

Y4
J 89/1
95/45

1020

95/4
J 89/1
95/45

FEDERAL DISTRICT COURT ORGANIZATION
ACT OF 1978

GOVERNMENT

DOCUMENTS

Storage

OCT 11 1978

FARRELL LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 12869

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1978

JUNE 2, 1978

Serial No. 45



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

31-425 O

1/28/81
2/24/80
DOCUMENTS
OCT 11 1978
FARRELL LIBRARY
KANSAS STATE UNIVERSITY

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, JR., New Jersey, *Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
JOSHUA EILBERG, Pennsylvania
WALTER FLOWERS, Alabama
JAMES R. MANN, South Carolina
JOHN F. SEIBERLING, Ohio
GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
BARBARA JORDAN, Texas
ELIZABETH HOLTZMAN, New York
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
SAM B. HALL, Jr., Texas
LAMAR GUDGER, North Carolina
HAROLD L. VOLKMER, Missouri
HERBERT E. HARRIS II, Virginia
JIM SANTINI, Nevada
ALLEN E. ERTEL, Pennsylvania
BILLY LEE EVANS, Georgia
ANTHONY C. BEILENSON, California

ROBERT MCCLORY, Illinois
TOM RAILSBACK, Illinois
CHARLES E. WIGGINS, California
HAMILTON FISH, Jr., New York
M. CALDWELL BUTLER, Virginia
WILLIAM S. COHEN, Maine
CARLOS J. MOORHEAD, California
JOHN M. ASHBROOK, Ohio
HENRY J. HYDE, Illinois
THOMAS N. KINDNESS, Ohio
HAROLD S. SAWYER, Michigan

ALAN A. PARKER, *General Counsel*
GARNER J. CLINE, *Staff Director*
FRANKLIN G. POLK, *Associate Counsel*

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

ROBERT W. KASTENMEIER, Wisconsin, *Chairman*

GEORGE E. DANIELSON, California
ROBERT F. DRINAN, Massachusetts
JIM SANTINI, Nevada
ALLEN E. ERTEL, Pennsylvania

TOM RAILSBACK, Illinois
M. CALDWELL BUTLER, Virginia

BRUCE A. LEHMAN, *Chief Counsel*
TIMOTHY A. BOGGS, *Professional Staff Member*
GAIL HIGGINS FOGARTY, *Counsel*
MICHAEL J. REMINGTON, *Counsel*
THOMAS E. MOONEY, *Associate Counsel*
JOSEPH V. WOLFE, *Associate Counsel*

CONTENTS

	Page
WITNESSES	
Hunter, Hon. Elmo B., district judge, Western District of Missouri, Chairman, Committee on Court Administration, Judicial Conference of the United States	2
Prepared statement	10
Nejelski, Paul, Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice, Department of Justice	25
Prepared statement	25

STATEMENTS

Ertel, Hon. Allen E., a Representative in Congress from the State of Pennsylvania.....	2
---	---

APPENDIXES

Appendix 1.—Additional statements and letters	46
Anderson, Hon. Glenn M., a Representative from the State of California ..	47
Patterson, Hon. Jerry M., a Representative from the State of California ...	51
Wiggins, Hon. Charles E., a Representative from the State of California ...	55
Sharp, Hon. Phil, a Representative from the State of Indiana	61
Mazzoli, Hon. Romano L., a Representative from the State of Kentucky	63
Caputo, Hon. Bruce F., a Representative from the State of New York.....	92
Ottinger, Hon. Richard L., a Representative from the State of New York ..	115
Walker, Hon. Robert S., a Representative from the State of Pennsylvania ..	117
Murtha, Hon. John P., a Representative from the State of Pennsylvania ...	120
Waggonner, Hon. Joe D., a Representative from the State of Louisiana.....	129
Pattison, Hon. Edward W., a Representative from the State of New York..	134
Wydler, Hon. John W., a Representative from the State of New York	136
Fuqua, Hon. Don, a Representative from the State of Florida	140
McClory, Hon. Robert, a Representative from the State of Illinois	146
Railsback, Hon. Tom, a Representative from the State of Illinois	147
Fitzpatrick, Collins, T., Circuit Executive, U.S. Court of Appeals for the Seventh Circuit	149
Stevenson, Hon. Adlai E., a Senator from the State of Illinois.....	152
Percy, Hon. Charles H., a Senator from the State of Illinois	162
Wilson, Hon. Charles, a Representative from the State of Texas	167
Appendix 2.—Pending bills—	
(a) H.R. 12869	172
(b) H.R. 3972	183
(c) H.R. 6465	185
(d) Other related bills	188
Appendix 3.—Maps of States involved by proposed legislation	217
Appendix 4.—Further details submitted to the subcommittee by:	
(a) U.S. Department of Justice	228
(b) Administrative Office of U.S. Courts	232
Appendix 5.—Federal district court judges and history of their courts.....	234

IV

Appendix 6.—Senate reports—	Page
(a) S. Report No. 95-87	290
(b) S. Report No. 95-221	293
Appendix 7.—Report of the Committee To Study Federal Judicial Districts in Illinois	296
Appendix 8.—“Savings Can Be Achieved by Consolidating Court Locations,” from GAO Report to the Congress on Further Improvements Needed in Administrative and Financial Operations of the U.S. District Courts (1976)...	332

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1978

FRIDAY, JUNE 2, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, Ertel, and Railsback.

Also present: Michael J. Remington, counsel, and Joseph V. Wolfe, associate counsel.

Mr. KASTENMEIER. The committee will come to order.

This morning the subcommittee will hear testimony on three bills which affect the functioning of the Federal judicial system.

First, we have before us H.R. 12869, an omnibus bill which amends title 28 of the United States Code to make certain changes in the places of holding Federal district court, in the divisions within judicial districts, and in judicial district dividing lines.

Then, we have two bills to establish new judicial districts: H.R. 3972 provides for the creation of the Southwestern District of California; and H.R. 6465 provides for the creation of the Southeastern District of New York. (H.R. 12869, H.R. 3972, and H.R. 6465 are reprinted in app. 2 at p. 172).

Our two witnesses today are official representatives of the judicial and executive branches. They are well qualified to speak on the issues raised in the bills.

First, I would like to welcome the Honorable Elmo B. Hunter, who will testify for the Administrative Office of the U.S. Courts.

Judge Hunter has been a district judge in the Western District of Missouri since 1965. Before becoming a Federal judge, he served as both a trial and appellate judge in the Missouri State court system.

After being named to the Federal bench, Judge Hunter quickly became an active member of the Judicial Conference of the United States. In 1969 he was named a member of the Conference's Subcommittee on Judicial Improvements; in 1976 he became chairman of that important subcommittee, and in March of this year, 1978, he became chairman of the Committee on Court Administration.

Judge Hunter, it's good to have you with us again this morning. You have been with us in the past and we are pleased to greet you. Would you like to come forward, sir?

You have a prepared statement, do you not?

**TESTIMONY OF HON. ELMO B. HUNTER, DISTRICT JUDGE,
WESTERN DISTRICT OF MISSOURI, CHAIRMAN, COMMITTEE
ON COURT ADMINISTRATION, JUDICIAL CONFERENCE OF
THE UNITED STATES, ACCOMPANIED BY WILLIAM JAMES
WELLER, LEGISLATIVE LIAISON, ADMINISTRATIVE OFFICE
OF U.S. COURTS**

Judge HUNTER. Yes, I do, Mr. Chairman. I would like to cover it briefly and then be available for questions on which, hopefully, I may shed some light.

Mr. KASTENMEIER. I think one may conclude that the committee, while it does have jurisdiction over courts, does not specialize in this aspect of the Federal courts. We welcome being edified and illuminated on the issues, if any, and, as a result, we welcome your testimony.

Judge HUNTER. Thank you, sir.

Mr. Chairman, I am indeed pleased to appear before this subcommittee today.

Mr. KASTENMEIER. Excuse me, Judge Hunter, I just want to say, after your statement, I will call on our colleague from Pennsylvania, Mr. Ertel, who I think would like to make a statement for the record.

Mr. ERTEL. Thank you, Mr. Chairman.

If I might, I would like to just submit my opening statement for the record rather than read it. It will be much easier that way.

Mr. KASTENMEIER. We appreciate that, and the statement of the gentleman from Pennsylvania will be accepted for the record.

Mr. ERTEL. Thank you, Mr. Chairman.

[The prepared statement of Hon. Allen E. Ertel follows:]

**STATEMENT REGARDING ADDITIONAL COURT FOR WESTERN DISTRICT OF
PENNSYLVANIA TO BE DESIGNATED FOR JOHNSTOWN**

I would like to take this opportunity to express my support for my colleague's, Mr. Murtha's, effort to arrange for the holding of court for the Western District of Pennsylvania in Johnstown.

My colleague presents ample evidence in his testimony of the need for the designation of an additional site at which to hear cases in that district. The lack of a court facility more readily accessible for residents outside the Pittsburgh and Erie areas inconveniences plaintiffs, defendants, lawyers, witnesses and jurors, posing special hardships for those individuals who must travel great distances to testify or serve on juries at great expense to themselves in terms of lost wages, and in terms of a little recognized expense to employers in lost productivity.

The present situation also contributes to court delays and the costs of disposing of a case, and further aggravates the already serious problem of court backlog. In the interests of the expeditious and equitable administration of Justice, I would urge my colleagues on this subcommittee to support this measure.

Judge HUNTER. Before addressing the three bills on today's schedule I would like to express my genuine personal appreciation for the contributions made by this subcommittee, under your leadership, Mr. Kastenmeier, since its formal creation only 5 years ago in the 93d Congress.

I am especially appreciative of your efforts in this Congress. Your hearings on "The State of the Judiciary and Access to Justice," and your work on the magistrate system and jury reform

bills, have only been superseded in value, in my view, by your subcommittee's impressive work on H.R. 9622, the diversity jurisdiction bill.

As you of course know, that particular legislative proposal is of rather special interest to me. I honestly believe its passage, as foreseen by Mr. Justice Jackson more than 25 years ago, would be "the greatest contribution that Congress could make to the orderly administration of justice."

All Federal judges have you and your colleagues on this subcommittee to thank for that "contribution" being further along the way to full realization than it has ever been.

Mr. KASTENMEIER. Thank you, Judge, for those remarks. And, of course, I must say that the diversity legislation is still in the process of being realized. We are mindful and appreciative of your own support. Your continuing support as far as our colleagues in the other body are concerned would be highly useful in the final realization of this important step forward.

Judge HUNTER. I hope we will provide the immediate and continuing support that will be effective.

Turning to the matter embodied in the three bills on this meeting's schedule, let me observe that they, too, will also each effect "the orderly administration of justice" to some degree. All three bills have as their purpose changes in the geographical configuration of specific district courts.

Although those proposed changes range in scope, from the superficially simple addition of one more statutorily designated location for the holding of court in a given district, to the creation of entirely new districts, there is one factor which is common to every one of the proposals: A duty to carefully balance the needs and convenience of litigants and the bar in a given geographical area against the impact upon the orderly administration of justice in that and contiguous geographical areas.

In the final analysis, while certain general rules of thumb have proven over time to be of value in initiating such evaluations, in many cases, a specific study of the competing benefits and detriments of a particular proposal is essential in arriving at a final determination of merit. The Judicial Conference's approach has evolved in recent years to reflect both the general rules of thumb and the need for specific studies.

In March 1959, during a personal appearance before the Judicial Conference, former chairman of the House Judiciary Committee, Emanuel Celler, suggested a special conference study of the adequacy of then-existing places of holding court. Then, as now, this committee was annually petitioned by local bar associations and community groups to statutorily designate additional localities as places of holding district court. Chief Judge John Biggs, then chairman of the Court Administration Committee created a special subcommittee to implement Chairman Celler's recommendation.

As a result of that undertaking, the Conference, in March 1961, began handling the evaluation of bills to authorize additional "places" in a manner which eventually led to the currently prevailing conference policy and its processes. All five such bills referred to the Conference by the House Judiciary Committee were—

Forwarded to the respective Judicial Councils of the circuits, with the request that the councils report their views to the Court Administration Committee * * *

and that Committee was authorized to, in turn,

inform the congressional committees of the views of the respective Judicial Councils of the circuits * * *.

Six months later, a formal procedure was approved and extended by the Conference. As reported in the Proceedings for September 1961:

After full discussion, the Conference directed that any bill to create a new judicial district, to establish a division within any existing judicial district, to authorize a new place for holding Federal court or to waive the provisions of 28 U.S.C. 142 respecting the furnishing of accommodations at places of holding court 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.

For the next 11 years that policy was followed in respect to every such proposal referred by the Congress for the Conference's views. In every instance, the Conference followed the recommendation filed with the Court Administration Committee by the appropriate Judicial Council of a circuit.

In October 1972, that procedure was altered slightly in relation to bills to statutorily authorize additional places for holding district court. As reported in the proceedings:

The Conference approved a recommendation of the committee and reaffirmed its position that no new places 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.

One year later, in September 1973, for the first time in 12 years, the Judicial Conference disapproved an additional place bill which had been approved by both the district court itself and the circuit council, because, " * * * no information as to the reasons for the proposal or the need for designating the location had been received * * * "

Perhaps, as a result of that action, the Conference was not again asked by a Circuit Council to consider such a recommended proposal until April 1976. In April 1976, the Conference considered three such proposals; in September of that year, one; and in March 1977, one. In all five instances, the Conference accepted the recommendations filed by the Circuit Councils with the Court Administration Committee.

Mr. Chairman, as you have mentioned, I have served on the Court Administration Committee now since 1969, and I am convinced by my exposure to these matters as part of that experience that the Conference policy for evaluating these proposals has real merit.

Since 1961, when the policy was first instituted, 54 bills to authorize additional places of holding court have been evaluated in accordance with that policy, and 10 have been approved. Only a very few proposals relating to changes in division or district boundaries have been considered, most of which have been approved by

the Circuit Councils because they would facilitate court administration.

Accordingly, they have been approved by the Judicial Conference. Generally, I believe that record I just mentioned should be regarded as supportive of the general rules of thumb which have been recognized by the judiciary in these matters.

Generally, additional places of holding district court should only be statutorily designated when there has been a showing of a strong and compelling need. For many years now the Judicial Conference has consistently recommended the consolidation of district court divisions and the reduction of numbers of places of holding district court.

The most recent statewide consolidation approved by the Congress was that affecting South Carolina in 1965, Public Law 89-242, and in November 1977 this Congress enacted Public Law 95-196, a bill specifically designed to eliminate one of the factors which had encouraged the proliferation of statutorily designated places for holding a district court in the past two decades, the requirement that circuit court judicial chambers be provided only at such designated places. This subcommittee, I know, is all too familiar with that legislation.

Again, in general, the greater the number of divisions and locations for holding district court, the less efficient the administration of justice within that district. In recent years, proposals urging additional divisions or court locations which have been processed by the Judicial Conference have often been disapproved, in spite of the fact they would be a direct benefit to one county or one community, because they would actually result in an overall reduction in access to justice for all litigants in the affected district.

To my knowledge, in all instances, the convenience of litigants and the bar in one locale have been assessed in terms of the impact on the administration of justice throughout the district. That assessment has appropriately been made by those in a position to be most familiar with the conditions prevailing in the affected communities, the judges of the district court themselves and the members of the appropriate circuit council which bears responsibility for the day-to-day administration of justice in that district.

Obviously, different factors influence each assessment and, given the peculiarities and special factors prevailing in specific communities, they should. Obviously if a district encompasses mountainous terrain, as do West Virginia, southern or eastern Kentucky, in which traveling even a short distance may be difficult, there is a clear need for several court locations.

The same may be said of a district encompassing a vast geographical expanse, such as western Texas or Alaska. In that case the long distances which must be traveled are a factor which must be considered in assessing the need for locations. Frequently, assessments reduce themselves to a question of whether it is more reasonable to ask litigants and lawyers to go to the court or to ask the court to come to them.

One fundamental reason for the Judicial Conference's frequent disapproval of additional statutorily designated locations in recent years is found in the collective effect of sections 139 through 142 of title 28, United States Code, those sections which govern regular

sessions, special sessions, and the pretermission of regular sessions of district court. Read together those three sections vest each district court with complete authority to sit in any location within its jurisdiction, "as the nature of * * * business may require," as long as, "Federal accommodations are available, or suitable accommodations are furnished without cost to the United States."

Historically, our Federal courts have been repeatedly asked to "show the flag" in communities which are not statutorily designated. Usually a court able to fill such a request has been able to borrow some facility which would accommodate one judge.

As we all know, however, in recent years the increase in court workloads has frequently impacted State and local courts almost as heavily as it has Federal courts, and it has become increasingly more difficult, not only for the Federal court to find the time to show the flag, but also to find the space and facilities. Nevertheless, the authority to take the court to the community is well recognized and long established.

I would also note that statutorily designating a location does not guarantee that court actually will be held there. As previously noted, under 28 U.S.C. 140, a district court may by order prepermit any regular session at any location, as long as it has the approval of its circuit council. Such authority is essential if our courts are going to expeditiously and efficiently manage their business; we can no longer afford to have judges traveling to outlying locations when the volume of business in those locations does not in fact justify the travel.

Frankly, the statutory designation of a location very often yields only one real 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.

With those observations in mind, let me address specifically the provisions of the three bills on your agenda today.

In your Federal District Court Organization Act of 1978, H.R. 12869, section 2 is designed to add eight additional statutorily designated locations for the holding of district court in seven judicial districts. Only subsection (c), authorizing the addition of Ashland in the Eastern District of Kentucky, and subsection (d), authorizing Corinth in the Northern District of Mississippi, have been impliedly or expressly approved by the Judicial Conference.

The addition of Corinth, Miss., was approved by the Judicial Conference on April 7, 1976, upon the recommendation of the district court and the Fifth Circuit Judicial Council. Although I know you are familiar with the material provided in the Senate's report which accompanies S. 622—a bill equivalent to section 2(d) of H.R. 12869, passed by the Senate on April 7, 1977—I would note for your record my understanding that the district court and circuit council approval was given in recognition of the fact that a Federal judicial presence has existed in Corinth for at least the last 8 years.

District Judge Orma R. Smith, a resident of the community, has, at his own expense, been renting commercial space for an office, from which he has provided judicial service to the local bar and citizenry. The U.S. Post Office building has for several years had space available which Judge Smith could use, in lieu of the commercial space he has been renting, only if Corinth is a statutorily designated location. In other words, in this instance, sufficient business already exists to justify the provision of the office space in the post office, only the statutory authorization is lacking.

In the case of Ashland, Ky., although never formally referred for Conference views, at the request of this subcommittee's staff the Administrative Office obtained the opinions of both the district court and circuit council. Apparently, although no bills were introduced to authorize Ashland in the past 3 years, the proposal has long been discussed in Kentucky, and the district court long ago felt that addition would be justified. This particular case is a perfect example of how important local prevailing conditions are in these assessments.

Today the statute authorizes court to be held in Catlettsburg, a community which is less than 10 miles from Ashland. Existing facilities at Catlettsburg, however, are inadequate. Not only is the courthouse itself insufficient, but supporting services such as restaurants and hotels do not exist. In fact the prevailing practice today, for litigants, jurors, and members of the bar who are attending sessions of court in Catlettsburg is to spend each evening in Ashland and travel each day to the court. In the opinion of both the district court and the circuit council the administration of justice would be better served were Ashland itself the designated location.

Mr. Chairman, as you know, this hearing was scheduled on very short notice, and many of the locations contained in section 2 of H.R. 12869 had never been formally referred for study to the Judicial Conference. During the past 3 weeks, at your request, the Administrative Office has sought the views of every district court and appropriate circuit council, and in six instances those authorities have stipulated that they cannot properly assess the proposals without further study and investigation.

In relation to section 2(a)'s proposed authorization of Long Beach and Santa Ana as additional locations in the Central District of California, Chief Judge Albert Lee Stephens, Jr. has advised us that in 1971 his court, by a vote of 14 to 2, disapproved the designation of Santa Ana, and the Ninth Circuit Council and Judicial Conference also disapproved it.

Although conditions have changed in the pattern of the court's business in the district since 1971, Judge Stephens believes that, until his court and the circuit council reconsider the proposal, no decisions should be made. Chief Judge James Browning of the Ninth Circuit Court of Appeals, chairman of the Ninth Circuit's Judicial Council, has notified the Administrative Office by telephone that he agrees with Judge Stephens.

In the case of Muncie, Ind., proposed as an additional location in southern Indiana in section 2(b) of this bill, the chief judge of that district has also asked that the court and circuit council be given time to consider the proposal. While the Muncie bar has repeatedly petitioned the court to sit in its community, to date the court has yet to feel that the volume of business would justify the session.

Chief Judge William E. Steckler has noted that, although a May 1975 survey was conducted to determine whether a magistrate position should be established in Muncie, that study focused exclusively upon criminal caseloads, and experiences to date with that caseload have fallen short of the Justice Department's 1975 projections. In fact today there is not enough business to warrant a resident full-time magistrate in Muncie. Only on April 3 of this year did the court find sufficient business to authorize a part-time position with a minimum salary of \$850 a year.

In the cases of Lancaster and Johnstown, Pa., embodied in sections 2 (f) and (g) of your bill, the Johnstown location has been informally studied by the district court at the request of Congressman Murtha and expressly disapproved. The Third Circuit Judicial Council has taken no action on the proposal. Neither the district court for the Eastern District of Pennsylvania nor the Third Circuit Judicial Council has ever evaluated the advisability of Lancaster being a designated place of holding court. Upon telephone inquiry the Administrative Office has been advised that the judges of the Eastern District do not feel they can either support or oppose the designation of Lancaster without a thorough study which they believe will take approximately 6 months.

Finally, in regard to the proposal for adding White Plains as a place of holding court in the Southern District of New York, embodied in section 2(e) of your bill, Chief Judge Irving R. Kaufman has advised the Administrative Office within the past week that the Judicial Council of the Second Circuit believes that proposal must be studied in association with the proposal for creating two new divisions within the Eastern District of New York, embodied in section 3(b) of your bill, the proposal to transfer Columbia, Greene, and Ulster Counties from the Southern to the Northern District of New York, embodied in section 4(c) of your bill, and H.R. 6465, the currently pending proposal which would create two new districts from the existing Eastern District of New York.

In Judge Kaufman's view, it would be extremely unwise to approve or disapprove any of those proposals until all of them have been simultaneously considered, because the approval of any one will necessarily influence the consideration of the others.

Section 3(a) of your bill literally eliminates all divisions in the Western Districts of Louisiana. That proposal, originally embodied in H.R. 1916 and H.R. 7745, both introduced during the last session of this Congress, was fully approved by the district court, the Fifth

Circuit Judicial Council, and finally by the Judicial Conference at its March 1978 proceedings. The elimination of divisions is in full conformity with the Judicial Conference's general policy and, in this particular instance, has received the approval of all concerned parties.

Section 3(c) of your bill would merely redraw existing divisions in the District of North Dakota. The proposal is identical to S. 2887, which passed the Senate in the 94th Congress and, in fact, has been requested by the district court itself. That bill had been approved by the Circuit Council for the Eighth Circuit and received the approval of the Judicial Conference in April of 1976. The justification for the change, contained in the Senate's report which accompanies S. 195 in this Congress, fully supports this change.

Section 4 of your bill proposes changes in district dividing lines affecting the Northern and Middle Districts of Florida, all three districts in Illinois, and the Eastern and Southern Districts of Texas.

The proposal to move Madison County, Fla., from the Middle to the Northern District of Florida was first approved by the Judicial Conference in March of 1970, upon the recommendation of both district courts and the Fifth Circuit Judicial Council. In past weeks both district courts and the circuit council have reaffirmed their approval.

The reorganization of the three districts in Illinois has not yet been reviewed by the Judicial Conference. All three districts and the circuit council for the Seventh Circuit, however, have fully endorsed the proposal, as embodied in section 4(b) of this bill.

As you know, this proposal has been under study for some time now and, as noted in correspondence to you from Collins Fitzpatrick, circuit executive for the Seventh Circuit, dated May 25 of this year, it has encountered no opposition.

Because the Court Administration Committee has not yet been asked to review the matter, I defer to the comments provided in Mr. Fitzpatrick's letter to you. I believe I can say, however, that given the full approval of all three district courts and the circuit council, there is no reason to believe that this proposal would be disapproved by the Judicial Conference.

Your bill's proposal for the creation of a new Lufkin division in the Eastern District of Texas, embodied in section 4(d) of your bill, does entail the removal of two counties, Polk and Trinity, from the Southern District. The matter has never been considered by either district court or by the Fifth Circuit Judicial Council. Our efforts to solicit the views of the district courts' chief judges have been unsuccessful, due to Chief Judge Joe J. Fisher's current absence from the country.

Although Judge Fisher will return on June 9 from London, given the care with which the Fifth Circuit has evaluated such proposals in recent years, I do not believe that the views of both courts and the circuit council will be available until this proposal has been given extensive further study.

In relation to the other two bills before you today, I have already noted that H.R. 6465, a bill to—among other things including the creation of an additional judgeship—create two new districts out of the existing Eastern District of New York, cannot be evaluated by

the Second Circuit Council in the immediate future. Time is needed for study.

The remaining proposal, H.R. 3972, a bill to create a new Southwestern District within the current Central District of California, embodies a proposal studied by the district court in 1976 and the Ninth Circuit Judicial Council last year.

On November 10, 1976, the judges of the district court for the Central District of California unanimously agreed that the establishment of the proposed new Southwestern District of California was a matter for congressional determination and that they would express no views.

In the summer of 1977, however, the Judicial Council of the Ninth Circuit evaluated the proposal, as embodied in the bill before you, and tabled any action on the matter. Chief Judge Browning has by telephone notified the Administrative Office that his council took that action in the belief that a determination should not be made on this matter until after enactment of the currently pending omnibus judgeship legislation.

Mr. Chairman, that covers, at least generally, the three bills. I hope that this information will assist your committee and, while I claim no expertise as to some of these localities, I would be pleased to try to answer any questions that you or your committee members may have.

[The prepared statement of Judge Hunter follows:]

STATEMENT OF JUDGE ELMO B. HUNTER, U.S. DISTRICT COURT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI AND CHAIRMAN OF THE COMMITTEE ON COURT ADMINISTRATION OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. Chairman, I am indeed pleased to be appearing before this subcommittee. Before addressing the business on today's schedule, I would like to express my genuine personal appreciation for the contributions made by this subcommittee—under your leadership, Mr. Kastenmeier—since its formal creation only five years ago in the Ninety-third Congress.

I am especially appreciative of your efforts in this Congress. Your hearings on "The State of the Judiciary and Access to Justice", and your work on the Magistrate System and Jury Reform bills, have only been superseded in value—in my view—by your subcommittee's impressive work on H.R. 9622, the Diversity Jurisdiction bill. As you of course know, that particular proposal is of rather special interest to me; I honestly believe its passage, as foreseen by Mr. Justice Jackson more than 25 years ago, would be "the greatest contribution that Congress could make to the orderly administration of justice." All Federal judges have you and your colleagues on this subcommittee to thank for that "contribution" being farther along the way to full realization than it has ever been.

Turning to the matter embodied in the three bills on this meeting's schedule, let me observe that they, too, will also each effect "the orderly administration of justice" to some degree. All three bills have as their purpose changes in the geographical "configuration" of specific district courts. Although those proposed changes range in scope—from the superficially simple addition of one more statutorily designated location for the holding of court in a given district, to the creation of entirely new districts—there is one factor which is common to every one of the proposals: a duty to carefully balance the needs and convenience of litigants and the bar in a given geographical area against the impact upon "the orderly administration of justice" in that and contiguous geographical areas.

In the final analysis, while certain general "rules of thumb" have proven over time to be of value in initiating such evaluations, in many cases, a specific study of the "competing" benefits and detriments of a particular proposal is essential in arriving at a final determination of merit. The Judicial Conference's approach has evolved in recent years to reflect both the general "rules of thumb" and the need for specific studies.

In March of 1959, during a personal appearance before the Judicial Conference, former Chairman of the House Judiciary Committee, Emmanuel Celler, suggested a

special Conference study of the "adequacy" of then-existing places of holding court. Then, as now, this Committee was annually petitioned by local bar associations and community groups to statutorily designate additional localities as "places of holding district court". Chief Judge John Biggs, then Chairman of the Court Administration Committee created a special subcommittee to implement Chairman Celler's recommendation.

As a result of that undertaking, the Conference, in March of 1961, began handling the evaluation of bills to authorize additional "places" in a manner which eventually led to the currently prevailing Conference policy and its processes. All five such bills referred to the Conference by House Judiciary Committee were "forwarded to the respective Judicial Councils of the circuits, with the request that the councils report their views to the (Court Administration) Committee * * *," and that Committee was authorized to, in turn, "inform the Congressional Committees of the views of the respective Judicial Councils of the circuits * * *".

Six months later, a formal procedure was approved—and extended—by the Conference. As reported in the "Proceedings" for September of 1961: "After full discussion, the Conference directed that any bill to create a new judicial district, to establish a division within any existing judicial district, to authorize a new place for holding federal court, or to waive the provisions of 28 U.S.C. 142 respecting the furnishing of accommodations at places of holding court 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.

For the next 11 years that policy was followed in respect to every such proposal referred by the Congress for the Conference's views. In every instance, the Conference followed the recommendation filed with the Court Administration Committee by the appropriate Judicial Council of a circuit.

In October of 1972, that procedure was altered slightly in relation to bills to statutorily authorize additional places for holding district court. As reported in the "Proceedings": The Conference approved a recommendation of the committee and reaffirmed its position that no new places 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.

One year later, in September of 1973, for the first time in 12 years, the Judicial Conference disapproved an "additional place" bill which had been approved by both the district court itself and the circuit council, because " * * * no information as to the reasons for the proposal or the need for designating (the location) had been received * * *". Perhaps as a result of that action, the Conference was not again asked by a Circuit Council to consider such a recommended proposal until April of 1976. In April of 1976, the Conference considered three such proposals; in September of that year, one; and in March of 1977, one. In all five instances, the Conference accepted the recommendations filed by the Circuit Councils with the Court Administration Committee.

Mr. Chairman, I have served on the Court Administration Committee now since 1969, and I am convinced by my exposure to these matters as part of that experience that the Conference policy for evaluating these proposals has real merit. Since 1961, when the policy was first instituted, 54 bills to authorize additional places of holding court have been evaluated in accordance with that policy, and 10 have been approved. Only a very few proposals relating to changes in division or district boundaries have been considered, most of which have been approved by the Circuit Councils because they would facilitate court administration. Accordingly, they have been approved by the Judicial Conference. Generally, I believe that record should be regarded as supportive of the general "rules of thumb" which have become recognized by the judiciary in these matters.

Generally additional places of holding district court should only be statutorily designated when there has been a showing of strong and compelling need. For many years now the Judicial Conference has consistently recommended the consolidation of district court divisions and the reduction of numbers of places of holding district court. The most recent statewide consolidation approved by the Congress was that affecting South Carolina in 1965 (Public Law 89-242), and in November of 1977 this Congress enacted Public Law 95-196, a bill specifically designed to eliminate one of the factors which had encouraged the proliferation of statutorily designated places

for holding a district court in the past two decades—the requirement that circuit court judicial chambers be provided only at such designated places. This subcommittee, I know, is all too familiar with that legislation.

Again, in general, the greater the number of divisions and locations for holding district court, the less efficient the administration of justice within that district. In recent years, proposals urging additional divisions or court locations which have been processed by the Judicial Conference have often been disapproved, in spite of the fact that they would be a direct benefit to one county or one community, because they would actually result in an overall reduction in "access to justice" for all litigants in the affected district. To my knowledge, in all instances, the convenience of litigants and the bar in one locale have been assessed in terms of the impact on the administration of justice throughout the district. That assessment has appropriately been made by those in a position to be most familiar with the conditions prevailing in the affected communities, the judges of the district court themselves and the members of the appropriate circuit council which bears responsibility for the day-to-day administration of justice in that district. Obviously, different factors influence each assessment, and given the peculiarities and special factors prevailing in specific communities, they should. Obviously, if a district encompasses mountainous terrain, as do West Virginia, Southern or Kentucky, Eastern, in which traveling even a short distance may be difficult, there is a clear need for several court locations. The same may be said of a district encompassing a vast geographical expanse, such as Western Texas; in that case the long distances which must be traveled are an factor which must be considered in assessing the need for locations. Frequently, assessments reduce themselves to a question of whether it is more reasonable to ask litigants and lawyers to go to the court or to ask the court to come to them.

One fundamental reason for the Judicial Conference's frequent disapproval of additional statutorily designated locations in recent years is found in the collective effect of sections 139 through 142 of title 28, those sections which govern regular sessions, special sessions, and the pretermission of regular sessions of the district court. Read together those three sections vest each district court with complete authority to sit in any location within its jurisdiction "as the nature of * * * business may require," as long as "federal accommodations are available, or suitable accommodations are furnished without cost to the United States." Historically, our federal courts have been repeatedly asked to "show the flag" in communities which are not statutorily designated. Usually a court able to fill such a request has been able to "borrow" some facility which would accommodate one judge. As we all know, however, in recent years the increase in court workloads has frequently impacted state and local courts as heavily as it has federal courts, and it has become increasingly more difficult, not only for the federal court to find the time to "show the flag," but also to find the space. Nevertheless, the authority to take the court to the community is well recognized and long established.

I would also note that statutorily designating a location does not guarantee that court actually will be held there. As previously noted, under 28 U.S.C. 140, a district court may by order pretermitt any regular session at any location, as long as it has the approval of its circuit council. Such authority is essential if our courts are going to expeditiously and efficiently manage their business; we can no longer afford to have judges traveling to outlying locations when the volume of business in those locations does not in fact justify the travel. Frankly, the statutory designation of a location very often yields only one real 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.

With those observations in mind, let me address specifically the provisions of the three bills on your agenda today. In your "Federal District Court Organization Act of 1978," H.R. 12869, section 2 is designed to add 8 additional statutorily designated locations for the holding of district court in 7 judicial districts. Only subsection (c) authorizing the addition of Ashland in the Eastern District of Kentucky and subsec-

tion (d) authorizing Corinth in the Northern District of Mississippi have been impliedly or expressly approved by the Judicial Conference.

The addition of Corinth, Mississippi was approved by the Judicial Conference on April 7, 1976, upon the recommendation of the District Court and the Fifth Circuit Judicial Council. Although I know you are familiar with the material provided in the Senate's Report which accompanies S. 622, a bill equivalent to section 2(d) of H.R. 12869 (passed by the Senate on April 7, 1977), I would note for your record my understanding that the District Court and Circuit Council approval was given in recognition of the fact that a Federal judicial presence has existed in Corinth for at least the last 8 years. District Judge Orma R. Smith, a resident of the community, has, at his own expense, been renting service space for an office, from which he has provided judicial service to the local bar and citizenry. The U.S. Post Office Building has for several years had space available which Judge Smith could use, in lieu of the commercial space he has been renting, only if Corinth is a statutorily designated location. In other words, in this instance, sufficient business already exists to justify the provision of the office space in the Post Office; only the statutory authorization is lacking.

In the case of Ashland, Kentucky, although never formally referred for Conference views, at the request of this Subcommittee staff the Administrative Office obtained the opinions of both the District Court and Circuit Council. Apparently, although no bills were introduced to authorize Ashland in the past three years, the proposal has long been discussed in Kentucky, and the District Court long ago felt that addition would be justified. This particular case is a perfect example of how important local prevailing conditions are in these assessments. Today the statute authorizes court to be held in Catlettsburg, a community which is less than ten miles from Ashland. Existing facilities at Catlettsburg, however, are inadequate. Not only is the courthouse itself insufficient, but supporting services, such as restaurants and hotels, do not exist. In fact, the prevailing practice today, for litigants, jurors, and members of the bar who are attending sessions of court in Catlettsburg is to spend each evening in Ashland, and travel each day to the court. In the opinion of both the District Court and the Circuit Council the administration of justice would be better served were Ashland itself the designated location.

Mr. Chairman, as you know, this hearing was scheduled on very short notice, and many of the locations contained in Section 2 of H.R. 12869 had never been formally referred for study to the Judicial Conference. During the past 3 weeks, at your request, the Administrative Office has sought the views of every district court and appropriate circuit council, and in six instances those authorities have stipulated that they cannot properly assess the proposals without further study and investigation.

In relation to section 2(a)'s proposed authorization of Long Beach and Santa Ana, as additional locations in the Central District of California, Chief Judge Albert Lee Stephens, Jr. has advised us that, in 1971, his Court, by a vote of 14 to 2, disapproved the designation of Santa Ana, and that the Ninth Circuit Council and Judicial Conference also disapproved it. Although conditions have changed in the pattern of the Court's business in the district since 1971, Judge Stephens believes that, until his Court and the Circuit Council reconsider the proposal, no decisions should be made. Chief Judge James Browning of the Ninth Circuit Court of Appeals, Chairman of the Ninth Circuit's Judicial Council, has notified the Administrative Office by telephone that he agrees with Judge Stephens.

In the case of Muncie, Indiana, proposed as an additional location in Indiana, Southern in section 2(b) of this bill, the Chief Judge of that district has also asked that the Court and Circuit Council be given time to consider the proposal. While the Muncie bar has repeatedly petitioned the Court to sit in its community, to date the court has yet to feel that the volume of business would justify the session. Chief Judge William E. Steckler has noted that, although a May 1975 survey was conducted to determine whether a magistrate position should be established in Muncie, that study focused exclusively upon criminal caseloads, and experiences to date with that caseload have fallen short of the Justice Department's 1975 projections. In fact today there is not enough business to warrant a resident full-time magistrate in Muncie. Only on April 3 of this year did the court find sufficient business to authorize a part-time position with a minimum salary of \$850 a year.

In the cases of Lancaster and Johnstown, Pennsylvania, embodied in sections 2 (f) and (g) of your bill, the Johnstown location has been informally studied by the District Court at the request of Congressman Murtha, and expressly disapproved. The Third Circuit Judicial Council has taken no action on the proposal. Neither the district court for the Eastern District of Pennsylvania nor the Third Circuit Judicial Council have ever evaluated the advisability of Lancaster being a designated place

of holding court. Upon telephone inquiry the Administrative Office has been advised that the judges of the Eastern District do not feel they can either support or oppose the designation of Lancaster without a thorough study which they believe will take approximately six months.

Finally, in regard to the proposal for adding White Plains as a place of holding court in the Southern District of New York embodied in section 2(e) of your bill, Chief Judge Irving R. Kaufman has advised the Administrative Office within the past week that the Judicial Council of the Second Circuit believes that proposal must be studied in association with the proposal for creating two new divisions within the Eastern District of New York (embodied in section 3(b) of your bill), the proposal to transfer Columbia, Greene, and Ulster Counties from the Southern to the Northern District of New York (embodied in section 4(c) of your bill), and H.R. 6465, the currently pending proposal which would create two new districts from the existing Eastern District of New York. In Judge Kaufman's view, it would be extremely unwise to approve or disapprove any of those proposals until all of them have been simultaneously considered, because the approval of any one will necessarily influence the consideration of the others.

Section 3(a) of your bill literally eliminates all divisions in the Western District of Louisiana. That proposal, originally embodied in H.R. 1916 and H.R. 7745, both introduced during the last session of this Congress, was fully approved by the District Court, the Fifth Circuit Judicial Council, and finally by the Judicial Conference at its March 1978 Proceedings. The elimination of divisions is in full conformity with the Judicial Conference's general policy, and in this particular instance has received the approval of all concerned parties.

Section 3(c) of your bill would merely redraw existing divisions in the district of North Dakota. The proposal is identical to S. 2887, which passed the Senate in the 94th Congress, and in fact has been requested by the District Court itself. That bill had been approved by the Circuit Council for the Eighth Circuit and received the approval of the Judicial Conference in April of 1976. The justification for the change, contained in the Senate's Report which accompanies S. 195 in this Congress, fully supports this change.

Section 4 of your bill proposes changes in district dividing lines affecting the Northern and Middle Districts of Florida, all three Districts in Illinois, and the Eastern and Southern Districts of Texas. The proposal to move Madison County, Florida from the Middle to the Northern District of Florida was first approved by the Judicial Conference in March of 1970, upon the recommendation of both District Courts and the Fifth Circuit Judicial Council. In past weeks both District Courts and the Circuit Council have reaffirmed their approval.

The reorganization of the three districts in Illinois has not yet been reviewed by the Judicial Conference. All three districts and the Circuit Council for the Seventh Circuit, however, have fully endorsed the proposal, as embodied in section 4(b) of this bill. As you know, this proposal has been under study for some time now, and as noted in correspondence to you from Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, dated May 25 of this year, it has encountered "no opposition." Because the Court Administration Committee has not yet been asked to review the matter, I defer to the comments provided in Mr. Fitzpatrick's letter to you. I believe I can say, however, that given the full approval of all three District Courts and the Circuit Council there is no reason to believe that this proposal would be disapproved by the Judicial Conference.

Your bill's proposal for the creation of a new Lufkin division in the Eastern District of Texas, embodied in section 4(d) of your bill, does entail the removal of two counties, Polk and Trinity, from the Southern District. The matter has never been considered by either District court of the Fifth Circuit Judicial Council. Our efforts to solicit the views of the District Courts' Chief Judges have been unsuccessful due to Chief Judge Joe J. Fisher's current absence from the country. Although Judge Fisher will return on June 9 from London, given the care with which the Fifth Circuit has evaluated such proposals in recent years, I do not believe that the views of both Courts and the Circuit Council will be available until this proposal has been given extensive further study.

In relation to the other two bills before you today, I have already noted that H.R. 6465, a bill to, among other things—including the creation of an additional judgeship—create two new districts out of the existing Eastern District of New York, cannot be evaluated by the Second Circuit Council in the immediate future.

The remaining proposal, H.R. 3972, a bill to create a new Southwestern District within the current Central District of California embodies a proposal studied by the District Court in 1976 and the Ninth Circuit Judicial Council last year. On November 10, 1976, the judges of the district court for the Central District of California

unanimously agreed that the establishment of the proposed new Southwestern District of California was a matter for Congressional determination and that they would express no views. In the summer of 1977, however, the Judicial Council of the Ninth Circuit evaluated the proposal, as embodied in the bill before you, and tabled any action on the matter. Chief Judge Browning has by telephone notified the Administrative Office that his Council took that action in the belief that a determination should not be made on this matter until after enactment of the currently pending omnibus judgeship legislation.

Mr. KASTENMEIER. Thank you, Judge Hunter.

Your testimony was extremely valuable to the subcommittee. If anything, however, it suggests once again that legislation before us is not really a simple matter. It's a rather complicated bill and it's rather difficult to find provisions upon which everyone agrees. We had hoped that this particular area, sort of a judicial housekeeping area, would be somewhat less controversial than some other matters.

I do think we should proceed briefly with Judge Hunter, and if we cannot conclude our questions briefly, we will put our other questions aside so we can hear from Mr. Nejelski, who will cover the same issues. Perhaps Judge Hunter would remain with Mr. Nejelski to answer questions.

I say that because we are under some time constraints. The House is in session and is considering an important bill.

So, with that in mind, I would like to start by asking just a couple of questions, although I think I have a greater number I would like to ask.

You indicate that the district judge may himself designate a place of holding court. I think you indicated he needs approval of the circuit council to do that, but that would seem to suggest that a statutory designation is not necessary.

What is the difference, for example, between a situation in which the district court with the approval of the Circuit Council decides, announces, or designates the holding of court in, say, Ashland, Ky., without explicit statutory authorization for that? In other words, what distinction can be drawn, or what utility is there in a statutory designation of a place for holding court quite apart from a court deciding to conduct proceedings in a certain city?

Judge HUNTER. First of all, we have the historical development that Congress has undertaken through the years to designate places for the holding of Federal court; and Congress has its own tools to investigate and evaluate. The judiciary is more comfortable, if I may use the term, with the designations made by Congress.

Second, the judiciary views its power to designate a place to hold court to be one that would apply mainly to a temporary situation. Perhaps an unusual caseload has built up in a particular locality or there are unusual circumstances of another nature that might call for a one-time holding of court.

The judiciary has not endeavored to designate places of holding court through the district court judge and the appropriate judicial council in a permanent, ongoing situation. I say that in a general way because there may be situations I am not aware of; but, within the scope of my knowledge, it has been for the temporary situation only that that power has been used by the courts.

Mr. KASTENMEIER. Several of the proposals pending before us differ as to motivation or justification. Many of them are, in fact, based on judicial reasons—that is to say to accommodate a senior judge who lives in a community, and prefers to hold court in that community, and can effectively do so.

In the event that that particular judge ceases to hold court anymore, ceases to be on active status or, in fact, dies, the justification for holding court in that particular community sometimes evaporates in terms of statutory designation or otherwise. And, indeed, I suppose if it is a statutory designation, the statutes ought to be cleaned up periodically to reflect the obsolescence instead of having places authorized which, in fact, are never resorted to or used.

Judge HUNTER. Mr. Kastenmeier, in 1972 an event came along that caused the entire Federal judiciary to do just what you are talking about, and that was to evaluate all of the court locations to see if there was a designated place that should be, in effect, erased, was no longer needed. That particular development came along when Congress required that the judiciary pay rent money to General Services for any court space that it needed. Certainly, the judiciary didn't want to be paying rent on space which was not truly needed.

A very careful survey was made, and I was fortunate enough at that point to have been the chairman of the Ad Hoc Committee of the Court Administration Committee that actually conducted the survey. I cannot say we were anything but very liberal with leaving places; but, even so, we did report to Congress that there were eight places which everyone agreed should no longer be places for holding court.

Mr. KASTENMEIER. And were they statutorily deleted?

Judge HUNTER. I wish I could answer that accurately. I did not follow them through to find out. We knew of no opposition from any quarter, not from the local bar, not from the judges, not from anywhere. I just assumed that had probably been accomplished. My point is the Judicial Conference stands ready at any time, I am sure, to make a similar survey, and we would certainly cooperate fully with Congress in eliminating of any designated places of holding court that were really no longer needed.

I think it should be an ongoing process.

Mr. KASTENMEIER. I agree with you. If we are going to liberally create new places for holding court we ought to also zealously scrutinize the existing list for those no longer used.

Going to the Corinth, Miss., case, do I understand that the judge living and holding court in Corinth, Miss., may not use a post office without statutory designation, that he cannot designate that community as a place for holding court with the approval of the circuit council?

Judge HUNTER. He cannot use Federal funds simply because he lives there. Federal funds may only be used if Corinth has an appropriate designation as a place for holding court. So he either has to pay for it out of his private money, which Judge Smith is now doing, or get somebody to volunteer space at no charge. If he wants to use Federal facilities and funds, Corinth has to be a designated place for holding court.

Mr. KASTENMEIER. By statute?

Judge HUNTER. By statute.

Mr. KASTENMEIER. So, in other words, the ability of a district court to designate a place for holding court with the approval of the circuit council is pretty meaningless, because this designation carries with it no resources to hold court in the community; is that correct?

Judge HUNTER. As a general statement, that is correct.

There have been a number of instances in which a State has made courtroom space available to the Federal system free of charge for periods of time, but not permanently. There are places where others make courtroom space available free of charge, but, again, for short periods of time. That is what prompted my earlier remark that, when the court undertakes to "designate a place," it is usually a very temporary matter and always for a special session of court as a short-term condition.

I have sat and held court in the chambers of the House of Representatives of the Missouri Legislature, a very unique experience—which I thoroughly enjoyed. That was for the purpose of admitting some 700 young men and women to the Federal bar. I used the chambers as a borrowed facility—at no charge to me, I assure you—or to the Government. That is somewhat illustrative of the breadth of those statutory powers.

Mr. DANIELSON. Would the gentleman yield?

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

Mr. DANIELSON. Apropos, I don't want to be out of order here but, sir, on this Corinth, Miss., situation the chairman was just referring to, Judge Smith, as I understood your statement and as I have now reread it on page 11, my understanding was that he was utilizing personally rented space as his office, but not as a place of holding court. I perceive this as having a two-sided equation: an office, the chambers of a judge being one thing, the place where he holds court as a presiding judge and hearing witnesses being another thing.,

In the instance of Judge Smith, which of these two aspects is in your mind as having been accomplished by his renting an office?

Judge HUNTER. I expect he handles a great many motions and short matters in his office. I do the same. Most Federal judges do that. But for the actual trial of a case, I think you are absolutely accurate, he needs a courtroom.

Mr. DANIELSON. So, by his personally paying rent, you are thinking of a chambers activity of a judge?

Judge HUNTER. Yes, sir.

Mr. DANIELSON. In this case.

Judge HUNTER. Yes, sir.

Mr. DANIELSON. If he could borrow a courtroom or suitable chamber in which to hold court in Corinth, the existing law would permit him to hold court there, would it not?

Judge HUNTER. Yes.

Mr. DANIELSON. Right. Let's assume now he has no trouble with his chief judge or judicial council. He could, under present law, hold court there. But until and unless it's a designated location for holding court he would not be able to take advantage of the available space in some Federal building there free of charge?

Judge HUNTER. Yes, sir. This is one of those matters that I reviewed in 1972-73, as a part of the ad hoc committee study I mentioned.

If the space in that particular post office is not being used, and there is a judge who needs it, then certainly there is no resultant cost to the taxpayer out of all of this.

Mr. DANIELSON. Does there seem to be enough judicial business in Corinth to utilize the services of a judge frequently?

Judge HUNTER. Insofar as I can recall from that earlier experience, although there is enough business there for a judge to be sent there, it's somewhat marginal. This judge will soon become a judge in senior status, and I would suspect that, at that point, he would be assigned that work as part of his senior status duties. So, it would be a continuing thing. When you consider the inducement to him to use it in senior status, I think the public generally would receive additional judicial time that it otherwise might not receive.

Mr. DANIELSON. You feel then that there is a sufficient volume of work under existing circumstances that you described to justify designating Corinth as a place where the court may sit, where they may have court, which would then, as I understand it, enable the judge to utilize this now vacant space in the federally owned building?

Judge HUNTER. My answer is yes.

Mr. DANIELSON. And you recommend that, I gather?

Judge HUNTER. Yes, sir.

Mr. DANIELSON. Thank you.

I yield back.

Mr. KASTENMEIER. Does the gentleman have other questions?

Mr. DANIELSON. Yes, I have other questions.

Judge HUNTER. The reason I hesitate, Mr. Danielson, is that I have a great amount of data in this book, and there are some judges involved with whom I would want to check before giving you an answer which involves individual statistics.

Mr. DANIELSON. I understand fully.

I am, of course, personally interested in the central district of California within the ninth circuit. There are two or three proposals affecting that area, one is to designate the cities of Long Beach and Santa Ana as places where the court "shall" sit, or another option where they "may" sit. And, another bill is much more far-reaching to subdivide the central division breaking off three counties into a southwestern district, the central district into a southwestern plus a central district.

I note on the last of these Judge Browning has recommended at least the deferring any further consideration until after the omnibus judge bill is passed in whatever form it will become law.

Have you or your group made any study as to the statistical data which would either justify the creation of a new district or perhaps cause you to report adversely on it?

Mr. WELLER. Congressman, I will try to answer this question for Judge Hunter.

In 1971 several studies were undertaken.

Mr. KASTENMEIER. Excuse me.

For the purposes of the record, it is William Weller who accompanies Judge Hunter.

Judge HUNTER. And, Congressman, Mr. Weller has made many of these calls.

Mr. DANIELSON. That is the way life is.

Mr. WELLER. Congressman, in 1971 and 1972 statistics were reviewed by the court, and studies have been reviewed since. Apparently there is some disagreement over what factors ought to be evaluated and what weight they ought to be given. That is part of the reason for Judge Browning wishing to postpone this for a while.

Mr. DANIELSON. Really the purpose of my question is that I would not feel comfortable, Mr. Chairman, or Judge Hunter, anyone, in setting up a new district, subdividing an existing district, unless I had sufficient statistical data as to the caseload, the nature of the litigation that might be entertained within the district, the geographical origin of it, where it's coming from.

We are getting into a massive piece of surgery when you set up a new judicial district and, while I fully would respect your opinion, Judge Hunter, and that of anybody else who would come before us to make a recommendation, I just could not feel comfortable doing it unless I felt that I had some evidence before me which would permit me, if not compel me, to reach that kind of a conclusion.

I just would not be able to make any such recommendation just on hunch or one man's testimony, no matter how fine a person he is.

Judge HUNTER. Mr. Danielson, I could not agree more. That is why we have this very carefully established system, that has been in operation now for 12 years, under which these matters are referred first to the administrative office, then out to the chief judge of the particular district court and to the circuit council, and then back to the Court Administration Committee, where a subcommittee studies it, reports to the full committee and finally back to the Judicial Conference of the United States.

I can really express no views here on behalf of the Judicial Conference unless the Judicial Conference has received all of that input and has taken an official position itself.

Where we get into trouble, sir, is where we bypass or short-cut that procedure, because this is a very complex subject, and it does take that full, indepth study.

Mr. KASTENMEIER. Would the gentleman from California yield?

Mr. DANIELSON. Surely.

Mr. KASTENMEIER. Because I think he has raised a very good question and I should have commented myself, it would appear without even having heard all of the testimony this morning that we are going to have, like the scenic rivers, we are going to have to have an action category and study category of these, of some of the proposals, and that is not to state that we would necessarily agree with every recommendation made to us by witnesses but, nonetheless, there clearly appears to be two categories of proposals. That is, those we are able to act upon forthwith and those we are not.

The second probably should go into the form of the study category.

Mr. DANIELSON. If the gentleman would yield back, I am 100 percent in agreement. I feel a lot better. I just am not in a mood to sit around here and carve up judicial districts this morning, or

possibly this year, probably this year. Because it's too much to be considered for the amount of time and the amount of study that we are going to be able to put into it. We just simply cannot master these facts that fast as far as I am concerned.

The other aspect on the central district of California, there are these proposals for designating the court to either "shall" sit or "may" sit in Long Beach and Santa Ana. Again, I think I would need some imperial data to cause me to feel justified in the "shall" sit. And inasmuch as the "may" sit situation is already in effect in the law, you can have a court sit in Long Beach or Santa Ana if need be, if they can get the use of a free courtroom, if the judge is willing to make the trip.

I don't think there is anything real urgent about it at the present time. So I have said enough and I yield back.

Judge HUNTER. Mr. Danielson, if I may just respond briefly, it is the wish and hope of the Judicial Conference that your subcommittee will continue to refer or request that type of information and the views of the Conference, because we have found out from our 12 years of experience that such a study is needed. It is an ad hoc situation in almost every instance. There is simply no way to generalize.

Mr. KASTENMEIER. Would the gentleman yield further?

Mr. DANIELSON. Surely.

Mr. KASTENMEIER. And I thank him for yielding.

In this connection it should be pointed out these requests have been made only recently of both the Conference and others. This is not to criticize the Judiciary Committee or any other subcommittee, but I think in the business of the omnibus judgeship bill, and with the emphasis on the creation of judgeships, that these requests were not more timely made, as they might have been. I recognize that they have only recently been made of you and there is no reason to think you could fully comply with all of the information we would like to have relating to these proposals.

For the record, perhaps I should say that the omnibus judgeship bill is in conference. It might have been a possibility that some of these matters would have been treated in such a bill. They were not and I think for good reason.

The omnibus judgeship bill creates district judgeships and new judgeships for the circuits. It provides for, as I recall, a merit selection plan, and I am not sure if either of the proposals contain a proposition for the division of the fifth circuit. I am not sure either contains proposals for the division of the ninth circuit.

I do not think the proposals go beyond that which I have stated. In any event, they do not go on to any other matters such as we have before us today? I think all of these matters were deferred and then recently, were reassigned to this subcommittee for action, just to set the stage for where we are.

Mr. DANIELSON. I have one more comment which is generated by Judge Hunter's last response or ad lib there.

I am glad to hear you say that you do urge that we continue this system of referral and then report back so we will have something to work with. We are just flying blind here if we don't have something like that, and I cannot participate in that.

I want to make one recommendation to you gentlemen and your council or conference.

I fully understand and I fully appreciate and respect the tendency of judges, members of the judiciary to use a lot of restraint when appearing in what you might call the political aspects of the judicial branch. But, I invite you to be pretty strong in your statements and, then, because we are dealing all of the time with people who paint things in the brightest of colors or the darkest and the pastels just don't show through somehow or another, so don't be hesitant to tell us what you recommend, in one syllable words.

It sure helps, and I would appreciate your doing it, because sometimes I get a feeling you are trying to guide us a little bit, but I am not real sure. I think it may be just a restraint showing up. So don't hesitate. We appreciate a little guidance here.

Thank you very much.

Mr. KASTENMEIER. The gentleman from Pennsylvania.

Mr. ERTTEL. Thank you, Mr. Chairman. I appreciate your coming, Judge Hunter. I have just a couple of questions.

In your testimony you indicated you applied some criteria to whether or not you should have a place where a court should sit under the statutory authorization, and you alluded to the criteria.

Do you have some sort of form, or how do you go about making that judgment why you would recommend? Is it the convenience of the court, the convenience of the witnesses, that is uppermost? Is it the economics in the situation? Can you give me an evaluation of your criteria?

Judge HUNTER. I will try. Your question is somewhat my asking, without being discourteous, how you decide to pass a piece of legislation. It is a very complex evaluation, to say the least.

The first thing we do is to see whether there is a real need to have a court in a particular place. This you can tell by a careful study of where the cases seem to originate, what lawyers from what localities are in them, where the real nexus of the cases is. You have a pretty good idea from those things as to what the potential litigation for that area would be if you had a regular court there.

Then you look to see how close other courts already are to that location. If it is just a matter of 35 or 40 miles to the courthouse, and you have a four-lane divided highway, it is no hardship on the attorneys and clients to come to where the court already is. If, as in Alaska, you might be going 900 miles to the courthouse, you have to take that into consideration even though the business, comparatively speaking, might be very small.

In addition, you have to weigh such factors as whether there are facilities that can be made reasonably available, and what kinds of cost factors are involved. It is a very complicated process.

I am constantly amazed by the things that appear when we make such a local study, that actually bear on whether justice is really being furthered by having that place designated as a place to hold court or not.

All of those factors, the volume of litigation, the type of litigation, the jury situation, the cost factors, the convenience to the parties, convenience to the public, the particular stresses that are

on the court, or that would be placed on the court by having to send its personnel out, all are included.

Mr. ERTEL. If I may, are you really applying the same criteria you would for a change of venue generally?

Judge HUNTER. It goes a little further than that.

Mr. ERTEL. I was curious about that. You have indicated, I guess, that the District Court for the Western District of Pennsylvania has indicated their disapproval of the suggestion that Johnstown be utilized as a place of court setting.

Do you have the underlying reasoning for that with you? You may not.

Judge HUNTER. I do not, sir, at this time, have it in hand. It was an action which was informal in nature, originated by a Congressman's inquiry, and I don't know how much formal data was collected or published. Certainly whatever was evaluated was never forwarded to the Third Circuit Judicial Council.

Mr. ERTEL. I wondered about that, because looking at the map of Pennsylvania here, I have one judicial district and three places where a court sits in that judicial district.

That judicial district represents one-half million people approximately, and I look at Johnstown, which does not have any place for a court to sit, and it is situated next to Altoona, which is a large city, in Pennsylvania, anyway, and there is one judicial district, and looking at the population figures alone and the area it would serve, it would seem logical to me that Johnstown would be a logical place to have a court sitting.

Also, the same thing would apply to Lancaster, as I look at it. Again, I know the area; it is heavily populated. Lancaster would serve an area of over a million people actually. I wondered what criteria was used—

Judge HUNTER. The only answer I have is that no study has ever before been requested, and there has been no formal study in the past 3 weeks. The things you mention, I am sure, would receive top attention.

Mr. ERTEL. Can you tell me briefly, I assume you have transferred your court to some town on a temporary basis, how many people do you have to move to sit in an area besides yourself and maybe the clerk and court reporter?

Judge HUNTER. I have to move an in-court deputy clerk out of the clerk's office; I have to have a court reporter; I customarily take a law clerk. I do not take a secretary—my court reporter performs that duty—but if it is a criminal case, then you have further involvements which I am sure the next witness will tell you about, such things as the U.S. Marshal Office having to send someone. You have other factors of that nature, depending on the type of litigation, but it is a pretty good traveling team, some five, six, or seven people, and it is expensive.

Mr. ERTEL. I was trying to get a feel for the difference in expense if you had to bring all the jurors from that distance, or the witnesses from that distance, or the lawyers from that distance.

Judge HUNTER. You don't get the jurors quite that locally. They are spread out pretty well wherever you call them to.

Mr. ERTEL. Generally they come from the locale of where the court sits, I would imagine.

Judge HUNTER. We have a rule under which we call them from within somewhere around an 80-mile radius.

Mr. ERTEL. I suspect each district varies on that.

Judge HUNTER. Each district has its approved jury plan.

Mr. ERTEL. Thank you very much. I appreciate your comments.

Mr. KASTENMEIER. The questions of the gentleman from Pennsylvania suggest we probably ought to have some formalized method of requesting information relative to such proposals.

I wasn't clear on your answer to Mr. Ertel as to whether, if a district judge disapproves or whether the circuit counsel or some other person or several persons reviewing such a request disapprove, whether there is any further assessment made by the judicial council at any other level? Perhaps I should put the question another way?

Do you have a particular plan by which you make a recommendation? Who, in fact, conducts the survey? Is it a district judge or the circuit council, or how do you reach a conclusion?

Judge HUNTER. The survey, as a practical matter, usually is made under the supervision of a subcommittee of the Court Administration Committee. That subcommittee makes direct contact with those people in the area who are knowledgeable and uses fully the facilities of the Administrative Office to help in that study.

It is at that subcommittee level that all the data is gathered and the evaluation process really starts.

Mr. KASTENMEIER. So it is really a national committee that is responsible for the ultimate recommendation?

Judge HUNTER. The Judicial Conference has the final word.

Mr. KASTENMEIER. I say that because I think you indicated that with respect to Pennsylvania, and perhaps others, that locally a judge or judges can turn down the matter? I am not sure.

"Neither the District Court for the Eastern District of Pennsylvania, nor the Third Circuit Judicial Council has ever evaluated the feasibility of Lancaster." And as far as Johnstown, "The Johnstown location has been informally studied by the District Court and expressly disapproved." That suggests that the national committee or subcommittee, itself, doesn't have a point of view on it or hasn't made a survey.

You merely reflect the point of view of the judge, the local judge?

Judge HUNTER. These are the rules of thumb and, like any rule, I suppose, where there is a necessity, there can be a change. We have had the situation, as I reported, where both the district judge and others who were interested in it, including the circuit council, approved the location and then the Judicial Conference of the United States disapproved it because they did not give their reasons and their backup support for it.

I am sure if there was some reason to believe that a district judge had not studied a proposal in sufficient depth or for some other reason, not reached the right result, that would not stop the process. It would still go further because it is the Judicial Conference that has the final word.

Mr. KASTENMEIER. In other words, then, I take it you are merely giving us some information as to the view in this case of a particular judge, but that has not necessarily been adopted as the view of

the Committee on Court Administration of the Judicial Conference of the United States.

Judge HUNTER. Yes, sir.

Mr. KASTENMEIER. Thank you.

Mr. DANIELSON. Could I ask a question?

Mr. KASTENMEIER. Sure.

Mr. DANIELSON. Could you give me, sir, an example of the type of case in which a district court may, of its own motion, decide to hold court in a place other than a designated place?

I can only think of a few which are sort of ceremonial in nature. Can you think of one other than that?

Judge HUNTER. I am limited somewhat by my experience.

First, let me clarify a point because I may have left a wrong impression. A district court does not technically "designate" a place of holding court. District courts may order "special sessions" at certain places, but standing facilities may be provided, under 28 U.S.C. 142, only if there is a statutorily designated position.

I have no personal experience of a district court being held at a place other than the customary place for that court, except in ceremonial type situations. I am limited by my personal experience, and I have made no study.

Mr. DANIELSON. I have only two in my consciousness. In one, business was conducted, but it was ceremonial. During the Vietnam war, we had a ceremony in our high school auditorium and veterans were there with arms and legs blown off and presented them with medals and two or three of them became citizens, and a very important civic function was performed by it.

I recall another situation where a witness was ill in a hospital, gravely ill, and they went there and actually permitted cross-examination in the hospital room. That is not ceremonial, but it is still unique, and I am not aware of a major trial ever being held under those circumstances. I wondered if you know of one.

Judge HUNTER. No, sir, I do not have any such in mind at all.

Mr. DANIELSON. Thank you very much.

Mr. KASTENMEIER. I want to thank Judge Hunter again for aiding this committee and also acknowledge the presence of his able assistant, who also serves the Judicial Conference of the United States, Mr. William Weller. And I would ask if you would remain, Judge—we might have further questions—but we would like to hear from Mr. Nejelski.

Judge HUNTER. Yes, sir, my day is yours, and I am pleased to remain. Thank you very much.

Mr. KASTENMEIER. It is a pleasure for me to greet again before this committee, Deputy Assistant Attorney General, Paul Nejelski, who, I guess I should say, aids Dan Meador in the Office for Improvements in the Administration of Justice. We are very pleased to see you here today, and if you would identify your colleague, we will have your statement, and you may proceed.

TESTIMONY OF PAUL NEJELSKI, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY LES ROWE, EXECUTIVE OFFICE OF U.S. ATTORNEYS, U.S. DEPARTMENT OF JUSTICE

Mr. NEJELSKI. I would like to introduce Les Rowe, from the executive office of U.S. attorneys. Mr. Rowe is a graduate of Catholic University Law School and has been with the Department for 13 years, both as an assistant U.S. attorney in the Eastern District of Virginia and as an attorney in the executive office for U.S. attorneys.

I would note that that is the office that has over 30 people in the Department in Washington to service and work with the U.S. attorneys around the country.

With your permission, I would like to submit our statement and not read it.

Mr. KASTENMEIER. Without objection, it will be received in the record.

[The prepared statement of Mr. Nejelski follows:]

STATEMENT OF PAUL NEJELSKI, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, DEPARTMENT OF JUSTICE

Mr. Chairman, thank you for this opportunity to offer some suggestions by the Department of Justice concerning a number of proposals now before the subcommittee as H.R. 12869, respecting the boundaries of and places for holding court by Federal district courts. There is a constant healthy tension in judicial administration between the interests of efficiency and centralized services and the desires of many participants or users of court services—and some judges—to have local sittings of the court. The Congress has used widely varying approaches to resolve this tension in the past, and the subcommittee's approach to a planned and reasoned periodic review of proposals affecting the places of sitting for our only national system of trial courts of general criminal and civil jurisdiction is a valuable step towards improving the efficacy and availability of justice in Federal court.

While I do not propose to attempt a specific evaluation of each suggested change or addition, it may be helpful to first summarize the various proposals, to review past experience in making similar decisions, to describe some ongoing research programs which may provide data and methods to assist the Congress in its deliberations, and to outline several considerations which are especially relevant to setting the boundaries and locations of Federal trial courts.

The representatives of the Judicial Conference and the Administrative Office of the United States Courts will comment from the perspective of the judiciary. We appreciate the opportunity to present the views of the Department of Justice, for these proposals also will affect a broad range of our operations and programs.

For example, a United States Attorney and United States Marshal, with their assistants and deputies, must be appointed within each Federal judicial district. Several parts of the Department, such as the Antitrust Division and the Civil Rights Division, litigate directly in the field. The Bureau of Prisons must provide a capability for detaining Federal prisoners both before and during trial in the district courts through its own facilities or by contract with State and local facilities. Finally, Federal investigators and expert witnesses must be available to give testimony in the district courts wherever court is held.

These proposals also will affect the availability of affordable justice for citizens in the areas covered. These concerns, which I will discuss specifically, form a major part of the work of the Office for Improvements in the Administration of Justice. As the subcommittee members know, we have a given high priority in our work to assessing legislation that will improve the delivery of justice, with a particular emphasis on the Federal courts.

Proposal categories

The proposals before the subcommittee fall into four related categories, with overlapping implications. First, there are those proposals which would authorize the creation of a new Federal district court. When a new district court is created, a full

range of personnel and facilities must be provided, including judges, clerks, reporters, bailiffs, probation personnel, offices and chambers, as well as a U.S. Attorney and U.S. Marshal for the district, with supporting staff and facilities.

The second category includes bills which would change the boundaries of existing districts, along county or parish lines. These proposals involve fewer expenses than the first category, although they raise some of the same challenges in dividing, transferring, and coordinating the trial of cases already filed in one or more of the affected districts.

The third category of proposals—is closely related to the fourth, those which could create, abolish, or alter internal divisions within existing districts. There is very little statutory or practical difference between an internal division of a court and a provision which simply requires that court be held in one or more places within a district. For example, some districts have provided by local rule for separate filings or jury panels along division lines.

Organization of the district courts

The organization of the Federal district courts has changed substantially over time, and no single pattern or approach has been followed for all courts. Chapter 5 of title 28, United States Code, creates the Federal judicial districts, with one or more district courts set up in each State. The district boundaries remain within a single State, with only minor exceptions required to accommodate Federal enclaves or possessions which are not part of a State. In 28 U.S.C. § 133, the Congress has authorized the President to appoint, by and with the advice and consent of the Senate, specified numbers of district judges for each of the several judicial districts. For the most part, district judges are appointed to a single district, although a few are appointed as "floaters" to two or more districts within a single State (e.g., Arkansas, Iowa, Kentucky, Missouri, Oklahoma, Washington and West Virginia). The multi-district judgeships provide some added flexibility to two or three districts, where an additional judgeship may not be justified for each.

The 95 Federal district courts are also organized under differing authorities, with the great majority established as inferior courts of the United States under Article III, while a few are territorial or "legislative" courts which depend for their authority on the Congress's Article I power to legislate concerning the territories of the United States. *Palmore v. United States*, 411 U.S. 389 (1973); *American Ins. Co. v. Cantor*, 1 Pet. 511 (1828). While the Article I courts may, for the most part, exercise the same range of jurisdiction as the Article III courts, the Congress should remain attentive to the substantial differences between these types of courts, especially the Article III guarantees of life tenure and undiminished salary in office during good behavior.

The organizational history of the district courts is well-chronicled in Surrency, "Federal District Court Judges and the History of Their Courts," 40 F.R.D. 139 (1967). The best treatment of the early development of federal jurisdiction and the relationship between district, circuit and Supreme Courts continues to be found in "The Business of the Supreme Court" (1928) by Frankfurter and Landis.

New States and territories

The district courts were first established by the Judiciary Act of 1789, which created a single court with one judge in each State. As new States were admitted to the Union, they were also organized into single districts with a single district judge, regardless of the size, population or former political status of the district. Only Oklahoma was admitted and organized into two judicial districts. Act of June 16, 1906, § 13, 34 Stat. 275.

Single districts also have been provided for the territories. The most recent example is the new district court set up last winter to fulfill the Covenant admitting the Northern Marianas Islands as an associated commonwealth. Public Law 95-157, 91 Stat. 1265 (1977). The history of this court has restricted comparative value, since it is a territorial Article I court created in fulfillment of a rather unique obligation.

Multiple districts

In 1802 the Congress divided North Carolina into three districts for purposes of holding court, and Tennessee into two districts for the same purpose. 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 for the purpose of providing additional cities in which the existing court might meet. Surrency's "History supra," at 147-152 reviews the gradual move towards dividing States into several districts, and the later trend towards appointing more than a single judge to serve in a district. In most cases, the new districts were authorized because of the long distances which

litigants had to travel to attend the sessions of Federal courts, and because the business of each district was thought to be enough to keep one judge occupied.

As a rule, 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. This technique may have been chosen because of the advantages of economy, collegiality of decision, and ease of administration and budgeting which more centralized courts offer. As a result, during the past 50 years, only four States have been further divided: Indiana (1928), and more recently Florida (Public Law 87-562, 76 Stat. 247 (1962)), California (Public Law 89-372, 80 Stat. 75 (1966)), and Louisiana (Public Law 92-208, 85 Stat. 742 (1971)).

The reasons for division apparently are not based exclusively upon quantitative considerations of maintaining a balance between the workload and staff size in the districts. For example, the recent division of Louisiana from two into three districts, split off nine parishes and a single judge into the new Middle district, located in Baton Rouge. This left thirteen parishes, nine district judges, and a substantially larger population in the truncated Eastern District, located in New Orleans. And, of course, the new district required its own facilities, supporting personnel, U.S. Attorney, and U.S. Marshal.

Similarly, the four California districts are now authorized widely varying numbers of judges—eleven in the Northern district, three in the Eastern, 16 in the Central district, and five in the Southern—although each is served by a separate U.S. Attorney and U.S. Marshal.

Divisions and places of holding court

While judicial "districts" have a separate and distinct meaning under the statutes, 28 U.S.C. § 451, internal "divisions" have no comparable independent statutory definition, and neither expand nor contract the geographic reach of the jurisdiction of the district court as a whole. Divisions are described, however, with respect to their parent districts, in chapter 5 of title 28 of the U.S. Code. Congress appears to have used both "divisions" and "places of holding court" at different times over the years. Regardless of the term used, the effect is the same: to prescribe a place where regular sessions of the court must be held.

The practice of subdividing districts into divisions appears to have originated in 1838, when the Northern District of New York was divided into three divisions. 5 Stat. 295. This action was evidently intended to ease the selection of juries, permitting them to be drawn from smaller divisions rather than across the entire district. Three places were specified where court was to be held, and each location became the center of a division. Although the divisions in New York were later abolished, the system was again used from time to time beginning in 1859, and today 42 of the 95 district courts in 23 states have two or more divisions. The number of divisions within each court seems to depend chiefly on the number of places for holding court, and ranges from no divisions in a majority of the judicial districts to a high of 10 divisions in the district of South Carolina (served by 5 judges). South Carolina may represent an atypical case, however, given the relatively high number of divisions and places for holding court in a State which is geographically smaller and less heavily populated than most. South Carolina also is the only State in which two districts were consolidated into one. Public Law 89-242, § 1(a), 79 Stat. 951 (1965).

The majority of districts have not been partitioned into divisions. However, the provisions of title 28 establishing districts also specify two or more places of holding court in most districts. These provisions effectively serve the same purpose which is now served by the more formal step of constituting a judicial division.

The traditional justification for divisions—easing problems of jury selection—now seems to be adequately addressed for all districts by the jury-plan authority conferred on every United States district court by 28 U.S.C. §§ 1863-66. These sections authorize each district court to draw up a plan for juror selection without regard to internal divisions. We are not aware, for example, that the Eastern District of Pennsylvania, with 19 Federal judges and no divisions, experiences significantly more difficulty in choosing jurors than the Middle district of Georgia, which has 2 judges and 7 divisions.

Much of the reason for creating or altering districts and divisions within States appears to result from the interest of local litigants and members of the bar for adding places of holding court more convenient to the needs of particular areas. They have in many respects been successful. Our latest figures indicate that the 95 district courts, with 399 currently authorized judgeships, have a total of 199 divisions and 425 required places of holding court. However, it appears that several courts may have delayed or formally pretermitted sessions at particular locations. 28 U.S.C. § 140(a). Thus, approximately 388 of the places of holding court are host to regular sessions of court.

Statutory authorization for a district, division headquarters, or a new place of holding court, is necessary before a Federal district court may sit. Section 142 of title 28 effectively prohibits the district courts from holding regular sessions of court at any place where quarters and accommodations are neither already available from Federal resources, nor offered without cost to the United States. Federal quarters are made available only at places where regular terms of court are statutorily authorized to be held. However, this provision has been waived by several public laws not codified in title 28. The waivers permit court to be held regularly in places where neither Federal accommodations nor cost-free equivalents are available, in effect authorizing several courts to meet in additional locations without meeting the title 28 restrictions. I will be glad to provide a list of these waivers for the convenience of the subcommittee.

Need for planning

Before turning to a discussion of several considerations relevant to setting the boundaries and locations of federal trial courts, I would like to review some approaches to meet the clear need for planning in this area.

Last July, this subcommittee, as part of its series on hearings on the "State of the Judiciary and Access to Justice", heard testimony from Professor Burt Neuborne, appearing on behalf of the American Civil Liberties Union. Professor Neuborne urged the Congress to view its role in legislating change in the justice system as a strategic process of allocating the scarce resources represented by the unique services of the federal judiciary.

The decisions that will be made by the Congress with regard to these proposals for district organization should be based as much on consideration of the long-term goals and needs of the justice system as on currently perceived local requirements. When seen in this way, district organization is a means of allocating judicial resources, comparable to those decisions already made to increase the number of Federal judges, or to reform diversity of citizenship jurisdiction.

Approaches to planning

Some efforts are underway in the Department of Justice and elsewhere which might serve as approaches to planning district organization.

The first of these is the formulation of justice impact statements. Within the next few weeks a contractor will be competitively selected to begin a year-long study of justice impact assessment, under the Federal Justice Research Program administered by our Office. As a result of this study, we expect to develop an objective means for assessing the efforts of proposed legislation of changes in rules of legal procedure upon the operations of the federal justice system—both civil and criminal. This effort should provide the Department with an increased capability for assessing justice system change, based upon application of a comprehensive model designed for consistent use. While we have not yet selected the specific legislative items on which the first impact statements will be done, we would be most interested in the suggestions that members or staff of the Judiciary Committees of both Houses might make.

Our work in this area is tied closely to similar efforts underway elsewhere. For example, the House of Representatives has adopted a "foresight provision" as part of the Committee Reform Amendments of 1974, H.R. Res. 988, 93d Cong., 1st sess., 126 Cong. Rec. 34469. Work being done in support of the responsibilities detailed by the resolution, including formulation of impact statements, recently has been summarized by a staff member of the Congressional Research Service. Renfro, "The Future and Congressional Reform," 64 A.B.A.J. 561 (1978).

The National Academy of Sciences is also studying impact statements, through the Panel on Legislative Impact on the Courts, established under the auspices of the Committee on Research on Law Enforcement and Criminal Justice. The panel, which will report in 1979, is studying three aspects of justice impact assessment: analysis of federal court caseloads, current and potential caseload projection methods, and analysis of the potential for litigation in new legislation. The project has been funded by the National Science Foundation, with the goal of applying experience analysis to the problems of justice impact assessment. The Department of Justice is working closely with the panel on its study.

This comparatively recent attention to assessing the impact of legislation on the justice system should enable the Congress, the Department of Justice, and the federal courts to be informed more fully of the consequences of proposed legislation, such as the proposals currently before the subcommittee.

Two other developments also promise assistance in evaluating legislative proposals. First, caseload forecasting has been studied by the Federal Judicial Center, and more recently by the National Academy of Sciences panel described above. The

objective of these efforts is to be able to predict the caseloads of the Federal courts, an effort which, if successful, should be invaluable in planning for meeting the resource needs of the courts. These efforts are summarized in reports from the Federal Judicial Center, and in the academic literature. See, e.g., Research Division, Federal Judicial Center, "District Court Caseload Forecasting: An Executive Summary" (October, 1975); Goldman, Hooper & Mahaffey, "Caseload Forecasting Models for Federal District Courts," 5 J. Legal Stud. 201 (1976).

The second effort includes various means of assessing judicial workloads caused by various types of cases, as well as judicial productivity. This information is especially important because it permits focused analysis of judicial resource requirements, based upon a known mix of case types. For example, a judicial district—or in the case of proposals for district organization, a geographic area—may have a comparatively high number of total civil filings. But, when the total number is looked at more closely, a substantial number of the filings may consist of cases that can be terminated more quickly than the "average" civil case, through pre-trial settlement or motion practice. Early termination is illustrated by cases brought under the social security laws in the federal courts: While 8,051 of these cases were terminated in the district courts during 1977, almost all of the cases were terminated before pre-trial. Further, the Federal Judicial Center has found that disposition of social security cases only requires about three-fourths the judge time required for an "average" civil case. For a further explanation and illustration of this approach, see Federal Judicial Center, "The 1969-1970 Federal District Court Time Study" (June 1971) (currently being updated and revised); Statement of Deputy Assistant Attorney General Paul Nejelski on S. 364, 95th Cong., 1st sess., before the Senate Comm. on Veterans' Affairs (August 31, 1977) (impact statement on proposed legislation to provide judicial review of administrative determinations of the Veterans Administration).

Analysis of judicial productivity also can provide valuable information to the Congress in assessing the need for additional judicial resources. For example, one researcher has found, by looking at "court outputs," rather than at the more conventional measure of "total cases disposed," that the district courts, on the average, have reserve capacity, and that courts which rely more heavily upon trials as disposition methods do not also show lower levels of productivity. Another finding of direct relevance to the proposals being considered by the subcommittee is that judgeships may be poorly allocated among districts in terms of the district demand for case-related judicial services. R. Gillespie, "Judicial Productivity and Court Delay: An Explanatory Analysis of the Federal District Courts," US/GPO (April 1977).

One recent study describing the operations of six selected northeastern district courts in some detail is Heydebrand, "The Context of Public Bureaucracies: An Organizational Analysis of Federal District Courts," 11 Law and Society Rev. 759 (1977). Another very useful recent article is Hellman, "Legal Problems of Dividing a State Between Federal Judicial Circuits," 122 U. Pa. L. Rev. 1188 (1973), which considers many of the same operating and jurisdictional issues involved in making changes to districts or divisions.

These studies and analytic techniques have been reviewed as possible components for inclusion in a comprehensive approach to planning for allocation of judicial resources. As noted, an adequate justice impact statement should include findings using many of the techniques that I have discussed. For example, the caseloads generated from a geographic area could be forecast for a period of 5 to 10 years in the future; the forecast should be based upon litigation "characteristics" of the population of the area, as well as previous filings from the area in the district courts. The types of cases forecast could be assessed to determine how much judicial time they would consume, or whether they would be amenable to alternative forms of dispute resolution. Judicial productivity in the existing districts serving the area also could be assessed, to determine whether existing capacity for handling cases is sufficient, or if it is appropriately distributed to meet the needs of the area.

Criteria for court organization

These data will be useful only if they can assist the Congress in measuring proposals for court changes against meaningful standards. At the risk of oversimplification, I would suggest four major questions to be considered in making these decisions. This testimony then concludes with a listing and discussion of more specific criteria that could be used.

1. *Does the proposed change provide a genuinely needed service to the public or significantly improve public access to the federal courts?* This standard contains the most discretion for evaluating the proposals, and differing interpretations will be invoked in any debate. This question suggests that the first justification for any

proposed change in court organization should be that such change will improve the delivery of justice. While this justification cannot be expressed easily in convenient quantitative terms, its weight as a factor in assessing the proposals demands careful analysis and consideration.

2. *What is the expected impact of the proposed change on the operations and administration of the court system itself?* As a general rule, courts can benefit from economies of scale. Thus, geographical districts should be established with a view to taking advantage of these economies, where consistent with the overriding need to provide affordable and effective access to justice for all.

Further, courts with more than one judge can operate more efficiently than single-judge districts, since the judges can share many of the same facilities and supporting staffs, and may accommodate readily to judicial absences due to illness, disqualification, vacations, and circuit court of appeals assignments. As the commentary to the recent ABA Standards Relating to Court Organization, § 1.12, notes, "under the arithmetic of calendar management, the judges of a multi-judge court can handle substantially more cases than an equal number of judges operating in separate courts." Moreover, the importance of collegiality and frequent contact with another jurist should not be underrated.

3. *Are the expected benefits of organizational change worth the expected costs?* Also, how can an organizational change be accomplished at the lowest cost consistent with its purposes? In making these determinations, the Congress should consider that benefits often are difficult to express quantitatively, and they may often be intangible. In contrast, costs often appear in the stark form of the bottom line of an appropriations request.

These first three considerations are illustrated by a fairly recent study done by Arthur Young & Co. for the Judicial Council of California. The study identifies a number of the potential advantages and disadvantages of branch courts, which are comparable in many ways to the four sets of proposals before the subcommittee.

As suggested by the Arthur Young study, as well as our own observations, advantages to the public may include reduced travel time and expense, better access to court services, and reduced burdens on members of jury panels and witnesses. More widely spread locations for holding court may also reduce the cost and difficulty of transporting prisoners to trial and minimize the travel and out-of-service time for local law enforcement officers called as witnesses.

There are also advantages to the community, for terms of court often provide a source of community identity and local pride. The availability of a Federal court may well stimulate growth of the local bar, and encourage it to provide needed legal services at affordable rates.

Turning to the costs side of the analysis, each new court location requires expensive facilities and, if away from the chief place of sitting, may impose high travel and per diem costs on judicial and executive branch employees during the session. For example, it costs the Department of Justice over \$150 in travel and living costs to send an Assistant U.S. Attorney for a single day of sitting of the District Court of Wyoming in Casper, Wyoming.

When new divisions or districts are created, additional court and Department of Justice officers and employees are usually required. For example, the U.S. Attorneys now operate in over 326 field offices to serve the needs of litigating and prosecuting actions in 95 district courts, although only 146 of these offices are permanently staffed. Smaller courts also make for less efficient utilization of the time of judges and of supporting staff. They also create difficulties in scheduling calendars, and increase variations in the court's workload.

4. *Are there special considerations of federalism and constitutional law?* Federal judicial districts traditionally do not overlap state borders, or split a district between two or more states except where the overlap involves a territory or federal enclave. This practice is well-accepted and eases problems of jurisdiction, particularly when dealing with matters of state law. Restriction or abolition of general diversity jurisdiction may reduce this original justification, but there is little support for redrawing district lines to overlap several states simply for the purpose of including a major metropolitan area, such as Washington, D.C. and its suburbs, within one district or division.

In contemplating changes in district or division bounds, one should bear in mind the Sixth Amendment's guarantee that an accused criminal defendant is entitled to trial by a jury of the "State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." The Congress's present practice of minimizing changes in districts does much to further the underlying policy of certainty which forms part of that right and to minimize

the complications of transferring or coordinating cases between districts when boundaries are changed.

Specific criteria

We would suggest that the subcommittee consider using the following criteria for evaluating these proposals.

A. Area characteristics

1. *Population.* While the Federal courts have never been apportioned exclusively on the basis of population, their work depends to some extent on the population size, density, distribution, and especially litigation-related characteristics within their boundaries. Closely related factors are the expected travel time and convenience of access for judges and litigants or criminal defendants to the place of trial. The Bureau of the Census has elaborate data on demographics and means of travel, and it may be helpful for the subcommittee to examine suggested changes in this light.

2. *Patterns of Industry and Commerce.* Population is only a rough indicator of an area's need for judicial resources; much depends upon the kinds of business and commerce found in a region. A major seaport and banking or financial center, for example, may present many more federal civil actions based on laws regulating commerce, and federal criminal prosecutions for violations of some of those laws, than a district where the economy is less-heavily regulated. As another example, certain types of industry may cause federally actionable claims, such as black lung cases in coal mining areas. Also, district and division boundaries should follow county and parish borders whenever possible.

3. *Federal Presence.* The presence of a major Federal enclave or military base complex will contribute a comparatively greater number of federal cases, such as San Diego in the Southern District of California, which has a large number of federal facilities. This geographic area also demonstrates the problem of handling substantial numbers of border law enforcement matters and customs violations.

4. *Geography.* The distribution of courts should minimize travel time for litigants and for the court itself. As a rule, court boundaries should consider the road, rail and air networks available for movement, and to the extent possible serve an area having a well-defined transportation pattern and community of interest.

B. Court system

1. *Court workload.* By using the techniques discussed earlier for caseload forecasting, judicial productivity analysis, and similar approaches, each proposal should be examined concerning the probable effects on caseload and the means and speed of disposition of cases.

2. *Multijudge districts.* Multijudge districts should be the preferred option for court organization. The advantages of these districts in making the best use of judges' limited time and in pooling their abilities and resources are so pronounced that the single-judge district should become the distinct exception. Single-judge district should be considered principally where a new state or territory does not require the services of a multijudge court, or where local geography, population distribution, or patterns of commerce have produced a unique situation warranting a departure from the norm. Division within a district and "floating judgeships", which detract from the collegiality of a judicial body, should be disfavored, save where unusual circumstances make them necessary.

3. *Simplified Organization.* It is normally preferable to authorize a new place of holding court directly rather than by creating a division with a district. New districts should be considered upon the admission of new States or territories, or where significant shifts in populations or patterns of litigation have created a compelling need. District boundaries should be adjusted, once established, only where needed to significantly improve access to justice or to achieve substantial administrative economies. As a rule, courts are most effective when their membership ranges between five and eleven judges, but larger established courts should not be fragmented in the absence of compelling reasons.

4. *Technology.* The role of technology will have an increasing impact on the trial process and allocation of judicial resources. State courts and administrative agencies are now experimenting with the use of telephones to conduct hearings and picture phones to hold arraignments. There are experiments using television for appellate arguments. The use of videotape is becoming increasingly popular both for depositions of individuals as well as whole trials.

In the Federal system, the judges of the Third Circuit and the Federal Judicial Center are experimenting with a computer system which ties together all of the judges in that circuit for rapid communication of opinions from the various offices

of the judges in Newark, New Jersey; Wilmington, Delaware; Philadelphia and Pittsburgh, Pennsylvania.

Some or all of these experiments may prove useful in increasing access to justice at reduced costs to our citizens. They may have an impact on the organization of courts, the need for judges to sit in specific places, or the requirement that lawyers and witnesses travel relatively large distances.

C. Government costs

In considering proposals for new districts or places of holding court, the subcommittee should consider the costs to the judiciary and to the Department of Justice. The Administrative Office of the U.S. Courts should be able to furnish information on the costs of additional courtroom facilities, salaries and expenses of court employees, and the need for support services, such as libraries and computer facilities.

The Department of Justice also would incur additional expenses. For example, the creation of a new district would require the establishment of a new U.S. Attorney's office. Assuming an office of small size (5 attorneys and accompanying support personnel), annual salary costs would be approximately \$275,000, and support costs of \$100,000 would bring the total to \$375,000. Similarly, a U.S. Marshals Office for the same size district would require approximately \$220,000 in salaries annually, and an additional \$90,000 in support costs, for a total of \$310,000. Both of these estimates are rough approximations of "typical" needs, and do not include special requirements in a district. For example, the costs for the Marshals could be increased substantially if cell blocks had to be leased or constructed. Also, we have not attempted to estimate non-U.S. Attorney government litigation costs, or the impact on the Bureau of Prisons, without reference to a specific area. Finally, the splitting of existing districts could be comparatively less costly, as current personnel, or their positions, could be transferred. However, in the recent cases of creation of new districts these economies generally were not realized.

Conclusion

In summary, we recommend 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. New divisions should not ordinarily be considered, and existing ones should be re-examined in light of today's faster communications and travel time. New places of holding court should be evaluated in terms of balancing their expected benefits in convenience and expanded access to litigants against expected costs in new facilities, salaries, and the travel time of federal judges. Access to justice, if it is to have meaning, must include timely and affordable adjudication by fair and efficient courts. Those ends are, in general, best served without elaborate organization, unneeded places of holding court, or avoidable and expensive overhead.

Mr. Chairman, that completes my written statement, but I would be pleased to respond to any questions which Members or the subcommittee staff may have at this time.

Mr. Nejelski. We appreciate this opportunity to appear before the subcommittee. To our knowledge, it is the first time the Department of Justice has been asked for its views in this very important matter. We have a special interest because the U.S. attorneys and their staff as well as other parts of the Department will be affected by these decisions.

Just to give two examples: One is the need to maintain an office of a reasonable size to have specialization among the assistants, between criminal and civil, and, within that, certain types of cases. That breaks down if there is just a single judge with a single assistant U.S. attorney attempting to handle the wide range of Federal jurisdiction; there are economies of size for us in terms of representing the Government.

Another is, interestingly enough, the automation of legal research and the availability of juris terminals. These are quite expensive but increasingly necessary for research, and it is impossible really to have a terminal in each possible place where the court may sit. So I just cite these as two of many examples of certain economies of scale.

We also, of course, have in the Department the U.S. Marshal's office and the Bureau of Prisons, which are responsible for making sure that persons who are convicted or are in custody awaiting trial are available to the court and to defense counsel, and so forth. There are problems of finding space in local jails or in Federal facilities.

There are also special problems for those divisions which litigate in the field, such as the Antitrust Division or Civil Rights Division, where we have field offices and supplement the U.S. attorney's office.

And, finally, there are several investigatory agencies, such as the Federal Bureau of Investigation, and the Immigration and Naturalization Service, which are in the Department of Justice, and which have an important role in trying to work with the court in terms of expert witnesses and so forth.

One example I might give in that regard is the proposed changing of three districts from the southern district to the northern district of New York: Greene, Columbia, and Ulster Counties. Those counties are now in the southern district. The only place of sitting is in Manhattan, which, if you look at a map, is a 3 or 4 hour drive from those counties. They are close to Albany, which is the headquarters of the northern district and also which has the area's Federal Bureau of Investigation field office.

So that means, as a practical matter, that if a case were being investigated by the FBI in those counties, the agents are in the Albany office. They would have to then go to Manhattan to present their case to the U.S. attorney and to serve as witnesses. This may be quite wasteful: Sending agents 200 or 300 miles from Albany down to Manhattan.

From our point of view, an important consideration is the relationship of the investigatory agencies, such as the Federal Bureau of Investigation and the Immigration Service. Of course, outside the Department, there are other agencies, although they generally follow the lines of the Federal Bureau of Investigation.

Mr. KASTENMEIER. Mr. Nejelski, are you saying, therefore, that the Department tends to favor the association of Greene, Columbia, and Ulster Counties with the northern district because they are closer to Albany?

Mr. NEJELSKI. That is right. In terms of proximity, as you can see from a map, they are closer to Albany. There is a very low volume of criminal cases. We have looked in the records and haven't found any criminal prosecution for years in those counties, partly because, I think, compared to the types of cases in the southern district, what is happening in these largely rural, sparsely populated counties is not as important or exciting. Or possibly the logistics of just getting people down to Manhattan is a problem.

There are only a few hundred civil cases; and, if we are successful and your subcommittee is successful in limiting the diversity jurisdiction, that would be almost minimal.

But I cite that merely as an example of the Department's interest in these questions.

In addition, as you know, since the creation of our office last year, we have a second interest: Trying to improve the administration of justice generally. We regard these questions, as mundane as

they may be, of creating districts and divisions and places of sitting as important in their own way as the judgeship bill and diversity bill. It is an important question of how these judicial resources will be allocated and how effectively they are going to be used.

To cite an extreme example, if the U.S. district court judges were distributed in single-judge districts all over the country, it would be a very inefficient use of that manpower which we are adding by the judgeship bill and hopefully by the diversity bill. It is more than just some of the mechanics that may be involved.

In view of the excellent and detailed presentation that has gone before, I will not attempt to cover any of that ground even in my remarks except to add one or two things that have come up in the course of discussions.

Congressman Danielson asked if there were examples where district courts have sat from time to time outside of the normal designated place. I remember when I was a court administrator in the State of Connecticut, before rejoining the Department of Justice last year, we had a request from the district court in New Haven that they would like to use some State facilities and hold trial for about 2 weeks in New London, about 60 miles away, because all of the witnesses, all of the counsel, were from New London. Rather than make all of those people drive 60 miles, or an hour, to New Haven, we were able to accommodate them and lend them, in a sense, the courtroom and the facilities at the State courthouse in New London.

Mr. Rowe informs me that we receive a number of these kinds of requests which we often see, because the U.S. attorney has to incur special expenses, and obtain authority from headquarters before they can start moving their staff to these, temporary supplemental places of sitting. A recent example would be the city of Wilson in eastern North Carolina. We don't have a lot of data on that, but it does exist.

Also, I would call to your attention an interesting phenomenon, which is the waiver of the statutory prohibition against sitting any place other than designated by Congress. At pages 10 and 11 of my testimony, we point out that these waivers have been passed as separate legislation and are not codified in title 28. Through our research we have found 15 of these places and there are probably more.

We would be happy, if you are interested, to do the research and find as many of these as we can and provide you with a list for the record and for your information.

Mr. DANIELSON. Mr. Chairman, may I inquire, if that is not too burdensome, I would like to have it in our record.

Mr. KASTENMEIER. Yes.

[See app. 4(a) at p. 341.]

[The information follows:]

Mr. NEJESKI. I was surprised to see for my State of Connecticut we have three places of sitting: Hartford, New Haven, and Bridgeport. Bridgeport apparently has the authority to sit because of a special public law that went through as a waiver of 28 U.S.C. 143, so Bridgeport received this type of a waiver.

Mr. DANIELSON. Sir, you mentioned New Haven. Did you not just mention a short while ago that you had a special—

Mr. NEJELSKI. New London is where——

Mr. DANIELSON. I missed that.

Mr. NEJELSKI. They had one trial there.

As our written testimony points out, there is an increasing body of knowledge about the courts and how they operate, such as by using weighted caseload studies. In support of Congress which is interested particularly in legislation, we hope to be performing impact statements with the money we have under the Federal justice research program. We gave one last summer, for example, on trying to estimate the number of judges that would be needed if decisions of the Veterans Administration were made reviewable in court. As you know, unlike the decisions of HEW, the Veterans' Administration decisions are not generally now reviewable.

Through this type of development of information, I hope we can better estimate and better plan what is necessary and going to be necessary for the courts rather than make ad hoc decisions as we are often forced to. While we can't avoid that entirely, hopefully we can engage in some longer term planning.

This is the final point; we have set up some criteria in the testimony starting at page 22. In response to Congressman Ertel's inquiry about what criteria we think are important, we have listed these criteria. I will not read them but call them to your attention.

We think it is particularly important to look at the special characteristics of the population of the area. For example, in the southern district of New York, it is more than just the number of people that happen to be there. It is Wall Street and financial institutions are there, and it is a headquarters for television, radio, and other activities that breed litigation. The existence of a Federal military base or other special Federal presence will result in a great deal of litigation in excess of what might be estimated if one were to just look at the normal population figures for that area.

We are happy to use whatever resources we can to assist you or provide any information that we can either in terms of the Department of Justice's special interest, such, as I mentioned, as districts of the Federal Bureau of Investigation, or numbers of assistant U.S. attorneys involved, as well as efforts by our office to engage in long-term planning for the courts.

Thank you very much. I would be happy to answer any questions you might have.

Mr. KASTENMEIER. Thank you, Mr. Nejelski.

How do you feel about divisions? Do you have any opposition to changing divisions?

Mr. NEJELSKI. No, the historical reason, for divisions doesn't seem to be as strong as it once was with the provisions now for drawing up jury plans.

I think historically divisions were created so jurors would not have to travel such a distance and a more reasonable pool of jurors could be created. It is my understanding now in recent years with the jury plans being drawn up, they can take this into account.

I used to be an assistant U.S. attorney in New Jersey. We had no divisions but a sizable population and three places of sitting. There may be some reasons for having them, but——

Mr. KASTENMEIER. I am glad to get that answer, because I, myself, was somewhat uninformed or mystified as to the practice of

having divisions. It goes way back historically, and it is somewhat obscure as to why they were created. Today, as a matter of fact, we have a proposal to completely eliminate divisions in the western district of Louisiana.

Mr. NEJELSKI. I would think that would make sense. I am not sure why South Carolina needs 10 divisions and New Jersey, with a larger population, has gotten along for 200 years without any divisions.

Mr. KASTENMEIER. You find no current justification for them except possibly for jurors, but even then jury plans can be effectively made without resorting to divisions as such. Is that correct?

Mr. NEJELSKI. That is right. Although in talking to the U.S. attorneys involved in the three States covered under section 3 of the omnibus bill, we have no objection. We are willing to go along with those changes, but I think it is something of an historic anomaly.

Mr. ERTEL. Would the chairman yield?

Mr. KASTENMEIER. Yes.

Mr. ERTEL. Thank you, Mr. Chairman.

I am curious about this division. I never experienced action in court with divisions. Does that require more personnel? When you break down the division, do you increase the overhead by having more court personnel?

Mr. NEJELSKI. Perhaps Mr. Rowe could answer that question better than I.

Mr. ROWE. Our experience has been yes. Usually several more administrative personnel will be necessary to draw up the additional jury list and take care of local matters in that office. Not always, but it is common.

Mr. ERTEL. I guess, if I may ask one more question, can you justify those additional personnel just on the basis of division? Would they be eliminated if you had just a district without divisions?

Mr. ROWE. No, they would be rapidly absorbed in other necessary work in that district.

Mr. ERTEL. They may be absorbed, but would you eliminate some workload? Is there extra workload because it is a division?

Mr. ROWE. Yes.

Mr. ERTEL. You would eliminate work overhead.

Thank you.

Mr. NEJELSKI. I think, as a general rule, and this goes to creation of districts as well, that we would favor larger districts and consolidation. I think there is some additional workload, especially in the districts, less so probably in the divisions.

Mr. ERTEL. Could you give me an example of some additional work that you might envision as a result of having these divisions, which is what we would call nonsense work?

Mr. ROWE. Maintaining court records for the benefit of the public when, in fact, those records may be duplicated in another office and the public never shows. Maintaining file systems that are duplicative and not necessarily used by anyone in the area.

Mr. ERTEL. Thank you.

Thank you, Mr. Chairman.

Mr. NEJELSKI. I would think that is a useful area of study, and we might explore that further.

Mr. KASTENMEIER. I wonder, Judge Hunter, if we could call on you again. I did defer the question on divisions to you, and since it has now arisen, I would ask you to comment on divisions, not only on the utility or necessity for them in the future but also why the system differs so greatly from one State to another.

I note there are 42 of the 95 judicial districts that have divisions, so what can we conclude?

Judge HUNTER. Let me start first by speaking of my own State of Missouri as an example. Our State is divided in half. We have an eastern and western district. In the western district, which covers approximately half of the State, we have five divisions. Their sole purpose, really, is to serve the convenience of the bar and, to some extent, the public. They are sort of an administrative tool.

If you have a district, there is a tendency to make it self-contained, that is, to see that it is staffed with a clerk. Then there is a temptation and pressure on the district attorney to also have some staff locally. It does result in some duplication.

It is something that we have been historically used to. I don't know the history of how it all started. They were there when I entered the judiciary and have been there for many years. They were designated by Congress, and we honor them for that reason, but it is at best an administrative tool and not essential.

Mr. KASTENMEIER. I appreciate that. I did want—

Mr. DANIELSON. May I testify on this point?

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

Mr. DANIELSON. I am thinking back a few years, but I was in the U.S. attorney's office in Los Angeles in the late forties and early fifties, and we then had only two districts in California, northern and southern. The southern district sat in Los Angeles—that was headquarters—but we had a northern division in Fresno, a central division in Los Angeles, and a southern division in San Diego, all three of which are separate districts at the present time.

We had two types of situation. I remember in Fresno there was a rather light caseload, just some residual Selective Service cases in World War II, and now and then something else. Judge Beaumont was assigned to that division, but he spent 80 percent of his time, at least, sitting in Los Angeles. We did have a courtroom. We had a U.S. attorney's office, and clerk's office. They were all locked most of the time, but, as a bachelor, I used to get sent up there to try cases, and that meant moving a clerk up, a marshal. We had a marshal there most of the time, but we had to have a marshal, and a matron for female jurors. We had a separate filing system, and they had different numbers on the cases. I remember that. It was kind of a nuisance actually.

In San Diego, on the other hand, where there was a huge volume of work, particularly illegal aliens, but narcotics and the like, we had a permanent judge, Weinberger, who sat there most of the time, but when he had some time to spare, he would come to Los Angeles. We had a permanent assistant U.S. attorney and permanent marshal, and so forth, but, again, a completely separate numbering system.

I think the volume of work had more to do with the needs of the divisions than geography. We had a lot in San Diego, very little in Fresno.

I think those are the two types of extremes that you might have for divisions, and they finally became districts, because our population went up from 8 million to 22 million.

Mr. ROWE. Mr. Danielson, while you have the floor, I might return to a question you asked Judge Hunter earlier. We also had been in touch with the U.S. attorneys out there relative to the creation of a new southwestern district and despite our best pressure, they adamantly asked not to make a definite answer until they could make a very thorough study of the questions involved.

Historically, the department had opposed the creation of a new district there. In the last study which was made in 1971 and 1972, we only had about 40 assistant U.S. attorneys there, and we now have 100, and the composition of that area has changed a lot. We would hope that we, too, could have some time to give a really detailed answer to that very serious question.

Mr. DANIELSON. I thank you.

And I thank you, Mr. Chairman, for letting me testify.

Mr. KASTENMEIER. I would like to ask you, Mr. Nejelski, about Illinois. I know my colleague, Mr. Railsback, isn't here, and I might ask you about an anomalous situation where the southern part of Illinois is really Illinois Eastern, going all the way from just under Chicago, from Kankakee, to the southern part of Illinois. Illinois Southern is really the western district of the area of Illinois. The proponents of change in Illinois tried in a plan to rationalize the State in terms of northern and central and southern districts. I wonder whether you have had an opportunity to look at that proposal?

Mr. NEJELSKI. We have. I talked personally, as has Mr. Rowe, to all three U.S. attorneys in Illinois, knowing Congressman Railsback's interest in this matter, and the substantial change that it would make. We would favor it at the Department of Justice. I think it makes sense to move Kankakee up to Chicago. I think, as the urban sprawl has grown, that Kankakee is now better serviced by the northern district. The redistricting is the result of a long-term study that has gone on in Illinois, and we would be in favor of it.

Mr. KASTENMEIER. Thank you.

One other question: If new districts are created—and I am only suggesting it because others have suggested at least two proposals for new districts, should one provide or not provide for additional judgeships? That is to say, in your view or your judgment—it may be a judgment for us to make as well—is it to be assumed that the new judgeships provided in the omnibus judgeship bill have answered the question of national need for Federal judges, and that if a new district were created, it should not necessarily involve provision for additional judgeships for that district?

Mr. NEJELSKI. It would be hard to give a categorical answer to that. One would have to look, for example, if one were to create a southwest district in California, at the projected caseload for the foreseeable future, let's say that is 5 years, and see how many of those judges could be transferred, and so forth.

One problem I fear with judgeship bills that I have seen on the State level, as well as the Federal, is by the time they get through the legislature, we are answering the problems of the last few years and not looking forward or even answering what currently may be the problem.

Mr. KASTENMEIER. Judge Hunter, would you care to comment on the question of new judgeships in the event a new district were created?

Judge HUNTER. Mr. Chairman, I don't really know, nor can I reasonably anticipate, what I may be buying into, but—assuming that the omnibus bill provides sufficient manpower on at least a statewide basis, or at least on the present district base—it shouldn't make any difference, really, whether you divide a unit into more administrative sections, and that really is the result of creating new divisions.

That shouldn't create additional work. You do have the practical problem of where the judges reside and that sort of thing. The practical problem might rise to the level where you would require a new judge because of the loss of traveltime, but if I were generalizing, I would think it should not require additional manpower.

Mr. KASTENMEIER. Certainly if it ever would, it would not seem to do so now, when we are in the very process of creating new judgeships in another bill which is pending before the Congress.

Mr. ERTEL. Would the Chairman yield on that issue?

Mr. KASTENMEIER. Yes, I yield.

Mr. ERTEL. Has anyone given consideration, and I must admit I didn't read your testimony previous to coming here, but I asked a question about divisions and if they are not arbitrarily and basically maybe redundant or superfluous.

We have had tremendous population flows and movement in the country and tremendous relocation of industry. Are any of the districts set up on a logical basis, or is it just historical accident, and maybe we should even look at the structure of the districts themselves. Have you looked at those at all? And I would address that to the gentleman from the Department of Justice, since that is the area in Justice where you are located, the administration of justice.

We are talking about making a new district in California, talking about moving a few counties in New York State. Certainly if this is some sort of relevance in these areas, there must be some sort of evaluation that should be done on a national scale. Can you answer that?

Mr. NEJELSKI. We have just been considering this problem in the last 3 weeks, since we were asked to testify in these hearings. The subject could certainly benefit from some study. It is a problem perhaps more for the Department of Justice, since the same number of judges would stay constant, but you need a separate U.S. attorney, separate marshal, and more personnel from the Department of Justice, if you divide up into districts and take the same number of judges, although you probably would also need a clerk of court.

Mr. ERTEL. It might be a good suggestion for the Department of Justice to come up with "the ideal plan," and then we would put

the politics to it and come up with what would be feasible. Maybe that would be something worth looking at.

I yield back to the chairman and thank the gentleman.

Mr. KASTENMEIER. I have just one more question, Judge Hunter.

As I understand it, you had a brief discussion of it before the committee. Judges do, I think you used the term, pretermitted places of holding court, that is, terminate by their own order a court session in a statutory place of holding court. I am not clear on how a judge pretermits a place of holding court—whether that is statutory or exclusively a judicially ordered place of sitting.

One of the problems is, we do not necessarily know of it one way or the other, and I don't know whether there are statistics and whether the Judicial Conference or the Justice Department is fully informed of these pretermittments, whatever you call them. I wonder if you could help us in that regard?

Judge HUNTER. I am sure that the statistical data could be made available to you within a reasonable time. I have not covered that in my own short preparation. Where Congress has designated a place of holding court, the judges will probably hold a token session there once in a while, just to try and keep good faith with Congress, but basically they will not be servicing it to any great degree if there is not sufficient business there for the servicing.

That was one of the factors we took into careful consideration in 1972, when we were trying to determine if there were not places designated for holding court that should be abolished. I am sure that material can be gathered.

I hesitate to make any further comments on it now, because I don't think I am adequately prepared.

Mr. KASTENMEIER. Counsel and I recalled that we are aware of locations that are pretermitted, of course, in the Western District of Wisconsin. I am not sure what the effect is, if it is a statutorily designated place or a special-ordered, judicially-ordered place of sitting. And, second, while the form of the statute is that the word "shall" is used with respect to locations, in fact, the term "shall" is not mandatory, but rather the "shall" only refers to the authorization with respect to the place, that "It shall be authorized," but the court is not, in fact, compelled to utilize such a statutorily authorized place of sitting.

Judge HUNTER. If my memory is correct, I think there is statutory authority, not for pretermitting the place of holding court, but pretermitting a particular session or time of holding court. I think that is as far as it goes.

I don't think any court would undertake to countermand the statutory authorization "The court shall be held at a certain place."

Mr. KASTENMEIER. The statute reads, "Any district court may by order made anywhere within its district adjourn, or with the consent of the Judicial Conference of the district, pretermitt any regular session of the court for insufficient business or other good cause."

Judge HUNTER. Yes, Mr. Chairman, the session is pretermitted, but it is still a designated place.

Mr. KASTENMEIER. The gentleman from California.

Mr. DANIELSON. Thank you, Mr. Chairman.

Following that, I had asked the counsel the same question a moment ago and apparently that is how "shall" becomes "may" in this context; simply, the court can pretermite the session if there is not sufficient business. Conceivably there would never have to be sufficient business.

So long as I know that "shall" means "may," I don't worry too much about it here.

I would like to ask this: I think this subcommittee is confronted with an awfully weighty decision here if we are trying to make judgments on districts, divisions, district boundaries, places of holding court, and the like, with the amount of time that we have available to consider such decision and the complexities.

So I personally am going to have to confess that I am going to have to lean very heavily upon the recommendations of the judicial branch as well as of the executive branch.

With that as background, can you tell me whether there are any respects in the bills now before us in which the judicial branch and the executive branch are not in agreement?

If you are both in agreement, I can look at it one way. If you are in disagreement, I certainly will have to look at it another way.

Mr. NEJELSKI. There is only one item in the omnibus bill where we differ from Judge Hunter's—

Mr. KASTENMEIER. That is in the New York case?

Mr. NEJELSKI. No.

Mr. KASTENMEIER. The three counties, I think you indicated approval.

Mr. NEJELSKI. The judicial branch would like to study it. I am not sure ultimately we will come out differently. I think Judge Kaufman in the second circuit feels that this proposal is tied up with other changes in the eastern district, and they want to wait for the whole thing to be resolved.

Judge HUNTER. That is correct.

Mr. NEJELSKI. I was pointing out as an example of our special interest in terms of the Federal Bureau of Investigation lines being different than the court lines and the problems that causes.

The one difference might be in Mississippi, where the Department in Washington has not seen enough volume of business there to justify it—

Mr. DANIELSON. Is that the Corinth proposal?

Mr. NEJELSKI. Yes, it is, but we don't feel strongly about that. Additional information may come to our attention. I think it may be difficult to say how much volume a place may or may not take because it is related to how much is going to a neighboring district court.

Mr. DANIELSON. Except for the Mississippi and the New York situations, which you have just alluded to, do you know of any others in which you are in disagreement?

Mr. ROWE. No, we don't. I think I counted six in which the court did not express an opinion one way or another. Conceivably we could differ on those.

Mr. DANIELSON. I am not going to suggest you sit down and work out your problems like Greece and Turkey, but it is a factor I am going to have to think about, and I have an idea others will, too. You know, we are in a classic situation of the division of powers

here. The judicial branch is a separate, co-equal, part of the Government, and I think it should have probably the loudest voice in saying what is going to be done on administering justice.

The Justice Department in the executive branch, however, has a tremendous responsibility in the administration of justice, though not in the judicial process, and I think with all of your divisions and antitrust divisions and FBI, and so on, we certainly have to give tremendous weight to having these interests be accommodated, because the efficiency of the administration of justice has a great deal to do with its quality, and I suppose we are doing the ultimate checking and balancing here, because we have to consider and pass the laws which implement and make possible the needs of the other two branches.

So I am just going to lean very heavily on recommendations, and any time the executive and judicial get together on something, I sure would like to know that as opposed to those where they don't, because it would help me resolve the problem.

I don't have any other questions. That is my attitude on it, and I thank you very much for your help.

Mr. KASTENMEIER. I thank the witnesses for their testimony. I think, really, from your testimony—and, of course, the committee is looking to advance proposals that are either agreed to or recommended or are not controversial—those which ought to be studied, unless some controversy remains, can possibly be put aside. I think it is clear from the testimony that, relatively speaking, there are a number of areas we could move on. Examples are Ashland, Ky., and Corinth, Miss., although I note the reservation of the Justice Department. Similarly, I would think that the Louisiana proposal to eliminate the districts is not controversial; the Florida proposal, the North Dakota proposal are not controversial and, notwithstanding the fact that the Judicial Conference has not made a final decision on Illinois, it does seem to me that that does not appear to be controversial. As to the others, I think we have enough guidance here to divide at least two classes of proposals before us.

Mr. NEJELSKI. I would note on one specific decision, the three counties between the Northern and Southern Districts of New York, that could be tied to another decision, which is to create a place of sitting in White Plains in Westchester County in the Southern District. That would mean that a place of sitting much closer to those counties would be created, and if one were on the fence, additional justification could be given to keeping them in the Southern District; so you may want to look at the New York proposals as a group rather than take one.

Mr. KASTENMEIER. I can see that might affect Ulster County. The other two, the northern counties, are so close, really, to Albany, and, strangely enough, Albany is nowhere near the geographic center of the judicial district, which appears to be the home city at the very southern edge of a large judicial district. We will look at that, in any event.

Judge HUNTER. Mr. Chairman, if I may interrupt, I might put Mr. Danielson a little more at ease; it is the practice, I think fairly generally, for the judicial councils, at their level, to touch base with the Department of Justice to determine whether or not any special problems might be created by any proposed changes. I have

received an education today, which I will carry back to the Judicial Conference, and see if I can't get them to make that a regular mandatory practice of seeking that input; so we will act with that knowledge.

Mr. KASTENMEIER. We in Congress have not had an opportunity to act, to my knowledge, either recently or often on such matters. When they are acted on, procedures are usually somewhat haphazard and often only involve one or two isolated cases.

We would like to approach these issues somewhat on a more regularized, more coordinated, basis in terms of communication and justification than perhaps has been customary in the past. In that context, we encourage exchange of information and contributions certainly from the Judicial Conference and the Justice Department as well. There may be others involved, too.

There are a number of pieces of legislation, offered by our colleagues which may not be immediately acted on. We, nonetheless, will want to move forward with those proposals as far as fully investigating them on the merits. Inasmuch as they are made by various Members of this body and the other body, we must regard them very seriously before either rejecting or approving them.

But to this end, the testimony of you, Judge Hunter, and Mr. Nejelski, as well as Mr. Rowe, has been most helpful today, and we are grateful to you.

Mr. DANIELSON. Thank you, gentlemen.

Mr. KASTENMEIER. The hearing is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

THE

OF

AND

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

APPENDIXES

APPENDIX 1.—Additional statements and letters.

Anderson, Hon. Glenn M., a Representative from the State of California.
Patterson, Hon. Jerry M., a Representative from the State of California.
Wiggins, Hon. Charles E., a Representative from the State of California.
Sharp, Hon. Phil, a Representative from the State of Indiana.
Mazzoli, Hon. Romano L., a Representative from the State of Kentucky.
Caputo, Hon. Bruce F., a Representative from the State of New York.
Ottinger, Hon. Richard L., a Representative from the State of New York.
Walker, Hon. Robert S., a Representative from the State of Pennsylvania.
Murtha, Hon. John P., a Representative from the State of Pennsylvania.
Waggoner, Hon. Joe D., a Representative from the State of Louisiana.
Pattison, Hon. Edward W., a Representative from the State of New York.
Wydler, Hon. John W., a Representative from the State of New York.
Fuqua, Hon. Don, a Representative from the State of Florida.
McClory, Hon. Robert, a Representative from the State of Illinois.
Railsback, Hon. Tom, a Representative from the State of Illinois.
Fitzpatrick, Collins, T., Circuit Executive, U.S. Court of Appeals for the Seventh Circuit.
Stevenson, Hon. Adlai E., a Senator from the State of Illinois.
Percy, Hon. Charles H., a Senator from the State of Illinois.
Wilson, Hon. Charles, a Representative from the State of Texas.

APPENDIX 2.—Pending bills:

- (a) H.R.12869.
- (b) H.R.3972.
- (c) H.R.6465.
- (d) Other related bills.

APPENDIX 3.—Maps of States involved by proposed legislation.

APPENDIX 4.—Further materials submitted to the subcommittee:

- (a) By U.S. Department of Justice.
- (b) By Administrative Office of U.S. Courts.

APPENDIX 5.—Federal District Court Judges and the History of their Courts, 40 F.R.D. 139.

APPENDIX 6.—Senate Reports:

- (a) S. Rept. No. 95-87, authorizing court to be held at Corinth, Mississippi.
- (b) S. Rept. No. 95-221, providing that Bottineau, McHenry, Pierce, Sheridan, and Wells Counties, N. Dak., shall be included in the Northwestern Division of the Judicial District of North Dakota.

APPENDIX 7.—Report of the Committee to study Federal Judicial Districts in Illinois.

APPENDIX 8.—“Savings Can Be Achieved By Consolidating Court Locations,” from GAO Report to the Congress on Further Improvements Needed in Administrative and Financial Operations of the U.S. District Courts (1976).

APPENDIX 1
 ADDITIONAL STATEMENTS AND LETTERS

GLENN M. ANDERSON
 32d DISTRICT, CALIFORNIA

2410 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, D.C. 20515
 TELEPHONE: (202) 225-6676

300 LONG BEACH BOULEVARD
 (P.O. Box 2349)
 LONG BEACH, CALIFORNIA 90801
 TELEPHONE: (213) 548-2721

Congress of the United States
 House of Representatives
 Washington, D.C. 20515

June 1, 1978

- COMMITTEES:
 PUBLIC WORKS AND
 TRANSPORTATION
- CHAIRMAN, AVIATION SUBCOMMITTEE
 - MEMBER, SURFACE TRANSPORTATION SUBCOMMITTEE
 - MEMBER, WATER RESOURCES SUBCOMMITTEE
- MERCHANT MARINE AND
 FISHERIES
- MEMBER, FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT SUBCOMMITTEE
 - MEMBER, MERCHANT MARINE SUBCOMMITTEE
 - MEMBER, OCEANOGRAPHY SUBCOMMITTEE
- MEMBER, NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

Honorable Robert W. Kastenmeier
 Chairman, Courts, Civil Liberties,
 and the Administration of Justice
 Subcommittee of the Committee on
 the Judiciary
 2137 Rayburn HOB

Dear Mr. Chairman,

Attached is a copy of my statement in support of two identical bills I introduced on behalf of myself and Representatives Charles H. Wilson and Mark W. Hannaford.

For the reasons outlined, I sincerely urge your favorable consideration of H.R. 12168 and H.R. 12698, which are the subject of your subcommittee's hearings tomorrow.

I'll gladly discuss this matter with you personally at your convenience.

Warmest personal regards.

Sincerely,

GLENN M. ANDERSON
 Member of Congress

GMA/wj

Enclosures -- Statement
 Bills

Remarks by
Honorable Glenn M. Anderson
A Representative in Congress
From the State of California
Before the Courts, Civil Liberties, and the Administration of Justice Subcommittee
Of the Committee on the Judiciary
June 2, 1978

My dear Mr. Chairman. I appreciate this opportunity to testify in support of H. R. 12168 and H. R. 12698, two identical bills to amend title 28, United States Code, to provide that the United States District Court for the Central District of California may be held at Long Beach, California.

Joining me in co-sponsorship are Representatives Charles H. Wilson and Mark W. Hannaford. Mr. Wilson and Mr. Hannaford represent the 31st and 34th California Congressional Districts, respectively, while I have the 32nd.

I notice that Congressman George Danielson, our California colleague from the 30th District, serves on this subcommittee. Though he is no doubt quite familiar with this area, I would like to spend a few minutes familiarizing the subcommittee Members to our area of California.

Long Beach is the 42nd largest city in the nation with a population of nearly 400,000. It is located 25 miles south of Los Angeles City's center. I have the privilege of representing the western half of the city -- Mr. Hannaford the eastern. Congressman Wilson is immediately adjacent to the north.

This area contains both the ports of Los Angeles and Long Beach, which rank with that of New York in activity. The United States Coast Guard has its western regional headquarters in Long Beach. This in turn is located next to the Navy's facility, which, will soon be expanded to home-port additional ships.

In addition to this federal presence, the Army occupies nearby Ft. MacArthur and the Veterans Administration occupies both a hospital and office.

Each generate significant caseloads for Central District judges and magistrates to consider.

In our three districts alone are nearly 1.5 million residents. Our districts are girded by freeways but those without cars must depend on an indifferent bus system. I'm certain Congressman Danielson could agree that these freeways are so crowded that a trip from Long Beach to Los Angeles City, though only 25 miles away, can easily take hours.

At the present time, it is necessary for both attorney and litigant in federal law suits to travel downtown to Central Los Angeles City where they must wait until their case is called for trial and to make this trip daily for all court appearances. This results in considerable inconvenience and expense to all concerned parties.

Though I am not an attorney, I would think that this would force attorneys making the trip to charge for their travel and waiting time. This results in additional costs of litigation to the parties.

Much of this unnecessary time waiting and traveling would be eliminated if a federal judge held court in Long Beach. Also, one such District Court Judge lives one mile from Long Beach but commutes to court in Los Angeles.

The Anderson Bills

On May 25, 1978, I had the distinct pleasure of meeting with The Honorable Albert L. Stephens, Jr., chief judge, Central District of California. I would like to share with the subcommittee some of the dialogue of that meeting in my Washington office.

Judge Stephens strongly opposes being forced to "branch" his court. It is his desire to continue the centralization at its present site on Temple Street in Los Angeles City.

To this end, he has been in close touch with my office and the San Francisco Regional office of the General Services Administration. GSA is responsible for acquiring all federal space, including that necessary should the Congress create additional judgeships in the Central District, which has over 500 employees at this time.

It is my understanding, through conversations with the late Regional GSA Administrator, Tom Hannon, that this agency will soon be seeking such prospectus approval of our House and Senate Public Works Committees.

As a member of the Committee on Public Works and Transportation, I assured Judge Stephens that it was not my intent to force the judge into holding court in Long Beach. In examining my bills, he agreed that the statute would be permissive and would only force the judge into holding court when, in his opinion, it was necessary for him to do so.

Thus, H. R. 13168 and H. R. 12698.

The Judicial Conference Process

In the context of this background, I hope that the subcommittee will act favorably on these two measures so that there will be no doubt that the Central District judges may hold court in Long Beach.

It is my understanding that since 1972, whenever the Congress requests the Judicial Conference's views on bills such as mine, the bills are directly referred to both the court and judicial council with statutorily conferred authority. If both approve the bill, the Conference approves it. If either disapprove, then the Conference disapproves. Judge Stephens told me that fundamentally, the Conference believes that no new places of holding court should be approved, statutorily, in the absence of a showing of a strong and compelling need. The judge also told me, however, that sometimes, because of publicity or other reasons, a change of venue to Long Beach would be highly desirable -- if federal space were available.

But, like Judge Stephens, I feel that the courts themselves and the circuit councils are best qualified to evaluate the degree of need.

Under its 1972 policy directive, although the Conference reserved the authority to review all recommendations of approval or disapproval by courts or circuit councils, in the 43 instances to date, the Conference has either found no reason to review the recommendations at all, or, upheld them upon review.

I would hope the subcommittee will, nonetheless, act favorably upon my bills. I would expect enactment of my bills to result in no net expense to the government. Mainly, because we are not really mandating with these measures that court be held in Long Beach. We are only giving the necessary statutory authority to the chief judge should he in the future desire to do so. By doing this, there would be no doubt that GSA could have space available, which, without statutory authority, they cannot even consider.

Although, under 28 U. S. C., section 84(c), only Los Angeles is a statutorily designated location at which court "shall be held," 28 U. S. C., sections 139 through 142 very thoroughly vest the district court with complete authority to sit in any location within its jurisdiction "as the nature of ...business may require," as long as "federal...accommodations are available, or suitable...accommodations are furnished without cost to the government."

Thus, favorable action by the subcommittee would in reality take special significance only after the chief judge states "a compelling need" to hold court in Long Beach and state and county courtrooms are not available for "loan," even for a very brief special session.

Also, since any such space permanently established would be an expense to the Circuit's budget, I'm certain "unnecessary" courts will not sit as long as Mr. Stephens is chief judge.

Action by the subcommittee would, however, illustrate your recognition that Long Beach and its surrounding 1.5 million residents have an identity of their own in the shadows of the Los Angeles megalopolis.

Action by the subcommittee will allow the General Services Administration to plan ahead in acquiring federal space in the area so that as new judgeships are created, space is available. I look to the experience in San Diego when GSA submitted prospectuses to our Public Works Committee with sufficient lead time

to provide chambers for the two additional judgeships that Congress may soon create in the Southern District of California.

I assure the subcommittee that as a member of the Public Works committee, I will continue to scrutinize all prospectuses for "federal space", be they for judges, federal buildings, or any other agency.

Mr. Chairman, Judge Stephens will be responding to my request for data on the cost of my two bills -- though I anticipate a savings. I ask that you allow me to include this material as it is made available.

(MATERIAL SUBMITTED FOR THE RECORD)

This data will respond fully to your request for cost. I expect no cost to the government, as we are not mandating that court be held -- only making it allowable in the future.

Mr. Chairman, thank you for this opportunity to testify in behalf of Mr. Wilson and Mr. Hannaford.

I look to your favorable action on H. R. 12168 and H. R. 12698.

###

COMMITTEES:
BANKING, FINANCE AND
URBAN AFFAIRS

SUBCOMMITTEES:
HOUSING
FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE
INTERNATIONAL DEVELOPMENT
INSTITUTIONS AND FINANCE
MERCHANT MARINE AND
FISHERIES

SUBCOMMITTEES:
COAST GUARD AND NAVIGATION
MERCHANT MARINE

JERRY M. PATTERSON
38TH DISTRICT OF CALIFORNIA

Congress of the United States
House of Representatives

Washington, D.C. 20515

June 1, 1978

HOME OFFICE:
VERLYN N. JENSEN
DISTRICT REPRESENTATIVE

MICHAEL SCOTT
ADMINISTRATIVE ASSISTANT
FEDERAL OFFICE BUILDING
34 CIVIC CENTER, PLZA. #21
SANTA ANA, CALIFORNIA, 92701
TELEPHONE: (714) 835-3811

WASHINGTON OFFICE:
GREGORY W. SANDERS
ADMINISTRATIVE ASSISTANT

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-2965

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Committee on the Judiciary
2137 Rayburn House Office Building
Washington, D.C., 20515

Dear Chairman Kastenmeier:

Thank you for your letter of May 22, 1978 requesting a written statement from me explaining the reasons for H.R. 12722. In response to your request, the following information is provided:

The Central District of California

The United States District Court for the Central Judicial District of California is, by population, the largest jurisdiction within the United States Court System. Within the boundaries of the Central District reside approximately 11,000,000 persons. The Central District is 30% larger than the second largest Judicial district.

In terms of geographic size, the Central District of California contains 39,921 square miles, ranking it 22nd among the 93 districts in the United States Court System.

The Central District of California is the only judicial district among the first 77, in terms of geographic size (from Alaska with 556,437 square miles to New Hampshire, with 9,033 square miles) to contain only one single authorized courtroom location.

The County of Orange, California and Environs

The County of Orange, California is, and for 20 years has been, one of the fastest growing counties in the United States. The current estimated population of Orange County exceeds 1,800,000. Population forecasts through the year 2000 indicate that the County of Orange will be inhabited by over 3,000,000 people. Population projections for the combined Orange, Riverside, and San Bernardino County area indicate that in excess of 4,500,000 persons are anticipated by the year 2000.

Central District Filing Statistics

Statistics obtained from the Administrative Office of the United States Courts reveal that total filings in the Central District of California reached 6,030 for the year ending June 30, 1977. Of these, 4,463 filings were of a civil nature.

REPLY TO:
☐ HOME OFFICE
☐ WASHINGTON OFFICE

Page Two
Honorable Robert Kastenmeier
June 1, 1978

In a statistical study and report prepared in January, 1976 for the Orange County Bar Association, a sampling of every twentieth case filed in the Central District of California for the years 1973, 1974 and 1975 was prepared. A conservative projection (discounting anticipated increases in consumer litigation, affirmative action suits, occupational health and safety filings and transfers of criminal litigation to the Central District) indicates that filings originating in the Orange, Riverside and San Bernardino County area would exceed 1,200 by 1980 and 1,500 by 1985.

The Case for Santa Ana as a Statutory Place of Holding Court

The City of Santa Ana is the county seat and governmental center for the County of Orange, and is near the demographic center of Orange County. In terms of proximity to population and access by major transportation corridors, Santa Ana is a logical additional place of holding for the Central District of California.

Travel distances to the United States Courthouse in Los Angeles from Santa Ana, Riverside and San Bernardino, relative travel distances to Santa Ana, and an attendant comparison chart, reveal the tremendous distances a litigant must cover in order to reach the only Federal court in the Central District, and the travel benefits that would ensue if court were held in Santa Ana:

LOCATION	MILEAGE	ROUNDRIP
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	Round Trip Los Angeles	Round Trip Santa Ana	Diff. Mileage
1. Downtown Santa Ana	62	0	62
2. Downtown Riverside	116	70	46
3. Downtown San Bernardino	120	94	26

In addition to the distances involved, traffic congestion, the lack of mass rapid transit, and difficulty in parking in downtown Los Angeles compound the litigants' travel problems. Travel distances do not reflect accurately the time and effort required to negotiate the extreme traffic congestion in Los Angeles.

Page Three
Honorable Robert Kastermeier
June 1, 1978

Since the Federal courts are designed to benefit the populace, the establishment of a statutory place of holding court in Santa Ana would assuage certain socio-economic inequities, in addition to resolving travel problems, 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.)
- B. Those prospective jurors who live more than 40 miles from the Courthouse are automatically 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 opt not to serve jury duty. 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 disenfranchisement and raises questions of fairness to criminal defendants and civil litigants.
- C. Transportation costs for those who do serve on jury duty from the Orange, Riverside and San Bernardino County area are inordinately high.
- D. Finally, the legislation is permissive. It does not require that court be held in Santa Ana. It merely permits court to be held in Santa Ana.

Potential Costs

The Chairman of the Orange County Board of Supervisors has indicated to me, in a letter dated May 26, 1978, that a suitable courtroom now used as a California Superior Courtroom can be made available in Santa Ana to the Central District Court. With proper coordination and interface with the County of Orange, costs for holding court in Santa Ana would be negligible.

Possible Alternatives

In terms of providing better service to the residents of the Orange, Riverside, and San Bernardino County area, other alternatives include the creation of a new and separate judicial district, or a separate division within the existing Central District to encompass the three counties. This alternative, however, is not considered practical at this time because of the high costs associated with creating a new district or separate division.

The only other alternative would be a dramatic improvement in the rapid transit systems of the greater metropolitan area of Los Angeles. This, of course, is not envisioned for the foreseeable future.

Page Four
Honorable Robert Kastermeier
June 1, 1978

In short, there are no practical alternatives, insofar as improved service to the Orange, Riverside and San Bernardino County area is concerned, to the authorization of an additional place of holding court in Santa Ana.

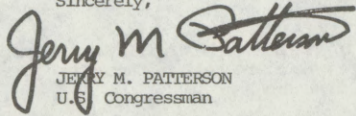
Supporters and Opponents of H.R. 12722

The following organizations have endorsed either the creation of a new Federal District Court for the Orange, Riverside, and San Bernardino County area, or the addition of Santa Ana as an authorized place of holding court for the Central District:

1. State Bar of California
2. Orange County Bar Association
3. Riverside County Bar Association
4. San Bernardino County Bar Association
5. Orange County Board of Supervisors
6. Orange County League of Cities
7. Central Labor Council of Orange County
8. The majority of Orange County's twenty-six cities
9. The majority of the Chambers of Commerce in Orange County

Please advise me if you need any additional information regarding H.R. 12722.

Sincerely,


JERRY M. PATTERSON
U.S. Congressman

JMP/gsb



CONGRESS OF THE UNITED STATES

Charles E. Wiggins

Member of Congress • 39th District, California

June 1, 1978

Committees:

JUDICIARY
HOUSE
ADMINISTRATION

Administrative Assistant
MICHAEL W. BLOMMER

Legislative Assistant
DAVID L. SHURTZ

District Representative
M. ROY KNAUFT

Washington Office
2371 Rayburn HOB
Washington, D.C.
ZIP 20515
202-225-4111

District Office
Brashears Center—
Suite 103
1400 North Harbor Blvd.
Fullerton, Ca. 92635
714-870-7266

Hon. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil
Liberties, & Administration
of Justice
House Judiciary Committee
2137 Rayburn H.O.B.
Washington, D.C. 20515

Dear Bob:

Thank you for your request to comment on both H.R. 12628, a bill to designate the cities of Santa Ana, San Bernardino, and Riverside as places of holding court in the Central District of California, and H.R. 3972, a bill to create a new judicial district in California comprised of the counties of Orange, San Bernardino, and Riverside, which are presently part of the Central District of California. I am pleased to do so.

The Central District of California as now constituted is the most populous judicial district in the United States. Nearly eleven million people reside within its boundaries. The district encompasses 39,921 square miles which ranks it 22nd in size among all the judicial districts. Yet despite the tremendous population and large size there is only one authorized place of holding court, that being in the City of Los Angeles. This fact works a hardship on the 3,255,000 persons who reside in the tri-county area of Orange, San Bernardino, and Riverside. (A map of California with the Central District and affected counties highlighted is attached.)

I firmly believe that a new judicial district comprised of the tri-county area is fully justified. H.R. 3972 was introduced on February 23, 1977 and referred to the Administrative Office of Courts in June, 1977, for a report. I am informed that the report has not yet been received by the Subcommittee. I can understand the hesitancy in proceeding with H.R. 3972 without a detailed cost estimate which only the Administrative

Office can provide. Therefore, a logical and fully justified first step towards the ultimate creation of the new district is to authorize Santa Ana, the County seat of Orange, as a place of holding court in the Central District of California.

1. The City of Los Angeles is the logical place of holding court for the seven million citizens of Los Angeles County. However, it is not for the three and one quarter million residents of the tri-county area. Furthermore, the following population statistics demonstrate that this area is growing at an explosive rate.

	Orange County	San Bernardino County	Riverside County	Los Angeles County
1975	1,684,500	696,000	532,000	7,020,000
1978	1,808,000	756,800	590,200	7,079,200
1980	1,967,000	775,000	604,000	7,197,000
1990	2,369,000	867,000	728,000	7,557,000

The City of Santa Ana has a current population of 183,900.

The geography of the Central District makes the City of Santa Ana significantly more convenient to the population of the tri-county area than the City of Los Angeles. Computing from the three county seats which are the population centers, the highway mileage figures comparing Santa Ana with Los Angeles are as follows:

Mileage to courthouse in Los Angeles		
<u>Location</u>	<u>Mileage</u>	<u>Roundtrip</u>
Downtown Santa Ana	31	62
Downtown Riverside	58	116
Downtown San Bernardino	60	120

Mileage to proposed courthouse in Santa Ana		
Downtown Santa Ana	0	0
Downtown Riverside	35	70
Downtown San Bernardino	47	94

	Comparison		
	Round Trip Los Angeles	Round Trip Santa Ana	Diff. Mileage
Downtown Santa Ana	62	0	62
Downtown River- side	116	70	46
Downtown San Bernardino	120	94	26

The Subcommittee should know that these mileages do not fully reflect the time and difficulty in traveling through this heavily populated area. Public transportation is not available. At anytime of day close to rush hour either inbound towards Los Angeles in the morning or outbound in the late afternoon, a one way 31 mile automobile trip between Santa Ana and Los Angeles will take in excess of one hour.

2. The Orange County Bar Association commissioned a study by a master in urban planning from the University of California at Irvine to ascertain the contributions made by tri-county area persons to the caseload of the Central District of California from 1973 through 1975, and to forecast that contribution to the caseload for the years 1976 through 1985. This fifty-nine page report was forwarded by the Judiciary Committee to the Administrative Office of Courts for analysis in June 1977. A summary of the findings follows:

Past Caseload Contribution

Year	Central District	Tri-County Area
1973	5301	870
1974	5162	880
1975	6270	859

Conservative Projections For Central District (CD) and Tri-County Area (TRI) (Excluding Criminal Transfers)

Year	Multiple Regression		Trend Analysis	
	CD	TRI	CD	TRI
1976	5879	957	5973	934
1977	6179	1020	6289	982
1978	6477	1085	6604	1032
1979	6775	1150	6920	1080
1980	7074	1215	7235	1130
1981	7373	1281	7551	1179
1982	7671	1346	7866	1228
1983	7970	1411	8182	1277
1984	8268	1477	8497	1326
1985	8568	1543	8812	1375

The study demonstrates what is dictated by commonsense. The population of the tri-county area generates a significant portion of the caseload of the Central District of California. Based on these statistics and applying the formulas used by the Judiciary Committee in considering the judgeship bill considered in the 95th Congress, the tri-county area, were it a judicial district, would merit three (3) full time district court judges.

3. The location of Federal courtrooms should be of benefit to the populace. The creation of a place of holding court in Santa Ana would greatly alleviate inequities now being suffered by the citizens of the tri-county area.

- The necessarily increased costs in attorney's fees necessitated by travel to Los Angeles and return from the tri-county area. (A minimum of three additional hours in attorney's time is calculated for each appearance in Los Angeles).
- The vast majority of jurors who actually serve in the Central District Court reside within the Los Angeles Metropolitan Area. Those jurors who live more than 40 miles from the Los Angeles courthouse are automatically 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. The inconvenience and foregoing of jury duty, in practical effect, amounts to a disenfranchisement.

4. I know of no opposition to the creation of a new judicial district comprised of Orange, San Bernardino and Riverside Counties. I also know of no opposition to designating Santa Ana as a place of holding court for the Central District.

The judges of the Central District of California formally decided on November 10, 1976, that the decision to create the district was "a matter to be left to the discretion of the legislative and executive branches of government". The judges are neutral on the creation of the new district.

The bill H.R. 3972, was co-sponsored by all members

of the House, with one exception, whose congressional district is affected; Messrs. Patterson, Brown, Badham, Lloyd and Hannaford. Mrs. Pettis supports the bill although she did not co-sponsor it.

The creation of the new district has been endorsed in writing by Senators Cranston and Hayakawa.

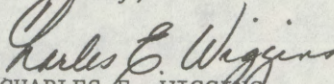
The establishment of the new district has been endorsed by the following organizations:

- State Bar of California
- Orange County Bar Association
- Riverside County Bar Association
- San Bernardino County Bar Association
- Orange County Board of Supervisors
- Orange County League of Cities
- Central Labor Council of Orange County
- Intergovernmental Coordinating Council of Orange County
- Resolutions from the majority of the 26 cities in Orange County
- Resolutions from the majority of the Chambers of Commerce in Orange County.

5. Temporary courtroom facilities in the Santa Ana Civic Center complex are currently available. Federally owned land is currently available adjacent to the existing New Federal Building in the Civic Center. I am informed that the site was purchased by the government for the purpose of constructing a Federal Court structure.

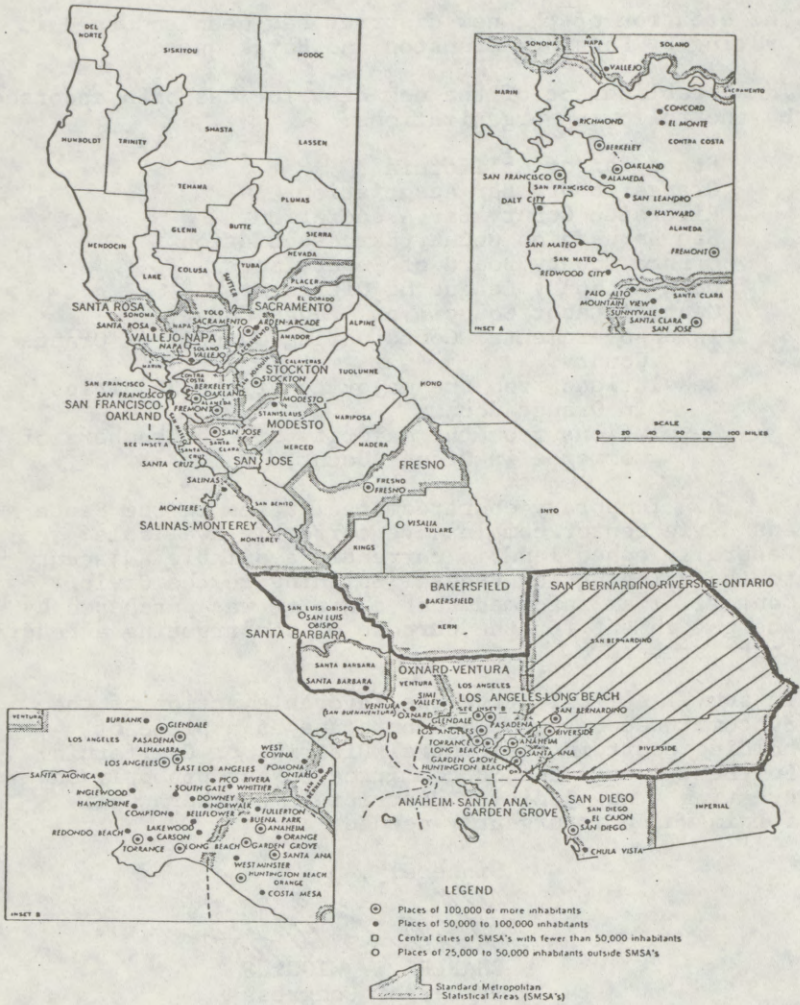
In sum, I strongly urge the favorable action of the Subcommittee on creating Santa Ana as a place of holding court in the Central District of California. Further, I urge the Subcommittee to act promptly on creating a new judicial district in Southern California which is urgently needed.

Sincerely,


 CHARLES E. WIGGINS
 Member of Congress

CEW:jt

California



U.S. DEPARTMENT OF COMMERCE Social and Economic Statistics Administration BUREAU OF THE CENSUS

Congress of the United States

House of Representatives

Washington, D.C. 20515

June 1, 1978

The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
2137 Rayburn

Dear Mr. Chairman:

I appreciate this opportunity to comment in support of H.R. 7413 and thank you for taking this time to hold hearings on this and similar legislation.

Currently, the Indianapolis Division of the Federal District Court for the Southern District of Indiana is authorized to sit in five locations: Indianapolis, Terre Haute, Evansville, New Albany, and Richmond. H.R. 7413 would add Muncie to that list.

Muncie is the hub of four Eastern Indiana counties within the Indianapolis Division with a combined population of 350,000. For many years attorneys in these counties have felt that the 65 mile distance to Indianapolis effectively has prohibited them from practicing in federal court without local Indianapolis counsel. The result has been great inconvenience for both clients and attorneys and a higher cost to litigants.

While federal caseload figures from the four-county area are not available for me to present to the Subcommittee, I feel confident in saying that this area will reflect the national trend of increased numbers of federal cases in the years ahead. I therefore believe it is warranted to provide a rapidly expanding population area easier access to the federal courts by periodically bringing the courts to them.

Cost. There are now five county court rooms in existence in Muncie. Delaware County Circuit Court Judge Alva Cox and Delaware County Superior Court Judge Steven Caldemeyer have expressed their support for this legislation and have indicated to me their willingness to permit the federal court to use the existing court rooms. Therefore no cost will be incurred in providing court facilities.

The only cost which may occur would be ensuring the adequacy of the law library which would be available to the Court and the usual cost involved in moving a court and its personnel.

The Honorable Robert Kastenmeier
June 1, 1978

Alternatives. At this time, the only alternative available in providing adequate access for the Muncie area to the federal courts would be the creation of another federal district. However, in light of Congress' recent action on H.R. 7843, the federal judgeships bill, I think you will agree that this option is not a realistic one.

Supporters and Opponents. Supporters of the bill include Delaware County Circuit Court Judge Alva Cox, Delaware County Superior Court Judge Steven Caldemeyer, and the Bar Associations of the four counties affected by the legislation; Delaware, Madison, Randolph, and Henry.

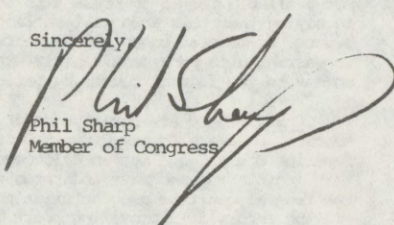
Chief Judge William Steckler of the U.S. District Court in Indianapolis indicated that he generally believes that traveling to locations outside of Indianapolis is inefficient insofar as the total workload of a judge is concerned. He therefore expressed reservations about legislation which would cause the sort of inconvenience for the Court it experiences when traveling to other locations outside of Indianapolis.

Mr. Chairman, in balancing the interests of those parties affected by this legislation--the public, the attorneys, and the courts--I believe the convenience to future litigants and the added cost to them should be the overriding factors considered.

This bill would not require the Court to sit in Muncie; only authorize it to do so. Court room facilities are in existence. The cost involved, if any, would be minimal.

I urge the Subcommittee to act favorably on H.R. 7413.

Sincerely,



Phil Sharp
Member of Congress

PS/jb

ROMANO L. MAZZOLI
THIRD DISTRICT, KENTUCKY

WASHINGTON OFFICE:
T. MICHAEL NEVENS
ADMINISTRATIVE ASSISTANT
1212 LOWMYER BUILDING
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5401

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 5, 1978

COMMITTEES:
JUDICIARY
DISTRICT OF COLUMBIA

DISTRICT OFFICE:
CECIL H. NOEL
CHARLES MATTINGLY
JOHN L. KILROY, JR.
VICKI GAGLIARDI
FEDERAL BUILDING
600 FEDERAL PLACE
LOUISVILLE, KENTUCKY 40202
TELEPHONE: (502) 582-5129

Honorable Robert Kastenmeier
Chairman, Subcommittee on Courts and Civil Liberties
House of Representatives
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The Honorable H. David Hermansdorfer, Judge of the United States District Court for the Eastern District of Kentucky, has contacted me on behalf of the proposal to have Ashland, Kentucky designated as a place for the holding of federal court.

Judge Hermansdorfer has provided me with extensive documentation on the need for the designation of Ashland, and I am enclosing this material. I request that you make this material and this letter part of your hearing record.

I would particularly call your attention to the report of the U.S. Marshall's Service which points out numerous security and safety problems with the present courthouse in Catlettsburg, Kentucky.

I hope that you will give this report serious consideration in your deliberations.

I have also been informed by Mr. James A. Higgins, Circuit Executive for the Sixth Circuit that the Circuit Council for the Sixth Circuit endorses the designation of Ashland as an additional place of holding court in the Eastern District of Kentucky.

I will be happy to provide any additional information that you may require on this subject, and I will speak for this provision at full Committee.

Sincerely,

ROMANO L. MAZZOLI
Member of Congress

RLM:tmn

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

United States District Court
FOR THE
Eastern District of Kentucky

CHAMBERS OF
H. DAVID HERMANSDORFER
JUDGE

May 26, 1978
Catlettsburg, Ky. 41129

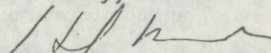
The Honorable Elmo Hunter
United States District Judge
Western District of Missouri
Room 613 United States Courthouse
811 Grand Avenue
Kansas City, Missouri 64106

My dear Judge Hunter:

I enjoyed our telephone conversation of this date. Your law clerk, Judy Heater, was kind enough to listen to my summary of the circumstances surrounding the courthouse facility at Catlettsburg, Kentucky. In support of those conclusions I enclose copies of certain inspections conducted by the United States Marshal's Service, the Postal Inspector, the Chief Clerk of the Eastern District of Kentucky, and determination made by the Judicial Council of the Sixth Circuit.

Should you find that you might need any other data about this facility, please advise and I will furnish you with whatever information is available.

Sincerely,


H. David Hermansdorfer
Judge

HDH:lsm

United States District Court
FOR THE
Eastern District of Kentucky

CHAMBERS OF
H. DAVID HERMANSDORFER
JUDGE

May 26, 1978
Catlettsburg, Ky. 41129

The Honorable Robert W. Kastenmeier, Chairman
House Subcommittee on Courts, Civil Liberties,
and Administration of Justice
Room 223 Rayburn Building
Washington, D.C. 20510

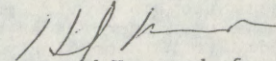
My dear Mr. Kastenmeier:

At the suggestion of Mr. Mike Remington of your staff I am enclosing copies of documents pertaining to the request of the Eastern District of Kentucky for a designation of Ashland, Kentucky as a place of holding federal court. The reasons for this request is the subject matter of the enclosed materials.

✓ The Judicial Council of the Sixth Circuit has passed a formal resolution attesting to the need for a new facility. This document is not enclosed as I have no copy. One is in the mail to me and I will forward it upon receipt.

I should like to express my appreciation to you for the inquiry of Mr. Remington and for the opportunity to express our position through Judge Elmo Hunter before your committee. I should appreciate your expressing to the members of the committee our appreciation for their consideration.

Most sincerely,


H. David Hermansdorfer
Judge

HDH:lsn

Resolution arrived and is enclosed.
1/5/79

JAMES A. HIGGINS
CIRCUIT EXECUTIVE

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
303 U. S. COURTHOUSE
CINCINNATI, OHIO 45202

February 10, 1977

Honorable H. David Hermansdorfer
United States District Court
P.O. Box 695
Catlettsburg, Kentucky 41129

Re: Proposed new court facility for the
Catlettsburg/Ashland area

Dear Judge Hermansdorfer:

~~Enclosed are two copies of a Resolution adopted by~~
the Judicial Council of the Sixth Circuit at a meeting held
on February 9, 1977, finding the present court facility at
Catlettsburg wholly inadequate and urging that a new facility
be provided in the Catlettsburg-Ashland area. This matter
was considered by the Council pursuant to your letter to
Chief Judge Phillips of January 19, 1977.

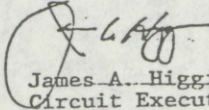
At some future date it will be necessary for the
Director of the Administrative Office to make a formal
request to the General Services Administration for the
construction of new court facilities in the Catlettsburg-
Ashland area. A Resolution of the Judicial Conference of
the United States, adopted at its September, 1960 meeting,
provides that "[T]he Director of the Administrative Office
[shall] refer all requests for additional court facility to
the Judicial Council of the appropriate Circuit for its
consideration and judgement as to the necessity for such
additional facilities, and request the General Services Admin-
istration to provide such facilities only if and after they
have been approved as necessary by the Judicial Council of the
Circuit." Accordingly, I am providing a copy of the Resolution
to Mr. Louis J. Komondy, Chief, Space and Facilities Branch of
the Administrative Office for his information. It also will
be necessary for the Council to consider a number of the details
of the proposed facility, such as the size of the courtroom,
but these will be handled at a later date when the specific
requirements of the Court are presented to GSA.

Honorable H. David Hermansdorfer
Page 2

February 10, 1977

If you have any questions or if I may provide any additional information do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Higgins", is written over a circular stamp or mark.

James A. Higgins
Circuit Executive

encl-

cc:

Circuit Council

Judge Moynahan

Judge Siler

Mr. Komondy, DAO

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT

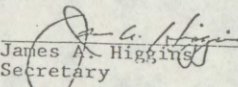
RESOLUTION ADOPTED AT A METTING ON FEBRUARY 9, 1977

WHEREAS, the present facility for the United States District Court for the Eastern District of Kentucky in the United States Post Office and Court House at Catlettsburg, Kentucky, is wholly inadequate to serve the needs of the Judge, Magistrate, Supporting Offices and General Public as a place of holding Court; and

WHEREAS, the present facility presents serious security problems and fire safety hazards to the Court, Supporting Offices and General Public;

NOW, THEREFORE, BE IT RESOLVED that the Judicial Council of the Sixth Circuit recognizes the dire need for a new facility for holding court for the Eastern District of Kentucky in the Catlettsburg-Ashland area, and the Council urges that all necessary steps be taken as soon as possible so that an adequate facility can be provided.

This is to certify that the foregoing Resolution unanimously was approved by the Judicial Council of the Sixth Circuit at a meeting held on February 9, 1977.


James A. Higgins
Secretary

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

COPY

UNITED STATES GOVERNMENT

Memorandum

TO : Benjamin F. Butler, Chief, Court Support Division, DATE: Oct. 21, 1977
U. S. Marshal's Service
Washington, D. C.

FROM : Gene Smith, Inspector, 6th Circuit Court Security Coordinator
903-A U. S. Courthouse & Post Office
Cincinnati, Ohio 45202

SUBJECT: COURT FACILITIES (Catlettsburg, Kentucky)

On Oct. 11, 1977, I visited with the Honorable H. David Hermansdorfer, U. S. District Judge for the Eastern District of Kentucky, in his chambers in the U. S. Post Office at Catlettsburg, Kentucky. In our conversation, the Judge informed me that a certain group of people from the Ashland and Catlettsburg, Kentucky area were in hopes of having a new U. S. Courthouse constructed in the Ashland, Kentucky area which is approximately six (6) to eight (8) miles West of Catlettsburg, Kentucky. Both of the communities are in the same County, Boyd.

On Oct. 18, 1978¹⁴¹⁷, I received from Judge Hermansdorfer a copy of the "FIRE EMERGENCY PROCEDURES" for the U. S. Post Office at Catlettsburg, Kentucky. I have enclosed a copy of these procedures for your viewing and your files.

If I may, I would like to refer back to my original PHYSICAL SECURITY SURVEY of the facilities at Catlettsburg, Kentucky in Oct. 1973, copies should be in your file but to save time, I have enclosed a copy from my files.

In this survey, you will see that recommendations were made in reference to the Marshal's area and also the Courts area.

Those recommendations for the Marshal's area have been installed and to the best of my knowledge are satisfactory and are doing the job we hoped they would do.

At this writing and at my last visit, I find that nothing has been done in the courtroom area and most of all nothing has been done in having a "FIRE ESCAPE" installed on the outside of this building from the third (3rd) floor to the (1st) floor.

Page #2, con't.

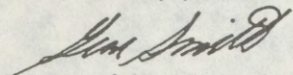
The "FIRE ESCAPE" is on^e item that I do strongly recommend and in reference to their on "FIRE PROCEDURES" this building could virtually explode causing the possible death of approximately thirty (30) Government employees.

I have on several occasions attended both civil and criminal courts in Catlettsburg, Kentucky and I can speak from first hand knowledge, it is like a local "FALL FESTIVAL or old fashion homecoming, due to the lack of restaurant facilities in this area, most of the people bring their their own lunches. I have on occasions when the Court has called a criminal docket, seen in the halls, witness room, jury rooms and in the Marshal's area, at least one hundred and fifty (150) to two hundred (200) people in these areas.

If it would be at all possible, I would like to suggest to the Marshals Service, that we get very involved in trying to have new facilities built in the Ashland, Kentucky area. Also if a new building is to be constructed, I feel that we should have some input in the areas of the Court and the Marshals facilities.

Hoping that what has been recommended and done along these lines meets with your approval, I remain

Respectfully yours:



Gene Smith, Inspector
Sixth Circuit Court
Security Coordinator

cc: U. S. Marshal
Lexington, Ky.

Judge Hermansdorfer ✓
Catlettsburg, Ky.

UNITED STATES MARSHALS SERVICE
OPERATIONAL ACTIVITY REPORT**FILE**

Report of (Name & File) Gene Smith 6th Circuit Court Coordinator Cincinnati, Ohio	Type of Report INITIAL Period of Report October 9, 1973	File Number 73-32-SS-2 Date Assigned October 5, 1973
--	--	---

Purpose of Operation: To determine the security needs for the U. S. Marshal's office and detention cell. Also to determine the needs for the U. S. District Court and to recommend installation of any needed security measures or equipment.

Subjects (Last name, first, M.I.) Addresses and District

U. S. Post Office & Courthouse
Broadway & Main Streets
Catlettsburg, Kentucky
EASTERN DISTRICT OF KENTUCKY.

Basis of Operation Initiation
Survey made upon the request of Reis R. Kash, Associate Director of Operations for the U. S. Marshal's Service.

Summary of Report:

The security conditions in this building are very bad.

Detention facilities in the Marshal's office are inadequate and should be given top priority listing for remodelling.

Prisoners are moved from the County Jail to the Marshal's office by walking down an alley and downtown streets. Prisoners are taken into the Marshal's office from a public corridor which is crowded with jurors and witnesses.

A weapons cabinet should be installed in the Marshal's office for use of other police officers when appearing before the Court.

A security door should be installed in the stair well from the first floor to the second floor, this too should be given top priority.

DISTRIBUTION	Copies	Date of Report
Director, U. S. Marshal's Service	2	October 29, 1973
File	1	Signature of Reporting Officer Approval - Section Chief Approval - Division Assoc. Director
Referred to		Comments:
Director		
Assoc. Director - Admin.		

Form USM-307
(Rev. 12-2-70)

(LD. 3-11-71) United States Marshals Service
 United States Department of Justice
 PHYSICAL SECURITY SURVEY

Report No. 73-32-SS-2

District: Eastern Kentucky

I. ENTRANCE INTERVIEW:

Date: October 9, 1973

With: Joe Mullins, Deputy in charge

Will activity be relocated?

Possibly, see remarks on Page #4

Are major structural modifications
 planned? No

Remarks: See remarks, page #4

II. DESCRIPTION OF ACTIVITY:

a. Mission.

No. of Courthouses: 1

No. of Courtrooms: 1

No. of Judges: 1

Geographic area: Eastern District
of Kentucky, Catlettsburg, Ky.

b. Personnel.

	Auth.	On Hand	Need
U. S. Marshal	SEE 73-32-SS-1		
Chief Deputy			
Supervisors			
Deputies			
Administrative			

c. Organization. U. S. Marshal's
Service, Catlettsburg, Kentucky.

d. Security of Funds and Controlled Forms:

Mosler legal file cabinet with
combination.

e. Equipment:

1. Responsible Officer: Joe Mullins,
Deputy in charge of this office.

2. Communications: One (1) mobile unit
in personal vehicle.

3. Vehicles: Private

4. Restraint Equipment:

See-73-32-SS-1

Type	On Hand	Need
Handcuffs		
Leg Irons		
Waist Chains		
Nylon Cuffs		

5. Civil Disturbance: 12 ga. Winchester
Mod.#12, kept at residence, no place
available at the office. Nothing else

6. Remarks: All equipment is being kept
in the U. S. M. Office at Lexington,
see survey 73-32-SS-1.

Page 1 of 4 pages.

PHYSICAL SECURITY SURVEIL

District: Eastern Kentucky
Date: 10-29-73

III. DESCRIPTION OF FACILITY:

a. Date and Type of Construction: 1910

Brick, concrete, limestone & steel.

b. Jurisdiction: Concurrent

c. Population: Approximately 30 people

d. Tenants: U.S. Courts, Prob. Dept., U.S.

Marshal and Post Office Dept.

e. Parking: Unassigned on street.

f. Police Support: Within same block.

g. Fire Support: Within same block

h. Duty Hours:

Mon.- Fri: 8:30AM to 5:00PM

Sat: None

Sun: None

i. Environment: Business & residential.

j. Intrusion Detection and Alarm
Systems: Buzzar from courtroom to

U. S. Marshal's Office.

k. Guard Force: Number 0 Posts 0

Adequate ☐Inadequate ☒Remarks: Post Office Bldg., no guards
assigned.1. Vaults, Safes and Cabinets (consider
key control, combination control
and resistance to forced entry):
Vault available in the Clerk of Courts

Office & the Office of U. S. Attorney.

m. Document Security: See # II, d., page
#1.

n. Lighting [Emergency & Auxiliary]:

None

o. Medical Facilities: None

p. Emergency Plans [Fire, Disorder &
Escape] Written? Unknown

Appropriate? Unknown

Current? Unknown

Properly Disseminated? Unknown

q. Personnel Screening: None

Page 2 of 4 pages.

PHYSICAL SECURITY SURVEY

Date: 10-29-73

IV. EVIDENCE HANDLING:

a. Evidence Custodian: Joe Mullins,Deputy in charge of field office.b. Marked, tagged, accounted for: Yesc. Segregated: Yesd. Construction of room: Nonee. Inventoried: Yes

V. SEIZED PROPERTY:

a. Custodian: Joe Mullins, Dep. in chg.b. Marked, tagged, accounted for: Yesc. Segregated: Yes, generally left at the place of seizure.d. Construction of room: Nonee. Inventoried: Yes at the time of the seizure and distruction.

VI. ARMS ROOM:

a. 3-Lock Security: Noneb. Segregated: NAc. Received for: Yes, if and when any are received.d. Arms Room Construction: Nonee. Inventoried: Annually

VII. PRISONER PROCESSING:

a. Number Daily: See 7B-32-SS-1b. Facilities Adequate? Noc. Procedures Adequate? Yesd. Van Adequate? See 73-32-SS-1e. Court Appearances: Criminal docket every 6 months, deputy must attend all civil trials.f. Visitors: None, attorneys only, al others at the jail.g. Feeding: At the jail, ^{now} exchanged to feeding by the Majshah when in court.

Page 3 of 4 pages.

PHYSICAL SECURITY SURVIVAL

FILE

DISTRICT: EASTERN KENTUCKY

Date: 10-29-73

VIII. COURTROOMS, JURY ROOMS, CHAMBERS:
[Attach sketch of each Courtroom
and each Chamber]

- a. Number of Courtrooms: 1
- b. Number of Chambers: 1
- c. Key Control: Yes
- d. Alarms: Yes, buzzer to Marshal' Off.
- e. Lighting: No emergency or auxiliary lights.
- f. First Aid Equipment: None.

- g. Crank calls and letters properly handled?
- Yes, to the FBI and a very

close personal relation between the
Judge & Deputy Marshal.

- h. Discreet methods of entry into Court-
-
- house?
- No

- i. Visitor and Package Control:
- No

IX. EXIT INTERVIEW: Date: 10-11-73 With: Joe Mullins, Dep. in chargeOverall Evaluation of Physical Security: Excellent Good Very Poor X

See attached recommendations and exhibits.

REMARKS: I have been advised by the Judge and Deputy Mullins that the Post Office
at Ashland, Ky. has been or will be moved to a new location and the old facilities
could be used by the Courts and the Marshal's Service. Judge Hermansdorfer would
like to move all facilities to Ashland, Ky. In the building at Catlettsburg, the
prisoners can be viewed by the jury as they are brought into the building in cuffs &
chains.

Sketches are attached as
Exhibits through

Page 4 of 4 pages.

October 29, 1973

BASED ON THE FOREGOING SECURITY SURVEY, THE FOLLOWING IS RECOMMENDED
FOR THE U. S. MARSHAL'S OFFICE AT CATLETTSBURG, KENTUCKY.

- 1: Immediate steps should be taken to reinforce the windows and the door in the Marshal's Detention cell. The wooden frames around the windows and the door should be removed and the bars to the windows and the door to the cell should be anchored to the masonry walls. Security screens should be installed over the bars and the door to prevent anything being passed to the prisoners and to keep the prisoners from breaking the windows in the Detention cell and the toilet.
- 2: The wooden benches that are now in the Detention cell should be removed and replaced with concrete or metal benches that are attached to the floor and the walls.
- 3: All electrical switches and outlets should be removed or permanently covered.
- 4: The light fixtures in the Detention cell should be removed and replaced with recessed light fixtures and tamper proof screws.
- 5: The lock on the Detention cell is not working properly and should be replaced with a much stronger lock.
- 6: A first aid kit capable of sustaining bleeding should be placed in the Marshal's office.
- 7: A CO2 fire extinguisher should be installed in the Marshal's office as the floors in the Detention cell are wood covered with tile.
- 8: A security door should be installed in the stair well between the first and second floors, this will prevent the public access to this area after closing of the courts and the other offices. Only those persons working above the first floor should have a key to this door.
- 9: This building has only one entrance and exit from the second and third floors. It is recommended that immediate steps be taken to afford another escape route from these floors should a fire break out on the first floor of this building.

Con't.

RECOMMENDATIONS OF THE SECURITY SURVEY CONDUCTED FOR THE U. S. MARSHAL'S
OFFICE AT CATLETTSBURG, KENTUCKY.

- 10: An emergency light should be installed in the Marshal's office, see Exhibit "A".
- 11: A four foot by six foot (4'X6') opening should be cut in the wall separating the Marshal's Reception Room and the Marshal's private work office. This will permit viewing the entrance into the office, see Exhibit "A".
- 12: A convex viewing mirror should be hung on the north wall of the Marshal's Reception office to allow the Marshal to view back into the Detention cell while working at his desk, see Exhibit "A".
- 13: The hardware and bolts on the radiator in the Detention cell should be changed to tamper proof material.

October 29, 1973

BASED ON THE FOREGOING SECURITY SURVEY, THE FOLLOWING IS RECOMMENDED FOR THE U. S. DISTRICT COURT AT CATLETTSBURG, KENTUCKY.

- 1: It is recommended that $\frac{1}{4}$ inch steel armor plate or $\frac{1}{2}$ inch polycarbon glass be installed at the Judge's bench, see Exhibit "B".
- 2: Doors 201 and 223 should be kept closed and locked at all times. They should be key controlled and equipped with a non-cancelling locking device, see Exhibit "B".
- 3: Door 231 should be kept closed and locked at all times, see Exhibit "B".
- 4: The glass panels or windows in doors 229 and 233 should be replaced with a solid material or painted. This will eliminate people from looking into the courtroom from the corridor, see Exhibit "B".
- 5: Emergency lights should be installed in the courtroom, corridor and the stair wells as shown on Exhibit "B".
- 6: A first aid kit capable of sustaining bleeding should be installed at the Clerk's desk in the courtroom, see Exhibit "B".
- 7: A CO2 fire extinguisher should be installed at the Clerk's desk in the courtroom, see Exhibit "B".

DAVIS T. MCGARVEY
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY
OFFICE OF THE CLERK

P. O. Box 741
Lexington, Kentucky 40501
November 1, 1976

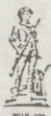
Mr. Louis J. Komody, Jr.
Division of Administrative Services
Administrative Office, U. S. Courts
Supreme Court Building
Washington, D. C. 20544

Re: Need for New Courthouse at
Catlettsburg - Ashland

Dear Mr. Komody:

An examination of the floor plan of the present building at Catlettsburg which serves as a United States Court-house and Post Office will point up the very limited space now available for the Court Personnel stationed there and the need for a new facility. The Court at Catlettsburg is one of two places in our district where a United States Judge and a full-time Magistrate have their chambers. Judge H. David Hermansdorfer who regularly presides over the Catlettsburg and Pikeville Divisions of our court and assists in other divisions has his headquarters office at Catlettsburg in chambers which were arranged in space available at the time of his appointment but which is inadequate by any standards for chambers befitting the office which he holds. Subsequent to his appointment a fulltime Magistrate, Mr. Joseph M. Hood, was stationed at Catlettsburg. Space for his office has still not been completed in a storage area on the fourth floor. The only access to the Magistrate's office at the present is through Judge Hermansdorfer's chambers. This situation would be intolerable for a long period of time. Plans have been under consideration for another entry but nothing has materialized yet. Judge Hermansdorfer's chambers are on the third floor and Mr. Hood's offices are on the fourth floor. Both offices are in the north end of the building and the only possible exits in case of fire or explosion are steps at the south end which go no higher than the third floor or the elevator which also goes no higher than the third floor.

When I speak of the limited space in the Court's chambers I am referring to the whole space including the library and room for the Court's Secretary and Law Clerks. The library is so limited in space that they have no room for the Kentucky



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Decisions, a set of books which are an essential tool for a United States District Judge in Kentucky. There is no space for the Law Clerks to have an office or typewriter except in the library. The only space for visitors who wait to see the Court is in the hall. Such conditions as I have described are totally inadequate.

Because of the need for space for the Judge's chambers court office space assigned to other offices had to be reduced. As an example, the probation officer stationed at Catlettsburg has one room in which both he and his secretary have desks. There is no space for the probation officer to have private interviews and such an interview is possible only by having his secretary leave the office and go to another part of the building during the interview. With a "headquarters office" of a Judge at Catlettsburg there are many arraignments, hearings on probation violations, trials and impositions of sentences and a second probation officer might well be stationed at Catlettsburg if there is adequate space.

The United States Attorney has one room in which he, his assistants and secretarial staff can conduct their business when Court is in session. There is no space for privacy to interview witnesses and discuss cases with defense counsel and prosecuting witnesses.

The Marshal's office has a small room used as a "hold-over" which has proved to be better than none but completely substandard as to security. There is no special hold-over space for women or juvenile prisoners. They must be kept in the Marshal's business office under guard when separated from male prisoners occupying the single room used as a hold-over. We in the Eastern District of Kentucky are particularly conscious of security of prisoners in view of the all too unpleasant occurrence involving the escape of two prisoners awaiting trial in the hold-over at Lexington who before they were recaptured the next morning had kidnapped a woman and killed six other innocent persons.

With the growth of activity at Catlettsburg by reason of Judge Hermansdorfer's office and of a fulltime Magistrate the Clerk's office should be expanded in space and equipment. We plan to add a deputy clerk at Catlettsburg in the immediate future and with this addition present space will not be adequate. The only space available for the official court reporter is the Judge's robing room immediately behind the bench. If Court is in session a typist would have to stop her work because of interference with the Court proceedings.

The Referee in Bankruptcy conducts hearings at Catlettsburg when the courtroom is available. There is only one room in the building large enough for such hearings. Use of the courtroom must be scheduled to avoid conflict with regular court proceedings and hearings by the Magistrate.

3.

We have no space where jurors can be sent to wait while proceedings are conducted in the courtroom out of their hearing and presence. We have one grand jury room and a petit jury room. If the grand jury is in session that room is not, available and as a rule we have a petit jury occupying the petit jury room during some part of each day court is in session. If both rooms are occupied other jurors must stand in the corridors under admonition of the Court to avoid contact and conversation with parties interested in cases assigned for trial. A jury lounge is needed.

We have no witness rooms and have no space for counsel and parties and/or public defenders to consult with their clients and witnesses. Two consultation rooms and a witness room are needed.

The restroom facilities in the building for the employees and public are limited to a men's room on the second floor adjacent to the courtroom and a ladies' room on the third floor near the entrance to the Judge's chambers. These public restrooms are inadequate in size and facilities for the large number of persons who must use them. There is one commode in the ladies' restroom for the use of ladies on the jury panel, witnesses, public, defendants and employees and extended recesses are necessary to permit the use of this facility.

The building constructed about 1911 has no fire escapes and only the small elevator and stairs at the south end of the building for egress from the second, third and fourth floors. I know that there are many deficiencies that should be corrected for it to be in compliance with minimum fire safety regulations, unless such corrections have been made since my last trip to Catlettsburg. The safety and welfare of the general public, employees stationed in the building and others required to be there because of litigation is an added reason for a new structure. Catlettsburg has a Fire Department which might be adequate for average structures but I am sure it would be unable to rescue persons trapped in the upper floors of the present United States Courthouse. The hospitals and doctors of this area are concentrated in Ashland and would not be available without a considerable delay for service if needed at the present building.

Catlettsburg is the county seat of Boyd County with a population of approximately 3,200. Ashland is a city which adjoins the city limits of Catlettsburg six miles west with a population of approximately 30,500. Catlettsburg has no hotel or motel facilities available for witnesses, litigants and jurors nor does it have restaurant facilities which could be used for a sequestered jury. Ashland has adequate facilities for Marshals to handle a sequestered jury for meals or overnight. Because of

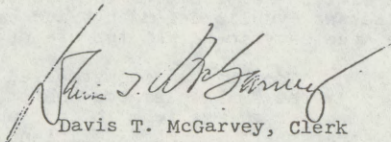
the limitation of the restaurants in Catlettsburg a large proportion of the persons involved in court proceedings drive to Ashland or West Virginia for lunch in preference to local restaurants.

Other than city, county and federal officials there are only 4 lawyers who maintain offices in Catlettsburg. There are 103 attorneys and firms listed in the Kentucky Legal Directory with offices in Ashland. Nearby towns to the west of Ashland also have attorneys who practice in the United States District Court at Catlettsburg.

Other Federal agencies in the area whose officers are involved in district court civil and criminal litigation have offices in Ashland. Attendance in court requires travel and longer absences from their duty stations than would be the case if the court was in Ashland.

In summary there is no question about the need for a new courthouse to serve the area now assigned to Catlettsburg. The present space and facilities are grossly inadequate to carry on the business of the Court with dignity, efficiency and safety to the public and prisoners and with average comfort for the litigants, witnesses, the public and officials of the Court. The only question is how soon the need for new facilities can be satisfied.

Very truly yours,



Davis T. McGarvey, Clerk

DTM:hfw

UNITED STATES POSTAL SERVICE

POSTAL INSPECTOR

P. O. Box 58

Louisville, Kentucky 40201

OUR REF: Catlettsburg, Kentucky 41129

DATE: February 14, 1974

SUBJECT: U.S. Post Office and Courthouse Building
Inspection.

CASE NO: 20-13480-GI

TO:

The Honorable H. David Hermansdorfer
Federal Judge for the Eastern District of KY
U.S. Post Office and Courthouse Building
Catlettsburg, Kentucky 41129

As you are aware an inspection of the U.S. Post Office and Courthouse Building at Catlettsburg, Kentucky was conducted February 6 and 7, 1974. Following is a summary of problems disclosed.

Lack of adequate space and inadequate parking facilities. At times when court is in session, 200 or more people are often crowded onto the second and third floors. Due to overcrowding, it is difficult to properly separate court witnesses and jurors and people congregating in the hallways tend to create a fire and safety hazard. There is a lack of space in the law library which makes it impossible to store all the needed reference material. Also, a conference room is not available which will comfortably contain the number of persons required to meet. Parking spaces are very limited and it is frequently necessary to park vehicles more than two blocks away.

The only means of exiting from the upper floors is by stairway or elevator located side-by-side at one end of the building. There is no fire escape or alternate route to escape from the upper floors in the event of a fire or other emergency. Also, all windows on the second floor are partially blocked by decorative iron bars.

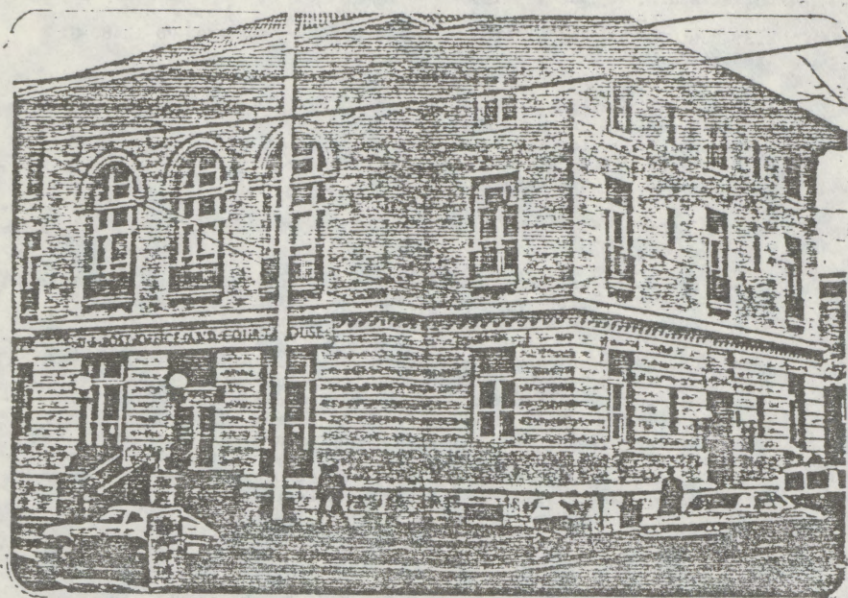
Because of overcrowded conditions and the physical lay-out of the building, it is not possible to provide adequate security. The Federal Court Judge is required to take the public stairway or elevator and often crowded hallways to get from his courtroom on the second floor to his chambers on the third floor. The U.S. Marshal's holding cell is not considered to be secure and to bring prisoners into the building, it is necessary to bring them through the post office lobby and up the public stairway or elevator. In bringing prisoners into the building, the U.S. Marshal is frequently required to park his vehicle more than 500 yards away and escort prisoners on foot because of inadequate parking facilities.

C. E. Gholson
C. E. Gholson
Postal Inspector

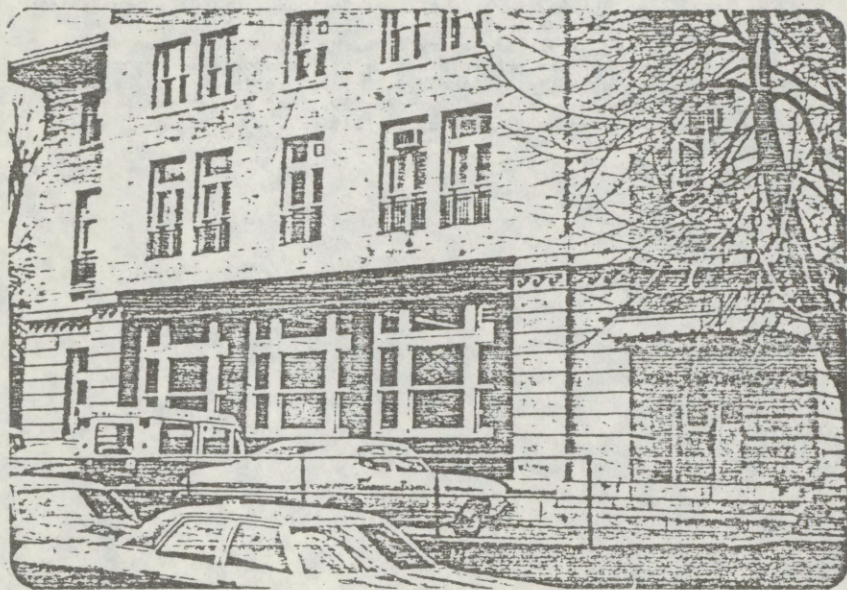
CEG:ab

exp. Wartus

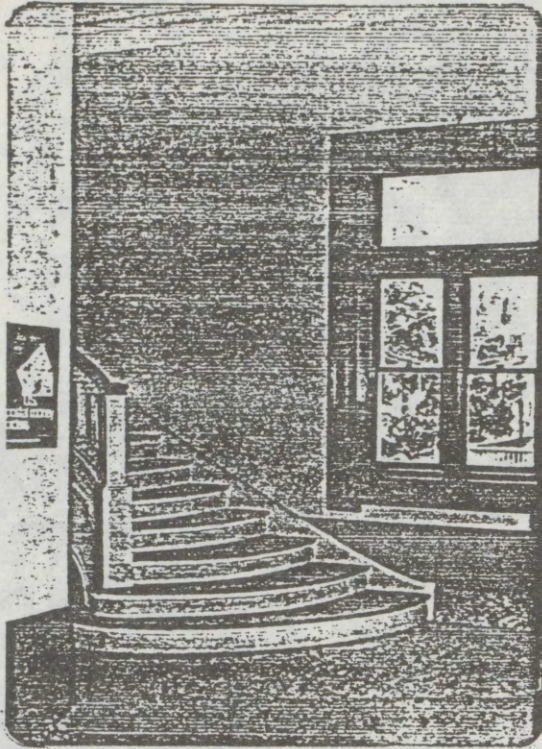
February 6/7



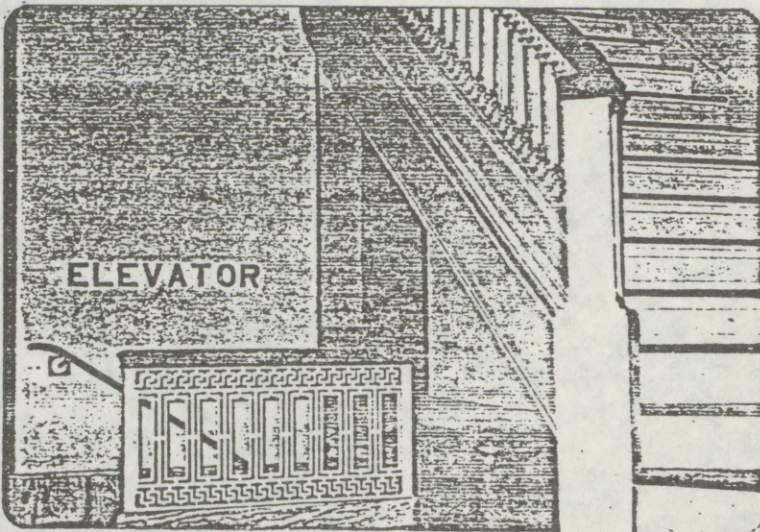
View of front and side of building. Note windows on second floor partly blocked by decorative iron bars.



Rear of building.



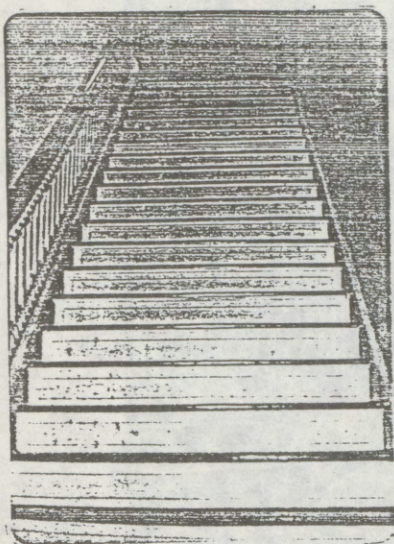
Stairway from lobby to upper floors.



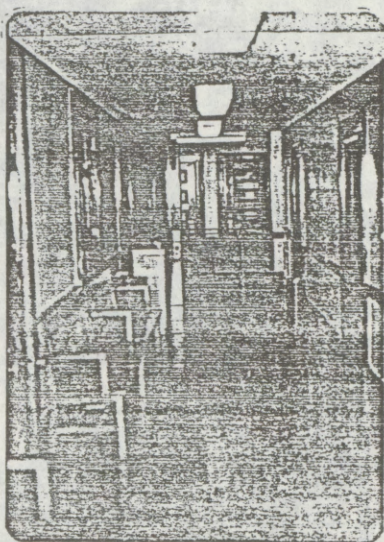
Location of elevator in relation to the stairway. This is the only means of exit from the upper floors.

Stairway, Kentu

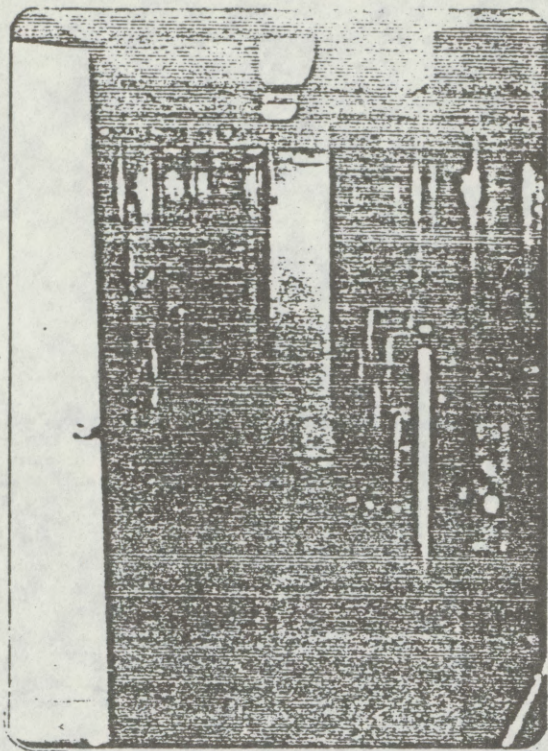
February 4/7 1974



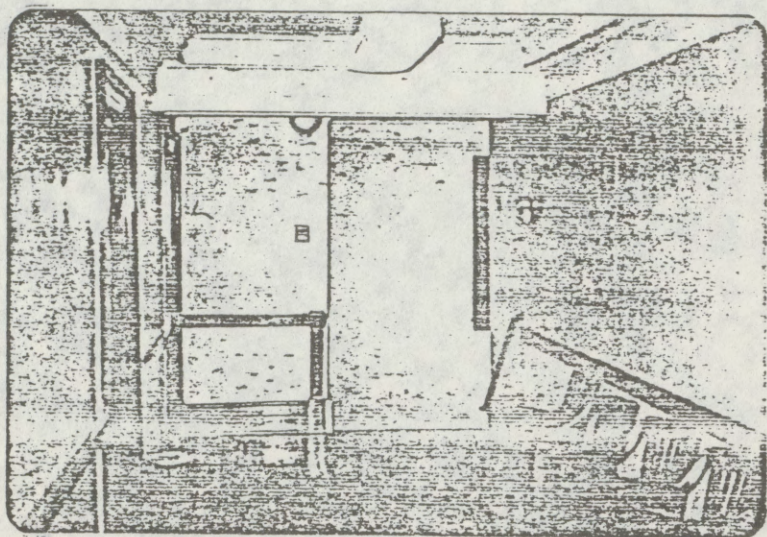
Stairway from lobby to second floor.



View of second floor from stairs.
Persons in furthest offices are more
than 75 feet from only exit.



View of second floor hallway looking toward stairway.



View of third floor hallway looking toward stairway.

JAMES A. HIGGINS
CIRCUIT EXECUTIVE

OFFICE OF THE CIRCUIT EXECUTIVE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
303 U. S. COURTHOUSE
CINCINNATI, OHIO 45202

April 15, 1977

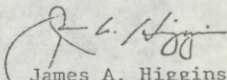
4/15/77
JAH
Wm

Louis J. Komondy, Chief
Space and Facilities Branch
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D.C. 20544

Dear Mr. Komondy:

At a meeting held on April 13, 1977, the Judicial Council of the Sixth Circuit considered your request of March 9, 1977, that it fix the size of the courtroom for the proposed new federal building in Ashland-Catlettsburg, Kentucky. After consideration the Council fixed the size of the courtroom at 2400 square feet.

Sincerely,


James A. Higgins
Circuit Executive

cc:
Hon. Bernard T. Moynahan, Jr.
Chief Judge
Hon. H. David Hermansdorfer
Mr. Davis T. McGarvey

United States District Court
FOR THE
Eastern District of Kentucky

CHAMBERS OF
H. DAVID HERMANSDORFER
JUDGE

January 19, 1977
Catlettsburg, Ky. 41129

Hon. Harry Phillips
Chief Judge
United States Court of Appeals
for the Sixth Circuit
United States Courthouse
Cincinnati, Ohio 45202

My Dear Judge:

With the consent of the Hon. Bernard T. Moynahan, Jr., Chief Judge of the Eastern District of Kentucky, I should like to bring to your attention, and that of the Judicial Council, the dire need for a new facility for holding court in the Catlettsburg/Ashland area of Northeastern Kentucky. The underlying factors giving rise to this situation are summarized below.

The Courthouse at Catlettsburg, Kentucky dates from 1910-1911. The courtroom and some offices are located on the second floor; my chambers, jury rooms and other offices are located on the third floor; and, the full-time Magistrate has his chambers on the fourth floor or attic. There is only one route of egress from the upper three floors of the building, a stairwell which also accommodates a small elevator. There are no alternate emergency exits on these floors, a factor which has warranted adverse comment by a Postal Inspector and a state fire marshal. I have attached copies of their reports for your perusal.

Following the tragedy at Lexington in the fall of 1973 involving two defendants who escaped from the "holdover" and who left in their wake six brutally murdered victims, a security investigation of all courthouses in this District was conducted by the United States Marshal's Service. I have read, but do not have a copy of, the resulting confidential report, which was particularly negative with respect to the facility at Catlettsburg. As a consequence, it is necessary for the Marshal to conduct a case by case determination as to the possible security problems posed by a particular defendant whose case normally would be called at Catlettsburg.

Page 2
Judge Phillips
January 19, 1977

When advised of a possible security problem, I am compelled to transfer the case to a more secure location: I am not going to be a party to another tragedy. The transfer of these cases becomes significant when a delay in the trial of the case occurs, particularly in view of the strictures imposed by the Speedy Trial Act.

In addition to the physical safety and security problems inherent in the present facility, there is also an abject lack of space needed to conduct the business of the Court. I have enclosed a copy of a letter written by the Clerk explaining these inadequacies in greater detail. It is sufficient to note that the building is simply overcrowded.

I am advised that activities to secure a new federal building in this area have commenced. I am further advised that a resolution of the Circuit Council recognizing the need for new court facilities would provide meaningful support for those efforts. I would appreciate it if the matter could be brought to the Council's attention for such action as it deems appropriate.

Very truly yours,

H. David Hermansdorfer
Judge

HDH:lsm

cc: Hon. B. T. Moynahan, Jr.
Chief Judge, U. S. Dist. Court
Eastern District of Kentucky
P. O. Box 121
Lexington, Kentucky 40501

July 12, 1976

U.S. POSTAL SERVICE BUILDING
25th & Broadway
Cattlettsburg, Kentucky 41129

RE: U.S. POSTAL SERVICE BUILDING
25th & Broadway
Cattlettsburg, Kentucky
Boyd County

Gentlemen:

Pursuant to the authority vested in this office by Chapter 227 of the Kentucky Revised Statutes, an inspection has been made of the above captioned property by a representative of this office.

I am listing the following deficiencies that must be corrected in order for your building to be in compliance with the minimum fire safety regulations.

1. Provide an additional approved means of egress from all four floors.
2. Replace stand pipe hose on all floors.
3. Install one 10 lb. ABC fire extinguisher in hallway of each floor .
4. Install one 20 lb. fire extinguisher in basement.
5. Mount fire extinguishers so that top will not be more than five feet from the floor.
6. Install approved illuminated exit signs over all required exits.
7. Have boiler inspected by Kentucky Boiler Bureau and certificate placed on basement wall under glass.
8. Mount emergency lighting units on wall to illuminate all required exits in Post Office.
9. Mount emergency lighting unit now used in U.S.Marshall's Office in corridor to illuminate all required exits.

I trust that you will take the necessary steps to correct the above deficiencies as they are for the safety and welfare of the general public who patronize your business.

Please advise this office when the corrections have been made in order that a reinspection can be made.

Yours very truly,

Clell Upton
Chief Deputy State Fire Marshal

CU/lld

cc: U.S.District Judge David H. Hermannsdorfer
C.A.Carpenter, Inspector

PREPARED STATEMENT OF REPRESENTATIVE BRUCE CAPUTO
BEFORE THE
JUDICIARY COMMITTEE
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE
JUNE 2, 1978

Mr. Chairman, Thank you for this opportunity to testify on the critical need for an additional place to hold court in the Southern District of New York.

The Southern District of New York, since its creation in 1814, has been authorized to sit in Manhattan only, at the extreme southern tip of the District. It comprises a large geographical area, 5,980 square miles and is one of the most populous districts in the county. It serves an inordinately large population, about 5 million people - from a single courthouse. Approximately 2 million people, 40 per cent, reside in the nine counties north of Manhattan (excluding the Bronx which is adjacent to and immediately north of Manhattan). All nine counties outside New York City experienced tremendous population growth during the ten year period 1960-1970 (Appendix 1). Bronx County had a small increase and Manhattan or New York County suffered a ten percent decrease. Further rapid population growth is projected for the nine counties through 1980. (Appendix 2).

Other statistics regarding growth are equally significant. Some of the largest domestic and international industries and corporations are located, or have their headquarters in the nine counties. In Westchester alone many large corporations maintain their principal offices (Appendix 3).

The presence of large corporations and manufacturers within the nine counties is important in terms of venue since a corporation is deemed a resident of the judicial district in which it is incorporated, licensed to do business or is doing business (28USC S 1391 c).

Westchester County is also the home for several major domestic and international banks and their branch offices (Appendix 4). Additionally, the City of White Plains is the financial center of the county and is home to several major stock and bond brokerage firms, including: Bake & Co., Inc., E.F. Hutton & Co., Inc., Merrill Lynch Pierce Fenner & Smith, Inc., and Shields Model Roland, Inc..

Appendix 5 shows the figures for the number of households, telephones and manufacturers, county by county, in the Southern District in 1960 and 1970. Appendix 6 reveals that there are twenty, four year colleges and eleven two year colleges in the nine counties. Additionally, Pace University Law School is located in White Plains. Appendix 6 also shows there are thirty-two commercial radio stations and seventeen daily newspapers in the nine counties.

I now turn to the problem of transportation and travel hardships. Inadequate mass transportation facilities from the nine counties north of New York to Foley Square (Manhattan) means there is a heavy reliance on the automobile. Only Westchester County has limited bus service to Manhattan and the Penn Central which offers train service to Manhattan is not really a viable alternate outside of Westchester County. As a

result of public transportation being so unevenly available in the District there is an unrepresentative concentration of Manhattan jurors, a condition which is exacerbated by the right of individuals residing more than 50 miles from the Foley Square courthouse to be excused from jury duty upon request. It thereby becomes apparent that a substantial number of parties are being judged by jurors not of their locale (Appendix 7).

It should be noted that jurisdiction in civil federal matters is primarily predicated upon residency (28USC §1332), while venue properly lies within the judicial district where all plaintiffs or all defendants reside or where the claim arose (28USC §1391). Motor vehicle negligence cases form a substantial portion of the federal court caseload. In this regard it must be emphasized that many nonresidents of New York State travel within the nine counties outside New York City on business and pleasure. Sullivan County, for example, in the heart of the Catskill Mountains is considered one of the greatest resort areas in the U.S. and attracts many nonresidents of New York State.

Driving time would be substantially reduced by having an additional court site north of New York City. If one takes into account the rush hour traffic conditions in New York City by adding one-half hour to AAA estimates, then mileage and travel time would range from approximately one hour from White Plains to three hours from Catskill in Greene County (Appendix 8).

Caseload activity is perhaps the most compelling argument for a new court location. In New York, the Northern, Eastern and Western Districts sit in a total of fourteen court locations. The single Southern District courthouse handles more cases than those fourteen courthouses combined. In fact, there are more civil cases pending in the Southern District than in any other district court in the United States. As of June 30, 1973, 10,596 civil cases were pending in the Southern District, amounting to approximately 66 2/3 per cent of all pending civil matters in the Second Circuit and exceeded the total number of pending civil matters in seven circuits.

In fiscal year 1973, the Southern District terminated 8,429 civil cases which is more than any other district court, and which disposition rate was approximately 67 per cent of the total for the Second Circuit, and exceeded the number of dispositions in five circuits.

New civil cases received during fiscal 1973 totaled 5,680 in the Southern District which is more than any other district court, constituting approximately 55 per cent of the total new intake for the Second Circuit.

At the end of fiscal year 1973 the Southern District ranked first in class actions commenced (151) and class actions pending (523) and thirtieth in bankruptcy cases (2.113). Furthermore, the Southern District recorded 486 civil trials in fiscal 1973, 74.8 per cent more than in 1972. This represented the largest number of completed civil trials among the 94 district courts.

Criminal statistics are equally impressive. The Southern District received 1,429 new criminal cases, terminated 1,427 and had 778 pending as of the end of fiscal year 1973. Of the 94 district courts the Southern District ranked eighth in new and pending criminal matters and seventh in the number of criminal cases terminated. In a letter to Mr. Edwin Tennant, Secretary of the Westchester Bar Association, Mr. Whitney North Seymour, former U.S. Attorney, states "... I can assure you with considerable confidence that there are a number of criminal cases originating north of the New York City line, which would be more than sufficient to provide business for a Federal Court in White Plains." Additionally, the Southern District had 1,527 persons under supervision of the federal probation department on June 30, 1973 which figure was exceeded by only six other district courts.

In June 1975, Thomas J. Cahill, former Chief Assistant to the U.S. Attorney for the Southern District, in a memorandum to Mr. Raymond Burghardt, a clerk of the U.S. District court for the Southern District, reported that the Internal Revenue Service in 1974 referred approximately 65 cases from the counties in the Southern District north of the Bronx line for prosecution, and that he estimated that as many as 85 said cases would be referred in the year 1975. He further indicated that his office received from the U.S. Post Office 45 criminal cases for prosecution from counties north of New York City. He also reported that the Federal Bureau of Investigation referred 135 cases for prosecution from the regional offices of the Bureau in the Southern District north of the Bronx and that the Secret Service arrested 35 defendants and had over 300 pending matters in that area.

Appendix 9 indicates the pending caseload as of the end of fiscal 1973 for 91 district courts (excluding Guam, Canal Zone and Virgin Islands) as well as the 1972 populations and the number of locations for holding court. It is worth noting that only three other district courts are limited to one location - Delaware, the District of Columbia and Hawaii. It is readily perceived that the typical district court carries a lighter caseload and services a smaller population than does the Southern District.

I would like to briefly outline the rationale for holding court in the City of White Plains. This major metropolitan area is well north of the Manhattan courthouse. White Plains is the county seat for Westchester County, a corporate headquarters and transportation nexus. White Plains is easily accessible to an elaborate north-south network of parkways - the New York State Thruway, Taconic State Parkway, Saw Mill River Parkway, Bronx River Parkway, Interstate Route 684, and the renovated Central Avenue which commences at the Bronx county line. Additionally, several of these parkways are connected east-west by the Cross Westchester Expressway which has four White Plains exits. The average driving time to this site from the county seats of the other nine counties in the Southern District would be approximately one hour, with the longest driving time from the northern-most county being two hours. Bus and train transportation are readily available in White Plains, and there is frequent bus service to and from Northern Westchester and lower Putnam

County. Westchester County Airport is within 20 minutes of the city by taxi or limousine service.

Of course, with respect to the nine counties, the available juror pool would be increased. Juror service would be required from all areas of Westchester, Rockland and Putnam counties, southern Dutchess County and southern and eastern Orange County. Moreover, it is anticipated that since White Plains is the prime shopping district for Westchester County, Putnam and Rockland, and with its excellent parking facilities, fine restaurants, good hotels and road accessibility that potential jurors from areas beyond the 50 mile mark within the district would also be willing to serve.

There are many outspoken supporters for a branch court in the City of White Plains. The New York State Bar Association, the County Bar Associations of Bronx, Dutchess, Orange, Putnam, Rockland, Sullivan and Westchester Counties, eleven local bar associations in Westchester County, the Westchester County Board of Legislators have all formally endorsed an additional place for holding court in the City of White Plains.

It is significant that even the Bronx County Bar Association supports this legislation since this fact highlights both the logic and equities involved and the truly objective nature of this proposal. Though the two other northernmost counties have not formally endorsed a branch court in White Plains they do not oppose the creation of a court office in White Plains either. A clear majority of the district judges are strongly in favor of a White Plains courthouse with no outspoken opposition to its establishment. In fact, just recently the district judges subcommittee unanimously recommended to the Board of Judges that they formally endorse this legislation.

Anticipated costs for a White Plains courthouse would be minimal. A lavish facility is not required. Those who endorse a new place for holding court expect judges and support personnel can be transferred from Foley Square to a White Plains location. This would free space at Foley Square. Federal agencies renting space in Manhattan could then relocate in the Foley Square courthouse if this was agreeable to both parties. The saving of federal rental payments in New York City could then be used to pay rent for a new location in White Plains. General Services Administration estimates indicate rent is typically lower in White Plains than in New York City; \$2 - 3 less per square foot is one estimate we received. Another possibility for utilizing the freed space at the Manhattan courthouse could be for other judicial or quasi-judicial activity. A June 1, 1979 New York Law Journal article describes a proposed voluntary masters program where qualified lawyers would assist in court determination of pending litigation to expedite case consideration. Available space could be utilized for such purposes.

To the best of my knowledge there is quite a bit of available rental space in White Plains. In fact we have been informed by GSA that the Bankruptcy Court that recently moved from Yonkers, New York to White Plains had no problem in locating rental space.

With regards to amount of space that is required we can only estimate. The Eastern District of New York recently acquired another place for holding court at Hofstra University. We understand that this branch court will service approximately 2.7 million people. As previously mentioned, the projected 1980 population for the nine counties outside New York City and the Bronx is 2.4 million. Consequently we cannot envision the need for any more space than the Eastern District currently uses at Hofstra University - that is 42,000 square feet. Even that estimate might be exaggerated. The Bankruptcy Court is only 21,000 square feet at a cost of \$6 per square foot. Space requirements could lie somewhere in between these figures.

Costs for running the Southern District courthouse could also be lowered due to reduced costs for juror transportation and overnight reimbursements for jurors unable to return from Manhattan to their homes in distant counties due to bad weather and other factors. Our office has requested from the Clerk of the District Court the number of jurors traveling from the nine counties north of New York City to Foley Square during a six month period in order to more accurately determine the cost-savings involved.

Another alternative which is being studied is the possibility of a new Federal complex in White Plains. There are numerous federal agencies housed all over Westchester County, such as the Department of Social Security, Internal Revenue Service, Federal Bureau of Investigation, and Department of Federal Probation. These federal agencies could possibly be combined with federal court facilities in one central location. In the heart of White Plains there exists substantial Urban Renewal Agency property situated adjacent to the recently constructed Supreme and County courthouse. Appendix 10 delineates the available property, provides a view after redevelopment, and illustrates the metropolitan and regional location of White Plains. We have been assured that the City of White Plains, the County of Westchester and the Urban Renewal Agency will all enthusiastically cooperate in support of whatever endeavors are necessary to bring about the opening of a branch of the Federal Court of the Southern District.

We have requested that the General Services Administration survey the present and potential needs for a new Federal Office Building in White Plains. We will report back to this Subcommittee on the progress of the survey as we receive reports.

I want to reemphasize that all parties concerned want the court established at no or at least minimal cost to the Federal Government. Information we have gathered thusfar indicates that is a good possibility.

In conclusion, I strongly believe that the creation of an additional place for holding court for the Southern District of New York will be viewed as a positive change to improve the administration of justice.

<u>COUNTY</u>	<u>POPULATION 1960</u>	<u>POPULATION 1970</u>	<u>PERCENTAGE CHANG</u>
Bronx	1,424,815	1,471,701	+3
New York	1,698,281	1,539,233	-10
Columbia	47,322	51,519	+9
Dutchess	176,008	222,295	+26
Greene	31,372	22,136	-6
Orange	183,734	220,558	+20
Putnam	31,722	56,690	+79
Rockland	136,803	229,903	+68
Sullivan	45,272	52,580	+16
Ulster	118,804	141,241	+19
Westchester	808,891	894,406	+10

Source: New York State Department of Commerce

POPULATION CHART

APPENDIX 1

<u>COUNTY</u>	<u>POPULATION 1970</u>	<u>POPULATION 1980(est.)</u>
Bronx	1,471,701	1,458,337
New York	1,539,233	1,456,674
Columbia	51,519	57,755
Dutchess	222,295	280,000
Greene	33,136	35,931
Orange	220,558	290,668
Putnam	56,690	67,153
Rockland	229,903	310,000
Sullivan	52,580	63,045
Ulster	141,241	170,453
Westchester	894,406	1,134,500

Summary

1970 population, Bronx and New York 3,010,934
 1970 population, nine counties north of
 New York City 1,902,328

1980 population (est.), Bronx and New York .2,914,011
 1980 population (est.), nine counties
 north of New York 2,409,505

Source: New York State Department of Commerce

POPULATION CHART

APPENDIX 2

AMF, Inc.
 Aetna Life & Casualty
 Allstate Insurance Company
 American Pecco, Inc.
 American Tel. & Tel.
 Anaconda
 Anchor Motor Freight, Inc.
 Avon Products, Inc.
 Beechnut, Inc.
 Burns International Security Service, Inc.
 Carling Breweries, Inc.
 Carvel
 CIBA-Geigy Corporation
 Continental Baking Company
 Dictaphone Corporation
 The Reuben H. Donnelly Corporation
 Exxon Company, U.S.A.
 General Foods Corporation
 General Motors Corporation
 International Business Machines
 Mobil Oil Corporation
 The Nestle Company, Inc.
 N.Y. Seven-Up Bottling Co., Inc.
 Pepsico, Inc.
 Phelps Dodge Cable & Wire Co.
 Picher Corporation
 Precision Valve Corporation
 Readers Digest Association, Inc.
 Reichhold Chemicals, Inc.
 Russell Burdsall & Ward Nut & Bolt Co.
 F&M Schaefer Brewing Co.
 Union Carbide Corporation
 World Book Encyclopedia

CORPORATIONS

APPENDIX 3

<u>NAME</u>	<u>NUMBER OF BRANCH OFFICES IN WESTCHESTER COUNTY</u>
Bankers Trust Co.	12
Barclays Bank of New York	22
Chase Manhattan Bank	11
Chemical Bank	2
County Trust Co.	61
First National City Bank	23
Manufacturers Hanover Trust Co.	11
Marine Midland Bank	3
National Bank of Westchester (Lincoln First Bank)	34
National Bank of North America (CIT Financial Corp.)	14

MAJOR BANKS IN WESTCHESTER COUNTY

APPENDIX 4

APPENDIX 5

COUNTY	# of HOUSEHOLDS		# of TELEPHONES		# of MANUFACTURERS	
	1960	1970	1960	1970	1960	1970
New York	695,763	687,283	470,241	543,794	22,533	15,668
Bronx	463,401	497,222	357,201	385,964	2,017	1,497
Columbia	14,447	16,292	12,428	16,292	87	76
Dutchess	46,962	62,495	41,419	57,749	219	221
Greene	9,777	10,750	8,434	9,736	59	45
Orange	53,919	65,607	47,026	58,492	350	353
Putnam	9,287	15,995	8,712	15,995	36	45
Rockland	34,699	60,359	31,915	56,902	164	210
Sullivan	14,112	16,865	12,412	14,752	93	78
Ulster	36,067	43,533	31,591	39,538	239	197
Westchester	241,281	282,629	222,085	265,186	1,396	1,254

Source: New York State Department of Commerce

<u>COUNTY</u>	<u>HIGHER EDUCATION</u>		<u>COMMERCIAL RADIO STATIONS</u>	<u>DAILY NEWSPAPERS</u>
	<u>4 Yr.</u>	<u>2 Yr.</u>		
New York	22	4	34	23
Bronx	4	2	-	-
Columbia	0	1	2	1
Dutchess	3	2	6	1
Greene	0	0	1	1
Orange	3	2	4	3
Putnam	0	0	1	0
Rockland	2	1	2	1
Sullivan	0	1	2	0
Ulster	1	1	5	1
Westchester	11	3	9	9

Source: New York State Department of Commerce

COLLEGES AND MEDIA

APPENDIX 6

	<u>Residence in New York City</u>	<u>Residence in Counties North of New York City</u>	<u>Percentage Counties North of New York City</u>
Parties	2727	364	11%
Plaintiffs	529	144	21%
Defendants	2198	220	9%

Source: Survey conducted by members of the Federal Court Committee. The period chosen (April 1, 1971 - March 31, 1972) was selected at random, but coincided with the Court Clerk's Office compilation of certain figures which were related to this study and were generously made available to the Committee.

STATISTICAL RESULTS OF COMMITTEE SURVEY

APPENDIX 7

TRANSPORTATION CHART

APPENDIX 8

<u>County From</u>	<u># of Miles to Foley Square</u>	<u>Driving Time</u>	<u># of Miles to White Plains</u>	<u>Driving Time</u>
Hudson, Columbia	114	2 hrs. 15 min.	85	1 hr. 30 min.
Poughkeepsie, Dutchess	81	1 hr. 30 min.	51	1 hr.
Catskill, Greene	126	2 hrs. 30 min.	97	2 hrs.
Goshen, Orange	68	1 hr. 20 min.	48	1 hr.
Carmel, Putnam	58	1 hr. 10 min.	28	35 min.
New City, Rockland	32	45 min.	18	20 min.
Liberty, Sullivan	107	2 hrs. 10 min.	79	1 hr. 35 min.
Kingston, Ulster	100	2 hrs.	78	1 hr. 35 min.
White Plains, Westchester	27	35 min.		

Source: Automobile Association of America

APPENDIX 9

STATISTICS OF THE DISTRICT COURTS

1972 ¹ POPULATION	DISTRICT ²	NO. OF COURT ² LOCATIONS	PENDING CASELOAD AS OF JUNE 30, 1973 ³			
			Civil	Criminal	Probation Supervision	
3,521,000	3	8	1,033	137	681	ALABAMA
		3	208	66	420	NORTHERN
		2	328	50	194	MIDDLE SOUTHERN
325,000	1	5	289	96	197	ALASKA
1,963,000	1	4	892	897	913	ARIZONA
2,008,000	2	5	610	94	240	ARKANSAS
		6	352	30	133	EASTERN WESTERN
20,411,000	4	4	2,878	526	1,847	CALIFORNIA
		3	899	476	828	NORTHERN
		1	2,720	1,357	4,308	EASTERN
		1	487	1,483	883	CENTRAL SOUTHWEST
		6	892	232	607	COLORADO
3,080,000	1	5	1,025	337	416	CONNECTICUT
571,000	1	1	394	49	163	DELAWARE
756,510	1	1	2,471	761	2,324	DISTRICT COLUMBIA
7,347,000	3	5	222	78	261	FLORIDA
		8	1,625	425	1,017	NORTHERN MIDDLE
		3	943	410	1,026	SOUTHERN

1972 POPULATION	DISTRICT	NO. OF COURT LOCATIONS	PENDING CASELOAD AS OF JUNE 30, 1973		Probation Supervision
			Civil	Criminal	
4,733,000	3	4	1,321	332	1,028
		7	302	71	460
		6	374	83	543
816,000	1	1	285	138	184
755,000	1	4	264	46	118
11,244,000	3	2	2,683	603	2,128
		4	442	181	282
		5	350	140	241
5,286,000	2	4	957	270	350
		4	1,006	234	562
2,884,000	2	6	233	38	95
		6	445	72	166
2,268,000	1	8	1,104	247	498
3,306,000	2	8	1,003	252	353
		4	663	72	463
3,738,000	3	1	3,579	246	542
		1	366	54	103
		6	1,158	93	381

1972
POPULATION

PENDING CASELOAD AS OF JUNE 30, 1973

Civil Criminal Probation Supervision

DISTRICT	NO. OF COURT LOCATIONS	Civil	Criminal	Probation Supervision	NAME
1	2	187	95	103	MAINE
1	4	1,343	385	950	MARSHALL
1	4	6,968	350	802	MASS.
2	5	1,996	1,256	1,605	MICHIGAN
	6	815	298	327	Eastern
1	6	1,101	264	568	Western
2	5	422	33	250	MINNESOTA
	7	509	52	399	MISSOURI
2	3	612	183	614	Eastern
	5	1,074	324	591	Western
1	12	331	85	260	MONTANA
1	3	591	129	202	NEBRASKA
1	4	331	113	244	NEVADA
1	2	254	55	85	NEW HAMPSHIRE

1972 POPULATION	DISTRICT	NO. OF COURT LOCATIONS	PENDING CASELOAD AS OF JUNE 30, 1973			
			Civil	Criminal	Probation Supervision	
7,349,000	1	3	2,601	809	1,199	N. J.
1,076,000	1	6	388	189	378	NEW MEXICO
18,367,000	4	6	669	231	267	NEW YORK
70) 4,913,262		3	2,105	1,201	1,644	Northern
		1	10,536	778	1,527	Eastern
		2	617	534	261	Eastern
		5				Western
5,221,000	3	8	442	116	558	North Carolina
		6	347	84	739	Eastern
		5	266	83	500	Middle
634,000	1	4	170	46	119	Western
						NORTH- DAKOTA
10,722,000	2	5	1,924	516	1,169	OHIO
		4	1,113	114	573	Northern
2,633,000	3	5				Southern
		8	347	41	211	Oklahoma
		10	198	26	138	Northern
			440	54	378	Eastern
2,185,000	1	6	419	197	563	Western
11,905,000	3	4				OREGON
		5	4,303	268	1,364	PENNA.
		2	631	135	226	Eastern
			1,200	253	590	Middle
						Western

1972
POPULATION

NO. OF COURT
LOCATIONS

PENDING CASELOAD AS OF JUNE 30, 1973
Civil Criminal Probation Supervision

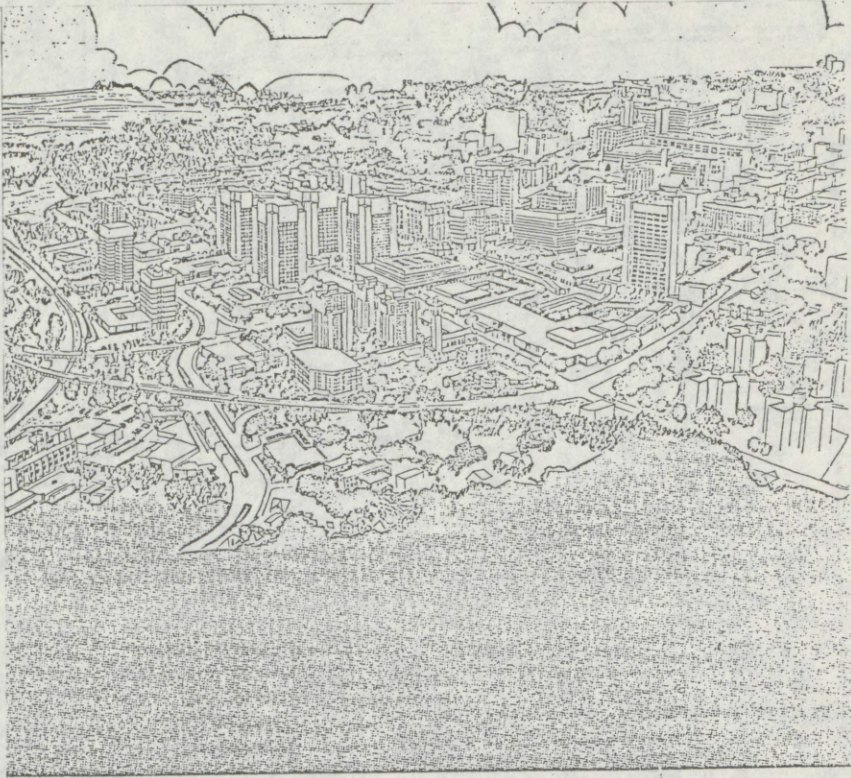
DISTRICT	1	2	1,778	287	255	PUERTO RICO
2,712,033	1	2	1,778	287	255	PUERTO RICO
969,000	1	1	328	41	131	RHODE ISLAND
2,688,000	1	10	1,092	101	807	SOUTH CAROLINA
680,000	1	5	278	176	152	SOUTH DAKOTA
4,072,000	3	4	517	70	571	TENNESSEE Eastern
		3	526	104	369	Middle
		3	597	172	495	Western
11,604,000	4	7	1,595	299	1,083	TEXAS Northern
		6	802	73	292	Eastern
		6	2,781	882	1,314	Southern
		8	904	529	1,133	Western
1,127,000	1	2	394	43	205	UTAH
460,000	1	7	306	84	68	VERMONT
4,765,000	2	4	1,025	377	923	VIRGINIA Eastern
		7	446	39	398	Western
3,418,000	2	4	247	90	175	WASHINGTON Eastern
		3	1,065	255	603	Western

1972 POPULATION	DISTRICT	NO. OF COURT LOCATIONS	PENDING CASELOAD AS OF JUNE 30, 1973		Probation Supervision
			Civil	Criminal	
1,795,000	2	6	404	45	WEST VIRGINIA
		5	999	88	Northern Southern
4,526,000	2	3	820	250	WISCONSIN
		5	658	97	Eastern Western
346,000	1	5	110	23	MINNESOTA

1. Estimated by Bureau of Census as of July 1, 1972, except for the District of Columbia and Puerto Rico, which figures are based on the 1970 census statistics by the Bureau of the Census. Source: The Book of the States 1974-75 pp. 536 et seq.

2. 28 U.S.C. §§ 81-131

3. Ann. Rep. of the Jud. Conf. of the U.S. (1973)



View After Redevelopment

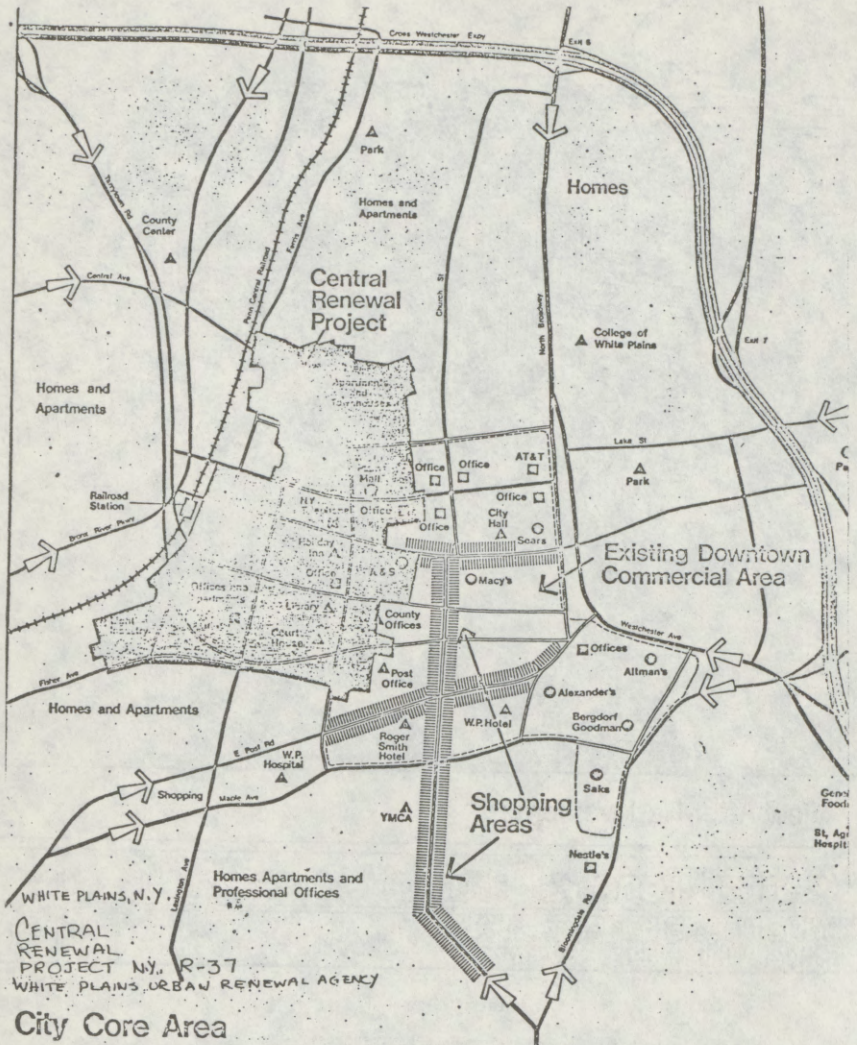
Central Renewal Project NY R-37

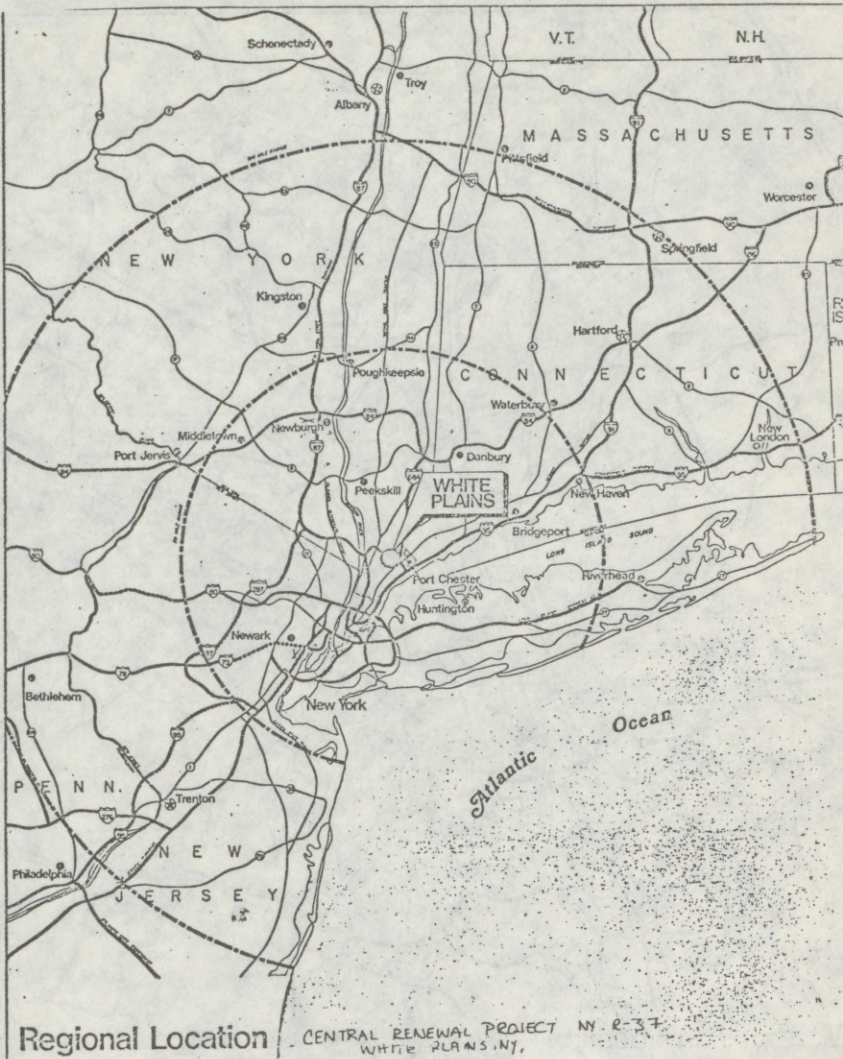
White Plains Urban Renewal Agency
City of White Plains, New York

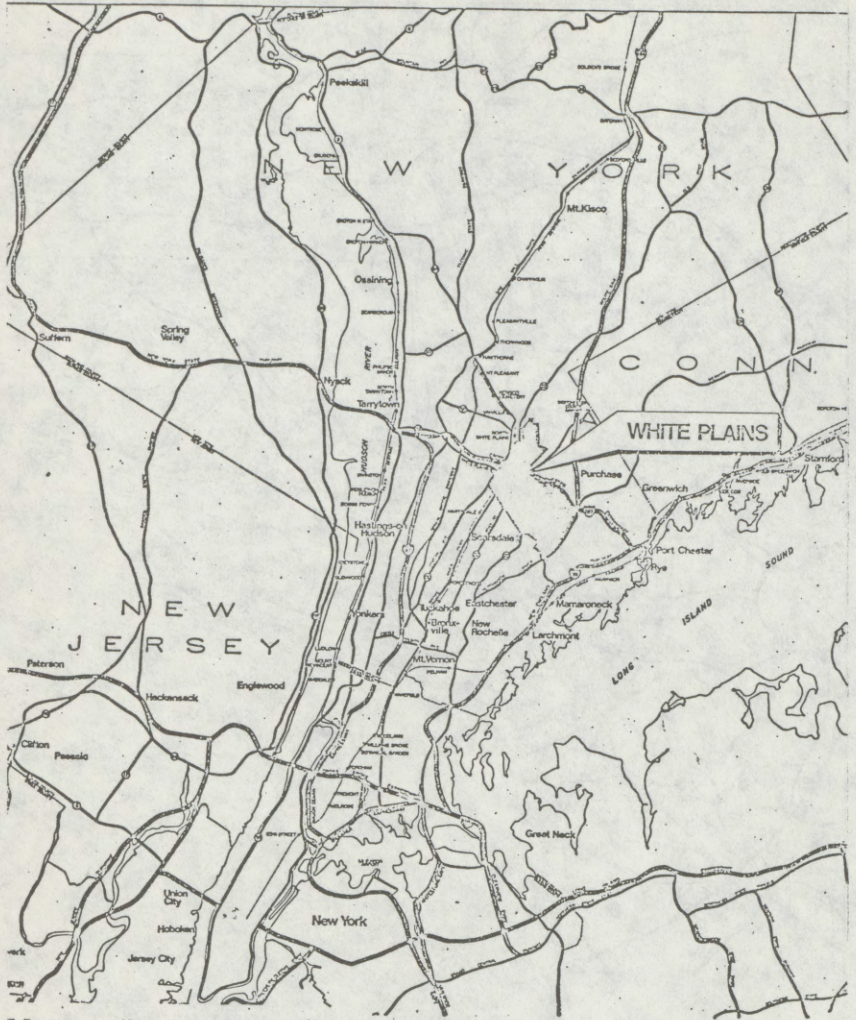


APPENDIX 10

URBAN DEVELOPMENT PROPERTY







Metropolitan Location - CENTRAL RENEWAL PROJECT N.Y.R-37
WHITE PLAINS, N.Y.

SCALE 1:1

June 9, 1978

STATEMENT OF THE HONORABLE RICHARD L. OTTINGER

BEFORE THE

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

Mr. Chairman, I am delighted to have the opportunity to present my views on H.R. 11585, which authorizes the Court of the Southern District to be held in White Plains, New York, as well as in New York City.

As the representative in Congress of major portions of Westchester County, New York, including the City of White Plains, I feel there is a very strong case to be made in favor of establishing a location in Westchester for the court of the Southern District.

The Westchester County Bar Association recently completed an exhaustive report on the feasibility of obtaining federal court facilities in White Plains. After studying the issue in detail, the Federal Court Committee of the Westchester Bar Association recommended the location of a second court location in White Plains and agreed that such a site would better serve the nine counties in the Southern District which lie outside of New York City.

Before I begin to summarize the Committee's findings and to offer my views on the matter, I would like to offer a brief profile of the Southern District, which should be helpful to the Subcommittee in its deliberations on the matter.

The Southern District of the U.S. District Court comprises an area of 5,980 square miles. Included in the District are eleven counties -- Manhattan, the Bronx, Westchester, Putnam, Rockland, Dutchess, Orange, Sullivan, Ulster, Greene, and Columbia. Except for the Bronx, the remaining nine counties are located to the north and northwest of New York City.

Currently, only one courthouse serves the entire Southern District, and it is located in the southernmost portion of the area, at Foley Square in Manhattan. This is roughly 2 hours and 30 minutes driving time from Catskill in Greene County -- one of the northernmost sections of the District. The Foley Square location is 2 hours and 15 minutes from Hudson in Columbia County; 2 hours and 10 minutes from Liberty in Sullivan County.

This sketch of the Southern District points to one of the major reasons for establishing a court at White Plains. It simply is inconvenient to a major portion of the public, the bar, and to the court to travel miles and miles to the Foley Square location. In addition, the distances involved severely deplete the court's pool of jurors, as a person residing more than 50 miles from a courthouse can be excused from jury duty upon request. It was noted in the Bar Association report that problems concerning jury selection have surfaced because of the large area covered by the Foley Square courthouse.

STATEMENT OF THE HONORABLE RICHARD L. OTTINGER

Page Two

Perhaps, one of the most persuasive arguments in favor of a White Plains location centers around the population of the Southern District. Forty percent of the people in the jurisdiction of the Southern District live outside of New York City. In addition, all nine counties outside of the City are experiencing population growth and the trend during the next decade is for further increases in population in the nine county area.

The Southern District handles one of the busiest caseloads in the nation. Roughly two-thirds of all pending civil cases in the Second Circuit are pending in the Southern District. In fiscal year 1973, the Southern District ranked eighth out of ninety-four district courts in new criminal cases started and pending.

The location of a second court location in White Plains would not set a precedent. On seven occasions since 1970, Congress has enacted legislation providing for additional sites for district courts.

In other districts of the country -- some which cover less square miles than the Southern District -- more than one location for the court is not uncommon. As was noted in the Westchester County Bar Association report, the Connecticut District Court -- which serves 37% less people than the Southern District, which services approximately 1,000 less square miles, which has ten times less the number of civil cases pending and less than half the number of criminal matters pending than the Southern District -- sits at five locations.

The Westchester County Bar Association, together with the County Bar Associations of Bronx, Dutchess, Orange, Putnam, Rockland, Sullivan Counties have endorsed the location of a branch office of the Southern District Court in the City of White Plains. In addition, eleven local bar associations in the County of Westchester have endorsed the White Plains site.

White Plains is the County Seat of Westchester. Roughly 48% of the population in the nine county area outside of New York City reside in Westchester County. The City is easily accessible by various means of transportation. The headquarters for many large corporations and banking institutions are located in White Plains. In addition, the center of White Plains is being revitalized through extensive urban renewal efforts, and should it be decided to construct a new and permanent Southern District courthouse in White Plains, the City could easily accommodate such a facility.

In conclusion, I strongly support the proposal for location of a second court site for the District Court for the Southern District of New York. Not only would the public benefit from the new location, but it also would make the job of the court a lot easier. I urge the Subcommittee to provide statutory authority for a second location for the Southern District in White Plains.

ROBERT S. WALKER
16TH DISTRICT, PENNSYLVANIA

COMMITTEES:
GOVERNMENT OPERATIONS
SCIENCE AND TECHNOLOGY

STAFF IN CHARGE:
HUGH M. COFFMAN
WASHINGTON OFFICE
GEORGE W. JACKSON
DISTRICT OFFICES

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 12, 1978

The Honorable Robert Kastenmeier, Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

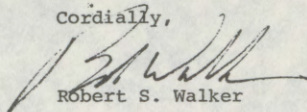
Enclosed, per your request, is a statement of the reasons
this legislation is necessary.

The statement is representative of the viewpoint of the
Lancaster County Bar Association prepared by the Chairman
of its Committee charged with looking into this matter.
That committee has studied the subject extensively and
knows of no organized or unorganized opposition to the
proposal that Lancaster be named a federal court station.

This legislation has the complete endorsement of the
Lancaster County Bar Association.

I would appreciate the Subcommittee's consideration of
this legislation.

Cordially,



Robert S. Walker

1

Enc.

LAW OFFICES
SHIRK, REIST AND BUCKWALTER
P.O. BOX 1552

LANCASTER, PENNSYLVANIA 17604
July 12, 1978

K. L. SHIRK, JR. (1941-1954)

SEYMOUR L. SHIRK, JR.
RONALD S. REIST

RONALD L. BUCKWALTER
RICHARD E. JOSEY
CAROL GENDIL TALE

THOMAS L. GOODMAN
DAVID W. S. WALKER, II

SEYMOUR L. SHIRK, JR.
JEFFREY S. WAGG

OFFICES

132 E. CHESTNUT STREET
LANCASTER, PENNSYLVANIA 17604
LANCASTER 264 7247
AREON-809 1742

107 WEST MAIN STREET
LEWISBURG, PENNSYLVANIA 17033
732-2583
628-7403

45 SOUTH BROAD STREET
LITITZ, PENNSYLVANIA 17543
626-2775

515 D-D LEAMAN AVENUE
MILLERSVILLE, PA. 17251
872-9605

ALL PHONES AREA CODE 717

Congressman Robert S. Walker
Member
U.S. House of Representatives
1028 Longworth House Office Building
Washington, DC 20515

Re: 76/7511 Fed. Court Station

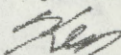
Dear Bob:

This letter is in answer to the letter to you from Honorable Robert W. Kastenmeier dated May 22, 1978, and has been prepared by the Federal Court Station Committee of the Lancaster Bar Association.

Since your letter arrived the day before the date of the hearing, it was impossible for us to attend although we would have liked to have done so.

Our statement is enclosed (it was believed that you might prefer it this way).

Respectfully yours,


K. L. Shirk, Jr.

STATEMENT

In re H.R. 11585

Lancaster as a place for court in Eastern District of Pennsylvania

1. Supporters: Lancaster Bar Association

2. Opponents: None Known

3. Predicted Cost of Legislation: Minimal. At this time there is no intent to set up the detailed office facilities now available in Reading (a much smaller county) where at this moment two judges hold court. It is intended that the limited facilities available previously in Allentown, and Easton would be available in Lancaster.

Space would be provided in the Lancaster County Court House.

It is admitted that at some later time as the work progresses and as Congress provides to the citizens expanding access to their federal courts (rather than the limited opportunity of having to travel to Philadelphia, Reading or Allentown); Lancaster may become a full fledged site, and justice would be transferred there, etc. as is now done in Allentown and Reading.

Both Berks County (Reading) and Lehigh County (Allentown) are smaller than Lancaster County in population and land area. Both Reading and Allentown are closer to Philadelphia and considerably so by interstate highways.

4. Present needs of the District:

Citizens who would otherwise resort to the federal court for resolution of their disputes many times forego their rights because of the difficulties in transportation, fees and other costs. On all criminal cases we are prejudiced because arraignment is only available in Philadelphia to Lancaster defendants.

5. Anticipated needs of the County: An ever increasing number of cases are being filed in the federal courts--criminal, civil and administrative. Lancaster County is growing fast (one of the fastest growing in the state) and is becoming more litigious.

THE HONORABLE ROBERT W. KASTENMEIER
CHAIRMAN
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND
ADMINISTRATION OF JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING

PRESENTED BY
THE HONORABLE JOHN P. MURTHA
PENNSYLVANIA

Good morning, Mr. Chairman and Members of the Committee. It is a pleasure for me to submit testimony supporting H. R. 12496 which I introduced on May 2, 1978. This legislation provides for the holding of court for the Western District of Pennsylvania at Johnstown.

Mr. Chairman, I would like to list some of the major reasons for the support of this demonstration:

A. The Increase of Volume in Federal Litigation:

As the Committee Members are aware, there is a continual rise in the judicial activity. The latest figures I have for the years 1974 and 1975 indicate there has been a 13% rise in civil filings and a 9% rise in criminal case filings between these two years. During this same period, it is my understanding that for each authorized judgeship in the Court of Appeals, there were 125 cases pending, and when consideration is given to the three judges on panels which decide such cases, the 125 panel caseload translates to a 375 judgeship caseload.

This increase in activity has been recognized by other Federal agencies and, as a result, the Federal Bureau of Investigation and the United States Postal Service have each added an additional person to their Johnstown offices.

In 1975, United States Magistrate William Glosser, stationed in Johnstown, heard 63 cases involving 63 defendants. Over 110 representatives of the United States government were involved in personal appearances before him, and approximately 45 other individuals, who traveled distances of up to 110 miles, were also involved with him in some capacity. Magistrate Glosser also handled over 100 telephone inquiries which are not reflected anywhere in official records. I have also enclosed for your review an update to this report of Magistrate Glosser. I will enclose a listing of civil court cases from the area in mention for 1975, 1976 and 1977.

B. Cost to the Individual:

According to the Cambria County Attorneys, as things stand at present, it is mandatory to obtain a Pittsburgh co-counsel because of the Federal Court Rules that require almost instantaneous representation upon call of the Court. This creates additional cost to the litigants from this area that would become unnecessary if hearings were held in Johnstown.

Gentlemen, the Western District of Pennsylvania consists of the 25 Western Pennsylvania counties with court being held in just Erie and Pittsburgh. You can see the difficulty in having only two places for the citizens of this area to file their cases.

C. Difficulty and Time Consumed in Travel for Attorneys and Witnesses:

Attorneys and witnesses must often travel to Pittsburgh and Erie for routine filings and other judicial activities. Some activities take only a few minutes to complete, but can cost the participants the greater part of the day in wages. There is some reluctance on the part of these parties to travel to Erie and Pittsburgh, and because of this reluctance on the part of witnesses, many must be subpoenaed in order to obtain them for court. This is not to mention the time spent on jury duty by the people of this area, and the many trips they must make back and forth to the District Court in Pittsburgh.

D. Available Space:

The present space facilities used by the bankruptcy judge when holding court in the Johnstown area is very inadequate. Presently these cases are held in the Judges Chambers in the Park Building in Johnstown. Judge Gerald Gibson holds regular sessions two days a month, and Judge Bernard Shafner holds sessions at least one day a month. In Fiscal Year 1974, Fiscal Year 1975, and the first half of Fiscal Year 1976, 46 - 106 - 61 bankruptcy filings were held respectively in Johnstown.

According to the Cambria County Attorneys, the lack of an adequate Johnstown facility causes bankruptcy proceedings frequently to be scheduled at Erie. The addition of regular hearings of the District Court will allow the development of adequate permanent facilities, thus also improving the situation for the bankruptcy hearings in Johnstown.

Gentlemen, let me be quick to point out that although there are no existing facilities presently in the Johnstown downtown area, there is an abundance of lease space available. Again, according to the Johnstown attorneys, there would be a need of approximately 1,100 square feet to house this type of facility. The Johnstown attorneys feel that the facility should consist of a clerk/reception room, a jury room, court room and judges chambers. It is my understanding that space could be leased on a long-term contract for about \$4.00 to \$7.00 per square foot on an annual basis. Additional costs for this facility would involve the hiring of a filing clerk, probably in the GS-7 range, telephone service, and general office expenses.

Mr. Chairman, I am aware of no opponents to this legislation, and I would like to submit for your review resolutions supporting my legislation adopted by the Bar Associations of the following counties: Bedford, Blair, Cambria and Somerset. These counties would benefit by my legislation and were the only counties contacted.

The only alternative to this legislation is the continuation of the existing procedure, which, as I have pointed out, is an extreme hardship to the judicial functions of the Western District of Pennsylvania.

WILLIAM L. GLOSSER
UNITED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
FRANKLIN AND LOCUST STREETS
JOHNSTOWN, PENNSYLVANIA 15901

814-536-6633

May 22, 1978

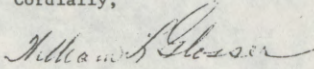
Honorable John P. Murtha
House of Representatives
431 Cannon Bldg.
Washington, DC 20515

Dear Mr. Murtha:

You have asked me for some statistical information on cases processed by myself as a part-time magistrate for the Western District of Pennsylvania serving the Johnstown/Altoona area.

For the past two and a half years I have handled approximately 200 cases. The flow seems to be evenly divided both by month and year. In addition to that, I have handled perhaps 200 telephone inquiries which are not reflected in the official statistics.

Cordially,



William L. Glosser
United States Magistrate

WLG:ar

J. WILLIAM MCINTYRE
ATTORNEY AT LAW
BEDFORD, PENNSYLVANIA 15522

TELEPHONE 623-6318

September 9, 1976

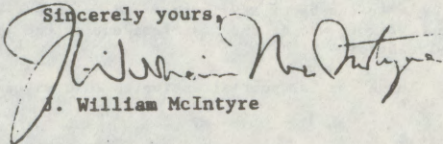
I. Samuel Kaminsky, Esq.
Kaminsky, Kelly and Wharton
Attorneys at Law
360 Stonycreek Street
Johnstown, Pennsylvania 15901

Re: Federal Western District of Pennsylvania
Court Facilities

Dear Mr. Kaminsky:

In reply to your letter of August 17 to me as President of the Bedford County Bar Association, you will be pleased to know that at a recent meeting of our association a motion was passed supporting the Cambria County Bar Association in its efforts to establish a Federal Court facility in Johnstown. Although only a few of our members practice in the Federal Courts, it was the feeling of the members that it would be most desirable to have a Federal Court facility in Johnstown.

Sincerely yours,



J. William McIntyre

JWM:rb

LAW OFFICES
FIKE, CASCIO & BOOSE, P. A.
SCULL BUILDING
SOMERSET, PENNSYLVANIA 15501

JOSEPH N. CASCIO
ROBERT I. BOOSE
EUGENE C. FIKE, II
JOHN M. CASCIO
JOHN J. DIRIENZO, JR.
JAMES R. CASCIO

AREA CODE 814
TELEPHONE 445-7948

January 6, 1977

Kaminsky, Kelly and Wharton
Attorneys at Law
360 Stonycreek Street
Johnstown, Pennsylvania 15901

Re: Federal Courthouse Facilities for W. Pa.

Attention: I. Samuel Kaminsky, Esq.

Dear Sam:

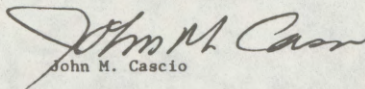
Your letter of January 4, 1977, has been forwarded to me by Bob Keim. At a meeting of the executive committee of the Somerset County Bar Association held December 9, 1976, your earlier letter was read and discussed and a resolution supporting the effort to locate a Federal Courthouse for Western Pennsylvania in the Johnstown area was passed unanimously by the members present.

If we can be of any further aid, please feel free to contact either Fred Coffroth who is the new President of the Association or me as Secretary-Treasurer.

Thank you for your attention to this matter.

Very truly yours,

FIKE, CASCIO & BOOSE, P. A.


John M. Cascio

JMC/rag

GOODMAN, NOTOPOULOS & SILVERMAN
ATTORNEYS AT LAW
203 CENTRAL TRUST BUILDING
ALTOONA, PENNSYLVANIA 16801
TELEPHONE (814) 946 0836

October 15, 1976

KENNETH B. VAUGHN
OF COUNSEL

MARTIN GOODMAN
ALEXANDER A. NOTOPOULOS
LOUIS P. SILVERMAN
BETH B. CROYLE
SUSAN P. REA

I. Samuel Kaminsky, Esq.
KAMINSKY, KELLY and WHARTON
360 Stonycreek Street
Johnstown, Pennsylvania 15901

Re: Federal Western District of
Pennsylvania
Court Facilities

Dear Sam:

In reply to your letter of August 17, 1976, the Board of Governors of the Blair County Bar Association on Wednesday, October 13, 1976 agreed to join with you and other counties requesting a Federal Court Facility in Johnstown.

Please advise if you wish your questionnaire to be sent to all of the counsel in our county.

Very truly yours,

Alex

Alexander A. Notopoulos

AAN/kp

INTRODUCTION

The Cambria County Bar Association supports the establishment of an additional court location for the United States District Court for the Western District of Pennsylvania, at Johnstown, Cambria County, Pennsylvania. We believe that a federal courthouse in Johnstown would serve attorneys, witnesses and citizens residing in Cambria County and the surrounding counties of Somerset, Blair, Bedford, Indiana and Clearfield in a much superior manner than at present. For many years, the citizens of these counties have been severely inconvenienced and greatly prejudiced by reason of the lack of a federal courthouse closer than Pittsburgh. Considerable time and money has been and is required for traveling to and from Pittsburgh.

We have the support of the Honorable John P. Murtha, Congressman for the 12th District of Pennsylvania, who is prepared to bring the matter of a request for funding for a Johnstown facility before the House Judiciary Committee. However, in order to substantiate our case, we need statistical data in support of this request. For this purpose, the United States District Court Committee of the Cambria County Bar Association, chaired by Samuel R. DiFrancesco, Sr., has prepared the attached questionnaire. We would appreciate your giving it immediate attention and returning it to the following address as soon as possible.

Please note also that we may need witnesses to testify before the House Committee. If you are interested please write to me, setting forth the testimony you would offer.

Very truly yours,

G. S. Margolis

Gustavo S. Margolis, President
Cambria County Bar Association
804 First National Bank Building
Johnstown, Pa. 15901

JOE D. WAGGONNER, JR.
4TH DISTRICT, LOUISIANA

PARISHES:
BOSSIER RED RIVER
CADDO SARINE
CLAIBORNE VERNON
DE SOTO WEBSTER

COMMITTEE ON
WAYS AND MEANS

CHAIRMAN:
SUBCOMMITTEE ON MISCELLANEOUS
REVENUE MEASURES
SUBCOMMITTEE ON
SOCIAL SECURITY

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 31, 1978

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reference to your letter of May 24 asking for a statement in support of my bill, H. R. 1916, to amend section 98 of title 28, United States Code, to eliminate the divisions in the Western District of Louisiana.

I am enclosing a copy of a well-researched memorandum prepared by Tom Stagg, U. S. District Judge of the Western District of Louisiana, which I feel best describes the problem and the need for some resolution of it. I would appreciate this being considered at the June 2 hearing.

All good wishes,

Joe D. Waggonner, Jr.

JDW:dgp

GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Louisiana Congressional Delegation

DATE: July 27, 1976

FROM : Tom Stagg, United States District Judge, Western District of Louisiana, Shreveport and Monroe Divisions

SUBJECT: Proposed amendment to 28 U.S.C. § 98(c) — Statutory Court Division

The advent of the Speedy Trial Act, coupled with an ever-increasing civil caseload, has necessitated an in-depth examination of the organization of the federal courts in the Western District of Louisiana. One of the principal problems uncovered in this review is the divisional structure of this District.

The Western District of Louisiana is one of 36 federal judicial districts operating under a statutory division scheme. Under such a plan Congress, by statute, designates the cities within the district where court is to be held as well as specifically designating the parishes (counties) to be included within a given division. On the other hand, in non-statutory divisions Congress designates the cities where court is to be held but remains silent on the areal composition of the divisions. Thus, in non-statutory divisions the Court, by Local Rule, determines the geographical limits of each division according to the workload generated by the several parishes composing the district and to problems peculiar to the area.

It is the opinion of the judges of this District, as well as the Clerk of Court, that the non-statutory division structure would be better suited for the most efficient operation of courts within the Western District. For example, as the attached exhibit indicates, the caseloads for the various statutory divisions evidence variances exceeding, in some cases, 100 per cent. As a further example, the population centers of Natchitoches and Concordia Parishes, presently situated in the Shreveport and Monroe Divisions, respectively, are much closer geographically to the seat of court in the Alexandria Division. This means that jurors, lawyers, litigants and witnesses coming from these parishes must travel a greater distance to attend trial than would be necessary if these parishes were included in the Alexandria Division. These examples are but two of the reasons dictating a change from a statutory to a non-statutory division system. The problems cannot permanently be remedied by realigning the parishes in the present statutory divisions since changes in population and caseload trends in the future may prescribe



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Memo to La. Congressional Delegation
7/27/76

additional changes.

In order to effectuate a non-statutory division system in the Western District of Louisiana, a relatively simple amendment to 28 U.S.C. §98(c) is necessary. It is proposed that the amendment read:

"WESTERN DISTRICT

"(c) The Western District comprises the parishes of Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Davis, DeSoto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Jefferson, Lafayette, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, and Winn.

"Court for the Western District shall be held at Alexandria, Lafayette, Lake Charles, Monroe, Opelousas, and Shreveport."

After the effective date of this amendment the judges could add a provision to the Local Rules designating the parishes to be contained in each of the six division points. No change is suggested in the division points and court will continue to be held in the six cities in the District.

It would be of considerable assistance if this matter could be expedited. After the November election the Clerk must begin the process of refilling jury wheels for each of the six divisions and complete this by March 31, 1977. If the proposed Parish changes could be made, this gathering of registered voter lists could proceed, using the new division boundaries.

It is sincerely hoped that you will give this your earliest consideration. The administration of justice in this District, both criminal and civil, will be greatly benefited by its passage.

§ 98. Louisiana

Louisiana is divided into three judicial districts to be known as the Eastern, Middle, and Western Districts of Louisiana.

Eastern District

(a) The Eastern District comprises the parishes of Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, and Washington.

Court for the Eastern District shall be held at New Orleans.

Middle District

(b) The Middle District comprises the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, and West Feliciana.

Court for the Middle District shall be held at Baton Rouge.

Western District

(c) The Western District comprises six divisions.

(1) The Opelousas Division comprises the parishes of Evangeline and Saint Landry.

Court for the Opelousas Division shall be held at Opelousas.

(2) The Alexandria Division comprises the parishes of Avoyelles, Catahoula, Grant, La Salle, Rapides, and Winn.

Court for the Alexandria Division shall be held at Alexandria.

(3) The Shreveport Division comprises the parishes of Bienville, Bossier, Caddo, Claiborne, De Soto, Natchitoches, Red River, Sabine, and Webster.

Court for the Shreveport Division shall be held at Shreveport.

(4) The Monroe Division comprises the parishes of Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, and West Carroll.

Court for the Monroe Division shall be held at Monroe.

(5) The Lake Charles Division comprises the parishes of Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, and Vernon.

Court for the Lake Charles Division shall be held at Lake Charles.

(6) The Lafayette Division comprises the parishes of Acadia, Iberia, Lafayette, Saint Martin, Saint Mary, and Vermillion.

Court for the Lafayette Division shall be held at Lafayette.

As amended Dec. 18, 1971, Pub.L. 92-208, § 3(a), 85 Stat. 741.

CIVIL AND CRIMINAL CASES FILED IN THE WESTERN DISTRICT
OF LOUISIANA FROM JULY 1, 1975 - JUNE 30, 1976

DIVISION:	Alexandria	Lake Charles 1/ (Vacant)	Monroe 2/ Stagg	Opelousas Scott	Shreveport 2/ Stagg	Lafayette 3/ (Vacant)	TOTALS :
JULY 75	18	125	48	13	53	40	297
AUG. 75	17	28	19	10	67	42	183
SEPT. 75	27	38	24	7	49	57	202
OCT. 75	15	40	41	17	41	22	176
NOV. 75	16	15	10	15	41	56	153
DEC. 75	16	28	19	14	60	28	165
JAN. 76	18	45	46	40	52	57	258
FEB. 76	12	30	25	14	52	27	160
MAR. 76	17	68	24	15	71	31	226
APR. 76	15	25	18	12	30	21	121
MAY 76	64	26	16	15	34	117	272
JUNE 76	17	25	84	51	39	31	247
Totals:	252	493	374	223	589	529	2460

1/ Senior Judge Edwin F. Hunter presently handles Lake Charles Division cases (493 filings)
 2/ Senior Judge Ben C. Dawkins presently handles a portion of the Shreveport and the Monroe cases (963 filings).
 3/ Senior Judge Richard J. Putnam has been ill for a number of months and has not returned to full duty (529 filings).

Mr. Pattison of New York

Mr. Chairman, I appreciate the opportunity to testify in support of H. R. 1883, a bill to provide that Columbia, Greene, and Ulster counties be included in the northern judicial district of New York.

As it stands now, these three counties are included within the southern judicial district of New York, centered in New York City. This creates a burden on those who must use the U. S. District Court. Geographically, Albany is situated much closer to these three counties. Accordingly, the people of Greene and Columbia counties have centered their lifestyles around Albany and not New York. They work there, utilize the services offered there, and are required to conduct state and other federal business in Albany.

Shortly after I introduced the bill in the 94th Congress, I conducted a poll of the attorneys in Greene and Columbia counties (those two counties which are located in my Congressional district), asking their opinion on this legislation. The response was 100% in favor of the bill. They indicated it would be much more efficient for them to conduct business in Albany rather than New York. Additionally, Congressman Fish received overwhelming support for the bill from the Ulster County Bar Association. It is clear that the attorneys affected by this legislation are totally in support of it.

The Honorable James T. Foley, Chief Judge, U. S. District Court, Northern District of New York has also indicated his support for H. R. 1883. It is his impression that the addition of these three counties to the northern district "will better serve the convenience of the attorneys and their clients and thus the interest of justice."

It is clear that the needs of the people of Columbia, Greene, and Ulster counties will be adequately, if not better served, with the enactment of this legislation.

6/29/78

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

ALBANY, NEW YORK 12201

June 26, 1978

JAMES T. FOLEY
CHIEF JUDGEHon. Robert W. Kastenmeier
Room 2232 Rayburn House Office Building
Washington, D. C. 20515Re: Judiciary Subcommittee on Courts, Civil Liberties,
and the Administration of Justice

Dear Congressman Kastenmeier:

I have been informed by Bill Weller, our able Legislative Liaison Officer for the Administrative Office of the United States Courts, that as Chairman of the above Subcommittee you requested the Administrative Office to obtain comments regarding certain pending legislative proposals affecting United States District Courts.

This Court is particularly interested in the proposed legislation to add three additional New York Counties -- Columbia, Greene and Ulster -- to the present twenty-nine counties over which the court exercises jurisdiction. I have expressed the views of the judges of this Court on several occasions that there will be no objection to this addition if the third judgeship for the District is authorized. There is no doubt that the new litigation that will be caused by this addition can be managed and disposed of efficiently and with reasonable dispatch if the judicial manpower here is increased.

These three counties, Columbia, Greene and Ulster, are contiguous to this Capital District area in which I have my Chambers in the City of Albany. I enclose for reference a diagram of the counties of the State of New York with the federal districts marked. The three counties are part of the Third Judicial District of New York State, and the attorneys from there are in Albany often in their practice of law. The distance from the three counties to Albany is considerably less than the distance to New York City and its environs. The addition of the three counties will better serve the convenience of the attorneys and their clients and thus the interests of justice.

Therefore, this Court, if we have the third judge, would be favorable to the addition of the three counties to the Northern Judicial District of New York as proposed by your Bill and the Bill of Congressman Pattison for himself and Congressman Fish. I recognize that such change may have to be weighed together with the proposed legislative changes for the Southern and Eastern Districts of New York.

I do hope that the comments herein are helpful to you and the Subcommittee.

Sincerely,

*James T. Foley*Chief Judge, U. S. District Court
Northern District of New York

Enclosure

cc: Judge Howard G. Munson
Judge Edmund Port
Congressman Edward W. Pattison
Congressman Hamilton Fish, Jr.
William James Weller, Legislative Liaison Officer
Robert D. Lipscher, Circuit Executive

JOHN W. WYDLER
Fifth District, New York

SEAN, NEW YORK
REPUBLICAN DELEGATION
VICE CHAIRMAN, NEW YORK
BIPARTISAN DELEGATION

DISTRICT OFFICE:
139 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501
TELEPHONE: CH 8-7676

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 31, 1978

Hon. Robert W. Kastenmeier, Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Bob:

This is in response to your letter of May 24th,
requesting that I submit a concise written statement in support
of my proposal to divide the Eastern District of New York into
two divisions (H. R. 2234; see also H. R. 3707, H. R. 5382 and
H. R. 11264).

Background and Reasons for the Legislation

Since 1970 I have had pending before the House Judiciary
Committee a bill which would divide the Eastern Judicial District
of New York into two divisions.

The obvious reasons for the legislation are judicial case
load of the Counties of Nassau and Suffolk and the transportation
problems associated with the lack of adequate court facilities for
the area. My bill would provide for a separate division within the
Eastern Judicial District for the Counties of Nassau and Suffolk,
which would provide that area with separate court facilities and a
full time judge.

When Judge George Pratt assumed the bench of the Eastern
District of New York in May 1976, he undertook to reestablish an
active and working Long Island court. A number of changes in
administrative systems were introduced, most particularly the establish-
ment of a full time clerk's office for the Long Island court. In
January 1977 Judge Pratt moved his official station from Brooklyn to
Westbury and he is now holding court there on a full time basis.
However, with the recent passage of S. 2597 (Public Law 95-271), Judge
Pratt will move his court to Hofstra University in Uniondale, which
will provide even more adequate facilities than he has had in Westbury.

COMMITTEES:
RANKING MINORITY MEMBER
SCIENCE AND TECHNOLOGY

SUBCOMMITTEES:
TRANSPORTATION, AVIATION
AND WEATHER
(RANKING MINORITY MEMBER)
EX OFFICIO MEMBER
OF ALL SUBCOMMITTEES OF
SCIENCE AND TECHNOLOGY

GOVERNMENT OPERATIONS

SUBCOMMITTEE:
INTERGOVERNMENTAL RELATIONS AND
HUMAN RESOURCES
(RANKING MINORITY MEMBER)

AD HOC COMMITTEE
ON ENERGY

TECHNOLOGY
ASSESSMENT BOARD
MEMBER

SUBURBAN CAUCUS
CO-CHAIRMAN

The reason for the move is to provide Long Island cases with a convenient place for court rather than continuing to force everyone on Long Island to travel to and from Brooklyn.

The travel burden on attorneys, parties, witnesses, and jurors from Nassau and Suffolk counties into Brooklyn is unreasonable and unnecessary. Traveling during rush hours requires a round trip time of 2 1/2 to 3 hours from central Nassau, 4 hours from western Suffolk and 5 hours from eastern Suffolk. To the present Westbury location in central Nassau, the round trip travel time for approximately 75 percent of the population of the two counties is reduced to less than 1 1/2 hours.

Judge Pratt advises that by his moving the Court to Westbury (and subsequently to Uniondale), the District is de facto, being administered as though the Eastern Judicial District were divided into two divisions. My legislation, H. R. 2234, which has been incorporated into Chairman Kastenmeier's H. R. 12869, would make this de jure, bringing the district into an orderly arrangement and providing for the possibility of appointing additional judges to handle the extremely heavy caseload, which caseload is outlined later in this statement.

Generally, a "division" is considered an administrative unit for managerial convenience to facilitate dockets, which would be appropriate in the case of the Eastern Judicial District of New York. Precedent for this is found in the following Judicial Districts:

Georgia (28 USC 90)
 Indiana (28 USC 94)
 Iowa (28 USC 95)
 Louisiana (28 USC 98)
 Maine (28 USC 99)
 Michigan (28 USC 102)
 Minnesota (28 USC 103)
 Mississippi (28 USC 104)
 Missouri (28 USC 105)
 North Dakota (28 USC 114)
 Ohio (28 USC 115)
 South Carolina (28 USC 121)
 South Dakota (28 USC 122)
 Texas (28 USC 124)
 Utah (28 USC 125)

Analysis of Present and Anticipated Needs of the District

The following table sets forth the current workload of the Eastern Judicial District as compared with the Long Island cases handled:

OCTOBER 1976 - AUGUST 1977

	<u>CIVIL</u>	<u>CRIMINAL</u>	<u>TOTAL</u>
Total Cases for EDNY	2,333	524	2,857
Cases arising in Nassau and Suffolk counties*	540	33	573
Percentage of "Long Island" cases	23.1%	6.3%	20%

* Magistrates' cases are excluded

More current figures show that Long Island cases constitute 27 percent of the civil cases handled within the Eastern Judicial District and 7 to 10 percent of the total criminal cases handled by the District. In one month, the criminal cases reached a level of 25 percent of the total handled by the Judicial District, which is an unprecedented case load for the Long Island area.

Data from Management Statistics for United States Courts, 1977, places the Eastern Judicial District of New York first in numerical standing within the Circuit and 34th within the United States. According to data from the Second Circuit Report for 1977 by the United States Courts, during the past ten years total filings in the Eastern District of New York have increased 96 percent. The district is unique in the Second Circuit in that both civil and criminal filings have grown significantly, 102 percent and 78 percent, respectively.

Quoting from the Second Circuit Report for 1977, page 36, "An outstanding characteristic of the Eastern District is its heavy criminal caseload. Criminal cases constituted 24 percent of total filings in 1977 - a proportion equalled only by the Western District of New York - compared to 19 percent for the circuit as a whole. 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."

Predicted Costs of the Legislation

There appears to be no additional cost to the Government involved.

Possible Alternatives

The only alternative would be to leave the District in its de facto state, which is not recommended.

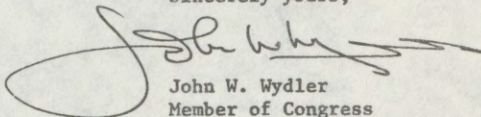
List of Supporters

The list of supporters comes from the cosponsors of the legislation. They are the Long Island delegation: Mr. Ambro, Mr. Downey, Mr. Lent, Mr. Pike and Mr. Wolff. The other Members of Congress who support this bill are: Mr. Bonker, Mr. Gilman, Mr. Jenrette, Mr. Kemp, Mr. Stockman, Mr. Vander Jagt, Mr. Walker, and Mr. Walsh.

There are no known opponents of this legislation.

This background and data on H. R. 2234 is respectfully submitted for your favorable consideration of this important bill for the Eastern Judicial District.

Sincerely yours,



John W. Wydler
Member of Congress

JWW:Fs

DON FUQUA
2D DISTRICT
FLORIDA



2256 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

June 1, 1978

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts, Civil
Liberties and the Administration of Justice
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed are copies of my prepared statement for the June 2 hearing your subcommittee is holding on my bill, H.R. 2054. I am most anxious for favorable consideration of H.R. 2054 and deeply appreciate the opportunity to submit this statement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Fuqua", written over a horizontal line.

DON FUQUA
Member of Congress

DF/Bcg
Enclosures

STATEMENT BY THE HONORABLE DON FUQUA
BEFORE THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES
AND THE ADMINISTRATION OF JUSTICE

Mr. Chairman, my bill, H.R. 2054, would amend Title 28 of the U. S. Code to provide that Madison County, Florida, shall be removed from the Middle Judicial District of Florida and included in the Northern Judicial District. This proposal passed the House of Representatives in the 91st Congress and was passed by the Senate in the 94th Congress. As far as I am aware, this legislation is non-controversial and is much needed solely for the convenience of judges, lawyers, jurors and witnesses who may be called from Madison County.

Florida is divided into three judicial districts. In the Northern District, where H.R. 2054 proposes to place Madison County, the closest city where federal district court proceedings are held is Tallahassee. In the Middle District, the closest court facilities are in Jacksonville. Court facilities in Gainesville are only slightly further than Jacksonville.

The purpose of this bill is to reduce the average distance which Madison County litigants, attorneys, jurors and witnesses must travel to the nearest federal district court. On its eastern border, Madison County is 66 miles from Tallahassee. On its western border, it is only 29 miles from Tallahassee.

In comparison -- on its eastern border Madison County is 86 miles from Jacksonville and on its western border it is an incredible 133 miles from Jacksonville.

Certainly no additional costs to the government are envisioned by my bill and I realistically expect that court costs will be reduced inasmuch as it will cost less when the government is required to pay travel expenses

- 2 -

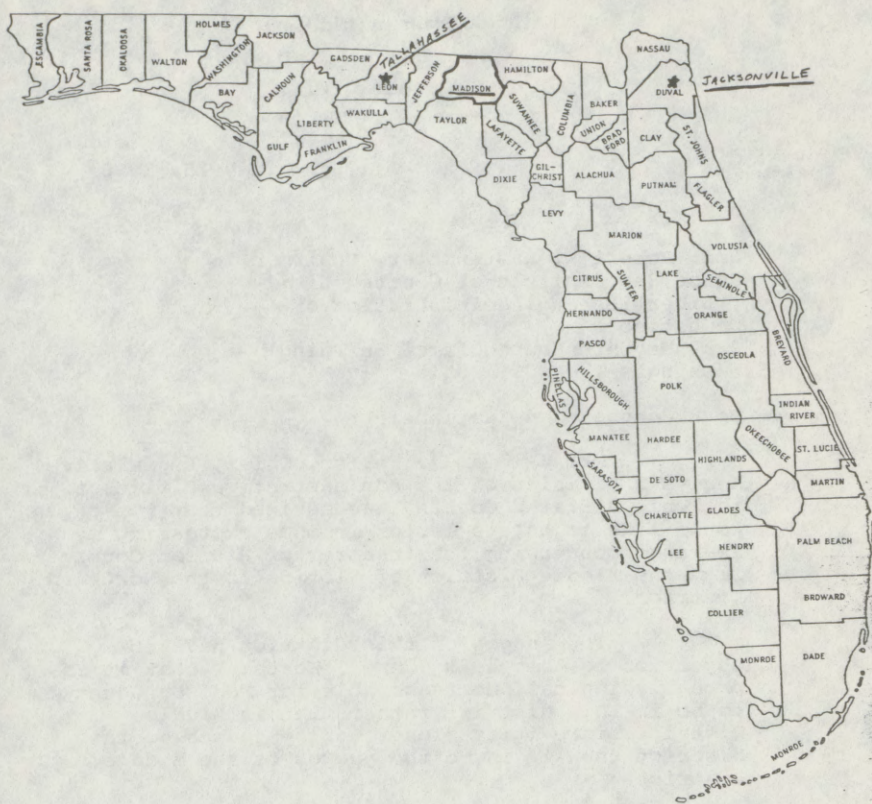
for witnesses or jurors. Obviously, too, the entire citizenry of Madison County would be inconvenienced by transferring Madison County to the Northern District.

Madison County, in population, is a relatively small county; the 1970 census placed the population at 13,481. I do not foresee that transferring the county from one judicial district to another will have any sizeable impact on the caseloads of the districts involved.

It is my understanding that neither the judges of the Northern Judicial District nor the Middle Judicial District have any objections to this transfer and many attorneys in the Madison County area have expressed to me their support for H.R. 2054.

Mr. Chairman, this legislation is of paramount importance only to the people of Madison County and I urge this subcommittee to endorse the transfer.

For informational purposes, I am attaching a map which I feel clearly demonstrates the geography I referred to earlier in my statement and shows the reasonableness of the transfer.



United States District Court
Northern District of Florida
Post Office Box 12347
Pensacola, Florida 32581

Winston E. Arnow
Chief Judge

May 25, 1978

MAY 30 1978

Hon. Robert W. Kastenmeier, Chairman
House Subcommittee of Courts, Civil
Liberties and Administration of
Justice
2137 Rayburn House Office Building
Washington, D. C. 20515

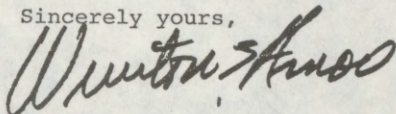
Dear Congressman Kastenmeier:

Mr. William J. Weller, Chief, Legislative Analysis Division of the Administrative Office of the United States Courts, has advised that you would like to have a letter from me expressing my feelings concerning the transfer of Madison County from the Middle District of Florida to the Northern District.

The judges of this district have no objection to this being done. We think that it is probably logical and reasonable for Madison County to be in this district rather than in Middle District since it is closer to the judges of this district than it is to the judges of the Middle District.

I did express some concern to Mr. Weller about the time elements in the bill. If we have to go through and fill the boxes, we would need at least six months before it became effective. Mr. Weller tells me there is another provision in the bill that may take care of that situation, and he will explore that and be in touch with you concerning that point.

Sincerely yours,



WINSTON E. ARNOW

cc: Hon. William Stafford
Mr. Marvin S. Waits, Clerk
Mr. William J. Weller

United States District Court

Middle District of Florida

80 N. Hughey Ave.

Orlando, Florida 32801

George C. Young
Chief Judge

May 30, 1978

JUN 1 1978

Congressman Robert Kastenmeier
Chairman, House Subcommittee on Courts,
Civil Liberties & the Administration of Justice
2137 Rayburn House Office Building
Washington, D. C. 20515

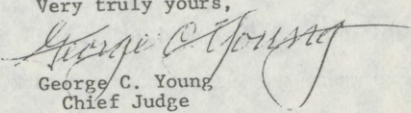
RE: H. R. 2054 - Madison County

Dear Congressman Kastenmeier:

It is my understanding that your Subcommittee is presently considering H.R. 2054 and that you have requested to be advised as to the views of the district judges of the Middle District of Florida concerning this proposed legislation.

The Bill would move Madison County, Florida from the Middle District of Florida to the Northern District of Florida. I am authorized to state on behalf of all of the judges of the Middle District that we are in accord that the passage of the Bill would be in the best interests of the administration of justice and that we favor its adoption.

Very truly yours,


George C. Young
Chief Judge

GCY/slp

CC: Middle District Judges
Mr. William Weller

STATEMENT OF THE HONORABLE ROBERT MCCLORY
REGARDING H.R. 12869
TO THE
HOUSE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

I am here to testify in favor of H.R. 12869 which provides for the redistricting of the downstate Illinois federal district courts.

I have attached a map to my statement which shows the benefits of the boundaries from the new districts.

Some areas of the state, as areas of the country, have a commonality of interests. However, the present district lines split these local regions. This would be corrected by the new district lines and benefit all the citizens of downstate Illinois. The litigants, jurors, and lawyers would not have to travel as much to get to the courthouse. For example, most grand juries in the Eastern District of Illinois are convened in East St. Louis. The grand jurors come from the entire district including Danville and Kankakee which are over 200 miles away. This is a substantial burden to place on Illinois citizens. With the new district lines citizens will not have to travel so far to serve on the grand jury and the grand jurors will have a better sense of the community where the suspected crimes took place.

The elongated Eastern District of Illinois also places a burden on the judges and reduces the time that they otherwise would spend deciding cases. For example, Judge Wise, who is stationed in Danville, has frequently had to travel to Benton, 200 miles away, to try cases.

The new district lines will cure these and other problems caused by the present boundary lines.

I strongly urge your support for H.R. 12869. This bill will help the citizens of Illinois and greatly aid the administration of justice.

STATEMENT OF THE HONORABLE TOM RAILSBACK,
CONGRESSMAN FROM ILLINOIS,
TO THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

Mr. Chairman. I would like to voice my support for H.R. 12869, the Federal District Court Reorganization Act. This bill, as it affects Illinois, corresponds to S. 2838 which was introduced earlier by Senator Charles H. Percy and Adlai E. Stevenson, III of Illinois.

Presently, Illinois is divided into three judicial districts; the northern, eastern and southern districts. Because of changing demographic and economic patterns, the existing judicial structure has not kept pace with present needs resulting in several defects.

H.R. 12869 would provide for the realignment of the existing eastern and southern districts into central and southern districts respectively, with a common boundary running east to west. As a result, the new central and southern districts would be geographically compact and cohesive, eliminating much of the unnecessary cost and inconvenience now confronted by the residents of Illinois.

The redistricting has the support of the active federal judges in the Southern and Eastern Districts of Illinois and the Judicial Council of the Seventh Circuit.

Additionally, in April of 1976 a Commission headed by John R. Mackay, a former president of the Illinois State Bar Association, unanimously concluded that the district

lines between the Eastern and Southern Districts of Illinois should be redrawn to provide more compact districts. It is important to note that there are no disadvantages associated with the redistricting of the downstate Illinois Federal district courts, other than those caused by the transition. The transitional problems are minor in comparison with the advantages that will be gained by redrawing the boundary lines. By the same token there are no costs associated with this legislation. Thus, I urge my colleagues to support H.R. 12869.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

COLLINS T. FITZPATRICK
CIRCUIT EXECUTIVE

May 25, 1978

The Honorable Robert W. Kastenmeier
House of Representatives
2232 Rayburn House Office Building
Washington, D. C. 20515

The Honorable Robert McClory
House of Representatives
2469 Rayburn House Office Building
Washington, D. C. 20515

The Honorable Thomas F. Railsback
House of Representatives
2431 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressmen Kastenmeier, McClory and Railsback:

Michael Remington has suggested that I write to you concerning H. R. 12454 which provides for re-districting of the downstate Illinois federal district courts. This bill corresponds to S. 2838, introduced by Senators Percy and Stevenson.

As you can see from the attached map, the principal benefit from the legislation would be to realign the district court boundaries so as to make the downstate Illinois districts more compact and cohesive. Under the current arrangement, the Eastern District of Illinois is elongated so that grand jurors from Eastern Illinois must travel up to 250 miles from Kankakee to meet in East St. Louis where most indictments in the district have been filed.

The Eastern District of Illinois has three places where court is held: Danville in Vermilion County, East St. Louis in St. Clair County, and Benton in Marion County. Because of the caseload distribution, the Danville judge is frequently called upon to travel 200 miles to Benton to hold court.

Another problem with the current alignment of the districts is that the St. Louis metropolitan area located on the Illinois side of the Mississippi River is divided between two federal districts.

Congressmen Kastenmeier,
McClory and Railsback

- 2 -

May 25, 1978

All of the above problems would be cured by the proposed legislation.

To my knowledge there is no opposition to the redistricting nor are there any disadvantages associated with it other than those caused by the transition. Those transitional problems are minor in comparison with the advantages that will be gained by redrawing the lines. There would be no costs associated with the realignment.

In April, 1976, the commission headed by John R. Mackay, then President of the Illinois State Bar Association, examined the question of redrawing the district lines between the Eastern and Southern Districts of Illinois and unanimously concluded that those lines should be redrawn to provide for more compact districts.

The redistricting is supported by District Judges Wise and Foreman of the Eastern District of Illinois and Judges Morgan and Ackerman of the Southern District of Illinois. The Judicial Council of the Seventh Circuit which is composed of all the circuit judges also favors the redistricting. One of those circuit judges, Harlington Wood, Jr., is a former district judge and United States Attorney for the Southern District of Illinois.

Presently there are two district judgeships for each district. The Omnibus Judgeship Bill now pending in a House-Senate Conference Committee provides for a third judgeship for the Eastern District of Illinois. If the district lines are redrawn, it is contemplated that the new Central District would have three judgeships and the new Southern District would have two judgeships.

If I can be of any help to you or the other subcommittee members in providing information or answering questions, I will be happy to do so.

Thank you for your help on this proposed legislation.

Sincerely,

Collins T. Fitzpatrick

Collins T. Fitzpatrick

cc: Mr. Michael Remington
Mr. Thomas Mooney

FEDERAL COURT DISTRICTS IN ILLINOIS

EXISTING DISTRICTS



PROPOSED DISTRICTS



<u>DISTRICT</u>	<u>JUDGESHIPS</u>
Northern	13
Southern	2
Eastern	2

<u>DISTRICTS</u>	<u>JUDGESHIPS</u>
Northern	16
Central	3
Southern	2

4/6/78

Attachment 1

ADLAI E. STEVENSON
ILLINOIS

United States Senate

WASHINGTON, D.C. 20510

May 26, 1978

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

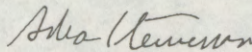
Dear Mr. Chairman:

In response to notification of the hearing to be held June 2 before your Subcommittee on H.R. 12454, a bill to restructure the Federal judicial districts in Illinois, I am submitting the attached statement in support of the bill.

As the cosponsor with Senator Percy of S. 2838, the companion measure in the Senate, I would very much appreciate inclusion of my statement in the hearing record on H.R. 12454.

With best wishes,

Sincerely,



Enclosure

COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS

SUBCOMMITTEE ON
INTERNATIONAL FINANCE (CHAIRMAN)

COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION

SUBCOMMITTEE ON SCIENCE,
TECHNOLOGY AND SPACE (CHAIRMAN)

SELECT COMMITTEE ON ETHICS
(CHAIRMAN)

SELECT COMMITTEE ON
INTELLIGENCE

SUBCOMMITTEE ON THE COLLECTION,
PRODUCTION AND QUALITY OF
INTELLIGENCE (CHAIRMAN)

DEMOCRATIC POLICY COMMITTEE

Statement by Senator Adlai E. Stevenson

I am grateful to the distinguished Chairman of this Subcommittee for the opportunity to present my views in support of H.R. 12454, introduced by Representatives Railsback, McClory and Hyde to restructure the federal judicial districts in Illinois. Together with my colleague from Illinois, Senator Percy, I am the sponsor of a companion measure in the Senate, S. 2838.

The principle thrust of this legislation is to replace the existing Eastern and Southern Districts with new Central and Southern Districts which more accurately reflect the make-up of the State. The history of the configuration of the federal districts in Illinois provides a backdrop against which to examine the need for this legislation. Upon attaining statehood in 1814, Illinois was organized into one federal judicial district. In 1855, the state was divided into Northern and Southern districts. Again in 1905, in response to demographic shifts, the district structure was altered by the addition of the current Eastern District. However, the present structure of districts in the State has remained unchanged since 1905. The character and development of the State have changed, however, and efficient utilization and administration of the Federal court system requires realignment of those outmoded boundaries.

As now divided, the federal district structure in Illi-

Page two

nois contains several major defects which hamper the equitable administration of justice in our state. Although redistricting has been advocated by court officials, attorneys and community leaders for a number of years, the impetus for this legislation comes from the formation by Senator Percy of the ad hoc Committee to Study Federal Judicial Districts in Illinois in 1975. The Committee received the endorsement and active support of the Illinois State Bar Association. John R. McKay, then President of the Bar Association, was appointed Chairman of the Committee. Members of the bar from each judicial district were recommended by their peers and community leaders to serve on the Committee. The Committee held statewide public hearings, receiving testimony from judges, United States Attorneys, federal marshals, court clerks, members of the bar and other affected residents of key areas of the state. Its report, released in April, 1976, was widely circulated for review and comment. The members of the Committee, who served without compensation, deserve the gratitude of the people of Illinois for the service they have performed.

Both the majority and minority reports of the ad hoc Committee identified several major defects in the current district structure. First, the present gerrymandered configura-

Page three

tion of the Eastern District is illogical and awkward. Parts of that District are located south of the Southern District. The Eastern District resembles a giant fish hook, stretching from Kankakee County, just south of Chicago, to Alexander County, at the confluence of the Ohio and Mississippi rivers, a distance of over 330 miles. The present Southern District on the other hand, encompasses the western part of Illinois and lies in the central, not the Southern, portion of the state. It is separated from the eastern part of the state for no apparent compelling reason, such as a natural geographic feature.

The existing District boundaries are more than geographic aberrations. As the Committee has observed, the flow of commerce and trade in the state has traditionally been east-west. The present District lines ignore this historical pattern and cut across the flow of commercial dealings from which much of their litigation is derived.

Furthermore, areas with no present or historical community of interest are drawn together into the same District. For example, Cairo, in the southernmost part of the state, and Kankakee, more than 300 miles to the north, are linked together for purposes of the Federal courts; some participants in court proceedings must drive hundreds of miles to attend.

Page four

On the other hand, areas such as east-central and west-central Illinois, with nearly identical social and economic characteristics, are artificially separated by federal district boundaries.

An additional recurring theme sounded by those testifying before the ad hoc Committee or commenting on the need for redistricting is the inconvenience and economic hardship imposed upon those who use the courts. This is not, as some have suggested, a trivial matter against which the "significance" or "importance" of particular litigation should be balanced. Justice requires reasonable access to the Federal courts for all citizens. When litigants, jurors, witnesses and lawyers are required to travel hundreds of miles, incurring food and lodging expense as well as travel costs, the administration of justice suffers. These situations are often the rule and not the exception, given the present configuration of judicial districts in Illinois. For example, from Carbondale, site of Southern Illinois University and the point of origin for a large percentage of litigation in the Eastern District, to the court in Danville is a distance of 233 miles. Since much of the litigation in this District originates in the southern part of the state, this is not an isolated instance.

Finally, the growth and development of urban centers in the state since the last realignment in 1905 has made the present

Page five

boundaries incongruous. For example, the current structure places the counties of Madison and St. Clair in separate judicial districts, although both are essentially part of the East St. Louis metropolitan area and have strong social, cultural and economic ties.

The solution to these defects embodied in H.R. 12454 and S. 2838 is endorsed by both the majority and minority reports of the ad hoc Committee, as well as by the vast majority of those who have studied and commented upon the problems. This legislation would create new Central and Southern Districts out of the existing Eastern and Southern Districts. As demonstrated on the attached map, the proposed Districts would divide the state logically in an east-west manner, eliminating the current gerrymandered appearance of the boundary lines, and uniting areas of common economic activity and interest. They take into account the historic flow of commerce in the state, the convenience of users of the courts, and the population of the included areas.

The new Districts would encompass all of the counties now included in the existing Eastern and Southern Districts, except Kankakee County, which would be placed in the existing Northern District to relieve the population burden on the proposed new Central District of the County's 97,000 residents. No substantial opposition to this change has been raised and,

Page six

considering the proximity of Kankakee County to the court in Chicago, service to its residents should be improved.

It should be emphasized that this legislation does not involve the construction of any additional court facilities, although it does anticipate utilization of those already authorized, such as construction of a new federal court building in St. Clair County, where it is expected that the Southern District would sit. Nor are other radical changes or expenses envisioned. For example, the Chief Judge, United States Attorney and Federal Marshal of the present Southern District would retain their offices in the new Central District. Under existing circumstances, the new Central and Southern Districts would each have two judges, creating a judge-to-population ratio of approximately 1:600,000 in the new Southern District and 1:1,000,000 in the new Central District. However, the omnibus judgeship bill now pending in conference committee includes an additional judgeship approved by both Houses for the existing Eastern District, and it is intended that that judgeship be utilized to provide three judges for the Central District and two for the Southern District. Amendments will of course be required to bring bills into conformity.

The last problem addressed by the ad hoc Committee, and long the subject of study and dispute in Illinois, is the

Page seven

situation in the Western Division of the Northern District. The conclusion of the Committee -- and the perception of the Division's residents -- was and is that the citizens of the Western Division have not been receiving adequate service from the Federal courts. The present structure of the Northern District, under which a judge sits only periodically in the Western Division, has resulted in substantial expense, delay and inconvenience for those served by the court. Indeed, there is evidence that many parties otherwise entitled to the advantages a Federal court offers have been, out of practical necessity, forced to use the State courts. The portrait of the Western Division as the neglected step-child of the Chicago-based Eastern Division was drawn by virtually every witness on the subject appearing before the ad hoc Committee and has been repeatedly highlighted in subsequent communications to me from members of the bench and bar in the Northern District.

The majority report of the ad hoc Committee proposed as its solution to this problem the creation of a new district, to be carved out of the existing Northern District plus the addition of a few counties from the other Districts, leaving a compressed "Chicago Metropolitan District." There is some sentiment in the state for such a solution. Four members of

Page eight

the ad hoc Committee, lead by Chairman MacKay, filed a minority report opposing the creation of a new District on the grounds that it would encourage litigation which would not otherwise be filed and would engender unjustified administrative difficulties and expense. Indeed, as of March 3, 1978 there were 88 civil cases pending in the Western Division, contrasted with an average of 310.9 per active judge in the Eastern Division.

The disadvantages of creating a new District are obvious, including the cost of new offices and the necessity of creating a new, smaller and thus less efficient United States Attorney's office. In addition, unless sufficiently populous areas were to be artificially grafted onto such a new District, it would be beset with the traditional difficulties of a one-judge district in the event of vacation or incapacity of the sitting judge.

However, the population of the Western Division (505, 657 per the 1970 census) justifies the services of a full-time judge, and the feelings of judicial deprivation of its citizens are very real. One workable solution, less drastic than the creation of an entirely new District, would be the assignment of a judge to sit permanently in this Division. Judicial assignments are the prerogative of the judicial

Page nine

council of the Seventh Circuit. I hope it will establish a permanent seat as the simplest and least expensive solution to a situation which has plagued the Western Division for decades, thus insuring access to the Federal courts for the citizens of northwestern Illinois. The enactment of the omnibus judgeship bill, which includes additional judgeships for the Northern District, should make this a feasible option. This solution provides flexibility. If a permanent judge did not generate a sufficient caseload in the Western Division, additional cases from the Eastern division could be assigned. Based on this analysis, therefore, the only alteration proposed by the pending legislation for the Northern District is the inclusion in its boundaries of Kankakee County, the impact of which I have discussed earlier.

The realignment of Federal judicial districts and the creation of new compact Central and Southern Districts proposed in H.R. 12454 will establish a more sensible, convenient and geographically accurate division of the state and will improve the service and accessibility of the Federal court system to the people of Illinois. I urge the Subcommittee to act favorably and expeditiously on this legislation.

TESTIMONY OF
SENATOR CHARLES H. PERCY
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND
THE ADMINISTRATION OF JUSTICE
OF THE
HOUSE JUDICIARY COMMITTEE
JUNE 2, 1978

Chairman Kastenmeier, I appreciate you and Congressman Railsback holding hearings on the proposal to realign the Federal Judicial Districts in Illinois.

This legislation was initially introduced in the Senate by Senator Stevenson and myself as S. 2838. It was introduced in the House of Representatives by Congressmen McClory, Railsback and Hyde as H.R. 12454. We believe that this proposal will make an important contribution to the administration of justice in Illinois and I strongly urge the Subcommittee's favorable consideration of it.

Illinois currently has three judicial districts: One covering the northern quarter of the State and two covering the eastern and western sections of the rest of the State. These latter two, the Eastern District and misnamed Southern District, run counter to the natural east-west flow of commerce in Illinois and cause significant transportation difficulties for many attorneys, clients and witnesses. In addition, some residents of the Western Division of the Northern District have felt that they do not receive adequate Federal judicial service.

Because many Illinoisans were of the opinion that these problems arising from the alignment of our Federal judicial districts should be corrected, in 1975 I requested that a committee be organized to study the existing system and make recommendations for improvement.

Senator Charles H. Percy
Page Two

John R. Mackay, former president of the Illinois State Bar Association, agreed to chair the committee that was subsequently formed.

The Committee to Study Federal Judicial Districts in Illinois held public hearings in Rockford, East St. Louis, Chicago, Peoria, and Champaign-Urbana. The Committee heard testimony from 44 witnesses and amassed hundreds of pages of exhibits. I have copies of this material and will be pleased to make them available should the Subcommittee members wish to examine it.

The committee presented its recommendations in April, 1976. I forwarded copies of these recommendations to all Illinois Federal Judges, U.S. Attorneys, Federal Marshals, officials of the Illinois Bar, members of the Illinois Congressional delegation and other affected individuals. The response was overwhelmingly in favor of the proposal we introduced.

The major impact of this legislation is to realign the existing Eastern and Southern Districts into a Central and Southern District with their common boundary running east to west. This will greatly reduce the cost and inconvenience now faced by many Illinoisans using the Federal court system, and it will bring together in each district areas and individuals with a more common identity and community of interest.

The bill also places the county of Kankakee within the Northern District rather than within the new Central District. This will provide Kankakee residents with more convenient access to the Federal courts.

The only issue on which the members of the Committee to

Senator Charles H. Percy
Page Three

Study Federal Judicial Districts did not agree was how to resolve the isolation felt by some residents of the Western Division of the Northern District. A majority of the committee believed that this area would best be served by the creation of a new district encompassing the existing Western Division and other contingent counties. However, several members of the committee as well as most others who commented on the committee's recommendations opposed such a change.

Upon consideration, Senator Stevenson and I have concluded that the need of residents of the Western Division can be served through less drastic and more easily facilitated means. Specifically, in light of the growing caseload in the Northern District and inclusion of three additional judgeships for this district in the omnibus judgeship bill passed by the House of Representatives, we anticipate that a judge could be appointed to the Western Division on a full time basis. Such an appointment is the prerogative of the Judicial Conference; however, I want to point out that it would resolve a longstanding concern.

It should be clearly understood that this proposal contemplates the addition of the new Illinois Federal District Judgeships contained in the Omnibus Judgeship Bill now pending before a House-Senate conference committee. We waited to introduce this legislation until it was clear that Illinois would have a sufficient number of judgeships to make the new district alignment workable.

Both the House and Senate version of the Omnibus Bill provide for an additional judgeship for what is now the Eastern District of Illinois. This judgeship in particular was critical to our proposal. The Senate bill provides two additional judgeships for the Northern District and

Senator Charles H. Percy
Page Four

the House bill, which was adopted when more recent data on caseloads was available, provides three. These new judgeships will make it possible for this proposed realignment to be effectuated.

As soon as the Omnibus Judgeship Bill was enacted into law, we had intended to introduce an amendment to S. 2838, to reflect these new seats. The amendment would provide for the assignment of the additional judgeship slated for the existing Eastern District to the new Central District. This would result in the assignment of three judges to the new Central District and two judges to the new Southern District. The Subcommittee may find it advisable to amend H.R. 12454 to so reflect the additional district judgeships provided for Illinois in the House version of the Omnibus Judgeship Bill.

For the Subcommittee's convenience, I have attached a map showing the existing and proposed district boundaries and assignment of judges.

In conclusion, I would once again like to recognize the members of the Committee to Study Federal Judicial Districts in Illinois, the Illinois State Bar Association, and the many others who took time from their busy schedules to assist in this effort through their counsel and advice.

I urge the Subcommittee to report H.R. 12454 as expeditiously as possible so that this needed realignment of the Illinois Federal Judicial Districts may be effectuated as soon as possible.

FEDERAL COURT DISTRICTS IN ILLINOIS

EXISTING DISTRICTS



DISTRICT	JUDGESHIPS
Northern	13
Southern	2
Eastern	2

PROPOSED DISTRICTS



DISTRICTS	JUDGESHIPS
Northern	16
Central	3
Southern	2

CHARLES WILSON
2D DISTRICT, TEXAS

COMMITTEE
APPROPRIATIONS

Congress of the United States

House of Representatives

Washington, D.C. 20515

June 1, 1978

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts, Civil
Liberties and the Administration of Justice
2137 Rayburn HOB
Washington, D.C. 20515

Dear Bob:

Thank you for the opportunity to provide you with background information and the reasons for HR 10706 to establish a Lufkin Division in the Eastern District of Texas, which I introduced.

The Eastern District of Texas, includes forty-one counties with a total population of 1,476,000 citizens.

There presently exists within the Eastern District six Divisions as follows:

1. Sherman Division, located in Sherman, Grayson County, Texas.
2. Paris Division, located in Paris, Lamar County, Texas.
3. Texarkana Division, located in Texarkana, Bowie County, Texas
4. Marshall Division, located in Marshall, Harrison County, Texas.
5. Tyler Division, located in Tyler, Smith County, Texas.
6. Beaumont Division, located in Beaumont, Jefferson County, Texas.

The Eastern District of Texas consists of a large geographic area with a heavy concentration of population which is not easily accessible to the Judicial Divisions in which such counties are located. This geographic

Honorable Robert W. Kastenmeier

June 1, 1978

Page 2

area is centered around Lufkin, Angelina County, Texas. The distance between the Courthouse in Tyler and the Courthouse in Beaumont is more than twice the distance between any other Division Courthouse and the next nearest Courthouse.

Of the 1,476,000 population of the Eastern District of Texas, over 900,000 of these citizens reside in the Tyler and Beaumont Divisions. Mathematically, in population count, two of the six Divisions serve approximately sixty-three per cent of the population. Not only is this a disproportionate ratio of population per Court, but more than fifty per cent of the geographic territory of the Eastern District of Texas is located within these two Divisions. If the Lufkin Division is established as proposed, the Tyler Division would have a population of 321,772, the Beaumont Division 378,953 and the Lufkin Division 241,142. (Population figures were taken from 1970 Census and I am sure that the current population is much greater than 1970).

The geographic area surrounding Angelina County is in urgent need of the establishment of a Division in Lufkin in order that the citizens in this area might better be served by the Federal Judiciary. Some of the pressing reasons for this need are as follows:

1. The burdensome time, distance and expense factors for litigants, witnesses, jurors and attorneys to appear in either the Tyler or Beaumont Divisions.
2. The heavy case load of the Tyler and Beaumont Divisions, and the anticipated increase in such case load because of the continuing increase in population in the area covered by the Tyler and Beaumont Divisions.
3. The removal of a fair percentage of the cases from the Tyler and Beaumont Divisions to Lufkin would insure all litigants a more speedy trial.
4. With the increase in volume of Federal cases now being filed, both civil and criminal, the dockets of the Federal Courts, now in existence,

Honorable Robert W. Kastenmeier

June 1, 1978

Page 3

are expected to increase considerably.

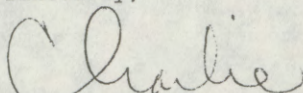
The Angelina County Bar Association recently adopted a unanimous resolution calling for the creation of a Lufkin Division in order that the needs of the citizens of this county and the surrounding counties might better be met. Such resolution has the endorsement of the local Chamber of Commerce and the citizens of the area.

If a Lufkin Division is to be created serious consideration should be given to transferring Trinity, Polk and Walker Counties from the Houston Division of the Southern District of Texas to the Lufkin Division, Eastern District. These three counties are much nearer to Lufkin than to Houston and by such transfer would greatly benefit the citizens of those counties by being closer to the House of Justice.

The GAO is presently planning a new Federal building in Lufkin and if action is taken soon enough on the proposed court, the facilities could be provided at a minimum expense.

If your Subcommittee wishes to obtain testimony from witnesses affected by the proposed change, I am sure that they can be made available.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charlie", written in dark ink.

Charles Wilson

Enclosure

CW:1mp

All population figures taken from
1970 Census

COUNTY	<u>SHERMAN DIVISION</u> POPULATION
--------	---------------------------------------

Collin	66,920
Cooke	23,471
Denton	75,633
Grayson	83,225

Division Population. 249,249

COUNTY	<u>PARIS DIVISION</u> POPULATION
--------	-------------------------------------

Delta	4,927
Fannin	22,705
Hopkins	20,710
Lamar	36,062
Red River	14,298

Division Population. 98,702

COUNTY	<u>TEXARKANA DIVISION</u> POPULATION
--------	---

Bowie	67,813
Franklin	5,291
Titus	16,702

Division Population. 89,806

COUNTY	<u>MARSHALL DIVISION</u> POPULATION
--------	--

Camp	8,005
Cass	24,133
Harrison	44,841
Marion	8,517
Morris	12,310
Upshur	20,976

Division Population. 118,782

COUNTY	TYLER DIVISION
	POPULATION
Anderson	27,789
Angelina	49,349
Cherokee	32,008
Gregg	75,929
Henderson	26,466
Houston	17,855

Nacogdoches	36,362
Panola	15,894
Rains	3,752
Rusk	34,102
Shelby	19,672
Smith	97,096
Van Zandt	22,155
Wood	18,589

Division Population. 477,018

COUNTY	BEAUMONT DIVISION
	POPULATION
Jasper	24,692
Jefferson	244,773
Hardin	29,996
Liberty	33,014
Newton	11,657
Orange	71,170
Sabine	7,187
San Augustine	7,858
Tyler	12,417

Division Population. 442,764

POPULATION OF EASTERN DISTRICT OF TEXAS. . . 1,476,321

POPULATION OF TYLER AND BEAUMONT DIVISIONS. . . 919,782

POPULATION OF SHERMAN, PARIS, TEXARKANA
AND MARSHALL DIVISIONS 556,539

APPENDIX 2(a).—PENDING BILLS

95TH CONGRESS
2D SESSION**H. R. 12869**

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1978

Mr. KASTENMEIER 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 places of holding Federal district courts, in the divisions within judicial districts, and in judicial district dividing lines.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Federal
5 District Court Organization Act of 1978".

6 PLACES OF HOLDING COURT

7 SEC. 2. (a) The last sentence of section 84 (c) of title
8 28, United States Code, is amended to read as follows:

I

1 "Court for the Central District shall be held at Long
2 Beach, Los Angeles, and Santa Ana."

3 (b) The last sentence of section 94 (b) (1) of title 28,
4 United States Code, is amended to read as follows:

5 "Court for the Indianapolis Division shall be held at
6 Indianapolis, Muncie, and Richmond."

7 (c) The last sentence of section 97 (a) of title 28,
8 United States Code, is amended to read as follows:

9 "Court for the Eastern District shall be held at Ashland,
10 Catlettsburg, Covington, Frankfort, Jackson, Lexington,
11 London, Pikeville, and Richmond."

12 (d) The last sentence of section 104 (a) (1) of title 28,
13 United States Code, is amended to read as follows:

14 "Court for the Eastern Division shall be held at Aber-
15 deen, Ackerman, and Corinth."

16 (e) The last sentence of section 112 (b) of title 28,
17 United States Code, is amended to read as follows:

18 "Court for the Southern District shall be held at New
19 York and White Plains."

20 (f) The last sentence of section 118 (a) of title 28,
21 United States Code, is amended to read as follows:

22 "Court for the Eastern District shall be held at Allen-
23 town, Easton, Lancaster, Reading, and Philadelphia."

24 (g) The last sentence of section 118 (c) of title 28,
25 United States Code, is amended to read as follows:

1 "Court for the Western District shall be held at Erie,
2 Johnstown, and Pittsburgh."

3 DIVISIONS WITHIN JUDICIAL DISTRICTS

4 SEC. 3. (a) Section 98 (c) of title 28, United States
5 Code, is amended to read as follows:

6 "WESTERN DISTRICT

7 "(c) The Western District comprises the parishes of
8 Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier,
9 Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne,
10 Concordia, Jefferson Davis, De Soto, East Carroll, Evan-
11 geline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle,
12 Lincoln, Madison, Morehouse, Natchitoches, Ouachita,
13 Rapides, Red River, Richland, Sabine, Saint Landry, Saint
14 Martin, Saint Mary, Tensas, Union, Vermilion, Vernon,
15 Webster, West Carroll, and Winn.

16 "Court for the Western District shall be held at Alex-
17 andria, Lafayette, Lake Charles, Monroe, Opelousas, and
18 Shreveport."

19 (b) Section 112 (c) of title 28, United States Code, is
20 amended to read as follows:

21 "EASTERN DISTRICT

22 "(c) The Eastern District comprises two divisions:

23 "(1) The City Division comprises the counties of
24 Kings, Queens, Richmond, and concurrently with the

1 Southern District, the waters within the counties of
2 Bronx and New York.

3 "Court for the City Division shall be held at Brooklyn.

4 "(2) The Long Island Division comprises the coun-
5 ties of Nassau and Suffolk.

6 "Court for the Long Island Division shall be held at
7 Hempstead (including the village of Uniondale).".

8 (c) Section 114 of title 28, United States Code, is
9 amended—

10 (1) in paragraph (2), by striking out "Sheridan,
11 Steele, Stutsman, and Wells" and inserting in lieu
12 thereof "Steele, and Stutsman";

13 (2) in paragraph (3), by striking out "Bottineau,"
14 and "McHenry,"; and

15 (3) by amending paragraph (4) to read as follows:

16 "(4) The Northwestern Division comprises the
17 counties of Bottineau, Burke, Divide, McHenry, Mc-
18 Kenzie, Mountrail, Pierce, Renville, Sheridan, Ward,
19 Wells, and Williams."

20 JUDICIAL DISTRICT DIVIDING LINES

21 SEC. 4. (a) Section 89 of title 28, United States Code,
22 is amended—

23 (1) in the first paragraph of subsection (a), by
24 inserting "Madison," immediately after "Liberty,"; and

1 (2) in the first paragraph of subsection (b), by
2 striking out "Madison,".

3 (b) (1) Section 93 of title 28, United States Code, is
4 amended to read as follows:

5 **"93. Illinois**

6 "Illinois is divided into three judicial districts to be
7 known as the Northern, Central, and Southern Districts of
8 Illinois.

9 **"Northern District**

10 "(a) The Northern District comprises two divisions.

11 "(1) The Eastern Division comprises the counties
12 of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee,
13 Kendall, Lake, La Salle, McHenry, and Will.

14 "Court for the Eastern Division shall be held at
15 Chicago.

16 "(2) The Western Division comprises the counties
17 of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson,
18 Whiteside, and Winnebago.

19 "Court for the Western Division shall be held at
20 Freeport and Rockford.

21 **"Central District**

22 "(b) The Central District comprises the counties of
23 Adams, Brown, Bureau, Cass, Champaign, Christian, Coles,
24 De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock,

6

1 Henderson, Henry, Iroquois, Knox, Livingston, Logan,
 2 McDonough, McLean, Macon, Macoupin, Marshall, Mason,
 3 Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria,
 4 Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler,
 5 Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and
 6 Woodford.

7 "Court for the Central District shall be held at Danville,
 8 Peoria, Quincy, Rock Island, and Springfield.

9 "Southern District

10 "(c) The Southern District comprises the counties of
 11 Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford,
 12 Cumberland, Edwards, Effingham, Fayette, Franklin, Gal-
 13 latin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey,
 14 Johnson, Lawrence, Madison, Marion, Massac, Monroe,
 15 Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline,
 16 Union, Wabash, Washington, Wayne, White, and Wil-
 17 liamson.

18 "Court for the Southern District shall be held at Alton,
 19 Benton, Cairo, and East Saint Louis."

20 (2) Section 133 of title 28, United States Code, is
 21 amended by striking out the item relating to Illinois and
 22 inserting in lieu thereof the following:

"Illinois:

"Northern	13
"Central	2
"Southern	2".

1 (c) Section 112 of title 28, United States Code, is
2 amended—

3 (1) in the first paragraph of subsection (a), by
4 inserting "Columbia," immediately after "Clinton," by
5 inserting "Greene," immediately after "Fulton," and
6 by inserting "Ulster," immediately after "Tomkins,";
7 and

8 (2) in the first paragraph of subsection (b), by
9 striking out "Columbia," "Greene," and "Ulster,".

10 (d) (1) Section 124 (b) (2) of title 28, United States
11 Code, is amended by striking out "Polk," and "Trinity,".

12 (2) Section 124 (c) of title 28, United States Code, is
13 amended to read as follows:

14 "Eastern District

15 "(c) The Eastern District comprises seven divisions.

16 "(1) The Tyler Division comprises the counties of
17 Anderson, Gregg, Henderson, Panola, Rains, Rusk,
18 Smith, Van Zandt, and Wood.

19 "Court for the Tyler Division shall be held at Tyler.

20 "(2) The Beaumont Division comprises the coun-
21 ties of Hardin, Jefferson, Liberty, and Orange.

22 "Court for the Beaumont Division shall be held at
23 Beaumont.

1 “(3) The Sherman Division comprises the counties
2 of Collin, Cooke, Denton, and Grayson.

3 “Court for the Sherman Division shall be held at
4 Sherman.

5 “(4) The Paris Division comprises the counties of
6 Delta, Fannin, Hopkins, Lamar, and Red River.

7 “Court for the Paris Division shall be held at Paris.

8 “(5) The Marshall Division comprises the counties
9 of Camp, Cass, Harrison, Marion, Morris, and Upshur.
10 “Court for the Marshall Division shall be held at
11 Marshall.

12 “(6) The Texarkana Division comprises the coun-
13 ties of Bowie, Franklin, and Titus.

14 “Court for the Texarkana Division shall be held at
15 Texarkana.

16 “(7) The Lufkin Division comprises the counties
17 of Angelina, Cherokee, Houston, Jasper, Nacogdoches,
18 Newton, Polk, Sabine, San Augustine, Shelby, Trinity,
19 and Tyler.

20 “Court for the Lufkin Division shall be held at Lufkin.”.

21 EFFECTIVE DATE

22 SEC. 5. (a) The amendments made by this Act shall
23 take effect one hundred and eighty days after the date of
24 enactment of this Act.

1 (b) Nothing in this Act shall affect the composition or
2 preclude the service of any grand or petit juror summoned,
3 empaneled, or actually serving in any judicial district on
4 the effective date of this Act.

Essentially, H.R. 12869 is a compilation of fourteen bills pending in subcommittee. These bills, reprinted below can be divided into three subject matter headings.

A. Bills to create new places of holding court within a district:

1. H.R. 12168 (Anderson, for himself, and Charles H. Wilson of California) - Long Beach, California.
2. H.R. 12722 (Patterson) - Santa Ana, California.
3. H.R. 12628 (Wiggins) - Santa Ana, Riverside, San Bernadino, California.
4. H.R. 7413 (Sharp) - Munice, Indiana.
5. S. 662 (Eastland) (passed the Senate on 4/7/77) - Corinth, Mississippi.
6. H.R. 11585 (Caputo) - White Plains, New York.
7. H.R. 11829 (Walker) - Lancaster, Pennsylvania.
8. H.R. 12496 (Murtha) - Johnstown, Pennsylvania.

B. Bills to either create a division, eliminate a division, or change division lines within a district.

1. H.R. 1916 (Waggoner) to eliminate the divisions of the Western District of Louisiana. [Same as H.R. 7745 (Long)].
2. H.R.2234 (Wydler) - to divide the Eastern District of New York into two divisions [Same as H.R. 3707, H.R. 5382, H.R. 11264, with sponsorship from Ambro, Downey, Lent, Pike, Wolff, Bonker, Gilman, Jenrette, Kemp, Vander Jagt, Walker, Walsh, and Stockman].
3. S. 195 (Burdick) (passed the Senate 5/24/77) - to provide that Bottineau, McHenry, Pierce, Sheridan, and Wells Counties, North Dakota, shall be included on the Northwestern Division of the Judicial District of North Dakota.

C. Bills to change judicial districts within a state:

1. H.R. 2054 (Fuqua) - to provide that Madison County, Florida, shall be included in the Northern District of Florida.
2. H.R. 12454 (McClory for himself, Railsback and Hyde) - to change the judicial districts within the State of Illinois.
3. H.R. 1883 (Pattison, for himself and Fish) - to provide that Columbia, Greene, and Ulster Counties, New York, shall be included in the Northern District of New York.
4. H.R. 10706 (Charles Wilson of Texas) - to establish a Lufkin Division in the Eastern District of Texas, and to provide that Trinity and Polk counties shall be in Eastern District of Texas.

APPENDIX 2(b)

95TH CONGRESS
1ST SESSION**H. R. 3972**

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1977

Mr. WIGGINS (for himself, Mr. PATTERSON of California, Mr. BROWN of California, Mr. BADHAM, Mr. LLOYD of California, and Mr. HANNAFORD) 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 sen-

8 tence, and inserting in lieu thereof the following:

9 “Southern, and Southwestern”;

I

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, the city of Riverside, and the city of San
10 Bernardino."

11 SEC. 2. The table in section 133 of title 28 of the United
12 States Code is amended by adding immediately after the
13 item relating to the Southern District of California the
14 following new item:

 "Southwestern..... 2".

15 SEC. 3. The establishment of the Southwest District
16 shall not be construed to require the relocation of the resi-
17 dence of any United States district judge presently sitting
18 in the Central District of California.

APPENDIX 2(c)

95TH CONGRESS
1ST SESSION**H. R. 6465**

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1977

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 (b), by striking out “Eastern”
6 each place it appears, and inserting “Southeastern” in
7 lieu thereof;

8 (2) by striking out subsection (c) and the head-
9 ing of such subsection, and inserting in lieu thereof the
10 following:

I

1 "Northeastern District

2 "(c) The Northeastern District comprises the counties
3 of Nassau and Suffolk.

4 "Court for the Northeastern District shall be held at a
5 suitable site within such District not more than five miles
6 from the boundary of Nassau and Suffolk Counties.

7 "Southeastern District

8 "(d) The Southeastern District comprises the counties
9 of Kings, Queens, and Richmond.

10 "Court for the Southeastern District shall be held at
11 Brooklyn."; and

12 (3) by redesignating the subsection relating to the
13 Western District as subsection (e).

14 SEC. 2. (a) Section 133 of title 28 of the United States
15 Code is amended by striking out the item relating to the
16 Eastern District of New York and inserting in lieu thereof
17 the following:

"Northeastern	5
"Southeastern	6".

18 (b) The district judges of the Eastern District of New
19 York holding office on the day immediately before the effec-
20 tive date of this Act whose official duty stations are in Nassau
21 or Suffolk Counties on such date shall on and after such
22 date be district judges of the Northeastern District. All other
23 district judges of such Eastern District holding office on

3

1 the day immediately before the effective date of this Act
2 shall be district judges for the Southeastern District of New
3 York. The President shall appoint, by and with the advice
4 and consent of the Senate, such additional judges as are
5 necessary to fill the remaining additional judgeships created
6 for the Northeastern and Southeastern Districts by the
7 amendment made by subsection (a) of this section.

8 (c) (1) Nothing in this Act shall in any manner affect
9 the tenure of office of the United States attorney and the
10 United States marshal for the Eastern District of New York
11 who are in office on the effective date of this section. Such
12 attorney and marshal shall be during the remainder of their
13 present terms of office the United States attorney and marshal
14 of the Southeastern District.

15 (2) The President shall appoint, by and with the
16 advice and consent of the Senate, a United States attorney
17 and marshal for the Northeastern District of New York.

APPENDIX 2(d)

95TH CONGRESS
2D SESSION**H. R. 12168**

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1978

Mr. ANDERSON of California (for himself and Mr. CHARLES H. WILSON 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
5 the Central District shall be held at".

I

95TH CONGRESS
2D SESSION

H. R. 12722

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1978

Mr. PATTERSON 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 the second sentence of section 84 (c) of title 28, United
4 States Code, is amended by inserting "and Santa Ana"
5 immediately after "Los Angeles".

I

95TH CONGRESS
2D SESSION

H. R. 12628

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 1978

Mr. WIGGINS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish additional places of holding court in the Central 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 of title 28 of the United States Code is
4 amended by striking out the last sentence of subsection (c)
5 and inserting in lieu thereof—
6 “Court for the Central District shall be held at Los
7 Angeles, Santa Ana, Riverside, and San Bernardino.”.

I

95TH CONGRESS
1ST SESSION

H. R. 7413

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1977

Mr. SHARP introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To add Muncie to the places where United States district court shall be held for the Indianapolis Division of the Southern District of Indiana.

- 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 sentence immediately preceding paragraph (2) of
- 4 section 94(b) of title 28 of the United States Code is
- 5 amended by inserting “, Muncie,” after “Indianapolis”.

I

95TH CONGRESS
1ST SESSION

S. 662

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1977

Referred to the Committee on the Judiciary

AN ACT

To provide for holding terms of the District Court of the United States for the Eastern Division of the Northern District of Mississippi in Corinth, Mississippi.

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 third sentence of section 104 (a) (1) of title 28,
4 United States Code, is amended to read as follows:

5 “Court for the eastern division shall be held at
6 Aberdeen, Ackerman, and Corinth.”.

Passed the Senate April 7 (legislative day, February 21), 1977.

Attest:

J. S. KIMMITT,

Secretary.

I

95TH CONGRESS
2D SESSION

H. R. 11585

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1978

Mr. CAPUTO 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 Southern District of New York shall be held at New York, New York, and White Plains, 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 the second paragraph of section 112 (b) of title 28,
4 United States Code, is amended to read as follows:
5 “Court for the Southern District shall be held at New
6 York and White Plains.”.

95TH CONGRESS
2D SESSION

H. R. 11829

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 1978

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 to read as follows:
5 “Court for the Eastern District shall be held at Allen-
6 town, Easton, Lancaster, Reading, and Philadelphia.”.

I

95TH CONGRESS
2D SESSION

H. R. 12496

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1978

Mr. MURTHA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 118 (c) of title 28, United States Code, to provide for the holding of court for the Western District of Pennsylvania at Johnstown, 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 (c) of title 28,
- 4 United States Code, is amended to read as follows:
- 5 “Court for the Western District shall be held at Erie,
- 6 Johnstown, and Pittsburgh.”.

I

[same as H.R. 7745 (Long)]

95TH CONGRESS
1ST SESSION

H. R. 1916

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 1977

Mr. WAGGONER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 98 of title 28, United States Code, to eliminate the divisions in the Western District of Louisiana.

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 98 (c) of title 28, United States Code, is
4 amended to read as follows:

5 “(c) The Western District comprises the parishes of
6 Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier,
7 Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne,
8 Concordia, Jefferson Davis, De Soto, East Carroll, Evange-
9 line, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle,
10 Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Ra-
11 pides, Red River, Richland, Sabine, Saint Landry, Saint

1 Martin, Saint Mary, Tensas, Union, Vermilion, Vernon,
2 Webster, West Carroll, and Winn.

3 "Court for the Western District shall be held at Alexan-
4 dria, Lafayette, Lake Charles, Monroe, Opelousas, and
5 Shreveport."

/same as H.R. 3707 (Wydler, for himself, Ambro, Downey, Lent, Pike, and Wolff); H.R. 5382 Wydler, for himself, Bonker, Gilman, Jenrette, Kemp, Vander Jagt, and Walsh); and H.R. 11264 (Wydler, for himself, and Stockman)/

95TH CONGRESS
1ST SESSION

H. R. 2234

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1977

Mr. WYDLER 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-
9 trict, the waters within the counties of Bronx and New
10 York.

“Court for the City Division shall be held at Brooklyn.

“(2) The Long Island Division comprises the counties of Nassau and Suffolk.

“Court for the Long Island Division shall be held at an appropriate location within the division, as selected by the Administrative Office of the United States Courts”.

95TH CONGRESS
1ST SESSION

S. 195

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1977

Referred to the Committee on the Judiciary

AN ACT

To amend title 28, United States Code, to provide that Bottineau, McHenry, Pierce, Sheridan, and Wells Counties, North Dakota, shall be included in the Northwestern Division of the Judicial District of North Dakota.

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 114 of title 28, United States Code, is
4 amended—

5 (1) by striking out “Sheridan”, “Wells” in sub-
6 paragraph (2).

7 (2) by striking out “Bottineau”, “McHenry”,
8 “Pierce”, in subparagraph (3).

9 (3) by striking out the entire subparagraph (4)

1 and inserting in substitution thereof the following new
2 subparagraph (4) :

3 “(4) The Northwestern Division comprises the
4 counties of Bottineau, Burke, Divide, McHenry, Mc-
5 Kenzie, Mountrail, Pierce, Renville, Sheridan, Ward,
6 Wells, and Williams.”.

7 SEC. 2. This Act shall be effective one hundred and
8 twenty days after date of enactment.

9 SEC. 3. Nothing in this Act shall affect the composition
10 or preclude the service of any grand or petit jurors sum-
11 moned, empaneled, or actually serving in the Northwestern,
12 Northeastern, or Southeastern Divisions of the Judicial Dis-
13 trict of North Dakota on the effective date of this Act.

Passed the Senate May 24 (legislative day, May 18),
1977.

Attest:

J. S. KIMMITT,

Secretary.

95TH CONGRESS
1ST SESSION

H. R. 2054

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1977

Mr. FUQUA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide that Madison County, Florida, shall be included in the northern judicial district of Florida.

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 89 of title 28, United States Code, is amended—

4 (1) by inserting after “Liberty,” in the first para-
5 graph of subsection (a) the following: “Madison,”; and

6 (2) by striking out “Madison,” in the first para-
7 graph of subsection (b).

8 SEC. 2. This Act shall be effective one hundred and
9 twenty days after date of enactment.

10 SEC. 3. Nothing in this Act shall affect the composi-

- 1 tion or preclude the service of any grand or petit jurors sum-
- 2 moned, empaneled or actually serving in the northern or
- 3 middle districts of Florida on the effective date of this Act.

95TH CONGRESS
2D SESSION

H. R. 12454

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1978

Mr. McCLORY (for himself, Mr. RAILSBACK, and Mr. HYDE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, to change the judicial districts in the State of Illinois.

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 93 of title 28, United States Code, is amended
4 to read as follows:

5 **“§ 93. Illinois**

6 “Illinois is divided into three judicial districts to be
7 known as the Northern, Central, and Southern Districts of
8 Illinois.

9 “Northern District

10 “(a) The Northern District comprises two divisions.

11 “(1) The Eastern Division comprises the counties

1 of Cook, De Kalb, Du Page, Grundy, Kane, Kankakee,
2 Kendall, Lake, La Salle, McHenry, and Will.

3 "Court for the Eastern Division shall be held at
4 Chicago.

5 "(2) The Western Division comprises the counties
6 of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson,
7 Whiteside, and Winnebago.

8 "Court for the Western Division shall be held at
9 Freeport and Rockford.

10 "Central District

11 "(b) The Central District comprises the counties of
12 Adams, Brown, Bureau, Cass, Champaign, Christian, Coles,
13 De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock,
14 Henderson, Henry, Iroquois, Knox, Livingston, Logan,
15 Macon, Macoupin, Marshall, Mason, McDonough, McLean,
16 Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria,
17 Piatt, Pike, Putnam, Rock Island, Sangamon, Schuyler,
18 Scott, Shelby, Stark, Tazewell, Vermilion, Woodford, and
19 Warren.

20 "Court for the Central District shall be held at Peoria,
21 Springfield, Danville, Rock Island, and Quincy.

22 "Southern District

23 "(c) The Southern District comprises the counties of
24 Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford,
25 Cumberland, Edwards, Effingham, Fayette, Franklin, Gal-

1 latin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey,
 2 Johnson, Lawrence, Madison, Marion, Massac, Monroe,
 3 Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline,
 4 Union, Wabash, Washington, Wayne, White, and
 5 Williamson.

6 "Court for the Southern District shall be held at Alton,
 7 East Saint Louis, and Benton, and Cairo."

8 SEC. 2. Section 133 of title 28, United States Code, is
 9 amended by striking out the item relating to Illinois and
 10 inserting in lieu thereof the following:

"Illinois:

"Northern -----	13
"Central -----	2
"Southern -----	2"

95TH CONGRESS
1ST SESSION

H. R. 1883

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 1977

Mr. PATTISON of New York (for himself and Mr. FISH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide that Columbia, Greene, and Ulster Counties, New York, shall be included in the northern judicial district of 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, United States Code, is
4 amended—

5 (1) by inserting after "Clinton", in the first para-
6 graph of subsection (a) the following: "Columbia", and
7 after "Fulton" "Greene", and after "Tompkins"
8 "Ulster";

9 (2) by striking out "Columbia", "Greene", and
10 "Ulster" in the first paragraph of subsection (b).

2

1 SEC. 2. This Act shall be effective one hundred and
2 twenty days after date of enactment.

3 SEC. 3. Nothing in this Act shall affect the composition
4 or preclude the service of any grand or petit jurors sum-
5 moned, empaneled, or actually serving in the northern and
6 southern districts of New York on the effective date of this
7 Act.

95TH CONGRESS
2D SESSION

H. R. 10706

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1978

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
4 Code, is amended by striking out "Polk," and "Trinty,".

5 (b) Section 124 (c) of such title is amended to read as
6 follows:

7 "Eastern District

8 “(c) The Eastern District comprises seven divisions.

9 “(1) The Tyler Division comprises the counties of

2

1 Anderson, Gregg, Henderson, Panola, Rains, Rusk,
2 Smith, Van Zandt, and Wood.

3 "Court for the Tyler Division shall be held at Tyler.

4 "(2) The Beaumont Division comprises the counties
5 of Hardin, Jefferson, Liberty, and Orange.

6 "Court for the Beaumont Division shall be held at
7 Beaumont.

8 "(3) The Sherman Division comprises the counties
9 of Collin, Cooke, Denton, and Grayson.

10 "Court for the Sherman Division shall be held at
11 Sherman.

12 "(4) The Paris Division comprises the counties of
13 Delta, Fannin, Hopkins, Lamar, and Red River.

14 "Court for the Paris Division shall be held at Paris.

15 "(5) The Marshall Division comprises the counties
16 of Camp, Cass, Harrison, Marion, Morris, and Upshur.

17 "Court for the Marshall Division shall be held at
18 Marshall.

19 "(6) The Texarkana Division comprises the coun-
20 ties of Bowie, Franklin, and Titus.

21 "Court for the Texarkana Division shall be held at
22 Texarkana.

23 "(7) The Lufkin Division comprises the counties
24 of Angelina, Cherokee, Houston, Jasper, Nacogdoches,

3

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.

95TH CONGRESS
1ST SESSION

H. R. 3972

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1977

Mr. WIGGINS (for himself, Mr. PATTERSON of California, Mr. BROWN of California, Mr. BADHAM, Mr. LLOYD of California, and Mr. HANNAFORD) 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 sen-
8 tence, and inserting in lieu thereof the following:
9 “Southern, and Southwestern”;

I

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, the city of Riverside, and the city of San
10 Bernardino."

11 SEC. 2. The table in section 133 of title 28 of the United
12 States Code is amended by adding immediately after the
13 item relating to the Southern District of California the
14 following new item:

 "Southwestern----- 2".

15 SEC. 3. The establishment of the Southwest District
16 shall not be construed to require the relocation of the resi-
17 dence of any United States district judge presently sitting
18 in the Central District of California.

95TH CONGRESS
1ST SESSION

H. R. 6465

IN THE HOUSE OF REPRESENTATIVES

APRIL 21, 1977

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 (b), by striking out “Eastern”
6 each place it appears, and inserting “Southeastern” in
7 lieu thereof;

8 (2) by striking out subsection (c) and the head-
9 ing of such subsection, and inserting in lieu thereof the
10 following:

I

1 "Northeastern District

2 "(c) The Northeastern District comprises the counties
3 of Nassau and Suffolk.

4 "Court for the Northeastern District shall be held at a
5 suitable site within such District not more than five miles
6 from the boundary of Nassau and Suffolk Counties.

7 "Southeastern District

8 "(d) The Southeastern District comprises the counties
9 of Kings, Queens, and Richmond.

10 "Court for the Southeastern District shall be held at
11 Brooklyn."; and

12 (3) by redesignating the subsection relating to the
13 Western District as subsection (e).

14 SEC. 2. (a) Section 133 of title 28 of the United States
15 Code is amended by striking out the item relating to the
16 Eastern District of New York and inserting in lieu thereof
17 the following:

"Northeastern ----- 5
"Southeastern ----- 6".

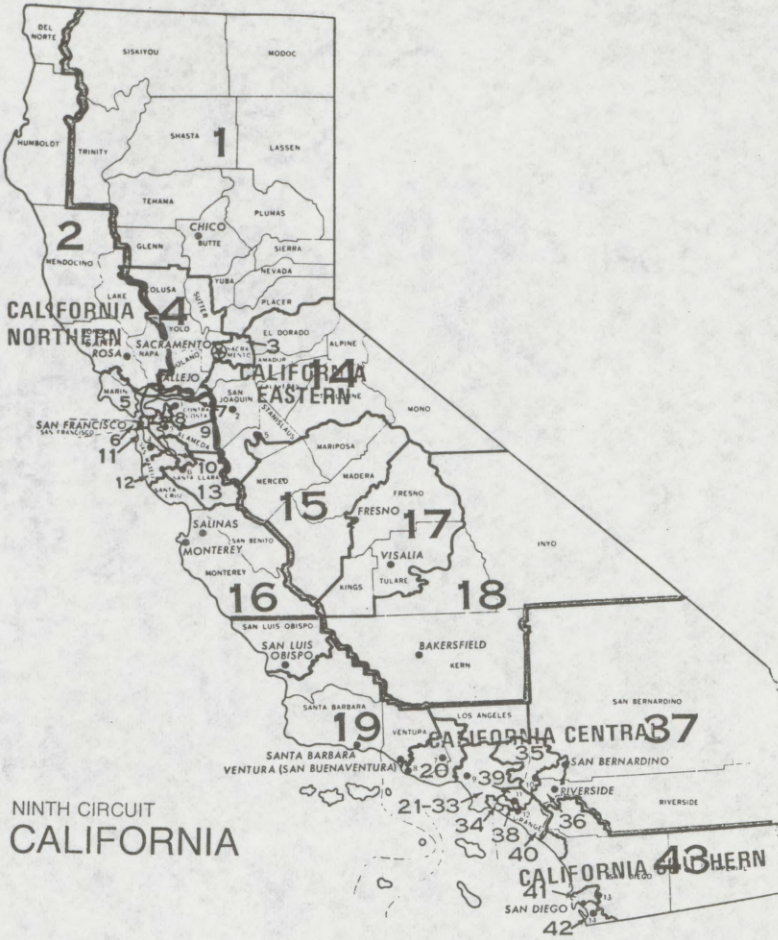
18 (b) The district judges of the Eastern District of New
19 York holding office on the day immediately before the effec-
20 tive date of this Act whose official duty stations are in Nassau
21 or Suffolk Counties on such date shall on and after such
22 date be district judges of the Northeastern District. All other
23 district judges of such Eastern District holding office on

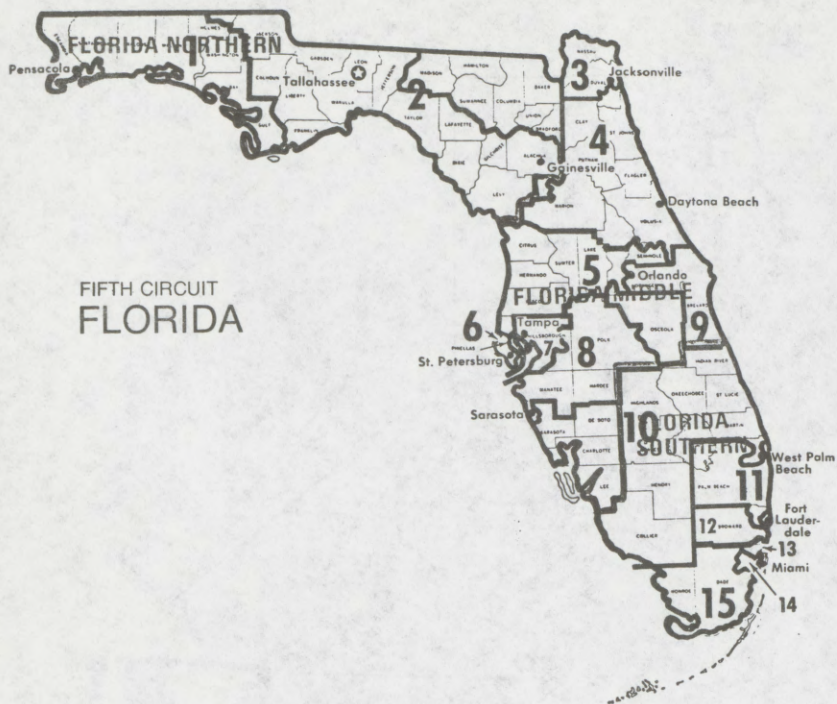
1 the day immediately before the effective date of this Act
2 shall be district judges for the Southeastern District of New
3 York. The President shall appoint, by and with the advice
4 and consent of the Senate, such additional judges as are
5 necessary to fill the remaining additional judgeships created
6 for the Northeastern and Southeastern Districts by the
7 amendment made by subsection (a) of this section.

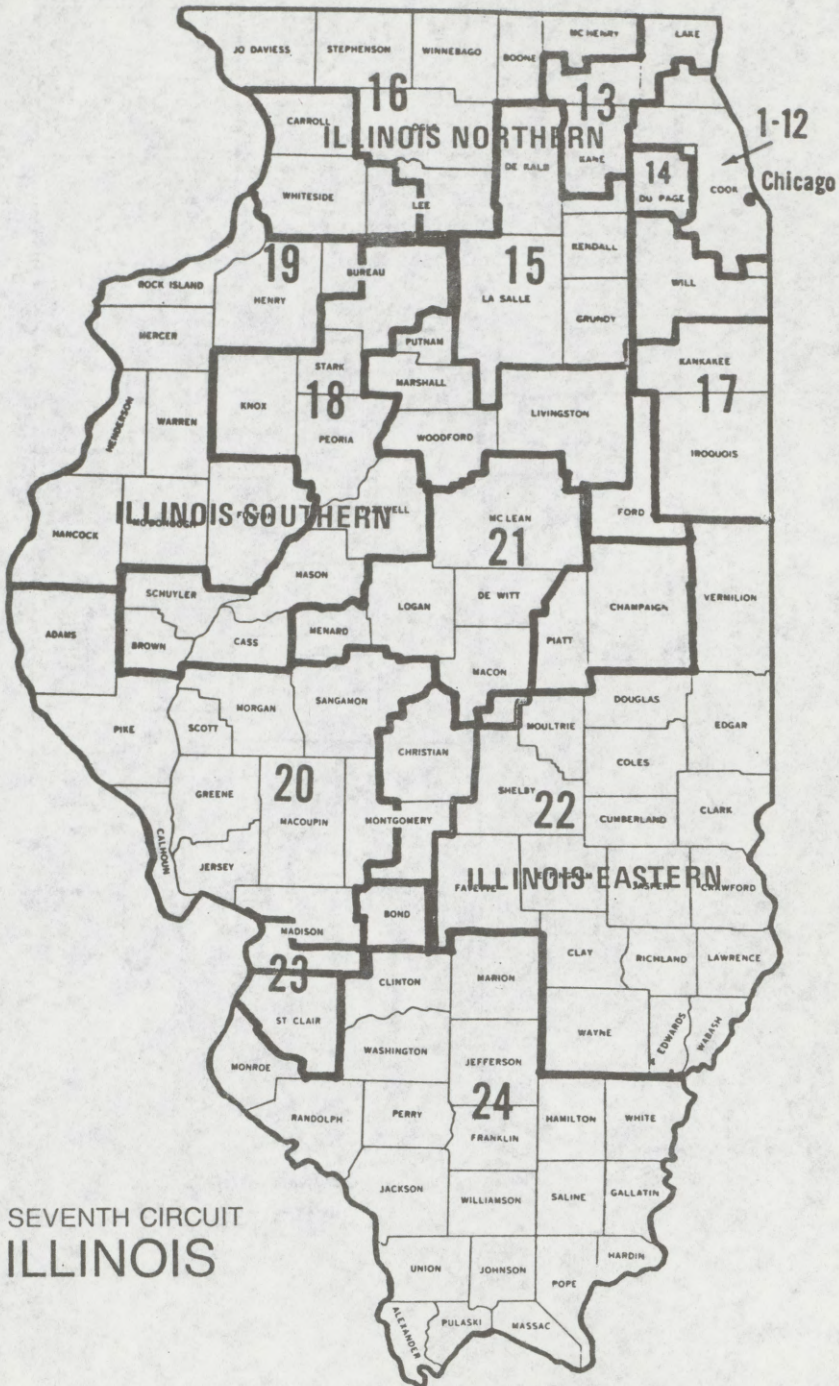
8 (c) (1) Nothing in this Act shall in any manner affect
9 the tenure of office of the United States attorney and the
10 United States marshal for the Eastern District of New York
11 who are in office on the effective date of this section. Such
12 attorney and marshal shall be during the remainder of their
13 present terms of office the United States attorney and marshal
14 of the Southeastern District.

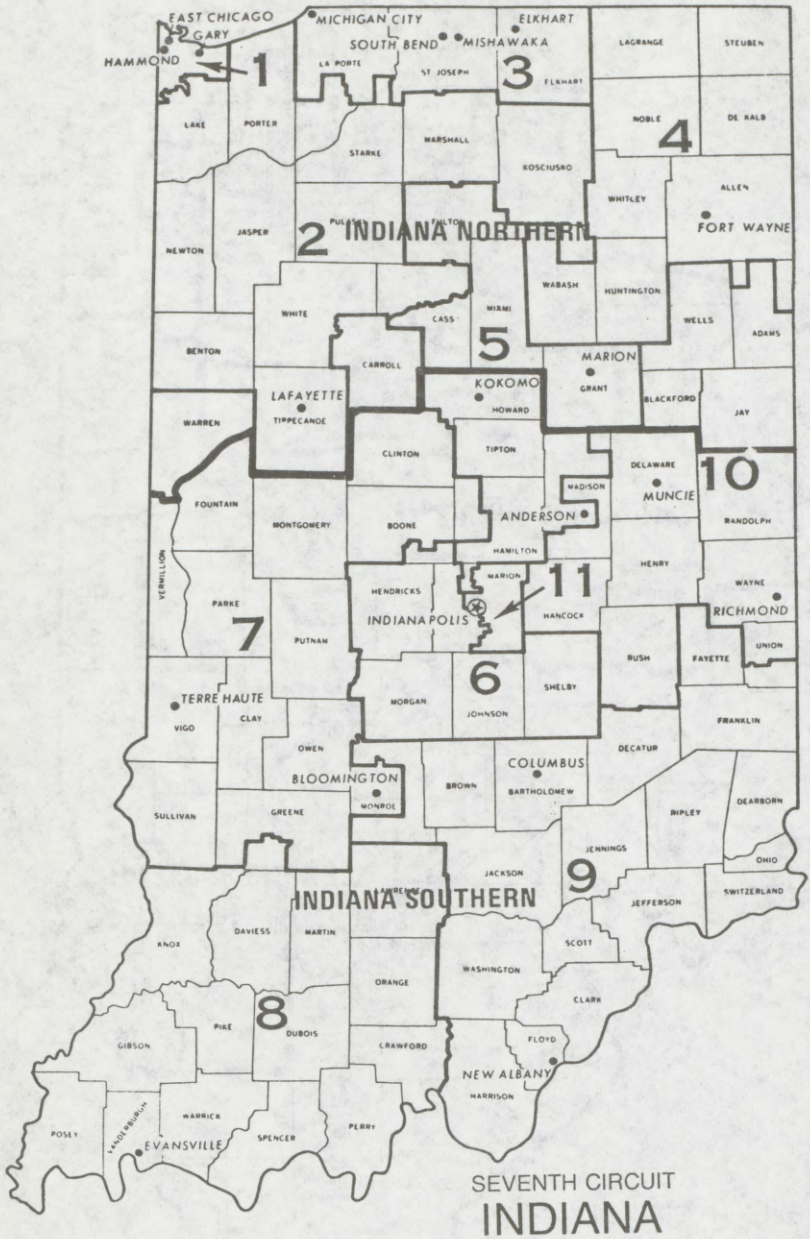
15 (2) The President shall appoint, by and with the
16 advice and consent of the Senate, a United States attorney
17 and marshal for the Northeastern District of New York.

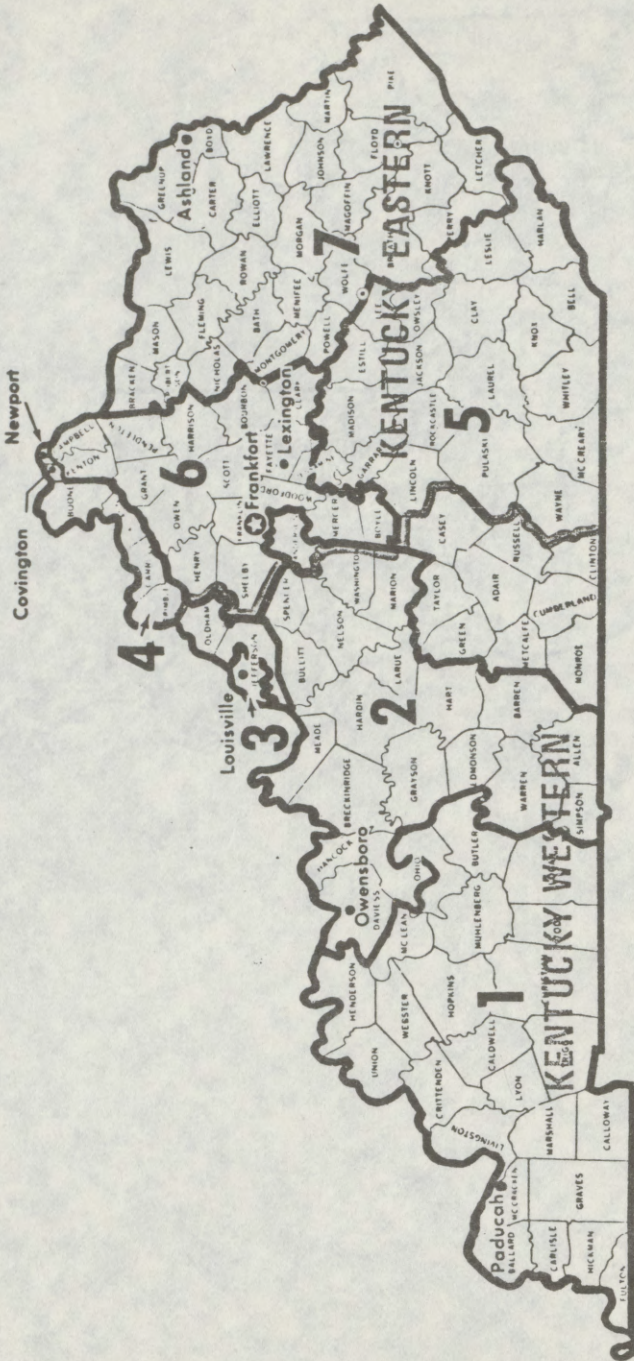
APPENDIX 3.—MAPS OF STATES INVOLVED BY PROPOSED LEGISLATION



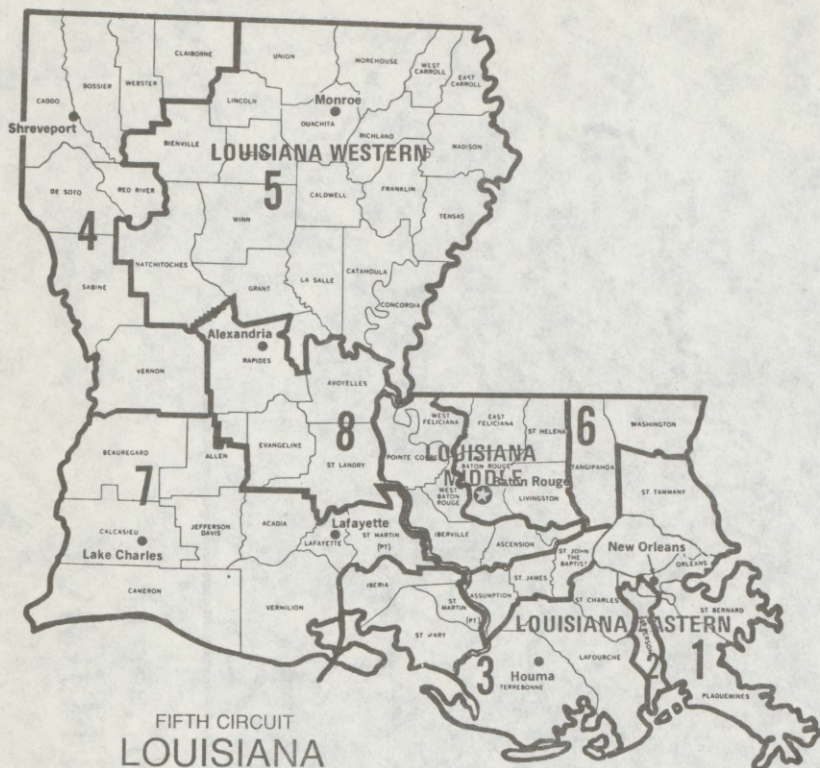


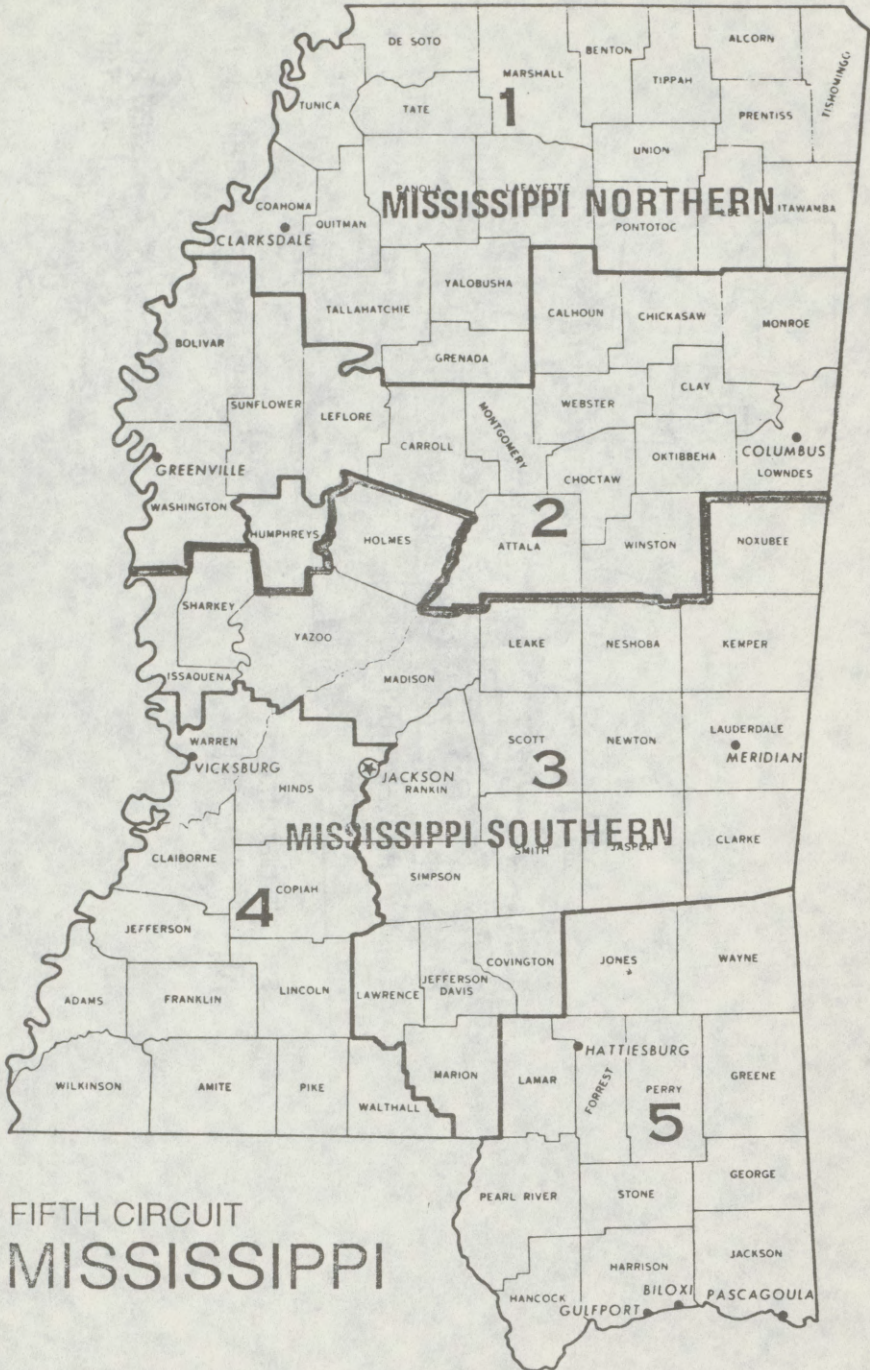




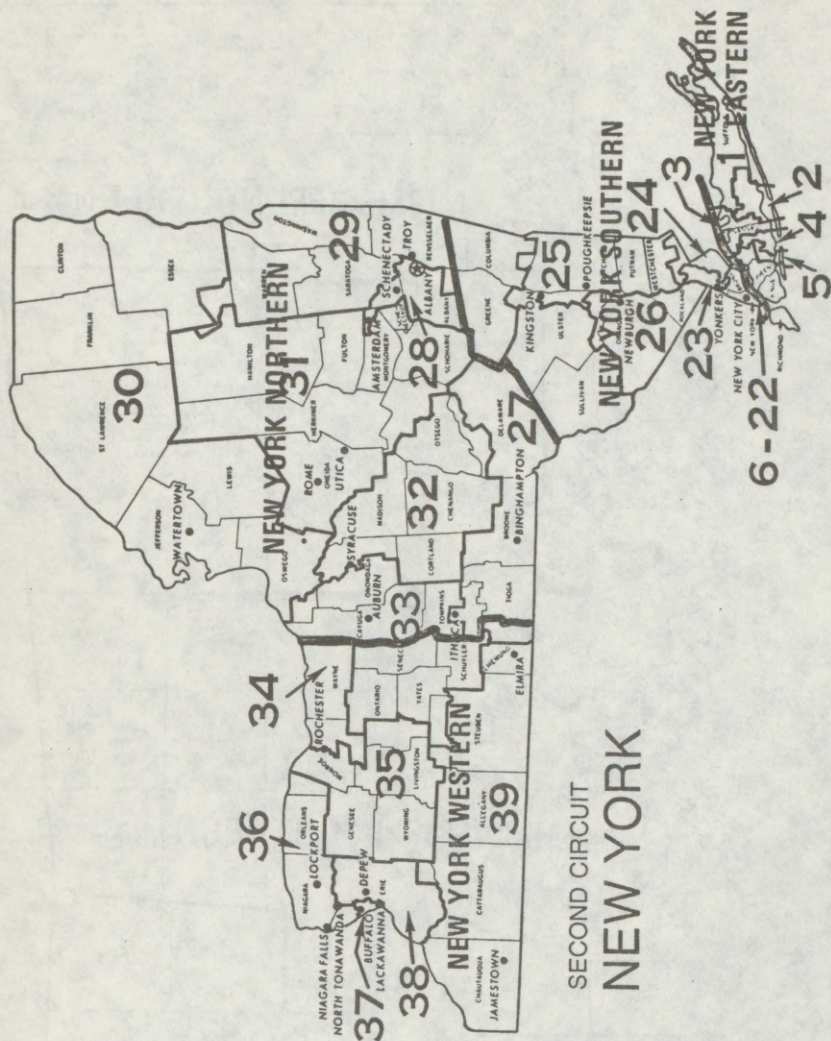


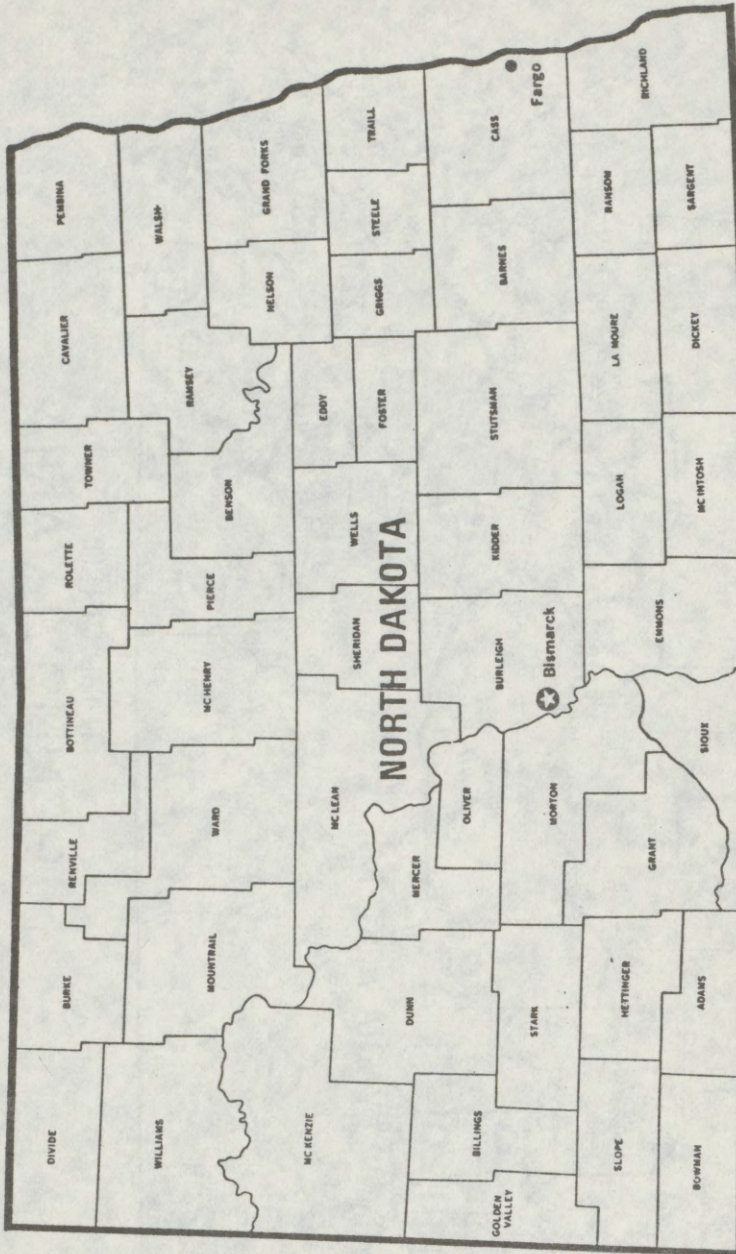
SIXTH CIRCUIT KENTUCKY





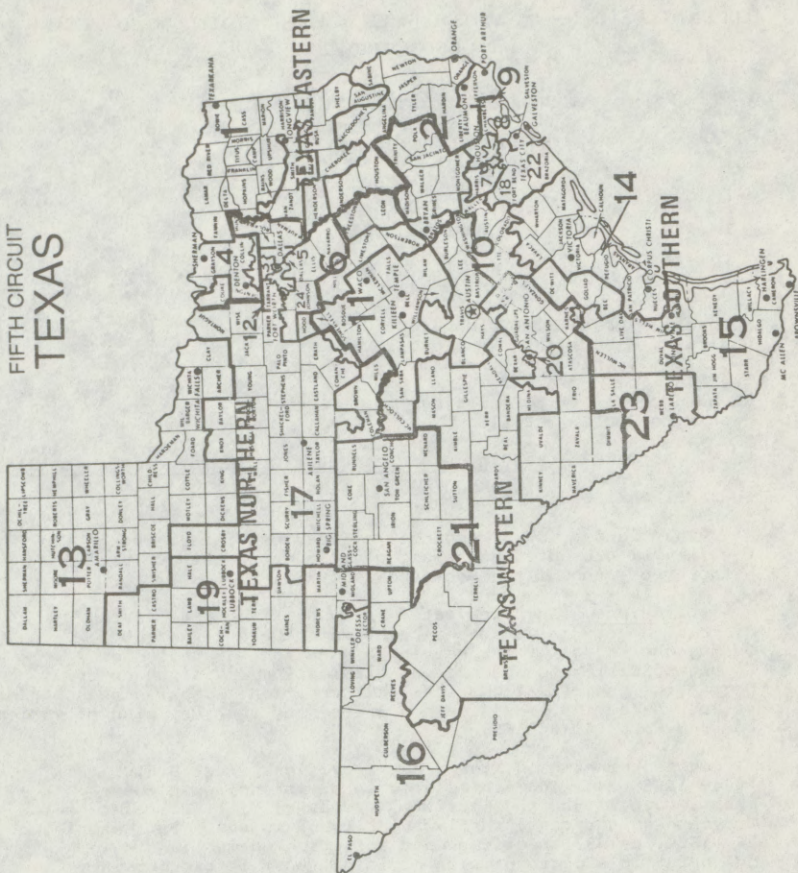
FIFTH CIRCUIT
MISSISSIPPI





EIGHTH CIRCUIT NORTH DAKOTA

FIFTH CIRCUIT TEXAS



APPENDIX 4(a).—FURTHER MATERIALS SUBMITTED TO THE
SUBCOMMITTEE



United States Department of Justice

OFFICE FOR IMPROVEMENTS IN THE
ADMINISTRATION OF JUSTICE

WASHINGTON, D.C. 20530

June 28, 1978

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties and the Administration
of Justice
Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 12869 - Federal District Court Organization Act of 1978

Dear Mr. Chairman:

This letter is in response to questions raised during the testimony I presented on behalf of the Department of Justice before your Subcommittee on June 2, 1978.

Divisions. As I indicated in my statement, 42 of the 95 district courts in 23 states have two or more divisions. During the course of the hearing a question was raised as to the possible consequences of eliminating divisions entirely. One of the justifications for their creation -- easing the problems of jury selection -- has been addressed by the jury plan provisions of 28 U.S.C. §§ 1863-66.

On the other hand, the venue provisions of 28 U.S.C. 1393, 1404, 1405, and 1406 are related to divisions, when they exist, rather than to districts. However, Title 28 references to venue do not consistently refer to divisions. For example, 28 U.S.C. § 1393 specifies that an action against a single defendant in a district with divisions must be brought in the division where the defendant resides. This section thus would not apply to the situation of multiple defendants, even where they reside in the same division. Moreover, the limitation of venue to divisions does not apply where venue is defined by plaintiffs' residence, nor 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 (28 U.S.C. § 1406), but more often will transfer it to one with proper venue. See 15 Wright, Miller, & Cooper, Federal Practice and Procedure: Jurisdiction and

- 2 -

Related Matters § 3809 (1976).

Several district courts have created divisions by local court rule. The most recently published account lists the following courts as having promulgated such rules: N.D. Florida, D. Montana, E.D.N.C., M.D.N.C., E.D. Va. (expressly creating divisions), D. Ariz., S.D. Fla., D. Or. (effectively creating divisions). See Comment, The Local Rules of Civil Procedure in the Federal District Courts - A Survey, 1966 Duke L.J. 1011. The Administrative Office of the U.S. Courts may have a more recent listing of such local practice.

These local rules have been held enforceable with respect to venue insofar as they require a transfer between divisions within one district, McNeil Construction Co. v. Livingston State Bank, 155 F. Supp. 658 (D. Mont. 1957), but improper venue under such rules has been held not to limit the in personam jurisdiction of the district court. Standish v. Gold Creek Mining Co., 92 F.2d 662 (9th Cir. 1963). Thus a dismissal of a case because of faulty venue under a local rule is probably improper. Local courts may be in the best position to determine the most desirable division of a district into jurisdiction units for purposes of venue. However, the status of such local rule divisions under section 1393 is unclear. See 15 Wright, Miller, & Cooper, *supra*, § 3809. Thus one option might be to delegate to the district courts by statute the discretionary authority to form divisions for venue purposes instead of legislating division boundaries for each district. (See Comment, *supra* at 1023).

Given the relation of some venue provisions to divisions, and the practice in some districts of creating divisions by local rule, it seems unwise to remove legislatively these boundaries without further study and development of means of accommodating such functions as intra-district venue. The delegation of discretionary authority to local courts to establish divisions for venue purposes is one possible solution.

Places of Sitting. Statutory designation of a place of sitting for a district court has several ramifications. A location must be authorized by statute as a regular place of sitting before quarters and accommodations for holding court can be authorized under 28 U.S.C. § 142. This is true for district courts, and until 1977 was true for circuit courts as well. In November, 1977, Congress enacted an exception for the circuit courts from the requirements of 28 U.S.C. § 142. Pub. L. No. 95-196, 91 Stat. 1420 (1977). Prior to this amendment, the circuit judges could not make use of federal facilities, even at no cost, unless the location was an authorized place of sitting. S. Rep. No. 579, 95th Cong., 1st Sess., reprinted in [1977] U.S. Code Cong. & Ad. News 3708.

- 3 -

Prior to 1962, where no federal facilities existed in authorized places of sitting, the district courts were required to obtain a statutory waiver of 28 U.S.C. § 142 to procure accommodations for holding court in such authorized places of sitting. H. Rep. No. 2340, 87th Cong., 2nd Sess., reprinted in [1962] U.S. Code Cong. & Ad. News 2822. (See 28 U.S.C. § 142 (1970), Amendments, for a list of waivers authorized prior to 1962.) In 1962 the statute was amended to allow the Administrator of the U.S. Courts, upon the approval of the judicial council of the circuit in which a district court was located, to request General Services Administration to provide accommodations. Pub. L. No. 87-764, 76 Stat. 762.

The waiver procedure in 28 U.S.C. § 142 is limited to the provision of accommodations where regular terms of court are authorized by law to be held. Although there is no definition in Title 28 of "regular terms", the phrase apparently is intended to mean the places of sitting as designated for each district in 28 U.S.C. §§ 81-131. Authorization to hold special sessions in other locations is conferred by 28 U.S.C. § 141, but case law indicates that such sessions are limited to extraordinary circumstances. See, e.g., *United States v. Addonizio*, 451 F.2d 49 (3d Cir. 1977) (special session in hospital where witness was close to death); *Lasky v. Quinlan*, 406 F. Supp. 265 (S.D.N.Y. 1976) (hearing on jail conditions 80 miles from court when most witnesses worked or resided where jail located). Thus it appears that 28 U.S.C. § 142 only applies to the provision of facilities at regular places of sitting. Since the 1962 amendments, requests for statutory waiver are no longer necessary. The Administrative Office of the U.S. Courts can probably can supply the committee with a list of locations where this administrative waiver has been granted to provide quarters and accommodations.

Districts. A review of the historical materials cited in my statement does not reveal any clear criteria that have been or should be considered in creating a new district or in determining what the ideal district should be. Our present network of districts appears to have evolved over time without any overall plan. Some of the factors that should be considered are listed in my statement. These factors do not address, however, the more fundamental need for a reexamination of the present allocation of judicial districts.

With the exception of Oklahoma, each state at one time consisted of a single district. Perhaps we should consider returning to single-district states. There are several factors be considered before dividing a single state into multiple

- 4 -

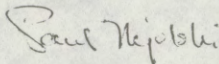
districts. One of the reasons for retaining one district would be to have the entire state subject to the precedential effects of a single district court, rather than to have different regions of the same state governed by differing federal case law. On the other hand, there are many administrative reasons supporting the division of populous states or geographically large or diverse states into more manageable units. The creation of a judicial district has an impact on the creation and administration of U.S. Attorney offices. The criteria affecting the organization of both the U.S. Attorney offices and the district courts may not be the same. For these reasons, we think it appropriate that a serious empirical study be conducted respecting the creation of new judicial districts so that in the future the Congress can be guided by objective criteria in making decisions creating a new district and can reasonably predict the impact of its actions.

Conclusion. Under present law, Congress retains exclusive authority to create or change districts, designate places of sitting (which must precede any authorization for quarters and accommodations), and create or alter divisions. Congress has given the courts discretionary authority to abolish terms (28 U.S.C. § 138), adjourn or pretermitt regular sessions (28 U.S.C. § 140), hold special sessions (28 U.S.C. § 141), or apply to the General Services Administration for provision of court quarters and accommodations at places where regular sessions are authorized by law (28 U.S.C. § 142). In addition, some district courts have created divisions by local court rule, although the applicability of the venue provision of 28 U.S.C. § 1393 remains unclear under such rules.

As our analysis indicates, bills such as H.R. 12869 present a host of judicial organization issues that cannot be resolved readily without more data and analysis. Although it is not feasible to collect such data for purposes of this bill, its availability would improve the ability of this committee to review these legislative proposals in the future.

A systematic study should be undertaken, perhaps in conjunction with the next quadriennial survey of the need for new judgeships, of the factors that should influence the creation of new districts, divisions, or places of sitting, and the impact these decisions have on the judiciary, the Department of Justice, and other interested organizations and individuals.

Sincerely,



Paul Nejelski
Deputy Assistant
Attorney General

APPENDIX 4(b)

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

July 6, 1978

WILLIAM JAMES WELLER
LEGISLATIVE LIAISON
OFFICERJOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties,
and the Administration of Justice
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

During your Subcommittee's Hearings on H.R. 12869 on June 2, the practice of district courts pretermittting regular sessions at statutorily designated locations under authority of 28 U.S.C. §140(a) was discussed at some length. During the dialogue Judge Hunter was only able to respond to your questions concerning the application of 28 U.S.C. §140(a) generally, because he did not have with him a record of specific instances in which that authority has been used.

Following the Hearing Mr. Remington informed me that you would like a listing of those instances since 1960, and I agreed to obtain the information from our files and forward it to you. I later learned that we do not retain such information here in Washington, and that the only way to accurately obtain it would be to survey each Circuit Council's records. On June 14 I informed Michael by letter that I had initiated that survey and would forward the results as soon as possible.

The survey has revealed that since 1960 regular sessions of district court have been pretermitted under 28 U.S.C. §140(a) at the following statutorily designated locations for the listed periods of time:

<u>Circuit</u>	<u>District</u>	<u>Location</u>	<u>Time Period</u>
First	-	-	-
Second	N.Y. (W)	Canandaigua	1960 - Present
Third	Pa. (E)	Easton	1974 - Present
Fourth	S.C.	Orangeburg)	
		Anderson)	
		Greenwood)	1974 - Present
		Rock Hill)	
		Spartanburg)	

Honorable Robert W. Kastenmeier
page two

<u>Circuit</u>	<u>District</u>	<u>Location</u>	<u>Time Period</u>
Fifth	-	-	-
Sixth	Ky. (E)	Richmond Jackson	1969 - Present 1974 - Present
	Mich. (E)	Sault Ste. Marie	1964 - Present
Seventh	-	-	-
Eighth	Iowa (S)	Creston) Ottumwa) Keokuk)	1960 - Present
	Minn.	Winona) Mankato)	1960 - Present
Ninth	Montana	Glasgow) Havre)	1977 - Present
	Idaho	Coeur d'Alene	1975 - Present
Tenth	Kansas	Leavenworth) Salina) Hutchinson) Dodge City) Fort Scott)	1962 - Present
District of Columbia	-	-	-

I hope that this information is fully responsive to your inquiry. Should you need further information, please have Michael telephone me at 633-6040.

Sincerely,

Bill Weller

William James Weller
Legislative Liaison Officer

APPENDIX 5

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 book ¹ 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

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 Bitter, 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, 1780, 1 STAT. 73.

HISTORY OF FEDERAL COURTS

Cite as 40 F.R.D. 139

141

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. 41.

11. Act of April 29, 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.

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 29, 1802, § 7, 2 STAT. 162.

of holding the district court, and of Tennessee ⁴⁰ 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 Carolina ⁴¹ 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 1814 ⁴² and after that Pennsylvania in 1818 ⁴³ 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 29, 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. 402.

44. Act of February 4, 1819, 3 STAT. 478.

45. Petition of Legislature of Georgia, 1845, House Doc. No. 121,

29th 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 109.

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, 1905, 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. 584; 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 19, 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.

6. Act of March 3, 1863, 12 STAT. 794.

4. Ex. Doc. 129, 37th Cong. 2d sess. v. 10.

7. Act of June 23, 1867, 14 STAT. 209.

5. Act of March 3, 1863, 12 STAT. 794.

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, 1929, 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 29, 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. 75.

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. 260; Act of August 3, 1949, 63 STAT. 493; 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. 493; 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.

*

*

*

*

*

*

*

FLORIDA

Florida was purchased from Spain through the Treaty of Washington, February 22, 1819. This treaty was not ratified until October 24, 1820,¹ and during the early part of 1821, the United States officially took control of its new territory. Since the actual occupation of Florida came at such a late date during the session, Congress, by statute, allowed the President to organize the government in the territory but this authority was to expire at the next session of Congress.²

The next year, Congress provided for the territorial organization. Provision was made for the governor to be appointed by the President and a legislature elected by the people. Two superior courts were organized, one to be held in that part known as East Florida, four times a year, at St. Augustine and at such other places as directed by the legislature, and the second, the Superior Court for West Florida, to be held at Pensacola and again, at such other places as directed by the legislature. These Superior Courts had jurisdiction over all crimes and exclusive jurisdiction over capital offences and civil cases in an amount over \$100. The Superior Courts were given the same federal jurisdiction as that given to the District Court for the District of Kentucky under the Judiciary Act of 1789, namely, full federal jurisdiction.³ Congress assigned to these Superior Courts the jurisdiction to hear and try all land claims arising under the Article 9 of the Treaty of Washington.⁴

The judicial system created lacked an Appellate Court and differed from those systems created in other territories. The number of courts were not enough and in 1824,⁵ Congress created a third Superior Court whose geographical jurisdiction extended west of the Apalachicola River and whose sessions were to be held in Pensacola. The other court included the area between the Apalachicola and the Suwanee Rivers and the terms of court for that area were to be held at the seat of the government, Tallahassee. The third court was to have jurisdiction over all other parts of Florida and hold its sessions at St. Augustine. An

1. Treaty of Washington, February 22, 1819, 8 STAT. 252.

4. Act of March 3, 1823, 3 STAT. 76S.

2. Act of March 3, 1821, 3 STAT. 637.

5. Act of May 24, 1824, 4 STAT. 45.

3. Act of March 3, 1822, 3 STAT. 654.

Appellate Court was created known as the Court of Appeals. This court, consisting of the three Superior Court judges, met at the State capital. From the decisions of this court, writs of error could be taken to the Supreme Court of the United States under the same condition as from other Circuit Courts.⁶

In 1828,⁷ Congress created a new district including that area south of the line drawn from Charlotte Harbor to include all of Southern Florida in a district called the Southern District. By this date, the other districts had become known as the Western, Middle and the Eastern Districts. The court in the Southern District was one of special jurisdiction over the division of such property. In addition, the judge was to issue permits to ships engaged in salvage operations.

In 1838,⁸ a fifth judicial district, called the Apalachicola River District, consisting of the counties of Franklin, Washington, and Jackson, was created. The Superior Court of this district was to have the same jurisdiction as the other Superior Court. This made a total of five federal courts in the territory of Florida, this being the greatest number created in a territory until the last decades of the Nineteenth Century.

Under these acts creating the Superior Courts, the territorial legislature had the authority to designate additional terms of the court.⁹ Only once did Congress disapprove a local law providing for a session of the Superior Court and that was in 1836, disapproving of the holding of the court for the Southern District in Indian Keys.¹⁰ In 1845, Florida became a state of the Union. The state was constituted as one judicial district with a District Court judge who would exercise the same jurisdiction as that assigned to the judge of the District Court for Kentucky under the Judiciary Act of 1789. The court was to hold terms in Tallahassee, St. Augustine and Key West.¹¹ Congress made the usual provisions for the transfer of business from the Superior Court to the District in federal matters and to the state courts in matters arising under the state laws. The Federal District Court was to adjudicate problems of land titles arising under the treaty of Washington.¹²

6. Act of July 14, 1832, 4 STAT. 601.

7. Act of May 23, 1828, 4 STAT. 292.

8. Act of July 7, 1838, 5 STAT. 294.

9. Act of April 28, 1828, 4 STAT. 241.

10. Act of July 2, 1836, 5 STAT. 70.

11. Act of March 3, 1845, 5 STAT. 788.

12. Act of February 22, 1847, 9 STAT. 130.

The combination of maritime business and the distance to travel made imperative the creation of another court to handle the extensive maritime problems arising in Key West. Simultaneously with the creation of the District Court in the Northern District, in 1847 Congress established a court to have a geographical jurisdiction covering the area lying south of the line from east to west, north of Charlotte Harbor. This area was sparsely settled, having less than 3,000 inhabitants, exclusive of Indians in the area. Nearly all the settlers lived in Key West. The judge of the Southern District would reside in Key West exercising the same jurisdiction as that assigned to the District Court of Kentucky under the Act of 1789, namely, full federal jurisdiction. For regular judicial purposes, sessions were held in May and November but for purposes of admiralty and maritime jurisdiction, the court was open at all times. In addition to his usual judicial duties, the judge had to grant licenses to ships engaged in salvage operations in the area. He was especially ordered to see that the ships were properly and sufficiently fitted and equipped for the business of saving property and that the master was trustworthy and innocent of any fraud and misconduct in relation to any property that had been shipwrecked on the coast.¹³ An additional act provided that the judge of the Northern District would exercise jurisdiction in the Southern District until a judge could be appointed.¹⁴ The court in the Southern District was held by the Union forces throughout the entire Civil War, probably the only Federal court in the South that continued to function without interruption. The Confederate Congress had created a special admiralty court to replace this Federal court but the Confederate judge appointed to hold the court was never able to exercise his jurisdiction.¹⁵

In 1879, Congress rearranged the state in such a way as to increase the geographical area of the Southern District to include nearly all the peninsula and the Northern District to include the area bordering the northern part of Florida on the Gulf of Mexico.¹⁶

The District Court for the Northern District since its establishment held sessions in Apalachicola and Pensacola.¹⁷

13. Act of February 23, 1847, 9 STAT. 132.

14. Act of February 23, 1847, 9 STAT. 132.

15. William M. Robinson, Jr. *JUSTICE IN GREY* (Cambridge, Mass. 1941), pp. 299-308.

16. Act of February 3, 1879, 20 STAT. 280.

17. Act of February 23, 1847, 9 STAT. 132.

HISTORY OF FEDERAL COURTS

Cite as 40 F.R.D. 139

183

In 1845, a new term was authorized in St. Augustine, but this session was discontinued in 1868. The term held in Apalachicola was likewise discontinued and the sessions transferred to Tallahassee. Sessions were established at Jacksonville and Pensacola.¹⁸ With the reorganization of the federal courts in 1879, the Northern District was held at Tallahassee. The term at Jacksonville was discontinued. The following is a list of cities where the court for the Northern District of Florida is held and the dates when the court was first held in that district:

Gainsville	1908 ¹⁹
Marianna	1911 ²⁰
Panama City	1937 ²¹
Pensacola	1847 ²²
Tallahassee	1847 ²³
Live Oaks	1961 ²⁴

When the Southern District was reorganized in 1879, the terms of the court were continued at Key West and a term was provided for at Tampa. The following is a list of cities where the District Court for the Southern District of Florida is held and the dates when the court was first held in those areas:

Tampa	1879 ²⁵
Jacksonville	1894 ²⁶
Ocala	1900 ²⁷
Miami	1906 ²⁸
Fernandina	1905 ²⁹
Orlando	1933 ³⁰
Fort Pierce	1935 ³¹
Fort Myers and West Palm Beach	1952 ³²

- | | |
|--|---|
| 18. Act of February 3, 1879, 20 STAT. 280. | 26. Act of July 23, 1894, 28 STAT. 117. |
| 19. Act of February 6, 1903, 35 STAT. 6. | 27. Act of May 18, 1900, 31 STAT. 180. |
| 20. Judicial Code 1911, 36 STAT. 1108. | 28. Act of June 9, 1906, 34 STAT. 226. |
| 21. Act of August 25, 1951, 50 STAT. 800. | 29. Act of February 18, 1905, 33 STAT. 719. |
| 22. Act of February 23, 1847, 9 STAT. 132. | 30. Act of June 15, 1933, 48 STAT. 147. |
| 23. Act of February 22, 1847, 9 STAT. 130. | 31. Act of August 22, 1935, 49 STAT. 683. |
| 24. Act of May 19, 1961. | 32. Act of 17 July 1952, 66 STAT. 757. |
| 25. 20 STAT. 280. | |

In 1962, the state was divided into a third district known as the Middle District, but the number of cities in which the courts were held was not increased.³³

Each district had a separate judge since its creation. The Southern District has the largest geographical area, and in recent years, has grown in population. In 1922,³⁴ a temporary judgeship, which was later made permanent, was provided for this district, making a total of two. This total was increased to three in 1930.³⁵ In 1954,³⁶ an additional judgeship was created raising the total to four judges for the district, and in 1961,³⁷ the total was raised to six. When the Middle District was created, three of these judges were assigned to the new district and three to the Southern District.

In 1966, one additional judge was authorized in the Middle and Northern Districts and two additional judges in the Southern District.^{37a} With the transfer of the judge for the entire state to the Middle District, the number of judges in that District is now five. The judicial strength of the Southern District is now five and the Northern District is now two.

In 1940,³⁸ a temporary judgeship for the Northern and Southern Districts of Florida was created, and made permanent in 1949.³⁹ This judge is now designated as belonging to the three districts. In 1966, this position was abolished and the judge was transferred to the Middle District.⁴⁰

33. Act of July 30, 1962, 76 STAT. 247.

34. Act of September 14, 1922, 42 STAT. 837; Act of January 17, 1929, 45 STAT. 1081.

35. Act of June 27, 1930, 46 STAT. 820.

36. Act of February 10, 1954, 68 STAT. 9.

37. Act of May 19, 1961, 75 STAT. 81.

37a. Act of March 18, 1966, 80 STAT. 75.

38. Act of May 24, 1940, 54 STAT. 219.

39. Act of August 3, 1949, 63 STAT. 493.

40. Act of March 18, 1966, 80 STAT. 75.

*

*

*

*

*

*

*

ILLINOIS

The area occupied by the State of Illinois was originally part of the Northwestern Territory created by the Continental Congress. It was later administered as a part of the Indiana Territory and finally, in 1809,¹ the Illinois Territory was created. This territory consisted of what are now the States of Illinois, Wisconsin, and a large portion of Minnesota.

Congress followed the pattern established in the Northwest Territory by providing for three Circuit Courts in the territory.² The unusual thing about this act was that the judges were to allot the circuits among themselves, and each year, review the allotment and make it a matter of public record. These Circuit Courts had jurisdiction over all causes that arose under common law or under Chancery except in the cases where the debt was to be less than \$20. The judges were conservators of the peace which, in effect, made them committing magistrates. These judges were to hold the Court of Appeals for the territory twice annually; its jurisdiction was confined to matters of law from causes arising in the Circuit Courts. The next year, 1816,³ Congress provided that the governor should direct the judges to hold a Court of Oyer and Terminer for the trial of any person charged with a felony in the county at such times as specified in the writ. By this act, the legislature was authorized to make laws pertaining to the organization of the courts in the territory.

In 1819,⁴ Illinois became a state in the Union. It was organized as one judicial district with a judge for the district. This judge was given the same jurisdiction as that assigned to the judge of the District Court for the District of Kentucky under the Act of 1789; namely, full federal jurisdiction with appeals directly to the Supreme Court of the United States. This power was reconfirmed in 1831.⁵ The court was to be held at the seat of the government for the territory.

In 1837,⁶ Illinois was made a part of the Seventh Circuit which was created, and the Circuit Court was established along with the District, each to exercise jurisdiction assigned by law.

1. Act of February 3, 1809, 2 STAT. 514.

2. Act of March 3, 1815, 3 STAT. 237.

3. Act of April 29, 1816, 3 STAT. 327.

4. Act of March 3, 1819, 3 STAT. 502.

5. Act of February 19, 1831, 4 STAT. 444.

6. Act of March 3, 1837, 5 STAT. 176.

In 1851,⁷ the judge of the District Court for the United States for the District of Illinois received extraordinary powers not usually granted to other district court judges. By this act, the judge was allowed to "make such rules and regulations for the regulation of the terms of said court, and the process thereof, and the business, and the fees and costs to be taxed therein, as he shall deem expedient, and revise and alter the same where necessary." The terms of the District Courts in other states were meticulously regulated by statute.

In 1855,⁸ the state was divided into two judicial districts with a judge for each district. The Northern District was to embrace the portion of the area in and around Chicago and the Southern District embraced the remainder of the state with terms of court held in Springfield. Terms of the Circuit and District Courts had been held in Chicago since 1848.⁹

In 1887,¹⁰ the Northern District was divided into two divisions, the Northern and Southern Divisions. The terms of the courts in the first division were held in Chicago and those for the Southern Division in Peoria. Several years later, the number of places for holding the courts was increased. The list indicates the cities where the terms of court were authorized and the date:

Quincy, 1888¹¹

Danville, 1890¹²

Cairo, 1868¹³

East St. Louis, 1904¹⁴

Sessions of the Federal Courts had been held in Springfield since that city became the capitol.

In 1937,¹⁵ the state was divided into three districts. Sessions of the court for the Northern District were authorized to be held in Chicago, for the Eastern Division, and in Freeport, for the Western Division. Peoria was transferred to the Southern District as a Northern Division. In 1950, a term of the court for

7. Act of March 3, 1851, 9 STAT. 63S.

8. Act of February 13, 1855, 10 STAT. 606.

9. Act of May 9, 1848, 9 STAT. 219.

10. Act of March 2, 1887, 24 STAT. 442.

11. Act of August 8, 1888, 25 STAT. 387.

12. Act of July 2, 1890, 26 STAT. 212.

13. Act of July 3, 1868, 15 STAT. 82.

14. Act of April 23, 1904, 33 STAT. 550. Sessions of the court in this city were discontinued when the district was organized in 1937. See footnote 15. In 1940, sessions were resumed. Act of June 6, 1940, 54 STAT. 237.

15. Act of August 12, 1937, 50 STAT. 624.

this division was authorized in Rock Island.¹⁶ The court for the Southern Division of this district is held at Springfield. Later, sessions were authorized for Quincy¹⁷ and Alton.¹⁸ The Eastern District was not divided into divisions and courts are held in Danville, Cairo, and Benton. In 1940, the terms of court at East St. Louis were resumed.¹⁹

The number of judges of the District of Illinois has been increased from time to time, the Northern District having the largest number of judges at the present time. The following is a list of the dates on which additional judgeships were created for each district:

Northern District

- 1887—Creation of the District. 1 Judge.
- 1905—Second judge authorized. Act of March 3, 1905, sec. 2, 33 STAT. 993.
- 1922—Temporary Judgeship. Act of September 14, 1922, 42 STAT. 838.
- 1928—Authorized the appointment of another judge under the above act. Act of May 29, 1928, 45 STAT. 974.
- 1931—Authorized the appointment of two permanent judges. Act of February 25, 1931, 46 STAT. 1417, a total of 4.
- 1938—Authorized the appointment of one permanent judge. Act of May 31, 1938, 52 STAT. 584, a total of 5.
- 1940—Temporary Judgeship. Act of May 24, 1940, 54 STAT. 219, a total of 6. This was made permanent in 1946.
- 1950—Two judgeships created. August 14, 1950, 64 STAT. 443. A total of 8.
- 1961—Two additional judgeships created, making a total of 10. May 19, 1961, 75 STAT. 81.
- 1966—One additional judge authorized, making a total of 11. March 18, 1966, 80 STAT. 75.

Southern District

- 1819—Creation of the Federal Courts. One judge authorized.
- 1931—Second judge authorized. February 20, 1931, 46 STAT. 1196.

16. Act of August 10, 1950, 64 STAT. 438.

18. Act of May 19, 1961, 75 STAT. 81.

17. Act of August 8, 1888, 25 STAT. 387.

19. See note 14

Eastern District

1922—Temporary Judgeship. Act of September 14,
1922, 42 STAT. 837.

1930—This position made permanent. Act of July 3,
1930, 46 STAT. 1196.

* * * * *

INDIANA

After the admission of Ohio and the creation of the Michigan Territory, the Indiana Territory was created embracing the present states of Illinois, Wisconsin, and part of Minnesota. In 1800,¹ the area which is now embraced in the state of Indiana was created as the Indiana Territory. The same form of government created in the other territories formed out of the Northwest Territory was established in this territory. Three judges

1. Act of May 7, 1800, 2 STAT. 58.

were appointed to hold a trial court but no name was given this court. In 1802, another statute referred to this trial court as the Superior Court.² The three judges were to hold the General Court, a court of appellate jurisdiction.

Indiana was admitted in 1817³ at which time the state was constituted as one judicial district with a judge exercising the same jurisdiction as that assigned to the judge of the District Court for the State of Kentucky under the Judiciary Act of 1789. This court continued exercising these extensive powers until 1837⁴ when it became a part of the Seventh Circuit. Sessions of the Circuit Court were held at Indianapolis. In 1863,⁵ the state was made a part of the Eighth Circuit and in 1866,⁶ it was reassigned to the Seventh Circuit where it has remained.

In 1870,⁷ Congress provided for terms of the courts at New Albany and Evansville. At this period, Congress was generous in establishing federal courts in new cities provided suitable court room space was provided without expense to the federal government. Such a provision was included in this act. In 1871,⁸ deputy clerks and marshals were authorized for these two cities.

In 1878,⁹ two terms of court were authorized to be held in Fort Wayne at such times prescribed by the judge provided suitable accommodations were furnished the court without expense to the government.

In 1925,¹⁰ the District of Indiana was divided into seven divisions known by the names of the cities in which the court was held. The clerk and marshal were to appoint deputies for each city. Under this act, in addition to the five cities where the court was held previously, sessions were provided for South Bend and Terre Haute. An additional judge was authorized for the district.

In 1928,¹¹ the state was divided into two districts known as the Northern and the Southern Districts. The Southern Dis-

2. Act of April 29, 1802, 2 STAT. 163.

3. Act of March 3, 1817, 3 STAT. 390.

4. Act of March 3, 1837, 5 STAT. 176.

5. Act of January 28, 1863, 12 STAT. 637.

6. Act of July 23, 1866, 14 STAT. 209.

7. Act of June 30, 1870, 16 STAT. 175.

8. Act of March 3, 1871, 16 STAT. 473.

9. Act of June 18, 1878, 20 STAT. 166.

10. Act of January 16, 1925, 43 STAT. 752. In addition to Indianapolis, New Albany, Evansville, and Fort Wayne, sessions of the court for this district were authorized in Hammond by the Judicial Code of 1911, 36 STAT. 1110.

11. Act of April 21, 1928, 45 STAT. 439.

trict constituted the Indianapolis, Terre Haute, Evansville, and New Albany Divisions, constituted the Southern District. The Northern District consisted of the Fort Wayne, South Bend and the Hammond Divisions. In 1954,¹² an additional term of court for the Hammond Division was authorized in Lafayette.

In 1925, when the state was one judicial district, two judges were authorized. When the state was divided into two districts, each judge was assigned to a separate district. In 1954,¹³ the number of judges in each district was increased to two, and again, in 1961,¹⁴ the number of judges was increased by one in each district thus bringing the total to three in both the Northern and Southern Districts. An additional district court judge was authorized in the Southern District making a total of four.¹⁵

12. Act of February 10, 1954, 6S
STAT. 11.

14. Act of May 19, 1961, 75 STAT.
83.

13. Act of February 10, 1954, 6S
STAT. 9.

15. Act of March 18, 1966, 80 STAT.
75.

*

*

*

*

*

*

*

KENTUCKY

Kentucky was one of the original states in the Union and provisions were made by the Judiciary Act of 1789 for one district court in the state presided over by one judge.¹ The court created in Kentucky exercised complete federal jurisdiction, including the jurisdiction normally exercised by the District Courts (in other states presided over by the District judge), and the Circuit Courts (presided over by a justice of the Supreme Court and the District Court or either of the two). This court in Kentucky was used as a standard of reference in later statutes creating courts in other states to express the concept of a single Federal Court with full jurisdiction. This broad federal jurisdiction was exercised until 1807 when the Seventh Circuit was created and a Circuit Court was established in that state.² In 1837, the state was assigned to the Eighth Circuit.³ In 1862, it was assigned to the Sixth Circuit and has remained in that circuit since that date although the other states constituting that grouping have varied.

The Judiciary Act of 1789 provided that the terms of the District Court were to be held in Harrodsburgh, which later became Frankfort, four times a year. In 1803, the number of terms was reduced to three per year⁴, and three years later, it was reduced to two.⁵ This was a familiar pattern in other states until the states grew and more terms were demanded. Until 1860, the terms of the District and Circuit Courts were held in Frankfort, but in that year, sessions of both courts were authorized in three additional cities: Louisville, Covington and Paducah.⁶ A later act provided for some change in the time for holding the courts and provided for a clerk at each location of the court.⁷

The state was divided into districts in 1901 when the Eastern District and the Western District were created. A separate judge was provided for each of the districts, and the number of cities where terms were held was significantly increased.⁸ The terms for the Eastern District were held in Frankfort, Covington, Richmond, and London and for the Western District, in Louisville, Owensboro, Paducah and Bowling Green. The number

1. Act of September 24, 1789, sec. 10, 1 STAT. 77.

5. Act of February 28, 1806, 2 STAT. 354.

2. Act of February 24, 1807, 2 STAT. 420.

6. Act of June 15, 1860, 12 STAT. 36.

3. Act of March 3, 1837, 5 STAT. 176.

7. Act of May 15, 1862, 12 STAT. 386.

4. Act of March 2, 1803, 2 STAT. 424.

8. Act of February 7, 1901, 31 STAT. 783.

HISTORY OF FEDERAL COURTS

Cite as 40 F.R.D. 139

209

of cities where the court is held in the Western District has not been increased but the number of cities in the Eastern District has been added as follows:

Catlettsburg—1902⁹

Jackson—1911¹⁰

Lexington—1920¹¹

Pikeville—1936¹²

Kentucky was never divided into divisions as was done in other states.

In 1936, a judge was provided for both districts¹³ which resulted in one judge in each district and one judge who divided his time in between both districts. In 1954, a second permanent judge was added to the Western District.¹⁴

9. Act of March 10, 1902, 32 STAT.
58.

12. Act of June 22, 1936, 49 STAT.
1822.

10. Act of March 3, 1911, 36 STAT.
1112.

13. Act of June 22, 1936, 49 STAT.
1806.

11. Act of January 29, 1920, 41
STAT. 900.

14. Act of February 10, 1954, 68
STAT. 9.

*

*

*

*

*

*

*

LOUISIANA

The purchase of Louisiana in 1803 from France by President Thomas Jefferson, is a well-known chapter of American history. In organizing the government of the territory of Orleans, as the area within the present state was then known, Congress created a Superior Court, and "such inferior courts and justices of the peace" as a legislature should establish. The jurisdiction of the Superior Court extended to all criminal cases; it had exclusive jurisdiction where the offense was capital and original and appellate jurisdiction in all civil cases in matters exceeding \$100. This act was the first time that Congress gave a title to the territorial courts. In addition, the act is unique in another respect in that this is the only occasion on which Congress created in a territory on the American Continent a separate District Court exercising federal jurisdiction.¹

Louisiana was admitted to the union in 1812 and a District Court was established with the same jurisdiction as the District Court in Kentucky; namely, complete federal jurisdiction with an appeal directly to the Supreme Court of the United States.² A Circuit Court was not established in Louisiana until 1837 when the state was included in the Ninth Circuit.³ In 1842, it was organized in the Fifth Circuit where it has since been.⁴

The Federal Courts in Louisiana then entered a chapter of their history (which is duplicated in only one other state) where-

1. Act of March 26, 1804, secs. 4, 8; 2 STAT. 284, 285.
2. Act of April 8, 1812, 2 STAT. 701.
3. Act of March 3, 1837, 5 STAT. 176.
4. Act of August 16, 1842, 5 STAT. 507, 3 STAT. 775.

by the state was divided into two districts thrice. In 1823, the state was divided into two districts, known as Eastern and Western District with the same judge in both districts.⁵ In 1845,⁶ the state was combined into one district. In 1848, the Judiciary Committee of the Senate in the Congress of the United States felt that again it was wise to divide the state into two districts because of the number of cases involving land titles in the Red River area of the state. The next year, Louisiana, for the second time, was divided into two districts known as the Eastern and Western Districts with a separate judge in each district.⁷ The terms of the court in the Eastern District were held in New Orleans but the terms of the court in the Western District were to be held in four cities; namely, Opelousas, Alexandria, Shreveport, and Monroe. In 1849, a session of the court was authorized in St. Joseph.⁸ In 1866, the Western District of Louisiana was abolished. It would not be surprising if this act was the result of the unsettled political situation in the state.⁹

In 1881, for the third time, the state was divided into two districts and has remained so divided since that date. The terms of the court for the Western District are held in Opelousas, Alexandria, Shreveport, and Monroe. A separate judge was authorized for this district.¹⁰ The Western District was not divided into divisions until 1888 when the counties of the district were divided into four divisions. This act authorized the appointment of deputy clerks in each of the cities where the courts were held.¹¹ In 1905, the Western District was divided into a fifth division known as the Lake Charles Division. A deputy marshal and clerk were authorized for the new division provided "suitable rooms and accommodations are furnished free of expense to the United States."¹² A sixth Division, known as the Lafayette Division was created in 1961.^{12a}

The Eastern District was first divided into divisions in 1888 with terms of court authorized in New Orleans and Baton Rouge. A deputy clerk was authorized for the Baton Rouge Division.¹³

- | | |
|--|---|
| 5. Act of March 3, 1823, 3 STAT. 775. | House Misc. Doc. 44, 39th Cong. 1st sess. vol. 1. |
| 6. Act of February 13, 1845, 5 STAT. 722. | 10. Act of March 3, 1881, 21 STAT. 507. |
| 7. Act of March 3, 1849, 9 STAT. 401. | 11. Act of August 8, 1888, 25 STAT. 388. |
| 8. Act of July 29, 1850, 9 STAT. 442. | 12. Act of March 2, 1905, 33 STAT. 841. |
| 9. Act of July 27, 1866, 14 STAT. 301; See petition of members of New Orleans Bar requesting the repeal of the Act of March 3, 1849, | 12a. Act of May 19, 1961, 75 STAT. 83. |
| | 13. Act of August 13, 1888, 25 STAT. 438. |

In 1938, an additional judge was added to each district bringing the total to two.¹⁴ However, several factors made the federal courts the favorite forum of the Louisiana bar. The port of New Orleans increased so in size that it came to be the second largest port in the United States, and with this growth, an increase in maritime cases in the Federal Courts resulted. The fact that Louisiana law allows a direct action against a tort-feasor's insurance company, which establishes diversity jurisdiction with more ease than in other states, and that the federal courts are bound by the finding of the jury whereas the state courts are not, increases the popularity of the Federal Courts for personal injury suits, probably more so than in any other state.¹⁵ The number of cases filed increased rapidly and in 1961, two additional judges, bringing the total to four, were authorized for the Eastern District and one additional judge, bringing the total to three, was authorized for the Western District.¹⁶ In 1966, Congress to increase the number of judges in the Eastern District to eight to handle the increasing case load.¹⁷

14. Eastern District, Act of March 18, 1938, 52 STAT. 110; Western District, Act of May 31, 1938, 52 STAT. 585.

15. Hearings before Subcommittee no. 5, of the Committee on the Judiciary, House of Representatives,

on the Federal Courts and Judges. 87th Cong. 1st sess., p. 169.

16. Act of May 19, 1961, P.L. 87-36, 75 STAT. 81.

17. 89th Cong., 1st sess., Bill, S. 1866; Act of March 18, 1966, 80 STAT. 75.

* * * * *

MISSISSIPPI

The Territory of Mississippi was established in 1798¹ with the same form of government as authorized in the Northwest Territory. The Territory included the area that Georgia had surrendered to the federal government embracing the present states of Alabama and Mississippi. Under the Northwest Ordinance, provision was made for the appointment of the governor and three judges who were to hold court in the territory and together with the governor, make all necessary laws. The judges were to hold office during good behavior. In 1804,² a fourth judge was appointed to the Superior Court as the trial courts came to be known. In 1810,³ a fifth judge was authorized.

In 1817,⁴ the area which now constitutes the State of Alabama was detached from the Mississippi Territory and Mississippi was admitted as a state of the Union. In a later act, Congress organized the new state as one judicial district, requiring the District Court judge to hold three sessions of the District Court at the capital, then located in Natchez.⁵ The court was to exercise full federal jurisdiction. In 1835, the sessions of the Federal District Court were transferred from Natchez to Jackson.⁶ In 1838,⁷ the state was divided into two districts, the Northern and the Southern Districts. The term of court for the Northern District was held at Pontotoc and for the Southern District at Jackson. The act authorized the appointment of a clerk, marshal, and district attorney for both districts, but a single judge presided in both districts. The court in the Northern District was to exercise full Circuit Court jurisdiction while in the Southern District, this court was held by the Justice of the Supreme Court of the United States or in his absence, the District Court judge.⁸ Hence, an appeal could be taken directly from the court in the Northern District to the Supreme Court of the United States; whereas, in the Southern District, an appeal would be made to the Circuit Court and then to the Supreme Court of the United States.

1. Act of April 7, 1798, 1 STAT. 547.

5. Act of April 3, 1818, 3 STAT. 413.

2. Act of March 27, 1804, 2 STAT. 301.

6. Act of March 3, 1835, 4 STAT. 773.

3. Act of March 2, 1810, 2 STAT. 563.

7. Act of June 18, 1838, 5 STAT. 248.

4. Act of December 10, 1817, 3 STAT. 472.

8. Act of February 16, 1839, 5 STAT. 317.

In 1882,⁹ the Northern District was divided into two divisions known as the Western and Eastern Divisions. The term of court for the Western Division was held at Oxford to which the court had been transferred from Pontotoc in 1886¹⁰ and for the Eastern Division at Aberdeen. Six years after the establishment of divisions in the Northern District,¹¹ the Southern Division was created in the Southern District but the statute did not make provision for another division, and sessions of the court for the Southern District were continued in Jackson. The sessions of the court were held in Mississippi City provided suitable accommodations were furnished without expense to the federal government. The marshal and clerk were to appoint deputies in this city. Some eleven years later, sessions of the court were transferred from Mississippi City to Biloxi.¹² In 1894,¹³ the Eastern Division was created and the seat of the court was Meridian.

The following is a summary of the organization of the court in the state:

Northern District

Eastern Division—Aberdeen

Western Division—Oxford

Both of these divisions created by Act of June 15, 1882, 22 STAT. 103.

A term of court was authorized to be held in Clarksdale by Act of February 24, 1911, 36 STAT. 932.

Delta Division—Clarksburg

Created by Act of May 27, 1912, 37 STAT. 118.

Greenville Division—Greenville

Created by Act of August 7, 1950, 64 STAT. 415.

Southern District

Jackson Division—Jackson

Southern Division—Mississippi City

Both divisions created by Act of April 4, 1888, 25 STAT. 79.

The terms were transferred from Mississippi City to Biloxi by Act of March 2, 1899, 30 Stat. 977.

9. Act of June 15, 1882, 22 STAT. 103.

11. Act of April 4, 1888, 25 STAT. 79.

10. Act of May 16, 1886, 14 STAT. 48.

12. Act of March 2, 1899, 30 STAT. 977.

13. Act of July 18, 1894, 28 STAT. 115.

Western Division—Vicksburg

Created by Act of March 3, 1911, § 90, 36 STAT.
1118.

Eastern Division—Meridian

Created by Act of July 18, 1894, 28 STAT. 115.

Hattiesburg Division—Hattiesburg

Created by Act of May 19, 1936, 49 STAT. 1362.

A single judge presided over both the Northern and Southern Districts until 1929,¹⁴ when a single judge was appointed for each district. No extra judges were appointed for any district in the state until 1961,¹⁵ when a second judge was appointed to the Southern District. An additional judge was authorized in both the Northern and Southern Districts, bringing the total number of judges to two in the Northern District and three in the Southern District.¹⁶

14. Act of March 1, 1929, 45 STAT.
1422.

16. Act of March 18, 1966, 80 STAT.
75.

15. Act of May 19, 1961, 75 STAT.
81.

*

*

*

*

*

*

*

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

1. Act of September 24, 1789, 1
STAT. 73.

3. Act of March 8, 1802, 2 STAT.
132.

2. Act of February 13, 1801, 2
STAT. 89.

4. Act of April 29, 1802, 2 STAT.
156.

the Federal Judiciary that two 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.

5. Act of April 29, 1812, 2 STAT. 719.

8. Act of March 3, 1817, 3 STAT. 392.

6. Act of April 9, 1814, 3 STAT. 120-121.

9. Act of April 3, 1818, 3 STAT. 413.

10. Act of May 29, 1830, 4 STAT. 422.

7. Act of May 27, 1826, 4 STAT. 192.

11. Act of July 4, 1864, sec. 4, 13 STAT. 385.

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 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 author-

12. Act of April 29, 1830, 4 STAT. 422.

14. Act of March 24, 1860, 12 STAT. 2.

13. Act of July 7, 1838, 5 STAT. 295.

15. Act of July 4, 1864, 13 STAT. 385.

ized 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 District has the largest number of judges of all federal districts.¹⁹

16. Act of February 25, 1865, 13 STAT. 438. 18. 1 AMER.L.REV. 744.

17. Act of May 12, 1900, 31 STAT. 175.

19. Laws creating new judicial positions:

Eastern District

			Total
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
----------------------	---------------	----------------------	---

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, 31 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

				Total
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 filled. 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
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 DAKOTA

The Dakota Territory was formed in 1861¹ from the former Nebraska Territory when that state was admitted to the Union. It embraced the area included in the present states of North and South Dakota, Montana and portions of Wyoming. The territorial act made the usual provisions for three District Courts presided over by the District judge appointed by the President of the United States for a four year term. The three judges of the District Court were to meet as a Supreme Court at the seat of the government. The act made provision for the Probate Courts and courts held by the justices of the peace.

Generally, Congress was reluctant to create additional judge-ships in any territory but in 1879,² an additional judge was

1. Act of March 2, 1861, 12 STAT. 239. 2. Act of March 3, 1879, 20 STAT. 473.

authorized. To meet the growing judicial business, Congress in 1884,³ and again in 1888,⁴ authorized additional judges with each act bringing the total in the territory to one chief justice and seven associates. This was the largest number of territorial judges in any one territory in the United States. The territorial legislature divided the states into judicial districts. In the Act of 1888, Congress divided the Fifth and Seventh and the Third and Eighth Districts. Each judge was given the authority to hold at least one term of the United States District Court per year at a time and place he was to designate.

The Territories of Montana and Wyoming were carved in part from the Dakota Territory leaving the latter with the area in the present states of North and South Dakota. In 1889,⁵ the Dakota Territory was authorized to write a constitution. Upon admission, the territory was divided into North and South Dakota and each admitted as a state.

In 1890,⁶ North Dakota was organized as one judicial district and was divided into four divisions known as the Southwest, Southeast, Northeast, and Northwest. The term of the District Court was to be held in Bismarck, Fargo, Grand Forks, and Devil's Lake. In 1906,⁷ the Western Division was created and the terms of court for this new division were held in Minot. In 1932,⁸ a Central Division was created and the terms of court were held in Jamestown. Thus, the state was divided into six divisions. Two years later,⁹ the number of divisions was reduced to four and terms of court were provided for the Southeastern Division at Fargo and Jamestown, thus abolishing the Central Division. Until a new federal building was completed in Fargo, all jury trials normally held in that city would be held in Grand Forks.¹⁰ The Western Division was combined with the Northeastern Division and the terms of court were held at Grand Forks and Devil's Lake. When the Judicial Code of 1948 was enacted, the terms at Jamestown and Devil's Lake were dropped on testimony of the chief judge that terms of court had not been held in those two cities for years.

3. Act of July 4, 1884, 23 STAT. 101.

7. Act of June 29, 1906, 34 STAT. 610.

4. Act of August 9, 1888, 25 STAT. 399.

8. Act of June 29, 1932, 47 STAT. 341.

5. Act of February 22, 1889, 25 STAT. 676.

9. Act of June 19, 1934, 48 STAT. 1120.

6. Act of April 26, 1890, 26 STAT. 68.

10. Act of June 3, 1930, 46 STAT. 495.

HISTORY OF FEDERAL COURTS

257

Cite as 40 F.R.D. 139

In 1954,¹¹ a second judge was authorized for the district bringing the total to two, which is the present number of judges assigned to this district.

11. Act of February 10, 1954, 68
STAT. 9.

*

*

*

*

*

*

*

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 Tues-

day 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.

6. Act of December 16, 1818, 3 STAT. 478.

7. Act of March 3, 1837, 5 STAT. 176.

8. Act of May 26, 1804, 4 STAT. 50.

9. Act of March 3, 1843, 5 STAT. 628.

10. Act of July 28, 1866, 14 STAT. 342.

11. Act of March 12, 1868, 15 STAT. 52; Act of February 21, 1871, 16 STAT. 429.

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.

14. Act of May 13, 1936, 49 STAT. 1271.

15. Act of July 27, 1930, 46 STAT. 820.

16. Act of February 29, 1909; Act of April 1, 1904, 33 STAT. 155.

17. Laws creating New Judicial Positions.

Eastern District

Act of 1789 provided for one judge.

Act of April 1, 1904, 33 STAT. 155 provided for an additional judge

in the district making a total of two judges.

Act of February 16, 1914, 38 STAT. 283 provided for an additional judge but the next vacancy in the district was not to be filled.

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.

Act of March 3, 1927, 49 STAT. 1347. This act added a permanent judge.

Act of June 16, 1936, 49 STAT. 1523. Added an additional judge but the act stipulated that the next vacancy would not be filled.

Act of June 2, 1938, 52 STAT. 780. Made the position under the above

HISTORY OF FEDERAL COURTS

275

Cite as 40 F.R.D. 139

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.

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. 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. One additional position was created making a total of eight permanent judges in the district.

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,

1935, 49 STAT. 659, making a total of

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.

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.

Act of May 19, 1961, 75 STAT. 81 authorized two additional judges and made the temporary judgeship permanent bringing the total to

Middle District

Western District	
	Total
Act creating the District provided for one judge.	1
Act of February 26, 1909, 35 STAT. 656 created an additional judicial post.	2
Act of September 14, 1922, 42 STAT. 837. Vacancy occurring more than two years from date of this act should not be filled unless authorized by Congress. This provision repealed by Act of August 19,	

	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. JUSTICE 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.

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).

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,

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, 1889, sec. 18, 25 STAT. 786. 15. Act of February 9, 1898, 30 STAT. 240.

HISTORY OF FEDERAL COURTS

Cite as 40 F.R.D. 139

291

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 6(a)

Calendar No 68

95TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 95-87AUTHORIZING DISTRICT COURT TO BE HELD AT
CORINTH, MISS.

APRIL 6 (legislative day, FEBRUARY 21), 1977.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 662]

The Committee on the Judiciary, to which was referred the bill (S. 662) to provide for holding terms of the District Court of the United States for the Eastern Division of the Northern District of Mississippi in Corinth, Miss., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize an additional place for holding court in the Eastern Division of the Northern Judicial District of Mississippi.

STATEMENT

This bill is identical to S. 2412 of the 94th Congress, which was reported by the Committee on the Judiciary and passed the Senate as reported on May 11, 1976.

The State of Mississippi is divided into two judicial districts, denominated as the Northern and Southern Districts. The Eastern Division of the Northern District consists of 13 counties in the north-eastern corner of the State of Mississippi and extends in a north-south direction of approximately 140 miles. The principal place of holding court for this division is Aberdeen, Mississippi, which is located approximately 60 miles from the southern boundary of the division. Ackerman, Mississippi, which is also designated as a statutory place of holding court in the Eastern Division, is approximately 91 miles southwest of Aberdeen. However, no trials are held at Ackerman, which

was included in the statute primarily as a location where chambers are provided for a circuit court judge from the State of Mississippi. The designation of Ackerman was required since section 142 of title 28 of the United States Code specifies that the General Services Administration can provide court quarters only at places where regular terms of court are authorized by law to be held.

The City of Corinth, which this bill would add as an additional place for holding court in the Eastern Division of the Northern Judicial District, is located in the extreme northern part of the Eastern District, approximately 85 miles north of Aberdeen. Corinth has a population of approximately 15,000 residents and is a principal commercial center in that part of the State. Litigants and counsel from 5 of the 13 counties can more conveniently attend court located at Corinth than at Aberdeen, which is the sole place of holding court. One of the judges of the court is a resident of Corinth. Since the closest Federal courthouse is at Aberdeen, 85 miles away, the judge must spend 4 hours of travel time for each trip from his residence to the court chambers at Aberdeen. If Corinth is designated as an official place for holding court, the Government Services Administration, pursuant to section 142 of title 28, United States Code, would be authorized to provide chambers for the judge at Corinth. It is not proposed to provide a courtroom at Corinth. The committee is advised that the Federal post office building at Corinth has vacant space on the second floor of the building which at relatively small expense can be remodeled to provide suitable chambers for the judge. These chambers will be used by the judge for study, research and preparation of orders and opinions. The judge will also hear motions and conduct certain pretrial and posttrial proceedings at Corinth in cases where the parties and their counsel are located closer to Corinth than they are to Aberdeen.

It has been the policy of the committee to refrain from creating new courts or from authorizing new places for court to be held, unless such change has been approved by the Judicial Conference of the United States. When this bill was introduced, the committee requested the views of the Judicial Conference of the United States. In addition Corinth, Mississippi, as a place of holding court, has been approved by all judges of the Northern Judicial District and by the Judicial Council of the Fifth Circuit. This bill was approved by the Judicial Conference of the United States at its semiannual meeting on April 7, 1976, as indicated in the following letter.

[Communications]

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS,
Washington, D.C., April 8, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reference to your letter of October 7, 1975, transmitting for comment S. 2412, a bill "To provide for holding terms of the District Court of the United States for the Eastern Division of the Northern District of Mississippi in Corinth, Mississippi."

3

The Judicial Conference of the United States, at its session on April 7, 1976, considered the provisions of S. 2412 and voted its approval of the proposal.

Sincerely,

WILLIAM E. FOLEY, *Deputy Director.*

COST

No authorization for appropriation is contained in this bill. The committee has been advised that, through normal budgetary procedures, the cost of remodeling and equipping a three-room suite of offices in an existing Federal building at Corinth can be accommodated in the funds already appropriated for fiscal year 1977 for the Federal judiciary. The committee estimates that cost at \$90,000.

SECTIONAL ANALYSIS

Section 1 of the bill amends section 104(a) (1) of the title 28, United States Code, by adding "Corinth" as a designated place of holding court in the northern judiciary district of Mississippi.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, 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

Chapter 5—DISTRICT COURTS

* * * * *

Sec. 104. Mississippi.

Mississippi is divided into two judicial districts to be known as the northern and southern districts of Mississippi.

(a) The northern district comprises four divisions.

(1) Eastern division comprises the counties of *Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tishomingo, and Winston.*

Court for the eastern division shall be held at *Aberdeen [and] Ackerman and Corinth.*

RECOMMENDATION

The Committee recommends that the bill do pass.

○

APPENDIX 6(b)

Calendar No. 200

95TH CONGRESS
1st Session

{

SENATE

{

REPORT
No. 95-221

PROVIDING THAT BOTTINEAU, McHENRY, PIERCE, SHERIDAN, AND WELLS COUNTIES, N. DAK., SHALL BE INCLUDED IN THE NORTHWESTERN DIVISION OF THE JUDICIAL DISTRICT OF NORTH DAKOTA

MAY 19 (legislative day, MAY 18), 1977.—Ordered to be printed

Mr. DECONCINI, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 195]

The Committee on the Judiciary, to which was referred the bill (S. 195) to amend title 28, United States Code, to provide that Bottineau, McHenry, Pierce, Sheridan, and Wells Counties, N. Dak., shall be removed from the Northeastern and Southeastern Divisions of the Judicial District of North Dakota, and included in the Northwestern Division of the Judicial District of North Dakota, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF BILL

The bill realines the Southeastern, Northeastern, and Northwestern Divisions of the Judicial District of North Dakota by transferring Bottineau, McHenry, and Pierce Counties from the Northeastern Division to the Northwestern Division and transferring Sheridan and Wells Counties from the Southeastern Division to the Northwestern Division. The restructured divisions will reduce the average distance which litigants, attorneys, and jurors in these counties must travel to the nearest place of holding court by approximately 100 miles.

An identical bill (S. 2887) passed the Senate in the 94th Congress, but the House took no action.

STATEMENT

The State of North Dakota constitutes a single Federal judicial district comprised of four divisions. The divisions approximate quadrants and are accordingly designated as the Northwestern, Northeastern, Southeastern, and Southwestern Divisions.

89-010

Bottineau, McHenry and Pierce Counties lie in the northcentral part of the State of North Dakota. They form the extreme western and northern part of the Northeastern Division of the judicial district in which court is held only in Grand Forks on the far eastern border. The distance from Bottineau, the county seat of Bottineau County, to Grand Forks is 192 miles. The corresponding distance from Towner, county seat of McHenry County, is 165 miles, and from Rugby, county seat of Pierce County, 146 miles.

In the Northwestern Division court is held in Minot, which lies near the eastern border of that division. All of the above mentioned counties are significantly closer to Minot than Grand Forks. Placing Bottineau, McHenry, and Pierce Counties in the Northwestern Division would reduce travel to the Federal courthouse from the county seat of each county by 113, 120, and 82 miles respectively.

Sheridan and Wells Counties lie in the central part of the State. They form the extreme northwestern part of the Southeastern Division. In the Southeastern Division court is held in Fargo on the far eastern border of the division. Consequently, it is necessary to travel 201 miles from McClusky, county seat of Sheridan County, and 173 miles from Fessenden, county seat of Wells County, to the Federal courthouse in Fargo. Alineing Sheridan and Wells Counties with the Northwestern Division would reduce the mileage to the Federal courthouse by 117 miles when traveling from McClusky and 83 miles when traveling from Fessenden.

The interests of the Government, litigants and members of the bar of the counties affected would be served by reduction in travel distance and time. There would also be a saving for the Government in the mileage fee paid to jurors who are called to jury service from these five counties. Lawyers in the counties affected have endorsed this realignment, as have the Federal district judges for the District of North Dakota.

The committee believes that this realignment has a meritorious purpose and recommends its favorable consideration.

COST

No additional cost to the Government is involved.

COMMUNICATIONS

This measure has the support and approval of the Judicial Conference of the United States, as is evidenced by the following letter from the Deputy Director of the Administrative Office of the U.S. Courts:

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., April 8, 1976.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reference to your letter on February 20, 1976, transmitting for study and report S. 2887, a bill to amend title 28, United States Code, to provide that Bottineau,

McHenry, Pierce, Sheridan, and Wells Counties, N. Dak., shall be included in the Northwestern Division of the Judicial District of North Dakota.

The Judicial Conference of the United States, at its session on April 7, 1986, considered the provisions of S. 2887 and voted its approval of the proposal.

Sincerely,

WILLIAM E. FOLEY, *Deputy Director.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law is shown in roman, matter repealed is enclosed in black brackets, and new matter is printed in italic) :

TITLE 28, UNITED STATES CODE

CHAPTER 5. DISTRICT COURTS

* * * * *

Sec. 114. North Dakota

North Dakota constitutes one judicial district comprising four divisions.

* * * * *

(2) The Southeastern Division comprises the counties of Barnes, Cass, Dickey, Eddy, Foster, Griggs, La Moure, Ransom, Richland, Sargent, [Sheridan,] Steele, *and Stutsman*, and Wells].

Court for the Southeastern Division shall be held at Fargo.

(3) The Northeastern Division comprises the counties of Benson, [Bottineau,] Cavalier, Grand Forks, [McHenry,] Nelson, Pembina, [Pierce,] Ramsey, Rolette, Towner, Traill, and Walsh.

Court for the Northeastern Division shall be held at Grand Forks.

(4) The Northwestern Division comprises the counties of *Bottineau*, Burke, Divide, *McHenry*, McKenzie, Mountrail, *Pierce*, Renville, *Sheridan*, Ward, *Wells*, and Williams.

Court for the Northwestern Division shall be held at Minot.

○

APPENDIX 7

REPORT
of the
COMMITTEE TO
STUDY FEDERAL
JUDICIAL DISTRICTS
IN ILLINOIS

Submitted by:
John R. Mackay, Chairman

Compliments of The Scheffer Press, Inc.,
118 S. Clinton Street
Chicago, Illinois 60606
312-263-6850

JOHN R. MACKAY

Attorney at Law

422 West Wesley Street • Wheaton, Illinois 60187

Phone: (312) 690-9800

April 8, 1976

Honorable Charles H. Percy
1200 Dirksen Office Building
Washington, D.C. 20510

Dear Senator Percy:

Reports of the Committee to Study
Federal Judicial Districts in Illinois

The reports which accompany this letter are the results of almost untold hours of individual and collective efforts of the members of the Committee to understand and recommend solutions to a problem that has beset the people of this State for many years.

The work of the Committee was unfunded until the Illinois State Bar Association graciously agreed to reimburse the members for their travel and housing expenses, as well as make its capable staff and facilities available to the Committee. While we are somewhat reluctant to single out any individuals for their contributions, we feel obliged to recognize the outstanding contributions made by Howard H. Braverman, Associate Executive Director and General Counsel of the Illinois State Bar Association; Wiley W. Edmondson, Special Counsel to the Committee; Richard M. Guerard, Special Counsel to the Committee; and Robert E. Craighead of the Illinois State Bar Association, whose administrative skills facilitated the efforts of the Committee.

While we recognize that there could very well be a variety of solutions to the problem, we believe that the proposed solutions effect your announced purpose of improving and advancing the administration of justice in the State of Illinois with a minimum of dislocation and expense to those involved in and concerned with our system of jurisprudence.

Very truly yours,

/s/

John R. Mackay

JRM/mjn

Encl.

REPORT
of the
COMMITTEE TO
STUDY FEDERAL
JUDICIAL DISTRICTS
IN ILLINOIS

Submitted by:
John R. Mackay, Chairman

INTRODUCTION

The Committee to Study Federal Judicial Districts in Illinois was organized at the request of Senator Charles H. Percy and shortly afterward received the endorsement and active support of the Illinois State Bar Association. Its purpose was to determine whether federal judicial district boundaries should be changed and related substantive changes made in order that the federal court system might better serve the people of Illinois.

John R. Mackay, then President of the Illinois State Bar Association, was appointed committee chairman by Senator Percy. Mr. Mackay performed much of the preliminary work necessary for organizing the committee and also conducted a survey and preliminary study of the problems of the federal district courts in Illinois. Members of the bar who were recommended by their peers and community leaders representing each federal judicial district in the State were then selected to serve

on the committee. Aside from geographical considerations, the selection criteria for committee members were:

- (1) Professional attainments
- (2) Past service to the profession and the community
- (3) Experience as federal practitioners and
- (4) Familiarity with the federal court system

The eventual composition of the committee was as follows: John R. Mackay, Chairman, Wheaton; Arthur T. Lennon, Vice-Chairman, Joliet; William F. Costigan, Bloomington; John M. Ferguson, Belleville; Sandor Korein, East St. Louis; Robert S. Hill, Benton; Durward J. Long, East Moline; Robert D. McKnelly, Kankakee; Bradner C. Riggs, Rockford; Raymond L. Terrell, Springfield; Robert L. Tucker, Chicago; Elmer Michael Walsh, Jr., Chicago; and Kevin M. Forde, Chicago.

Initially, the committee determined that the best way to obtain the information necessary to make its recommendations would be to conduct hearings in key areas across the state. Hearings were subsequently held in Rockford, East St. Louis, Chicago, Peoria, and Champaign-Urbana.¹ Prior to each hearing, notice was sent to the local media and bar associations, federal judges, clerks of court, federal agencies and offices, chambers of commerce and community organizations.²

¹ A list of the witnesses who appeared before the committee is appended hereto as Appendix 1.

A list of Exhibits which the committee received into evidence at its hearings is appended hereto as Appendix 2.

² A list of the persons and organizations to whom notice was sent prior to each hearing, and copies of the notices appear in the exhibit volume as Exhibit 1.

CRITERIA APPLIED BY THE COMMITTEE IN REACHING ITS RECOMMENDATIONS AND CONCLUSIONS

Before the organization of the Committee, research was done by John R. Mackay, law student volunteers and others to determine what criteria should be applied in evaluating any proposed change in the structure of the federal courts. In particular they studied the legislative history of prior congressional proposals for changing district or division boundaries, for creating new districts or divisions and for authorizing courts to sit in new locations.³

The criteria eventually used by the committee to determine the need for any changes were as follows:

- (1) Convenience of districts, divisions and court locations
- (2) Compactness and contiguity of districts and divisions
- (3) Geographic and economic origin of cases, also, subject matter of cases
- (4) Location of population centers
- (5) Availability of transportation, including major highways, airline routes and public transportation
- (6) Availability of suitable facilities for court operations at any site contemplated as a court location
- (7) Whether boundaries should follow natural or arbitrary lines
- (8) The effect of any proposed change on the work flow of the courts involved in the change

³ See Exhibit 2, Report, "Methods for Changing District Court Structure: A Survey".

— 4 —

- (9) The opinions of those district court judges who would be directly affected by any change
- (10) The problems of the Offices of U. S. Attorney, Marshal and Probation Officer
- (11) The effect of any increase in case filings which might be anticipated in a given area
- (12) Whether changes in the district court structure would lead to more filings from a given area, so as to justify increased judicial services

The last of these criteria presented the committee with what was, in many respects, one of its most difficult problems. The standard measure used in determining the need for judicial services has been the number of filings in a district and the weighted caseload of the judges. However, witnesses from areas where federal court services were contended to be inadequate, argued against this maintaining that the number of filings and the weighted caseload generated in their areas were not an adequate measure of their need for court services. They said that many lawsuits are not filed at all or, where concurrent jurisdiction was present, are filed in a state court. These cases would have been filed in a federal court if federal courts were more available.

A contrary view was presented in the testimony of the Clerk of the District Court for the Northern District, who stated that, first, judicial services should be where litigation exists and not where later promised and, second, if the cost and inconvenience of travel for counsel and parties outweigh the benefits to be derived from the litigation, then the benefits of the litigation must be modest.

In the end, the committee determined that it would place major emphasis on population and other factors

indicative of a given area's need and potential need for court services, and would place much less emphasis on court statistics relative to case filing and weighted caseloads. It recognized that it could not ignore such statistics since, consideration of any bill which proposed changes would include a review of weighted caseloads and other standards applied in the past by the Judicial Conference of the United States and by Congress. The cost, inconvenience and lack of service experienced by litigants in certain areas of the state and those who must pay lawyers to travel many miles in order to appear for motions, pre-trial conferences and trials were hardly "modest."

As a result problems involving equal protection of the law may exist when federal courts are not reasonably accessible. From the standpoint of service to the public, the committee decided that it is of vital importance to provide as much accessibility to the federal court system as possible. Therefore the members put first emphasis on formulating recommendations which would improve court services to the public, and less emphasis on conforming to statistical criteria.

This report thus represents the conclusions reached by the committee after applying the recited criteria to the evidence regarding proposed changes in federal court organizations and structure.

STATISTICAL AND GEOGRAPHIC DATA CONCERNING THE NOW EXISTING FEDERAL JUDICIAL DISTRICTS OF ILLINOIS

The Northern District presently comprises a total of eighteen (18) counties having a 1970 population of 7,720-

362. It is divided into the Eastern Division (10 counties), with a population of 7,214,705, and the Western Division (8 counties) with a population of 505,657.

The Southern District is comprised of thirty-nine (39) counties having a total population of 1,931,736 and consists of the Northern Division (16 counties) with a population of 853,812, and the Southern Division (23 counties) with a population of 1,077,924.

The Eastern District, which is actually the southernmost District, is comprised of forty-five (45) counties having a population of 1,471,796.⁴

The Northern District is authorized to have thirteen (13) District Judges and the Southern and Eastern Districts each are authorized to have two (2) Judges.

The Management Statistics for 1975, reported by the Director of the Administrative Office of the United States Courts, reflect the following:

		Rankings	
		Seventh Circuit	U.S.
NORTHERN DISTRICT			
Filings per judgeship	375	5	53
Weighted filings per judgeship	449	2	31
Trials completed per judgeship	26	6	87
SOUTHERN DISTRICT			
Filings per judgeship	299	7	76
Weighted filings per judgeship	292	7	76
Trials completed per judgeship	32	5	78

⁴ See Exhibit 3, Transcript of the East St. Louis Hearing of the Committee to Study Federal Judicial Districts in Illinois, December 12, 1975.

— 7 —

EASTERN DISTRICT

Filings per judgeship	411	2	41
Weighted filings per judgeship	371	6	57
Trials completed per judgeship	61	1	28

The national average ratio of district judges to population throughout the United States is one judge for each 511,928 persons. The average ratio for the ten most populous states is one judge for each 551,846.

Illinois with its population of 11,109,460 has an authorized seventeen district judges, a ratio of one district judge for 653,763 people. The existing ratios in each District of judges to population are:

	POPULATION	RATIO
Northern District	7,720,362	1: 593,874
Eastern District	1,471,796	1: 735,898
Southern District	1,931,736	1: 965,868

Considering the State of Illinois as a whole, it was a ratio of one (1) U.S. District Judge to 653,763 persons.

In order to correspond with the national average ratio, Illinois would require 21.71 U.S. District Judges or an additional 4.71 judges. In order to conform with the average ratio of the ten most populous states, Illinois would require 20.13 U.S. district judges or an additional 3.13.

FINDINGS OF THE COMMITTEE REGARDING FEDERAL JUDICIAL DISTRICTS AND DIVISIONS AS NOW CONSTITUTED

After a careful and complete study of the available evidence, the committee has arrived at the following

findings concerning federal judicial districts and divisions in this state:

1. *The Area Now Encompassed By The Western Division Of The Northern District Of Illinois Is Not Adequately Served.*

The committee finds that the Western Division of the Northern District does not receive adequate service from the federal courts. Extensive evidence demonstrated that the present structure of the Northern District has caused unnecessary expense and delay in civil litigation; has led to failure to criminally prosecute some persons who may have violated federal statutes, and has caused many cases to be filed in a state court which the plaintiff, but for the cost and inconvenience, would have filed in a federal court.⁵

The fact that there are serious problems concerning federal court services in the Western Division was conceded by every witness who addressed himself to the subject, including the two judges of the Northern District who testified. Indeed there is a great deal of sentiment in favor of making the division into a separate district.⁶

⁵ See Exhibit 4, Transcript of the Rockford Hearing of the Committee to Study Federal Judicial Districts in Illinois, November 21, 1975.

⁶ See e.g., Exhibit 5, Editorial, "Federal Court Services", Channel 13 TV Rockford, November 28, 1975; Exhibit 6, Written Recommendations Submitted to the Committee to Study Federal Judicial Districts in Illinois by Mr. Manus on behalf of the Stephenson County Bar Association, November 21, 1975; Exhibit 7, Transcript of the Rockford Hearing at pages 16, 43, 44, 45, 46, 49, 50, 63, 64. See also, Exhibit 8, Letter from the Winnebago County Bar Association, approving an early draft of the Committee's Report, as it pertained to Rockford.

There can be no question regarding either the fact or the scope of the difficulties experienced by residents of the Western Division who use the federal courts. An alternative means of alleviating the problems was proposed by one of the judges who suggested that one of the next judges to be appointed, should be a resident of the Western Division. That judge would however, preside in Chicago subject to assignment by the chief judge. He at most, would merely make periodic trips to preside in the Western Division. The committee finds that the problems of the Western Division area are too serious to be corrected by this measure.

Its conclusion was that the problems in the Western Division can only be solved through the creation of a new judicial district. (1)

2. *The Eastern District As Presently Constituted Impedes The Administration Of Justice.*

All witnesses who testified concerning the composition of the Eastern District expressed extreme dissatisfaction with that district's present boundaries and organization.⁷ The committee agreed unanimously that the present structure of the Eastern District which has existed since 1905, is illogical, gerrymandered and inconsistent with any sound system of making federal court services available, in a practical manner, to persons in all parts of the state.

The committee finds that the present composition of the Eastern District lacks "compactness and contiguity." The district covers all of the eastern portion of the state, from Kankakee on the outskirts of Chicago through the

⁷ See Exhibit 3.

Champaign-Urbana area, and then swings southwest to include East St. Louis and the southern extremity of the state. The distance from the tip of this hook-shaped district in Kankakee County to its southernmost point at Cairo is approximately 334 miles. Thus, the district cuts across the normal lines of commerce and intercourse between communities, which run generally in an east-west direction in Illinois. It includes, for instance, such diverse areas as Cairo and Kankakee, which have little or no community of interest, yet incongruously divides the St. Louis Metropolitan area by including St. Clair County but excluding Madison County which is in the Southern District.

This awkward and unrealistic arrangement has created serious and unnecessary problems for attorneys and parties who desire to make use of the federal court in the Eastern district. For one thing, it has led to absurd situations in which attorneys, clients, and witnesses must drive hundreds of miles in order to attend court. As an example, attorneys in the Carbondale area (which generates a disproportionately large number of federal cases, due to the presence of Southern Illinois University), are frequently required to drive all the way to Danville,* i.e., a distance of approximately 233 miles.

It is not surprising therefore that the sentiment in the Eastern District is overwhelmingly in favor of changing the present composition of the district.⁹

* See Exhibit 9, letter from attorney Brocton D. Lockwood to Congressman Paul Simon, March 3, 1975.

⁹ E.g., Exhibit 10, letters from attorneys and Bar Associations to the committee and Congressman, all dated 1975.

3. *The Names Of The Eastern And Southern Districts Are Misleading And Geographically Inaccurate.*

The reasons for this finding by the committee are obvious to anyone who glances at a map of the districts. The present Southern District is in the center, and not the southern portion, of the state. The present Eastern District lies east and south of the present Southern District.¹⁰

4. *The Residents Of The Chicago Metropolitan Area Have In General Ready Access To The Federal Court Presiding In Chicago.*

The committee finds that, generally speaking residents of Cook and surrounding counties have relatively easy access to the Federal Court in Chicago because of the excellent highway and mass transportation systems in the metropolitan area. Witnesses who testified before the committee expressed a desire that a federal court sit in Joliet, and it does appear that persons in Will, Kendall, Grundy and LaSalle Counties do, on occasion experience some inconvenience and difficulty in attending court.

5. *It Is Neither Practical Nor Desireable To Organize The Federal Courts In Illinois Into A Single Federal Judicial District.*

In recent years, there has been some sentiment notably in the United States Department of Justice in favor of consolidating the federal courts in each state into a single district.

¹⁰ See Exhibits 3 supra and 11, letter from U.S. Attorney Henry A. Schwarz to committee, dated December 10, 1975.

Such an action would have few advantages, and the committee finds that it would not constitute a workable solution to the problems of persons using the federal courts in this state.¹¹ Illinois is simply too large, diverse and populous a state to be restricted to one district. Further, such centralization would require a reduction in the number of chief judges, clerks, U.S. Attorneys and Marshals and this process alone would create insuperable administrative and technical difficulties. Actually the problems of the present three-district arrangement such as citizen access and law enforcement are largely due to overcentralization.

6. *It Is Highly Undesirable For Any Federal Judicial District To Have Less Than Two Judges.*

The committee finds that serious problems are created whenever any federal judicial district is served by less than two full-time judges. In a single district, it becomes necessary to procure a judge from another district when-

¹¹ The committee feels that a high degree of centralization in federal court structure is not in the best interest of the people of Illinois. Where litigation in the federal courts centers in a few communities, there is a tendency toward the development of a smaller number of specialist lawyers close to the court and lawyers not resident to the seat of the court are at a great disadvantage.

Further, law enforcement and prosecution of federal crimes tends to center on crimes arising close to the seat of the district attorney. In particular, smaller crimes or distant crimes are deferred to local prosecution where they are at a distance from the center or seat of the district attorney. The district attorney tends to lose out-living local contacts and prosecution becomes more difficult. This may be true as well of the enforcement and investigatory agencies where they office primarily close to the seat of the district attorney.

ever the regular judge is on vacation, becomes incapacitated or is engaged in a prolonged trial.

A one judge district prevents flexibility of assignment when a judge has an announced judicial position, precludes continuity of judicial handling on termination or interruption of service, restricts the judges' opportunity to consult with one another, and renders changes of judges for prejudice more difficult.

7. *Any New Court Facilities Authorized And Constructed Should Include Dual Courtroom Facilities.*

The increased work load of the federal court system could be handled with far greater efficiency if the principal seat of court in each district had at least two jury courtrooms. Two judges operating the separate adjoining courtrooms would thus be able to substantially increase jury utilization by selection of separate juries on simultaneous trials.

In addition, on many occasions one courtroom may be tied up with a prolonged trial. Lack of another courtroom means that the rest of the court's business will come to a standstill, even though another judge might be available, by special assignment or otherwise. Dual courtrooms would also permit much greater flexibility in special assignments of visiting judges to courts engulfed in undesirable backlogs of cases.

In Illinois, there are three locations where new facilities are contemplated. One is in St. Clair County where construction of a new federal court building has been authorized which should include dual jury courtrooms. The other locations are at Joliet and Rockford, where new federal buildings are also planned.

The following recommendations and proposals of the committee, deal with the Joliet and Rockford areas in regard to redistricting. It is recommended that strong consideration also be given to the dual courtroom concept in those locations.

RECOMMENDATIONS FOR THE REORGANIZATION OF THE FEDERAL DISTRICTS IN ILLINOIS

In view of these findings the committee makes the following recommendations:

1. *The Boundaries Of The Eastern And Southern Districts Should Be Altered So That Their Boundary Lines Run Easterly And Westerly Rather than Northerly And Southerly*

A reorganization along these lines will result in the federal district courts being geographically far more convenient for parties, attorneys and other persons who must attend court. In addition, it would correct the present problem of district boundaries cutting across the natural east-west flow of commerce and other intercourse between the various areas of the state. Thus the recommended districts would embrace areas with substantially greater identity and community of interest than is now the case.

This general recommendation will be embraced by the more specific recommendations which follow.

2. *Madison and St. Clair counties, as elements of the Illinois portion of the St. Louis metropolitan area, should be part of the same judicial district.*

It is very desirable that areas which are essentially a part of a single metropolitan community, facing the

same general problems and having the same concerns and interests, should be a part of the same federal judicial district. Such a case is clearly presented by Madison and St. Clair counties, which are contiguous and constitute a part of the East St. Louis Metropolitan area. It follows that these counties should be a part of the same district, instead of having Madison County in the Southern District and St. Clair County in the Eastern District.

It is suggested that in considering the following four proposals reference be made to the map attached as Appendix 3.

3. *A Southern District of Illinois should be formed to consist of the counties of Clark, Cumberland, Crawford, Jasper, Effingham, Fayette, Bond, Madison, Jersey, Calhoun, St. Clair, Clinton, Marion, Clay, Richland, Lawrence, Wabash, Edwards, Wayne, Jefferson, Washington, Monroe, Randolph, Perry, Franklin, Hamilton, White, Gallatin, Saline, Williamson, Jackson, Union, Johnson, Pope, Hardin, Alexander, Pulaski and Massac with court to sit at Benton, Alton and St. Clair County.*

This proposed "Southern District of Illinois" allows a more natural division of the central and southern areas than does the present organization. Historically, commerce has flowed from east to west in Illinois; the present district lines disrupt the natural pattern and flow of commerce, resulting in areas with no community of interest, such as Cairo and Kankakee, being included within the same district. This reorganization would correct this problem and would solve another problem by putting Madison County in the same district as St. Clair County.

A new federal court building has been authorized for construction in St. Clair County. The evidence presented was that the site of this new building has not been finally determined. Although at present there is a federal courtroom in the Post Office Building in downtown East St. Louis, all of the witnesses from the Eastern District who have appeared before the committee of Illinois were unanimous in their testimony that the new court facilities for St. Clair County should be located in the center or eastern half of St. Clair County.

The committee found that considerable problems exist regarding the present court facilities located in downtown East St. Louis where there are no motels or hotels or restaurants for use by jurors, employees, attorneys and witnesses who attend the court. That location therefore has serious drawbacks as a location for a new federal court facility. Members of the St. Clair County Bar Association who testified were unanimous in requesting that the new court facilities be located other than in downtown East St. Louis. If the new building was located in the Edgmont area of East St. Louis (the eastern edge) or near Belleville or Fairview Heights, Illinois, it would be much more accessible by highways, and would offer not only better and safer parking facilities, but adequate motels and restaurants for jurors, witnesses, court personnel and attorneys.¹²

It is therefore proposed that the court in the new Southern District should sit at Benton and Alton, where present facilities already exist, and in the center or eastern half of St. Clair County, rather than in downtown East St. Louis.

¹² See Exhibit 3.

It is further recommended, that the new court building in St. Clair County include dual jury courtrooms.

It should be noted that the new Southern District of Illinois would serve a population of 1,213,234. True, this population would be the smallest of the state's four districts. The committee feels however, that the four major penal institutions, Southern Illinois University at both Carbondale and Edwardsville, and the sizable coal mining industry generate more than enough cases to balance it with the other districts. With two judges, the Southern District would have a ratio of one judge per population of 606,617.

4. *A Central District of Illinois should be formed consisting of the counties of Henderson, Warren, Knox, Stark, Marshall, Livingston, Ford, Iroquois, Vermilion, Champaign, McLean, Tazewell, Peoria, Fulton, McDonough, Hancock, Adams, Schuyler, Mason, Logan, DeWitt, Piatt, Douglas, Edgar, Coles, Moultrie, Decatur, Christian, Sangamon, Menard, Shelby, Montgomery, Macoupin, Greene, Morgan, Cass, Brown, Scott and Pike with court to sit at Danville, Peoria and Springfield.*

This proposed "Central District of Illinois" would not only be compact, but would avoid slashing across the natural east-west flow of commerce and intercourse, correcting one of the greatest problems with the present district lines. It is felt that service to the Champaign-Urbana and Danville areas would be improved, since it would never again be necessary for attorneys, parties and others from these areas to travel to East St. Louis, as now occurs on some occasions. No new court facilities would be required to serve the new Central District of

Illinois in as much as there are adequate facilities which are at Danville, Peoria, and Springfield.¹³ The Central District would have a population of 1,801,650 persons and, with two judges, a ratio of one judge to 900,825 people.

5. *The counties of Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Carroll, Ogle, DeKalb, Whiteside, Lee, Kendall, Will, Kankakee, Grundy, LaSalle, Putnam, Bureau, Henry, Rock Island and Mercer should be organized as the Northern District of Illinois, with the court sitting at Rockford, Joliet, and Rock Island.*

This new district would incorporate the present Western Division of the Northern District of Illinois, with portions of other former districts and divisions to warrant sufficient caseload for two full-time judges. The Northern District would have a population of 1,480,725 persons and, a ratio of one judge to 740,362 people.

With respect to places for holding court in the new Northern District, court facilities now exist at Rock Island and are under construction in Rockford. A new federal building for Joliet, which has been approved

¹³ The committee notes, however, that strong arguments were made in favor of moving the court from Danville to Urbana. In particular, the presence of the University of Illinois with its superb library and hundreds of law students who could greatly profit from work and observation in the federal court are facts which greatly favor these arguments. See Exhibit 12, Statement of Hiram Paley, Mayor of Urbana, February 6, 1976. The committee notes, however, that the existing court facility in Danville has recently been renovated and doubt that the expense of a new facility would be justified.

and is in the planning stage should include courtroom and support facilities. Again, it is recommended that the dual courtroom concept be considered for these new facilities.

It is believed that the creation of such a new district would greatly improve services to the area which now forms the Western Division of the Northern District.¹⁴ There would be no loss of convenience to the other portions of the state which are incorporated into the new district; in fact, by providing for a seat of court, within the new district at Joliet, the counties of Kendall, Grundy, Will and Kankakee should actually receive better judicial services. By the same token, this would relieve the Chicago court of the burden of caseload originating in such counties, including the many cases arising from the penitentiaries in Will County.

6. *The counties of Cook, DuPage, Kane and Lake should be constituted as the "Chicago Metropolitan District of Illinois", with the court sitting in Chicago.*

All of the communities within these counties have a substantial identity of interest, and have ready access to the federal court in Chicago. The Chicago Metropolitan District of Illinois would have 13 judges and a population of 6,613,851 persons. The ratio of judges to population would be one to 508,758 people, the ratio in the present Northern District of Illinois is one to 593,874. This new district would thus be a compact and efficient judicial administrative unit.

¹⁴ See e.g., Exhibits 4, 6, and 8.

CONCLUSION

The committee feels that there is nothing impractical about creating another federal judicial district in Illinois. The expense required for the new offices will be very moderate especially when compared to the benefits which would be gained in the area now contained within the Western Division of the Northern District, and in view of the importance of our federal courts as one-third of our federal government.

The committee realizes that its reorganization plan would lead to some administrative problems regarding records, etc., which might persist for a number of years. However, since such problems would accompany any changes in the district court structure, the committee further feels that the permanent advantages of this plan far outweigh these short-range disadvantages.

The committee assumes that, under its plan, the Chief Judge, the U.S. Attorney and the U.S. Marshal in the present Northern District would continue to, hold their respective offices in the new Chicago District. In the same way the Chief Judge, U.S. Attorney and Marshal in the present Southern District will continue holding their offices in the new Central District.

It is recognized that Chief Judge Henry Wise of the present Eastern District resides and holds most of his court in Danyille, which would, under the proposed new districts, fall within the new Central District. The committee is aware of this situation but believes it would be corrected in the normal course of attrition. In the meantime Judge Wise or one of the senior judges could be specially assigned to the new Southern District.

— 21 —

The present United States Attorney for the Eastern District resides in St. Clair County and maintains his principal office in East St. Louis. Although, the U.S. Clerk, resides in Danville, his principal office is in East St. Louis, as is the probation office.

As recommended herein, the proposed new districts would reflect the following:

	Population	Number of Judges	Ratio of Judges to Population
Chicago District	6,613,851	13	1:508,758
Northern District	1,480,725	2	1:740,362
Central District	1,801,650	2	1:900,825
Southern District	1,213,234	2	1:606,617

At first the foregoing recommendations and proposals may appear drastic, but considering that the present districts have existed since before 1905 and that we are dealing with the judicial branch of the federal government, which represents one-third of our form of government, these proposals, are indeed, modest.¹⁵

¹⁵ See Exhibit 13, "Statisticians Report to the Committee to Study Federal Judicial Districts in Illinois, prepared by Donald L. Goff, a professional research consultant. This report indicates not only that the committee's plan is practical, but that the basic premise behind the plan—the concept that the need for federal court services follows from the population of a given area, rather than from "court statistics", is sound; as Mr. Goff noted:

"... within five per cent, the load of cases follows the overall pattern of population. Hence any redistricting plan which logically allows for population patterns, including the transportation and geographical compactness tests established by the committee, should also prove flexible in meeting the long-term demands of the population and of court loads." See Exhibit 13, p. 7.

The committee further points out that the foregoing recommendations and proposals are directed toward minimum present standards, made necessary because of past inattention to the judicial needs of the state. While we have given attention to population and commercial trends in redrawing district lines, it is obvious that even if our recommendations are put into effect immediately, Illinois will still find itself behind the national average in the ratio of authorized district judgeships to population.

This majority report is submitted by Arthur T. Lennon, Vice Chairman, William F. Costigan, John M. Ferguson, Robert S. Hill, Durward J. Long, Robert D. McKnelly, Bradner C. Riggs, Raymond L. Terrell, and Robert L. Tucker.

APPENDIX 1: WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Rockford

- 1 Judge Robert French — Associate Circuit Judge of Illinois 17th
- 2 Louis Nack — President Jo Daviess County Bar
- 3 Sebastian DeFilippis — Executive Director, City-County Planning Commission, Rockford — Winnebago
- 4 Albert H. Manus — Chairman, Stephenson County Bar Federal Court Committee
- 5 Leroy Mitchell — Rockford attorney
- 6 Frances Hickey — Rockford attorney
- 7 Don Mateer — Rockford attorney
- 8 James Canfield — Rockford attorney
- 9 Dale Conde — President, Winnebago County Bar
- 10 John McNamara — Rockford attorney
- 11 Judge Richard DeGunther — Bankruptcy Judge, Northern District of Illinois Federal Court
- 12 Frank Maggio — Chairman, Winnebago County Bar Federal Courts Committee
- 13 Arthur Swanson — Rockford attorney

East St. Louis

- 14 Judge Omer Poos — Senior Judge, Southern District of Illinois Federal Courts
- 15 Judge James L. Forman — Judge, Eastern District of Illinois Federal Courts
- 16 Burton Bernard — Madison County attorney
- 17 Judge James Trabue — Bankruptcy Judge, Eastern District of Illinois Federal Courts
- 18 Vernon A. Heitman — Chief Probation Officer, Eastern District of Illinois Federal Courts
- 19 Harold Baker — Belleville attorney
- 20 Harold I. Elbert — St. Louis attorney
- 21 Howard Wilson — U.S. Marshal, Eastern District of Illinois Federal Courts
- 22 Thomas Mefford — Bailiff to Senior Judge Juergens
- 23 Kenneth Meyers — U. S. Magistrate, Eastern District of Ill.
- 24 Dewey Hawkins — Chief Deputy U. S. Clerk, Eastern District of Illinois Federal Courts
- 25 Sandor Korein — Representative St. Clair County Bar

Chicago

- 26 Judge J. Sam Perry — Senior Judge, Northern District of Illinois Federal Courts
- 27 H. Stuart Cunningham — Clerk of Court, Northern District of Illinois Federal Courts
- 28 Samuel Saxon — Representative Will County Bar
- 29 Morris Berlinsky — Former Mayor of Joliet
- 30 Wellington Smith — Former President, Will County Bar
- 31 Lawrence Morrissey — Chicago attorney
- ✓ 32 Judge James Parsons — Chief Judge, Northern District of Illinois Federal Courts

Peoria

- 33 Judge Max Lipkin — Bankruptcy Judge, Northern Division of Southern District of Illinois Federal Courts
- 34 Donald Mackay — U. S. Attorney, Southern Division of Southern District of Illinois Federal Courts
- 25 Stuart Lefstein — Representative, Rock Island County Bar
- 36 Judge Robert Morgan — Judge, Northern Division of Southern District of Illinois Federal Courts

Urbana

- 37 Bill J. Evans, President, Champaign County Bar
- 38 Robert Turnbow — Rantoul attorney
- 39 William Bland — Champaign Mayor
- 40 Hiram Paley (Don Goff) — Urbana Mayor
- 41 Wesley Schwengel — Chairman, Champaign County Board
- 42 Helen Satterthwaite — State Representative, 52nd District
- 43 Clyde Meechum — Representative, Vermilion County Bar
- 44 Judge Larry Lessen — Bankruptcy Judge, Eastern District of Illinois Federal Courts

— 3a —

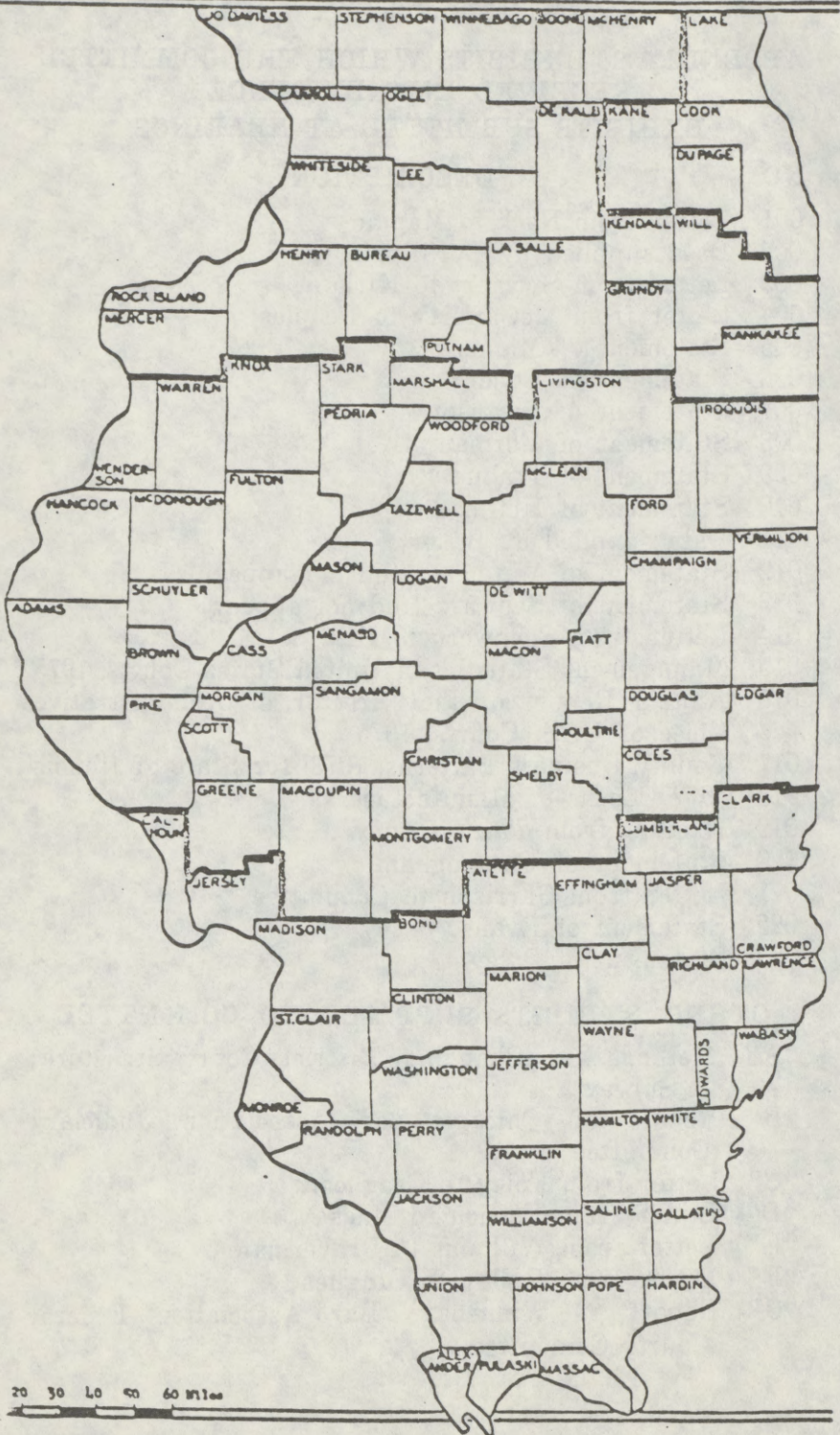
APPENDIX 2: EXHIBITS WHICH THE COMMITTEE
RECEIVED INTO EVIDENCE
EXHIBITS SUBMITTED AT HEARINGS

NO.	DESCRIPTION
001	Letter from Nack to Maggio
002	Data supplied by DeFilippis
003	Letter from Swygert to Kirks
004	Letter from McCafferty to Peoples
005	Statement of Manus
006	Statement of Conde
007	Statement of Swanson
008	Statement of Forman
009	Statement of Trabue
010	Statement of Heitman
011	Data supplied by Baker
012	Statement of Wiseman (did not appear)
013	Statement of Schwarz (did not appear)
014	Letter from Schuwerk to Hill
015	Management Statistics of United States Courts, 1975
016	Annual Report of the Director of Administrative Office of U. S. Courts, 1975
017	County Business Patterns, 1973, for State of Illinois
018	1972 Census of Manufacturers
019	Excerpt from <i>Third Branch</i>
020	Statement of Cunningham
021	Letter from Garrison to Committee
022	Statement of Evans
023	Statement of Paley

OTHER EXHIBITS SUPPLIED TO COMMITTEE

- "A" Methods for Changing District Court Structure:
A Survey
- "B" Report of Chicago Bar Association Judiciary
Committee
- "C" Letter from Foley to Craghead
- "D" Letter from Feirich to Mackay
- "E" Letter from Williams to Braverman
- "F" Letter from Gulley to Craghead
- "G" Report of Winnebago Bar Association Federal
Courts Committee

APPENDIX 3



— ml —

MINORITY REPORT

This minority report is submitted by Chairman John R. Mackay, Kevin M. Forde, Sandor Korein and Elmer Michael Walsh, Jr.

For the reasons set forth in this minority report, we agree with many of the findings and recommendations contained in the majority report, particularly with respect to the formation of Southern and Central Districts to replace the present Southern and Eastern. We disagree, however, with the majority's proposal to change the present boundaries of the Northern District and to create a new district.

THE PROPOSED CENTRAL & SOUTHERN DISTRICTS

The majority report contains an excellent proposal for the formation of Southern and Central Districts. We join in that proposal, except that we believe that the Counties of Kankakee, Putnam, Bureau, Henry, Rock Island, and Mercer should be included in the proposed Central District and thus retain the Northern District in its present form.

The new Southern and Central Districts will thus include the same counties which make up the present Southern and Eastern, and there is adequate judicial manpower to handle the existing caseload of these counties.¹

¹ During the year ending 30 June, 1975, combined Southern and Eastern Districts had average filings per authorized judgeship of 355 unweighted and 332 weighted cases, compared with the national averages of 402 unweighted and 400 weighted cases. Taking the Southern and Eastern Districts together, the average filings per year, per authorized judgeship, have been lower than the national average of both weighted and unweighted cases in each of the seven years of the 1969-1975 period.

— m2 —

The only problem relating to these counties is a geographical one, which, as demonstrated by the majority, can be resolved by forming districts following an eastern and western pattern in place of the present crazy-quilt pattern. This proposal will greatly improve the administration of justice without increasing expenses to the taxpayer.

The majority's proposal to include the Counties of Kankakee, Putnam, Bureau, Henry, Rock Island and Mercer in the proposed new fourth district is offered only to increase the potential filings within this new district and thereby support the predetermined conclusion that a fourth district is necessary.

THE NEW FOURTH DISTRICT

The new fourth district has been proposed to resolve what the majority report describes as the failure of the present arrangement to provide adequate judicial service to citizens in the Western Division of the Northern District now centered in Rockford. The claim made by the majority report is that the present Western Division does not receive adequate judicial service is based on three particular points:

- (1) It is unduly expensive or inconvenient for Western Division citizens to litigate in federal courts located in Chicago;
- (2) Presumably because of a similar inconvenience, the Government fails to prosecute persons alleged to have committed federal crimes in this area; and
- (3) Many cases filed in state courts would have been filed in the federal court were such a forum available.

— m3 —

In response to these criticisms, it should first be noted that federal district courts are courts of limited jurisdiction. They were created by Congress to adjudicate substantial federal questions. They were never intended to provide the judicial services offered by a court of general jurisdiction or common pleas. Considerable travel and related expense is often necessary in seeking access to a federal forum. To appreciate this proposition, we might note that the states of Alaska, Idaho, Montana, Nevada and Utah have only two federal judges each. Wyoming has only one. Indeed, a day's travel to a federal courthouse or judge is common in our western states. For these reasons, the claimed inconvenience is unconvincing.

The suggestion that crimes go unpunished in the Western Division because federal judicial services are not available is a point not supported by the Office of the United States Attorney, and there is no evidence that creating a new district would improve rather than impede the administration of criminal justice. Minor federal offenses which include a violation of state law should be referred to state officials for local prosecution. Such offenses do not justify the expense and inconvenience of trial in federal courts.

The least compelling argument made by the majority is that the creation of a new district with full-time judicial presence will promote the filing of cases in the federal court which are presently being filed in the state court. While least compelling, this argument is the primary argument of the majority in favor of the creation of a fourth district.

The cases involved are those which may be filed in either the federal or state courts. These are almost exclusively "diversity" cases; that is, cases where federal

— m4 —

jurisdiction is based on the fact that the parties to the litigation are citizens of different states. [28 USC Section 1332] Many of these cases are personal injury cases which may be filed in the federal court only because of the fortuitous coincidence that parties live in different states. Because of the proximity of the Iowa and Wisconsin borders, there are a number of such cases being filed in the state courts in the Rockford area.

The essence of the majority argument is that diversity cases would either be filed initially in the federal court or "would be removed" from the state court by the defendants. But there is no suggestion in the argument that any citizen in such a case is denied access to judicial relief or that the relief afforded by the state courts in the Western Division is inadequate. In short, the issue is merely whether or not parties should have a choice of forum in these cases.

The minority of this committee is of the opinion that we should not create a new federal judicial district merely to accommodate forum shopping opportunities for personal injury litigants. This opinion is based on an assessment of more pressing problems confronting the federal courts, particularly those of handling a growing backlog of substantial federal cases and meeting the rigid provisions of the Speedy Trial Act [18 USC Sec. 3161].²

² The Speedy Trial Act requires that all criminal defendants be brought to trial within a specified period after arraignment. (The arraignment itself must be conducted within 10 days of an indictment or filing of information.) During the first year of the operation of the Act, defendants in criminal cases must be tried within 180 days of arraignment. The time period is then shortened to 120 days during the second year of the Act's operation, and 80 days during the third year. Thereafter, the time is cut to 60 days from arraignment.

— m5 —

The position espoused by the majority is totally in conflict with the mainstream of thought on the administration of justice in the federal system. There is a strong and continuing effort to curtail diversity jurisdiction cases. The elimination or curtailment of such cases has been urged by Chief Justice Burger. The American Law Institute and certain committees of Congress. This Committee should anticipate that diversity jurisdiction will be eliminated or at least substantially reduced. The majority report overlooks the practical reality that the Administrative Office of the United States Courts and the Department of Justice will certainly oppose any effort to obtain the additional judgeships, the new offices for United States Attorney and Marshal, the Clerk of Court and other court facilities required by such a fourth district where the only substantial increase in caseloads will be the filing of additional cases most of which may be personal injury cases.

Substantial fiscal considerations must be balanced against the arguments of "need" for additional judicial services. The current approach has been to consolidate districts rather than create new ones. The suggestion that new federal courtrooms be built in Joliet, composed of no fewer than two full court facilities, is unsupported. It is difficult to take seriously the suggestion that a lawyer or litigant in Joliet is greatly inconvenienced by attending court sessions in Chicago. Admittedly, it would be more convenient for the citizens of Will County to have a courthouse and a full-time federal judicial office in Joliet, but this again overlooks the limited role of federal courts in the judicial system.

It is also difficult to accept the proposition that Will and Kankakee Counties should be part of a district which also includes Rock Island and Winnebago Counties. As

— m6 —

mentioned earlier, these counties are lumped together merely with the hope of providing sufficient filings to justify a two-judge district. The majority concluded that at least two judges are required for a district to operate efficiently. They were then forced to draw district boundaries large enough to justify two full-time district judges. But the drafting of this district defeats the objectives of a two-judge district. If a judge is needed to cover an absence in either the Joliet Court or the Rockford Court, assistance will undoubtedly be given by a judge sitting in Chicago. As a practical matter, a judge sitting in Joliet would never see Rockford; likewise, a judge assigned to Rockford or Rock Island would find it most inconvenient to sit in Joliet.

The three major metropolitan areas in the proposed fourth district are Rockford, Joliet and Rock Island. None of these areas is related to any of the others in any substantial manner. It is difficult to travel conveniently from any one of them to any other. Without the Rock Island area, the Rockford area would not have a sufficient number of cases, even with the increase in diversity cases, to merit a full-time judgeship. The principal source of cases for the judgeship at Joliet would, of course, be the Illinois State Penitentiary. These cases, while substantial in number, are assigned a weight of one-third of the average civil weight by the Administrative Office. The relative ease with which they are expected to be disposed of would not support the case in favor of one or more additional judgeships.

Some final comment should be made on the underlying proposition that the creation of a new two-judge district will encourage filings to a point where there will eventually be a sufficient workload to justify those judgeships,

— m7 —

In view of the strict limitations imposed upon judicial manpower, we adhere to a philosophy that any new judge-ships for Illinois should be assigned to the districts where cases are presently on file and awaiting trial, as opposed to where cases *may* be filed in the future. The extent to which the Chicago Court is over-burdened has been re-stated on many occasions. For the past few years, civil and criminal filings have substantially increased. This increase has caused the number of pending cases to pass beyond controllable proportions and has resulted in a backlog.³ The application of the Speedy Trial Act will only serve to increase the backlog. The pending load includes many complex cases involving substantial federal questions. They are neither petty crimes nor automobile accident cases involving negligent drivers or injured persons who cross a state boundary. On the face of it, it does not appear that a promise of larger numbers of such diversity cases to be filed in federal courts is really expedient for the ends of justice.

³ See Footnotes Dicta, 57 Chi. Bar Rec. 64 [1975].

APPENDIX 8

REPORT TO THE CONGRESS*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

Further Improvements Needed In Administrative And Financial Operations Of The U.S. District Courts

A 1970 GAO report directed attention to opportunities to improve the administrative and financial operations of U.S. district courts. While some improvements have been made, more are possible in areas such as

- juror utilization,
- placement of registry account funds,
- internal controls over cash and courtroom exhibits, and
- courtroom utilization.

Judicial councils, to a large extent, have not taken an active role in overseeing the administrative and financial activities of the district courts. In light of the long term inactivity of the councils and the factors contributing to it, the Congress should reexamine the role of the judicial councils.

CHAPTER 5SAVINGS CAN BE ACHIEVED BYCONSOLIDATING COURT LOCATIONS

In many districts, Government owned or leased court facilities are not used or used infrequently and for short periods. Reducing the number of these locations would result in savings from (1) eliminating time lost by judges and other Government employees traveling to these locations and related travel costs and (2) making the space available to other Government agencies occupying leased space.

Title 28, U.S. Code 81-131, provides that district court be held in 425 locations. In addition, court is held in territorial courts in Guam, Virgin Islands, and the Canal Zone. Under the statute, 9 districts are permitted to hold court in only 1 location and 82 districts are permitted to hold court in more than 1 location. Title 28, U.S. Code 140(a), provides that:

"Any district court may, by order made anywhere within its district, adjourn or, with the consent of the judicial council of the circuit, pretermitt any regular session of court for insufficient business or other good cause."

Two of the four districts we reviewed were authorized to hold court in more than one location. The Middle District of Florida was authorized eight locations; however, court was held on a continuous basis at only three of the locations: Jacksonville, Tampa, and Orlando.

Court was not held nor were there any court facilities at three locations. At the two remaining locations, Fort Myers and Ocala, court was generally held twice a year for short periods. During the 18 months from July 1973 through December 1974, there were about 378 available working days. However, the court only used space at Ocala on 43 days and at Fort Myers on 29 days. Thirteen cases were tried at Ocala and 11 at Fort Myers. According to a General Services Administration official, space assigned to the U.S. marshal and U.S. attorney at Ocala and Fort Myers was generally used only during court sessions. Had the court, U.S. marshal, and U.S. attorney released their space for use by other Government agencies, the Government would have saved an estimated \$65,000 in rental cost during

the 18 months. Holding court in these locations required travel time by judges and other Government employees in addition to an estimated \$16,400 in travel costs during the 18 months.

Litigants from Fort Myers and Ocala could use the court facilities at Tampa and Orlando since these locations are not unreasonably distant. The chief judge of the district believes that Fort Myers and Ocala should not be eliminated as places of holding court because litigants at these locations have the same right to have court held near them as litigants in Tampa and Orlando. Additionally, the population in both areas was increasing faster than any other area in Florida.

Although court is authorized at four locations in the Eastern District of Pennsylvania, only three locations have court facilities: Philadelphia, Reading, and Easton. The facilities at Philadelphia are used continuously and those at Reading were used on 155 days during fiscal year 1974. The facilities at Easton were not used by any judge or magistrate from July 1973 to April 1975. The Easton facilities, which occupy 2,475 square feet in a building owned by the U.S. Postal Service, cost the judicial branch about \$16,800 annually. While the court occupies this space, other Federal agencies are commercially leasing about 2,800 square feet of space at other Easton locations. The chief judge of the district requested the Administrative Office to deactivate the Easton facility. The facility was returned to the General Services Administration in June 1975.

We solicited additional information on infrequently used court facilities from other district courts. An analysis of the information obtained showed that Government owned or leased court facilities at 17 locations in 11 districts were not used by the courts during 1974 and many facilities in other locations were used infrequently. The following schedule shows courtroom usage during 1974:

<u>Days used by courts</u>	<u>Number of locations</u>
0 - 5	26
6 - 10	13
11 - 20	32
21 - 30	25
31 - 50	39
51 - 99	58
100 plus	41

In addition to the Easton facility released by the judiciary, 11 other facilities included in the above schedule have been released after our review was initiated.

Underutilized court facilities has been a continuing problem of the judiciary. A report by the Committee on Ways and Means of Economy in the Operation of the Federal Courts, filed with the Judicial Conference in September 1948, concluded:

"* * * it is clear that, throughout the country, court is now required to be held in many places where such a service is entirely unnecessary and wasteful of time and money."

In 1961 the Judicial Conference referred to the report by stating,

"Recent studies by the Administrative Office of the United States Courts suggest that this conclusion is as valid today as it was in 1948 when the Committee on Economy reported to the Conference."

On February 10, 1972, the Director of the Administrative Office proposed to the Committee on Court Administration of the Judicial Conference that courtrooms at 71 locations where trial days averaged 5 or less during the preceding 5-year period be closed.

An ad hoc subcommittee, appointed by the Committee on Court Administration to review the situation, found that the chief judges of many districts wished to retain little-used court facilities for various reasons. However, the chief judges of the involved districts and circuits agreed that 12 court locations could be released.

The ad hoc subcommittee reporting on these 12 locations stated in part:

" * * * we are not prepared to recommend to the Committee that it recommend to the Judicial Conference that it release the aforesaid facilities before an appropriation is sought with which to pay rent on court facilities. Rather we believe that the position of the judiciary should be that, while these are not needed now, we leave it to Congress as to whether we should receive an appropriation with which to pay rent on them. We say this for several reasons. Firstly, while the involved judges are willing to release these facilities, we would still expect the involved congressmen, chambers of commerce, bar associations, and the like to oppose such action."

During the fiscal year 1976 House appropriations hearings, the question of underutilized court facilities was again raised. The Director of the Administrative Office stated in part:

"The places of holding court are established by the Congress. * * * Through historical development we have some 600 places of holding court in the United States, of which in excess of 200 are not used, or they are used less than 5 days out of the year. Some are not used at all by the judicial system. Once you establish this very expensive, elaborate facility and it is a physical reality, it is very difficult to dispose of it and get it off the books. We have importuned committees, other committees to pass laws abolishing the holding of court in those places so that we could sacrifice the facility and turn it back to GSA and let them put it to some other governmental use or destroy it, so far as we are concerned. We have not made much progress in that effort.

"As a result, we do have court facilities and judge's chambers which are not used, judge's chambers fully stocked and furnished with complete libraries. A judge may walk into it 1 day a year and may not walk into it that frequently. It is customary when a man is appointed to the Federal bench, if he happens to be from a place other than where his predecessor was from the first thing he sets about to do is to importune his friends in the Congress

to see that that city is made a place of holding court, and in due course that is achieved. We have to build a court facility, furnish him chambers, and then when he takes senior status and dies, and his successor is appointed from a city 200 miles away, the proceedings start all over again. That is the reason we end up with 200 court facilities we don't need."

CONCLUSIONS

Holding court infrequently and for short periods of time at various locations has resulted in (1) lost time to the judges and other Government employees, due to the need for travel, (2) low usage of courtroom facilities at those locations, which could be made available to other Government agencies, and (3) increased cost of transporting various court employees and records.

RECOMMENDATION

We recommend that judicial councils (1) evaluate the need to continue holding court and court space at locations where the volume of court business requires that court be held infrequently and for short periods of time and (2) request the Administrative Office of the U.S. Courts to turn excess court facilities back to the General Services Administration to avoid maintenance and rent cost.

AGENCY COMMENTS

The Administrative Office said that consolidation of court locations has been a topic of constant concern. It said that some court locations, as noted in this report, have been abandoned. Additionally, a courtroom utilization survey is in progress. It pointed out two difficulties which arise whenever it attempts to close a facility. One is that although the district court may not often use a courtroom during a year, other judicial officers, such as U.S. magistrates and bankruptcy judges, do use the facility and, on occasion, executive branch agencies and congressional committees use the courtroom for hearings held out of Washington (usage figures on p. 27 include use by all judicial officers). Secondly, there is inevitably local pressure not to close a court facility.

