b) The Northern District comprises three divisions.

13 "(1) The Southern Division comprises the coun-
14 ties of Allegan, Antrim, Barry, Benzie, Charlevoix,
15 Emmet, Grand Traverse, Ionia, Kalkaska, Kent, Lake,
16 Leelanau, Manistee, Mason, Mecosta, Missaukee,
17 Montcalm, Muskegon, Newaygo, Oceana, Osceola,
18 Ottawa, and Wexford.

19 "Court for the Southern District shall be held at Grand
20 Rapids, and Traverse City.

21 "(2) The Northern Division comprises the coun-
22 ties of Alger, Baraga, Chippewa, Delta, Dickinson,
23 Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac,
24 Marquette, Menominee, Ontonagon, and Schoolcraft.

25 "Court for the Northern Division shall be held at Mar-
26 quette and Sault Sainte Marie.

1 “(3) The Eastern Division comprises the counties
2 of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare,
3 Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella,
4 Midland, Montmorency, Ogemaw, Oscoda, Otsego,
5 Presque Isle, Roscommon, Saginaw, and Tuscola.
6 “Court for the Eastern Division shall be held at Bay
7 City.

8 “Western District

9 “(c) The Western District comprises the counties of
10 Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Hillsdale,
11 Ingham, Jackson, Kalamazoo, Saint Joseph, Shiawassee,
12 and Van Buren.

13 “Court for the Western District shall be held at Lansing
14 and Kalamazoo.”.

15 SEC. 3. (a) The amendment made by this Act shall take
16 effect one hundred and eighty days after the date of enact-
17 ment of this Act.

18 (b) Nothing in this Act shall affect the composition or
19 preclude the service of any grand or petit juror summoned,
20 empaneled, or actually serving in any judicial district on the
21 effective date of this Act.

96TH CONGRESS
2D SESSION

H. R. 7665

To amend title 28, United States Code, to divide the fifth judicial circuit of the
United States into two circuits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1980

Mr. RODINO (for himself, Mr. BROOKS, Mr. KASTENMEIER, Mr. EDWARDS of
California, Mrs. BOGGS, Mr. BOWEN, Mr. LONG of Louisiana, Mr. MICA, and
Mr. MOORE) (by request) introduced the following bill; which was referred to
the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to divide the fifth
judicial circuit of the United States into two circuits, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Appellate Court Reorga-
4 nization Act of 1980”.

5 SEC. 2. Section 41 of title 28, United States Code is
6 amended—

(1) in the text before the table, by striking out
"eleven" and inserting in lieu thereof "twelve";

(2) in the table, by striking out the item relating
to the fifth circuit and inserting in lieu thereof the fol-
lowing new item:

"Fifth..... Louisiana, Mississippi, Texas.";

and

(3) at the end of the table, by adding the follow-
ing new item:

"Eleventh..... Alabama, Canal Zone, Florida, Georgia.".

SEC. 3. The table in section 44(a) of title 28, United
States Code, is amended—

(1) by striking out the item relating to the fifth
circuit and inserting in lieu thereof the following new
item:

"Fifth..... 14";

and

(2) by adding at the end thereof the following new
item:

"Eleventh..... 12".

SEC. 4. The table in section 48 of title 28, United
States Code, is amended—

(1) by striking out the item relating to the fifth
circuit and inserting in lieu thereof the following new
item:

"Fifth..... New Orleans, Forth Worth, Jackson.";

and

(2) by adding at the end thereof the following new
item:

"Eleventh..... Atlanta, Jacksonville, Montgomery.".

SEC. 5. Each circuit judge in regular active service of
the former fifth circuit whose official station on the day
before the effective date of this Act—

(1) is in Louisiana, Mississippi, or Texas is as-
signed as a circuit judge of the new fifth circuit; and

(2) is in Alabama, Florida, or Georgia is assigned
as a circuit judge of the eleventh circuit.

SEC. 6. Each judge who is a senior judge of the former
fifth circuit on the day before the effective date of this Act
may elect to be assigned to the new fifth circuit or to the
eleventh circuit and shall notify the Director of the Adminis-
trative Office of the United States Courts of such election.

SEC. 7. The seniority of each judge—

(1) who is assigned under section 5 of this Act; or

(2) who elects to be assigned under section 6 of
this Act;

shall run from the date of commission of such judge as a
judge of the former fifth circuit.

SEC. 8. The eleventh circuit is authorized to hold terms
or sessions of court at New Orleans, Louisiana, until such

1 time as adequate facilities for such court are provided in At-
2 lanta, Georgia.

3 SEC. 9. The following provisions apply to any case in
4 which, on the day before the effective date of this Act, an
5 appeal or other proceeding has been filed with the former
6 fifth circuit:

7 (1) If the matter has been submitted for decision,
8 then further proceedings in respect of the matter shall
9 be had in the same manner and with the same effect as
10 if this Act had not been enacted.

11 (2) If the matter has not been submitted for deci-
12 sion, then the appeal or proceeding, together with the
13 original papers, printed records, and record entries duly
14 certified, shall, by appropriate orders, be transferred to
15 the court to which it would have gone had this Act
16 been in full force and effect at the time such appeal
17 was taken or other proceeding commenced, and further
18 proceedings in respect of the case shall be had in the
19 same manner and with the same effect as if the appeal
20 or other proceeding had been filed in said court.

21 (3) A petition for rehearing or a petition for re-
22 hearing en banc in a matter decided before the effec-
23 tive date of this Act, or submitted before the effective
24 date of this Act and decided on or after the effective
25 date as provided in paragraph (1), shall be treated in

1 the same manner and with the same effect as though
2 this Act had not been enacted. If a petition for rehear-
3 ing en banc is granted the matter shall be reheard by a
4 court comprised as though this Act had not been en-
5 acted.

6 SEC. 10. As used in sections 5, 6, 7, 8, and 9 of this
7 Act, the term—

8 (1) "former fifth circuit" means the fifth judicial
9 circuit of the United States as in existence on the day
10 before the effective date of this Act;

11 (2) the term "new fifth circuit" means the fifth ju-
12 dicial circuit of the United States established by the
13 amendment made by section 2(2) of this Act; and

14 (3) the term "eleventh circuit" means the elev-
15 enth judicial circuit of the United States established by
16 the amendment made by section 2(3) of this Act.

17 SEC. 11. The court of appeals for the fifth circuit as
18 constituted on the day before the effective date of this Act
19 may take such administrative action as may be required to
20 carry out this Act. Such court shall cease to exist for admin-
21 istrative purposes on July 1, 1984.

22 SEC. 12. This Act and the amendments made by this
23 Act shall take effect on July 1, 1981.

96TH CONGRESS
2D SESSION

H. R. 7625

To amend title 28, United States Code, to remove the States of Alabama, Florida, and Georgia from the fifth judicial circuit, to create an additional judicial circuit to be composed of the States of Alabama, Florida, and Georgia, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1980

Mr. MICA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to remove the States of Alabama, Florida, and Georgia from the fifth judicial circuit, to create an additional judicial circuit to be composed of the States of Alabama, Florida, and Georgia, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Appellate Court Reorgani-
4 zation Act of 1980".

5 SEC. 2. Section 41 of title 28, United States Code, is
6 amended—

1 (1) by striking out "eleven" in the first sentence
2 and inserting in lieu thereof "twelve";

3 (2) by striking out the item relating to the fifth
4 circuit and inserting in lieu thereof the following:

"Fifth..... Louisiana, Mississippi, Texas, Canal Zone.";

5 and

6 (3) by adding at the end thereof the following:

"Eleventh..... Alabama, Florida, Georgia."

7 SEC. 3. Section 44(a) of title 28, United States Code is
8 amended—

9 (1) by striking out the item relating to the fifth
10 circuit and inserting in lieu thereof the following:

"Fifth..... 14";

11 and

12 (2) by adding at the end thereof the following:

"Eleventh..... 12";

13 SEC. 4. Section 48 of title 28, United States Code, is
14 amended—

15 (1) by striking out the item relating to the fifth
16 circuit and inserting in lieu thereof the following:

"Fifth..... New Orleans, Fort Worth, Jackson.";

17 and

18 (2) by adding at the end thereof the following:

"Eleventh..... Atlanta, Jacksonville, Miami, Mont-
gomery."

SEC. 5. (a) Each circuit judge in regular active service of the fifth circuit whose official station is located in the States of Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit with headquarters in Atlanta, Georgia. Each circuit judge in regular active service whose official station is located in the State of Louisiana, Mississippi, or Texas is assigned as a circuit judge of the fifth circuit with headquarters in New Orleans, Louisiana. The seniority in service of each of the judges so assigned shall run from the date of his original appointment to be a judge of the fifth circuit as it was constituted prior to the effective date of this Act.

(b) The United States Court of Appeals for the Eleventh Circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia.

SEC. 6. A circuit judge in senior status on the fifth circuit as such circuit existed on the day prior to the effective date of this Act is assigned for administrative purposes to the circuit in which he resides on the effective date of this Act and, notwithstanding section 294(d) of title 28 of the United States Code, any such judge may be assigned, by the chief judge of the judicial council of either the fifth or eleventh circuit, such judicial duties as such judge is willing to undertake.

SEC. 7. The following provisions apply to any case in which on the day before the effective date of this Act, an appeal or other proceeding has been filed with the United States Court of Appeals for the Fifth Circuit as constituted before such date:

(1) If any hearing before such court has been held in the case, or if the case has been submitted for decision, then further proceedings in respect of the case shall be held in the same manner and with the same effect as if this Act had not been enacted.

(2) If no hearing before such court has been held in the case, and the case has not been submitted for decision, then the appeal or other proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders duly entered of record, be transferred to the court to which it would have transferred had this Act been in effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be held in the same manner and with the same effect as if this appeal or other proceeding had been originally filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act, or in a matter submitted before the effective date of this Act and decided on or after the effective date of this Act, shall be

1 treated in the same manner and with the same effect as if this
 2 Act had not been enacted. If a petition for rehearing en banc
 3 is granted, the matter shall be reheard by a court comprised
 4 in the same manner as if this Act had not been enacted.

5 (4) A matter that has been decided before the effective
 6 date of this Act that is remanded by the Supreme Court after
 7 the effective date of this Act shall be treated in the same
 8 manner and with the same effect as if this Act had not been
 9 enacted.

10 SEC. 8. The United States Court of Appeals for the
 11 Fifth Circuit as it is constituted before the effective date of
 12 this Act may take any administrative action to advance the
 13 purposes of this Act.

14 SEC. 9. This Act shall become effective on October 1,
 15 1980.

96TH CONGRESS
 2D SESSION

H.R. 7645

To amend title 28 of the United States Code to divide the existing United States Court of Appeals for the Fifth Circuit into two autonomous circuits, one to be composed of the States of Louisiana, Mississippi, and Texas with headquarters in New Orleans, Louisiana, to be known as the fifth circuit, and the other to be composed of the States of Alabama, Florida, and Georgia with headquarters in Atlanta, Georgia, to be known as the eleventh circuit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1980

Mr. EDWARDS of Alabama introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to divide the existing United States Court of Appeals for the Fifth Circuit into two autonomous circuits, one to be composed of the States of Louisiana, Mississippi, and Texas with headquarters in New Orleans, Louisiana, to be known as the fifth circuit, and the other to be composed of the States of Alabama, Florida, and Georgia with headquarters in Atlanta, Georgia, to be known as the eleventh circuit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 That this Act may be cited as the "Appellate Court Reorga-
 4 nization Act of 1980".

5 SEC. 2. Section 41 of title 28, United States Code, is
 6 amended—

7 (1) by striking out "eleven" in the first sentence
 8 and inserting in lieu thereof "twelve";

9 (2) by striking out the item relating to the fifth
 10 circuit and inserting in lieu thereof the following:

"Fifth..... Louisiana, Mississippi, Texas.";

11 and

12 (3) by adding at the end thereof the following:

"Eleventh..... Alabama, Canal Zone, Florida,
 Georgia.".

13 SEC. 3. Section 44(a) of title 28, United States Code, is
 14 amended—

15 (1) by striking out the item relating to the fifth
 16 circuit and inserting in lieu thereof the following:

"Fifth..... 14";

17 and

18 (2) by adding at the end thereof the following:

"Eleventh..... 12".

19 SEC. 4. Section 48 of title 28, United States Code, is
 20 amended—

1 (1) by striking out the item relating to the fifth
 2 circuit and inserting in lieu thereof the following:

"Fifth..... New Orleans, Fort Worth, Jackson.";

3 and

4 (2) by adding at the end thereof the following:

"Eleventh..... Atlanta, Jacksonville, Miami, Mont-
 gomery.".

5 SEC. 5. (a) Each circuit judge in regular active service
 6 of the fifth circuit whose official station is located in the
 7 States of Alabama, Florida, or Georgia is assigned as a cir-
 8 cuit judge of the eleventh circuit with headquarters in At-
 9 lanta, Georgia. Each circuit judge in regular active service
 10 whose official station is located in the States of Louisiana,
 11 Mississippi, or Texas is assigned as a circuit judge of the fifth
 12 circuit with headquarters in New Orleans, Louisiana. The se-
 13 niority in service of each of the judges so assigned shall run
 14 from the date of his original appointment to be a judge of the
 15 fifth circuit as it was constituted prior to the effective date of
 16 this Act.

17 (b) The United States Court of Appeals for the Eleventh
 18 Circuit is authorized to hold terms or sessions of court at
 19 New Orleans, Louisiana, until such time as adequate facilities
 20 for such court are provided in Atlanta, Georgia.

21 SEC. 6. A circuit judge in senior status of the fifth cir-
 22 cuit as such circuit existed on the day prior to the effective
 23 date of this Act is assigned for administrative purposes to the

1 circuit in which he resides on the effective date of this Act
2 and, notwithstanding section 294(d) of title 28 of the United
3 States Code, any such judge may be assigned, by the chief
4 judge or the judicial council of either the fifth or eleventh
5 circuit, such judicial duties as such judge is willing to under-
6 take.

7 SEC. 7. The following provisions apply to any case in
8 which on the day before the effective date of this Act, an
9 appeal or other proceeding has been filed with the United
10 States Court of Appeals for the Fifth Circuit as constituted
11 before such date:

12 (1) If any hearing before such court has been held
13 in the case, or if the case has been submitted for deci-
14 sion, then further proceedings in respect of the case
15 shall be had in the same manner and with the same
16 effect as if this Act had not been enacted.

17 (2) If no hearing before such court has been held
18 in the case, and the case has not been submitted for
19 decision, then the appeal or other proceeding, together
20 with the original papers, printed records, and record
21 entries duly certified, shall, by appropriate orders duly
22 entered of record, be transferred to the court to which
23 it would have been transferred had this Act been in
24 effect at the time such appeal was taken or other pro-
25 ceeding commenced, and further proceedings in respect

1 of the case shall be had in the same manner and with
2 the same effect as if the appeal or other proceeding
3 had been originally filed in such court.

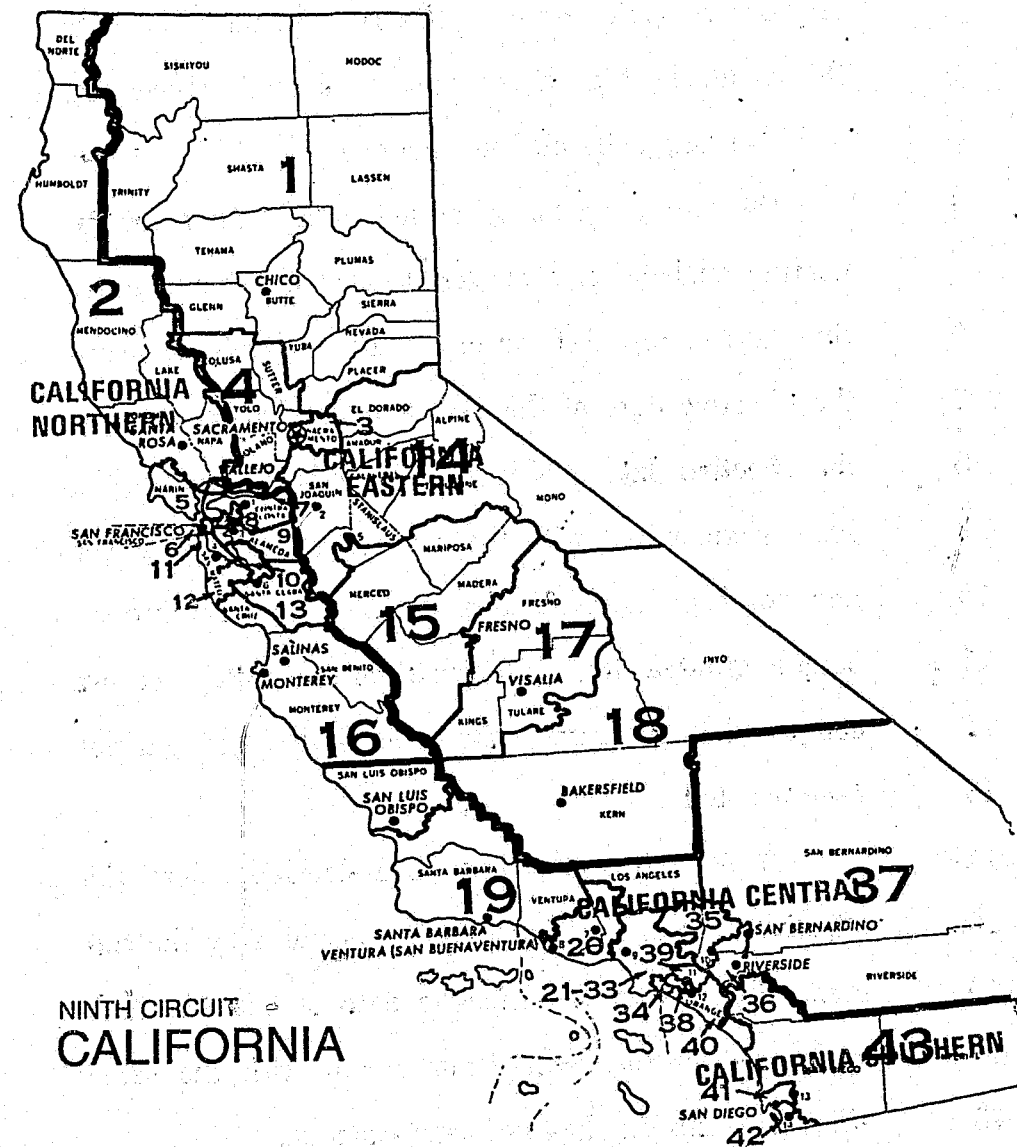
4 (3) A petition for rehearing or a petition for re-
5 hearing en banc in a matter decided before the effec-
6 tive date of this Act, or in a matter submitted before
7 the effective date of this Act and decided on or after
8 the effective date of this Act, shall be treated in the
9 same manner and with the same effect as if this Act
10 had not been enacted. If a petition for rehearing en
11 banc is granted, the matter shall be reheard by a court
12 comprised in the same manner as if this Act had not
13 been enacted.

14 (4) A matter that has been decided before the
15 effective date of this Act that is remanded by the Su-
16 preme Court after the effective date of this Act shall
17 be treated in the same manner and with the same
18 effect as if this Act had not been enacted.

19 SEC. 8. The United States Court of Appeals for the
20 Fifth Circuit as it is constituted before the effective date of
21 this Act may take any administrative action to advance the
22 purposes of this Act.

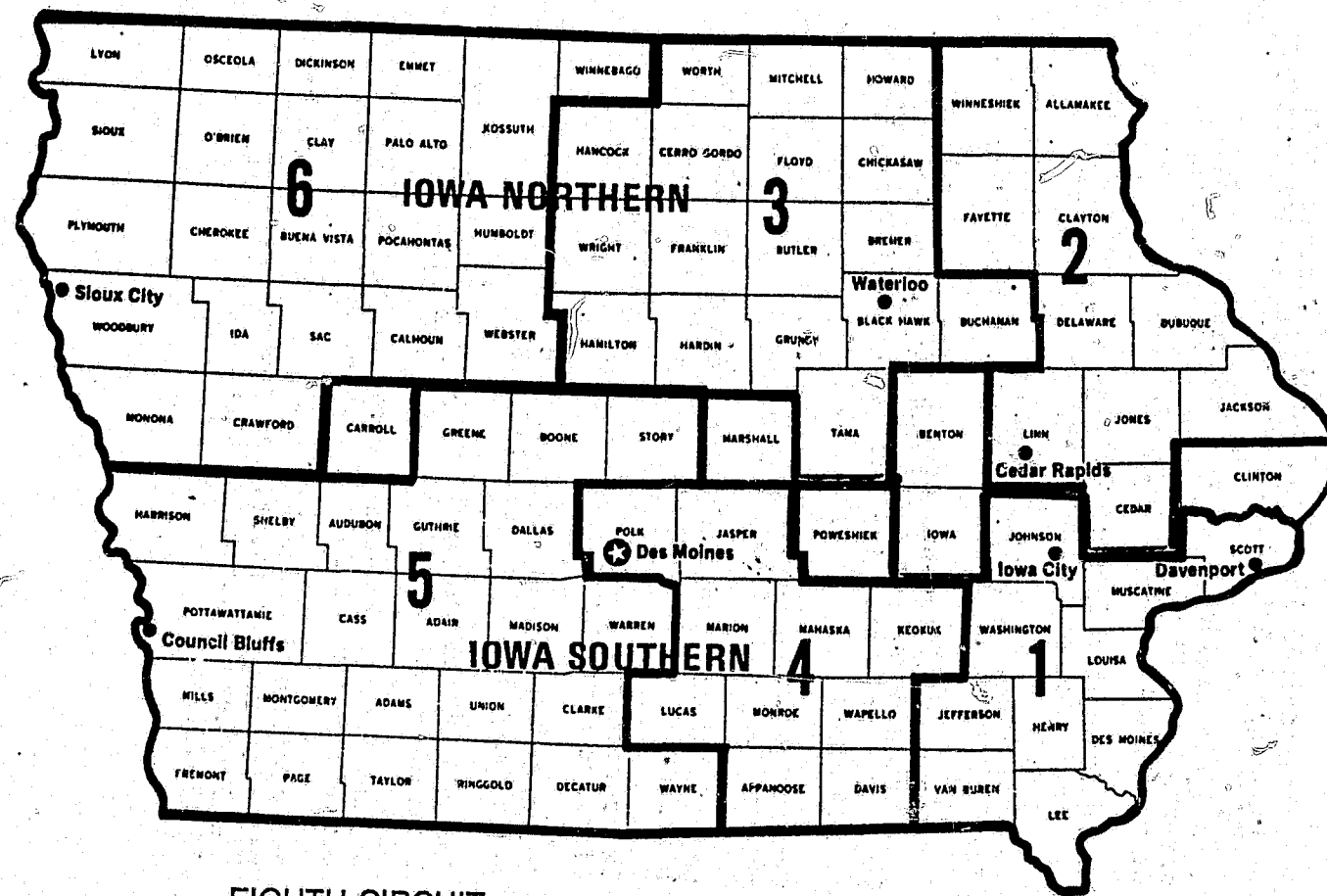
23 SEC. 9. This Act shall become effective on October 1,
24 1980.

APPENDIX 3—MAPS OF STATES INVOLVED BY PROPOSED LEGISLATION



CALIFORNIA

- 1850 - New state was organized into two judicial districts, Northern and Southern, with one judgeship each - Act of September 28, 1850, 9 STAT. 521.
- 1866 - State reorganized into one judicial district with one judgeship - Act of July 27, 1866, 14 STAT. 300.
- 1886 - State again divided into two judicial districts, Northern and Southern, with one judgeship each - Act of August 5, 1886, 24 STAT. 308.
- 1907 - One additional judgeship created for the Northern District - Act of March 2, 1907, 34 STAT. 1253.
- 1914 - One additional judgeship created for the Southern District - Act of July 30, 1914, 38 STAT. 580.
- 1922 - One temporary judgeship created for the Northern District and one permanent judgeship created for the Southern District - Act of September 14, 1922, 42 STAT. 837.
- 1927 - Temporary judgeship in the Northern District made permanent - Act of March 3, 1927, 44 STAT. 1372.
- 1930 - One additional judgeship created for the Southern District - Act of July 27, 1930, 46 STAT. 819.
- 1935 - Two additional judgeships created for the Southern District - Act of August 2, 1935, 49 STAT. 508.
- 1938 - One additional judgeship created for each district - Act of May 31, 1938, 52 STAT. 585.
- 1940 - One additional judgeship created for the Southern District - Act of May 24, 1940, 54 STAT. 220.
- 1946 - One additional judgeship created for the Northern District - Act of June 15, 1946, 60 STAT. 260.
- 1949 - Two additional judgeships created for the Northern District and two additional judgeships created for the Southern District - Act of August 3, 1949, 63 STAT. 493.



APPENDIX 3.—MAPS OF STATES INVOLVED BY PROPOSED LEGISLATION

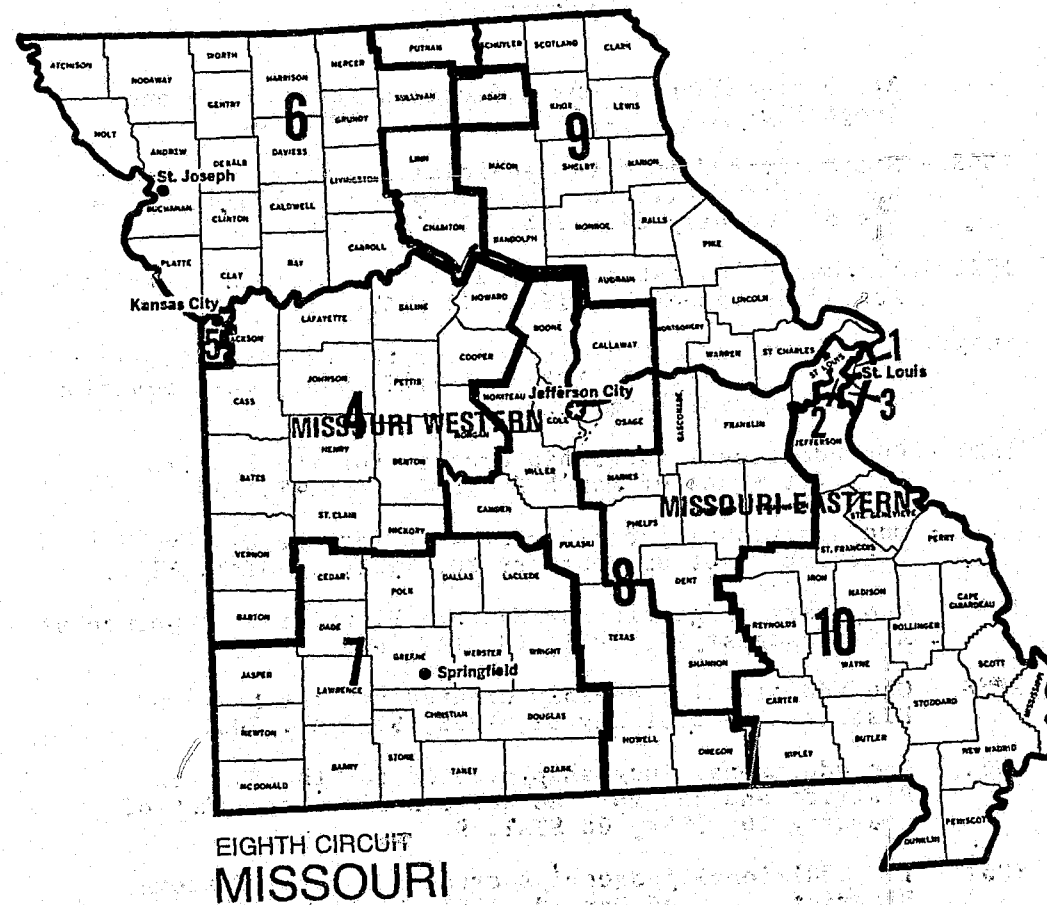
IOWA

- 1845 - Iowa was organized as one judicial district with one judgeship - Act of March 3, 1845, 5 STAT. 789.
- 1882 - State divided into two judicial districts with one judgeship each - Act of July 20, 1882, 22 STAT. 172.
- 1928 - Temporary judgeship created for the Southern District - Act of January 19, 1928, 45 STAT. 52. This position never made permanent.
- 1961 - One additional judgeship created to serve both districts - Act of May 19, 1961, 75 STAT. 80.
- 1978 - One additional judgeship created for the Southern District - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships	- 4
Northern District	- 1
Southern District	- 2
Northern and Southern Districts	- 1

- 1836 - State organized as one judicial district with one judgeship- Act of July 1, 1836, 5 STAT. 62.
- 1863 - State divided into two judicial districts - Eastern and Western, with one judgeship for each district - Act of February 24, 1863, 12 STAT. 660.
- 1922 - Temporary judgeship created for the Eastern District - Act of September 14, 1922, 42 STAT. 437.
- 1925 - Temporary judgeship created for the Western District - Act of February 17, 1925, 43 STAT. 949. This position was never made permanent.
- 1927 - One additional judgeship created for the Eastern District - Act of March 3, 1927, 44 STAT. 1380.
- 1931 - One additional judgeship created for the Eastern District - Act of February 20, 1931, 46 STAT. 1197.
- 1935 - Temporary judgeship for Eastern District made permanent - Act of August 14, 1935, 49 STAT. 659.
- 1938 - One additional judgeship created for the Eastern District - Act of May 31, 1938, 52 STAT. 585.
- 1954 - One additional judgeship created for the Eastern District and one for the Western District - Act of February 10, 1954, 68 STAT. 9.
- 1961 - Two additional judgeships created for the Eastern District - Act of May 19, 1961, 75 STAT. 80.
- 1970 - Two additional judgeships created for the Eastern District - Act of June 2, 1970, 84 STAT. 294.
- 1978 - Three additional judgeships created for the Eastern District and two for the Western District - Act of October 20, 1978, 92 STAT. 1629.

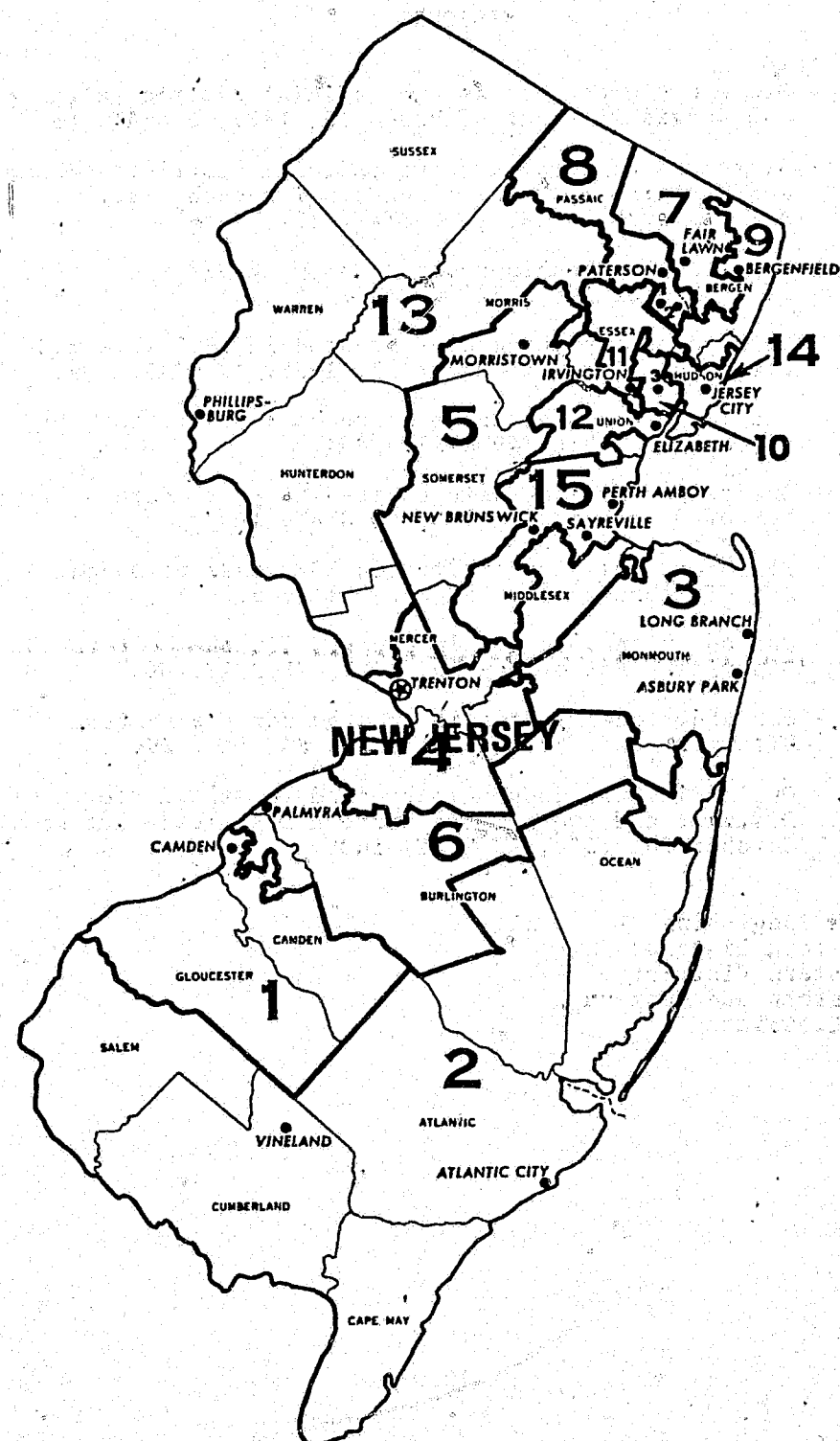
Total Judgeships - 17
 Eastern District - 13
 Western District - 4



MISSOURI

- 1822 - State was organized as one judicial district with one judgeship - Act of March 16, 1822, 3 STAT. 653.
- 1857 - State was divided into two judicial districts, Eastern and Western, with one judgeship for each district - Act of March 3, 1857, 11 STAT. 197.
- 1922 - Temporary judgeship created for each district - Act of September 14, 1922, 42 STAT. 838.
- 1935 - Both temporary judgeships created in 1922 were made permanent - Act of August 19, 1935, 49 STAT. 659.
- 1936 - One judgeship created to serve both districts - Act of June 22, 1936, 49 STAT. 1804.
- 1942 - One temporary judgeship created to serve both districts - Act of December 24, 1942, 56 STAT. 1083.
- 1954 - Temporary position created in 1942 made permanent - Act of February 10, 1954, 68 STAT. 9.
- 1961 - One additional judgeship created for the Western District - Act of May 19, 1961, 75 STAT. 80.
- 1970 - One additional judgeship created for the Eastern District - Act of June 2, 1970, 84 STAT. 294.
- 1978 - One additional judgeship created for the Eastern District and two for the Western District - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships	- 11
Eastern District	- 4
Western District	- 5
Eastern and Western Districts	- 2

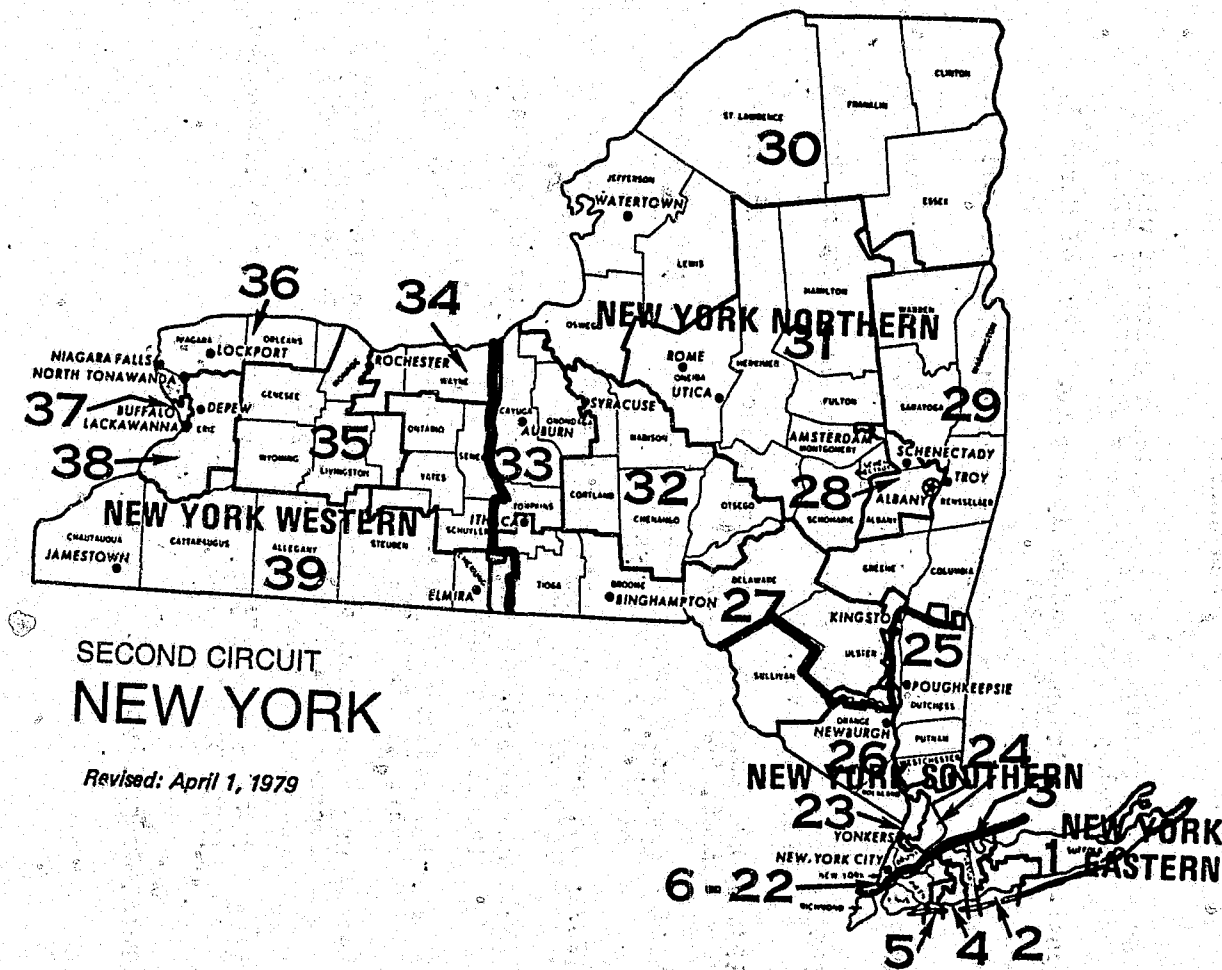


THIRD CIRCUIT
NEW JERSEY

NEW JERSEY

- 1789 - State organized as one judicial district with one judgeship - Act of September 24, 1789, 1 STAT. 73.
- 1905 - One additional judgeship created - Act of March 3, 1905, 33 STAT. 987.
- 1916 - One additional judgeship created - Act of April 11, 1916, 39 STAT. 48.
- 1922 - One temporary judgeship created - Act of September 14, 1922, 42 STAT. 837.
- 1932 - Temporary judgeship made permanent - Act of May 20, 1932, 47 STAT. 161.
- 1940 - One temporary judgeship created - Act of March 24, 1940, 54 STAT. 219.
- 1944 - Temporary judgeship made permanent - Act of December 22, 1944, 58 STAT. 887.
- 1949 - One additional judgeship created - Act of August 3, 1949, 63 STAT. 493.
- 1954 - One additional judgeship created - Act of February 10, 1954, 68 STAT. 9.
- 1961 - One additional judgeship created - Act of May 19, 1961, 75 STAT. 80.
- 1970 - One additional permanent and one temporary judgeship created. Temporary was never made permanent - Act of June 2, 1970, 84 STAT. 294.
- 1978 - Two additional judgeships created - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships - 11



NEW YORK

- 1789 - State organized as one judicial district with one judgeship - Act of September 24, 1789, 1 STAT. 73.
- 1801 - State divided into two judicial districts - Act of February 13, 1801, 2 STAT. 89.
- 1802 - Act of February 13, 1801, repealed and state reverted to one judicial district - Act of March 8, 1802, 2 STAT. 132.
- 1812 - One additional judgeship created - Act of April 29, 1812, 2 STAT. 719.
- 1814 - State divided into two judicial districts, Northern and Southern, with one judgeship each - Act of April 9, 1814, 3 STAT. 120.
- 1865 - Eastern District created from counties of the Southern District with separate judgeship authorized for new district - Act of February 25, 1865, 13 STAT. 438.
- 1900 - Western District created from counties of the Northern District with a separate judgeship authorized for the new district - Act of May 12, 1900, 31 STAT. 175.
- 1903 - One additional judgeship created for the Southern District - Act of February 9, 1903, 32 STAT. 805.
- 1906 - One additional judgeship created for the Southern District - Act of May 26, 1906, 34 STAT. 202.
- 1909 - One additional judgeship created for the Southern District - Act of March 2, 1909, 35 STAT. 685.
- 1910 - One additional judgeship created for the Eastern District - Act of June 25, 1910, 36 STAT. 838.
- 1922 - Two temporary judgeships created for the Southern District and one temporary for the Eastern District - Act of September 14, 1922, 42 STAT. 837.

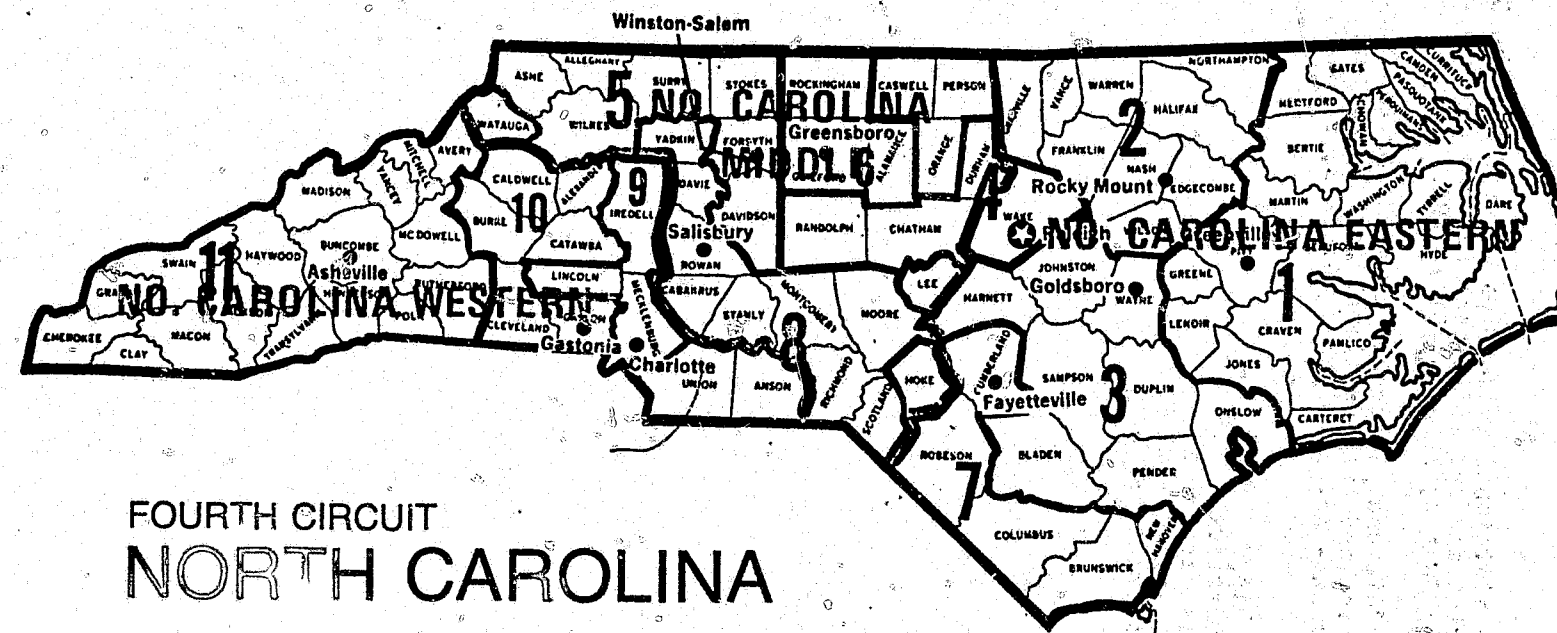
NEW YORK (Continued)

- 1927 - One additional judgeship created for the Northern District and one for the Western District - Act of March 3, 1927, 44 STAT. 1370, 1374.
- 1929 - Three additional judgeships created for the Southern District - Act of February 26, 1929, 45 STAT. 1317.
- Two additional judgeships created for the Eastern District - Act of February 28, 1929, 45 STAT. 1409.
- 1935 - One additional judgeship created in the Eastern District and the temporary created in 1922 was made permanent. The two temporary judgeships created in 1922 for the Southern District were made permanent - Act of August 19, 1935, 49 STAT. 659.
- 1936 - Two additional judgeships created for the Southern District - Act of June 15, 1936, 49 STAT. 1491.
- 1938 - One temporary judgeship created for the Southern District - Act of May 31, 1938, 52 STAT. 585.
- 1940 - One temporary judgeship created for the Southern District (position was never made permanent) - Act of March 24, 1940, 54 STAT. 219.
- Temporary judgeship created in 1938 for the Southern District was made permanent - Act of June 8, 1940, 54 STAT. 253.
- 1949 - Four additional judgeships created for the Southern District - Act of August 3, 1949, 63 STAT. 493.
- 1954 - Two additional judgeships created for the Southern District - Act of February 10, 1954, 68 STAT. 9.
- 1961 - Six additional judgeships created for the Southern District and two additional for the Eastern District - Act of May 19, 1961, 75 STAT. 80.
- 1966 - One additional judgeship created for the Western District - Act of March 18, 1966, 80 STAT. 75.

NEW YORK (Continued)

- 1970 - Three additional judgeships created for the Southern District and one additional for the Eastern District - Act of June 2, 1970, 84 STAT. 294.
- 1978 - One additional judgeship created for the Northern District and one additional for the Eastern District - Act of October 20, 1978, 92 STAT. 1629.

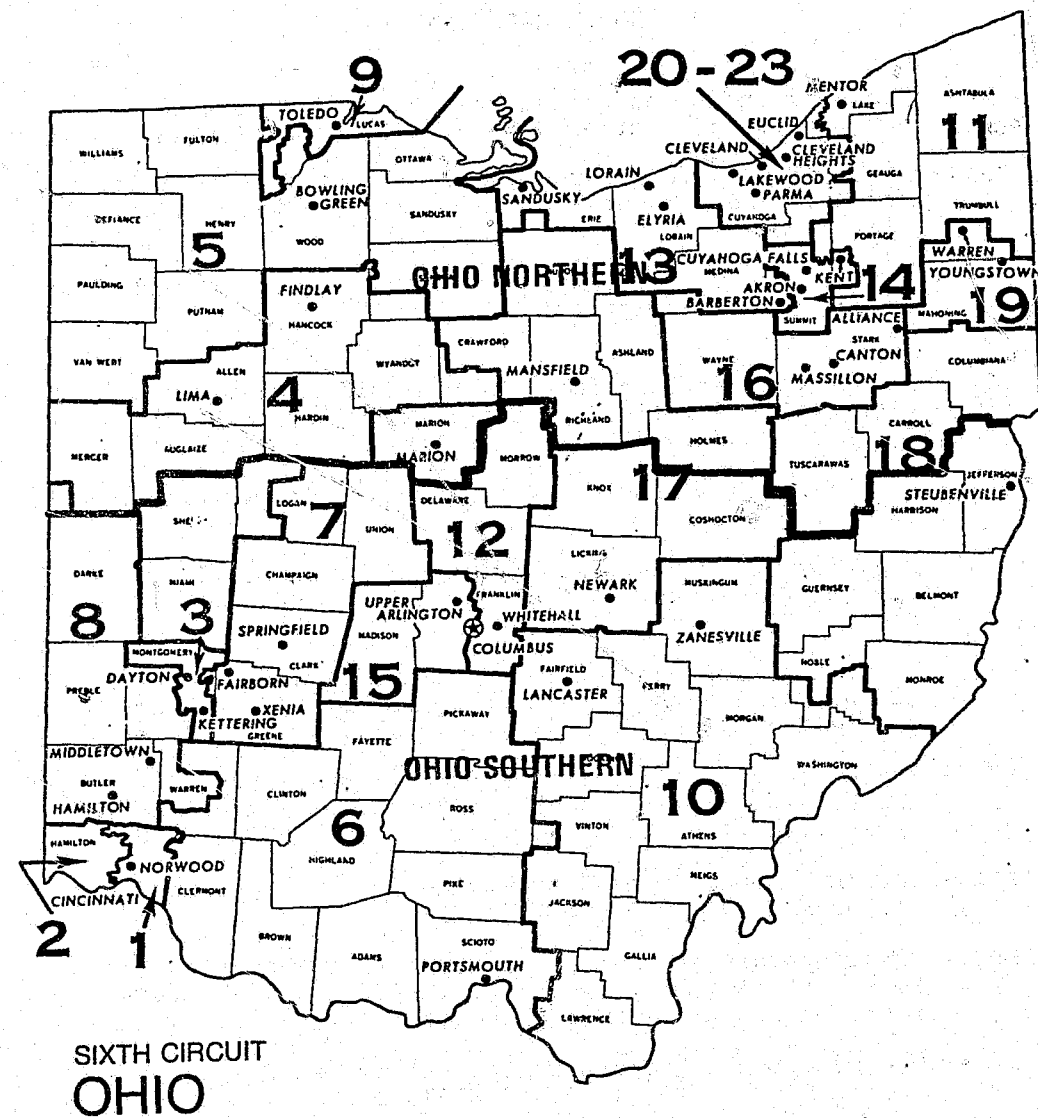
Total Judgeships	- 43
Northern District	- 3
Eastern District	- 10
Southern District	- 27
Western District	- 3



FOURTH CIRCUIT
NORTH CAROLINA

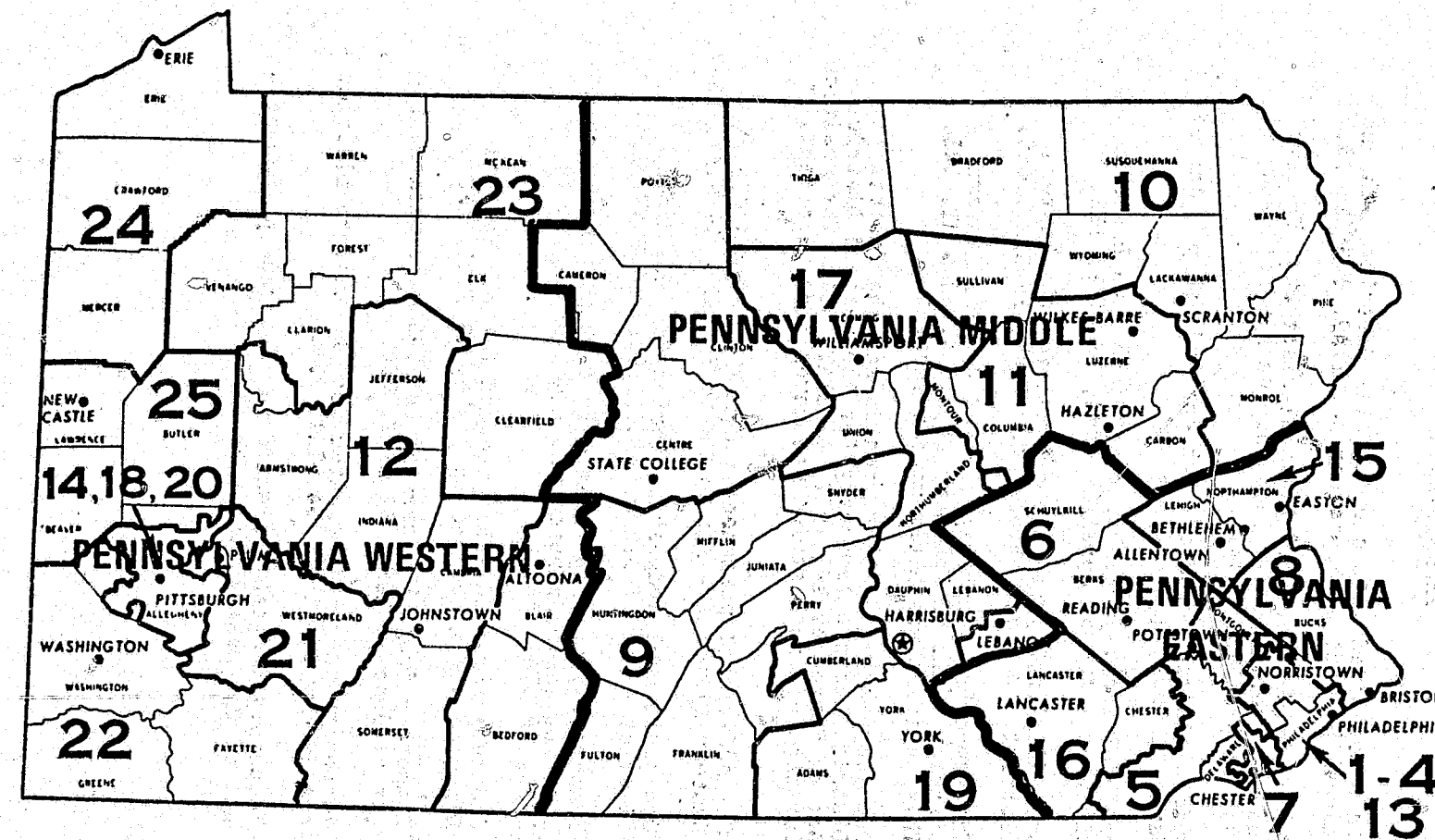
NORTH CAROLINA

- 1790 - State organized as one judicial district with one judgeship - Act of June 4, 1790, 1 STAT. 126.
 - 1794 - State divided into three judicial districts, Wilmington, New Bern and Edenton - Act of June 9, 1794, 1 STAT. 396.
 - 1797 - Act of June 9, 1794, was repealed and state reverted to one judicial district - Act of March 3, 1797, 1 STAT. 518.
 - 1801 - State again divided into three judicial districts, Albermarle, Pamptico and Cape Fear - Act of March 3, 1801, 2 STAT. 123.
 - 1802 - Act of March 3, 1801, was repealed - Act of March 8, 1802, 2 STAT. 132.
 - Organization established by act of March 3, 1801, was reconstituted - Act of April 29, 1802, 2 STAT. 162.
 - 1872 - State organized into two judicial districts, Eastern and Western, with one judgeship authorized for each district - Act of June 4, 1872, 17 STAT. 215.
 - 1927 - State organized into three judicial districts, Eastern, Middle, and Western, with one judgeship authorized for each district - Act of March 2, 1927, 44 STAT. 1339.
 - 1961 - One additional judgeship created for each district - Act of May 19, 1961, 75 STAT. 80.
 - 1970 - One temporary judgeship created for the Eastern District - Act of June 2, 1970, 84 STAT. 294. This position was never made permanent.
 - 1978 - One additional judgeship created for each district - Act of October 20, 1978, 92 STAT. 1629.
- Total Judgeships - 9
 Eastern District - 3
 Middle District - 3
 Western District - 3



OHIO

- 1803 - State organized as one judicial district with one judgeship - Act of February 19, 1803, 2 STAT. 201
- 1855 - State divided into two districts, Northern and Southern, with a judgeship authorized for each district - Act of February 10, 1855, 10 STAT. 604.
- 1900 - Temporary judgeship created for the Northern District - Act of December 19, 1900, 31 STAT. 726.
- 1907 - Temporary judgeship created for the Southern District - Act of February 25, 1907, 34 STAT. 928.
- 1910 - Temporary judgeships created in 1900 and 1907 were made permanent - Act of February 24, 1910, 36 STAT. 202.
- 1922 - Temporary judgeship created for the Northern District - Act of September 14, 1922, 42 STAT. 837.
- 1935 - Temporary judgeship created in 1922 was made permanent - Act of August 19, 1935, 49 STAT. 659.
- 1937 - One additional judgeship created for the Southern District - Act of August 25, 1937, 50 STAT. 805.
- 1941 - Temporary judgeship created for the Northern District - Act of May 1, 1941, 55 STAT. 148.
- 1949 - Temporary judgeship created in 1941 was made permanent - Act of August 3, 1949, 63 STAT. 493.
- 1954 - One additional judgeship created for the Northern District - Act of February 10, 1954, 68 STAT. 9.
- 1961 - One additional permanent and one temporary judgeship created for the Northern District and one temporary created for the Southern District - Act of May 19, 1961, 75 STAT. 80. (Neither temporary judgeship was ever made permanent.)
- 1966 - One additional judgeship created for the Northern District and one for the Southern District - Act of March 18, 1966, 80 STAT. 75.



THIRD CIRCUIT
PENNSYLVANIA

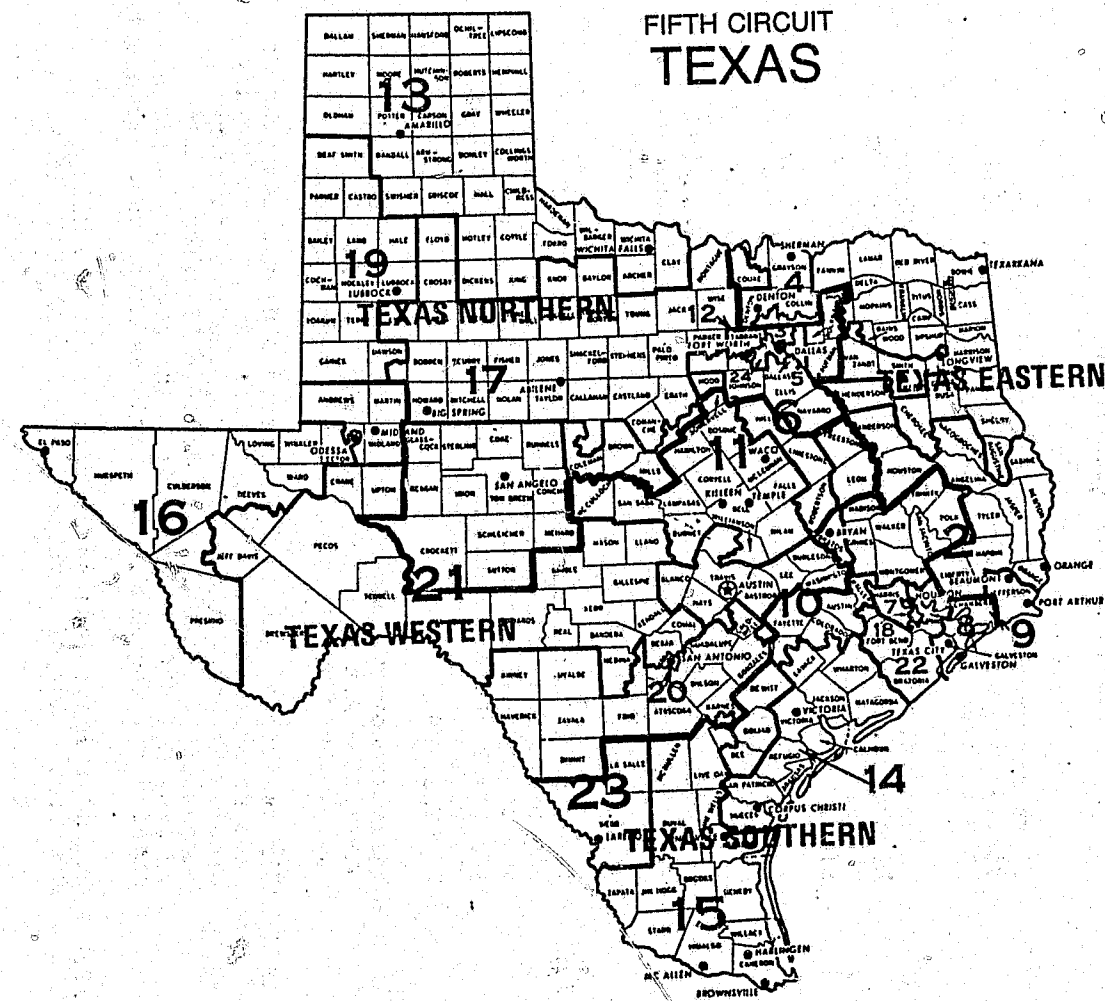
PENNSYLVANIA

- 1789 - State organized into one judicial district with one judgeship - Act of September 24, 1789, 1 STAT. 73.
- 1815 - State divided into two judicial districts, Eastern and Western, with one judgeship each - Act of April 20, 1815, 3 STAT. 462.
- 1901 - Middle district created with one judgeship - Act of March 2, 1901, 31 STAT. 880.
- 1904 - One additional judgeship created for the Eastern District - Act of April 1, 1904, 33 STAT. 155.
- 1909 - One additional judgeship created for the Western District - Act of February 26, 1909, 35 STAT. 656.
- 1914 - One temporary judgeship created for the Eastern District - Act of February 16, 1914, 38 STAT. 283. This position was never made permanent.
- 1922 - One temporary judgeship created for the Eastern District and one temporary for the Western District - Act of September 14, 1922, 42 STAT. 837. The position for the Eastern District was never made permanent.
- 1927 - One additional permanent judgeship created for the Eastern District - Act of March 3, 1927, 44 STAT. 1347.
- 1929 - One additional judgeship created for the Middle District - Act of February 28, 1929, 45 STAT. 1344.
- 1935 - Temporary judgeship created in 1922 for the Western District was made permanent - Act of August 19, 1935, 49 STAT. 659.
- 1936 - One temporary judgeship created for the Eastern District - Act of June 16, 1936, 49 STAT. 1523.
- 1938 - Temporary judgeship created in 1936 made permanent - Act of June 2, 1938, 52 STAT. 780.
- 1940 - Temporary judgeship created for the Eastern District - Act of May 24, 1940, 54 STAT. 219.
- 1944 - Temporary judgeship created in 1940 made permanent - Act of December 7, 1944, 58 STAT. 796.

PENNSYLVANIA (Continued)

- 1946 - Temporary judgeship created to serve all three districts - Act of July 24, 1946, 60 STAT. 654. This position was never made permanent.
- 1949 - Two additional judgeships created for the Eastern District and one temporary judgeship created for the Western District - Act of August 3, 1949, 63 STAT. 493.
- 1950 - Temporary judgeship created in 1949 made permanent - Act of August 29, 1950, 64 STAT. 562.
- 1954 - One additional judgeship created for the Eastern District and one additional permanent plus one temporary created for the Western District - Act of February 10, 1954, 68 STAT. 9.
- 1961 - Three additional judgeships created for the Eastern District, one additional for the Middle District, two additional for the Western District, and the temporary judgeship created in 1954 for the Western District was made permanent - Act of May 19, 1961, 75 STAT. 80.
- 1966 - Three temporary judgeships created for the Eastern District - Act of March 18, 1966, 80 STAT. 75. One of these positions was never made permanent.
- 1970 - Six additional judgeships created plus two temporaries made permanent in the Eastern District, one temporary created for the Middle District, and two additional judgeships created for the Western District - Act of June 2, 1970, 84 STAT. 294. The temporary position created for the Middle District was never made permanent.
- 1978 - Two additional judgeships created for the Middle District - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships - 34
 Eastern District - 19
 Middle District - 5
 Western District - 10



CONTINUED

4 OF 6

TEXAS

- 1845 - State organized as one judicial district with one judgeship - Act of December 29, 1845, 9 STAT. 1.
- 1857 - State was divided into two judicial districts, Eastern and Western, with one judgeship for each district - Act of February 21, 1857, 11 STAT. 164.
- 1879 - Northern District was created with one judgeship - Act of February 24, 1879, 20 STAT. 318.
- 1898 - Temporary judgeship created for the Northern District. This position was never made permanent - Act of February 9, 1898, 30 STAT. 240.
- 1902 - Southern District created with one judgeship - Act of March 11, 1902, 32 STAT. 65.
- 1917 - One additional judgeship created for the Western District - Act of February 26, 1917, 39 STAT. 938.
- 1919 - One additional judgeship created for the Northern District - Act of February 26, 1919, 40 STAT. 1183.
- 1922 - One temporary judgeship created for the Northern District - Act of September 14, 1922, 42 STAT. 837.
- 1935 - Temporary judgeship created in 1922 for the Northern District was made permanent - Act of August 19, 1935, 49 STAT. 659.
- 1938 - One additional judgeship created for the Southern District - Act of May 31, 1938, 52 STAT. 585.
- 1949 - Temporary judgeship created for the Southern District - Act of August 3, 1949, 63 STAT. 493.
- 1954 - One additional judgeship created for the Eastern District and one for the Southern District. Temporary judgeship created for the Southern District in 1949 was made permanent - Act of February 10, 1954, 68 STAT. 9.
- 1961 - Two additional judgeships created for the Northern District, one for the Southern District and one for the Western District - Act of May 19, 1961, 75 STAT. 80.

TEXAS (Continued)

1966 - Two additional judgeships created for the Southern District and one for the Western District - Act of March 18, 1966, 80 STAT. 75.

1970 - One additional judgeship created for each of the four districts - Act of June 2, 1970, 84 STAT. 294.

1978 - Five additional judgeships created for the Southern District, three for the Northern District, one for the Eastern District and one for the Western District - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships	- 32
Northern District	- 9
Eastern District	- 4
Southern District	- 13
Western District	- 6

pointment Books of the Department of Justice now found in the National Archives. Where lists are available, they have been checked and an attempt has been made to eliminate all discrepancies. However, it is inevitable that in massing such detail, some errors shall result, and for this reason, the author asks the indulgence of the reader and requests that such information be called to his attention.²

The history of the organization of the courts in the different states is based primarily upon the statutes, and such articles as were available. No attempt was here made to study the Congressional politics behind each change made in the Federal courts, for this awaits another who is interested in one jurisdiction, and for whom such a study would have more relevance.

Nothing reveals the growth of the Federal courts as does the gradual increase in the number of cities in which the courts were held. The statutes establishing the Federal courts in the different states, provided for their sessions in no more than two cities within the state. By special acts at a later time, Congress gradually increased this number until by 1870, the District Courts were held in a total of 98 cities in the then existing 37 states, and the Circuit Courts were held in 79 cities. Strange as it may seem, the Circuit Courts were held in different cities from the District Courts for at least two states. Whether this distinction between the two courts was followed in practice is doubtful, for the Circuit Courts could exercise a great portion of the jurisdiction of the District Courts. The bar often expressed the need to have the Federal courts meet in additional cities within the states and Congress responded to these requests.³ By 1965, the Federal courts were held in 393 cities in this country and with each session of Congress, additional cities are added to this growing list.

HISTORY OF FEDERAL COURTS

By the Judiciary Act of 1789,⁴ Congress established three courts; namely, the Supreme Court, the Circuit Court, and the

2. The author would like to express his appreciation to Mr. Harry Bitner, who as Librarian of the Department of Justice, aided in locating the appointment books and to his successor, Mr. Marvin Hogan who has supplied innumerable details concerning individual judges.

3. See speech of the President of the Georgia Bar Association commenting on convenience afforded by these new locations for the sessions of the Federal Courts nearer more members of the Bar. 1891 Ga. Bar Assoc.Proc. 38.

4. Act of September 24, 1789, 1 STAT. 73.

TEXAS (Continued)

- 1966 - Two additional judgeships created for the Southern District and one for the Western District - Act of March 18, 1966, 80 STAT. 75.
- 1970 - One additional judgeship created for each of the four districts - Act of June 2, 1970, 84 STAT. 294.
- 1978 - Five additional judgeships created for the Southern District, three for the Northern District, one for the Eastern District and one for the Western District - Act of October 20, 1978, 92 STAT. 1629.

Total Judgeships - 32
 Northern District - 9
 Eastern District - 4
 Southern District - 13
 Western District - 6

APPENDIX 4.—HISTORY OF COURTS AFFECTED BY LEGISLATIVE PROPOSALS

FEDERAL DISTRICT COURT JUDGES

and the

HISTORY OF THEIR COURTS

by

ERWIN C. SURRENCY *

The history of the Federal Courts has been the subject of several articles and one book¹ but the organization of these courts in each individual state has been generally neglected, except for a limited number of articles appearing in bar publications. As each state was admitted to the union, federal courts were established in the Admitting Statute; but from this point on, changes in organization were made by individual acts and the courts came to vary from state to state.

It is unfortunate that many of the judges on the District Courts who moulded the Federal law are now virtually unknown. The author became interested in compiling a list of Federal judges by courts, several years ago for his own use in his study of American legal history. Believing that such a list with a short history of the organization of the Federal Courts in the different states would be of some value to others, this study is published to fulfill that purpose, and to make possible an expanded history of these courts.

The information for these lists was taken from many sources. For the Nineteenth Century, the primary sources were the Ap-

* Professor and Law Librarian, Temple University School of Law, Philadelphia, Pennsylvania. Editor, American Journal of Legal History; Executive Board, American Association of Law Libraries; past President, American Society of Legal History (1957-1958). Author of various articles in legal periodicals and author of "Research in Pennsylvania Law" 2nd edition, 1966; "Marshall Reader" (1955); "A Guide to Legal Research" (1959). Compiler of "List of Unpublished Legal

Theses in American Law Schools" (1954).

1. John J. Parker, "The Federal Judicial System", 14 F.R.D. 361 (1954); Felix Frankfurter, THE BUSINESS OF THE SUPREME COURT (1927); Surrency, "History of Federal Courts", 28 MO.L. REV. 214 (1963). The author would like to express his appreciation to the editors of the MISSOURI LAW REVIEW for permission to use certain portions of that article here.

pointment Books of the Department of Justice now found in the National Archives. Where lists are available, they have been checked and an attempt has been made to eliminate all discrepancies. However, it is inevitable that in massing such detail, some errors shall result, and for this reason, the author asks the indulgence of the reader and requests that such information be called to his attention.²

The history of the organization of the courts in the different states is based primarily upon the statutes, and such articles as were available. No attempt was here made to study the Congressional politics behind each change made in the Federal courts, for this awaits another who is interested in one jurisdiction, and for whom such a study would have more relevance.

Nothing reveals the growth of the Federal courts as does the gradual increase in the number of cities in which the courts were held. The statutes establishing the Federal courts in the different states, provided for their sessions in no more than two cities within the state. By special acts at a later time, Congress gradually increased this number until by 1870, the District Courts were held in a total of 98 cities in the then existing 37 states, and the Circuit Courts were held in 79 cities. Strange as it may seem, the Circuit Courts were held in different cities from the District Courts for at least two states. Whether this distinction between the two courts was followed in practice is doubtful, for the Circuit Courts could exercise a great portion of the jurisdiction of the District Courts. The bar often expressed the need to have the Federal courts meet in additional cities within the states and Congress responded to these requests.³ By 1965, the Federal courts were held in 393 cities in this country and with each session of Congress, additional cities are added to this growing list.

HISTORY OF FEDERAL COURTS

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4. Act of September 24, 1789, 1 STAT. 73.

District Court. The jurisdiction of the Supreme Court is well known and need not be reviewed here. A District Court presided over by a District Court Judge, was established in each state, but the jurisdiction of this court was extremely limited. It had exclusive jurisdiction in Admiralty, of seizures under the import, navigation and trades statutes, and seizures on land for the violation of federal statutes. It had concurrent jurisdiction with the Circuit Court where an alien sued for a tort based upon a violation of law of nations or a treaty; where the Federal Government itself sued and the amount was equal to \$100 or less; and suits against consuls. The jurisdiction of the District Court was gradually increased by different statutes and after 1815, it exercised criminal jurisdiction in all cases except capital offenses.

The jurisdiction of the Circuit Court extended to all matters triable under the federal statutes and not reserved exclusively to the District Court. In addition, the Circuit Court had exclusive original jurisdiction in diversity of citizenship cases where the amount exceeded \$500. It acted as an Appellate Court from the decisions of the District Court. However, writers have continued to confuse the Circuit Courts established in 1789 and the Circuit Courts of Appeals established at a later date.

In the beginning, the Circuit Court was held by two justices of the Supreme Court and the District Court judge, creating a court of three judges. In 1793, Congress provided that these courts be held by a single justice of the Supreme Court and the District Court judge.⁵ Because of this requirement to go on circuit and hear cases in the Circuit Courts, the justices of the Supreme Court traveled extensively throughout the United States. The exercise of this power by the justices of the Supreme Court was considered by many an important function but gradually, it became impossible for them to exercise this jurisdiction as well as their duties as members of the Supreme Court. This requirement of riding the circuit was felt to be a chief defect of the Federal System. After the defeat of the Judiciary Act of 1801,⁶ which relieved the justices of this burden, traveling the circuits came to be an accepted part of the Federal Courts, although the practice gradually fell into disuse.

Not every District Court was included in a circuit. From the First Judiciary Act of 1789 until 1866,⁷ in a few states only one

5. Act of March 2, 1793, 1 STAT. 334. 7. Act of July 23, 1866, 14 STAT. 209.

6. Surrency, "The Judiciary Act of 1801", 2 Amer. J. Leg. Hist. 53 (1958).

Federal Court, known as the District Court, exercised complete federal jurisdiction. Often where a state was divided into two or more districts, one of these courts would exercise complete federal jurisdiction with an appeal directly to the Supreme Court. Such courts were established in 1789 in Maine, which was then a district of Massachusetts, and in Kentucky. In all subsequent statutes, the District Court in Kentucky was used as a reference to describe the organization of one Federal Court exercising complete federal jurisdiction. In 1911,⁸ the Circuit Courts were abolished and the District Courts modelled after the one originally established in Kentucky, came to be the trial court of the Federal System.

A step was taken in 1869⁹ to relieve the justices of circuit duty somewhat by creating the office of Circuit Judge. A Circuit Judge was appointed for each of the nine existing circuits possessing the same powers as the associate justice sitting as a Circuit Court Judge. Many of these judges traveled widely. When the Circuit Courts of Appeals were established in 1891,¹⁰ these judges came to constitute those courts but this was a different type of jurisdiction than that previously exercised by these judges.

CIRCUIT COURT DUTY

One of the intriguing questions of the history of the Federal Courts is when the justices of the Supreme Court stopped holding terms of the Circuit Court. This question cannot be answered with any degree of certainty, for to establish such a date, it would be necessary to examine the minutes of each of the Circuit Courts to determine when the Justice last attended. In all probability, the justices did not cease performing this function at any one time but the function gradually fell into disuse. The opening wedge for the justices to abolish this function is found in the Judiciary Act of 1802 where it is provided that "when only one of the judges hereby directed to hold the Circuit Courts, shall attend, such Circuit Court may be held by the judge so attending."¹¹ Gradually, the District Court judges began to act as judges in both courts. It is known that prior to 1860, at least one justice did not bother to go on circuit. Justice Daniels made his long tiring trip from Virginia, his home, to Arkansas and Mississippi

8. Judicial Code of 1911, 36 STAT. 1087. 10. Act of March 2, 1891, 26 STAT. 827.
9. Act of April 10, 1869, 16 STAT. 44. 11. Act of April 20, 1802, sec. 4, 2 STAT. 158.

five times during his tenure as a Justice.¹² To hold these Circuit Courts required the Justices to travel many miles during the course of a year. In 1838, John Forsythe, the Secretary of State, made a report to the Senate in which he indicated the number of cases pending in the Circuit Courts and the number of miles traveled by the Justices during the course of the year. According to this report, Roger B. Taney, the Chief Justice, traveled a total of 458 miles in holding the terms of the courts in his circuit.¹³ Most of the justices averaged a total of 2,000 miles during the year. Before one is tempted to compare this with the perambulations of the modern judge, one should remember that travel was neither so rapid nor pleasant as at the present.

The record, however, must have been held by Justice John McKinley, who traveled a total of 10,000 miles during the course of a year.¹⁴ Justice McKinley was assigned to the Ninth Circuit, which included Alabama, Mississippi, Louisiana and Arkansas. This circuit was established in 1837,¹⁵ and the court was to be held in the following order: Little Rock, Arkansas, on the fourth Monday in March; Mobile, Alabama, on the second Monday of April; Jackson, Mississippi, on the first Monday in May; New Orleans on the third Monday in May; and Huntsville, Alabama, on the first Monday in June. In the fall, the terms of the Circuit Court were held in New Orleans, Jackson and Mobile.¹⁶ Justice McKinley wrote that he must travel by boat from Little Rock through New Orleans to Mobile, Alabama, a distance of approximately 850 miles, for the purpose of holding the Circuit Court. To get to Jackson, Mississippi, he had to travel from Mobile back through New Orleans up to Vicksburg, Mississippi, by water, and finally by stage to Jackson, a distance of 800 miles. The next term of the Circuit Court was in New Orleans, a city through which he had already passed three times. It should be noted that the terms of the Circuit Courts were scheduled by Congress, generally at two-week intervals.

12. John P. Frank, JUSTICE DANIEL DISSENTING; A BIOGRAPHY OF PETER V. DANIEL 1784-1860 (1964), 275, 276. Lean, 2,500; John Catron, 3,464; John McKinley, 10,000.
13. Senate Doc. No. 50, 25th Cong., 3d Sess., Vol. II, at 32. The mileage reported by each of the Justices is as follows: Roger B. Taney, 458; Henry Baldwin, 2,000; James M. Wayne, 2,370; Philip P. Barbour, 1,498; Joseph Story, 1,896; Smith Thompson, 2,590; John Mc-
14. Senate Doc. No. 50, 25th Cong., 3d Sess., Vol. II, at 39.
15. Act of March 3, 1837, 5 STAT. 176.
16. A year later, the term of the Circuit Court at Huntsville was abolished. Act of February 22, 1838, 5 STAT. 210.

Justice McKinley's situation may have been extreme when compared with the other justices, but their difficulties were great although the distances which they had to travel were shorter. Justice McLean, traveling 2,500 miles by public conveyance, complained that in May, 1837,¹⁷ the mud was so deep in Indiana that it was impossible for a carriage of any description to pass and that the mail and passengers had to be conveyed in common wagons. Justice Barbour,¹⁸ traveling 1,498 miles to hold the Circuit Courts in North Carolina and Virginia, held the Circuit Court in Richmond as he returned to Washington for the term of the Supreme Court, which substantially reduced his amount of traveling.

In 1838, in an act establishing the terms of the newly reorganized Seventh Circuit,¹⁹ Congress said it was the duty of the justice to attend at least one term annually in this circuit and in the absence of the circuit judge, the District judge could, at his discretion, adjourn the cause to a succeeding term of the Circuit Court.

This provision was generalized when, in 1844,²⁰ it was provided that a Justice of the Supreme Court would have to attend only one term annually in each of the Circuit Courts in his circuit. He was to designate the term he would attend, taking into consideration the nature and importance of the business pending therein, as well as public convenience. When the Justice attended the Circuit Court, the following types of cases were to be given priority on the docket: appeals and writs of error from the District Court, and those cases specially reserved by the District Court judge which he felt were difficult or of peculiar interest. The final provision of the act was a declaration that the act did not prohibit the Justices from attending other terms whenever, in their opinion, public interest demanded their presence.

When in 1869,²¹ Congress authorized the appointment of Circuit Court judges, the Justices of the Supreme Court were required to go on circuit at least once in every two years. In view of the crowded dockets of the Supreme Court it is doubtful if any justice held Circuit Court in more than one of the courts in his circuit every other year. Justice Field is known to have held Circuit Court in California after this period but it is doubtful if he went to the other states in his circuit.

17. Senate Doc. No. 50, 25th Cong., 3d Sess., Vol. II, at 36-37. nal organization of the circuit, see text accompanying note 44, *infra*.

18. Senate Doc. No. 50, 25th Cong., 3d Sess., Vol. II, at 39. 20. Act of June 17, 1844, 5 STAT. 676.

19. Act of March 10, 1838, 5 STAT. 215. For a discussion of the origi- 21. Act of April 10, 1869, 16 STAT. 44.

When the Circuit Courts of Appeals (now known as the Courts of Appeals) were established in 1891,²² Congress obviously expected the justices to take an active part in these courts. The then existing Circuit Court judges, along with the Justice of the Supreme Court for the circuit, were to constitute these appellate courts, whose jurisdiction extended to appeals from the District and Circuit Courts. These judges could associate with them a District Court judge from the circuit. The appellate jurisdiction of the Circuit Court from the District Court was abolished by this act. Congress authorized additional judges in each circuit to bring the personnel on the Circuit Court of Appeals to three or four. The function and the power of the justices of the Supreme Court on the Circuit Courts today is not clear, although it is known that rarely does any justice seek to participate in those courts.

ORGANIZATION OF THE CIRCUITS

For the purpose of holding the Circuit Courts, and later the Courts of Appeals, the country is divided into circuits. Under the Judiciary Act of 1789, the country was divided into three circuits, designated the Southern, Middle, and Eastern Circuits. No specific provision was made for the assignment of Justices to the circuits, it being evident that Congress expected the members of the Supreme Court to settle this among themselves.²³

By 1800, some realignment of the circuits was necessary. In 1802,²⁴ six circuits, the same number formed by the ill-fated Act of 1801, were created, embracing all the states then in the Union with the exception of Kentucky, Tennessee, Ohio, and Maine (which at this time was still a part of Massachusetts). Each of these circuits was designated by number. The act specially allotted the Supreme Court Justices to the various circuits, but provided that after the next appointment to the Bench, the Justices were to determine the assignment to the circuits among themselves and enter such allotment as an order of the court. However, in 1803,²⁵ Congress provided that the Circuit Court for the Sixth Circuit should consist of the Justice residing in the Third Circuit and the local district judge where the court was held. The Third Circuit was to consist of the senior associate Justice residing within the Fifth Circuit, who was at that time

22. Act of March 2, 1891, 26 STAT. 827. 24. Act of April 29, 1802, § 4, 2 STAT. 157.

23. Act of September 24, 1789, § 4, 1 STAT. 74. 25. Act of March 3, 1803, 2 STAT. 244.

40 F.R.D.—10

Bushrod Washington. Again, in 1808,²⁶ Congress passed another act assigning the Justice living in the Second Circuit to hold the Circuit Court in that circuit. This was the last act in which Congress assigned a Justice to a particular circuit.

In 1807²⁷ Congress created the Seventh Circuit, to consist of the states of Tennessee, Kentucky and Ohio. A seventh Justice was added to the Supreme Court in order to preside in this circuit.²⁸ After the passage of this act, all the states in the Union at that time were included in a circuit, although in those states which were divided into two districts only one of the districts was included in the circuit organization. The circuit court jurisdiction was removed from some of the district courts as circuit courts were created.

Between 1807 and 1820, five new states were admitted to the Union; in each such state a district court was established and given circuit court jurisdiction. In 1820²⁹ Maine was admitted to the Union, but was added to the First Circuit. This state had always been a part of Massachusetts, and therefore was never a federal territory, which accounts for the fact that a district court with full federal jurisdiction had been established by the Judiciary Act of 1789, rather than territorial courts, as was customarily done in the federal territories.

No other changes were made in the organization of the circuits until 1837. By that date, nine new states had been admitted, and the district courts in eight of these states exercised circuit court jurisdiction. In 1837³⁰ after a decade of debate, Congress finally passed an act creating two new circuits, the Eighth and Ninth Circuits, and all twenty-six states then members of the Union were assigned to a circuit. However, in Louisiana and Alabama, which were organized into two districts each, one of the district courts in each state continued to exercise full federal jurisdiction as both a district and circuit court. In other states where two or more districts existed, the circuit court jurisdiction formerly exercised by one of the districts was abolished, and the district assigned to the same circuit as the other district in the

26. Act of March 9, 1808, 2 STAT. 471.

27. Act of February 24, 1807, 2 STAT. 420.

28. The sessions of this circuit court were to be held on the first Monday in May and November in Frankfort, Kentucky; in Nashville,

Tennessee, on the first Monday in June; in Knoxville, Tennessee, on the third Monday in October; and in Chillicothe, Ohio, on the first Monday in January and September.

29. Act of March 30, 1820, 3 STAT. 554.

30. Act of March 3, 1837, 5 STAT. 176.

state. At no time was a state which was organized into two or more districts divided between different circuits.

In 1842,³¹ Alabama and Louisiana were detached from the Ninth Circuit and were designated as the Fifth Circuit. The states comprising the former Fifth Circuit were assigned either to the Fourth or the Sixth Circuits.

In 1861 came the Civil War, and the Justices suspended holding the circuit courts in the Southern states. However, in 1862,³² the states which had been admitted since the last arrangement of the circuits were assigned to circuits, and circuit court jurisdiction of the district courts in Texas, Florida, Wisconsin, Minnesota, Iowa and Kansas was abolished. The number of Supreme Court Justices was not increased; the circuits were enlarged. Actually, there were ten circuits, and the circuit embracing California, Nevada and Oregon was designated as the Tenth Circuit.³³ The next year, Indiana was detached from the Seventh Circuit and assigned to the Eighth Circuit.³⁴

By the Act of July 23, 1866³⁵ the Tenth Circuit was abolished, and all the states were allotted among nine circuits. From 1866 until 1929, new states when admitted to the Union were assigned to either the Eighth or Ninth Circuits. Finally, a Tenth Circuit was created from the Eighth Circuit in 1929.³⁶ Proposals have been made to create an Eleventh Circuit, but no action has been taken by Congress.³⁷

DIVISION OF A STATE INTO SEVERAL DISTRICTS

One of the innovations of the Judiciary Act of 1801³⁸ had been the division of New Jersey, Virginia, Maryland and North Carolina into districts, but without additional district judges. Although, that act was later repealed, a new act provided for the division of North Carolina³⁹ into three districts for the purposes

31. Act of August 16, 1842, 5 STAT. 507.

32. Act of July 15, 1862, 12 STAT. 576.

33. Act of March 3, 1863, 12 STAT. 794.

34. Act of January 28, 1863, 12 STAT. 637.

35. Act of July 23, 1866, 14 STAT. 209.

36. Act of February 28, 1929, 45 STAT. 1346, at 134.

37. Report of the Judicial Conference, House Doc. No. 475, 83d Cong., 2d Sess. 3.

38. Act of February 13, 1801, § 21, 2 STAT. 96.

39. Act of April 20, 1802, § 7, 2 STAT. 162.

of holding the district court, and of Tennessee⁴⁰ into two districts for the same purpose. The new districts in these cases did not mean additional judges, for the new districts were created only to provide additional cities in which the court would meet. South Carolina⁴¹ was unique among all the states in that it was divided into two districts for the purpose of holding district court, while the entire state constituted one district for the purpose of holding the circuit court.

The first division of a state into two districts with a separate judge for each was made in New York in 1814⁴² and after that Pennsylvania in 1818⁴³ and Virginia in 1819.⁴⁴ These divisions were made because of the long distances the litigants had to travel to attend the sessions of the federal courts. The business of each district was thought to be enough to keep one judge occupied.

Several of the state legislatures petitioned Congress for the division of their state into two or more districts.⁴⁵ The legislature of Texas gave as its reason the inconvenience and the expense of attending the district court, which was held at Galveston for the entire state of Texas. They desired an additional district and provision for holding the court in at least two places in each of these districts.⁴⁶ Congress acted upon the request in 1857 by creating the Eastern and Western Districts of Texas, with provision for holding the courts in two places in each district.⁴⁷

Congress has since accepted the idea of appointing several judges in one district and has become reluctant to divide the states into further districts, although bills have been introduced for that purpose. Indiana, in 1928, was the last state to be divided into districts,⁴⁸ until 1962, when Florida was divided into three districts.⁴⁹ In 1966, California was divided into four districts.^{49a} The Judicial Conference of the United States has

40. Act of April 20, 1802, § 16, 2 STAT. 165.

41. Act of February 21, 1823, 3 STAT. 726. The act of March 3, 1911, § 105, 36 STAT. 1123, authorized an additional judge in the state.

42. Act of April 9, 1814, 3 STAT. 120.

43. Act of April 20, 1818, 3 STAT. 462.

44. Act of February 4, 1819, 3 STAT. 478.

45. Petition of Legislature of Georgia, 1845, House Doc. No. 121,

20th Cong., 1st Sess., Vol. IV; Petition of Legislature of Texas, 1850, Senate Misc. Doc. No. 102, 31st Cong., 1st Sess., Vol. I.

46. Petition of Legislature of Texas, 1850, supra note 100.

47. Act of February 21, 1857, 11 STAT. 164.

48. Act of April 21, 1928, 45 STAT. 437.

49. Act of April 30, 1962, 76 STAT. 247.

49a. Act of March 18, 1966, 80 STAT. 75.

generally opposed the creation of new districts. However, the year before, the two districts in South Carolina were merged into one; this being the first such merger in the history of the Federal Courts.^{49b} Districts usually have been named with reference to their location within the state (Northern, Southern, etc.) with the exception of a few states where a third district was created between two existing districts and became known as the "Middle District."

When Congress provided for the holding of the district or circuit courts in two or more locations within a district, many problems of administration were presented. Was the jury to be selected from the entire district or from an area close to the place where the term of court was to be held? In which city would the cause be tried? To solve some of these problems, in 1838 the Northern District of New York was divided into divisions for the trial of "all issues, triable by a jury."⁵⁰ This act grouped the counties into divisions designated as the Northern, Eastern and Western Divisions of the Northern District. This was the first organization of a district into divisions. A cause of action which arose in the Northern or Eastern divisions was triable in the Circuit Court held in Albany; the causes of action arising in the Western division were triable in Canandaigua. This did not, however, regulate the venue of transitory actions or the "changing of the same for good cause." Four places were prescribed for the purpose of holding the district court and each of these locations was assigned to a division. The divisions in the Northern District of New York were later abolished and this pattern was not used again until after 1859,⁵¹ when Iowa was separated into divisions. Since that time, such a procedure has been commonplace. Today, the district courts in 23 states are organized into divisions.

Not all states have been partitioned into divisions, and in some the parties have their choice of cities in which to try their cases. The lawyer has often made his choice, not on the basis of convenience, but on other intangible factors—whether the verdicts of juries in certain cities tend to be higher than in others, or whether juries are more reluctant to convict for certain crimes.

Generally, divisions have been known by the name of the city in which the court for that division is held, although some are named for points of the compass. In only two states have the divisions been numbered.⁵²

49b. Act of October 7, 1965, 79 STAT. 951.

50. Act of July 7, 1838, 5 STAT. 295.

51. Act of March 3, 1859, 11 STAT. 437.

52. Kansas, Act of June 9, 1890, 26 STAT. 129, all divisions abolished by Act of August 27, 1949, 63 STAT. 666; Minnesota, Act of April 26, 1890, 26 STAT. 72.

APPOINTMENT OF JUDGES

The appointment of judges has long been considered a matter of political patronage, and if Jefferson had been successful in his impeachment of the federal judges,⁵³ even the provision of the Constitution providing life tenure for judges would have been thwarted. Rarely has any President appointed anyone to the bench from other than his own party. However, at least one significant change in the appointing process has been that the selection has passed from the hands of the President. Today, selections are made by the Attorney General in consultation with Senators from the state concerned. Furthermore, while during the Nineteenth Century the only qualification was loyalty to the party in power, beginning with Theodore Roosevelt the general trend has been to give some consideration to the candidates' qualifications. Increasingly the American Bar Association is consulted.⁵⁴

The Judiciary Act of 1789 provided for a single district court judge in each state—a total of thirteen district judges. When Rhode Island and North Carolina accepted the Constitution, these states were similarly organized, which established the pattern followed after that date. New states, as admitted to the Union, were organized into single districts with a single judge, regardless of the size of the district. Looking back, one cannot but conclude that Congress was completely unaware of the size of these states—how can one otherwise account for the organization of Texas into a single district?⁵⁵ Only once was a state admitted and at the time of its admission organized into two districts. This was the State of Oklahoma.⁵⁶

The only experiment during the Nineteenth Century regarding two judges in a single district was made in New York in 1812.⁵⁷ A second judge was appointed and the senior judge was required to sit on the circuit court with the Supreme Court Justice. In his absence, the junior judge could sit. This experiment continued for two years, at the end of which New York was divided into two districts with a single judge in each district.⁵⁸ After this date, when the business of the court made the services of a second

53. See 3 Beveridge, *THE LIFE OF JOHN MARSHALL* 50-223 (1919).

54. For political implications in the appointment of federal judges, see Evans, "POLITICAL INFLUENCES IN THE SELECTION OF FEDERAL JUDGES," 1948 WIS.L.REV. 330; Major, "FEDERAL JUDGES AS POLITICAL PATRONAGE," 38 CHI.BAR RECORD 7 (1956).

55. Act of December 29, 1845, 9 STAT. 1.

56. Act of June 16, 1906, § 13, 34 STAT. 275.

57. Act of April 29, 1812, 2 STAT. 719.

58. Act of April 9, 1814, 3 STAT. 120.

judge necessary, states were divided into two or more districts. One should realize, however, that the division of a state into a second district did not invariably indicate the appointment of an additional judge, for some states were subdivided simply to provide additional locations for holding the federal courts.⁵⁹ Alabama, for instance, was divided into two districts in 1824,⁶⁰ and into a third district in 1839,⁶¹ but no additional judge was authorized for the state until 1886,⁶² when a judge was authorized in the Southern District, leaving the incumbent judge to preside over the Northern and Middle Districts.

The business of the federal courts grew during the last part of the nineteenth century,⁶³ and the addition of an increasing number of cities in which the courts were required to meet placed a severe burden on the district court judges. Since Congress primarily concerned itself with the organization of the circuit courts and the supplying of the necessary judges for these courts, the needs of the district courts received little attention. In 1903,⁶⁴ Congress authorized an additional district judge for the state of Minnesota and in the same year an additional district judge for the Southern District of New York; this was the first time a second judge had been authorized for a district in nearly a century. Thereafter, each Congress passed several acts increasing the number of judges in individual districts, until 1922,⁶⁵ when Congress passed an omnibus act authorizing additional judges in several districts. Since 1954,⁶⁶ additional judges have been authorized by omnibus bills, although individual bills authorizing additional judges in single districts have also been introduced.

Another innovation following the turn of the century was the appointment of a judge to assist in two or more districts. In 1911,⁶⁷ there were four states in which the same judge presided over two districts, but generally judges were authorized for each district. South Carolina, for instance, had only one judge in both

59. See the text accompanying notes 103-05 *supra*, for additional discussion of this point.

60. Act of March 10, 1824, 4 STAT. 9. See also Surrency, "THE APPOINTMENT OF FEDERAL JUDGES IN ALABAMA," 1 AM.J. LEG.HIST. 148 (1957).

61. Act of February 6, 1839, 5 STAT. 315.

62. Act of August 2, 1886, 24 STAT. 213.

63. See statistics for the Supreme Court in 1890, 140 U.S. 707 (1890).

64. Act of February 4, 1903, 32 STAT. 795; Act of February 9, 1903, 32 STAT. 805.

65. Act of September 14, 1922, 42 STAT. 837.

66. Act of February 10, 1954, 68 STAT. 8. The Omnibus Judgeships Bills since 1922 are as follows: Act of August 19, 1935, 49 STAT. 659; Act of May 31, 1938, 52 STAT. 534; Act of May 24, 1940, 54 STAT. 219.

67. Act of March 3, 1911 § 1, 36 STAT. 1087.

districts until 1911,⁶⁸ when a second judge was authorized. In 1929,⁶⁹ a third judge was created to preside in both districts. Since that date,⁷⁰ similar positions have been created in other states.

Generally, in the case of multiple-judge courts, Congress has not attempted to prescribe the cities in which any judge shall preside, but has left this to the senior circuit judge. However, when appointing a judge to sit in both the Northern and Southern Districts of West Virginia, Congress specified the cities in which each judge was to sit.⁷¹ Today, where a judge is to preside is left to the court to determine.

Congress has experimented with several alternatives to the increase in the number of permanent judges in a district. In 1910,⁷² an additional judge was authorized in the district of Maryland but with the proviso that the next vacancy was not to be filled. This type of appointment was used in 1922,⁷³ when twenty-three temporary judgeships were created. But, one by one, in separate acts, these positions have been made permanent. In 1948,⁷⁴ only nine temporary judgeships existed in the federal judicial system, although five additional temporary judges were authorized in 1954.⁷⁵ Since then all of these positions have been made permanent. In 1961,⁷⁶ temporary judgeships were authorized in Ohio, and are currently the only such positions. A temporary judgeship does not violate the Constitution, for all the individuals appointed have life tenure, and the district has the services of another judge for an indefinite period.

68. Act of March 3, 1911, § 105, 36 STAT. 1123.

69. Act of February 26, 1929, 45 STAT. 1319.

70. Missouri and Oklahoma, Act of June 22, 1936, 49 STAT. 1804; Kentucky, Act of June 22, 1936, 49 STAT. 1806; Washington, Act of May 31, 1938, 52 STAT. 584; West Virginia, Act of June 22, 1936, 49 STAT. 1805.

71. Act of August 23, 1937, 50 STAT. 744. Several of the acts passed between 1903 and 1911 authorized the circuit judge to divide the work among the several judges in a single district, but these provisions were incorporated into the general duties of a senior judge of the circuit court of appeals in 1911. Act of March 3, 1911, § 23, 36 STAT.

1090. See also the Act of February 4, 1903, § 2, 32 STAT. 795, authorizing an additional judge in Minnesota, which provided that the senior judge of the Eighth Circuit should make all necessary orders for the division of business and the assignment of cases for trial in said district.

72. Act of February 24, 1910, 36 STAT. 202.

73. Act of September 14, 1922, 42 STAT. 837.

74. H. R. Rept. 308, 80 Cong., 1st Sess., notes under § 133.

75. Act of February 10, 1954, 68 STAT. 8.

76. Act of May 10, 1961, § 2(e) (1, 2), 75 STAT. 83.

* * * * *

CALIFORNIA

California was formally incorporated into the United States as the result of the Treaty of Guadalupe Hidalgo ending the Mexican War (1848). Military government was operated in the territory until California was admitted to the Union in 1850, and provisions were made at that time for a permanent government. The act¹ establishing the Federal Courts in the new state provided for the division of the state into two parts at the 27th parallel, to be known as the Northern and Southern Districts of California. The terms of the Northern District were held in Sacramento, San Francisco, San Jose, and Stockton and the terms for the Southern Districts were held in Los Angeles and Monterey. Both of these courts were given the same jurisdiction as Circuit Courts with appeals directly to the Supreme Court. All cases pending in the state courts over which the Federal Courts had jurisdiction were to be transferred to the Federal Courts by writ of certiorari or merely by the transfer of the papers. The act provided for a separate judge in each district but Congress may have considered the judge of the Northern District more important as he was given a salary of \$3500, payable quarterly, while the judge of the Southern District was to receive the annual stipend of \$2800, payable quarterly.

The President had difficulty in obtaining judges for these courts. Judah P. Benjamin, who was later to win fame as a member of the Confederate cabinet and as an English barrister, was issued a commission for the Northern District dated September 28, 1850, but he declined the appointment. James McHall Jones of Louisiana was next commissioned but he died December 1, 1851 without holding a term of court. The President failed for nearly three years to fill this post which was probably the reason that prompted Congress to pass the act² which provided that the President should appoint a judge for the Southern District with the advice and consent of the Senate. This act abolished the sessions of the Northern District Court at San Jose, Stockton, and Sacramento. The act further stipulated that when the judge of either district was not able to hold court, then the judge of the other district was to hold the prescribed sessions.

California was at such a distance from Washington that it was impossible for a justice of the Supreme Court of the United States to hold a circuit court in that state. Congress adopted a solution to this problem which had been suggested in the famous

1. Act of September 28, 1850, 9 STAT. 321.

2. Act of January 18, 1854, 10 STAT. 265.

Judiciary Act of 1801, and urged upon Congress many times after the repeal of this act; namely, the creation of a circuit court with a judge who would not be a member of the Supreme Court of the United States. A court was created known as the Circuit Court of California. This court was to have the same jurisdiction as the other circuit courts of that time.³ It was to hold four terms; two each in San Francisco and Los Angeles. The District Judge was to sit with the Circuit Judge but either one could hold the Circuit Court alone. Appeals were to be taken directly to the Supreme Court of the United States.

Matthew Hall McAllister was appointed as the Circuit Court judge. McAllister requested a leave of absence in 1862 which was granted.⁴ He later resigned and the court was abolished the next year, thus ending the experiment with separate judges for the Circuit Courts.⁵

Certainly, California and the newly admitted state of Oregon would want to be included in the then existing system of Circuit Courts with a justice of the Supreme Court presiding, as was the pattern in the other states. This act of 1863 provided for an additional justice of the Supreme Court to preside over the Tenth Circuit, consisting of the States of California and Oregon; the latter had been admitted as a state in 1859.⁶ The justice appointed to this circuit was given an additional one thousand dollars "for his travelling expenses for each year in which he may actually attend a session of the Supreme Court of the United States," which indicates that this justice was expected to spend most of his time on the West Coast. As so often happens, the act did not materialize in this way for the number of justices on the Supreme Court was reduced to seven in 1867; thus, in effect, abolishing the special judge for circuit duty on the West Coast.⁷

In 1866, Judge Fletcher Haight of the Southern District died, and Congress took this opportunity to abolish this court; thus reorganizing into one judicial district.⁸ The judge, marshal, and attorney of the Northern District were to exercise their duties in the entire state. Judge Ogden Hoffman was judge in the Northern District at this time and hence, he became the judge of the entire district. Since the major part of the business of the Southern District had been taken up with land litigation, there was not enough business in the district to justify a separate

3. Act of April 30, 1856, 11 STAT. 6.

4. Ex. Doc. 129, 37th Cong. 2d sess. v. 10.

5. Act of March 3, 1863, 12 STAT. 794.

6. Act of March 3, 1863, 12 STAT. 794.

7. Act of June 23, 1867, 14 STAT. 209.

8. Act of July 27, 1866, 14 STAT. 301.

district court. Judge Cosgrave, in his interesting history of the court, reported that of the 405 cases on the dockets of this court from its establishment in 1850 until the district was abolished, 395 of these cases involved land titles.⁹ However, in 1886,¹⁰ it was found necessary again to divide California into two districts, and it has remained organized in this manner to the present. A judge was appointed to each district. The terms of the District Courts in the Northern District were held in San Francisco and the terms of the Southern District were held in Los Angeles.

The Judicial Code of 1911 divided the Southern District into two divisions, the Northern and Southern, and provided that the terms of the courts were to be held in Fresno, Los Angeles, and San Diego.¹¹ The Central Division was created in 1929 but no changes were made in the places where the court was to be held.¹² The Southern District is organized into three divisions at the present.

The Northern District was not divided until 1916¹³ at which time it was organized into two divisions, the Northern and Southern. The sessions of the court were continued in Sacramento, Eureka,¹⁴ and San Francisco as provided in the Judicial Code of 1911.

Proposals have been made in Congress to divide the states into three or four districts. The Judicial Conference of the United States, although opposed to the creation of the new districts, has withdrawn their objection to this division because of the growth of the state which has resulted in an increase in the business of the courts.¹⁵ In 1966 the state was divided in four districts, and the new Central and Eastern Districts were created.^{15a}

California for a number of years ranked next to New York in the total number of Federal District Court judges, but that dis-

9. George Cosgrave, *EARLY CALIFORNIA JUSTICE, THE HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, 1849-1944* (San Francisco, 1948), p. 52.

10. Act of August 5, 1886, 24 STAT. 308.

11. Act of March 3, 1911, sec. 72, 36 STAT. 1107.

12. Act of March 1, 1920, 45 STAT. 1424.

13. Act of May 16, 1916, 39 STAT. 122.

14. A session of court to be held in Eureka was first provided for by Act of June 20, 1906, 34 STAT. 631.

15. REPORT, PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, 1964, p. 8; S. [BILL] 1666, 89th Cong. 1st sess.

15a. Act of March 18, 1966, 80 STAT. 73.

tion is now shared with Pennsylvania, both states having a total authorization of 22 District Court judges.¹⁶ A second judge was authorized for the Northern District in 1907 bringing the total in that district to two.¹⁷ In 1922, a temporary appointment was authorized for this district and five years later, the position was made permanent.¹⁸ In 1938, an additional judge was authorized but the statute required the individual appointed under its provisions to live in Sacramento.¹⁹ Since this statute, at least one judge has resided in that city. An additional judge was authorized in 1946 and two additional judges were authorized in 1949 and in 1961, bringing the total in this district to nine.²⁰

The Southern District embracing the southern part of California has the largest number of judges. A second judge was authorized for this district in 1914, another in 1922, and another in 1930, bringing the total in the district to four.²¹ In 1935, two more judges were authorized for this district bringing the total then to six.²² In 1938, an additional judge was authorized for the district and this statute required the individual appointed under its provisions to reside in Fresno.²³ Further increases in Judicial Personnel were made in 1940, 1949, 1954 and by the Omnibus Judgeship Bill of 1961,²⁴ bringing the total strength to thirteen.

In 1966, the districts in the state were rearranged and two additional districts, the Central and Eastern, were created. The two judges of the old Northern District residing in Sacramento and a judge of the Southern District were assigned to the new Eastern District bringing the number of judges in the new District to three. Ten judges of the old Southern District, who were within the geographical boundaries of the new Central District, were assigned to that district. In addition, the statute authorized three new district judges for the new Central District bringing the total to thirteen judges. The number of judges in the Northern District after two judges were transferred to the

16. 28 U.S.C. 133.

17. Act of March 2, 1907, 34 STAT. 1253.

18. Act of September 14, 1922, 42 STAT. 837; Act of March 3, 1927, 44 STAT. 1372.

19. Act of May 31, 1938, 52 STAT. 585.

20. Act of June 15, 1946, 60 STAT. 200; Act of August 3, 1949, 63 STAT. 403; Act of May 19, 1961, 75 STAT. 80.

21. Act of July 30, 1914, 38 STAT. 580; September 14, 1922, 42 STAT. 837; Act of July 27, 1930, 46 STAT. 819.

22. Act of August 2, 1935, 49 STAT. 508.

23. Act of May 31, 1938, 52 STAT. 585.

24. Act of May 24, 1940, 54 STAT. 220; Act of August 3, 1949, 63 STAT. 403; Act of February 10, 1954, 68 STAT. 8; Act of May 19, 1961, 75 STAT. 80.

new Eastern District was seven, but the act authorized two additional judges which brought the strength of the reconstituted District back to a total of nine judges.²⁵

25. Act of March 18, 1966, 80 STAT. 75.

* * * * *

IOWA

The Territory of Iowa was established June 12, 1838¹ incorporating the area between the Missouri and the Mississippi Rivers which was then a part of the Wisconsin Territory. The usual territorial form of government was established in this area. The judiciary consisted of three District Courts presided over by three judges, appointed by the President for four year terms. The territorial legislature was authorized to establish a geographical districting of the state and assign the judges accordingly.

In 1845,² Iowa was admitted as a state. The new state was organized as one judicial district. Two sessions of the court were authorized at the seat of government. The judge exercised the same powers as those granted to the judge of the District Court for Kentucky under the Act of 1789. When Iowa was made part of the Ninth Circuit in 1862,³ this authority was abolished and Circuit and District Courts were established. The Circuit Court for the District of Iowa was held in Des Moines and appeals from the District Courts in the other parts of the state were taken to this court.⁴ In 1866,⁵ Iowa was made a part of the Eighth Circuit where it has remained until the present.

In 1849,⁶ Iowa was divided into three divisions known as the Northern, Middle, and Southern Divisions. The courts were held for the Northern Division in Dubuque for the Middle Division in Iowa City, and for the southern Division in Burlington. In 1859,⁷ the state was reorganized into the Northern, Southern and Western Divisions with the terms of the court held respectively in Dubuque, Keokuk, and Des Moines. Iowa was later divided into an additional division known as a Central Division. The court for the Western Division was held at Council Bluffs and the court for the Central Division at Des Moines. Although the distinction between the Circuit and the District Courts all but vanished in 1844⁸ when it was provided that the District Court judge or the Justice of the Supreme Court or either of them could hold the Circuit Court, it was only in 1880,⁹ that the terms of the Circuit Court were authorized in each of the cities where the District Court was then held.

In 1882,¹⁰ Iowa was divided into two districts known as the Southern and the Northern Districts. This act made provision for a judge for each district. The Northern and Southern Districts were divided into three divisions each known as the Eastern, Central, and Western Divisions.¹¹ The sessions for the Circuit Court of the Northern District were held in Dubuque and for the Southern District in Des Moines. The Circuit judge for the Eighth Circuit could provide that the judges of both districts were to sit together in either of the districts to hold a Circuit Court. Additional divisions have been created in both districts since that date.¹² The judge of the Southern District was given the unusual power of being able to fix the time

¹ Act of June 12, 1838, 5 STAT. 235.

² Act of March 3, 1845, 5 STAT. 789.

³ Act of July 15, 1862, 12 STAT. 576.

⁴ Act of March 2, 1863, 12 STAT. 699.

⁵ Act of July 23, 1866, 14 STAT. 209.

⁶ Act of March 3, 1849, 9 STAT. 412.

⁷ Act of March 3, 1859, 11 STAT. 437.

⁸ Act of June 17, 1844, 5 STAT. 176.

⁹ Act of June 4, 1880, 21 STAT. 155.

¹⁰ Act of July 20, 1882, 22 STAT. 173.

¹¹ The following is the list of the Districts and their divisions and the cities where the terms of courts are held:

Northern District

Eastern Division—Dubuque

Central Division—Fort Dodge

Western Division—Sioux City

Southern District

Eastern Division—Keokuk

Central Division—Des Moines

Western Division—Council Bluffs

Created by Act of June 30, 1870, 16 STAT. 174.

¹² The following divisions have been created since the original organization in 1882:

Northern District: Cedar Rapids Division—Cedar Rapids. Act of February 24, 1891, 26 STAT.

767.

Southern District

Southern Division—Creston. Act of June 1, 1900, 31 STAT. 250.

Davenport Division—Davenport. Act of April 28, 1904, 33 STAT. 547.

Ottumwa Division—Ottumwa. Act of February 20, 1907, 34 STAT. 913.

Additional terms were created in the following cities attached to existing divisions:

Northern District

Eastern Division—Waterloo

Central Division—Mason City

for the holding the Circuit and District Court in Davenport, although terms of all District Courts were fixed by statute.

In 1928,¹³ an additional judge was provided for the Southern District but the next vacancy on the court was not to be filled. Today, each district is presided over by a single judge, but in 1961,¹⁴ a new judge was authorized to preside in both districts where his services were needed.

MICHIGAN

Michigan was created in 1805¹ constituting the area between Lake Michigan and Lake Huron. When Illinois was admitted as a state, the Michigan Territory was extended to include the areas of the present states of Wisconsin and the part of Minnesota east of the Minnesota River.² In 1834,³ the Michigan Territory was extended out to the Missouri River. When the state was admitted in 1837,⁴ it was confined to its present boundary.

When the territory was first organized in 1805, the territorial form of government which had been established in the other territories created from the Northwest Territory was followed. This included the appointment of a governor and three judges who together would act as a legislative body for the territory. The judges were to hold trial court and an appellate court. Their conduct caused a great deal of complaint in the area for they were accused of holding sessions of their courts at night without proper notice of adjourning court to enact laws substantiating their procedure and of arbitrarily administering criminal justice.⁵ In 1830,⁶ a fourth judge was authorized for the territory who was to hold court at Prairie du Chien, Green Bay and Mackinac. In 1837, Michigan⁷ was admitted as a state. It was constituted as one judicial district and the court was to hold two sessions at the seat of the government which was then in Detroit. The judge was to exercise the same jurisdiction as that given to the judge of the District Court for Kentucky under the Judiciary Act of 1789; namely, full federal jurisdiction. Very shortly thereafter,⁸ Michigan was made a part of the Seventh Circuit and the Circuit Court jurisdiction of the court was abolished. Later, the state was assigned to the Sixth Circuit where it has been since that date.⁹

In 1863,¹⁰ Michigan was divided into two districts designated as the Eastern and Western Districts. The terms of the court for the Eastern District were to be held in Detroit and in the Western District at Grand Rapids. A judge was authorized for each district. In 1878,¹¹ the Western District was divided into the Southern and Northern Divisions. The term of court for the Southern Division was held at Grand Rapids and the term for the Northern Division was held at Marquette. At the same time, the judge of the Eastern District was authorized to hold court at Port Huron at his discretion. In 1887,¹² he was required to hold session in Bay City as well as Detroit.

The Eastern District was not divided into divisions until 1894,¹³ when the Northern and Southern Divisions were created. The term of the court for the Northern Division was held at Bay City and that for the Southern Division at Detroit and Port Huron. The judge was to hold special terms in Bay City for the hearing of admiralty causes.

In 1930,¹⁴ the divisions of the court were rearranged. At that time, Port Huron was transferred to the Northern Division of the Eastern District, but in 1954, was transferred back to the Southern Division.¹⁵ A term of court for the Northern Division of the Western District was authorized to be held in Sault Sainte Marie in addition to the term held at Marquette in 1930. The term of court for the Southern

¹³ Act of January 19, 1928, 45 STAT. 52.

¹⁴ Act of May 19, 1961, 75 STAT. 83.

¹ Act of January 11, 1805, 2 STAT. 309.

² Act of April 18, 1818, § 7, 3 STAT. 431.

³ Act of June 28, 1834, 4 STAT. 701.

⁴ Act of January 26, 1837, 5 STAT. 144.

⁵ See "Michigan Justice in the Old Times." 19 AMER.L.REV. 623.

⁶ Act of January 30, 1823, 3 STAT. 722.

⁷ Act of July 1, 1836, 5 STAT. 62.

⁸ Act of March 3, 1837, 5 STAT. 176.

⁹ Act of July 23, 1866, 14 STAT. 209.

¹⁰ Act of February 24, 1863, 12 STAT. 661.

¹¹ Act of June 19, 1878, 20 STAT. 177.

¹² Act of February 28, 1887, 24 STAT. 423.

¹³ Act of April 30, 1894, 28 STAT. 68.

¹⁴ Act of March 31, 1930, 46 STAT. 138.

¹⁵ Act of February 10, 1954, 68 STAT. 11.

Division of the Western District was held at Grand Rapids until 1954 when term was authorized to be held in Kalamazoo and Mason. The unusual thing about this state was the fact that it was not until 1961 that a session of court was authorized to be held in the state capital, Lansing.¹⁶ At that time, the term in Mason was dropped.

When the state was divided into two districts, a judge was authorized for each of the districts. In 1925,¹⁷ a temporary judge was authorized for the Western District. A permanent second judge for this district was not authorized until 1954.¹⁸

The number of judges in the Eastern District has grown to eight and the following is a list of the dates when the judgeships were created:

1863—Organization of the district.

1922—Temporary judge. Act of September 14, 1922, 42 STAT. 437. This made permanent by Act of August 14, 1935, 49 STAT. 659.

1927—Third judge authorized. Act of March 3, 1927, 44 STAT. 1380.

1931—Fourth judge authorized. Act of February 20, 1931, 46 STAT. 1197.

1938—Fifth judge was authorized. Act of May 31, 1938, 52 STAT. 585.

1954—A sixth judge was authorized. Act of February 10, 1954, 68 STAT. 9.

1961—Two additional judges were authorized bringing the total judicial strength to 8 judges. Act of May 19, 1961, 75 STAT. 81.

MISSOURI

Missouri was formerly a part of the original Louisiana Purchase and in 1804,¹ it was organized as the District of Louisiana and placed under the jurisdiction of the Indiana territory. The governor and the judges of the Indiana Territory were to establish courts and the terms of these courts were to be held at places most convenient. In 1805,² the District of Louisiana was created. In 1812,³ the State of Louisiana, formerly called the Territory of Orleans, was admitted, and the Territory of Missouri⁴ created. In addition to the governor appointed by the President, the act provided for three judges to hold a Superior Court; these judges were appointed for a term of four years. The Superior Court had exclusive jurisdiction in capital cases and in civil cases in an amount exceeding \$1,000. The legislature was authorized to establish the places where the courts were to be held. In addition to the Superior Court, the act authorized the creation of Inferior Courts and Justice of the Peace Courts.

The area was admitted as a state in 1821⁵ and in 1822,⁶ the state was organized as one judicial district with a District Court judge who exercised the same power as that given to the judge of the District Court for Kentucky. He was to hold the District Court three times a year at the seat of the government. Very shortly after the admission to the state of the Union, the Capital was transferred from St. Louis to Jefferson City and the court was likewise transferred. This was an unfortunate situation for most of the federal business was in St. Louis. In 1839,⁷ the act required the judge of the District of Missouri to go to St. Louis to make all necessary orders for the return to the Circuit Court, meeting in Jefferson City, of all matters preparatory to trial. He was to perform this duty the first Monday in October. In 1855,⁸ the statute required him to hold terms of the Circuit Court in St. Louis in addition to the term held by the Justice of the Supreme Court. However, this failed to solve the basic problem.

In 1857,⁹ the state was divided into two districts known as the Eastern and Western Districts. The terms of the District Court for the Eastern District was held in St. Louis and for the Western District in Jefferson City. A separate judge was appointed for each court.

¹⁶ Act of May 19, 1961, 75 STAT. 81.

¹⁷ Act of February 17, 1925, 43 STAT. 949.

¹⁸ Act of February 10, 1954, 68 STAT. 9.

¹ Act of March 26, 1804, § 12, 2 STAT. 287.

² Act of March 2, 1805, 2 STAT. 324.

³ Act of June 4, 1812, 2 STAT. 743.

⁴ Act of June 4, 1812, 2 STAT. 742.

⁵ Act of March 2, 1821, 3 STAT. 645.

⁶ Act of March 16, 1822, 3 STAT. 653.

⁷ Act of March 3, 1839, 5 STAT. 337.

⁸ Act of February 21, 1855, 10 STAT. 611.

⁹ Act of March 3, 1857, 11 STAT. 197.

In 1837,¹⁰ Missouri was made a part of the newly created Eighth Circuit, and in 1862,¹¹ it was assigned to the Ninth Circuit. Later,¹² the state was reassigned to the Eighth Circuit where it has remained. The act of assigning the court to the Eighth Circuit in 1837 abolished the Circuit Court powers of the District Court but provided for terms of a Circuit Court in St. Louis. Appeals from the District Court for the Western District were taken to the Circuit Court for the District of Missouri sitting in St. Louis.

In 1857,¹³ when the two districts were created, the unusual power was granted the judges of both districts of holding the Circuit Court in the absence of the Justice of the Supreme Court. The oldest commissioned judge in the state was to be circuit judge in the absence of the justice and the opinion of the presiding judge was to prevail in the event of a tie. A judge from the district from which the appeals were taken was not to sit in the Circuit Court.

In 1872,¹⁴ a Circuit Court was authorized for the Western District of Missouri which was to have full and complete jurisdiction to determine all matters pending in the late Circuit Court for the District of Missouri.

In 1879,¹⁵ the Western District of Missouri was divided into two divisions known as the Eastern and Western Divisions. The terms of court for the Western Division were held in Kansas City and for the Eastern Division in Jefferson City. The following table is the list of the present divisions, giving the date of their organization:

Eastern District

Eastern Division—St. Louis

Created by Act of February 28, 1887, 24 STAT. 425. A term of court was held in Rolla, Act of June 22, 1910, 46 STAT. 586 but this term was later discontinued.

Northern Division—Hannibal

Created by Act of February 28, 1887, 24 STAT. 425.

Southeastern Division—Cape Girardeau

Created by Act of January 31, 1905, 33 STAT. 627. Records to be kept in St. Louis. Terms at Cape Girardeau were to be held if suitable rooms were furnished without expense to the government.

Western District

Western Division—Chillicothe and Kansas City

Created by Act of January 21, 1879, 20 STAT. 263. A term of court was provided for Chillicothe; Act of June 22, 1910, 36 STAT. 587.

Southwestern Division—Joplin

Created by Act of January 24, 1901, 31 STAT. 739. No additional clerk or marshal to be appointed.

Saint Joseph Division—Saint Joseph

Created by Act of January 21, 1879, 20 STAT. 263.

Central Division—Jefferson City

Under the Act of 1879, creating the Eastern and Western Divisions, the terms of court for the Eastern Division to be held in Jefferson City. Act of January 21, 1879, 20 STAT. 263. Under the Act of February 28, 1887, 24 STAT. 425, this became the Central Division.

Southern Division—Springfield

Created by Act of January 21, 1879, 20 STAT. 263.

When the districts were created in 1857, a judge was authorized for each district. In 1922,¹⁶ temporary judgeships were authorized for both the Eastern and Western Districts and in 1935,¹⁷ both were made permanent. In 1936,¹⁸ a judgeship was created for both districts and a similar temporary judgeship was created in 1942,¹⁹

¹⁰ Act of March 3, 1837, 5 STAT. 176.

¹¹ Act of July 15, 1862, 12 STAT. 576.

¹² Act of July 23, 1866, 14 STAT. 209.

¹³ Act of March 3, 1857, 11 STAT. 197.

¹⁴ Act of June 8, 1872, 17 STAT. 283.

¹⁵ Act of January 21, 1879, 20 STAT. 263.

¹⁶ Act of September 14, 1922, 42 STAT. 838.

¹⁷ Act of August 19, 1935, 49 STAT. 659.

¹⁸ Act of June 22, 1936, 49 STAT. 1804. This was a permanent position.

¹⁹ Act of December 24, 1942, 56 STAT. 1083. This position made permanent Act of February 10, 1954, 68 STAT. 9.

bringing the total to two judges appointed jointly to both districts. This position was later made permanent.²⁰ In 1961, a third judge was added to the Western District.²¹

NEW JERSEY

New Jersey was organized as one judicial district under the First Judiciary Act, and has remained so organized throughout its history. The sessions for the District Courts were held in New Brunswick and Burlington, and those for the Circuit Court in Trenton.¹ In 1844,² the District Court was transferred to Trenton from New Brunswick and Burlington. In 1888,³ the judge of the district for New Jersey was authorized by statute to transfer the trial of a civil case to Newark with the consent of the parties, provided application was made one week prior to trial. In 1911,⁴ sessions of the court were authorized to be held in Newark, and two years later, the clerk was authorized to appoint a deputy for the Newark office.⁵ Since the establishment of the court in Newark, the amount of judicial business has grown until today, the largest amount of business is done there. Before 1961, five judges were stationed in Newark and one in each of the other cities. In 1926,⁶ a session was established in Camden.

In 1905,⁷ an additional judge was provided for the district, and since that act, the number of judges has increased to eight.⁸

NEW YORK

The Federal Courts of New York were established by the Judiciary Act of 1789.¹ The state was constituted as one district in which a District judge was appointed to preside over the District Court. The District Court was to be held four times annually, the first Tuesday of November and every third month thereafter. The courts would be held in New York City. A Circuit Court was established to be held by two justices of the Supreme Court with the District Court judge for New York. The Circuit Court was held twice annually on the fourth day of April and October.

The Judiciary Act of 1801 which was repealed in the Jefferson administration, would have divided New York into two districts, but made no provision for a judge in each of the districts. The state was assigned the Second Circuit. Three judges were to be appointed under the Act of 1801² to hold the Circuit Court and provision was made to hold the Circuit Court in New York City and Albany, New York. However, this act was repealed³ in 1802 and New York reverted back to consisting of one district with a District Court held in New York City and a Circuit Court presided over by the Justice of the Supreme Court and the District judge. In 1802, New York was assigned to the Second Circuit and a justice of the Supreme Court came to the state to hold Circuit Court.⁴

In 1812, Congress provided for the appointment of two judges for the District Court. This was the first time in the history of the Federal Judiciary that two

²⁰ Act of February 10, 1954, sec. 2 (10), 68 STAT. 11.

²¹ Act of May 19, 1961, 75 STAT. 81.

¹ Act of September 24, 1789, 1 STAT.

² Act of June 4, 1844, 5 STAT. 660.

³ Act of August 8, 1888, 25 STAT. 388.

⁴ Judicial Code 1911, § 96, 36 STAT. 1119.

⁵ Act of February 14, 1913, 37 STAT. 674.

⁶ Act of May 17, 1926, 44 STAT. 561.

⁷ Act of March 3, 1905, 33 STAT. 987.

⁸ The acts establishing judgeships in this district have been as follows:

1905—Second Judge. Act of March 3, 1905, 33 STAT. 987.

1916—Third Judge. Act of April 11, 1916, 39 STAT. 48.

1922—Temporary Judge. Act of September 14, 1922, 42 STAT. 837.

1932—The above office made permanent brings the total to four judges. Act of May 20, 1932, 47 STAT. 161.

1940—Temporary Judge:

Act of March 24, 1940, 54 STAT. 219.

This office made permanent in 1944 bringing the total to five judges.

Act of December 22, 1944, 58 STAT. 887.

1949—Sixth Judge. Act of August 3, 1949, 63 STAT. 493.

1954—Seventh Judge. Act of February 10, 1954, 68 STAT. 9.

1961—Eighth Judge. Act of May 19, 1961, 75 STAT.

¹ Act of September 24, 1789, 1 STAT. 73.

² Act of February 13, 1801, 2 STAT. 89.

³ Act of March 8, 1802, 2 STAT. 132.

⁴ Act of April 29, 1802, 2 STAT. 156.

judges for the same district were authorized. However, the experiment lasted for two short years. The senior judge presided and when the two disagreed, the opinion was rendered in conformity with the opinion of the presiding judge. The act provided that the senior judge act with the justice to hold the Circuit Court but in the absence of the senior judge, the second judge had the authority to act.⁵

Two years later, Congress divided the state into two districts; the Northern District and the Southern District. The Southern District Court was held in New York City and the court of the Northern District was held in Utica, Geneva, and Salem. Since there were two judges in the state, the statute assigned Mathias B. Tallmadge to the Northern District and William P. VanNess to the Southern District. The judge of the Southern District was given authority in the event of sickness or inability of the judge of the Northern District to hold the District Court in that district. The District Court in the Northern District was given Circuit Court jurisdiction and appeals from the decision of the judge sitting as the Circuit Court would be to the Circuit Court held in the Southern District in the same manner as from other District Courts to their respective Circuit Court.⁶ This appeal was abolished in 1826, and an appeal allowed directly to the Supreme Court of the United States in the same manner as appeals from other Circuit Courts.⁷

In 1817, Congress authorized the judge of the Northern District with the judge of the Southern District, or either judge in the absence of the other, to hold sessions of the District Court in the Northern District. The additional sum of \$1,000 was paid to the judge of the Southern District for proceeding under this act.⁸

The next year, a similar act was passed, but this one provided that the judge of the Northern District was to hold court in the Southern District under the same conditions.⁹

The judge of the Southern District of New York became the best paid judge in the Federal system. He received \$3,500 per year for his services. Most of the other judges were paid \$2,500 or less.¹⁰ Later, the salary of the judge of the Northern District¹¹ was raised to the same level.

In the early 19th Century, New York continued to grow in size and new cities in other areas of the state grew in importance. This had an effect on the Federal Courts in that new terms of the courts were required. In 1830, it was provided that the term of this District Court in the Southern District be held the first Tuesday in each month. Holding sessions of the District Court this frequently, was probably unique in the Federal System at this period. Section 2 provided for two additional sessions of the Circuit Court for the trial of criminal and equity suits, on the first Monday in February and July. The act further provided that the Circuit Court might hold special sessions and that such special sessions might be held by the District judge alone.¹²

In addition to more frequent sessions, new places for holding the courts were established. An act in 1838 provided for terms of the District Court for the Northern District at Albany, Utica, Rochester and Buffalo, and a term of the Circuit Court annually in Albany. One of the most unusual features of this act was the fact that the Northern District was divided into three divisions for the trial of issues of fact by juries. The act specified what counties of the Northern District were included in each division. All issues of fact were tried in the correct division unless ordered by the court on cause shown.¹³ This was the first time that any district in the United States had been subdivided into divisions. In the first half of the 19th Century, the creation of new districts in those states where it was necessary to hold the federal courts in more than one locality, was favored. By the end of the century, Congress returned to the creation of divisions within existing districts as a means to solve problems of the courts meeting in more than one locality. These divisions were abolished in New York in 1860 and divisions have never been created in New York since that date.¹⁴

The fact that criminal cases were tried in cities, very often at great distances from the place where the crime was committed, caused some annoyance to those who were tried. In New York, a novel solution was adopted but shortly abandoned. The judge of the Northern District was authorized to convene at his discretion, in

⁵ Act of April 29, 1812, 2 STAT. 719.

⁶ Act of April 9, 1814, 3 STAT. 121.

⁷ Act of May 27, 1826, 4 STAT. 192.

⁸ Act of March 3, 1817, 3 STAT. 392.

⁹ Act of April 3, 1818, 3 STAT. 413.

¹⁰ Act of May 29, 1830, 4 STAT. 422.

¹¹ Act of July 4, 1864, sec. 4, 13 STAT. 385.

¹² Act of April 29, 1830, 4 STAT. 422.

¹³ Act of July 7, 1838, 5 STAT. 205.

¹⁴ Act of March 24, 1860, 12 STAT. 2.

certain counties, special terms of courts for the trial of criminal issues of fact arising in the counties providing he gave 20 days notice.¹⁵

In 1865, the Eastern District was created from the existing counties of the Southern District. A separate judge was authorized and the court was to be held in Brooklyn the first Wednesday of each month. The new district was given concurrent jurisdiction with the Southern District over the waters of the counties of New York, Queens, and Suffolk. In the event that the judge of the Southern District was unable to hold court, the judge from the Eastern District was qualified to perform this function.¹⁶

In 1900, the Western District was created from counties in the Northern District. A separate judge for this new district was authorized and the cities where the court was to be held were indicated.¹⁷

The business of the Federal Courts in the state continued to grow and it became obvious that additional judges were necessary for the existing courts rather than the creation of additional districts or authorizing additional terms of the courts, all of which had been tried. One of the reasons Judge Betts, of the Southern District, resigned was because of the additional burdens placed upon him by the Bankruptcy Act of 1867.¹⁸ In 1903, an additional judge was authorized for the Southern District, and throughout the 20th Century, additional judges have been added to each of the districts. Today, the Southern Districts has the largest number of judges of all federal districts.¹⁹

The following is a list of the cities and dates when the sessions were authorized in each place:

Northern District

Albany

Auburn: Act of July 4, 1864, 13 STAT. 385.
Binghamton: Act of May 12, 1900, 13 STAT. 175.
Malone: Act of August 12, 1937, 50 STAT. 623.
Syracuse: Act of May 12, 1900, 31 STAT. 175.
Utica: Act of July 4, 1864, 13 STAT. 385.

Southern District

New York: Act of September 24, 1789, 1 STAT. 73.

Eastern District

Brooklyn: Act of February 25, 1865, 13 STAT. 438.

Southern District

Act of February 9, 1903, 32 STAT. 805, one additional judge, 2.
Act of September 14, 1922, 42 STAT. 838, two additional judges, 4.
Act of February 29, 1929, 45 STAT. 1317, three additional judges, 7.
Act of August 19, 1935, 49 STAT. 659, two additional judges, 9.
Act of June 15, 1936, 49 STAT. 1491, two additional judges, 11.
Act of May 31, 1938, 52 STAT. 585, one additional judge, 12.
This act provided for a temporary judge and the first vacancy was not to be filed.
This provision was repealed by the Act of June 8, 1940, 54 STAT. 253.
Act of March 24, 1940, 54 STAT. 219, one temporary judge, 12.
Act of August 3, 1949, 63 STAT. 493, four additional judges, 16.
Act of February 10, 1959, 68 STAT. 8, two additional judges, 18.

¹⁵ Act of July 4, 1864, 13 STAT. 385.

¹⁶ Act of February 25, 1865, 13 STAT. 438.

¹⁷ Act of May 12, 1900, 31 STAT. 175.

¹⁸ 1 AMER. L. REV. 744.

¹⁹ Laws creating new judicial positions:

Eastern District

Act of June 25, 1910, 36 STAT. 838, one additional judge, 2.
Act of September 14, 1922, 42 STAT. 838, one additional judge, 3.
(This provided for a temporary appointment, but the position was made permanent by Act of August 19, 1935, 49 STAT. 659.)

Act of February 28, 1929, 45 STAT. 1409, two additional judges, 5.
Act of August 28, 1935, 49 STAT. 945, one additional judge, 6.
Act of May 19, 1961, 75 STAT. 81, two additional judges, 8.

Western District

Act of March 3, 1927, 44 STAT. 1370, one additional judge, 2.
Act of March 18, 1966, 80 STAT. 75, one additional judge, 3.

Northern District

Act of March 3, 1927, 44 STAT. 1374, one additional judge, 2.

Act of May 19, 1961, 75 STAT. 81, six additional judges, 24.

Western District

Buffalo: Act of July 4, 1864, 13 STAT. 385.
Canandaigua: Act of March 3, 1911, sec. 97, 36 STAT. 1118.
Elmira: Act of March 3, 1911, sec. 97, 36 STAT. 1118.
Jamestown: Act of May 12, 1900, 31 STAT. 175.
Rochester: Act of July 4, 1864, 13 STAT. 385.
Lockport: Act of May 12, 1900, 31 STAT. 175. Omitted from Judicial Code of 1948 because court had not been held in the city for 32 years.

NORTH CAROLINA

North Carolina did not ratify the Constitution and was not provided for in the Judiciary Act of 1789. When the state joined the Union in 1790, it was organized as one judicial district with the terms of the District Court and the Circuit Court held in New Bern.¹ The Circuit Court was to be held by the Justices of the Supreme Court assigned to the circuit with the District Court judge.

In 1792,² sessions of the District Court were authorized in New Bern, Wilmington, and Edenton in rotation.

In 1792,³ Congress took the unusual step of dividing the state into three districts for the purposes of holding the District Court. The District Court was held in Wilmington, New Bern, and Edenton, and the districts were known by the cities in which they met. The Circuit Court was held in New Bern. This is the first time the Congress divided any state up into more than one district although no additional officers were provided. This act was repealed in 1797,⁴ and the terms of court were again established in New Bern.

In 1801,⁵ sessions of the District Court were again authorized in Edenton, New Bern, and Wilmington, three times a year in each city. The districts were given names such as the District of Albermarle [Edenton], District of Pamptico [New Bern] and the District of Cape Fear [Wilmington]. This is one of the few times in the history of the Federal Judiciary that names other than directional terms taken from the points of the compass, were given to districts. This act was repealed by the same statute as that repealing the famous Judiciary Act of 1801.⁶ This organization was reconstituted in 1802⁷ with the addition of a clerk for each district.

The sessions of the District Court have been held in these cities since that date with the exception of Edenton. The terms were transferred from that city to Elizabeth City in 1870.⁸

In 1872,⁹ the state was divided into two districts known as the Eastern and Western Districts. By 1926, the court for the Western District was held in eight cities and the court for the Eastern District in six.

In 1927,¹⁰ the state was divided into three districts to be known as the Eastern, Middle and Western Districts. The following is a list of cities in which the court meets and the date the terms were authorized for the particular districts:

Eastern District

Elizabeth City: Act of July 1, 1870, 16 STAT. 180.
Fayetteville: Act of June 7, 1924, 43 STAT. 661.
New Bern: Act of June 9, 1794, 1 STAT. 396.
Raleigh: Act of March 2, 1793, 1 STAT. 336, authorized the transfer of the sessions of the Circuit Court from New Bern to Raleigh by order of the court when there shall be suitable accommodations. The term of court in this city was first set by Act of March 3, 1797, 1 STAT. 518.
Wilmington: Act of June 9, 1794, 1 STAT. 396.
Wilson: Act of October 7, 1914, 38 STAT. 728.
Washington: Act of March 3, 1905, 33 STAT. 1004.

¹ Act of June 4, 1790, 1 STAT. 126.

² Act of April 12, 1792, 1 STAT. 252.

³ Act of June 9, 1794, 1 STAT. 396.

⁴ Act of March 3, 1797, 1 STAT. 518.

⁵ Act of March 3, 1801, 2 STAT. 123.

⁶ Act of March 3, 1802, 2 STAT. 132.

⁷ Act of April 29, 1802, 2 STAT. 163.

⁸ Act of July 1, 1870, 16 STAT. 180.

⁹ Act of June 4, 1872, 17 STAT. 215.

¹⁰ Act of March 2, 1927, 44 STAT. 1339.

Western District

Asheville: Act of June 4, 1872, 17 STAT. 217.
 Bryson City: Act of April 25, 1928, 45 STAT. 457.
 Charlotte: Act of June 19, 1878, 20 STAT. 173.
 Shelby: Act of December 24, 1924, 43 STAT. 722.
 Statesville: Act of June 4, 1872, 17 STAT. 217.

Middle District

Durham: Act of February 28, 1933, 47 STAT. 1350, as a part of the Eastern District. Transferred to Middle District by Act of June 28, 1935, 49 STAT. 429.
 Greensboro: Act of June 4, 1872, 17 STAT. 217. Transferred from Western District upon organization of the District.
 Rockingham: Act of March 2, 1927, 44 STAT. 1339.
 Salisbury: Act of January 31, 1908, 35 STAT. 3. Transferred to the Middle District when it was created.
 Wilkesboro: Act of February 23, 1903, 32 STAT. 852. Transferred from Western District when this district was organized.
 Winston-Salem: Act of June 12, 1936, 44 STAT. 734. Originally this city was included in the Western District.

When the two districts were originally established in 1872, a judge was provided for each district. In 1927, when the Middle District was created, a judge was authorized for that district. In 1961,¹¹ a judge was authorized for each of the three districts bringing the total of judges in each district to two.

OHIO

Ohio was the first territory¹ formed from the Northwest Territory and embraced the present area of the state. During the territorial period, three judges held all courts in the area and the three sat with the governor to enact legislation. In 1802,² the area was admitted as a state and in 1803,³ provision was made for the organization of a District Court with the same powers as those exercised by the judge of the District of Kentucky. The District judge in Ohio was expected to hold three terms at the seat of the government which was then Chillicothe. In 1820,⁴ the terms of the District and Circuit Courts were transferred to Columbus, the new state capital since 1816.

In 1807,⁵ the state was made a part of the newly organized Seventh Circuit, and Circuit Courts were organized within the state. In 1842,⁶ one session of the Circuit and the District Courts was transferred from the state capital at Columbus to Cincinnati. The District Judge was given authority to hold adjourned sessions of the court in Cleveland. However, the act⁷ was repealed two years later and the terms of the court were transferred back to Columbus. In 1855, the state was divided into two districts known as the Northern and Southern Districts.⁸ The terms of Circuit and District Courts were held in Cincinnati and Cleveland. A separate judge was provided for both districts. This act abolished the terms of all the courts in Columbus for the clerk was to transfer all records to the Southern District in Cincinnati which court retained jurisdiction of all cases then pending.

Later, special terms were authorized to be held in Cleveland to transact any business "which might under existing laws be transacted at any regular term."⁹

In 1878,¹⁰ the Northern District was divided into two divisions known as the Eastern and Western Divisions. The terms of court for the Eastern Division were to be held in Toledo and the Western Division to be held in Cleveland. In 1880,¹¹ the Southern Division was divided into the Eastern and Western Districts and the term of court was established in Columbus for the Eastern Division and in Cincinnati for the Western Division. The following is a list of the cities where the terms of court

¹¹ Act of May 19, 1961, 75 STAT. 81.

¹ Act of April 30, 1802, 2 STAT. 173. Authorized the state to prepare a constitution.

² Admitted by Act of February 19, 1803, 2 STAT. 201.

³ Act of February 19, 1803, 2 STAT. 201.

⁴ Act of March 4, 1820, 3 STAT. 544.

⁵ Act of February 24, 1807, 2 STAT. 420.

⁶ Act of June 1, 1842, 5 STAT. 488.

⁷ Act of March 26, 1844, 5 STAT. 652.

⁸ Act of February 10, 1855, 10 STAT. 604.

⁹ Act of February 21, 1855, 10 STAT. 611.

¹⁰ Act of June 8, 1878, 20 STAT. 102.

¹¹ Act of February 4, 1880, 21 STAT. 63.

were presently held in the state and the date that a session of court was authorized for the city:

Northern District

Eastern Division: Created by Act of June 8, 1878, 20 STAT. 102.

Cleveland: Act of February 21, 1855, 10 STAT. 611. Authorized adjourned sessions at this place. Made permanent July 7, 1870, 16 STAT. 192.

Youngstown: Act of February 26, 1909, 35 STAT. 656.

Akron: Act of February 10, 1954, § 2(b) (9), 68 STAT. 11.

Western Division: Created by Act of June 8, 1878, 20 STAT. 102.

Lima: Act of February 14, 1928, 42 STAT. 1246.

Toledo: Act of May 23, 1872, 17 STAT. 153.

Southern District

Western Division: Created by Act of February 4, 1880, 21 STAT. 63.

Cincinnati: Act of June 1, 1942, 5 STAT. 488.

Dayton: Act of March 4, 1907, 34 STAT. 1294.

Eastern Division: Created by Act of February 4, 1880, 21 STAT. 63.

Columbus: Act of March 4, 1820, 3 STAT. 544.

Steubenville: Act of March 4, 1915, 38 STAT. 1187.

It should be noted, however, that when terms of court were provided at Dayton in 1907,¹² it was not a part of any division of the Southern District, and any case which was within the jurisdiction of the district, for convenience of the parties, could be tried in Dayton.

When the state was divided into two judicial districts, a judge was authorized for each district. In 1900,¹³ a temporary post was created for the Northern District and this was made permanent in 1910.¹⁴ In 1922,¹⁵ another temporary judge was authorized for the Northern District and this was also made permanent bringing the total to three in 1935.¹⁶ Another temporary judgeship was authorized in 1941,¹⁷ and was made permanent in 1949.¹⁸ A fifth judicial post was created in 1954,¹⁹ and a sixth in 1961.²⁰ A temporary judgeship was authorized for the Southern District in 1907²¹ and this was made permanent in 1910.²² A third judgeship was authorized in 1937.²³ Temporary judges were authorized in both districts in 1961.²⁴ In 1966, an additional judge was authorized in each district bringing the total to seven judges in the Northern District and four in the Southern District.²⁵

¹² Act of March 4, 1907, 34 STAT. 1294.

¹³ Act of December 19, 1900, 31 STAT. 726.

¹⁴ Act of February 24, 1910, 36 STAT. 202.

¹⁵ Act of September 14, 1922, 42 STAT. 837.

¹⁶ Act of August 19, 1935, 49 STAT. 659.

¹⁷ Act of May 1, 1941, 55 STAT. 148.

¹⁸ Act of August 3, 1949, 63 STAT. 493.

¹⁹ Act of February 10, 1954, 68 STAT. 9.

²⁰ Act of May 19, 1961, 75 STAT. 80.

²¹ Act of February 25, 1907, 34 STAT. 928.

²² Act of February 24, 1910, 36 STAT. 202.

²³ Act of August 25, 1937, 50 STAT. 805.

²⁴ Act of May 19, 1961, 75 STAT. 81.

²⁵ Act of March 18, 1966, 80 STAT. 75.

PENNSYLVANIA

The Federal Courts in Pennsylvania were created by the Judiciary Act of 1789. Pennsylvania was organized as one district with a District judge holding court alternately in Philadelphia and York, beginning in Philadelphia on the second Tuesday of November and every second Tuesday thereafter in the third month in the alternate location. Pennsylvania was assigned to the Middle Circuit for the purpose of holding the Circuit Court. The Circuit Court for the District of Pennsylvania was held alternately in Philadelphia and York beginning on the 11th of April 1790, and every sixth month thereafter.¹ Later the sessions of both courts were held exclusively in Philadelphia.²

In the first years, Judge Richard Peters, the District Court judge, held Circuit Court with various members of the Supreme Court. Although the system of requiring a justice of the Supreme Court to sit on the Circuit Court pleased few, the custom continued for over a century. During these early years, the travel was so difficult it is amazing how few sessions were missed. An examination of the minutes of the Circuit Court indicates that the October term 1794, October term 1797, October term 1798 and October term 1800 were all passed over because of the lack of a judge to hold the court. By the Act of 1802, Pennsylvania was assigned to the Third Circuit and by virtue of the provisions of the act assigning the justices to the circuits, Bushrod Washington became the justice assigned to the Third Circuit.

The Judiciary Act of 1801³ created special judges to hold the Circuit Courts to relieve justices of the Supreme Court of this duty. Four sessions of the Circuit Court presided over by the three Circuit judges appointed under this act were held in May and October 1801 and January and May in 1802. No Circuit Court was held for nearly a year until the April term in 1803, which was held by Justice Washington and Judge Peters.

The Judiciary Act of 1801 would have divided Pennsylvania into two districts, the Eastern and Western Districts, for the purpose of holding the Circuit Court. The terms of the court for the Eastern District were held in Philadelphia and the terms for the Western District at Bedford. However, this act was repealed by Thomas Jefferson and the Federal Circuit and District Courts continued to be held in Philadelphia at the stated times.

In 1815,⁴ Pennsylvania was divided into two districts designated as the Eastern and Western Districts. Richard Peters continued as judge of the Eastern District and the President was authorized to appoint a judge for the Western District with

1. Act of September 24, 1879, secs. 2, 3, 1 STAT. 73, 74. 3. Act of February 13, 1801, 2 STAT. 89.

2. Act of May 12, 1796, 1 STAT. 463. 4. Act of April 20, 1818, 3 STAT. 462.

a salary of \$1600 paid quarterly. In addition to the jurisdiction generally exercised by a District Court, the District Court for the Western District was to exercise Circuit Court powers within that district. Appeals from this district were to be taken to the Circuit Court for the Eastern District of Pennsylvania sitting in Philadelphia.⁵ In 1820, provision was made for an appeal from the District Court "when exercising the powers of a circuit court" directly to the Supreme Court, under the usual rules covering appeals in such cases. The date of the first session of this court in the new district was set in June 1818, but the court did not get organized at that time. Congress passed an act providing that any case that was to have been transferred to this court would not abate because of the failure of this court to meet.⁶ The sessions of the court in the new district were held in Pittsburgh.

The Act of March 3, 1837⁷ reorganized the circuits by creating new circuits, reassigning the states to the circuits, and abolishing the Circuit powers of several of the District Courts which had formerly exercised this jurisdiction, including the District Court for the Western District of Pennsylvania. However, this act did not affect the jurisdiction of the court when held at Williamsport where two terms of the court had been held since 1824.⁸ This, in effect, gave the District Court judge of the Western District of Pennsylvania the powers of a Circuit Court judge when holding court at Williamsport and the power of a District Court judge when sitting in Pittsburgh. This defect was remedied in 1843⁹ when it was provided that a Circuit Court would be held in Williamsport by the justice assigned to the circuit.

In addition to the sessions of the District Courts held in Pittsburgh and Williamsport, the judge of the District Court for Western Pennsylvania was required in 1866¹⁰ to hold two terms of the court in Erie on the first Monday in July and January. The Act of March 12, 1868¹¹ provided a Circuit Court be held in Erie at the same time fixed for holding the District Court.

In 1901,¹² the Middle District of Pennsylvania was created and was attached to the Third Circuit. It was provided that the

5. Act of April 20, 1818, 3 STAT. 462. 9. Act of March 3, 1843, 5 STAT. 628.

6. Act of December 16, 1818, 3 STAT. 478. 10. Act of July 28, 1866, 14 STAT. 342.

7. Act of March 3, 1837, 5 STAT. 170. 11. Act of March 12, 1868, 15 STAT. 52; Act of February 21, 1871, 16 STAT. 429.

8. Act of May 26, 1804, 4 STAT. 50. 12. Act of March 2, 1901, 31 STAT. 882.

terms of the Circuit and District Courts for this district be held in Scranton, Williamsport, and Harrisburg where the first term of the court for the purpose of organizing the court was held on the first Monday in May, 1901.¹³ In 1936,¹⁴ a term of the Federal District Court for the Middle District of Pennsylvania was authorized in Wilkes-Barre provided suitable accommodations for the purpose of holding this court were furnished without expense to the government. However, this act did not provide for a clerk at Wilkes-Barre and all papers were kept in the clerk's office in Scranton. Today, the courts in this district are held in these cities. The Middle District is not divided into divisions as is true in other states, but provision is made in the statutes for trying the case at the closest place for holding sessions of the Federal Court.

In 1930,¹⁵ provision was made for holding a term of the Court for the Eastern District at Easton on the first Tuesday in June and November provided suitable accommodations were furnished free of cost to the federal government. This act provided that all papers were to be kept in the clerk's office in Philadelphia.

The importance of the Federal Courts grew rapidly and by the beginning of the 20th Century, they had far more business than a single judge could handle. In 1904 and 1909, additional judges were authorized in the Eastern and Western Districts, giving each of these courts two judges each.¹⁶ From time to time, the number of judges for the three districts were increased, and today, eleven judges are authorized for the Eastern District of Pennsylvania, three judges are authorized for the Middle District and eight judges are authorized for the Western District. The acts creating these additional judges are listed below.¹⁷

13. Act of June 30, 1902, 32 STAT. 549.	in the district making a total of two judges.
14. Act of May 13, 1936, 49 STAT. 1271.	Act of February 10, 1914, 38 STAT. 283 provided for an additional judge but the next vacancy in the district was not to be filled.
15. Act of July 27, 1930, 46 STAT. 820.	Act of September 14, 1922, 42 STAT. 837, provided for an additional judge but any vacancy occurring after two years would not be filled except by consent of Congress.
16. Act of February 20, 1909; Act of April 1, 1904, 33 STAT. 155.	Act of March 3, 1927, 49 STAT. 1347. This act added a permanent judge.
17. Laws creating New Judicial Positions.	Act of June 16, 1936, 49 STAT. 1523. Added an additional judge but the act stipulated that the next vacancy would not be filled.
Eastern District	
Act of 1789 provided for one judge.	Act of June 2, 1938, 52 STAT. 780. Made the position under the above
Act of April 1, 1904, 33 STAT. 155 provided for an additional judge	

In 1946,¹⁸ a judgeship was created for the Eastern, Middle, and Western Districts of Pennsylvania. One cannot but wonder concerning the political motive behind this act when he reads the provision that the President must submit a nomination to the Senate in 90 days or the act will expire. In 1954, this act was amended by providing that should a vacancy occur while "the judge appointed pursuant to this section is holding office * * * such judge shall thereafter be a district judge for the middle district of Pennsylvania."¹⁹ Judge Frederick V. Follmer, who was first appointed in 1946 as the judge for the Eastern, Western, and Middle Districts of Pennsylvania, became a judge of the Middle District in 1955.

act permanent making a total of four judges.	1935, 49 STAT. 659, making a total of	3
March 24, 1940, 54 STAT. 219. Created a temporary judgeship which was not to be filled when the next vacancy occurred. This position made permanent, by the Act of December 7, 1944, 58 STAT. 796.	Act of August 3, 1949, 63 STAT. 495.495. Next vacancy occurring in this office not to be filled. Made permanent by Act of August 29, 1950, 64 STAT. 562, making a total of four judges.	4
Act of August 3, 1949, 63 STAT. 493. Two additional judgeships were created by this act making a total of seven judges in the district.	Act of February 10, 1954, 68 STAT. 9. Created a temporary judge for the District, thus making a total of 5 permanent judges and one temporary judge.	5
Act of February 10, 1954, 68 STAT. 9. One additional position was created making a total of eight permanent judges in the district.	Act of May 19, 1961, 75 STAT. 81. 81 authorized two additional judges and made the temporary judgeship permanent bringing the total to	8
Act of May 19, 1961, 75 STAT. 81. Three additional judicial posts were created bringing the total number of judges to eleven.		
Act of March 18, 1966, 80 STAT. 75, authorized three temporary judges,	Middle District	
	Western District	Total
Act creating the District provided for one judge.		1
Act of February 28, 1929, 45 STAT. 1344 provided for 1 judge.		2
Act of May 19, 1961, 75 STAT. 81, authorized an additional Judge.		3
18. Act of July 24, 1946, 60 STAT. 654.		
19. Act of February 10, 1954, sec. 6, 68 STAT. 14.		

* * * * *

TEXAS

Texas was admitted to the Union in 1846. At that time, it was organized as one judicial district with a single judge who was to hold a District Court at Galveston and at "such other times and places * * * as the said judge may order." This power was rarely granted to judges of the Federal Courts. This court was granted the powers of a Circuit Court.¹ By the time Texas

1. Act of December 29, 1845, 9
STAT. 1.

was admitted, the Circuit Courts were generally held by the District Court judge.

In 1857,² Texas was divided into two judicial districts known as the Eastern and Western Districts. The terms of court in the Eastern District were held in Galveston and Brownsville and in the Western District at Austin and Tyler. The judge of the District Court of Texas became the judge of the Eastern District and a judge for the Western District was appointed. Both courts continued to exercise full federal jurisdiction.

Circuit Courts were established in Texas in 1862³ when Texas was made a part of the Sixth Circuit. In 1866, the state was assigned to the Fifth Circuit.⁴ Distinction in each city continued to be made between the District and Circuit Courts until the latter courts were abolished in 1911.

When Texas seceded from the Union, the District Court continued to act as a trial court in the Confederate Judicial System. The Confederate Statute creating a judicial system abolished the distinction between the District and Circuit Courts. Of all the courts within the Confederacy, those in Texas were unique in the fact that the judges who had served on the court before the Civil War continued in the same office after the war. Judge Thomas H. Duvall, who was appointed in 1857 to the Western District and Judge John C. Watrous of the Eastern District ignored the Ordinance of Secession and after the establishment of federal authority in Texas, both judges reopened their courts.⁵

In 1870, Judge Watrous submitted his resignation because of ill health, and in recognition of Watrous' services, Congress voted him a salary for his natural life.⁶

In 1879,⁷ the state was divided into a third district known as the Northern Judicial District. A judge was authorized for the new Northern District.

In 1902,⁸ Texas was divided into a fourth district known as the Southern District. The President was authorized to appoint a judge, marshal, clerk, and district attorney to this district.

2. Act of February 21, 1857, 11
STAT. 164.

3. Act of July 15, 1862, 12 STAT.
576.

4. Act of July 23, 1866, 14 STAT.
209.

5. William M. Robinson, Jr. JUS-
TICE IN GRAY, Cambridge, 1941,
p. 16.

6. Act of April 5, 1870, 16 STAT. 81.

7. Act of February 24, 1879, 20
STAT. 320.

8. Act of March 11, 1902, 32 STAT.
65.

Texas and New York are unique in that they are the only states presently organized into four districts.

In 1884,⁹ Congress organized certain counties then in the Western District into a division, although it was not designated as such by prescribing that suits arising in the counties named in the act should be tried in El Paso. The federal courts in the Western District were then holding sessions in Brownsville, San Antonio, and Austin, but this act did not group the other counties into divisions. Again, in 1897,¹⁰ certain counties of the Eastern District were created into a division although the other parts of the district were not organized as such. This organization resulted in some counties of the district being in divisions and others not. This defective organization was not remedied until 1902,¹¹ when all the districts were divided into divisions.

The following is a list of the cities in Texas where sessions of the federal courts were held and the dates the sessions were authorized:

Northern District

Dallas

Act of February 24, 1879, 20 STAT. 320.

Fort Worth

Act of February 10, 1900, 31 STAT. 27.

Abilene

The terms of court held in Graham transferred to this city.

Act of June 11, 1896, 29 STAT. 456.

San Angelo

Act of February 10, 1900, 31 STAT. 27.

Amarillo

Act of February 14, 1908, 35 STAT. 8.

Wichita Falls

Act of February 26, 1917, 39 STAT. 939.

Lubbock

Act of May 26, 1928, 45 STAT. 747.

9. Act of June 3, 1884, 23 STAT. 35.

10. Act of February 8, 1897, 29 STAT. 516. Creating the Beaumont Division. In the same year, Congress provided for a second division in the Western District (Laredo Division, Act of March 2,

1897, 30 STAT. 1002) and four years later, a second division, known as the Sherman Division, was created. (Act of February 19, 1901, 31 STAT. 798).

11. Act of March 11, 1902, 32 STAT. 64.

Southern District

Galveston

Seat of the first Federal Court in Texas.
Act of December 29, 1845, 9 STAT. 1.

Houston

Act of March 11, 1902, 32 STAT. 68.

Laredo

Act of March 2, 1899, 30 STAT. 1002.

Brownsville

Act of February 21, 1857, 11 STAT. 164.

Victoria

Act of April 18, 1906, 34 STAT. 122.

Corpus Christi

Act of May 29, 1912, 37 STAT. 120.

Eastern District

Tyler

Act of February 21, 1857, 11 STAT. 164.

Beaumont

Act of February 8, 1897, 29 STAT. 516.

Sherman

Act of February 19, 1901, 31 STAT. 798.

Paris

Act of March 6, 1889, 25 STAT. 787.

This act gave the court jurisdiction over portions of the Indian country. This jurisdiction was abolished by Act of March 1, 1895, 28 STAT. 693.

Texarkana

Act of March 2, 1903, 32 STAT. 927.

Jefferson

Act of February 24, 1879, 20 STAT. 320.

Western District

Austin

Act of February 21, 1857, 11 STAT. 164.

Waco

Act of February 24, 1879, 20 STAT. 320.

El Paso

Act of June 3, 1884, 23 STAT. 35.

San Antonio

Act of February 24, 1879, 20 STAT. 320.

Del Rio

Act of June 1906, 34 STAT. 226.

Pecos

Act of February 5, 1913, 37 STAT. 663.

The District Courts for the Northern District and later, the Eastern District, exercised jurisdiction in what is now the State of Oklahoma. In 1883,¹² the District Court for the Northern District was given jurisdiction in the Indian Territory, south of the Canadian River and east to the lands assigned certain Indian tribes. All causes arising in this area were to be tried in Graham, Texas. As there were no courts in this area at this period, this jurisdiction extended to all violations of the laws involving a white man, for all disputes between the Indians were settled in the tribal courts. In 1889,¹³ a court in the Indian territory was organized but this court's jurisdiction was limited and other causes which did not fall within its jurisdiction would be tried in a division of the Eastern District of Texas. The counties of Lamar, Fannin, Red River and Delta in Texas and the area roughly sought of 34 degrees and 30 seconds parallel west to approximately Beaver Creek in the present state of Oklahoma were organized as a division of the Eastern District. The sessions of this court were held in Paris, Texas. The next year, the territory of Oklahoma was organized and the jurisdiction of the Federal Court for the Northern District in the area of the new territory was discontinued.¹⁴ The jurisdiction of the court for the Eastern District was not abolished until the admission of the state in 1907.

As in so many other states, the case load in the federal courts of this state continued to grow, necessitating the appointment of new judges. In 1898,¹⁵ a second judge was authorized in the Northern District but this position was not to be filled. In effect, this act provided only temporary relief in the district. The following is a list of statutes authorizing additional judges in the state:

Northern District

Act of February 24, 1879, 20 STAT. 320.

Act of February 9, 1898, 30 STAT. 240. Temporary.

Act of February 26, 1919, 40 STAT. 1183.

Act of September 14, 1922, 42 STAT. 837.

Authorized a temporary judge. Made permanent by

12. Act of January 6, 1883, sec. 3, 22 STAT. 400. 14. Act of May 2, 1890, sec. 33, 26 STAT. 97.

13. Act of March 1, 1880, sec. 18, 25 STAT. 786. 15. Act of February 9, 1898, 30 STAT. 240.

Act of August 19, 1935, 49 STAT. 659.
Act of May 19, 1961, 75 STAT. 81.

Southern District

Act of March 11, 1902, 32 STAT. 65.

Act of May 31, 1938, 52 STAT. 585.

Act of August 3, 1949, 63 STAT. 493.

Temporary. Made permanent by Act of February 10, 1954, 68 STAT. 9.

Act of February 10, 1954, 68 STAT. 9.

Act of May 19, 1961, 75 STAT. 80.

Act of March 18, 1966, 80 STAT. 75, authorized two judges making a total of seven judges.

Eastern District

Act of December 29, 1845, 9 STAT. 1.

Act of February 10, 1954, 68 STAT. 9.

Western District

Act of February 21, 1857, 11 STAT. 164.

Act of February 26, 1917, 39 STAT. 938.

Required to reside in El Paso.

Act of May 19, 1961, 75 STAT. 81.

Act of March 18, 1966, 80 STAT. 75, authorized an additional judge making a total of four in the district.

APPENDIX 5.—LEGISLATIVE HISTORY OF PUBLIC LAW 96-462 (DISTRICT
COURT ORGANIZATION ACT OF 1980)

96TH CONGRESS
2D SESSION

H. R. 8178

To amend title 28 to make certain changes in judicial districts and in divisions
within judicial districts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1980

Mr. KASTENMEIER (for himself, Mr. DANIELSON, Mr. MAZZOLI, Mr. GUDGER,
Mr. HARRIS, Mr. RAILSBACK, Mr. MOORHEAD of California, and Mr.
SAWYER) introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To amend title 28 to make certain changes in judicial districts
and in divisions within judicial districts, and for other pur-
poses.

*Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Dis-
trict Court Organization Act of 1980".

2

PLACE OF HOLDING COURT

SEC. 2. Section 84(e) of title 28, United States Code, is
amended by inserting "and Santa Ana" after "at Los
Angeles".

DIVISIONS OF SOUTHERN DISTRICT OF IOWA

SEC. 3. (a) Section 95(b) of title 28, United States
Code, is amended—

(1) in paragraph (3) by inserting "Fremont," after
"Cass," and by inserting "Page," after "Montgom-
ery," and

(2) in paragraph (4) by striking out "Fremont,"
and "Page,".

(b) The amendments made by subsection (a) shall not
apply to any action commenced before the effective date of
such amendments and pending in the United States District
Court for the Southern District of Iowa on such date.

DIVISIONS OF EASTERN DISTRICT OF MISSOURI

SEC. 4. (a) Section 105(a) of title 28, United States
Code, is amended—

(1) in paragraph (1) by striking out "Audrain,"
and "Montgomery," and

(2) in paragraph (2) by inserting "Audrain," after
"Adair," and by inserting "Montgomery," after
"Monroe,".

1 (b) The amendments made by subsection (a) shall not
 2 apply to any action commenced before the effective date of
 3 such amendments and pending in the United States District
 4 Court for the Eastern District of Missouri on such date.

5 DISTRICTS OF NORTH CAROLINA

6 SEC. 5. (a) The first sentence of section 113(a) of title
 7 28, United States Code, is amended by adding before the
 8 period at the end thereof the following: "and that portion of
 9 Durham County encompassing the Federal Correctional In-
 10 stitution, Butner, North Carolina".

11 (b) Section 113(b) of title 28, United States Code, is
 12 amended—

13 (1) by striking out "Alleghany, Ashe,"

14 (2) by inserting "(excluding that portion of
 15 Durham County encompassing the Federal Correc-
 16 tional Institution, Butner, North Carolina)" after
 17 "Durham",

18 (3) by striking out "Watauga, Wilkes," and

19 (4) by striking out "Rockingham, Salisbury,
 20 Wilkesboro,".

21 (c) Section 113(c) of title 28, United States Code, is
 22 amended—

23 (1) by inserting "Alleghany," after "Alexander,"

24 (2) by inserting "Ashe," after "Anson," and

1 (3) by inserting "Watauga, Wilkes," after
 2 "Union,".

3 (d) The amendments made by this section shall not
 4 apply to any action commenced before the effective date of
 5 such amendments and pending in any judicial district of
 6 North Carolina on such date.

7 DIVISIONS OF EASTERN DISTRICT OF TEXAS

8 SEC. 6. (a) Section 124(b)(2) of title 28, United States
 9 Code, is amended by striking out "Folk," and "Trinity,".

10 (b) Section 124(c) of title 28, United States Code, is
 11 amended—

12 (1) by striking out "six" and inserting in lieu
 13 thereof "seven",

14 (2) in paragraph (1)—

15 (A) by striking out "Angelina,"

16 (B) by striking out "Houston, Nacog-
 17 doches," and

18 (C) by striking out "Shelby,"

19 (3) in paragraph (2) by striking out "Orange,
 20 Sabine, San Augustine, and Tyler." and inserting in
 21 lieu thereof "and Orange.", and

22 (4) by adding at the end thereof the following new
 23 paragraphs:

1 “(7) The Lufkin Division comprises the counties
2 of Angelina, Houston, Nacogdoches, Polk, Sabine, San
3 Augustine, Shelby, Trinity, and Tyler.

4 “Court for the Lufkin Division shall be held at
5 Lufkin.”.

6 EFFECTIVE DATE

7 SEC. 7. (a) This Act and the amendments made by this
8 Act shall take effect on October 1, 1981.

9 (b) Nothing in this Act shall affect the composition or
10 preclude the service of any grand or petit juror summoned,
11 empaneled, or actually serving in any judicial district on the
12 effective date of this Act.

Union Calendar No. 864

96TH CONGRESS
2D SESSION

H. R. 8178

[Report No. 96-1417]

To amend title 28 to make certain changes in judicial districts and in divisions
within judicial districts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1980

Mr. KASTENMEIER (for himself, Mr. DANIELSON, Mr. MAZZOLI, Mr. GUDGER,
Mr. HARRIS, Mr. RAILSBACK, Mr. MOORHEAD of California, and Mr.
SAWYER) introduced the following bill; which was referred to the Committee
on the Judiciary

SEPTEMBER 26, 1980

Committed to the Committee of the Whole House on the State of the Union and
ordered to be printed

A BILL

To amend title 28 to make certain changes in judicial districts
and in divisions within judicial districts, and for other pur-
poses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal District Court Organization Act of 1980".

PLACE OF HOLDING COURT

SEC. 2. Section 84(c) of title 28, United States Code, is amended by inserting "and Santa Ana" after "at Los Angeles".

DIVISIONS OF SOUTHERN DISTRICT OF IOWA

SEC. 3. (a) Section 95(b) of title 28, United States Code, is amended—

(1) in paragraph (3) by inserting "Fremont," after "Cass," and by inserting "Page," after "Montgomery," and

(2) in paragraph (4) by striking out "Fremont," and "Page,".

(b) The amendments made by subsection (a) shall not apply to any action commenced before the effective date of such amendments and pending in the United States District Court for the Southern District of Iowa on such date.

DIVISIONS OF EASTERN DISTRICT OF MISSOURI

SEC. 4. (a) Section 105(a) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "Audrain," and "Montgomery," and

(2) in paragraph (2) by inserting "Audrain," after "Adair," and by inserting "Montgomery," after "Monroe,".

(b) The amendments made by subsection (a) shall not apply to any action commenced before the effective date of such amendments and pending in the United States District Court for the Eastern District of Missouri on such date.

DISTRICTS OF NORTH CAROLINA

SEC. 5. (a) The first sentence of section 113(a) of title 28, United States Code, is amended by adding before the period at the end thereof the following: "and that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina".

(b) Section 113(b) of title 28, United States Code, is amended—

(1) by striking out "Alleghany, Ashe,".

(2) by inserting "(excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina)" after "Durham",

(3) by striking out "Watauga, Wilkes," and

(4) by striking out "Rockingham, Salisbury, Wilkesboro,".

(c) Section 113(c) of title 28, United States Code, is amended—

- 1 (1) by inserting "Alleghany," after "Alexander,"
 2 (2) by inserting "Ashe," after "Anson," and
 3 (3) by inserting "Watauga, Wilkes," after
 4 "Union,".

5 (d) The amendments made by this section shall not
 6 apply to any action commenced before the effective date of
 7 such amendments and pending in any judicial district of
 8 North Carolina on such date.

9 DIVISIONS OF EASTERN DISTRICT OF TEXAS

10 SEC. 6. (a) Section 124(b)(2) of title 28, United States
 11 Code, is amended by striking out "Polk," and "Trinity,".

12 (b) Section 124(c) of title 28, United States Code, is
 13 amended—

14 (1) by striking out "six" and inserting in lieu
 15 thereof "seven",

16 (2) in paragraph (1)—

17 (A) by striking out "Angelina,"

18 (B) by striking out "Houston, Nacog-
 19 doches," and

20 (C) by striking out "Shelby,"

21 (3) in paragraph (2) by striking out "Orange,
 22 Sabine, San Augustine, and Tyler." and inserting in
 23 lieu thereof "and Orange.", and

24 (4) by adding at the end thereof the following new
 25 paragraphs:

1 "(7) The Lufkin Division comprises the counties
 2 of Angelina, Houston, Nacogdoches, Polk, Sabine, San
 3 Augustine, Shelby, Trinity, and Tyler.

4 "Court for the Lufkin Division shall be held at
 5 Lufkin."

6 EFFECTIVE DATE

7 SEC. 7. (a) This Act and the amendments made by this
 8 Act shall take effect on October 1, 1981.

9 (b) Nothing in this Act shall affect the composition or
 10 preclude the service of any grand or petit juror summoned,
 11 empaneled, or actually serving in any judicial district on the
 12 effective date of this Act.

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1980

SEPTEMBER 26, 1980.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 8178]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8178) to amend title 28 to make certain changes in judicial districts and in divisions within judicial districts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to create two new places of holding Federal court, to rearrange the divisions in four Federal judicial districts. In short, the legislation modifies the organization and placement of Federal district courts so as to better reflect the changing demographic patterns and varying societal needs in four States.

BACKGROUND

A. SANTA ANA, CALIF.

The State of California is the most highly populated state in the nation with a population of 22,694,000.¹ California is divided into four judicial districts denominated as the northern, central, eastern and southern districts. The central district includes the seven counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside and San Bernardino, with a combined population of over 11 million, 30% larger than the next largest judicial district in the country, and covering a geographic area of nearly 40,000 square miles.²

¹ U.S. Bureau of the Census, July 1, 1979 provisional data.
² State of California, Department of Finance estimate.

At present, the statutorily authorized place of holding court in the central district is in the City of Los Angeles. This legislation proposes to add the City of Santa Ana as a second place of holding in the central district. Santa Ana is the county seat of Orange county, which has generated approximately 41% of the population growth among the seven county area over the last decade.³

The Santa Ana place of holding court would serve the tri-county area consisting of Orange, Riverside and San Bernardino counties. This tri-county area containing approximately 3.2 million persons would still be larger than 66 of the 90 districts in the United States at present and would cover 28,100 square miles.

The establishment of a Santa Ana place of holding Federal court would ease the existing travel burden on attorneys and litigants in the tri-county area. It would reduce round trip driving distances between the cities of Riverside, San Bernardino and Santa Ana, and the present place of holding in Los Angeles, from 116 to 70 miles, 120 to 94 miles, and 62 to 0 miles respectively. The associated problems of traffic congestion and parking in downtown Los Angeles would also be substantially eliminated.

The Administrative Office of the Courts has estimated a tricounty caseload of 1,030 per year. This is equal to or greater than 41 of the current federal districts and capable of supporting a multi-judge court of at least two and probably three judges. Therefore, an authorized place of holding court in Santa Ana would also significantly relieve the present case load strain on the Los Angeles place of holding court.

The Subcommittee on Courts Civil Liberties and the Administration of Justice was advised that facilities for a place of holding court in Santa Ana could be adequately provided for in existing Orange County court buildings. Thus, the proposed place of holding would be situated at the Santa Ana Civic Center, which currently houses city, county, state and Federal Government operations in one central location.

In conclusion, the Committee was satisfied that the creation of an additional place of holding court for the central district of California in the City of Santa Ana was clearly justified at this time.

B. DIVISION OF SOUTHERN DISTRICT OF IOWA

The State of Iowa is divided into two judicial districts, denominated as the northern and southern districts. The Southern District comprises six statutory divisions. At present, the Iowa counties of Fremont and Page which situate in the far southwest corner of the state are within the Southern Division of the Southern Judicial District.

Court for the Southern Division is held in Des Moines. Council Bluffs is the place of holding court for the Western Division. Page and Fremont counties are located geographically, and several hours of traveling time, closer to Council Bluffs than Des Moines.

This legislation would transfer the counties of Page and Fremont, currently in the Southern Division of the Southern Judicial District to the Western Division. It is the Committee's view that this change, which is supported by attorney practitioners in the southwest Iowa

³ State of California, Department of Finance estimate.

region, the United States Department of Justice, and the Judicial Conference of the United States, would substantially reduce the costs and time incurred in traveling to federal district court for litigants and attorneys from the two affected counties.

C. DIVISIONS OF EASTERN DISTRICT OF MISSOURI

The State of Missouri is divided into two judicial districts, denominated as the eastern and western districts. The Eastern District comprises three statutory divisions.

At present, the Missouri counties of Audrain and Montgomery are within the Eastern Division of the Eastern Judicial District which holds court in St. Louis. Hannibal, the place of holding court for the Northern Division, is located approximately fifty miles or half the distance closer to Audrain and Montgomery counties than St. Louis.

This legislation would transfer the counties of Audrain and Montgomery, currently in the Eastern Division of the Eastern Judicial District to the Northern Division. It is the Committee's view that this change, which is supported by the organized bar from both counties as well as the Judicial Council of the Eighth Circuit Court of Appeals, would substantially reduce the costs and time incurred in traveling to Federal district court for litigants and attorneys from the two affected counties.

D. DISTRICTS OF NORTH CAROLINA

1. Butner Correctional Institution.—Section 113 of title 28, United States Code, sets out the jurisdictional boundaries for the Middle and Eastern Judicial Districts of North Carolina. Durham County falls within the Middle District (28 U.S.C. 113(b)); Granville County falls within the Eastern District (28 U.S.C. 113(a)). The line dividing Durham and Granville counties—and, therefore, the Middle and Eastern Districts—also divides the Federal Correctional Institution at Butner, North Carolina, into two segments. As a result, approximately one-half of the institution is located, for jurisdictional purposes, within the Middle District; the remaining one-half lies within the Eastern District.

Such a jurisdictional division raises potentially serious problems particularly with respect to criminal prosecution and *habeas corpus* actions. For example, the site of a criminal violation may be hard to determine and challenges may be raised to the court's jurisdiction depending on the reliability of the surveyor's line or a few feet disagreement as to where events occurred. Prisoner suits concerning conditions may shift from district to district, as an inmate moves about within the institution. Finally, conflicting rulings about running the institution may issue from the two courts.

This legislation, which was originally proposed by the U.S. Department of Justice, would resolve this problem by amending 28 U.S.C. 113 to include the Butner Facility in its entirety within the Eastern District of North Carolina and exclude it from the Middle District.

2. District Boundary Lines.—The State of North Carolina is divided into three judicial districts denominated as the western, middle and eastern districts. The four North Carolina counties of Watuaga,

Ashe, Alleghany and Wilkes lie in the upper northwest corner of the Middle Judicial District directly north of the existing boundary line which divides the Western and Middle districts.

The realignment proposed by this legislation would transfer the above named counties from the Middle Judicial District to the Western Judicial District. The effect of this change would be to locate these four mountainous counties closer to a place of holding court in Statesville in the Western District than they presently are to Winston-Salem, the nearest statutory place of holding court in the Middle District.

The Committee believes that the proposed district realignment would ease the burden and lessen the cost of traveling to Federal district court for attorneys and litigants from the four affected counties. In addition, the move would locate an available court facility in the city of Wilkesboro in Wilkes county within the Western District. This would present the Western District with a viable option for a future place of holding court should caseload activity and other circumstances so warrant. The instant change has the support of attorneys from the area and the approval of the Judicial Council of the Fourth Circuit Court of Appeals, as well as the Judicial Conference of the United States.

E. DIVISIONS OF EASTERN DISTRICT OF TEXAS

The State of Texas is divided into four judicial districts, denominated as the northern, eastern, southern and western districts. The Eastern Judicial District comprises six divisions denominated as the Tyler, Beaumont, Sherman, Paris, Marshall and Texarkana divisions. The Southern Judicial District also comprises six divisions. The Houston division of the Southern District lies contiguous to the southwestern boundary of Beaumont Division of the Eastern District.

This legislation would create a new Lufkin Division within the Eastern Judicial District. Into this new division would be moved the counties of Polk and Trinity now within the Houston Division of the Southern District of Texas, the four counties of Angelina, Houston, Nacogdoches, and Shelby now within the Tyler Division of the Eastern District, and the three counties of San Augustine, Sabine and Tyler, now within the Beaumont Division of the Eastern District of Texas.

The Tyler and Beaumont Divisions presently contain 60 percent of the land area of the Eastern District. The creation of a new Lufkin Division out of the Tyler and Beaumont Divisions would more evenly distribute the 41 county 30,956 square mile Eastern District among seven instead of six divisions. The new division would also absorb much of the population growth in the Eastern District, 85 percent of which has occurred during this century in the Tyler and Beaumont divisions.

The counties of Polk and Trinity in the Western District are surrounded on the north, east and south by the Eastern District. This change would have the result of eliminating a geographically illogical swerve in the district boundary dividing the Eastern and Western Districts by incorporating Polk and Trinity counties into the Eastern District.

This legislation also establishes a place of holding court for the new Lufkin Division in the City of Lufkin, the county seat of Angelina County. The effect of this change in terms of traveling distance to a Federal court would be to reduce the average mileage for residents of the Lufkin Division from 90 to 38, resulting in a savings of time and expenses for litigants and their attorneys. The new division would also reduce caseloads in the Tyler and Beaumont divisions of the Eastern District and the Houston division of the Southern District. The Committee believes this would have a positive effect upon the administration of justice among the Federal courts in that area as well as lessen the burden and cost of travel for litigants and attorneys.

The Committee also understands that an existing Federal facility in Lufkin is available, subject to physical modifications, for a Federal courthouse. Thus, this change, which is supported by attorneys in the area and has the approval of the Judicial Council of the Fifth Circuit Court of Appeals, the Judicial Conference of the United States and the U.S. Department of Justice, would result in increased convenience and more efficient administration without undue expense.

STATEMENT

On August 22, 1980, the Subcommittee on Courts, Civil Liberties and the Administration of Justice held a 1-day hearing on twenty legislative proposals which affect district court organization. In addition, testimony was received on several legislative proposals to split the fifth judicial circuit court of appeals. See H.R. 7665, 96th Cong., 2d Sess.; H. Rpt. 96-1390.

On the district court bills, testimony was received from the United States Department of Justice (Joan C. Barton, Peter F. Rient, and Leslie Rowe), the Judicial Conference of the United States (James E. Macklin, accompanied by the Honorable Richard H. Chambers), Hon. John Seiberling, Hon. Glenn Anderson, and Hon. Jerry Patterson. Written statements were also received from Hon. Steven Neal, Hon. George Brown, Hon. Robert Walker, Hon. Charles Wilson (of Texas), Hon. Frank Guarini, Hon. Harold Hollenbeck, Hon. Jerry Ambro, Hon. Harold Volkmer, Hon. Tom Harkin, and Hon. Tony Coelho.

Shortly after the hearing, a draft omnibus bill was circulated to the Members of the Subcommittee on Courts, Civil Liberties and the Administration of Justice. The criteria for inclusion in this draft bill was whether there was any controversy or opposition to the specific proposal, or whether there had been a serious request for delay to consider the measure. Only non-controversial proposals, with no opposition or requests for delay, were included in the draft bill. All other bills were placed in a study category and action on these other bills has not been foreclosed.

On September 18, 1980, the Subcommittee on Courts, Civil Liberties and the Administration of Justice marked up the draft bill, and unanimously elected to report a clean bill to the full Committee (H.R. 8178). No amendments were offered.

On September 24, 1980, the full Committee considered H.R. 8178, and after a brief general debate, ordered the bill reported.

SECTIONAL ANALYSIS

SHORT TITLE

Section 1 provides that the proposed legislation may be referred to as the "Federal District Court Organization Act of 1980".

PLACES OF HOLDING COURT

Section 2, by amending section 84(c) of title 28, United States Code, creates a place of holding court in Santa Ana, California.

DIVISIONS OF SOUTHERN DISTRICT OF IOWA

Section 3, by amending section 95(b) of title 28, United States Code, transfers two counties from the Southern Division of the Southern District of Iowa to the Western Division of that District.

DIVISIONS OF EASTERN DISTRICT OF MISSOURI

Section 4 amends section 105(a) of title 28, United States Code. It transfers two counties from the Eastern Division of the Eastern District of Missouri to the Northern Division of that District.

DISTRICTS OF NORTH CAROLINA

Section 5, by amending section 113 of title 28, United States Code, makes two changes. Subsection (a) places the portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina, entirely within the Eastern District of North Carolina. Subsection (b) excludes that portion of Durham County encompassing the Butner Institution from the Middle District of North Carolina. Subsection (b) further strikes out four counties (Alleghany, Ashe, Watauga, and Wilkes) from the Middle District. Subsection (c) places these counties in the Western District. In addition, subsection (b) strikes three statutory places of holding court (Rockingham, Salisbury and Wilkesboro). No decision is made at this time as to whether one or all of these cities should be designated as places of holding court in the Western District. Since this decision is somewhat controversial, the committee intends to resolve it at the start of the 97th Congress.

DIVISIONS OF EASTERN DISTRICT OF TEXAS

Section 6 amends section 124 of title 28, United States Code. It creates a new Lufkin division in the Eastern District of Texas. It accomplishes this by taking seven counties from the Tyler and Beaumont Divisions of the Eastern District and placing them in the new Division. It also takes two counties from the Houston Division of the Southern District and places them in the new Division of the Eastern District. Section 6 also creates a new place of holding court in Lufkin, Texas.

EFFECTIVE DATE

Section 7 sets forth an effective date for the proposed legislation. Subsection (a) provides that the Act shall take effect on October 1,

1981. Subsection (b) provides that nothing in the Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of the Act.

OVERSIGHT FINDINGS

In regard to clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the committee recognizes that, in addition to its responsibility to create judgeships pursuant to fair, systematic and open procedures, it should resolve questions relating to places of holding court and to district and division dividing lines in a similar manner. Thus, it is the view of the committee that the processing of district court organization legislation is most efficiently and expeditiously dealt with by formulation of an omnibus bill. Moreover, in this regard, the committee feels that it is better able to sort out meritorious and noncontroversial proposals from those requiring more study or consensus.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the committee by the Committee on Government Operations.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representative, the bill creates no new budget authority on increased tax expenditures for the Federal judiciary.

INFLATION IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representative, the committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the committee agrees with the cost estimate of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 26, 1980.

HON. PETER W. RODINO, JR.,
Chairman,
Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 8178, the Federal District Court Organization Act of 1980, as ordered reported by the House Committee on the Judiciary, September 23, 1980.

The bill realigns the District Court districts in Iowa, Missouri, North Carolina, and Texas. The bill also creates the Lufkin Division

of the Eastern District of Texas and designates Santa Ana, California, as a place of holding court for the Central District of California. The bill becomes effective October 1, 1981.

Based on information from the Department of Justice, the Administrative Office of the U.S. Courts, and the General Services Administration, it is estimated that the bill will require additional staff and space in Lufkin, Tex., and access to facilities in Santa Ana, Calif. CBO estimates that this bill will cost \$319,000 in fiscal year 1982, \$197,000 in fiscal year 1983, \$213,000 in fiscal year 1984, \$231,000 in fiscal year 1985, and \$246,000 in fiscal year 1986.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

COMMITTEE VOTE

H.R. 8178, a quorum of Members having been present, was reported by voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * *

PART I—ORGANIZATION OF COURTS

* * * * *

CHAPTER 5—DISTRICT COURTS

* * * * *

§ 84. California

California is divided into four judicial districts to be known as the Northern, Eastern, Central, and Southern Districts of California.

Northern District

(a) The Northern District comprises the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma.

Court for the Northern District shall be held at Eureka, Oakland, San Francisco, and San Jose.

Eastern District

(b) The Eastern District comprises the counties of Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Inyo, Kern,

Kings, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

Court for the Eastern District shall be held at Fresno, Redding, and Sacramento.

Central District

(c) The Central District comprises the counties of Los Angeles, Orange, Riverside, San Bernardino, San Louis Obispo, Santa Barbara, and Ventura.

Court for the Central District shall be held at Los Angeles and Santa Ana.

§ 95. Iowa

Iowa is divided into two judicial districts to be known as the Northern and Southern Districts of Iowa.

Northern District

(a) The Northern District comprises four divisions.

(1) The Cedar Rapids Division comprises the counties of Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linin, and Tama. Court for the Cedar Rapids Division shall be held at Cedar Rapids.

(2) The Eastern Division comprises the counties of Allamakee, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, and Winneshiek.

Court for the Eastern Division shall be held at Dubuque and Waterloo.

(3) The Western Division comprises the counties of Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, and Woodbury.

Court for the Western Division shall be held at Sioux City.

(4) The Central Division comprises the counties of Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth and Wright.

Court for the Central Division shall be held at Fort Dodge and Mason City.

Southern District

(b) The Southern District comprises six divisions.

(1) The Central Division comprises the counties of Boone, Dallas, Greene, Guthrie, Jasper, Madison, Marion, Marshall, Polk, Poweshiek, Story, and Warren.

Court for the Central Division shall be held at Des Moines.

(2) The Eastern Division comprises the counties of Des Moines, Henry, Lee, Louisa, and Van Buren.

Court for the Eastern Division shall be held at Keokuk.

(3) The Western Division comprises the counties of Audubon, Cass, Fremont, Harrison, Mills, Montgomery, Page, Pottawattamie, and Shelby.

Court for the Western Division shall be held at Council Bluffs.

(4) The Southern Division comprises the counties of Adair, Adams, Clarke, Decatur, [Fremont,] Lucas, [Page,] Ringgold, Taylor, Union, and Wayne.

Court for the Southern Division shall be held at Creston.

(5) The Davenport Division comprises the counties of Clinton, Johnson, Muscatine, Scott, and Washington.

Court for the Davenport Division shall be held at Davenport.

(6) The Ottumwa Division comprises the counties of Appanoose, Davis, Jefferson, Keokuk, Mahaska, Monroe, and Wapello.

Court for the Ottumwa Division shall be held at Ottumwa.

§ 105. Missouri

Missouri is divided into two judicial districts to be known as the Eastern and Western Districts of Missouri.

Eastern District

(a) The Eastern District comprises three divisions.

(1) The Eastern Division comprises the counties of [Audrain,] Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, [Montgomery,] Phelps, Saint Charles, Saint Francois, Saint Genevieve, Saint Louis, Warren, and Washington, and the city of Saint Louis.

Court for the Eastern Division shall be held at Saint Louis.

(2) The Northern Division comprises the counties of Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby.

Court for the Northern Division shall be held at Hannibal.

(3) The Southeastern Division comprises the counties of Bollinger, Butler, Cape Girardeau, Carter Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne.

Court for the Southeastern Division shall be held at Cape Girardeau.

§ 113. North Carolina

North Carolina is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of North Carolina.

Eastern District

(a) The Eastern District comprises the counties of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico,

Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson *and that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina.*

Court for the Eastern District shall be held at Clinton, Elizabeth City, Fayetteville, New Bern, Raleigh, Washington, Wilmington, and Wilson.

Middle District

(b) The Middle District comprises the counties of Alamance, [Alleghany, Ashe,] Cabarrus, Caswell, Chatham, Davidson, Davie, Durham (*excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina*), Forsythe, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, [Watauga, Wilkes,] and Yadkin.

Court for the Middle District shall be held at Durham, Greensboro, [Rockingham, Salisbury, Wilkesboro,] and Winston-Salem.

Western District

(c) The Western District comprises the counties of Alexander, Alleghany, Anson, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Polk, Rutherford, Swain, Transylvania, Union, Watauga, Wilkes, and Yancey.

Court for the Western District shall be held at Asheville, Bryson City, Charlotte, Shelby, and Statesville.

§ 124. Texas

Texas is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of Texas.

Northern District

(a) The Northern District comprises seven divisions.

(1) The Dallas Division comprises the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall.

Court for the Dallas Division shall be held at Dallas.

(2) The Fort Worth Division comprises the counties of Comanche, Erath, Hood, Jack, Palo Pinto, Parker, Tarrant, and Wise.

Court for the Fort Worth Division shall be held at Fort Worth.

(3) The Abilene Division comprises the counties of Callahan, Eastland, Fisher, Haskell, Howard, Jones, Mitchell, Nolan, Shackelford, Stephens, Stonewall, Taylor, and Throckmorton.

Court for the Abilene Division shall be held at Abilene.

(4) The San Angelo Division comprises the counties of Brown,

Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green.

Court for the San Angelo Division shall be held at San Angelo.

(5) The Amarillo Division comprises the counties of Armstrong, Brisco, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

Court for the Amarillo Division shall be held at Amarillo.

(6) The Wichita Falls Division comprises the counties of Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Knox, Montague, Wichita, Wilbarger, and Young.

Court for the Wichita Falls Division shall be held at Wichita Falls.

(7) The Lubbock Division comprises the counties of Bailey, Borden, Cochran, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Kent, Lamb, Lubbock, Lynn, Motley, Scurry, Terry, and Yoakum.

Court for the Lubbock Division shall be held at Lubbock.

Southern District

(b) The Southern District comprises six divisions.

(1) The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.

Court for the Galveston Division shall be held at Galveston.

(2) The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, [Polk,] San Jacinto, [Trinity,] Walker, Waller, and Wharton.

Court for the Houston Division shall be held at Houston.

(3) The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

Court for the Laredo Division shall be held at Laredo.

(4) The Brownsville Division comprises the counties of Cameron, Hidalgo, Starr, and Willacy.

Court for the Brownsville Division shall be held at Brownsville.

(5) The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

Court for the Victoria Division shall be held at Victoria.

(6) The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio.

Court for the Corpus Christi Division shall be held at Corpus Christi.

Eastern District

(c) The Eastern District comprises [six] seven divisions.

(1) The Tyler Division comprises the counties of Anderson, [Angelina,] Cherokee, Gregg, Henderson, [Houston, Nacogdoches,] Panola, Rains, Rusk, [Shelby,] Smith, Van Zandt, and Wood.

Court for Tyler Division will be held at Tyler.

(2) The Beaumont Division comprises the counties of Hardin, Jasper, Jefferson, Liberty, Newton, [Orange, Sabine, San Augustine, and Tyler.] *and Orange.*

Court for the Beaumont Division is to be held at Beaumont.

(3) The Sherman Division comprises the counties of Collin, Cook, Denton, and Grayson.

Court for the Sherman Division shall be held at Sherman.

(4) The Paris Division comprises the counties of Delta, Fannin, Hopkins, Lamar, and Red River.

Court for the Paris Division shall be held at Paris.

(5) The Marshall Division comprises the counties of Camp, Cass, Harrison, Marion, Morris, and Upshur.

Court for the Marshall Division shall be held at Marshall.

(6) The Texarkana Division comprises the counties of Bowie, Franklin, and Titus.

Court for the Texarkana Division shall be held at Texarkana.

(7) *The Lufkin Division comprises the counties of Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler.*

Court for the Lufkin Division shall be held at Lufkin.

* * * * *

Public Law 96-462
96th Congress

An Act

To amend title 28 to make certain changes in judicial districts and in divisions within judicial districts, and for other purposes.

Oct. 15, 1980
[H.R. 8178]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal District
Court
Organization
Act of 1980.

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal District Court Organization Act of 1980". 28 USC 1 note.

PLACE OF HOLDING COURT

SEC. 2. Section 84(c) of title 28, United States Code, is amended by inserting "and Santa Ana" after "at Los Angeles".

DIVISIONS OF SOUTHERN DISTRICT OF IOWA

SEC. 3. (a) Section 95(b) of title 28, United States Code, is amended—

(1) in paragraph (3) by inserting "Fremont," after "Cass," and by inserting "Page," after "Montgomery," and

(2) in paragraph (4) by striking out "Fremont," and "Page,".

(b) The amendments made by subsection (a) shall not apply to any action commenced before the effective date of such amendments and pending in the United States District Court for the Southern District of Iowa on such date. 28 USC 95 note.

DIVISIONS OF EASTERN DISTRICT OF MISSOURI

SEC. 4. (a) Section 105(a) of title 28, United State Code, is amended—

(1) in paragraph (1) by striking out "Audrain," and "Montgomery," and

(2) in paragraph (2) by inserting "Audrain," after "Adair," and by inserting "Montgomery," after "Monroe,".

(b) The amendments made by subsection (a) shall not apply to any action commenced before the effective date of such amendments and pending in the United States District Court for the Eastern District of Missouri on such date. 28 USC 105 note.

DISTRICTS OF NORTH CAROLINA

SEC. 5. (a) The first sentence of section 113(a) of title 28, United States Code, is amended by adding before the period at the end thereof the following: "and that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina".

(b) Section 113(b) of title 28, United States Code, is amended—

(1) by striking out "Alleghany, Ashe,".

- (2) by inserting "(excluding that portion of Durham County encompassing the Federal Correctional Institution, Butner, North Carolina)" after "Durham",
- (3) by striking out "Watauga, Wilkes," and
- (4) by striking out "Rockingham, Salisbury, Wilkesboro,".
- (c) Section 113(c) of title 28, United States Code, is amended—
- (1) by inserting "Alleghany," after "Alexander",
- (2) by inserting "Ashe," after "Anson," and
- (3) by inserting "Watauga, Wilkes," after "Union,".
- 28 USC 113 note. (d) The amendments made by this section shall not apply to any action commenced before the effective date of such amendments and pending in any judicial district of North Carolina on such date.

DIVISIONS OF EASTERN DISTRICT OF TEXAS

- SEC. 6. (a) Section 124(b)(2) of title 28, United States Code, is amended by striking out "Polk," and "Trinity,".
- (b) Section 124(c) of title 28, United States Code, is amended—
- (1) by striking out "six" and inserting in lieu thereof "seven",
- (2) in paragraph (1)—
- (A) by striking out "Angelina",
- (B) by striking out "Houston, Nacogdoches", and
- (C) by striking out "Shelby",
- (3) in paragraph (2) by striking out "Orange, Sabine, San Augustine, and Tyler." and inserting in lieu thereof "and Orange.", and
- (4) by adding at the end thereof the following new paragraphs:
- "(7) The Lufkin Division comprises the counties of Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity, and Tyler.
- "Court for the Lufkin Division shall be held at Lufkin."

EFFECTIVE DATE

28 USC 84 note.

- SEC. 7. (a) This Act and the amendments made by this Act shall take effect on October 1, 1981.
- (b) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, empaneled, or actually serving in any judicial district on the effective date of this Act.

Approved October 15, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1417 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 30, considered and passed House.
Oct. 1, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 42:
Oct. 15, Presidential statement.

APPENDIX 6.—LEGISLATIVE HISTORY OF PUBLIC LAW 96-452
(SPLITTING THE FIFTH CIRCUIT)96TH CONGRESS
2D SESSION**S. 2830**

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 1980

Referred to the Committee on the Judiciary

AN ACT

To amend title 28 of the United States Code to divide the existing United States Court of Appeals for the Fifth Circuit into two autonomous circuits, one to be composed of the States of Louisiana, Mississippi, and Texas with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the States of Alabama, Florida, and Georgia with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Appellate Court Reorga-*
- 4 *nization Act of 1980".*
- 5 SEC. 2. Section 41 of title 28, United States Code, is
- 6 amended—

1 (1) by striking out "eleven" in the first sentence
2 and inserting in lieu thereof "twelve";

3 (2) by striking out the item relating to the Fifth
4 Circuit and inserting in lieu thereof the following:

"Fifth..... Louisiana, Mississippi, Texas.";

5 and

6 (3) by adding at the end thereof the following:

"Eleventh..... Alabama, Canal Zone, Florida, Georgia.".

7 SEC. 3. Section 44(a) of title 28, United States Code, is
8 amended—

9 (1) by striking out the item relating to the Fifth
10 Circuit and inserting in lieu thereof the following:

"Fifth..... 14";

11 and

12 (2) by adding at the end thereof the following:

"Eleventh..... 12".

13 SEC. 4. Section 48 of title 28, United States Code, is
14 amended—

15 (1) by striking out the item relating to the Fifth
16 Circuit and inserting in lieu thereof the following:

"Fifth..... New Orleans, Fort Worth, Jackson.";

17 and

18 (2) by adding at the end thereof the following:

"Eleventh..... Atlanta, Jacksonville, Miami, Montgomery.".

1 SEC. 5. (a) Each circuit judge in regular active service
2 of the fifth circuit whose official station is located in the
3 States of Alabama, Florida, or Georgia is assigned as a cir-
4 cuit judge of the eleventh circuit with headquarters in At-
5 lanta, Georgia. Each circuit judge in regular active service
6 whose official station is located in the States of Louisiana,
7 Mississippi, or Texas is assigned as a circuit judge of the fifth
8 circuit with headquarters in New Orleans, Louisiana. The se-
9 niority in service of each of the judges so assigned shall run
10 from the date of his original appointment to be a judge of the
11 fifth circuit as it was constituted prior to the effective date of
12 this Act.

13 (b) The United States Court of Appeals for the Eleventh
14 Circuit is authorized to hold terms or sessions of court at
15 New Orleans, Louisiana, until such time as adequate facilities
16 for such court are provided in Atlanta, Georgia.

17 SEC. 6. A circuit judge in senior status of the fifth cir-
18 cuit as such circuit existed on the day prior to the effective
19 date of this Act is assigned for administrative purposes to the
20 circuit in which he resides on the effective date of this Act
21 and, notwithstanding section 294(d) of title 28 of the United
22 States Code, any such judge may be assigned, by the chief
23 judge or the judicial council of either the fifth or eleventh
24 circuit, such judicial duties as such judge is willing to under-
25 take.

1 SEC. 7. The following provisions apply to any case in
2 which on the day before the effective date of this Act, an
3 appeal or other proceeding has been filed with the United
4 States Court of Appeals for the Fifth Circuit as constituted
5 before such date:

6 (1) If any hearing before such court has been held
7 in the case, or if the case has been submitted for deci-
8 sion, then further proceedings in respect of the case
9 shall be had in the same manner and with the same
10 effect as if this Act had not been enacted.

11 (2) If no hearing before such court has been held
12 in the case, and the case has not been submitted for
13 decision, then the appeal or other proceeding, together
14 with the original papers, printed records, and record
15 entries duly certified, shall, by appropriate orders duly
16 entered of record, be transferred to the court to which
17 it would have been transferred had this Act been in
18 effect at the time such appeal was taken or other pro-
19 ceeding commenced, and further proceedings in respect
20 of the case shall be had in the same manner and with
21 the same effect as if the appeal or other proceeding
22 had been originally filed in such court.

23 (3) A petition for rehearing or a petition for re-
24 hearing en banc in a matter decided before the effec-
25 tive date of this Act, or in a matter submitted before

1 the effective date of this Act and decided on or after
2 the effective date of this Act, shall be treated in the
3 same manner and with the same effect as if this Act
4 had not been enacted. If a petition for rehearing en
5 banc is granted, the matter shall be reheard by a court
6 comprised in the same manner as if this Act had not
7 been enacted.

8 (4) A matter that has been decided before the ef-
9 fective date of this Act that is remanded by the Su-
10 preme Court after the effective date of this Act shall
11 be treated in the same manner and with the same
12 effect as if this Act had not been enacted.

13 SEC. 8. The United States Court of Appeals for the
14 Fifth Circuit as it is constituted before the effective date of
15 this Act may take any administrative action to advance the
16 purposes of this Act.

17 SEC. 9. This Act shall become effective on October 1,
18 1980.

Passed the Senate June 18 (legislative day, June 12),
1980.

Attest:

J. S. KIMMITT,
Secretary.

Union Calendar No. 846

96TH CONGRESS
2D SESSION**H. R. 7665**

[Report No. 96-1390]

To amend title 28, United States Code, to divide the fifth judicial circuit of the United States into two circuits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1980

Mr. RODINO (for himself, Mr. BROOKS, Mr. KASTENMEIER, Mr. EDWARDS of California, Mrs. BOGGS, Mr. BOWEN, Mr. LONG of Louisiana, Mr. MICA, and Mr. MOORE) (by request) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 25, 1980

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see bill as introduced on June 25, 1980]

A BILL

To amend title 28, United States Code, to divide the fifth judicial circuit of the United States into two circuits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 *That this Act may be cited as the "Fifth Circuit Court of*
2 *Appeals Reorganization Act of 1980".*

3 *SEC. 2. Section 41 of title 28, United States Code, is*
4 *amended—*

5 *(1) in the text before the table, by striking out*
6 *"eleven" and inserting in lieu thereof "twelve";*

7 *(2) in the table, by striking out the item relating*
8 *to the fifth circuit and inserting in lieu thereof the fol-*
9 *lowing new item:*

"Fifth..... District of the Canal Zone, Louisiana,
Mississippi, Texas."

10 *and*

11 *(3) at the end of the table, by adding the following*
12 *new item:*

"Eleventh..... Alabama, Florida, Georgia."

13 *SEC. 3. The table in section 44(a) of title 28, United*
14 *States Code, is amended—*

15 *(1) by striking out the item relating to the fifth*
16 *circuit and inserting in lieu thereof the following new*
17 *item:*

"Fifth..... 14";

18 *and*

19 *(2) by adding at the end thereof the following new*
20 *item:*

"Eleventh..... 12".

1 *SEC. 4. The table in section 48 of title 28, United*
 2 *States Code, is amended—*

3 *(1) by striking out the item relating to the fifth*
 4 *circuit and inserting in lieu thereof the following new*
 5 *item:*

"Fifth..... New Orleans, Fort Worth, Jackson.";

6 *and*

7 *(2) by adding at the end thereof the following new*
 8 *item:*

"Eleventh..... Atlanta, Jacksonville, Montgomery.".

9 *SEC. 5. Each circuit judge in regular active service of*
 10 *the former fifth circuit whose official station on the day*
 11 *before the effective date of this Act—*

12 *(1) is in Louisiana, Mississippi, or Texas is as-*
 13 *signed as a circuit judge of the new fifth circuit; and*

14 *(2) is in Alabama, Florida, or Georgia is as-*
 15 *signed as a circuit judge of the eleventh circuit.*

16 *SEC. 6. Each judge who is a senior judge of the former*
 17 *fifth circuit on the day before the effective date of this Act*
 18 *may elect to be assigned to the new fifth circuit or to the*
 19 *eleventh circuit and shall notify the Director of the Adminis-*
 20 *trative Office of the United States Courts of such election.*

21 *SEC. 7. The seniority of each judge—*

22 *(1) who is assigned under section 5 of this Act; or*

1 *(2) who elects to be assigned under section 6 of*
 2 *this Act;*
 3 *shall run from the date of commission of such judge as a*
 4 *judge of the former fifth circuit.*

5 *SEC. 8. The eleventh circuit is authorized to hold terms*
 6 *or sessions of court at New Orleans, Louisiana, until such*
 7 *time as adequate facilities for such court are provided in*
 8 *Atlanta, Georgia.*

9 *SEC. 9. The provisions of the following paragraphs of*
 10 *this section apply to any case in which, on the day before the*
 11 *effective date of this Act, an appeal or other proceeding has*
 12 *been filed with the former fifth circuit:*

13 *(1) If the matter has been submitted for decision,*
 14 *further proceedings in respect of the matter shall be*
 15 *had in the same manner and with the same effect as if*
 16 *this Act had not been enacted.*

17 *(2) If the matter has not been submitted for deci-*
 18 *sion, the appeal or proceeding, together with the origi-*
 19 *nal papers, printed records, and record entries duly*
 20 *certified, shall, by appropriate orders, be transferred to*
 21 *the court to which it would have gone had this Act*
 22 *been in full force and effect at the time such appeal*
 23 *was taken or other proceeding commenced, and further*
 24 *proceedings in respect of the case shall be had in the*

1 same manner and with the same effect as if the appeal
2 or other proceeding had been filed in such court.

3 (3) A petition for rehearing or a petition for re-
4 hearing en banc in a matter decided before the effective
5 date of this Act, or submitted before the effective date
6 of this Act and decided on or after the effective date as
7 provided in paragraph (1) of this section, shall be
8 treated in the same manner and with the same effect as
9 though this Act had not been enacted. If a petition for
10 rehearing en banc is granted, the matter shall be re-
11 heard by a court comprised as though this Act had not
12 been enacted.

13 SEC. 10. As used in sections 5, 6, 7, 8, and 9 of this
14 Act, the term—

15 (1) "former fifth circuit" means the fifth judicial
16 circuit of the United States as in existence on the day
17 before the effective date of this Act;

18 (2) the term "new fifth circuit" means the fifth
19 judicial circuit of the United States established by the
20 amendment made by section 2(2) of this Act; and

21 (3) the term "eleventh circuit" means the eleventh
22 judicial circuit of the United States established by the
23 amendment made by section 2(3) of this Act.

24 SEC. 11. The court of appeals for the fifth circuit as
25 constituted on the day before the effective date of this Act

1 may take such administrative action as may be required to
2 carry out this Act. Such court shall cease to exist for admin-
3 istrative purposes on July 1, 1984.

4 SEC. 12. This Act and the amendments made by this
5 Act shall take effect on October 1, 1981.

FIFTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT OF 1980

SEPTEMBER 25, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 7665]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7665) to amend title 28, United States Code, to divide the fifth judicial circuit of the United States into two circuits, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to divide the current Fifth Judicial Circuit into two new and autonomous circuits. The new Fifth will comprise the States of Louisiana, Mississippi and Texas, as well as the District of the Canal Zone. The new Eleventh will comprise the States of Alabama, Florida and Georgia.

The goal of the legislation is to meet societal change and growing caseloads in the six States presently comprising the Fifth Circuit. It accomplishes this by providing the residents, attorneys and litigants who reside or litigate within those States with a new Federal judicial structure which is capable of meeting the clear mandates of our judicial system—the rendering of consistent, expeditious, fair and inexpensive justice. The two new circuits will preserve and promote the vigor, integrity and independence of the illustrious parent court.

BACKGROUND

Congress created the United States Courts of Appeals in 1891. At that time nine circuits were created, numbered 1 through 9.¹ Subsequently, in 1922 the Court of Appeals for the District of Columbia was first recognized as a circuit court of appeals.² And in 1929, Congress split the then existing Eighth Judicial Circuit and created a Tenth Judicial Circuit.³

In 1891, as one of the original circuits, the Fifth Circuit was comprised and remains so, of the six states of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida. From time to time Congress has considered the wisdom of splitting up this large circuit to better meet the needs of the citizens of these six large and growing states. Up to this time, Congress has resisted altering the original makeup of the circuit; however, the Committee on the Judiciary now believes that the time has come to concur in the recommendation of the Judicial Council of Fifth Circuit as stated in a Petition to Congress unanimously agreed to on May 5, 1980:

PETITION TO THE CONGRESS

The undersigned judges in regular active service of the United States Court of Appeals for the Fifth Circuit respectfully petition the Congress of the United States to enact legislation dividing the presently existing Fifth Circuit into two completely autonomous circuits, one to be composed of the states of Louisiana, Mississippi and Texas with headquarters in New Orleans, Louisiana, to be known as the Fifth Circuit, and the other to be composed of the states of Alabama, Florida and Georgia with headquarters in Atlanta, Georgia, to be known as the Eleventh Circuit;

Under 28 U.S.C. section 332, the Judicial Council is composed of all circuit judges of the Circuit in regular active service, and under this section it is responsible for "the effective and expeditious administration of the business of the courts within its circuit." Necessarily the Council is intimately familiar with all affairs of the Court of Appeals.

The Court of Appeals for the Fifth Circuit is currently authorized twenty-six active judges. In addition, it has eleven senior judges who are active in the work of the Court. This makes the Fifth Circuit the largest appellate court in the history of the Republic. The size of the Court itself now creates problems which make unduly burdensome, and in the opinion of many of the witnesses before the Subcommittee on Courts, Civil Liberties and the Administration of Justice seriously impair, the effective administration of justice within the Circuit.

Geographically, the Fifth Circuit, composed of six states, is huge in size extending from El Paso, Texas, to Miami, Florida. The total population will likely reach 40,000,000 in the current 1980 census. Prior to the passage of the recent Omnibus Judgeship Act, the Court had fifteen judges which number was increased to an authorized twenty-six judges, almost double the previous number. This number of judges,

¹ See Act of March 3, 1891, Ch. 517 (51st Cong., 2d Sess.), 26 Stat. 826.

² Act of Aug. 15, 1971, ch. 64, 42 Stat. 162.

³ Act of Feb. 28, 1929, ch. 363, section 1, 45 Stat. 2346.

as the Congress determined, was fully justified by the tremendous increase in the amount and nature of the litigation filed annually with the Court.⁴

The numerical size of the Court has the possibility of diminishing the quality of justice. Citizens residing in the states of the Fifth Circuit, and especially litigants and lawyers, are entitled to know with a maximum degree of reliability what the law of the Circuit is.

Accordingly, there must be uniformity in the application of the law by the Court, especially since it does not generally sit as a body en banc but only in panels of three judges. As the Court now approaches 2,250 opinions per year, it becomes even more difficult to preserve uniformity in the law of the circuit.⁵ The possibility of intra-circuit conflicts is extremely great and occurs with regularity. The only sanction for such conflicts is to resort to en banc consideration. With a twenty-six judge court this is a most cumbersome, time consuming and difficult means of resolving lawsuits. Increasingly, the members of the bar are petitioning the Court for en banc consideration of panel decisions.⁶

The size of the Court of Appeals for the Fifth Circuit is inextricably involved with its en banc function. The Court performs its highest duty when it sits en banc in cases of exceptional importance, involving decisional conflicts between its panels or significant issues of national policy. It is virtually impossible to carry out the en banc function with twenty-five members.⁷ Inevitably, as the size of the Court grew the necessity for en banc consideration grew too.

Likewise, the judges of the Court, who are charged with the duty of preserving the rule of law in the Circuit, are required to study and absorb all of the production of all of the judges, that is, their written opinions for the Court.⁸ This in itself is a tremendous task. Additionally, each member of the Court must examine all of the petitions for rehearing en banc, a chore of real magnitude, but a vitally necessary one.

The impact of this great volume of work on the district judges is also serious. The more than one hundred twenty-five senior and active district judges of the Fifth Circuit are required to keep abreast of the law of the Circuit. It is now virtually impossible for a district judge to read and consider the opinions of the Court while at the same time, keeping the functions of the district court current.

Thus, the time and efforts of the Fifth Circuit judges are used to the utmost. An ordinary working week is impossible since hours must also be spent by the judges at home, on the weekends and holidays merely to keep abreast of what is going on in the circuit Court. While the quality of the decisions of the judges is very high, it is inevitable

⁴ This report relies heavily on the excellent statement of Judge Frank M. Johnson, Jr., before the Subcommittee on Courts Civil Liberties and the Administration of Justice, 96th Cong., 2d Sess. (1980) [hereinafter referred to as House hearings].

⁵ For the twelve month period which ended June 30, 1980, the Court of Appeals for the Fifth Circuit filed 2,243 written opinions. The balance of the cases were disposed of on the Summary Calendar—with many of these involving intricate legal questions but not necessitating extensive treatment by written opinions.

⁶ For further discussion of the need to preserve uniformity and consistency, see statement of Griffin B. Bell, House Hearings *supra* note 3.

⁷ Almost 12 percent of the cases decided by panels in 1979 were reviewed by the entire Court to determine if en banc consideration was to be had. At the present time, the en banc caseload is the largest ever pending before a federal appellate court.

⁸ For further discussion of the difficulty of holding en banc proceedings before a 25-judge court, see statement of James P. Coleman, House Hearings, *supra* note 3.

⁹ This will approach approximately 10,000 pages this year.

that the quality will eventually diminish if no relief is granted by the Congress. However, it must be emphasized that the compelling necessity for dividing the Fifth Circuit into two courts is found, not for the benefit or convenience of the judges, but for the benefit of the citizens, attorneys, and litigants within the Circuit. In addition, the citizen taxpayer will reap the following benefits.

First, there are obvious savings of unnecessary expense that will come from smaller geographical areas, and shortened lines of communications and transportation. The federal treasury will be saved the expense of transporting judges and their staffs all over the Circuit from West Texas to South Florida. The cost of appeals to litigants now includes the time and expenses of their counsel traveling far distances for the purpose of presenting oral arguments. As a matter of record, practically every state bar association within the Circuit has adopted a resolution recommending a division of the Circuit.

Second, there will be a savings from eliminating the number of copies of everything that is done. At the present time the writing of one letter or the sending of a document by a judge must, in many instances, necessitate copies to twenty-four other judges.

Third, savings will occur from eliminating duplication on the en banc function. A court that is now twenty-five judges, each with three law clerks, involves over 100 highly paid people, all of whom are generally involved to some extent in monitoring the law of the Circuit; and the judges in requesting and voting on cases to go en banc. To cut the load in two halves would cut the duplication in half.

Further, it is the view of the committee that as now constituted the Court can be divided into two three-State circuits without any significant philosophical consequences within either of the proposed circuits.

The Congress, if it acts favorably on the proposal of the Court, will not be creating two small circuit courts. After division, each of the circuit's filings, as well as the number of active judges, will be as great as any circuit in the country other than the Ninth.⁹

The following is a list of organizations that have commented favorably on H.R. 7665 (Splitting the 5th Circuit):

1. U.S. Department of Justice.
2. American Bar Association.
3. Commission on Revision of the Federal Court Appellate System.
4. Judicial Council of the Fifth Circuit.
5. Federal Bar Association.
6. National Association of Attorneys General.
7. Attorneys General of the six States within the Fifth Circuit.

⁹ The cases filed in Texas, Louisiana, and Mississippi (the proposed Fifth Circuit) for the 12-month period which ended June 30, 1980, were 2,301. The number of judges will be 14.

The cases filed in Alabama, Georgia and Florida (the proposed Eleventh Circuit) for the 12-month period which ended June 30, 1980, were 1,919. The number of judges will be 12.

It should be noted that in the last 2 years and since the Omnibus Judgeship Act was passed, the Court has had a 21.8-percent increase in filings. The increase in filings for just the last statistical year (which ended June 30, 1980) was 11 percent.

The impact on the Circuit Court's workload from 35 additional district judges must be considered. The known and anticipated increase of 40 new appeals per each new district judgeship is based upon the national as well as the Fifth Circuit average of appeals per district judge. During the judge's first year the experience-based estimate is 10 new appeals per new judgeship, 20 during the second year and 40 during the third year. This means that by 1982 filings of appeals with the Court will increase by 36.8 percent over 1979 filings: 1979, 4,113; 1980, 4,380; 1981, 4,680; and 1982, 5,380.

8. Delegates from the State of Georgia to the Fifth Circuit Judicial Conference, 1980.
9. Delegates from the State of Alabama to the Fifth Circuit Judicial Conference, 1980.
10. Delegates from the State of Texas to the Fifth Circuit Judicial Conference, 1980.
11. Delegates from the State of Florida to the Fifth Circuit Judicial Conference, 1980.
12. Delegates from the State of Louisiana to the Fifth Circuit Judicial Conference, 1980.
13. Delegates from the State of Mississippi to the Fifth Circuit Judicial Conference, 1980.
14. United States Magistrates of the Fifth Circuit.
15. District Judges' Association of the Fifth Circuit (consisting of 110 district judges).
16. Bankruptcy Judges of the Fifth Circuit.
17. Mississippi Bar Association.
18. Florida Bar Board of Governors.
19. State Bar of Georgia.
20. Houston, Texas, Bar Association.
21. Mobile, Alabama, Bar Association.
22. New York Times.
23. Alabama Black Lawyers Association.

Following is a list of organizations which have withdrawn previous opposition to H.R. 7665:

1. American Civil Liberties Union
2. Lawyers Committee for Civil Rights Under Law
3. Alabama Black Lawyers Association
4. NAACP Legal Defense Fund¹⁰

One of the principal bases of opposition to division of the circuit when it was first proposed was fear on the part of civil rights supporters that it would perpetuate the judiciary in the South as an all-white institution.¹¹ Given the historical and political context in which the proposal arose, the committee cannot say that this fear was groundless. However, the affirmative action guidelines for judicial selections issued pursuant to Congressional directive and appointments made in the Fifth Circuit, both on the appellate and district court levels, indicate that any problem of this nature that may have existed is rapidly disappearing. Still, testimony before the subcommittee on Courts, Civil Liberties and the Administration of Justice indicates that some lingering doubts on this still remain. The committee took this into consideration in establishing the effective date of this legislation. It is the view of the committee that continued adherence to the affirmative action guidelines by the President, whoever he may be, in appointing, and the Senate, in confirming judicial nominations, will completely eliminate this matter from future consideration.

Finally, more than 9 years ago on March 16, 1971, the Judicial Conference of the United States approved for transmittal to Congress, to establish a commission to study the division in the United States

¹⁰ The committee also has been contacted or has received letters of support from the following individuals: Mrs. Coretta King, Mayor Maynard Jackson (Atlanta, Ga.), Mayor Richard Arrington (Birmingham, Ala.), Mayor Johnny Ford (Tuskegee, Ala.), Joe Reed, John Doar, Esq., Mayor Kenneth Gibson (Newark, N.J.), and Carl Stokes, Esq.

¹¹ See statement of Althea T. L. Simmons, House Hearings, *supra* note 3.

of the several judicial circuits. Congress passed the bill pursuant to which a distinguished group was appointed to the new Commission on Revision of the Federal Court Appellate System. The Commission was composed of sixteen persons, four appointed by the President, four members of the Senate appointed by the President pro tempore of the Senate, four members of the House of Representatives appointed by the Speaker, and four members appointed by the Chief Justice. After numerous public hearings the Commission made its written report to Congress on December 18, 1973. The Commission found, among other things, that the case for realignment of the geographical boundaries of the Fifth Circuit is clear and compelling. Thus its prime recommendation as to the Fifth Circuit was that it be divided into two circuits, one to be composed of the states of Texas, Louisiana, and Mississippi and the other of Alabama, Georgia, and Florida. The Commission also pointed out that serious problems of administration and of internal operation inevitably result with so large a court, particularly when the judges are as widely dispersed geographically as they are in the Fifth Circuit. The Commission's recommendation that the Fifth Circuit be divided into two separate and autonomous circuits was eminently correct and that division is now long overdue.¹² The unanimous view of this Committee is to the same effect.

STATEMENT

On May 5, 1980, the active judges of the Fifth Circuit Court of Appeals unanimously joined in a petition to the Congress urging that the currently constituted Fifth Circuit be immediately split into two completely autonomous units.

On June 18, 1980, the United States Senate passed S. 2830 (companion legislation) by voice vote. By unanimous consent, after introduction the bill was held at the desk and never referred to Committee.

On August 22, 1980, the Subcommittee on Courts, Civil Liberties and the Administration of Justice held one day of hearings on the subject of Federal court organization, including the proposed split of the Fifth Circuit. Testimony was received from the Honorable Griffin B. Bell, for the American Bar Association; Chief Judge James P. Coleman, and Judges Robert A. Ainsworth, Jr., and Frank M. Johnson, Jr., of the Fifth Circuit Court of Appeals; Ms. Althea T. L. Simmons, for the NAACP; and Peter Rient and Joan Barton, for the United States Department of Justice.

On September 3, 1980, the subcommittee, a quorum of Members being present, by voice vote ordered reported the bill to the full Committee.

On September 23, 1980, the committee, a quorum of Members again being present, by voice vote ordered the bill favorably reported.

SECTIONAL ANALYSIS

Section 1 of the bill provides that the act may be referred to as the "Appellate Court Reorganization Act of 1980".

Section 2 splits the existing Fifth Judicial Circuit into two new

¹² See statement of Robert A. Ainsworth, Jr., *Id.*; Final Report of the Commission on Revision of the Federal Court Appellate System (1975).

and autonomous circuits. It accomplishes this objective by adding to the list of circuits a new reference to the Eleventh Circuit, which will consist of the States of Alabama, Florida, and Georgia. Section 2 further deletes reference to these three States as falling within the Fifth Circuit, by providing that the new Fifth Circuit comprises the States of Louisiana, Mississippi, and Texas (as well as the District of the Canal Zone). Finally, in the reference to the number of judicial circuits existing within the United States, section 2 states that there will be 12, rather than 11, circuits.

Section 3 of the proposed legislation specifies the exact number of active judges who will sit in each of the two new circuits. It provides that 14 judges will sit in the new Fifth Circuit, and that 12 will sit in the Eleventh Circuit. It should be noted that section 3 merely allocates the current active judgeships to the States in which the active judges now reside. It also is noteworthy that no new judgeships are created.

Section 4: This section, by amending section 48 of title 28, refers to the places where terms or sessions of court should be held on an annual basis. Specifically, section 4 provides that annual sessions for the new Fifth Circuit shall be held in New Orleans, Fort Worth and Jackson. It further provides that sessions for the Eleventh Circuit shall be held at Atlanta, Jacksonville and Montgomery.

Current law (28 U.S.C. § 48) provides that annual sessions may also be held at such other places within a circuit as may be designated by rule of court. Thus, this section should not be read as precluding the holding of court at any other designated place within a respective circuit.

Last, of the six cities listed in this section, five are presently designated statutorily as official places of holding sessions of circuit court. Only Jackson, Miss., is not so designated. It was the view of the subcommittee that Jackson should be added so that each State affected by the circuit split would have one statutorily designated city.

Section 5 of the proposed legislation sets forth a scheme which will partition or assign the circuit judges in regular active service to one of the new circuits. If an active circuit judge's official station on the day before the effective date of the act is in Louisiana, Mississippi or Texas, then the judge will be assigned as an active circuit judge of the new Fifth Circuit. If an active circuit judge's official station is in Alabama, Florida or Georgia, then he or she is to be assigned to the new Eleventh Circuit.

Section 6 grants senior judges with the right to elect—on the day prior to the effective date of the Act—to which circuit he or she would like to be assigned. The judge's election must be sent to the Director of the Administrative Office of the United States Courts.

The reason for this section is primarily to allow senior judges who were appointed to sit on the old Fifth Circuit and who over the years have faithfully served on that court, to continue to serve on a court still designated as the Fifth Circuit if they so desire. It is the view of the committee that it is appropriate to grant the eleven senior circuit judges presently sitting in the Fifth Circuit with the opportunity to make the election as to which of these two circuits they wish to be assigned.

Section 7 is a conforming amendment that preserves the existing seniority of each judge in regular active service and each senior judge.

This section clarifies that the seniority of these judges shall run from the date of commission of such judge as a judge of the former Fifth Circuit.

Section 8 is a transition provision that specifies that the Eleventh Circuit can hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia. The latter has a Federal Building, that has been designated as the U.S. Court of Appeals Courthouse in Atlanta, Georgia, and it is the view of the Committee that not much time would elapse before the Eleventh Circuit would be prepared to hold regular sessions in Atlanta.

Section 9 creates an implementation mechanism with which judges, circuit executives, clerks, litigants, and lawyers can determine in which circuit pending and future cases will be adjudicated. Basically, on and after the effective date of this Act (Oct 1, 1981) all cases will be filed in the circuit in which they arise. The following provisions apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former Fifth Circuit.

First, if the matter has been submitted for decision, then further proceedings concerning the matter shall transpire in the same manner and with the same effect as if this Act had not been enacted. In other words, if oral argument has been heard or if the case has otherwise been submitted to a panel for decision, then it stays in the old Fifth Circuit until final resolution has occurred.

Second, if the matter has been filed but has not been submitted for decision, then the appeal or proceeding, together with all relevant papers (including original papers, printed records, and record entries duly certified), shall, by appropriate court orders, be transferred to the court to which it would have gone had this Act been in effect at the time such appeal was taken or other proceeding commenced. Further proceedings concerning the case shall occur in the same manner and with the same effect as if the appeal or other proceeding had been filed in said court. Stated a bit differently, any case pending in the old Fifth Circuit, but not yet submitted to a panel for decision, shall be transferred to the new Eleventh Circuit if it would have gone there had the proposed legislation been in full force when such appeal or proceeding was commenced. This provision guarantees that the new circuit will immediately start receiving cases.

Third, petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of the proposed legislation, or submitted before the effective date of the proposed legislation, and decided on or after the effective date as provided in paragraph (1), shall be treated in the same manner as though the proposed legislation had not been enacted. If a petition for rehearing en banc is granted the matter shall be reheard by a court comprised as though this Act had not been enacted. This subsection provides that all rights relating to petitions for rehearing in matters decided before, or submitted before the effective date of the proposed legislation shall be preserved.

Section 10: This section provides three definitions for terms used in the proposed legislation. The phrase "former fifth circuit" means the

Fifth Judicial Circuit of the United States as in existence prior to the effective date of the Act. The "new fifth circuit" is used to represent the Fifth Circuit created by the proposed legislation. The term "eleventh Circuit" means the newly created Eleventh Judicial Circuit of the United States.

Section 11 of the proposed legislation also is a transition feature. When read with section 9, it grants the former Fifth Circuit with broad administrative discretion to resolve—for a period after the effective date—procedural developments unforeseen by section 9.

Section 12 provides that the Act and amendments made by this Act shall take effect on October 1, 1981.

OVERSIGHT FINDINGS

Oversight of the Federal judicial system, including its structure and organization, is the responsibility of the Committee on the Judiciary. During the 95th and the 96th Congresses, the Committee, acting through two of its subcommittees, held extensive hearings on proposals to split the Fifth Circuit into two autonomous units.

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee issues the following findings:

It is the view of the Committee that the circuit split will better serve the residents, attorneys and litigants who reside or litigate within the six States involved by creating a more functional and manageable judicial structure. The two new circuits will preserve and promote the vigor, integrity and independence of the parent court.

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority on increased tax expenditures for the Federal judiciary.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the committee agrees with the cost estimate of the Congressional Budget Office.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 7665 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 24, 1980.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7665, the Fifth Circuit Court of Appeals Reorganization Act of 1980, as ordered reported by the House Committee on the Judiciary, September 23, 1980.

The bill creates a new Eleventh Circuit Court of Appeals by dividing the present Fifth Circuit into two circuits. The Eleventh Circuit will comprise the States of Alabama, Florida, and Georgia, and will hold sessions in Atlanta, Ga. This bill is intended to improve the administration and effectiveness of the court of appeals of the current Fifth Circuit region. The bill becomes effective October 1, 1980.

Based on information from the Administrative Office of the U.S. Courts, CBO estimates that implementation of this bill will require an additional five positions and will cost approximately \$223,000 in fiscal year 1981, \$232,000 in fiscal year 1982, \$238,000 in fiscal year 1983, \$242,000 in fiscal year 1984, and \$247,000 in fiscal year 1985.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

COMMITTEE VOTE

H.R. 7665 was reported by voice vote, a quorum of Members being present.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

PART I—ORGANIZATION OF COURTS

CHAPTER 3—COURTS OF APPEALS

§ 41. Number and composition of circuits

The [eleven] twelve judicial circuits of the United States are constituted as follows:

Circuits	Composition
District of Columbia.	District of Columbia.
First -----	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second -----	Connecticut, New York, Vermont.
Third -----	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth -----	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
[Fifth -----	Alabama, Canal Zone, Florida, Georgia, Louisiana, Mississippi, Texas.]
Fifth -----	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth -----	Kentucky, Michigan, Ohio, Tennessee.
Seventh -----	Illinois, Indiana, Wisconsin.
Eighth -----	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth -----	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth -----	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh -----	Alabama, Florida, Georgia.

* * * * *

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of judges
District of Columbia -----	11
First -----	4
Second -----	11
Third -----	10
Fourth -----	10
Fifth -----	[26]14
Sixth -----	11
Seventh -----	9
Eighth -----	9
Ninth -----	23
Tenth -----	8
Eleventh -----	12

* * * * *

§ 48. Terms of court

Terms or sessions of courts of appeals shall be held annually at the places listed below, and at such other places within the respective circuits as may be designated by rule of court. Each court of appeals may hold special terms at any place within its circuit.

Circuits	Places
District of Columbia.	Washington.
First -----	Boston.
Second -----	New York.
Third -----	Philadelphia.
Fourth -----	Richmond, Asheville.
[Fifth -----	New Orleans, Atlanta, Fort Worth, Jacksonville, Montgomery.]
Fifth -----	New Orleans, Fort Worth, Jackson.
Sixth -----	Cincinnati.
Seventh -----	Chicago.
Eighth -----	St. Louis, Kansas City, Omaha, St. Paul.
Ninth -----	San Francisco, Los Angeles, Portland, Seattle.
Tenth -----	Denver, Wichita, Oklahoma City.
Eleventh -----	Atlanta, Jacksonville, Montgomery.

Any court of appeals may, with the consent of the Judicial Conference of the United States, pretermi any regular term or session of the court at any place for insufficient business or other good cause.

* * * * *

PUBLIC LAW 96-452—OCT. 14, 1980

FIFTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT OF 1980

94 STAT. 1994

PUBLIC LAW 96-452—OCT. 14, 1980

Public Law 96-452 96th Congress

An Act

Oct. 14, 1980
[H.R. 7665]

To amend title 28, United States Code, to divide the fifth judicial circuit of the United States into two circuits, and for other purposes.

Fifth Circuit
Court
of Appeals Reor-
ganization Act of
1980.
28 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fifth Circuit Court of Appeals Reorganization Act of 1980".

SEC. 2. Section 41 of title 28, United States Code, is amended—
(1) in the text before the table, by striking out "eleven" and inserting in lieu thereof "twelve";

(2) in the table, by striking out the item relating to the fifth circuit and inserting in lieu thereof the following new item:

"Fifth..... District of the Canal Zone, Louisiana, Mississippi, Texas.";

and

(3) at the end of the table, by adding the following new item:

"Eleventh..... Alabama, Florida, Georgia."

SEC. 3. The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the fifth circuit and inserting in lieu thereof the following new item:

"Fifth..... 14";

and

(2) by adding at the end thereof the following new item:

"Eleventh..... 12".

SEC. 4. The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the fifth circuit and inserting in lieu thereof the following new item:

"Fifth..... New Orleans, Fort Worth, Jackson.";

and

(2) by adding at the end thereof the following new item:

"Eleventh..... Atlanta, Jacksonville, Montgomery."

SEC. 5. Each circuit judge in regular active service of the former fifth circuit whose official station on the day before the effective date of this Act—

(1) is in Louisiana, Mississippi, or Texas is assigned as a circuit judge of the new fifth circuit; and

(2) is in Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit.

SEC. 6. Each judge who is a senior judge of the former fifth circuit on the day before the effective date of this Act may elect to be assigned to the new fifth circuit or to the eleventh circuit and shall

Assignments.
28 USC 41 note.

Senior judges,
assignments
election.
28 USC 41 note.

notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 7. The seniority of each judge—

(1) who is assigned under section 5 of this Act; or
(2) who elects to be assigned under section 6 of this Act; shall run from the date of commission of such judge as a judge of the former fifth circuit.

SEC. 8. The eleventh circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia.

SEC. 9. The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former fifth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this Act had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act, or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted.

SEC. 10. As used in sections 5, 6, 7, 8, and 9 of this Act, the term—

(1) "former fifth circuit" means the fifth judicial circuit of the United States as in existence on the day before the effective date of this Act;

(2) the term "new fifth circuit" means the fifth judicial circuit of the United States established by the amendment made by section 2(2) of this Act; and

(3) the term "eleventh circuit" means the eleventh judicial circuit of the United States established by the amendment made by section 2(3) of this Act.

Seniority.
28 USC 41 note.

Eleventh circuit,
temporary site.
28 USC 41 note.

Cases, applicable
provisions.
28 USC 41 note.

Definitions.
28 USC 41 note.

28 USC 41 note.

Termination.

Effective date.
28 USC 41 note.

SEC. 11. The court of appeals for the fifth circuit as constituted on the day before the effective date of this Act may take such administrative action as may be required to carry out this Act. Such court shall cease to exist for administrative purposes on July 1, 1984.

SEC. 12. This Act and the amendments made by this Act shall take effect on October 1, 1981.

Approved October 14, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1390 (Comm. on the Judiciary),
CONGRESSIONAL RECORD, Vol. 126 (1980):

Oct. 1, considered and passed House and Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 42:
Oct. 15, Presidential statement.

CONTINUED

5 OF 6

APPENDIX 7.—FURTHER MATERIALS RELATING TO THE NORTHERN DISTRICT OF OHIO—PROVIDED BY JAMES MACKLIN

CIVIL FILINGS 1980
JULY 1, 1979 THROUGH JUNE 30, 1980
DISTRICT OF OHIO, NORTHERN

FILLED ORIGINALS RELATING TO
NORTHERN DISTRICT OF OHIO
1 Provide

JUDGE NAME	TOTAL CIVIL CASES	NARA & SOCIAL SECURITY	COMMERCE	PRISONER PETS	FORFEITURE PENALTY TAX SUITS	REAL PROP	LABOR SUITS	CONTRACTS	TORTS	COPYRIGHT PAT & TRADEMARK	CIVIL RIGHTS	ANTITRUST	OTHER
KALBFLEISCH	1	-	-	-	-	-	-	-	-	-	1	-	-
BATTISTI	173	25	-	13	6	13	22	34	28	3	19	-	10
GREEN	87	14	2	6	6	9	3	10	17	-	14	-	6
YOUNG	399	43	3	42	17	35	28	96	74	5	39	4	13
THOMAS	334	38	1	1	19	24	40	58	62	6	49	2	24
LAMBROS	374	34	1	24	17	38	46	57	69	9	52	9	18
WALINSKI	388	52	2	42	9	27	28	95	73	5	38	3	14
KRUPANSKY	376	43	2	25	18	40	51	52	69	8	52	2	14
CONTIE	397	47	2	26	22	39	45	60	74	9	59	4	10
MANOS	328	37	1	20	20	24	44	46	54	8	49	2	23
WHITE	50	6	-	1	-	13	6	7	7	1	5	-	4
ALDRICH	64	6	-	2	-	19	8	7	9	-	11	-	2
OTHERS & UNASSIGNED	47	4	-	4	4	4	9	8	8	-	4	-	4

448

CIVIL FILINGS 1979
JULY 1, 1978 THROUGH JUNE 30, 1979
DISTRICT OF OHIO, NORTHERN

JUDGE NAME	TOTAL CIVIL CASES	NARA & SOCIAL SECURITY	COMMERCE	PRISONER PETS	FORFEITURE PENALTY TAX SUITS	REAL PROP	LABOR SUITS	CONTRACTS	TORTS	COPYRIGHT PAT & TRADEMARK	CIVIL RIGHTS	ANTITRUST	OTHER
BATTISTI	188	18	-	13	11	26	16	32	30	6	28	-	8
GREEN	150	13	-	9	5	18	5	31	32	-	27	-	10
YOUNG	373	41	2	46	11	57	32	38	71	5	58	3	9
THOMAS	395	42	1	23	15	48	36	71	62	7	61	4	25
LAMBROS	375	46	1	16	23	55	41	60	50	7	54	5	17
WALINSKI	371	41	-	63	14	46	29	35	83	5	37	4	14
KRUPANSKY	375	38	2	17	17	55	35	65	54	3	63	3	23
CONTIE	469	49	6	27	26	47	49	76	79	10	67	2	31
MANOS	368	28	1	25	25	48	37	67	51	1	55	1	29
OTHERS & UNASSIGNED	13	3	-	1	-	-	-	-	5	-	2	-	2

449

CIVIL FILINGS 1978
JULY 1, 1977 THROUGH JUNE 30, 1978

DISTRICT OF OHIO, NORTHERN

JUDGE NAME	TOTAL CIVIL CASES	NARA & SOCIAL SECURITY	COMMERCE	PRISONER PETS	FORFEITURE PENALTY TAX SUITS	REAL PROP	LABOR SUITS	CONTRACTS	TORTS	COPYRIGHT PAT & TRADEMARK	CIVIL RIGHTS	ANTITRUST	OTHER
BATTISTI	161	18	2	15	5	12	14	21	32	5	28	2	7
GREEN	141	24	-	9	3	17	1	19	30	-	31	-	7
YOUNG	342	31	1	41	15	52	45	25	67	2	46	2	15
THOMAS	309	25	1	20	15	35	25	46	50	10	64	4	14
LAMBROS	294	47	1	26	8	41	26	29	67	2	39	2	6
WALINSKI	347	50	1	45	13	54	44	34	67	6	38	2	13
KRUPANSKY	283	33	2	15	8	33	30	30	51	5	60	3	13
CONTIE	423	52	6	43	14	77	46	38	57	6	59	2	23
MANOS	314	31	3	20	6	32	33	42	52	9	57	5	24
OTHERS & UNASSIGNED	168	11	-	4	61	8	8	20	23	2	19	1	11

450

CIVIL FILINGS 1977
JULY 1, 1976 THROUGH JUNE 30, 1977
DISTRICT OF OHIO, NORTHERN

JUDGE NAME	TOTAL CIVIL CASES	NARA & SOCIAL SECURITY	COMMERCE	PRISONER PETS	FORFEITURE PENALTY TAX SUITS	REAL PROP	LABOR SUITS	CONTRACTS	TORTS	COPYRIGHT PAT & TRADEMARK	CIVIL RIGHTS	ANTITRUST	OTHER
BATTISTI	154	16	-	7	2	14	14	33	23	2	34	3	6
GREEN	146	15	1	8	3	19	3	23	33	-	32	-	9
YOUNG	307	27	-	38	4	30	43	36	60	5	43	6	15
THOMAS	328	37	2	18	11	38	26	51	54	4	59	5	23
LAMBROS	355	45	4	15	13	38	57	46	72	6	45	6	8
WALINSKI	308	28	1	48	3	22	44	39	68	5	38	2	10
KRUPANSKY	335	28	-	20	5	39	33	61	62	7	57	6	17
CONTIE	452	44	-	34	17	63	51	65	69	4	77	4	24
MANOS	346	29	-	20	23	36	34	55	56	9	63	5	16
OTHERS & UNASSIGNED	16	1	-	1	1	3	2	-	1	-	4	-	3

DEFENDANTS FILED
NORTHERN DISTRICT OF OHIO
YEAR ENDED JUNE 30, 1980

JUDGE	TOTAL	IMMIGRATION	EMBEZZLEMENT	AUTO THEFT	WEAPONS AND FIREARMS	LIQUOR	BURGLARY AND LARCENY	MARIJUANA AND CONT, SUB.	NARCOTICS	FORGERY AND COUNTERFEIT	FRAUD	HOMICIDE ROBBERY ASSAULT	OTHER
BATTISTI	16	-	1	-	6	-	-	-	-	4	4	-	1
YOUNG	54	-	6	5	2	-	8	-	4	5	6	11	7
THOMAS	43	-	8	-	2	-	9	-	5	7	9	2	1
LAMBROS	57	-	1	1	4	-	6	-	6	6	8	14	11
WALINSKI	49	-	6	6	6	-	8	-	-	12	6	3	2
KRUPANSKY	36	1	4	-	4	-	9	3	-	3	9	2	1
CONTIE	49	-	4	6	1	-	14	-	-	6	7	6	5
MANOS	60	-	5	-	7	2	2	4	4	11	13	5	7
OTHER	22	-	-	-	-	-	2	-	-	-	19	-	1

DEFENDANTS FILED
NORTHERN DISTRICT OF OHIO
YEAR ENDED JUNE 30, 1979

JUDGE	TOTAL	IMMIGRATION	EMBEZZLEMENT	AUTO THEFT	WEAPONS AND FIREARMS	LIQUOR	BURGLARY AND LARCENY	MARIJUANA AND CONT. SUB.	NARCOTICS	FORGERY AND COUNTERFEIT	FRAUD	HOMICIDE ROBBERY ASSAULT	OTHER
BATTISTI	20	-	1	-	-	-	-	-	1	3	8	7	-
YOUNG	58	1	5	4	5	-	2	4	-	13	12	4	8
THOMAS	56	-	5	2	5	-	3	2	1	9	7	2	20
LAMBROS	52	-	5	-	4	-	4	11	-	8	7	5	8
WALINSKI	46	3	4	-	5	-	6	3	-	11	8	2	4
KRUPANSKY	48	-	4	1	9	-	9	-	2	2	12	5	4
CONTIE	61	-	4	5	6	-	6	-	-	6	14	6	14
MANOS	50	-	5	-	5	-	3	6	-	2	15	5	9
OTHER	7	-	3	-	-	-	2	-	-	-	2	-	-

453

DEFENDANTS FILED
NORTHERN DISTRICT OF OHIO
YEAR ENDED JUNE 30, 1978

JUDGE	TOTAL	IMMIGRATION	EMBEZZLEMENT	AUTO THEFT	WEAPONS AND FIREARMS	LIQUOR	BURGLARY AND LARCENY	MARIJUANA AND CONT. SUB.	NARCOTICS	FORGERY AND COUNTERFEIT	FRAUD	HOMICIDE ROBBERY ASSAULT	OTHER
BATTISTI	63	-	6	4	8	-	5	-	-	15	11	6	8
YOUNG	78	3	8	5	15	-	4	-	-	14	7	8	14
THOMAS	68	-	4	-	10	-	7	2	-	10	13	10	12
LAMBROS	74	-	5	-	10	-	4	-	-	15	12	8	20
WALINSKI	79	4	7	2	10	-	8	2	-	16	14	4	12
KRUPANSKY	84	-	2	1	3	-	10	-	2	23	13	3	27
CONTIE	71	-	11	-	7	-	9	-	2	12	19	3	8
MANOS	77	-	4	11	4	-	15	-	4	15	14	10	-
OTHER	8	-	1	-	-	-	3	-	-	-	2	-	2

454

DEFENDANTS FILED
NORTHERN DISTRICT OF OHIO
YEAR ENDED JUNE 30, 1977

JUDGE	TOTAL	IMMIGRATION	EMBEZZLEMENT	AUTO THEFT	WEAPONS AND FIREARMS	LIQUOR	BURGLARY AND LARCENY	MARIJUANA AND CONT. SUB.	NARCOTICS	FORGERY AND COUNTERFEIT	FRAUD	HOMICIDE ROBBERY ASSAULT	OTHER
BATTISTI	46	-	2	-	-	-	10	-	-	9	7	9	9
YOUNG	89	1	3	4	16	-	6	4	-	26	13	7	9
THOMAS	93	-	6	3	7	-	17	3	7	24	17	3	6
LAMBROS	111	-	16	-	4	-	15	-	6	37	9	16	8
WALINSKI	106	3	8	11	2	-	9	2	18	18	6	8	21
KRUPANSKY	91	-	2	1	12	-	22	-	6	15	9	14	10
CONTIE	132	-	16	3	4	-	21	-	-	43	19	11	15
MANOS	94	-	9	-	11	-	22	-	8	16	14	8	6
OTHER	18	-	1	-	5	-	1	-	-	1	1	-	9

455

September 17, 1980

Honorable George Clifton Edwards, Jr.
Chief Judge
United States Court of Appeals
for the Sixth Circuit
United States Courthouse
Cincinnati, Ohio 45202

Dear Judge Edwards:

On August 22 testimony was taken by my subcommittee on two bills affecting the Sixth Circuit, (H.R. 1883 and H.R. 4435). The views of the United States District Court for the Northern District of Ohio, and those of the Judicial Council for the Sixth Circuit, were presented by Mr. James Macklin of the Administrative Office of the U.S. Courts. Mr. Macklin persuasively explained the court and council opinion that existing statutory authority should be relied upon to fashion a remedy to the perceived caseload distribution problems which exist in the Northern District of Ohio. I personally agree with the view that legislation in a situation like this one should be avoided, if existing statutory authority is in fact used to formulate a responsive remedy to the problem.

Representative John Seiberling, the principal sponsor of both bills, also appeared. He advised the subcommittee that he agrees that a bill such as H.R. 4435 should be passed only if the problem cannot be satisfactorily remedied by the exercise of existing statutory authority. In his opinion, however, efforts to date by the district court to fashion a remedy have not been satisfactory. I am enclosing a copy of the statement which Mr. Seiberling filed for the record.

The Department of Justice also testified, agreeing in general with Mr. Macklin's observations, yet also advising the sub-

committee of its agreement with Mr. Seiberling's opinion that remedial efforts undertaken to date have not been satisfactory. At my request the Administrative Office provided the enclosed caseload distribution data for the past four court management years for the Northern District of Ohio. That information certainly appears to support Mr. Seiberling's views.

My subcommittee has consistently endorsed the basic principles underlying existing provisions in title 28 of the United States Code which vest primary responsibility in the courts themselves for the administration of their business. We recognize the value of those most familiar with local conditions balancing court management factors and community convenience factors. We realize that litigants are best served when a true balance is consistently maintained.

In this Congress the subcommittee has devoted extensive efforts to legislation which would strengthen the authority of judicial councils of the circuits, and clarify the extent to which those councils are responsible for evaluating complaints against judges' behavior in the performance of their duties. H.R. 7974, the "Judicial Councils Reform and Judicial Conduct and Disability Act of 1980", which was unanimously approved by the House of Representatives on September 15, embodies the subcommittee's commitment to entrusting the circuit councils with adequate authority for the effective and efficient administration of court business within each circuit. That bill is in full conformity with views expressed in recent years by the Judicial Conference of the United States, and in full conformity with thoughtful academic commentary advising Congress to avoid legislation which would precipitate unnecessary litigation concerning the constitutionality of its provisions.

In keeping with the subcommittee's confidence in the circuit councils' abilities to perform their functions well, I request that you place the caseload distribution problem in the Northern District of Ohio before your council for action as soon as possible. Certainly the authority vested in your council under 28 U.S.C. section 332 today is sufficient to permit the fashioning of a more effective remedy for the present problem in the

Northern District of Ohio, and I am sure you would agree that a satisfactory solution achieved by that means would be preferable to enactment of H.R. 4435.

Because the subcommittee must take action on this matter within a matter of days, I would also ask that you notify me as soon as possible of its status on your council's agenda. Mr. Seiberling expressed his desire during the hearing for an expeditious solution to the problem. Although he expressed his willingness to accept a remedy by means other than enactment of H.R. 4435, he also understandably noted that enactment of his bill in this Congress would be a certain and expeditious answer to the problem now.

Let me thank you and the members of the Judicial Council of the Sixth Circuit for your cooperation with us in our efforts.

Sincerely yours,

Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

RWK:mra

Enclosures

NOV 3 1980

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MICHIGAN-OHIO-KENTUCKY-TENNESSEE

Chambers of the Court

CINCINNATI, OHIO 45202

NOV 10 1980

October 21, 1980

CHIEF JUDGE

GEORGE EDWARDS
Cincinnati, Ohio 45202

RECIPIENT JUDGES

PAUL C. WEICK
Akron, Ohio 44313

PIERCE LIVELY
Dayton, Ohio 45422

ALBERT J. ENGEL
Grand Rapids, Michigan 49502

DAMON J. KEITH
Detroit, Michigan 48226

GILBERT S. MERRITT
Nashville, Tennessee 37203

BAILEY BROWN
Memphis, Tennessee 38112

CORNELIA G. KENNEDY
Detroit, Michigan 48226

BOYCE F. MARTIN, JR.
Louisville, Kentucky 40202

NATHANIEL R. JONES
Cincinnati, Ohio 45202

SENIOR JUDGES

LESTER L. CECIL
Dayton, Ohio 45402

HARRY PHILLIPS
Nashville, Tennessee 37203

ANTHONY J. CELEBREZZE
Cleveland, Ohio 44114

JOHN W. PECK
Cincinnati, Ohio 45202

Honorable Robert W. Kastenmeir,
Chairman
Sub-committee on Courts, Civil Liberties
and the Administration of Justice
2232 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kastenmeir:

Your letter of September 17, 1980 regarding the caseload distribution problems in the Northern District of Ohio was submitted to and considered by the Sixth Circuit Judicial Council at a meeting on October 14, 1980. The Council also received and considered at that meeting a letter dated October 8, 1980 from the Honorable William K. Thomas, Judge of the Northern District of Ohio, containing the views of the Judges of that District concerning this matter. Judge Thomas was writing on behalf of the Judges of the Northern District of Ohio in the absence of Chief Judge Frank J. Battisti. A copy of Judge Thomas' letter of October 8th is enclosed.

After full discussion of this matter the Council adopted the following Resolution:

"RESOLVED, the Sixth Judicial Council approves the Report of Judge William K. Thomas dated October 8, 1980 regarding the caseload distribution problems in the Northern District of Ohio and views and recommendations contained therein on the assumption that the procedures outlined therein will be implemented so that, except in rare instances, Akron cases will be tried in Akron."

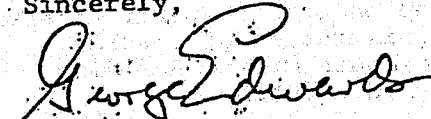
Honorable Robert W. Kastenmeir

Page 2

The Council is satisfied that the agreement of the Judges of the Northern District of Ohio supporting the continued existence of Akron as a place of holding court and of trying Akron cases in Akron, as approved by the Resolution of the Council, will prove to be the most desirable resolution of this problem from the standpoint of the administration of justice and the convenience to the litigants and their attorneys in the Northern District of Ohio.

I appreciate the Sub-committee's confidence in the ability of the Circuit Council to deal with this problem and the opportunity given to the Circuit Council to consider this matter before any consideration of a legislative solution.

Sincerely,



George Edwards
Chief Judge

r/

cc:

Honorable Frank J. Battisti
Mr. James E. Macklin, Jr.

William R. Thomas
Judge

United States District Court
Northern District of Ohio
Cleveland, Ohio 44114

October 8, 1980

The Honorable George Edwards
622 U.S. Courthouse
Cincinnati, Ohio 45202

Dear Chief Judge Edwards:

U.S. Representative Robert W. Kastenmeier, D-Wis., I understand, has asked the Sixth Circuit Judicial Council to attempt to work out a voluntary administrative solution to the condition which is relevant to the bill pending before his subcommittee. The bill, authored by U.S. Representative John F. Seiberling, would create an Akron-Youngstown division of the federal court for the Northern District of Ohio and assign several judges to that division. In our telephone conversation of yesterday afternoon, you asked me to report to you the consensus of the views of our judges concerning this matter. You indicated that you would submit the report to the judicial council at next Tuesday's meeting.

The judges of this court favor and support the continued existence of a federal court in Akron. In addition, the judges accept the goal of trying Akron cases in Akron. To achieve these objects, judges of this court have taken and will take the affirmative steps described below.

Since June 1971 the individual docket system has been in effect in the northern district, eastern division. Cases are assigned to the judges by lot with respect to each case category. Thus Judge Contie, sitting in Akron, presently receives the same kind and number of cases as each of the active judges sitting in Cleveland. Chief Judge Frank J. Battisti, because of his administrative duties, receives a one-half share of the cases filed.

Pursuant to agreements effected January 1, 1979, Judge Contie and each of the judges sitting in Cleveland have operated an exchange procedure. Akron cases, assigned to Cleveland judges, are transferred to Judge Contie in exchange for Cleveland cases assigned to Judge Contie. However, any Akron case received by a Cleveland judge in excess of Cleveland cases assigned to Judge Contie, is retained by the Cleveland judge.

In addition, some of the Cleveland judges have tried Akron cases in Akron. Hereafter, this practice will be enlarged. Judges sitting in Cleveland agree to try all Akron cases in Akron unless the parties and counsel prefer to try the case in Cleveland. Of course, an unexpected contingency may arise. For example, if a Cleveland judge was suddenly faced with an application for a temporary restraining order in a Cleveland case that might take several hours to hear, it might be a better use of judicial time to ask the Akron parties and counsel to come to Cleveland and be ready to start their case as soon as the emergency matter was concluded.

Riding the circuit from Cleveland to Akron is not the most productive use of a judge's time, although understandably, Akron parties and counsel usually desire to try their cases in Akron. Nonetheless, the individual docket system, applicable to the entire pool of cases in the eastern division, the continuation of the described exchange procedure, and the enlargement of Cleveland-to-Akron circuit riding, seem to offer the optimal way of assigning and trying cases in the Northern District of Ohio, Eastern Division.

Sincerely,

William K. Thomas

William K. Thomas

WKT/vr
(See P.S. on page 3.)

P.S. A draft of this letter was circulated among the judges. Judge Contie and the judges sitting in Cleveland were asked to respond today whether "this letter states your position, including your agreement to try Akron cases in Akron." Each was asked to call so that any non-acceptance might be noted. None of the judges sitting in Cleveland has indicated non-acceptance.

Judge Contie advised me "that he does not favor the plan as submitted unless it contains a provision: All Akron cases will be tried in Akron unless a true emergency exists."

WKT