DISTRICT COURT REORGANIZATION

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 5994 and Related Bills

DISTRICT COURT REORGANIZATION

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DISTRICT COURT REORGANIZATION

THURSDAY, AUGUST 9, 1984

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

The subcommittee met, pursuant to call, at 1:30 p.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Schroeder, Glickman, Berman, and Moorhead.

Staff present: Michael Remington, chief counsel; Joseph V. Wolfe, associate counsel; and Audrey K. Marcus, Clerk.

Mr. KASTENMEIER. The subcommittee will come to order.

Without objection, the subcommittee will permit the meeting this afternoon to be covered in whole or in part by still photography or other means pursuant to rule 5 of the committee rules.

Today we will be hearing testimony on 11 bills; 10 of which deal with the geographic organization of the Federal district courts. One of the bill creates a new division within existing district. Two others transfer counties among divisions within districts. The remaining bills designate new places of holding Federal court.

The other bill before us, H.R. 3919, eliminates the $10,000 amount-in-controversy requirement for Federal jurisdiction for certain cases involving common carriers.

For the past several Congresses, this subcommittee has been regularly processing legislation relating to Federal court reorganization. Near the end of each Congress, we conduct a hearing on all bills relating to Federal court organization. We closely examine and evaluate the merits of each proposal based on the information submitted to us from sponsoring Members, from the Judicial Conference and from the U.S. Department of Justice.

The proposals which we find meritorious and necessary are included in an omnibus bill which we then send forward. This method results in necessary adjustments to the geographic layout of the Federal judiciary being made efficiently, impartially and openly. Perhaps more importantly, the other Members of the House who are not closely involved with the Federal court system trust our judgment and accept the alterations we recommend to them. Their trust is a source of pride to us as members of the subcommittee.

Recently, the process has been somewhat threatened. Last month, two bills dealing with places of holding court were passed

as riders to the bankruptcy bill. These bills were never the subject of any hearings in the House, nor were they examined or evaluated by this subcommittee. In at least one case, the original sponsoring Member was not even aware of the measure's passage until a week after the bill was signed into law.

In my view, this is not the way these matters should be handled. These proposals are not insignificant; they are important to people and places that are affected by them. In a larger sense, the integrity of the Congress and the Federal judiciary may be at issue.

No proposals affecting the geographic organization of the Federal courts should escape the scrutiny of this subcommittee and I hope what occurred in the context of the bankruptcy bill will not occur again.

Having said that, I would like to introduce our witnesses. Our first witness this afternoon is the distinguished chairman of the Agriculture Committee, our colleague from the State of Texas, the honorable Mr. de la Garza, our friend.

Mr. GLICKMAN. Mr. Chairman, I have many chairmen in this place, but this is really my chairman who is testifying right now. I am glad to be here.

TESTIMONY OF HON. E. DE LA GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DE LA GARZA. Thank you very much, Mr. Chairman, and members. I have a prepared statement which has been submitted for the record. I will summarize this very briefly, Mr. Chairman.

Mr. KASTENMEIER. We appreciate that and without objection, your statement will be entered into the record.

Mr. DE LA GARZA. Your subcommittee asked us to respond to four questions, which we have done. What is the need, local or national, for the proposed legislation? This is primarily a jurisdictional division of the work of the Brownsville Division of the southern district of Texas, which would effectively improve the administration of justice and alleviate problems creating undue economic burdens on the Government, mostly because of geography. The proposed site of the court would be McAllen, which is some 60 miles west and north of Brownsville. The population of the county wherein McAllen lies is approximately 300,000 at this time; whereas Cameron County, where Brownsville is, is around 200,000.

Question two: What are the anticipated costs of the proposed reorganization? We list them: Internal Revenue Service, Federal Bureau of Investigation, Marshal's office. Using figures from the Government sources we come up with a savings of $431,400. The only cost factor in addition to the court itself would be for the U.S. attorney's office, approximately $13,500 annually to lease space in the Federal building. Two additional deputy clerks would be hired for approximately $124,000 annually, which, when deducted from the $431,400 leaves a savings of almost $307,000, in addition to the savings in travel expenses of the witnesses, and the different man-hours saved.

In addition, I would say it would result in a much higher savings than what we have listed here. For example, the total estimated juror cost for travel for a 12-month period was approximately

$58,000. By taking average mileage within the two proposed areas, we come up with a savings which would be around $34,000 for the total, or $24,000 in juror travel in that area.

Third: What, if any, alternative means are available which might serve the same purpose which this legislation would serve? Quite honestly, we find none, Mr. Chairman.

Four, is there any identifiable support and/or opposition to your reorganization plan? And if there is opposition, what causes the controversy? We find no opposition, Mr. Chairman; not from the sitting judges, not from the administration and not from the Bar Association's lawyers. Everything is positive, Mr. Chairman.

The Social Security Division will be moving out of the building in which the proposed court would sit so there will be ample space. It is located in downtown McAllen, TX, which would be the hub for approximately 350,000 people which this court would serve.

Basically, that answers your four questions, Mr. Chairman, and we would appreciate favorable consideration. Our major problem is geography. You have to take the witnesses some 60 miles; you have to take the Federal prisoners some 60 miles; you have to have jurors from some 60 miles. Roughly 58 percent of the jurors are from Hidalgo County and anything you do with the Federal court imposes a 120-mile roundtrip for everyone associated with any litigation and/or business with the court.

Mr. KASTENMEIER. I thank my colleague for his presentation. This will, then, establish seven, rather than six divisions in the District Court for the Southern District of Texas. The new division will be called the McAllen Division, with the court meeting at McAllen. Is that correct?

Mr. DE LA GARZA. I am not sure of the divisions, Mr. Chairman. Let's see, there is Houston, Corpus Christi, Brownsville, Laredo——

Mr. KASTENMEIER. There are currently six divisions in the Southern District of Texas.

Mr. DE LA GARZA. I can identify four, but I would take the chairman's word for six.

Mr. KASTENMEIER. We can confirm that.

Mr. DE LA GARZA. This would be an additional sitting in McAllen in Hidalgo County.

Mr. KASTENMEIER. Are you aware of any opposition to this proposed change?

Mr. DE LA GARZA. None that we have been able to identify from any source within the executive department or from the sitting judges or within the bar associations. There is no controversy from the county commissioners or chambers of commerce. We have not identified any opposition at all.

Mr. KASTENMEIER. I thank my colleague.

Do either of you——

Mr. GLICKMAN. No; the chairman was so persuasive that he has got my support.

Mr. KASTENMEIER. I will say to my friend from Texas that in the tentative draft of the bill we have prepared for markup, we have incorporated the language of your bill which you introduced January 26, H.R. 4662. So unless there is some opposition from some currently unidentified source, I think you can expect that this will be in the omnibus bill as you have requested.

Mr. DE LA GARZA. Thank you very much, Mr. Chairman, and members of the committee.

Mr. KASTENMEIER. Next, the Chair would like to call another colleague of ours. We are very pleased to have him here. The gentleman from New York, Mr. Mrazek, who represents the Third District of New York, will be testifying about his proposal to designate Hauppauge as an additional place for holding court in the Eastern District of New York.

Mr. Mrazek, we welcome you.

TESTIMONY OF HON. ROBERT J. MRAZEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY ANTON J. BOROVINA, ESQ., LEGAL COUNSEL AND ASSOCIATE STAFF MEMBER, COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES

Mr. MRAZEK. Thank you, Mr. Chairman. I would suggest that sometimes these Indian names are almost as difficult to pronounce as Czechoslovakian names.

Mr. KASTENMEIER. We have a few ourselves.

Mr. MRAZEK. I have heard a lot of different pronunciations of my name, and also of Hauppauge, so I think the chances are yours is one of the acceptable pronunciations.

I very much appreciate the opportunity to testify before the subcommittee in support of H.R. 5619, which would establish a Federal court facility in Hauppauge, which is the de facto county seat of Suffolk County.

I have a statement, a formal statement, which I would like to submit for the record, rather than reading it, and simply comment.

Mr. KASTENMEIER. We will receive that statement and make it part of the record and you may summarize.

Mr. MRAZEK. Thank you, Mr. Chairman.

I think the need for this facility in Hauppauge is manifestly clear. In the eastern district of New York, there has been a 28 percent increase in the number of cases filed since 1982, and, in fact, a 77 percent increase over the filings made in 1978.

The eastern district is made up of Brooklyn, Queens, Nassau, and Suffolk Counties. The tremendous growth in population in Nassau and Suffolk Counties has now yielded a population, according to the latest census, of about 2.6 million people, which is approximately half of the people in the eastern district.

The court is located in Brooklyn, NY, in Cadman Plaza. To get to Cadman Plaza from some parts of Suffolk County, it takes in the neighborhood of 2 to 4 hours, based on traffic in each direction. Suffolk County has 1.3 million people and a number of the most important cases filed in the eastern district have emanated from Suffolk County, including the "Baby Jane Doe" and the "Agent Orange" cases. Both of them were quite complex and controversial and required lengthy consideration by the Federal court. In each case, litigants, attorneys and other parties had to travel an extensive distance to have those cases heard.

The existing Federal court facilities in Brooklyn are in full use and are overcrowded. Where there is a small court division in the town of Uniondale, located in Nassau County, the simple fact is

that there is no more room there to accommodate even one more judge, let alone the two currently approved for the eastern district.

This bill would relieve the pressure for more space by setting up a facility in the county seat of Suffolk County in Hauppauge and allow for the leasing of space and the use of that space by two Federal judges and one magistrate, including the chambers, courtrooms and libraries, as well as clerk and probation offices.

The total cost would be estimated to be in the neighborhood of $251,000 per year for this space. There is a distinguished panel chaired by Judge Leonard Wexler, which is currently seeking the most available and economical options for renting that space.

I like to feel that those represent the most important and compelling reasons why this additional location is needed and I would be happy to answer any questions you may have as to other aspects.

[The statement of Mr. Mrazek follows:]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

ROBERT J. MRAZEK
3RD DISTRICT, NEW YORK

COMMITTEE ON
APPROPRIATIONS

AUGUST 9, 1984

TESTIMONY OF CONGRESSMAN ROBERT J. MRAZEK BEFORE
THE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND
THE ADMINISTRATION OF JUSTICE OF
THE COMMITTEE ON THE JUDICIARY

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. THANK YOU FOR ALLOWING ME THIS OPPORTUNITY TO TESTIFY IN SUPPORT OF H.R. 5619, A BILL RELATING TO THE GEOGRAPHICAL ORGANIZATION OF THE EASTERN DISTRICT OF NEW YORK. SPECIFICALLY, H.R. 5619 WOULD AMEND SECTION 112 OF TITLE 28 OF THE U.S. CODE TO ALLOW THE EASTERN DISTRICT TO HOLD COURT IN HAUPPAUGE. RIGHT NOW, THE DISTRICT SITS IN BROOKLYN AND IS AUTHORIZED (AND DOES) HOLD COURT IN UNIONDALE, LOCATED IN NASSAU COUNTY. HAUPPAUGE IS FOUND IN SUFFOLK COUNTY AND SERVES AS ITS DEMOGRAPHIC CENTER, AND THE DE FACTO SEAT OF GOVERNMENT.

MR. CHAIRMAN, IT HAS BEEN MY PRIVILEGE TO REPRESENT THE INTERESTS OF SUFFOLK COUNTY, FIRST AS A MEMBER OF THAT COUNTY'S LEGISLATURE, AND NOW AS A MEMBER OF THIS HOUSE-- OVER 12 YEARS. I HAVE SEEN THE RAPID GROWTH IN SUFFOLK'S POPULATION, STANDARD OF LIVING, EMPLOYMENT OPPORTUNITIES, TECHNOLOGY AND ECONOMY. SUFFOLK TODAY HAS A LIFE OF ITS OWN, DISTINCT, FREE AND INDEPENDENT FROM THAT COLOSSUS OF THE WEST, NEW YORK CITY.

A DIRECT CONSEQUENCE OF THIS PHENOMENON IS THE INTENSITY OF SOCIAL AND BUSINESS INTERACTIONS WHICH TOUCH UPON OUR FEDERAL LAWS, AND IT IS THE FEDERAL JUDICIARY WHICH IS MOST RESPONSIBLE IN ASSURING THAT THE TAILORED AND DELIBERATE APPLICATION OF THESE LAWS OCCURS.

OF COURSE, THE JUDICIARY'S MOST VISIBLE FIGURE IS THE FEDERAL JUDGE-- BUT AS THIS COMMITTEE WELL KNOWS-- MORE PEOPLE THAN JUST THE JUDGE PROVIDE INPUT INTO THE DOINGS OF JUSTICE. I REFER TO LITIGANTS, ATTORNEYS, CLERKS, JURIES AND COURT PERSONNEL, EACH OF WHOM NEED, GIVE, FACILITATE, REGULATE OR SUPERVISE, AS THE CASE MAY BE, ACCESS TO THE JUDGE AND IN THE BROADER SENSE, THE ADMINISTRATION OF JUSTICE. WHERE THESE PEOPLE COME FROM, THEIR ROOTS AND COMMITMENT TO THE COMMUNITY AS WELL AS THEIR OWN VALUABLE NOTIONS OF HONOR, ETHICS, JUSTICE AND CIVIL DUTY, ALL AFFECT TO A SUBSTANTIAL DEGREE HOW THE ADMINISTRATION OF JUSTICE IS FASHIONED AND PERCEIVED.

SUFFOLK NEEDS AND DESERVES A FEDERAL COURT SO THAT ITS 1.3 MILLION PEOPLE CAN BENEFIT FROM, PARTICIPATE IN, AND GIVE LOCAL LIFE TO THE FEDERAL JUDICIARY'S PROMOTION OF JUSTICE. H.R. 5619 SERVES SUFFOLK'S BEST INTERESTS AND, AT THE SAME TIME, WEDS THE FEDERAL JUDICIARY TO HER GROWTH AND BUSTLE.

I WOULD NOW LIKE TO ADDRESS THE QUESTIONS POSED BY THE CHAIRMAN. OF COURSE, I STAND READY TO RESPOND TO ANY OTHER INQUIRY BY THIS COMMITTEE AND WOULD WELCOME THE OPPORTUNITY.

THE NEED TO ENACT H.R. 5619 IS MANIFEST. IF MY EARLIER REMARKS LEAVE ANY DOUBTS, THEY ARE RESOLVED BY EMPIRICAL DATA AND CIRCUMSTANCE. IN 1983, 5,729 CASES WERE FILED IN THE EASTERN DISTRICT, A 27.7% INCREASE OVER 1982 (4,485 CASES), AND A 77.4% INCREASE OVER THE FILINGS MADE IN 1978 (3,229 CASES). FROM DECEMBER, 1983 TO MAY, 1984, THE MOST RECENT DATA AVAILABLE, LONG ISLAND CASES AMOUNTED TO APPROXIMATELY 30% OF ALL CIVIL CASES FILED WITH THE COURT. DURING THIS PERIOD ALONE, THERE WERE 2,778 CIVIL CASES FILED (EXCLUDING THE AGENT ORANGE CASES), OF WHICH 47.5% WERE "SUFFOLK COUNTY CASES". SUFFOLK COUNTY, IT SEEMS, IS ALREADY A FONT OF FEDERAL LITIGATION AND EXACERBATES THE ALREADY CONGESTED COURT CALENDAR. OF COURSE, MORE JUDGES AUTHORIZED TO SIT IN THE EASTERN DISTRICT WOULD RELIEVE THE CONGESTION TO SOME DEGREE-- BUT CIRCUMSTANCE HAS INTERVENED, WHICH MAKES THE PASSAGE OF H.R. 5619 CRUCIAL.

THE EXISTING FEDERAL COURT FACILITIES IN BROOKLYN AND UNIONDALE ARE IN FULL USE AND OVERCROWDED. THERE IS SIMPLY NO MORE ROOM TO ACCOMODATE EVEN ONE MORE JUDGE, LET ALONE THE TWO CURRENTLY APPROVED FOR THE EASTERN DISTRICT BY P.L. 98-353. H.R. 5619 RELIEVES THE PRESSURE FOR MORE SPACE.

ANOTHER CIRCUMSTANCE UNDERSCORING THE NEED TO ENACT H.R. 5619 IS THE DISTANCE LITIGANTS, ATTORNEYS, JURY MEMBERS AND CANDIDATES MUST NOW COMMUTE IN ORDER TO PARTICIPATE IN THE WORKINGS OF THE FEDERAL JUDICIARY. DEPENDING ON WHERE THE SUFFOLK RESIDENT BEGINS THE TRIP, AS MUCH AS FOUR HOURS CAN BE SPENT TRAVELLING ONE WAY TO THE COURT. THESE DISTANCE AND TIME FACTORS PLACE

GREAT HARDSHIP ON LITIGANTS, LAWYERS, JURORS AND WITNESSES. THEIR PROCLIVITY TO PARTICIPATE IN THE PROCESS BECOMES LESSENED.

THE COSTS OF THE PROPOSED REORGANIZATION ARE MINIMAL. ADDITIONAL AUTHORIZATION FOR THE EXPENDITURE OF FEDERAL DOLLARS IS NEITHER NECESSARY NOR SOUGHT BY MY BILL, CERTAINLY GOOD NEWS FOR THE BUDGET CONSCIOUS. SUFFOLK'S FEDERAL COURTHOUSE WOULD BE LOCATED ON LEASED PROPERTY, HAVING AN AVERAGE COST OF LESS THAN $20 PER SQUARE FOOT. APPROXIMATELY 12,560 SQUARE FEET OF SPACE WOULD BE SUFFICIENT TO ACCOMODATE THE CHAMBERS, COURTROOMS AND LIBRARIES OF TWO FEDERAL JUDGES, ONE MAGISTRATE, A CLERK AND PROBATION OFFICE, CONFERENCE ROOMS AND JURY DELIBERATION ROOMS, FOR A TOTAL OF $251,200 PER YEAR.

THE ALTERNATIVE MEANS SERVING THE SAME PURPOSE AS H.R. 5619 WOULD BE: 1) TO ESTABLISH A NEW JUDICIAL DISTRICT FOR LONG ISLAND, OR 2) TAKE OVER SPACE SOMEWHERE IN BROOKLYN. SUFFICE IT TO SAY THAT THESE OPTIONS WOULD BE MORE COSTLY AND, IN THE LATTER CASE, INSENSITIVE TO THE PRESENT NEED FOR THE FEDERAL COURT FACILITY IN SUFFOLK.

THE SUPPORT FOR A FEDERAL COURT FACILITY IN SUFFOLK COUNTY IS BROAD-BASED. I AM PLEASED TO ADVISE THE CHAIRMAN THAT I HAVE SECURED THE APPROVALS OF THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT AS WELL AS THE CHIEF JUDGE AND JUDGES WHO SIT ON THE BOARD OF JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. I INCLUDE HEREWITH, FOR THE RECORD, COPIES OF THE CORRESPONDENCE TO SUCH EFFECT. FURTHER, MY OFFICE HAS BEEN ADVISED THAT THE SUFFOLK COUNTY BAR ASSOCIATION, AS

WELL AS THE ADMINISTRATIVE OFFICE OF THE LOCAL COURTS, APPROVE OF THE ESTABLISHMENT OF A FEDERAL COURTHOUSE IN HAUPPAUGE.

I AM AWARE OF NO OPPOSITION TO H.R. 5619.

CONCLUSION

THE ADMINISTRATION OF JUSTICE IN THIS FEDERAL REPUBLIC ADMITS TO NO FORMULA. IT IS MOLDED BY PEOPLE WHO HAVE DIVERSE INTERESTS AND CONCERNS. THE DUTY OF THE JUDGE IS TO HARMONIZE THESE SEEMINGLY CONFLICTING VOICES SO THAT FAIR AND EQUITABLE APPLICATION OF OUR LAWS OCCURS IN A CONVENIENT AND ACCESSIBLE ENVIRONMENT. WHERE THE JUDGE HOLDS COURT AND WHERE THE LITIGANTS, ATTORNEYS, JURORS, WITNESSES AND COURT EMPLOYEES LIVE AND HAVE THEIR ROOTS, INDELIBLY COLORS THE PROCESS BY WHICH THE JUDGE IS SUMMONED TO FASHION JUSTICE. SUFFOLK COUNTY DESERVES TO BE PART OF THIS PROCESS. H.R. 5619 ENABLES SUFFOLK, WITH ITS OWN DISTINCT VALUES OF LAW AND ORDER, TO PARTICIPATE FULLY IN AND REAP THE BENEFITS OF THE TAILORED, DELIBERATE APPLICATION OF JUSTICE.

THANK YOU AGAIN FOR ALLOWING ME THIS OPPORTUNITY TO STATE MY CASE FOR LONG ISLAND.

Robert J. Miaskel

UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT

STEVEN FLANDERS
CIRCUIT EXECUTIVE
(212) 791-0988

U. S. COURTHOUSE
NEW YORK, N. Y. 10007
(FTS) 8-663-0988

April 10, 1984

Mr. William E. Foley
Director
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Mr. Foley:

This is to inform you that the Judicial Council of the Second Circuit unanimously supports the proposal of the Board of Judges of the Eastern District of New York that Hauppauge, Long Island be made a place where court may be held in that district. In accordance with this action and the attached resolution, the Judicial Council and the Eastern District Board of Judges will be pleased if you will take the earliest possible steps to amend 28 U.S.C. §112(c) and begin the process of obtaining space. There are, I understand, available facilities that could possibly serve the court's purpose.

Hauppauge is in Suffolk County, Long Island, a county that now has a population in excess of 1.3 million people. Hauppauge is 35 miles east of the courthouse that was recently opened at Uniondale, in Nassau County, and would seve a fast-growing and populous region. As you know, there is an acute shortage of space for court facilities in the Eastern District of New York. Adding Hauppauge will permit the Administrative Office to resolve a portion of the urgent need for space in the district at the relatively low costs available in Suffolk County, rather than responding entirely by undertaking much higher costs for space in Brooklyn.

Thank you for your assistance in this matter. Please let me know if I or any of us can provide any additional information.

Sincerely,

Steven Flanders

SF:MF

cc: Chief Judge Feinberg
Chief Judge Weinstein
Mr. Weare

BE IT RESOLVED by the Board of Judges, United States District Court for the Eastern District of New York that Hauppauge in Suffolk County on Long Island be designated as a place of holding court for the United States District Court.

Dated: Brooklyn, New York
March 20, 1984

Jack B. Weinstein, Chief Judge

Mark A. Costantino, U.S.D.J.

Thomas C. Platt, U.S.D.J.

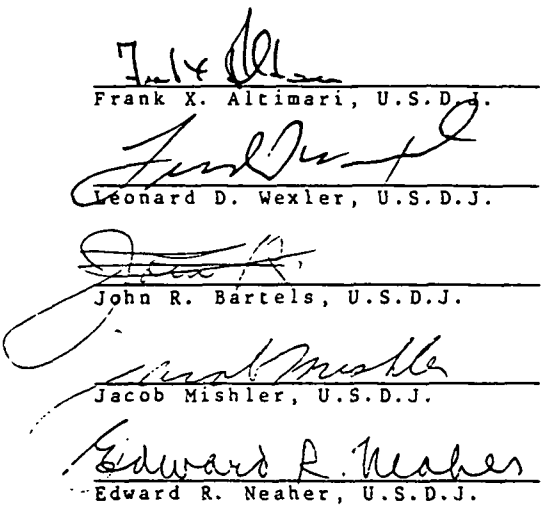
Henry Bramwell, U.S.D.J.

Charles P. Sifton, U.S.D.J.

Eugene H. Nickerson, U.S.D.J.

Joseph M. McLaughlin, U.S.D.J.

I. Leo Glasser, U.S.D.J.



Frank X. Altimari, U.S.D.J.

Leonard D. Wexler, U.S.D.J.

John R. Bartels, U.S.D.J.

Jacob Mishler, U.S.D.J.

Edward R. Neaher, U.S.D.J.

Mr. KASTENMEIER. We thank our colleague for his presentation. You have introduced a bill, H.R. 5619, which achieves what you have advocated here. I am not aware that the committee will have any difficulty accommodating this request.

I would like to ask this, though. I am not soliciting, but over the years there have been a number of so-called "housekeeping" changes in the eastern district of New York, not necessarily in your district, but in the general area of the counties outside the city, which obviously have come about because of changes in population, transportation, and court business.

Is there anything else you think we ought to be looking at at this time in terms of Greater Long Island or the Eastern District? Are you aware of other problems?

Mr. MRAZEK. No; I am not. I think it is fair to say that in terms of population changes, there was an absolutely massive shift from the city to suburban counties surrounding the city and fully 40 percent of the population of the city of New York can now be found in just the two counties of Nassau and Suffolk. Nassau has basically stabilized its population; Suffolk is still growing by substantial percentages each year.

I would tend to think that at some point, based upon continued shifts in population, there may very well be in the future a need for a new judicial district on Long Island to serve Nassau and Suffolk Counties. But I am not here to press or avare for the establishment of such a district. I can say that my office was able to secure the support of the chief judge and all of the judges of the eastern district court for this type of interim approach to resolve a serious problem and to do so as economically as possible.

Mr. KASTENMEIER. Do either the gentleman from Kansas or the gentlewoman from Colorado wish to question Mr. Mrazek?

Mr. GLICKMAN. I just would mention that I have been through Hauppauge on my way to the Hamptons and I am sure that is what happens to a lot of people. I was aware of how to pronounce it, I think, before I came in here today.

Mr. KASTENMEIER. How does one pronounce it?

Mr. GLICKMAN. I think it is Hauppauge, isn't it? Like "hop-hog."

Mr. MRAZEK. I have heard Hauppauge, "apagie," Hapach, Hoppog. I think any one of those would be acceptable. The chairman of the Agriculture Committee refers to me as "Mazerkie," which is acceptable to me as well. [Laughter.]

Mr. KASTENMEIER. In any event, we are pleased to have you appear today. Hopefully, we will have markup later today, in which case we hope to be able to accommodate your request.

Mr. MRAZEK. Thank you very much, Mr. Chairman.

Mr. KASTENMEIER. Thank you to the gentleman from New York.

Now the Chair would like to call our next witness, Mr. William Weller, who is Director of Legislative Affairs for the Administrative Office of the U.S. Courts. He will be giving us the views of the administrative office on all of the bills before us today. We appreciate your appearance.

TESTIMONY OF WILLIAM WELLER, LEGISLATIVE AFFAIRS OFFICER, ADMINISTATIVE OFFICE OF THE U.S. COURTS, ACCOMPANIED BY CHRISTY E. MASSIE, COUNSEL, LEGISLATIVE AFFAIRS, ADMINISTRATIVE OFFICE OF U.S. COURTS

Mr. WELLER. Thank you, Mr. Chairman. I am accompanied today by Christy Massie of my staff at the Administrative Office, who, in fact, did most of the work on the information contained in this statement. She is accompanying me so that if I get into trouble, she can bail me out.

I am representing Mr. Foley, who regrets that he cannot be here today due to a number of commitments on his calendar at the office. As you may know, he was on annual leave last week and came back to find a good many things awaiting his attention.

In our prepared statement, which we have filed with the subcommittee, we followed a practice which we have followed now for five Congresses in a row of summarizing for you the findings of our district courts and circuit counsels which have, at this subcommittee's request, reviewed each of the proposals on the agenda today.

The Court Administration Committee of the Judicial Conference does not review any proposals of this type unless both the District Court and the Circuit Council have both approved them. So the views that you have in our prepared statement have gone through the district court judges affected, the circuit councils with administrative responsibility oversighting the district, the Court Administration Committee of the Judicial Conference, and the conference itself.

I will not go into details; I will let the statement stand on its own and try to answer any questions you may have.

On the remaining piece of legislation before you, concerning the Federal jurisdictional amount-in-controversy change, the judicial conference does not recommend passage of the legislation. The conference's position was adopted 6 years ago when an earlier change, which resulted in this legislation being before you now, was enacted by Congress.

In the past few months, because of the question about the conference's adherence to its previously established policy position, our Federal Jurisdiction Subcommittee of Court Administration and the Court Administration Committee itself have reviewed this proposal. Three weeks ago in Asheville, NC, the Court Administration Committee unanimously reaffirmed its opinion on behalf of the conference that this legislative change would not be desirable.

The Department of Justice's prepared remarks, which Mr. Mullins will present following my testimony, are excellent in terms of discussing what is at issue. We defer completely to the views expressed by the Department and we concur in them.

[The statement of Mr. Foley follows:]

PREPARED STATEMENT

OF

MR. WILLIAM E. FOLEY
DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS

ON BEHALF OF
THE JUDICIAL CONFERENCE OF THE UNITED STATES

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

ON

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

AND

H.R. 3919 - THE AMOUNT IN CONTROVERSY REQUIREMENT

THURSDAY
AUGUST 9, 1984

Mr. Chairman, I appear before your subcommittee today to provide the views of the Judicial Conference on several bills relating to the geographic organization of the Federal Courts. On behalf of the Judicial Conference, let me express our genuine thanks to this subcommittee and to you for seeking our views and for your willingness to devote valuable time to hearings on judicial housekeeping.

Most of the bills scheduled would amend existing sections of Chapter 5 of title 28, United States Code, to implement changes in the geographical or organizational configuration of existing Federal Judicial districts. The remaining bill, H.R. 3919, would amend sections 1337 and 1445 of title 28, United States Code, to repeal the amount in controversy requirement in certain actions arising under the Interstate Commerce Act.

CHANGES IN GEOGRAPHICAL OR ORGANIZATIONAL CONFIGURATIONS OF THE FEDERAL JUDICIAL DISTRICTS

Although the proposed changes range in scope — from the addition of a statutorily designated location for the holding of court in a given district, to the creation of a new division — there is one factor which is common to all of our evaluations 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 order to accomplish that duty, it is necessary to examine the statutory provisions which control the implementation of Chapter 5 provisions and the Judicial Conference policy which governs evaluations of these bills.

RELEVANT STATUTORY PROVISIONS OF TITLE 28

Chapter 5 is designed to respond to the organizational and administrative needs of the ninety-one presently existing "non-territorial" Article III United States District Courts. The first fifty-one sections of Chapter 5 establish the organizational structure of the district courts on a state-by-state basis and designate the number of districts per state, the statutorily mandated divisions per district, if any, and the places of holding court for each division and/or district. These are the sections that the pending bills seek to amend. However, in order to evaluate each of these bills, I believe that four other sections of Chapter 5 — dealing directly with the scheduling of court sessions — and section 462 — controlling the provision of quarters and accommodations (courtrooms, chambers, and court office space) — are also relevant — because they have historically influenced the introduction of bills similar to those before you today.

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

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

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

As a result of Congress' action in 1963, federal district courts today sit in either "regular" or "special" sessions. Under section 139 "regular" sessions of court are fixed by the local rules of each court in locations "statutorily designated" in the organizational sections of Chapter 5 (81 - 131), and such "regular" sessions may be set as "continuous" sessions, which run year-long. Almost all district courts are today setting "continuous" sessions in several communities. Under section 140 each individual court may, upon its own order, adjourn a "regular" session at a given location "for insufficient business or other good cause." With approval of the judicial council which oversees the administration of its business (See 28 U.S.C. §332), a district court can also, under section 141, "pretermit" any regular session for the same reasons. In this context, the court's action constitutes a literal suspension of activity at a given location, either indefinitely or for a time certain. Finally, section 141 fully authorizes a district court to schedule "special" sessions at any location, if the business before the court requires such a session, and expressly provides that "any business" may be transacted at a "special" session which might be transacted at a "regular" session.

In summary, a district court, subject only to the oversight of its circuit council and Congress, is authorized to sit when and where it believes best in order to properly manage its workload. In reality the scheduling of sessions of court in a given community is not contingent upon that community being "statutorily designated" in sections 81 through 131 of Chapter 5 at all. Why, then, are significant numbers of bills introduced in almost every Congress to "statutorily designate" specific communities as places at which "court shall be held"? Section 462 provides the answer to that question.

Section 462 — Court Accommodations

(a) Sessions of courts of the United States (except the Supreme Court) shall be held only at places where the Director of the Administrative Office of the United States Courts provides accommodations, or where suitable accommodations are furnished without cost to the judicial branch.

(b) The Director of the Administrative Office of the United States Courts shall provide accommodations, including chambers and courtrooms, only in places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accomodations as necessary.

(emphasis added)

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

When Judge Hunter testified before this subcommittee during the Ninety-fifth Congress, on legislation similar to the bills before you today, he stated:

Frankly, the statutory designation of a location very often yields only one benefit while generating two pragmatic problems. A Member of Congress, petitioned by his constituents to obtain a statutory designation for a community, can easily "get himself off the

hook" by having the statute amended. At that point he has served his community, and the decision to sit in that community or not falls squarely upon the shoulders of the court.

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

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

Regrettably, courthouses once built do occasionally "draw business." More regrettable, however, may be the fact that many of them do not draw enough to justify their existence; and busy courts cannot afford to spend judges' time there when the work exists elsewhere. Then the Admininstrative Office is called before the Appropriations or Public Works Committees of Congress to explain why a courthouse the judiciary never wanted is not being "properly utilized."

For purposes of this statement today, I would only reiterate the obvious fact that not building an unnecessary courthouse, and not leasing unneeded commercial space is an ever-more essential saving of taxpayer dollars, and frequently the cost can be most easily avoided by simply not "statutorily designating" the community —

unless there is a strong evidence of a great deal of court work to be done there. The purpose of section 462 should not be frustrated by prolifically amending sections 81 - 131.

JUDICIAL CONFERENCE POLICY

When Judge Hunter appeared before this subcommittee in June of 1978 and Mr. Macklin appeared in August of 1980, they both explained the history of the policy which the Judicial Conference has developed since 1959. Therefore, I will not repeat that history. In September of 1978, as a direct result of this subcommittee's hearings, the Judicial Conference adopted special procedures for consideration of proposals to modify judicial districts. In October of 1978, the Director of the Administrative Office of the U.S. Courts transmitted the revised policy to all judges and courts. A copy of the transmittal is attached to this statement as Appendix "A".

Under that policy, you will note that the Conference does not consider a proposed change in geographical or organizational configuration unless both the district court and judicial council of the circuit affected have approved the change and filed a brief report summarizing their reasons therefor. The judges of the individual district courts know their districts best. The members of the judicial councils of the circuits are statutorily responsible for "the effective and expeditious administration of the business of the courts" within their circuits. Therefore, the Court Administration Committee will not even review a proposal unless both the individual court and the council have approved. This, however, does not automatically preclude disapproval by the Judicial Conference. The Judicial Conference weighs the proposal on its own merits to see if it justifies approval in terms of workload at the designated location.

Thus far, the Judicial Conference has a general record of approval of consolidation and disapproval of proliferation. In general the greater the number of divisions and locations for holding court, the less efficient the administration of justice within the district. Even though a change might benefit one county or one community, the change might, in actuality, result in an overall reduction in "access to justice" for all litigants in the affected district. A change should only be statutorily designated when there has been a showing of strong and compelling need. Therefore, 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 court.

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 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 those in Texas; in these cases the long distances which must be traveled are a factor which must be considered in assessing the need for changes. 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.

With all of these observations in mind, let me address the bills pending today. I will try to comment on all bills which have similar changes in organizational or geographical configurations together.

DIVISION CHANGES WITHIN DISTRICTS

Georgia - H.R. 813

This bill would amend 28 U.S.C. § 90(a) by transferring the counties of Cherokee, Fannin, Gilmer and Pickens from the Atlanta Division of the Northern District of Georgia to the Gainesville Division of the Northern District of Georgia. Both the District Court for the Northern District of Georgia and the Judicial Council for the Eleventh Circuit have approved the transfer of Fannin, Gilmer, and Pickens Counties, but not Cherokee. The district court and the judicial council both felt that the interests of the public and the federal judicial system would best be served by retaining Cherokee County in the Atlanta division for the following reasons:

1. A new four-lane limited access highway has been completed that would connect Canton, the county seat of Cherokee County, to Altanta. Mileage to Atlanta would be approximately 58 miles and driving time only about one hour. Driving time to Gainesville would be longer and on a less desirable road.

2. Because of its proximity to the Atlanta metropolitan area, Cherokee County is experiencing dramatic growth. With such growth, an increase in civil and criminal business from that county is a reasonable expectation. The Federal district court facilities in Atlanta are more than adequate to handle an increase. Moving cases to the Gainesville division will entail additional costs for both new facilities and personnel.

3. A large number of residents already work in Atlanta and commute daily. Most of the services now available in the county come from Atlanta.

Therefore the Judicial Conference, upon recommendtion of the Court Administration Committee, has approved the transfer of all counties except Cherokee.

Illinois - H.R. 1579

This bill would amend 28 U.S.C. § 93 by transferring the counties of McHenry and DeKalb from the Eastern Division of the Northern District of Illinois to the Western Division of the Northern District of Illinois. Both the District Court for the Northern District of Illinois and the Judicial Council for the Seventh Circuit have approved the transfer of McHenry and DeKalb Counties.

At present the judge who is assigned to the Western division, centered in Rockford, serves there only on a part-time basis and serves the remainder of his time in the Eastern Division. It is contemplated that the increase in filings due to the transfer may well justify his spending full time there. Due to the fact that the dockets in Chicago are vastly overcrowded, the transfer would lighten the caseload in Chicago and increase the caseload in Rockford where the facilities are more than adequate to handle the increase.

In addition the bar associations of both counties have passed resolutions requesting the transfer because Rockford is more convenient for the lawyers and litigants of McHenry and DeKalb Counties.

It is the view of the District Court and the Judicial Council affected that no serious dislocation of the activities of the Federal Court would result. Therefore, the Judicial Conference, upon recommendations of the Court Administration Committee, has approved the transfer of both counties.

Texas - H.R. 4662

This bill would amend 28 U.S.C. § 124 by creating a McAllen Division in the Southern District of Texas and designating McAllen as the place of holding court in the new division. The Brownsville Division currently serves the counties of Willacy, Cameron, Hidalgo and Starr. This bill would transfer Hidalgo and Starr Counties from the Brownsville Division to the new McAllen Division in the Southern District of Texas. Both the District Court for the Southern Division of Texas and the Judicial Council of the Fifth Circuit have approved the establishment of the new division and the designation of McAllen as the place of holding court.

The district court and the judicial council both felt that a jurisdictional division of the work at the Brownsville Division would effectively improve the administration of justice and alleviate problems creating undue economic burdens for the following reasons:

1. The vast geographic area of the Brownsville Division necessitates large travel costs for court and executive branch employees. Hidalgo and Starr are the two counties the farthest away from Brownsville.
2. The bar associations of both Hidalgo and Starr Counties support the creation of the new division because of the convenience of the laywers and the litigants, as well as cost savings to the litigants.

3. The high incidence of criminal arrests, one of the highest in the nation, requires the transporting of all prisoners to Brownsville, causing costly security and transportation problems.

4. The transportation problems are compounded by the resulting overcrowding of local jail facilities. This creates a substantial hardship which, therefore, requires the availability of other more costly housing.

5. The Brownsville jury wheel includes a mix of jurors from all four counties. Due to the vast geographic area involved, this increases juror cost to the government and creates an inconvenience for the citizens involved. It has been estimated by the clerk of the Southern District of Texas that of those summoned last year approximately 42 percent were from Cameron and Willacy Counties and 55 percent were from Hidalgo and Starr Counties. The clerk estimates that the establishment of the McAllen Division, comprising Hidalgo and Starr Counties, would save $24,000 each year in jury costs alone.

6. All of the executive agencies involved with the court already have existing duty stations or offices located in the McAllen area. All agencies anticipate significant savings in cost in such areas as travel, per diem, transportation, vehicle depreciation, telecommunications, extra and overtime personnel and prisoner housing costs.

7. McAllen currently has a U.S. Federal Building which could be easily remodeled to provide suitable courtrooms, judge's chambers and clerk's offices. With a projected savings of $431,400 annually, occasioned by the creation of the new division, the net cost of the remodeling could be quite negligible.

Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has approved the establishment of the new McAllen Division and the designation of McAllen as the place of holding court in the new division.

Places of Holding Court

New Jersey - H.R. 313

This bill would amend 28 U.S.C. § 110 by designating Paterson as an additional place of holding court in the District of New Jersey. Both the District Court for the District of New Jersey and the Judicial Council of the Third Circuit have disapproved the designation of Paterson as a place of holding court.

It is the view of both the district court and the judicial council that caseload statistics indicate that such a change is neither administratively nor financially justifiable. In addition, the following factors influenced the decision of both the district court and the judicial council:

1. Recent population figures indicate that the area in which Paterson is located is experiencing a decline in population, while substantial gains have been made in other parts of the state.
2. Paterson is only fifteen miles from Newark, site of the existing Federal court. All public rail and bus transportation connects with Newark. Therefore, it is not inconvenient to travel the distance to Newark.
3. Since Paterson is within fifteen miles of the existing facility in Newark, the cost factor would, therefore, be unreasonable. In addition to making provisons for a judge and personal staff, provision must be made for

supporting personnel of the court — the office of the clerk, bankruptcy judge, probation officer, magistrate and court reporters — and personnel of the Department of Justice, the U.S. Attorney and the U.S. Marshal.

4. At present there are plans to build a new Federal facility in Newark, where there is already a shortage of courtrooms. In addition, New Jersey received three new judgeships as a result of the enactment of the Bankruptcy Amendments and Federal Judgeships Act of 1984. Therefore, with a new facility at Newark, there would be no need to expend additional funds for Federal facilities at Paterson.

When the relevant factors of size, density, distribution of population, travel time, convenience to judges, litigants, attorneys and jurors, and cost to taxpayers are taken into account, it is readily apparent that there is no genuine need for a resident Federal judicial presence in Paterson. Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has not approved the designation of Paterson, New Jersey as a place of holding court.

Kentucky - H.R. 2329

This bill would amend 28 U.S.C. § 97 by designating Hopkinsville as an additional place of holding court in the Western District of Kentucky. The District Court for the Western District of Kentucky recommended that no action be taken on this matter by the Judicial Council of the Sixth Circuit. However, the Judicial Council reviewed the bill and unanimously concluded that Hopkinsville should not be approved as an additional place of holding court.

The council did not believe that enough case-related work was arising in the area to be served by Hopkinsville to warrant the administrative burden of an additional statutory designation. At present, the district is authorized to hold court in four locations, actually does so, and occasionally holds special sessions in additional locations for the convenience of the public. In addition the U.S. Attorney neither endorsed nor opposed the bill. Only the Christian County Bar Association has recommended approval.

Under controlling Conference policy, "Only when a proposal has been approved both by the district court affected and by the appropriate circuit council, and only after both have filed a brief report summarizing their reasons for their approval with the Court Administration Committee, shall that Committee review the proposal and recommend action to the Judicial Conference". Since the Judicial Council of the Sixth Circuit did not approve the designation of Hopkinsville as a place of holding; and since, therefore, the Court Administration Committee could not recommend approval to the Judicial Conference, we recommend that H.R. 2329 not be enacted..

Louisiana - H.R. 3604

This bill would amend 28 U.S.C. § 98(a) by designating Houma as an additional place of holding court for the Eastern District of Louisiana. The Judicial Conference, upon recommendation of the Court Administration Committee, has approved the designation of Houma, Louisiana, as a place of holding court. This particular provision was enacted into law on July 10, 1984, when the President signed the Bankrutpcy Amendment and Federal Judgeship Act of 1984, as section 203(b).

Illinois - H.R. 4179

This bill would amend 28 U.S.C. §93(b) by designating Champaign/Urbana as an additional place of holding court in the Central District of Illinois. Both the District Court for the Central District of Illinois and the Judicial Council for the Seventh Circuit have approved the designation.

It is the view of the district court and the judicial council that the caseload statistics for the area in question do indeed justify the addition of Champaign/Urbana as a place of holding court. In addition the following factors influenced their decision:

1. At present Danville is the site of the Federal District Court for the Central District of Illinois for the eastern part of the state and is located on the far eastern side of the state, only eight miles from the Indiana Border. Champaign/Urbana is more centrally located to the bulk of the population in that part of the state and is within the largest county in the division.
2. Danville is served by one interstate highway while Champaign/Urbana is served by three. In addition superior air and bus service to Champaign/Urbana makes it more accessible than Danville. Amtrak stops in Champaign/Urbana, but does not stop in Danville. Therefore, Champaign/Urbana is much more accessible than Danville.
3. Danville has inadequate facilities to handle its present caseload.
4. The University of Illinois College of Law is located in Champaign/Urbana. The law library and law students would be of great assistance to the judges, their staff and the Federal district court in general.

Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has approved the designation of Champaign/Urbana as a place of holding court for the Central District of Illinois.

New York - H.R. 5619

This bill would amend 28 U.S.C. § 112(c) by designating Hauppauge as an additional place of holding court for the Eastern District of New York. Both the District Court for the Eastern District of New York and the Judicial Council for the Second Circuit have approved the designation.

The district court and the judicial council both felt that the interest of the public and the Federal Judicial System would be best served by designating Hauppauge as a place of holding court for the following reasons:

1. Hauppauge is in the Western portion of Suffolk County, Long Island, which is the most populous county (outside Brooklyn and Queens).
2. Hauppauge is thirty-five minutes east of the existing facility at Uniondale in Nassau County. Although this may seem like a short distance, the commute is along the Long Island Expressway which, because of heavy traffic, is time-consuming and burdensome for litigants.
3. At present the district as a whole desparately needs a new federal court facility. As a result of the enactment of the Bankruptcy Amendments and Federal Judgeships Act of 1984, two additional judgeships were created, making the shortage more acute.
4. The district as a whole recently experienced a caseload increase of thirty-two percent. Suffolk County accounted for 40 perent of the total caseload.

There has been no opportunity as yet for the Court Administration Committee to submit to the Judicial Conference its recommendation of the designation of Hauppauge as a place of holding court. But, due to the approval of both the District Court for the Eastern District of New York and the Judicial Council for the Second Circuit, we would recommend enactment of this legislation.

Colorado - H.R. 5994

This bill would amend 28 U.S.C. § 85 by designating Boulder as an additional place of holding court for the District of Colorado. Both the District Court for the District of Colorado and the Judicial Council for the Tenth Circuit have approved the designation for the following reasons:

1. Colorado is a mountainous state. This necessitates large government costs for jurors traveling from Boulder to Denver. The time and expense are also burdensome to litigants and attorneys.
2. The Fleming School of Law is located on the University of Colorado campus in Boulder. We have been assured that the moot courtroom located there would be available for the use of the district court at no cost to the Judiciary. In addition, the law library and law students would be of great assistance to the judge, his or her staff and the Federal district court in general.

Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has approved designation of Boulder as a place of holding court for the District of Colorado.

Vermont - H.R. 5777

This bill would amend 28 U.S.C. § 126 by designating Bennington as an additional place of holding court for the District of Vermont. Both the District Court for the District of Vermont and the Judicial Council of the Second Circuit have approved the designation.

Both the district court and the judicial council felt that an additional Federal presence in the lower two counties would enhance service to the people of Vermont. Vermont has two judges on active status. In addition a third judge has taken senior status and is still hearing cases. This judge has indicated his willingness to serve in Bennington.

Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has approved designation of Bennington as a place of holding court in the District of Vermont.

Georgia - H.R.___

To our knowledge, no bill has yet been introduced embodying a proposed revision in designated locations for holding court in the Southern District of Georgia which actually originated with the court itself. The proposal would amend 28 U.S.C. § 90(a)(b) by changing the headquarters of the Swainsboro Division of the Southern District of Georgia to Statesboro, by renaming the division, the "Statesboro" Division of the Southern District of Georgia, and by repealing the designation of Swainsboro as a place

of holding court. Both the District Court for the Southern District of Georgia and the Judicial Council of the Fifth Circuit Court of Appeals (Georgia is now in the Eleventh Circuit) have approved this change for the following reasons:

1. The court facilities in Swainsboro are wholly inadequate and in disrepair. If this legislation is enacted, the court facilities in Swainsboro will be closed.
2. Statesboro has new state court facilities which can be used with no cost to the Judiciary.

Therefore, the Judicial Conference, upon recommendation of the Court Administration Committee, has approved the change of the place of holding court for the Swainsboro Division of the Southern District of Georgia from Swainsboro to Statesboro and the change of the name of the division to the Statesboro Division.

AMOUNT-IN-CONTROVERSY REQUIREMENT IN CERTAIN ACTIONS ARISING UNDER THE INTERSTATE COMMERCE ACT

H.R. 3919 would amend sections 1337 and 1445 by removing the requirement of an amount in controversy for some actions involving common carriers under the Interestate Commerce Act. This particular requirement was added in 1978 by the 95th Congress. I will not repeat the history and reasoning behind the addition of this requirement. Suffice it to say that the history and reasoning that justified enactment by the 95th Congress has not changed. The probability of increasing the workload in the Federal district courts as a result of not having an amount in controversy requirement in these cases is just as real today as it was in 1978.

As you know, the Judicial Conference supported repeal of the jurisdictional amount under the general Federal question statute, 28 U.S.C. §1331, enacted in 1980. At that time, the Judicial Conference was greatly concerned about adding substantial

numbers of cases that have minimal amounts in controversy under specific statutes. One such instance that Congress concurrently recognized was cases arising under the consumer product safety laws. Pub. L. 96-486, §3(a), 94 Stat. 2369, December 1, 1980, amending Pub. L. 92-573, §23, 86 Stat. 1226, October 27, 1972 (15 U.S.C. §2072(a)) (retaining $10,000 jurisdictional amount in consumer product safety cases).

We can foresee substantial numbers of minor cases arising under §1337 provisions, relating to the Interstate Commerce Act, as it would be amended by the bill. One instance of a large number of non-joinable, non-class action claims for small amounts of overcharging in shipping, filed in a single district court, is already a matter of record. See Appendix B, showing Commerce cases for the District of Massachusetts. This group of cases was the underlying reason for imposing the $10,000 jurisdictional amount. Pub. L. 95-486, §9, 92 Stat. 1629, 1633, October 20, 1978. Federal court resources would be strained further than they are today if the courts were required to handle the large number of trivial claims that would arise from repeal of the jurisdictional amount. Accordingly, the Judicial Conference would not recommend the enactment of this measure.

Mr. Chairman, that concludes my prepared statement. I would again note that we very much appreciate your affording us this opportunity to present our views on these bills and their potential impact on the administration of justice in the Federal courts.

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

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F SPANIOL, JR.
DEPUTY DIRECTOR

October 12, 1978

MEMORANDUM TO ALL CIRCUIT COURT JUDGES
DISTRICT COURT JUDGES
CIRCUIT EXECUTIVES

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

> The Judicial Conference reaffirms its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after a showing of strong and compelling need. Therefore, whenever Congress requests the Conference's views on bills to:
>
> 1. create new judicial districts;
> 2. consolidate existing judicial districts within a state;
> 3. create new divisions within an existing judicial district;
> 4. abolish divisions within an existing judicial district;
> 5. transfer counties from an existing division or district to another division or district;
> 6. authorize a location or community as a statutorily designated place at which "court shall be held" under Chapter 5 of title 28 of the United States Code; or
> 7. waive the provisions of Section 142 of title 28, United States Code respecting the furnishing of accommodations at places of holding court --
>
> the Director of the Administrative Office shall transmit each such bill to both the chief judge of each affected district and the chief judge of the circuit in which each such district is located, requesting that the district court and the judicial council for the

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

William E. Foley
Director

APPENDIX B

DISTRICT OF MASSACHUSETTS
CIVIL CASES PENDING, BY TYPE OF CASE
DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1972-81

TYPE OF CASE	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981
TOTAL CIVIL CASES	4,708	6,968	8,945	10,422	12,162	13,324	14,265	11,720	10,594	6,425
U.S. CASES, TOTAL	414	540	667	794	879	1,102	1,326	1,402	1,528	1,370
CONTRACT	53	56	60	75	75	115	145	168	403	359
LAND CONDEMNATION	11	17	40	42	46	46	48	49	54	65
OTHER REAL PROPERTY	12	14	11	24	44	41	47	37	24	32
TORT ACTIONS	74	85	122	120	98	117	127	134	98	118
ANTITRUST	2	2	2	3	1	1	1	4	2	1
CIVIL RIGHTS	15	40	42	62	73	68	77	79	69	68
PRISONER PETITIONS:										
MOTION TO VACATE	13	18	20	21	17	22	29	32	19	9
HABEAS CORPUS	9	13	10	6	7	8	10	10	8	9
CIVIL RIGHTS	5	7	3	4	2	2	3	2	2	1
OTHER	3	7	3	9	8	9	5	1	-	2
FORFEITURES & PENALTIES	35	54	58	70	85	88	97	84	86	55
LABOR LAW SUITS	45	51	64	66	94	121	123	140	134	121
NARA	8	4	2	2	-	-	-	-	-	-
SOCIAL SECURITY	23	34	69	86	100	170	283	340	324	257
TAX SUITS	46	61	64	98	85	93	94	109	118	108
ALL OTHER U.S. CASES	60	77	97	106	144	201	237	233	207	165
PRIVATE CASES, TOTAL	4,294	6,428	8,278	9,628	11,283	12,222	12,939	10,318	9,086	5,055
CONTRACT	445	560	654	751	826	924	1,009	1,000	867	892
REAL PROPERTY	14	15	20	23	18	25	27	24	22	28
F.E.L.A	49	83	64	61	63	62	110	118	128	116
MARINE PERS INJURY	275	360	345	337	336	311	338	328	279	290
MOTOR VEHICLE P.I.	148	186	202	206	210	201	207	180	168	168
OTHER PERS INJURY	161	216	282	379	475	530	596	610	659	974
OTHER TORT ACTIONS	28	38	68	65	70	75	92	101	84	71
ANTITRUST	66	90	92	93	82	90	93	85	74	92
CIVIL RIGHTS	160	240	312	433	472	599	672	666	606	612
** COMMERCE	2,457	4,042	5,671	6,677	8,004	8,491	8,801	6,144	5,247	869
PRISONER PETITIONS:										
HABEAS CORPUS	80	84	71	65	64	95	93	100	91	89
CIVIL RIGHTS	65	86	92	110	135	144	156	167	152	183
OTHER	8	10	6	4	1	1	2	2	2	3
COPYRIGHT, PATENT, & TRADEMARK	93	117	111	99	131	143	172	168	177	194
LABOR LAW SUITS	72	95	101	128	174	270	284	319	261	227
ALL OTHER PRIVATE	173	206	187	195	202	261	287	306	249	247

Mr. KASTENMEIER. Does that conclude your remarks?

Mr. WELLER. Yes, sir.

Mr. KASTENMEIER. I don't know if you have seen the tentative draft of an omnibus court reorganization bill that the committee has. Let me go through the draft with you.

In terms of Mr. Mrazek's legislation affecting the court for the Eastern District of New York, that has been approved?

Mr. WELLER. Correct, Mr. Chairman. It is long overdue.

Mr. KASTENMEIER. Do you concur in the changes that would be accomplished with respect to the exchange of counties in the Northern District of Illinois?

Mr. WELLER. We very much approve of that, yes, sir.

Mr. KASTENMEIER. Do you concur in the change requested in legislation by the gentleman from Texas who testified earlier in terms of creating seven divisions, rather than six, in the southern district of Texas?

Mr. WELLER. The conference concurs in that proposal, too, Mr. Chairman.

Mr. KASTENMEIER. As I remember, you support the change involving the place of holding court in Georgia, from Swainsboro to Statesboro?

Mr. WELLER. That is correct, sir.

Mr. KASTENMEIER. Do you approve of the change involving naming Boulder as an additional place of holding court?

Mr. WELLER. We concur in that change.

Mr. KASTENMEIER. And the proposal to add Bennington as a place of holding court?

Mr. WELLER. We also concur.

Mr. KASTENMEIER. I have no further questions. I appreciate your brief testimony this morning.

Mr. WELLER. Thank you.

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

Mr. GLICKMAN. No questions, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from California?

Mr. MOORHEAD. I noticed one of these proposals seems to have divided support. The administration had no objection to the one in Kentucky, but the judicial council has disapproved the proposal. Why the split?

Mr. WELLER. I can't answer on behalf of the Department of Justice, Mr. Moorhead. The Circuit Council of the Sixth Circuit is firmly of the opinion that the district court's resources will be better utilized without the change, and as I understand the situation there within the judicial community, the judges of the district court, in deference to the interests of their local bar associations, chose not to take a position on the matter.

I don't know if you would be free to interpret their action as anything more than diplomacy. Under section 332 of title 28, the circuit council actually has the statutory responsibility to bite the bullet and make decisions in these matters and the sixth circuit council has very firmly recommended against the change.

Mr. MOORHEAD. So you are supporting it?

Mr. WELLER. No, sir, we are not supporting the change in Kentucky.

Mr. MOORHEAD. OK. That is the only question I have, Mr. Chairman.

Mr. KASTENMEIER. Would you restate very briefly the objection of the judicial conference to the amount-in-controversy requirement in certain actions arising under interstate commerce?

Mr. WELLER. I think briefly, Mr. Chairman, it boils down to an apprehension of a quantitative increase in district court workloads in large metropolitan areas. The reason that the alteration was made in legislative action 8 years ago arose in Boston and the data is very revealing there. We have attached an appendix to our prepared statement showing the impact on district court case filings in the District of Massachusetts as a result of the previous change.

Fundamentally, the district courts are overwhelmed these days with increasing civil filings and, at some point, Congress is going to have to take a hard look at legislation you have so arduously championed for so many Congresses concerning the abolition of diversity jurisdiction. Every incremental aspect of this thing makes a difference. We are looking at a proposal here that has the inherent promise of increasing in already very busy district courts the civil caseload burden.

I don't mean to misstate our case; I think the Department of Justice has done an excellent job of describing the elements involved here. Many of these cases that we are looking at with this particular proposal do not require adjudication. They are, in fact, settled out; but the workload burden on the clerk's office, and the associated workload burden on a supervising judge, can be significant. It certainly was in Boston over a period of several years, which prompted Congress to take the action that you are now being asked to reverse only 8 years later.

Our position is that our resources are scarce. We don't have enough of them and we can't afford the luxury of this change.

Mr. KASTENMEIER. All right. Thank you. If there are no further questions, we appreciate your appearance and your help today.

Mr. WELLER. Thank you again, sir.

Mr. KASTENMEIER. I neglected to point out that the gentlewoman from Colorado and her colleague Mr. Wirth, have introduced a bill affecting that State. That proposal has been approved and is included in the omnibus bill. I don't think it requires any special justification.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The last witness the Chair would like to call this morning is Mr. Mullins, representing the Justice Department. Dennis F. Mullins is Deputy Assistant Attorney General, Office of Legal Policy. We are very pleased to welcome him here today.

TESTIMONY OF DENNIS F. MULLINS, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DAVID J. KARP, ATTORNEY ADVISOR, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE; AND ALFREDA ROBINSON-BENNETT, SENIOR TRIAL COUNSEL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. MULLINS. Thank you, Mr. Chairman. At the table with me today is David Karp on my left, an attorney advisor in the Office of

Legal Policy, who did most of the work regarding H.R. 3919; and to my right, Alfreda Bennett, who works in the Civil Division of the Department of Justice and actually litigates a number of these Carmack amendment cases.

With your permission, Mr. Chairman, I would like to submit my written testimony for the record and summarize briefly at this time.

Mr. KASTENMEIER. Without objection, your 31-page statement will be received and made part of the record; and we will be pleased to hear your abbreviated remarks.

Mr. MULLINS. They will be brief, yes.

First, respecting the 10 bills changing the judicial division lines and places for holding court, I would note only that the recommendations of the Department of Justice and the Judicial Conference are by and large the same. Each bill has to be evaluated individually on the merits, as it is apparent this subcommittee does on a regular biennial basis.

I would mention no more about those bills except in response to questions. I am pleased to appear today to present the views of the Department of Justice, not only on those bills, but also on H.R. 3919, a bill to remove the amount-in-controversy requirement for Carmack amendment cases.

Under 49 U.S.C. § 11707, the Carmack amendment, suits for lost or damaged freight under bills of lading can be brought in either State or Federal court. However, access to a Federal forum is limited to cases in which the matter in controversy for each receipt or bill of lading exceeds $10,000. H.R. 3919 would remove this limitation.

The current $10,000 jurisdictional requirement was enacted in 1978 in response to perceived abuses of the system in the District of Massachusetts. During the mid-1970's, over 3,000 Carmack amendment cases were filed each year, to the point that in the middle of 1975, 64 percent of the pending cases in the District of Massachusetts were Carmack amendment cases.

Primarily these cases dealt with spoilage of fruit in transit, involved very small amounts, and were filed by a relatively small number of Carmack amendment plaintiff's attorneys. In 1978, Congress concluded that the Federal courts were not the best place for such cases and added this jurisdictional amount.

I would note, based on figures from the Administrative Office, that the number of Commerce cases decreased from a high of 3,155 in 1976 to 13 in 1981. For those of us trying to implement the policy of reducing the Federal caseload, this is progress.

The Department sees no advantages of enacting H.R. 3919. There is no indication that Federal judges provide greater expertise in most of these small cases and we see no advantage to be gained in the sense of uniformity in this area of the law. Rather, we share the concern of the judicial conference that such substantive and procedural differences that exist between Federal and State courts which handle these cases will be exploited, such that whichever party, plaintiff or defendant, which feels that the Federal court is the friendlier or the more advantageous forum in any particular case will file or remove cases there.

H.R. 3919 contains no safeguards that would protect against a repetition of the situation that occurred in Massachusetts during the 1970's and that led to the current law. In fact, in our opinion, once the jurisdictional amount is removed, we see no such safeguards are possible.

The literature provided to this committee and to us by the representatives of the shipping industry indicate that if the right to a Federal forum is reinstated in small cases, it likely would be used not only in Massachusetts, but nationally. The State court systems are used to dealing with litigation of this sort and have developed institutional mechanisms suitable for handling it. Such cases may, for example, be brought within the jurisdiction of the municipal courts or the small claims courts.

By contrast, Federal district courts are the only existing forums at the Federal level which can reasonably be assigned jurisdiction over Carmack amendment cases. As Federal trial courts of general jurisdiction, they are structurally and institutionally unsuited to function as clearinghouses for the negotiation and settlement of enormous numbers of small freight claims.

For the foregoing reasons, the Department of Justice opposes enactment of H.R. 3919.

I would at this time like to point out, however, that the literature provided by the shipping industry notes that the $10,000 jurisdictional amount, in conjunction with the limited venue provisions added by the Staggers Rail Act of 1980, combine to create the alleged hardship.

In 1981, the Department of Justice issued a report on the liability provisions of the Staggers Rail Act, as required by Congress in that act. In this report, the Department indicated that the venue provisions seemed unduly restrictive. This may be an avenue that proponents of H.R. 3919 may wish to pursue in the future.

This concludes my prepared remarks. I would, of course, be pleased to answer any questions the subcommittee may have.

[The statement of Mr. Mullins follows:]

Department of Justice

STATEMENT

OF

DENNIS F. MULLINS
DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY

BEFORE

THE

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

CONCERNING

PLACES OF HOLDING COURT LEGISLATION

ON

AUGUST 9, 1984

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear today to present the views of the Department of Justice on H.R. 3919, a bill to amend the Judicial Code to remove the amount-in-controversy requirement for certain actions involving common carriers, and on eleven bills to change the boundaries of judicial divisions and the locations for holding federal district court. These latter bills will be addressed individually in Part II of this testimony, while H.R. 3919 is addressed in Part I. The Department of Justice opposes enactment of H.R. 3919. 1/

I. H.R. 3919 -- Amount-in-Controversy Requirement for Carmack Amendment Cases

Under 49 U.S.C. § 11707, the "Carmack Amendment," suits for loss or damage to freight under a receipt or bill of lading can be brought in either state or federal court. However, access to a federal forum is limited to cases in which the matter in controversy for each receipt or bill of lading exceeds $10,000. H.R. 3919 would remove this limitation.

1/ The Judiciary is also opposed to this legislation. See letter of Leland E. Beck, Counsel, Administrative Office of the U.S. Courts, to Honorable Peter W. Rodino concerning H.R. 3919 (Dec. 7, 1983).

The current amount-in-controversy requirement was enacted in the 95th Congress. 2/ The problem which led to this reform was described as follows in the Senate Committee Report:

> Suits for freight damage or loss resulting from shipments in interstate commerce may be brought in either Federal or State court. These actions frequently arise from spoilage of fruits or vegetables in transit. Under present law, Federal courts are open to these actions regardless of the amount. . . .
>
> The result of this unlimited jurisdiction is that the Federal District Court for the District of Massachusetts has found itself inundated with these small freight damage claims, and similar situations could arise in almost any metropolitan area which must import substantial amounts of produce.
>
> In Massachusetts, as in most Federal jurisdictions, these freight damage actions were filed in State court because they involved only small amounts. However, in 1968. . . these actions began to appear in the Massachusetts Federal Court. . . . . [T]he practice of bringing such actions in Federal courts continued and grew. . . . Freight damage claims brought under. . . [the Carmack Amendment]. . .accounted for 1,229 civil filings [in the federal District Court of Massachusetts] in 1972 and 2,436 civil filings in 1973. . . . [T]he figures for 1974 and 1975 continue this trend, being 3,116 and 3,122 respectively. On June 30, 1975, Carmack Amendment cases represented 64 per cent of the pending cases in [the federal district court of] Massachusetts . . . .

2/ This reform was part of the omnibus judgeships bill that was enacted in 1978, P.L. 95-486, § 9(a), 92 Stat. 1633 (1978). A hearing on the proposed creation of the $10,000 amount-in-controversy requirement for Carmack Amendment cases involving all affected interests was held before the Senate Judiciary Subcommittee on Improvements in Judicial Machinery in 1975. See Federal Jurisdiction of Freight Damage Claims: Hearing on S. 346 before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 94th Cong., 2d Sess. (1975) [hereafter cited as "Hearing"]. The Department of Justice supported the reform. See id. at 3.

> These cases are rarely tried, with only 2 of the 1,002 cases disposed of in 1972 coming to trial. The other 1,000 cases were amicably settled by the parties who prepared a stipulation of settlement, and a judge of the court was merely required to sign his name in order to approve the settlement and reduce it to judgment.
>
> Although the amounts may vary, they are often settled for minuscule amounts. It is reported that some have been settled for as little as $65.
>
> Mass filing of damage claims for such small amounts which are rarely tried has placed an intolerable burden on the Massachusetts district court, and has forced it to function not as a judicial body but as a clearing-house for the negotiation and settlement of private debts.
>
> The Federal courts were not intended to be forums for small claims such as these and it is clearly inconsistent with the theory of Federal jurisdiction to have our courts function as collection agencies. . . .
>
> [The jurisdictional amount requirement] is intended to remedy this situation. . . . 3/

We believe that the grounds supporting Congress's decision to impose a jurisdictional amount limitation remain valid today. These grounds have, moreover, been strengthened by the acute caseload problem that the federal courts have faced in recent years. The remainder of my testimony on H.R. 3919 will discuss general considerations affecting the division of federal and state jurisdiction, the specific arguments that have been advanced in support of H.R. 3919, and the reasons why it should not be enacted.

3/ S. Rep. No. 117, 95th Cong., 1st Sess. 49-50 (1977), reproduced in 1978 U.S. Code Cong. & Admin. News 3612-13.

A. The Division of Federal and State Jurisdiction

The proponents of H.R. 3919 have emphasized that Carmack Amendment cases are governed by federal law and arise under a federal statute. However, an inflexible rule that access to a federal trial forum must be provided in cases involving federal law was not intended by the Framers and is not supported by either historical or contemporary practice.

At the Constitutional Convention, the Randolph plan provided for the creation of inferior federal courts. This proposal was attacked by other participants in the Convention on the ground that the state courts, subject to Supreme Court review, would be adequate interpreters and enforcers of federal law. The matter was brought to a vote and the Convention deleted the provision for lower federal courts; a compromise measure was thereafter adopted which left the creation of such courts in the discretion of Congress. The text of the Constitution, as finally enacted, expressly contemplates a role for the state courts in the administration of federal law. The Supremacy Clause provides: "This Constitution, and the Laws of the United States. . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." 4/

4/ U.S. Const., Art. VI, cl. 2. See Hart & Wechsler's The Federal Courts and the Federal System 11-12 (2d ed. 1973).

While the first Congress acted on its authority to create lower federal courts, these courts were not initially vested with any broad federal question jurisdiction. Rather, the First Judiciary Act in 1789 generally limited federal jurisdiction to admiralty and diversity cases and federal government litigation, requiring private litigants to look to the state courts for the vindication of claims arising under federal law. 5/ The role of the federal courts has subsequently expanded with the growth of the national government, but the federal courts have never occupied the full area of potential federal question jurisdiction, and the state courts have never been wholly divested of responsibilities in this area. Currently, state courts play a large role in the adjudication of cases involving the interpretation and application of federal law.

For example, in civil cases arising under state law, the state courts hear and decide defenses based on federal law. Aside from Supreme Court review, their decisions on federal questions in these cases are not subject to review in any federal court, and litigants generally have no right to bring these cases in federal court or to remove them to federal court. In state criminal cases, the influence of federal law in procedural matters is pervasive. Here, too, there is generally no right to secure a trial in, or removal to, a federal court.

5/ See id. at 33-35, 844-45.

In cases arising under federal statutes, the general pattern is also one of shared federal and state responsibility. The state courts possess concurrent jurisdiction in these cases except where Congress has decided to make federal jurisdiction exclusive. While the choice between state and federal forums is often left to the litigants, access to a federal forum is limited or barred altogether in a number of important areas.

For example, in suits under the Federal Employers' Liability Act, the Jones Act, and the Securities Act of 1933, a defendant may not remove to federal court a suit commenced in state court by the plaintiff. 6/ In the category of cases addressed by this bill -- Carmack Amendment cases below a $10,000 threshold -- state courts are the only forum permitted. The same is true of suits under the Magnuson-Moss Warranty Act in which the claims asserted total less than $50,000. 7/ Suits for damages under the Consumer Product Safety Act are also subject to a $10,000 amount-in-controversy requirement. 8/ Like the Carmack Amendment, these statutes are likely to produce a large number of

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6/ See 28 U.S.C. § 1445(a)(FELA); 46 U.S.C. § 688 (Jones Act); 15 U.S.C. § 77v(a)(Securities Act of 1933); see generally Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3729.

7/ See 15 U.S.C. § 2310(d)(3).

8/ See 15 U.S.C. § 2072(a).

small claims that could create a significant burden on the federal courts.

Another broad area of state court responsibility is cases arising under state laws enacted in accordance with various federal regulatory and social welfare programs. While these are not technically cases arising under federal law, the content of the applicable state statutes, plans or regulations is partially determined by federal prescriptions, and the state courts are often largely responsible for implementing the federal policies reflected in these prescriptions. This category includes, for example, cases arising under state laws implementing the 55 mile per hour speed limit and the Aid to Families with Dependent Children program. 9/

Thus, the general picture is one of shared federal and state responsibility in the adjudication of federal issues, including a predominant or exclusive role for the state courts in a number of areas. This suggests strongly that the policy questions presented by H.R. 3919 cannot be resolved on the basis of a general rule or presumption concerning access to a federal forum in federal question cases. There is a need for a more

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9/ See generally State Justice Institute/Annual Message of Chief Justice--1980: Hearing on H.R. 6709, S. 2387, S. 2483, and H.R. 6597 Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 96th Cong., 2d Sess. 221-23 (1980).

discriminating consideration of the policy questions raised by the proposal.

B. Arguments Supporting H.R. 3919

The proponents of this legislation have advanced a number of specific arguments:

1. Consistency with other federal question cases. Through enactments in 1976 and 1980, Congress removed the $10,000 amount-in-controversy requirement under the general federal question jurisdiction statute, 28 U.S.C. § 1331. It has been urged that it is inconsistent to retain such a requirement for freight claims cases:

> [T]he $10,000 minimum. . . applies only to Section 11707 cases under the Interstate Commerce Act. Thus, "federal question" cases arising under the Carmack Amendment are treated differently from all other federal question controversies. . . . "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?" 10/

As the examples discussed earlier make clear, the assertion that Carmack Amendment cases are treated uniquely and

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10/ Shippers Nat'l Freight Claim Council, Repeal of $10,000 Jurisdictional Threshold as a Condition Precedent to Federal Court Jurisdiction Over Cargo Loss and Damage Claims in Transportation 3 (Nov. 1, 1983) (emphasis in original) [hereafter cited as "SNFCC Statement"].

arbitrarily is simply incorrect. In a number of areas, cases involving federal law questions or arising under federal law are committed entirely to the state courts, or are admitted to the federal courts on a basis at least as restrictive as freight claims cases under current law.

2. Expertise. A second argument is that federal judges have greater expertise in this area of law:

> This unique condition [the amount-in-controversy requirement] unfairly forces loss and damage claimants to seek relief in state courts rather than having their cases heard by Federal court judges experienced in federal laws governing interstate commerce. 11/

This argument presupposes that the average federal judge who hears Carmack Amendment and similar cases hears more of them and thus becomes more expert in handling them than the average state judge. However, the number of Carmack Amendment cases brought in state court has always been far greater than the number brought in federal court, and all cases below the $10,000 threshold have been brought in state court since 1978. 12/

11/ Id.

12/ In essence, the Carmack Amendment is a codification of the common law right to recover for loss or damage in transit caused by a carrier. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 137-38 (1964). There has been no reluctance in other areas to entrust the state courts with the interpretation and application of nationally uniform statutes that govern liability for loss or damage to transported goods in commercial transactions. See, e.g., (Footnote Continued)

Moreover, even if federal judges do enjoy some advantage in expertise, it is dubious that the difference has much importance. Specialized expertise in adjudication is most significant in cases that frequently require the decision of technical and complex issues that are likely to prove difficult or confusing for judges who have not received extensive exposure to them. It does not appear that small claims for cargo damage meet this description. 13/ These cases rarely go to trial, and they are generally fact-bound disputes which do not raise significant legal questions. They have normally been brought in state court, 14/ though there was no legal impediment to bringing them in federal court prior to 1978. The allegedly superior expertise of federal judges in these cases has apparently not been a consideration of overriding importance.

3. Uniformity in the Law. Another argument supporting H.R. 3919 is that it is needed to secure an adequate degree of uniformity in the interpretation of the Carmack Amendment:

> Since 1978, parties at interest -- shippers and carriers alike -- have been confronted by State court decisions rendered in all 50 states, each one free to

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12/ (Footnote Continued)
Uniform Commercial Code §§ 2-509, -510 (provisions governing allocation of risk of loss between buyers and sellers).

13/ See generally Hearing, supra note 2, at 31, 33-34.

14/ See id.; text accompanying note 3 supra.

apply its own interpretation of common carrier liability. 15/

The force of this argument depends on how large a problem is caused by conflicts between different state courts in this area, and how much improvement would be achieved by extending the range of concurrent jurisdiction. In fact, we do not find that Carmack Amendment litigation is troubled by interjurisdictional differences to any unusual degree. Of course, there is no reason why any significant differences that emerge could not be resolved through substantive legislative amendments.

If the assumption of this argument is that federal court jurisdiction produces a relatively uniform body of federal precedents that the state courts are likely to follow, it is difficult to see why the system proposed by H.R. 3919 would be significantly better than the current system. There is now concurrent federal jurisdiction in Carmack Amendment cases where the amount exceeds $10,000. The same questions of statutory interpretation that arise in smaller cases also arise in the larger cases that can now be brought in federal court, and can be addressed in the decisions of the federal courts in those cases.

In general, providing an exclusive federal forum can potentially produce gains in uniformity, if only because 50 state

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15/ SNFCC Statement, supra note 10, at 3.

supreme courts can disagree in more ways than twelve federal appellate courts. However, H.R. 3919 only proposes the extension of concurrent jurisdiction to cases involving smaller amounts and would not eliminate the effects of divergent state court interpretations. These effects would continue to be felt whenever the parties preferred to litigate in state court.

There is, of course, no reason to expect that parties would make their choice of forum with an eye toward securing decisional uniformity. Rather, as in other areas, the choice would be made on the basis of favorable caselaw or procedures and other tactical advantage.

These considerations naturally raise the question of whether the proposal of H.R. 3919 reflects a desire to avoid differences among the courts or a desire to exploit such differences. A remarkably candid letter from the President of the Oscar Mayer Foods Corporation to the Chairman of this Subcommittee in support of repealing the $10,000 jurisdictional amount restriction suggests that the latter motive has been significant:

> Title 28, Section 1337 was originally enacted. . .with no such restrictions except for [a limitation on removal by defendants of] actions brought in State court. This section, as . . .amended [in 1978]. . . serves to further reduce the forum in which we, as a claimant, can be heard. By limiting jurisdiction, the practice of forum shopping may be denied to the point that a plaintiff may be left no option but to plead his

> case in a court which has historically rendered decisions which were unfavorable to similar pleadings. 16/

It is perhaps understandable that self-interested litigants and their attorneys would value enlarged opportunities for this type of strategic game playing. However, providing a choice between forums that haphazardly benefits one party or the other in particular cases furthers no public interest.

C. Other Considerations

The amount-in-controversy requirement for Carmack Amendment cases was enacted in 1978 in response to the serious problems one federal district court had experienced for a decade as the result of a decision by a small number of attorneys in one city to file produce spoilage cases in federal court. As the Senate Committee Report noted, the same thing could happen in almost any metropolitan area if attorneys involved in freight claim litigation happened to conclude that the federal courts were a more congenial forum.

The proposal of H.R. 3919 incorporates no safeguards against future situations in which federal courts could be subjected to a deluge of small claims. Indeed, access to the

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16/ Letter of Jerry Hiegel, President, Oscar Mayer Foods Corporation, to Honorable Robert W. Kastenmeier (Sept. 8, 1983) (emphasis in original).

federal courts would actually be broader under H.R. 3919 than it was prior to 1978, since the bill would remove all restrictions on defendants as well as plaintiffs. 17/

The time of the federal courts should be regarded as a scarce national resource. The commitment of this resource is most clearly appropriate in connection with cases that implicate the sovereign interests of the United States, 18/ and cases in areas in which the federal courts provide an expert, high quality forum and reliance on state processes could not reasonably be expected to yield comparably satisfactory results. 19/

Conversely, we would regard adjudication of small freight claim cases in the federal courts as an improvident use of their limited resources. The point, of course, is not that such cases are unimportant, but simply that the federal district courts are not an appropriate forum for them.

17/ Prior to 1978, plaintiffs could bring Carmack Amendment suits in federal court regardless of amount, but defendants could remove to federal court Carmack Amendment cases commenced against them in state court only if the amount exceeded $3,000.

18/ For example, criminal prosecutions under federal law, civil suits to which the United States is a party, and other suits affecting the operation of the federal government.

19/ For example, patent, bankruptcy and antitrust cases.

The category of cases addressed by this bill is largely a small claims jurisdiction. For example, in the hearing in 1975 on the proposal to create the $10,000 amount-in-controversy requirement, the following information was given on a sample of 384 Carmack Amendment cases that were filed in the District Court of Massachusetts in 1974: Sixty-two percent of these cases were settled for less than $500, and 84 percent for less than $1,000. The largest dollar amount involved in any case was $3,700, and only eight cases involved a figure over $3,000. 20/

The state court systems are used to dealing with litigation of this sort, and have developed institutional mechanisms suitable for handling it. Such cases may, for example, be brought within the jurisdiction of municipal courts or small claims courts. By contrast, the federal district courts are the only existing forums at the federal level which can reasonably be assigned jurisdiction over Carmack Amendment cases. As federal trial courts of general jurisdiction, they are structurally and institutionally unsuited to function as clearinghouses for the negotiation and settlement of enormous numbers of small freight claims.

For the foregoing reasons, the Department of Justice opposes enactment of H.R. 3919.

20/ See Hearing, supra note 2, at 4.

II. Bills Respecting Judicial Division Boundaries And Places For Holding Court

The bills to change the boundaries of divisions within judicial districts and the locations at which federal district judges are authorized to hold court reflect the competing desires for an accessible yet cost-efficient federal court system. The Department of Justice recognizes that the federal judiciary must accommodate the needs of litigants, attorneys and others without an undue expenditure of tax monies. Thus, our evaluation of each of the eleven unrelated bills listed in the invitation to testify involved a balancing process. Some of these proposals meet clear-cut needs, while others seem to reflect the less pressing desires of particular constituent groups. Some would result in large expenditures of funds, some would have a negligible fiscal impact, and others would result in savings to the government. Some proposals would result in unnecessary expenditures while others would address the growing demands being placed on the federal court system in a fiscally prudent manner.

Of course, when Congress merely authorizes court to be held in an additional location no costs are incurred. That must await the appropriation and expenditure of funds to construct new facilities, and the circuit councils' authorization of judges to sit at the new locations. However, an authorization of a new location by Congress may be taken as an expression of its desire that the Executive and Judicial Branches take the steps necessary

for court to be held there. Thus, in our analysis of these bills, we have considered costs that would result from the exercise of the new authority as a cost of the bills themselves.

In our analysis we have paid close attention to the likely fiscal impact of the bills, as the costs of holding court in a new city can be considerable. They include purchase, construction, renovation, rental and maintenance costs. They include per diem and travel costs for Assistant U.S. Attorneys, U.S. Marshals, Bureau of Prison officials, federal investigators and expert witnesses. Often additional court staff and security officers become necessary. However, we are pleased to note that plans to implement several of the proposed changes include the use of existing facilities at little or no cost to the government. Also, some costs must be incurred in order to provide facilities for the new district judges to be appointed to fill vacancies created last month in the Bankruptcy Amendments and Federal Judgeship Act of 1984.

A. H.R. 313 - Paterson, New Jersey.

H.R. 313 would amend section 110 of title 28, United States Code, to permit the United States District Court for the District of New Jersey to be held in Paterson, New Jersey in addition to Camden, Trenton and Newark. The Department of Justice makes no recommendations respecting the enactment of this legislation.

Initially, we have some reservations about the need to authorize court to be held in Paterson. We understand that the federal district judges sitting in Newark are unanimously opposed to H.R. 313. We question the wisdom of establishing a new courthouse in an area that has suffered from a population decline in recent years and which is only fifteen miles from the existing federal courthouse.

We understand that two of the three new federal judges that will fill positions created in the Bankruptcy Amendments and Federal Judgeship Act of 1984 will be assigned to sit in northern New Jersey. As the existing federal building lacks room for expansion, new facilities will have to be built. We understand that plans are underway to build a major new facility across the street from the existing federal building. The plans for this building provide for seven new courtrooms. If this facility is built, there obviously would be no need to have court held in Paterson.

It seems reasonable that from a judicial administration perspective, certain economies would result from having the additional courtrooms located in proximity to the existing ones. However, we recognize that a variety of other considerations are factored into the decision of where to locate the new federal building for northern New Jersey. Thus, if the decision of where to locate the new federal building has not been made, then the decision of whether this legislation should be enacted would

involve policy considerations as to which the Department of Justice would make no recommendations. However, if and when it is decided that the new building should be located in Newark, then the Department of Justice would recommend against enactment of this legislation.

B. H.R. 813 - Northern District of Georgia.

H.R. 813 would amend section 90(a) of title 28, United States Code, to change the boundaries of the judicial divisions in the Northern District of Georgia. The Department of Justice recommends enactment of this legislation.

H.R. 813 would transfer Cherokee, Fannin, Gilmer, and Pickens Counties from the Atlanta Division of the Northern District of Georgia to the Gainesville Division of that district. We understand that the purpose of the bill is to reduce the increasingly heavy caseload of the Atlanta Division, and to make it more convenient for jurors in those four counties to travel to court.

The Atlanta Division's caseload continues to grow both in the quantity and complexity of cases filed. By contrast, criminal filings in the Gainesville Division have decreased, and the complexity of its overall caseload has remained about the same. Therefore, it would appear reasonable to reduce the Atlanta Division's caseload by transferring to Gainesville the

cases arising in the relatively rural counties of Cherokee, Fannin, Gilmer and Pickens. Placing those four counties in the Gainesville Division would also be more convenient for jurors, since Gainesville is more easily accessible than Atlanta for jurors residing in those counties. 21/

It appears that the fiscal impact of this legislation would be negligible. Therefore, because H.R. 813 would distribute the caseload more evenly between the Atlanta and Gainesville Divisions and would make travel to court more convenient for jurors at no increase in cost to the government, the Department of Justice recommends enactment of this legislation.

C. H.R. 1579 - Northern District of Illinois.

H.R. 1579 would amend section 93(a) of title 28, United States Code, to change the boundaries of the judicial divisions in the Northern District of Illinois. The Department of Justice recommends enactment of this legislation.

21/ Some have argued that Atlanta is more easily accessible to residents of Cherokee County, which is gradually becoming part of the metropolitan Atlanta area. Although Cherokee County may be closer to Atlanta in terms of absolute distance, and although the quality of highways between Cherokee County and Atlanta may be higher than between Cherokee County and Gainesville, those factors probably are outweighed by the inconvenience to jurors of traveling in Atlanta's rush-hour traffic.

H.R. 1579 would transfer DeKalb and McHenry Counties from the Eastern Division of the Northern District of Illinois to the Western Division of that district. We understand that the purpose of the bill is to enable the placement of a full-time judge for the Western Division in Rockford, Illinois by increasing the division's caseload. At the present time, the Western Division does not have a full-time judge. One of the judges of the Northern District, whose home is in Rockford, divides his time between Rockford and Chicago, where court is held for the Eastern Division.

We understand that two major benefits would result from transferring DeKalb and McHenry Counties to the Western Division and placing a full-time judge in Rockford. First, Rockford is geographically more convenient than Chicago for the lawyers and litigants of DeKalb and McHenry Counties. Second, the placement of a full-time judge in Rockford would make more efficient use of courthouse facilities because the federal courthouse in Chicago is overcrowded while the Rockford courthouse is under-utilized.

It appears that the fiscal impact of this legislation would be negligible. Thus, the Department of Justice recommends enactment of this legislation.

D. H.R. 2329 - Hopkinsville, Kentucky.

H.R. 2329 would amend section 97(b) of title 28, United States Code, to permit the United States District Court for the Western District of Kentucky to be held in Hopkinsville, Kentucky in addition to Bowling Green, Louisville, Owensboro, and Paducah. The Department of Justice has no objection to enactment of this legislation.

Despite the fact that Hopkinsville's part-time federal magistrate presides over a fairly heavy caseload, most of the cases involve simple misdemeanor charges arising on the nearby Fort Campbell Army Base. According to the Hopkinsville magistrate's office, a very minute percentage of those cases require consideration by the federal district judge sitting in Paducah. Indeed, the district judge in Paducah heard only 17 criminal cases last year. Furthermore, discussions with judicial and executive branch personnel throughout the Western District do not indicate a great need for this legislation. Enthusiasm for this bill seems to come solely from local officials in Hopkinsville.

However, we are informed that an old Post Office building, currently being used by the city of Hopkinsville with permission of the Federal Government, could be converted into a courthouse. No new construction would be necessary as adequate office and courtroom space already exist. The judge in Paducah has indicated a willingness to travel to Hopkinsville as needed.

If remodeling costs can be kept to a minimum, as we are informed they could be, and no permanent staff is required, then court could be held in Hopkinsville at very little cost.

The volume and type of litigation in the Hopkinsville area does not presently justify the designation of Hopkinsville as a location for holding court. However, with the cooperation of local officials who would benefit from a court in Hopkinsville, the cost of holding court there on a part-time basis would be minimal. Therefore, the Department of Justice has no objection to enactment of this legislation.

E. H.R. 3604 - Houma, Louisiana.

H.R. 3604 would amend section 98(a) of title 28, United States Code, to permit the United States District Court for the Eastern District of Louisiana to be held in Houma, Louisiana in addition to New Orleans. However, this change was enacted last month as section 203(b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984.

F. H.R. 4179 - Champaign/Urbana, Illinois.

H.R. 4179 would amend section 93(b) of title 28, United States Code, to permit the United States District Court for the Central District of Illinois to be held in Champaign/Urbana, Illinois in addition to Danville, Peoria, Quincy, Rock Island,

and Springfield. The Department of Justice recommends enactment of this legislation.

The Central District at present has three federal judges, one of whom sits in Danville, near Illinois' eastern border. In the last five years, the civil docket in Danville more than doubled from 250 cases filed in 1979 to 569 in 1983. For the first half of this year alone, 485 civil suits have been filed. To reduce this backlog, the Central District's other two judges have agreed to visit the eastern part of the state. They have been unable to do so, however, because Danville's courthouse contains only one courtroom.

We understand that Champaign/Urbana has a very large federal building equipped with a courtroom. For the minimal cost of converting other available space into chambers, the building could comfortably house either a visiting or permanent federal judge. Moreover, because of its larger population, central location, and law school facilities, Champaign is more accessible than Danville to judges, lawyers, and jurors. We are also informed that a number of law students would be available to assist in providing counsel to prisoners in the numerous pro se filings.

Since H.R. 4179 would facilitate speedier trials at negligible cost, the Department of Justice recommends enactment of this legislation.

G. H.R. 4662 - McAllen, Texas.

H.R. 4662 would amend section 124(b) of title 28, United States Code, to establish the McAllen Division of the Southern District of Texas. The Department of Justice recommends enactment of this legislation.

This legislation would provide for seven, rather than six, divisions of the Southern District of Texas. In order to create the new seventh division, the bill would remove Hidalgo and Starr Counties from the Brownsville Division and constitute those two counties as a new McAllen Division. Court for the new division would be held at McAllen, the seat of Hidalgo County. One of the two judges now sitting in Brownsville, who is a native of McAllen, would be transferred to the McAllen Division. The caseload of the old Brownsville Division would be split about evenly between the new McAllen and Brownsville Divisions.

The Southern District of Texas, with its 250-mile common border with Mexico, has the highest number of criminal filings in the United States. About one-half of those filings occur in the Brownsville Division. As currently constituted, the Brownsville Division covers a four-county area, which is about 150 miles long. Approximately 58 percent of the jurors in the Brownsville Division must travel to court from Hidalgo and Starr Counties, the two counties farthest from Brownsville, where court is held. The large number of filings in the Division, combined

with the sizeable geographic area involved and the fact that most jurors reside in the counties farthest from Brownsville, has resulted in excessive travel time and transportation costs for jurors, and excessive costs for such items as travel, per diem, vehicles, and prisoner housing for law enforcement agencies.

We understand that creation of a new McAllen Division would significantly reduce the cost of administering justice in the four-county area which currently constitutes the Brownsville Division. For example, we are informed that the change would result in annual savings of $24,000 in juror travel expenses, and federal law enforcement agencies operating in the area project total annual savings of $431,400. By contrast, the estimated cost of creating the new division would be about $123,500 annually -- the amount needed to acquire necessary space in McAllen for the court, its staff, and the U.S. Attorney's office. All of the other relevant federal law enforcement agencies already have fully staffed offices in McAllen.

Because the creation of a McAllen Division would reduce the cost of administering justice in the Southern District of Texas and increase the convenience of jurors and law enforcement agencies, the Department of Justice recommends enactment of this legislation.

H. H.R. 5619 - Hauppauge, New York.

H.R. 5619 would amend section 112(c) of title 28, United States Code, to allow the United States District Court for the Eastern District of New York to be held in Hauppauge, New York in addition to Brooklyn and Uniondale. The Department of Justice has no objection to enactment of this legislation.

Hauppauge is the county seat of the Long Island county of Suffolk. Although Long Island generates nearly 40% of the Eastern District's caseload, only three of the district's thirteen judges regularly sit in Uniondale, which is on Long Island between Hauppauge and Brooklyn. While Suffolk County produces one-half of those cases, or 20% of the district's total caseload, the 35-mile commute from Hauppauge to Uniondale along the Long Island "Expressway" is often frustrating and time-consuming for litigants, counsel and witnesses. Of course, establishing court in Hauppauge would provide Suffolk County with a more convenient location to try cases arising locally.

In contrast to Brooklyn, which is suffering from a population decline, Long Island's population increased over 30% during the 1970's. To manage the corresponding rise in litigation, two new federal judgeships were created in the Eastern District as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984. We are informed that because the courthouses in Brooklyn and Uniondale are filled to capacity and

cannot economically be expanded, the federal government will need to finance the construction or lease of new facilities to accommodate the new judges. Since most of the population growth centers around Hauppauge, it would make sense to locate the new facilities there.

Because there is a need to accommodate the increasing caseload from the Hauppauge area, combined with the necessity of providing for additional facilities for the two new judges in any event, the Department of Justice has no objection to enactment of this legislation.

I. H.R. 5994 - Boulder, Colorado.

H.R. 5994 would amend section 85 of title 28, United States Code, to permit the United States District Court for the District of Colorado to be held in Boulder, Colorado in addition to Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling. The Department of Justice recommends enactment of this legislation.

Court would be held periodically in the moot courtroom at the University of Colorado in Boulder for the convenience of litigants as well as for the educational benefit of the law students. The district judge who would sit in Boulder has assured us that the law school facilities would be adequate for his needs and are available without cost. We are informed that

cases heard in Boulder would only involve litigants from the area.

Because H.R. 5994 would benefit the litigants and law students who reside in the Boulder area while resulting in no additional cost to the federal government, the Department of Justice recommends enactment of this legislation.

J. No Bill Number - Southern District of Georgia.

The invitation to testify referred to "two other bills which have not yet been introduced." In conversations with Subcommittee staff, we were informed that this refers to one bill regarding the Southern District of Georgia, which to our knowledge still has not been introduced, and H.R. 5777, regarding the District of Vermont, which was introduced in June 1984.

The first proposal, not yet submitted in bill form, would amend title 28, United States Code, to change the place for holding court in the Swainsboro Division of the Southern District of Georgia from Swainsboro to Statesboro, and change the name of that division to the Statesboro Division. The Department of Justice recommends enactment of this legislation.

We understand that the purpose of the bill is to have court held in a location with better court facilities and accommodations than are available in Swainsboro, where they are

clearly inadequate. For example, the Swainsboro jury room is located in a basement, to which access is difficult for a significant number of jurors. Moreover, Swainsboro has no overnight accommodations for use by jurors when they must be sequestered or when other circumstances dictate an overnight stay.

Statesboro's facilities for court staff and jurors are far superior to those in Swainsboro. Since Statesboro is a college town, several motels are located there. Although there is no federal building in Statesboro, state authorities have agreed to allow the court to use fully adequate state-owned facilities in Statesboro at no cost to the federal government.

Because better facilities and accommodations for the court and its jurors are available in Statesboro, and because the proposed legislation would appear to have little or no fiscal impact on the federal government, the Department of Justice recommends enactment of this legislation.

K. H.R. 5777 - Bennington, Vermont.

H.R. 5777 would amend section 126 of title 28, United States Code, to permit Federal district court to be held in Bennington, Vermont as well as the already designated cities of Brattleboro, Burlington, Montpelier, Rutland, St. Johnsbury, and Windsor. The Department of Justice recommends enactment of this legislation.

Vermont's two active status federal judges currently sit in Burlington and Rutland. Vermont recently acquired the services of a third federal judge; the judge who recently took senior status is still hearing cases. We understand that the Brattleboro and Montpelier courthouses are being used for other purposes and the facilities at St. Johnsbury and Windsor are inadequate and in disrepair. Thus, establishing court at Bennington would be the most convenient and economical way to accommodate a third judge. Since the state of Vermont has given the federal government permission to use facilities of either the state district court or the superior court in Bennington at no cost to the federal government, the only fiscal impact would involve the leasing of chambers in a nearby office building. As a result, the new judge could move into permanent chambers in Rutland while the judge on senior status could move from Rutland to his hometown of Bennington.

The cost of leasing chambers will not be significant and will enable the government to retain the services of the senior judge. This expense can be terminated when he can no longer hear cases. Therefore, the Department of Justice has no objection to enactment of this legislation.

This concludes my prepared remarks. I would be pleased to answer any questions the Subcommittee may have.

Mr. KASTENMEIER. You have indicated that the Carmack amendment cases have been around for some time, I think you said the early 1970's?

Mr. MULLINS. They reached a peak in the District of Massachusetts in the early 1970's. The Carmack amendment was initially enacted in 1906.

Mr. KASTENMEIER. Is there any way, other than just opposing H.R. 3919, that we could aid in what appears to be a problem here. Could we propose some arbitration requirements or something to dispose of these cases without necessarily enacting something like H.R. 3919?

Mr. MULLINS. When it comes to compulsory arbitration, we do have concerns based on Article III of the Constitution. To some degree, these were elaborated upon in our letter to you respecting your five bills dealing with diversity jurisdiction, one of which raises the arbitration possibility in the context of diversity cases.

Once a case is in Federal court, ignoring for one moment those cases that can be assigned solely to Article I tribunals based on their coming within one of the exceptions to Article III noted in Justice Brennan's opinion in *Northern Pipeline* [1] there is some degree of right to have the case heard before an Article III judge and, if for over $20, a right to have a case at law decided by a jury. To the extent arbitration could conceivably be encouraged, it would be beneficial, but it could not be mandated.

Mr. KASTENMEIER. I remember some years back Senator Kennedy of Massachusetts had an interest in this—it may have been in the context of diversity jurisdiction, I have forgotten. It certainly would have been in the context of the elimination of the $10,000 amount-in-controversy limitation in cases arising out of Federal questions. But apparently this aspect was never resolved.

On a different subject—what differences do you have with the analysis of the Administrative Office with respect to the places of holding court or other judicial administrative divisional changes?

Mr. MULLINS. The differences are few. With respect to the one in Kentucky mentioned by Congressman Moorhead, we have no disagreement on the merits of that particular situation—the lack of a real need for court to be held there. It is simply a difference in the standard that is applied as to whether our position is a "no objection" or an "opposed." My understanding is that the Administrative Office—or the Committee of the Judicial Conference that decides these things—has a strong policy opposing the dispersion of Federal cases into numerous different locations and very much wants to keep the number of locations at the minimum necessary to accommodate the needs of the people.

That interest is of concern to the Department of Justice as well, but it may not be as great. The fiscal concern may be greater for the executive branch. While there is no particular need for court to be held in Hopkinsville, apparently arrangements have been made by the local officials so that it would cost next to nothing.

So on that basis, we have no objection.

Mr. KASTENMEIER. I understand.

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[1] *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

I have no further questions, Mr. Mullins.

Does the gentleman from California have any questions?

Mr. MOORHEAD. I don't believe so. I was trying to understand this 3919 and basically you can't from reading it without having the code section. I understand that this bill would wipe out the $10,000 limitation and let them go to court for pennies, more or less; is that it?

Mr. MULLINS. That is right. It is instructive when we review the record from the hearings held on this matter in 1975 before a Senate subcommittee, where Chief Judge Caffrey of the Massachusetts District Court provided a log of cases disposed of in his court which ranged from—obviously there were some no-recoveries where the defendant prevailed—but the recoveries ranged from $100 to a high of $3,700 over a field of 208 cases.

The testimony of the shippers today seems to indicate that even with inflation, the value of those cases has not changed dramatically.

Mr. MOORHEAD. It is obvious that we should find a means of justice that is cheaper, that is more reasonable than the amount in controversy. I don't think that will do it.

Mr. MULLINS. Pardon?

Mr. MOORHEAD. I am sure that you wouldn't want to be fighting over something that is less than the cost of the fight.

Mr. MULLINS. One would think so, but sometimes litigation strategies are developed by attorneys for both claimants and defendants, which are designed to achieve goals other than the cost-effective litigation of any particular case.

We note that the record respecting the first appearance of a jurisdictional amount in this matter, which was to prevent removal of these cases from State court to Federal court by defendants unless the amount exceeded $3,000—and this was added in 1914—the record reflects the desire of the railroads at that time, which were quite powerful economically and politically, to let it be known that small shippers would have to spend more than they would recover in order to sue the railroads. This is the sort of gamesmanship that is not in the public interest.

Mr. MOORHEAD. Thank you.

Mr. KASTENMEIER. On behalf of the committee, we thank you for your appearance.

Mr. MULLINS. Thank you, Mr. Chairman, Mr. Moorhead.

Mr. KASTENMEIER. That concludes the testimony today. I would like to receive for the record a statement submitted on behalf of the Shippers National Freight Claim Council, Inc., in support of H.R. 3919. They are not actually here to testify in person.

[The statement of Shippers National Freight Claim Council, Inc., follows:]

STATEMENT

Submitted On Behalf Of The

SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.

Before The

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES &
THE ADMINISTRATION OF JUSTICE

Of The

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

In Support Of

H.R. 3919, A BILL TO AMEND

TITLE 28, UNITED STATES CODE

August 9, 1984

Mr. Chairman and Members of the Subcommittee:

The Shippers National Freight Claim Council appreciates the scheduling of H.R. 3919 for hearing before your Subcommittee today and the opportunity to present its support for enactment of this bill.

A. The Council's Credentials.

The Shippers National Freight Claim Council (Council) is a non-profit, tax-exempt association, formed in February, 1974 by a group of shippers who had become disillusioned about the prospects of favorable results arising out of an investigation by the Interstate Commerce Commission (ICC) into carrier claims practices and related ICC regulations. It was decided that the increasing problems in this field, and need for relief therefrom, could better be resolved by concerted action on the part of private sector interests through the medium of a trade association.

Since its origin ten years ago, the Council membership has grown to over 500 regular members (claimant shippers and receivers), and more than 100 non-claimant members, such as carriers, forwarders, insurers, etc.

The general objectives of the Council are as follows:

(1) REGULATION Preserve federal regulation of common carrier cargo liability, claims standards, and cargo insurance requirements.

(2) STANDARDS Maintain full common carrier cargo liability and and claims standards applicable to domestic and international commerce.

(3) UNIFORMITY Support uniformity in cargo liability limits, time deadlines for filing claims and lawsuits, liability/ claims standards and burdens of proof applicable to modal and multimodal common carriage.

B. The Purpose of H.R. 3919.

H.R. 3919 was introduced on September 19, 1983 by Congressman William F. Clinger of Pennsylvania. This bill, if enacted, would restore access for shippers and/or receivers of goods claimants to the Federal District Courts to litigate loss and damage claims valued at less than the present $10,000 minimum amount, as specified in Sections 1337 and 1445 of Title 28 of the United States Code.

C. The History of Minimum Threshhold Requirements in Title 28 for Litigation in the Federal Courts.

Set forth below is a history of the pertinent actions by Congress providing for Federal District Court jurisdiction to hear cases where the amounts in controvery exceed the sum or value of minimum amounts, exclusive of interest and costs.

1. 1948. Section 1337 was enacted by Congress to confer original jurisdiction on the Federal District Courts to hear cases on the regulation of commerce. NO MINIMUM WAS IMPOSED.

2. 1948. Section 1445 was enacted by Congress to confer removal jurisdiction on the Federal District Courts to hear cases on the regulation of commerce. A $3,000 MINIMUM WAS IMPOSED, exclusive of interest and costs (June 25, 1948, 62 Stat 939).

3. 1958. Section 1331, which confers original jurisdiction on the Federal District Courts in federal question cases arising under the Constitution, laws and treaties of the United States, was amended by Congress to INCREASE THE EXISTING $3,000 MINIMUM TO A $10,000 MINIMUM (July 25, 1958, Public Law 85-554).

4. 1976. Section 1331 was amended by Congress to REMOVE THE EXISTING $10,000 MINIMUM in cases brought against the United States (October 21, 1976, Public Law 94-574).

5. 1978. Section 1337 was amended by Congress to ESTABLISH A $10,000 MINIMUM (October 20, 1978, Public Law 95-486).

6. 1978. Section 1445 was amended by Congress to INCREASE THE EXISTING $3,000 MINIMUM TO A $10,000 MINIMUM (October 20, 1978, Public Law 95-486).

7. 1980. Section 1331 was amended by Congress to REMOVE THE EXISTING $10,000 MINIMUM in all remaining federal question cases not covered by the 1976 amendment (December 1, 1980, Public Law 96-486).

D. The Status of Minimum Threshhold Requirements Applicable to Cargo Loss and Damage

Section 11707 of the Interstate Commerce Act applies to cargo loss and damage in United States commerce. This section is the recodified section of the law enacted on October 17, 1978 (Public Law 94-473). This provision was previously identified as Section 20 (11) of Part I of the Interstate Commerce Act and Section 219 of Part II of such Act, applicable to rail and motor common carriers, respectively. Section 11707 is referred to as "The Carmack Amendment."

By the above-cited amendment of Section 1331 in 1980 to REMOVE THE $10,000 MINIMUM applicable to litigation on all federal questions, this means that such minimum was removed almost four years ago on all litigation involving all terms of the Interstate Commerce Act except Carmack Amendment controversies. Today, federal question cases arising under the Carmack Amendment are treated differently from other federal question controversies. Hence, it is an anomaly in the statutory system applicable to litigation in the Federal District Courts that only cargo loss and damage cases are subject to the $10,000 minimum.

E. The Reason for the 1978 Amendment of Sections 1337 and 1445.

The 1978 amendments to Sections 1337 and 1445 establishing the $10,000 minimum amount for cargo loss and damage litigation were

enacted without any participation in or review of such litigation by the Interstate Commerce Commission.

The 1978 amendments were also enacted without the convening of public hearings before any House or Senate Committee at which private sector transport carriers and shippers could have been given the opportunity to testify on such legislation.

The $10,000 amendment originated in the Senate, and was added to the bill then under consideration regarding the authorization of additional District Court and appellate judgeships (H.R. 7843).

Reportedly, the only known basis for such amendment was the fact that a number of law suits on fresh produce claims had been instituted in the Federal District Court for the District of Massachusetts by a small group of receivers and their claim agent in Boston. Such suits were then filed in such Court because of an evidentiary ruling in the Massachusetts State Courts holding that Federal inspection certificates were inadmissible as evidence. This holding was later reversed.

Thus, the enactment of the $10,000 minimum was occasioned by a momentary overload of specialized produce cases in only one state (Massachusetts), yet it has since had nationwide application. This requirement also applies only to Section 11707 cases under the

Interstate Commerce Act.

Moore's Federal Practice, Section 0.167[4], asks:

> "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?"

F. Today's Recourse for Cargo Shippers and Receivers.

Historically, Federal and state courts have exercised concurrent jurisdiction over cargo loss and damage claims arising from shipments in interstate commerce. Federal law prevails, however, according to the U.S. Supreme Court. Adams Express Company v. Croninger, 226 U.S. 491 (1913).

The $10,000 MINIMUM threshhold requirement unfairly forces loss and damage claimants to seek relief in state courts rather than having their cases of lesser amount heard by Federal court judges experienced in federal laws governing interstate commerce. Since 1978, parties at interest - shippers and carriers alike - have been confronted by state court decisions rendered in all 50 states, each one free to apply its own interpretation of common carrier liability.

Judges in local and state courts are not knowledgeable about transportation law and as the deregulation of transport spreads, a growing number of conflicting state court decisions can be expected. There is little doubt that uncertainty and confusion in this area of the law will grow by virtue of varying state court action involving the interpretation of the Carmack Amendment.

G. The Interstate Commerce Commission Supports the Relief Provided by H.R. 3919.

The Interstate Commerce Commission reviewed the $10,000 MINIMUM REQUIREMENT for the first time in 1981 and advised Congress that "The Commission recommends removal of the new [1978] inconsistency so that Carmack Amendment controversies can be handled in the same manner as other federal question cases." Rail Carrier Cargo Liability Study Report, September 29, 1981, page 40 (excerpt attached).

H. Effect of Enacting H.R. 3919 on Court Caseload.

The Judicial Conference, by letter to Chairman Rodino of the House Judiciary Committee, dated December 8, 1983, expresses concern about "the large number of trivial claims that would arise from repeal of the jurisdictional amount."

We respectfully submit that no "trivial claim" problem will result, for the following reasons:

1. The request to repeal the jurisdictional amount is bottomed on the occasional but important need for federal court interpretation of federal law. The need for federal litigation on legal issues will govern the filing of lawsuits, not the amount of the claim.

2. Cargo loss and damage claims brought before Federal District Courts will inevitably cost the claimant substantial dollars for legal services, and other costs. Litigation of claims for the sake of litigation is not a realistic prospect in today's economic world.

3. In instances where loss and damage claims involve relatively low amounts, absent substantial legal issues, arbitration mechanisms are available at the Transportation Arbitration Board for shipper-trucker disputes and the American Arbitration Association for shipper-railroad disputes.

4. In 1984 a survey was conducted by the Council of representative shippers to ascertain the extent of 1983 cargo loss and damage claims in interstate commerce. The attached exhibit reflects the results. The highlights of this survey are as follows:

a. The average value of claims ranged from $128 to $716 per claim.

b. The heavy preponderance of claims were below $5,000 in value and would be taken to federal court only in instances of substantial legal questions.

c. Any claim over $1,000 should not be regarded as "trivial", whether taken to court or not.

Accordingly, the inpact of enacting H.R. 3919 would have little effect on court caseloads while, at the same time, providing fairness and due process to potential claimants now subjected to discrimination that will otherwise be maintained.

I. Conclusion

The Shippers National Freight Claim Council respectfully urges the enactment of H.R. 3919 by the 98th Congress.

Respectfully submitted,

Robert E. Redding

Robert E. Redding
Director of Federal Affairs

SHIPPER CARGO CLAIMS SURVEY

TOTAL CLAIMS [1]

Shipper[2]	Number	Average Value (000)	Claims over $10,000	Claims $5,000 to $10,000	Claims below $5,000
A	783	$271	2	3	778
B	29	152	-	-	29
C	600	716	1	5	594
D	2,236	241	3	5	2,226
E	2,288	128	-	25	2,263
F	308	576	8	25	283
G	1,405	481	4	21	1,384

1/ Shippers A-F claims - truck only. Shipper G - rail only.

2/ Shipper data were provided, subject to the condition of company confidentiality.

EXCERPT FROM INTERSTATE COMMERCE COMMISSION RAIL CARRIER CARGO LIABILITY STUDY REPORT

Analysis

Jurisdiction today is concurrent over interstate cargo claims. Section 11707(d) provides that a civil action may be brought in a district court of the United States or in a state court However, federal law prevails.[20/] The Commission stated in Loss and Damage, supra, at 589-90:

> Section 20(11) of the act provides a statutory cause of action for loss or damage in transit caused by a carrier even though the statute, in effect, merely recodifies the common law right. In fact, it is sometimes anomalously called a right under the Federal common law. Carrier liability is determined with particular reference to Federal Statutes and decisions, and the undisputed effect of these is that although a carrier is not an insurer per se, it, nonetheless, is fully liable for damage to or loss of goods transported by it unless the loss or damage occurred as a result of one of the excepted cases. As a consequence, a carrier is virtually an insurer and the Federal law summarily invalidates carrier arguments to the contrary unless there is a correlation of the defense to an excepted cause, Commodity Credit Corporation v. Norton 167 F. 2d 161, 164 (1948). Neither the decisions of State courts which may be to the contrary... may overcome this governing principle. Missouri Pac. R. R. v. Elmore & Stahl, 377 U.S. 134 (1964), rehearing denied, 377 U.S. 948; and Condokes v. Southern Pacific Company, 303 F. Supp. 1158 (D. Mass. 1968). Conflicting interpretations, therefore, would have to be resolved in the Federal Courts.

Since Federal law prevails, claims arising under section 11707 are "federal questions" and the provisions of the Carmack Amendment govern exclusively, regardless of whether the plaintiff asserts a federal question. The right of removal to federal court, however, is limited. The $3,000 threshhold established in 1914 for removal was increased to $10,000 in 1978.

A $10,000 minimum was required to originate in federal courts. The threshhold was raised to eliminate the inconsistency between removal and original jurisdiction. Thus, legislative history of Pub. L. 95-486, which amended 28 U.S.C. $1337 and $1445(b), stated:

> The Carmack amendment, 49 United States Code 20 (11), and 28 United States Code 1337, provide that suits may be brought in federal court against a railroad or motor carrier. However, there is no provision

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20/ Adams Express Co. v. Croninger, supra.

> in these statutes that assumes that the court will only hear substantial claims. This is a basic inconsistency with diversity and Federal question jurisdiction, which require a $10,000 minimum amount in controversy. 1978 U.S. Cong. & Adm. News, Page 3612.

A new inconsistency exists now that Congress has recently removed the $10,000 threshhold for original jurisdiction in federal question cases. (Pub. L. 96-486.) Today, federal questions cases arising under the Carmack Amendment are treated differently from other federal question controversies. Moore's Federal Practice $0.167[4] asks, "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?"

The Commission recommends removal of the new inconsistency so that Carmack Amendment controversies can be handled in the same manner as other federal question cases.

Mr. KASTENMEIER. If there are other statements to be submitted on that legislation, they, too, may be received.

That concludes the hearing today.

[Whereupon, at 2:30 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

FOR HEARING ON FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1984, AUGUST 9, 1984

APPENDIX I—LEGISLATIVE MATERIALS

A. H.R. 6163, 98th Cong., 2d Sess. (1984).
B. H. Rep. No. 1062, 98th Cong., 2d Sess. (1984).
C. Pub. L. 98-620, 98 Stat. 3335 (1984).

APPENDIX II—ADDITIONAL MATERIALS

A. Letter from William James Weller to Hon. Robert W. Kastenmeier dated June 8, 1984.
B. Additional materials relating to H.R. 3919:
1. H.R. 3919, 98th Cong., 1st Sess. (1983).
2. Letter from Jerry M. Hiegel, President, Oscar Mayer Foods Corporation, to Hon. Robert W. Kastenmeier dated September 8, 1983.
3. Letter from Ronald S. Kreul, Rayovac Corporation, to Hon. Robert W. Kastenmeier dated September 15, 1983.
4. *Repeal of $10,000 Jurisdictional Threshold as a Condition Precedent to Federal Court Jurisdiction Over Cargo Loss and Damage Claims in Transportation,* submitted by Shippers National Freight Claim Council, Inc., dated November 1, 1983.
5. Letter from Janice M. Rosenak, Legislative Counsel, Interstate Commerce Commission to Hon. Peter W. Rodino, Jr., dated November 16, 1983, with attachment.
6. Letter from Leland E. Beck, Counsel, Administrative Office of the U.S. Courts, to Hon. Peter W. Rodino, Jr., dated December 7, 1983.
7. *Dispute Resolution Program for Shippers and Common Carriers of Property (Other than Household Goods), Including Conditional Payment of Attorneys' Fees,* submitted by Shippers National Freight Claim Council, Inc., dated April 6, 1984.
8. Letter from Harry E.J. Marsh, Jr., Century Manufacturing Co., to Hon. Peter W. Rodino, Jr., dated July 24, 1984.
9. Letter from Bob Baker, Lennox Industries Inc., to Hon. Peter W. Rodino, Jr., dated July 25, 1984.
10. Letter from James E. Bartley, The National Industrial Transportation League, to Hon. Robert W. Kastenmeier, dated July 26, 1984.
11. Letter from John Graham, Subaru of America, Inc., to Hon. Peter W. Rodino, Jr., dated July 27, 1984.
12. Letter from Eugene J. Mielke, The Pillsbury Company, to Hon. Peter W. Rodino, Jr., dated July 31, 1984.
13. Letter from Hon. Glenn M. Anderson, to Robert W. Kastenmeier dated August 8, 1984.
14. Letter from Hon. William F. Clinger, Jr., to Hon. Robert W. Kastenmeier dated August 9, 1984.
15. Letter from Hon. Bruce A. Morrison to Mr. William E. Foley, Director, Administrative Office of the U.S. Courts, dated October 22, 1984, with attachment.
16. Letter from Hon. Bruce A. Morrison to Mr. Dennis Mullins, Deputy Assistant Attorney General, dated October 22, 1984, with attachment.
C. Materials relating to H.R. 313:
1. H.R. 313, 98th Cong., 1st Sess. (1983).
2. Letter from Hon. Robert A. Roe to Hon. Robert W. Kastenmeier dated August 1, 1984, with attachments.
D. Materials relating to H.R. 813:
1. H.R. 813, 98th Cong., 1st Sess. (1983).
2. Letter from Hon. Ed Jenkins to Hon. Robert W. Kastenmeier, dated July 27, 1984, with attachments.
E. Materials relating to H.R. 1579:

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1. H.R. 1579, 98th Cong., 1st Sess. (1983).
2. Letter from Hon. Lynn Martin to Hon. Robert W. Kastenmeier, dated July 24, 1984, with attachments.

F. Materials relating to H.R. 2329:
1. H.R. 2329, 98th Cong., 1st Sess. (1983).
2. Letter from Hon. Carroll Hubbard to Hon. Robert W. Kastenmeier, dated July 24, 1984, with attachments.

G. Materials relating to H.R. 4179:
1. H.R. 4179, 98th Cong., 1st Sess. (1983).
2. Letter from Hon. Edward R. Madigan to Hon. Robert W. Kastenmeier, dated August 6, 1984, with attachments.

H. Materials relating to H.R. 4662:
1. H.R. 4662, 98th Cong., 2d Sess. (1984).
2. Letter from Hon. E (Kika) de la Garza to Hon. Robert W. Kastenmeier dated August 7, 1984, with attachments.

I. Materials relating to H.R. 5777:
1. H.R. 5777, 98th Cong., 2d Sess. (1984).
2. Letter from Hon. James M. Jeffords to Hon. Robert W. Kastenmeier dated August 7, 1984, with attachments.

J. Materials relating to the proposed relocation of the Swainsboro Division of the Southern District of Georgia to Statesboro:
1. Letter from Hon. Lindsay Thomas to Hon. Robert W. Kastenmeier dated March 28, 1984, with attachments.
2. Letter from Hinton R. Pierce, U.S. Attorney, Southern District of Georgia, to Hon. Robert W. Kastenmeier, dated May 25, 1984.
3. Letter from Hon. Lindsay Thomas to Hon. Robert W. Kastenmeier dated July 6, 1984, with attachment.
4. Letter from Hon. Robert W. Kastenmeier to Hon. Lindsay Thomas dated August 7, 1984.
5. A Proposal for a Statesboro Division of the Federal District Court, Southern District of Georgia, and Addendum.
6. A Proposal for the Continuation of the Swainsboro Division of the United States District Court for the Southern District of Georgia.

APPENDIX I

LEGISLATIVE MATERIALS

I

98TH CONGRESS
2D SESSION

H. R. 6163

To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 1984

Mr. KASTENMEIER (for himself, Mrs. SCHROEDER, Mr. MOORHEAD, and Mr. HYDE) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal District Court Organization Act of 1984".

SEC. 2. The second sentence of subsection (c) of section 112 of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).".

SEC. 3. (a) Subsection (a) of section 93 of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "De Kalb," and "McHenry,"; and

(2) in paragraph (2)—

(A) by inserting "De Kalb," immediately after "Carroll,"; and

(B) by inserting "McHenry," immediately after "Lee,".

(b) The amendments made by subsection (a) of this section shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the effective date of this Act, and shall not affect any action pending in such court on such effective date.

SEC. 4. The second sentence of subsection (b) of section 93 of title 28, United States Code, is amended by inserting "Champaign/Urbana," before "Danville".

SEC. 5. (a) Subsection (b) of section 124 of title 28, United States Code, is amended—

(1) by striking out "six divisions" and inserting in lieu thereof "seven divisions";

(2) in paragraph (4) by striking out ", Hidalgo, Starr,"; and

(3) by adding at the end thereof the following:

"(7) The McAllen Division comprises the counties of Hidalgo and Starr.

"Court for the McAllen Division shall be held at McAllen.".

(b) The amendments made by subsection (a) of this section shall apply to any action commenced in the United States District Court for the Southern District of Texas on or after the effective date of this Act, and shall not affect any action pending in such court on such effective date.

SEC. 6. (a) Paragraph (1) of section 90(a) of title 28, United States Code, is amended—

(1) by inserting "Fannin," after "Dawson,";

(2) by inserting "Gilmer," after "Forsyth,"; and

(3) by inserting "Pickens," after "Lumpkin,".

(b) Paragraph (2) of section 90(a) of title 28, United States Code, is amended by striking out "Fannin,", "Gilmer,", and "Pickens,".

(c) Paragraph (6) of section 90(c) of title 28, United States Code, is amended by striking out "Swainsboro" each place it appears and inserting in lieu thereof "Statesboro".

(d) The amendments made by this section shall apply to any action commenced in the United States District Court for the Northern District of Georgia on or after the effective date

of this Act, and shall not affect any action pending in such court on such effective date.

SEC. 7. Section 85 of title 28, United States Code, is amended by inserting "Boulder," before "Denver".

SEC. 8. The second sentence of section 126 of title 28, United States Code, is amended by inserting "Bennington," before "Brattleboro".

SEC. 9. (a) The amendments made by this Act shall take effect on January 1, 1985.

(b) The amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of this Act.

○

98TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 98-1062

FEDERAL DISTRICT COURT ORGANIZATION ACT OF 1984

SEPTEMBER 24, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 6163]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6163) to amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to realign the boundaries of divisions within three judicial districts, to statutorily create an additional place of holding court in four judicial districts, and to change the place of holding court in one judicial district. In short, the legislation modifies the organization and placement of Federal district courts so as to better reflect the changing demographic patterns and varying societal needs in six states.

BACKGROUND

Each Congress, several bills are introduced to change the geographic organization of the Federal courts. It generally has been the policy of the subcommittee to refrain from authorizing new places of holding court or making changes in the organizational or geographical configuration of individual judicial districts unless such changes have been endorsed by the judicial branch of government—through the Judicial Conference of the United States—and

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the executive branch—through the United States Department of Justice.

The Judicial branch has set strict standards for such endorsements. The Judicial Conference approved the following clarified statement of policy at its September 1978 meeting:

> The Judicial Conference reaffirms its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after a showing of strong and compelling need. Therefore, whenever Congress requests the Conference's views on bills to:
>
> 1. create new judicial districts;
> 2. consolidate existing judicial districts within a state;
> 3. create new divisions within an existing judicial district;
> 4. abolish divisions within an existing judicial district;
> 5. transfer counties from an existing division or district to another division or district;
> 6. authorize a location or community as a statutorily designated place at which "count shall be held" under Chapter 5 of title 28 of the United States Code; or
> 7. waive the provisions of Section 142 of title 28, United States Code respecting the furnishing of accommodations at places of holding court—
>
> The Director of the Administrative Office shall transmit each such bill to both the chief judge of each affected district and the chief judge of the circuit in which each such district is located, requesting that the district court and the judicial council for the circuit evaluate the merits of the proposal and formulate an opinion of approval or disapproval to be reviewed by the Conference's Court Administration Committee in recommending action by the Conference. In each district court and circuit council evaluation, the views of the affected U.S. Attorneys offices, as representative of the views of the Department of Justice, shall be considered in addition to caseload, judicial administration, geographical, and community-convenience factors. Only when a proposal has been approved both by the district courts affected and by the appropriate circuit council, and only after both have filed a brief report summarizing their reasons for their approval, with the Court Administration Committee, shall the Committee review the proposal and recommend action to the Judicial Conference.[1]

Thus, when a hearing was scheduled on the several bills relating to the geographic organization of the Federal courts, the subcommittee carefully considered the written and oral testimony of the Judicial Conference.[2]

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[1] Memorandum to all Circuit Court Judges, District Court Judges, and Circuit Executives dated October 12, 1978, from William E. Foley, Director, Administrative Office of the United States Courts.

[2] See District Court Organization: Hearings Before the Subcomm. on Courts, Civil Liberties and the Administration of Justice of the Comm. on the Judiciary, 98th Cong., 2d Sess. (1984) (testimony of William Foley) [hereinafter referred to as Hearings on District Court Organization, 98th Cong.].

The Subcommittee also requested and considered the testimony of the executive branch of government. The Department of Justice generally consults with the United States Attorneys offices in the affected districts, who are able to assess local needs and conditions. The Department of Justice also considers the fiscal impact of the proposals, including the cost of obtaining the necessary office space and per diem and travel costs for court personnel. On the basis of the recommendations of the respective U.S. Attorneys and the anticipated fiscal impact, the Department is able to formulate a clear and consistent position on court organization issues.[3]

In addition, written materials in support of the proposals were solicited from the sponsoring members of the various bills.

The following discussion of the proposed legislation is divided into two parts: proposals to change divisions within districts and proposals to create or change places of holding court within judicial districts.

A. PROPOSALS TO CHANGE DIVISIONS WITHIN DISTRICTS

1. Northern District of Georgia.—The Northern District of Georgia is divided into four divisions: the Gainesville, Atlanta, Rome and Newman Divisions. The proposed legislation would move three counties—Fannin, Gilmer, and Pickens—from the Atlanta Division to the Gainesville Division.

The testimony received indicated that both divisions have a full complement of facilities and court-related personnel. However, the caseload in the Atlanta Division continues to grow both in the quantity and complexity of cases filed, while criminal filings in the Gainsville Division have decreased. Therefore, it appears reasonable to reduce the Atlanta Division's caseload by transferring to Gainsville the cases arising from primarily rural counties of Fannin, Gilmer and Pickins.

The three counties are geographically located closer to Gainesville than to Atlanta. In the most extreme case, Fannin County is nearly 60 miles closer to Gainesville. Thus, jurors, attorneys, and other interested parties have indicated a preference to travel to Gainsville rather than traveling the mountainous roads to Atlanta. In addition, the Government could realize a savings in the mileage fees paid to jurors who are called to jury service from these three counties.

The proposed legislation is supported by the bar associations of the affected counties and by U.S. District Court Judge William C. O'Kelley, who is assigned to the Gainesville Division. No opposition to the proposal has been identified.

2. Northern District of Illinois.—The Northern District of Illinois is comprised of two divisions—the Eastern Division and the western Division. The proposed legislation would transfer McHenry and DeKalb counties from the Eastern Division to the Western Division.

Court for the Eastern Division is held in Chicago; court for the Western Division is held in Rockford, the second-largest city in Illi-

[3] See Hearings on Federal Court Organization, 98th Cong. (statement of Dennis F. Mullins, Deputy Assistant Attorney General, U.S. Department of Justice).

nois. The eastern Division docket is heavily overloaded and the judge who serves the Western Division currently divides his time between Rockford and Chicago. Transferring McHenry and DeKalb counties will shift approximately 200,000 people from the Eastern Division to the Western Division. Cases arising in those two counties will be placed on the Rockford docket, thereby relieving the heavy caseload in Chicago.

McHenry and DeKalb counties are geographically more convenient to Rockford than Chicago. Thus, attorneys, jurors and others in those counties will find access to a Federal court in Rockford easier and less expensive.

The caseload in Rockford would increase sharply as a result of this proposal. However, the facilities in Rockford are currently under-utilized and it appears that the existing facilities are more than adequate to handle the increase. In addition, the increased filings would likely justify placement of a full-time judge in Rockford, thereby making more efficient use of the courthouse there. Because of the exisiting facilities and personnel, the anticipated costs are minimal.

The proposal enjoys the support of the McHenry and DeKalb county bar associations, as well as the bar associations from all of the other counties in the Western Division and the Chief Judge of the Northern District of Illinois. In addition, both the Judicial Conference and the Department of Justice have endorsed the proposal.

3. Southern District of Texas.—The Southern Distict of Texas is currently divided into six divisions. The Brownsville Division presently covers a four-county area which is about 150 miles long. The proposed legislation would transfer Hidalgo and Starr counties from the Brownsville Division to a newly-created McAllen Division, and would leave Cameron and Willacy counties in the Brownsville Divison. Under the proposal, one of the two judges currently sitting in Brownsville would be transferred to the McAllen Division.

The testimony received by the subcommittee indicated that the vast geographical area currently covered by the Brownsville Division necessitates enormous travel costs for court and executive branch employees. The high number of criminal arrests which occur along the Mexican border in the Brownsville Division has created costly prisoner transportation and security problems which would be alleviated with the establishment of a facility in McAllen which could be used for temporarily housing prisoners. Approximately 58% of the jurors summoned to serve in the Brownsville Division must travel to court from Hidalgo and Starr counties, the two counties farthest from Brownsville, creating tremendous inconvenience for the jurors and increased travel costs for the Government.

The creation of a new McAllen Division will significantly reduce the cost of administering justice in the four-county area which currently constitutes the Brownsville Division. The projected savings in jury costs alone is $24,000. In addition, the savings resulting from reduced costs of transporting prisoners and the savings anticipated by the executive agencies in such areas as travel, per diem, transportation, vehicle depreciation and telecommunications is projected to total approximately $431,400 annually. A U.S. Federal building currently exists in McAllen, and all of the executive agen-

cies involved with the court already have duty stations or offices in the McAllen Area. As a consequence, the projected cost of $123,500 per year to acquire the necessary space for courtrooms, judge's chambers and clerk's offices is, in comparison, negligible.

The proposal is endorsed by the bar association of Hidalgo and Starr counties, the Judicial Confidence and the Department of Justice.

B. PLACES OF HOLDING COURT PROPOSALS

1. Central District of Illinois.—The State of Illinois is divided into three judicial districts—Northern, Central and Southern. Court for the Central District is currently held at Danville, Peoria, Quincy, Rock Island, and Springfield. The proposed legislation would add Champaign/Urbana as an additional place of holding court in the Central District.

One of three Federal judges in the Central District currently sits in Danville, near the eastern border of Illinois. The testimony and material submitted indicate that the civil docket in Danville has more than doubled in the last five years, from 250 cases filed in 1979 to 569 in 1983; and that 485 civil suits have been filed during the first half of this year. As a result of the burgeoning caseload, additional court facilities are necessary in this part of the state. Danville is no longer the center of population in this part of Illinois. Champaign/Urbana lies within the largest county in the area, and is more centrally located to the bulk of the population there. In addition, the three interstate highways to Champaign/Urbana and superior air and bus service make it more accessible then Danville for lawyers, litigants and jurors. The University of Illinois College of Law is located in Champaign/Urbana. The law library there would be of great assistance to the judges and the Federal district court; and the law students would be available to assist in providing counsel to prisoners in pro se cases.

The facilities in Danville are inadequate and funds will have to be expended to build an additional courtroom in this part of the state. A large Federal building currently exists in Champaign/Urbana; thus, the cost of adding a courtroom to that building is anticipated to be no higher than the cost of adding a courtroom to the building in Danville.

It was stressed in the supporting documents that Champaign/Urbana will be an additional place of holding court, and that Danville will not be abandoned as a court site. The only opposition to the proposal came from the Vermilion County Bar Association, the county in which Danville is located, which expressed concern over whether Federal court will continue to be held in Danville. Federal Judge Harold A. Baker has indicated that Danville will remain his official station.

The three judges in the Central District of Illinois, as well as the Judicial Conference and the Department of Justice, support this proposal.

2. Eastern District of New York.—The State of New York is divided into four judicial districts—Northern, Southern, Eastern, and Western. Court for the Eastern District is currently held in Brooklyn and Hempstead (including the village of Uniondale in Nassau

County). The proposed legislation will add Hauppauge as a place of holding court in the Eastern District.

Hauppauge is located in Suffolk County, Long Island. The testimony received by the subcommittee indicates that Suffolk County has experienced tremendous growth in recent years; its current population is approximately 1.3 million. The corresponding caseload increase has resulted in severe overcrowding of the existing facilities in the Eastern District. Approximately 20% of the district's total caseload arises in Suffolk County, where residents may spend as much as four hours traveling to the courthouse in Uniondale. Although Hauppauge is only 35 miles from Uniondale, the drive along the Long Island Expressway is time-consuming and imposes a great hardship on litigants, lawyers, jurors and witnesses.

The creation of two additional Federal judgeships as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [4] makes the need for additional space even more critical. The anticipated cost of leasing the necessary space in Suffolk County is $251,200 per year. It is believed that leasing comparable space in Brooklyn would be considerably more costly.

This proposal has been endorsed by the Judicial Council of the Second Circuit, the judges of the Eastern District, the Administrative Office of the U.S. Courts and the Department of Justice. No opposition to the proposal has been identified.

3. Judicial District of Vermont.—The State of Vermont constitutes one judicial district. Court is currently held at Brattleboro, Burlington, Montpelier, Rutland, Saint Johnsbury, and Windsor. The proposed legislation would designate Bennington as an additional place of holding court.

The establishment of Bennington as a place of holding court will be useful to the citizens in southwestern Vermont, who currently must travel to Rutland or Brattleboro. The distance to both cities is substantial, and the drive becomes an even greater hardship during the snowy winter months.

Vermont recently acquired the services of a third full-time federal judge. Another judge, Honorable James Holden, recently took senior status and is still hearing cases. Judge Holden has secured the approval of the Vermont Supreme Court to use state court facilities in Bennington. Thus, only nominal costs for leasing space for chambers in a nearby office building will be incurred under this proposal. In addition, this will obviate the need to acquire space in Rutland to accommodate the new judge who will be replacing Judge Holden.

The Judicial Conference, the Department of Justice, and the Vermont Bar Association support the proposal.

4. Judicial District of Colorado.—The State of Colorado constitues one judicial district. Court is currently held at Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling. The proposed legislation would designate Boulder as an additional place of holding court.

This proposal is aimed at alleviating the congestion in the Denver facility, and making the Federal court more accessible to the citizens of Boulder. The materials submitted indicate that cases

[4] Pub. L. No. 98-353.

heard in Boulder would only involve litigants from that area. Court would be held in the moot courtroom at the University of Colorado Fleming School of Law in Boulder at no cost to the Federal government. The district judge who would sit in Boulder has indicated that the facilities at the law school are adequate for his needs and no additional space would be required. Finally, this proposal would provide an educational benefit to the students at the Fleming School of Law.

The proposal is endorsed by Chief Judge Sherman Finesilver, District Judge Jim Carrigan, the Boulder County Bar Association, the Dean of the Law School, the Judicial Conference, and the Department of Justice.

5. Southern District of Georgia.—The State of Georgia is divided into three judicial districts—Northern, Middle and Southern. The Southern District of Georgia is divided into six division. The proposed legislation would change the headquarters of the Swainsboro Division to Statesboro, rename the division as the "Statesboro Division," and eliminate the designation of Swainsboro as a place of holding court.

The testimony and other materials submitted in support of this proposal show that Statesboro is the geographical, population, and commercial center for the region. The existing Federal courthouse in Swainsboro is in disrepair and no longer adequately serves the needs of the division. By contrast, a new state courthouse exists in Statesboro and space for Federal court would be available in that building at no cost to the Federal government. In addition, the support facilities in Statesboro—restaurants, motels and hotels—are vastly superior, both in number and quality, to those in Swainsboro.

The proposal is supported by all the Federal judges in the Southern District, the bar associations in the Statesboro area, the Judicial Conference, and the Department of Justice. Opposition to the proposal comes from several bar associations in the Swainsboro area.

STATEMENT

On August 9, 1984, the Subcommittee on Courts, Civil Liberties and the Administration of Justice held a one-day hearing on ten legislative proposals which affect district court organization.

Testimony was received from the Honorable E (Kika) de la Garza, the Honorable Robert J. Mrazek, the Administrative Office of the U.S. Courts (William Weller, accompanied by Christy E. Massie), and the U.S. Department of Justice (Dennis F. Mullins, accompanied by David J. Karp and Alfreda Robinson-Bennett). Written statements were received from Hon. Robert A. Roe, Hon. Ed Jenkins, Hon. Lynn Martin, Hon. Carroll Hubbard, Hon. Edward Madigan, Hon. James M. Jeffords, and Hon. Patricia Schroeder.[5]

[5] In conducting its hearings on all pending legislative proposals, the subcommittee followed the pattern set in previous Congresses. See, Federal District Court Organization Act of 1978: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the Comm. on the Judiciary, 95th Cong., 2d Sess. (1978); Federal Court Organization and Fifth Circuit Division: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the Comm. on the Judiciary, 96th Cong., 2d Sess. (1980).

Following the hearing on August 9, a draft omnibus bill was circulated to the Members of the Subcommittee. With the exception of the proposal to move the district court headquarters in Swainsboro, Georgia to Statesboro, the omnibus bill contained only noncontroversial proposals. The Statesboro proposal was included in the omnibus bill on the basis of its support from the Judicial Conference and the Department of Justice. The bills for which opposition had been identified have been placed in a study category, and action on them has not been foreclosed.

The Subcommittee proceeded to mark up the draft bill, and unanimously voted to report a clean bill (H.R. 6163) to the full Committee. No amendments were offered.

On September 18, 1984, the full Judiciary Committee considered H.R. 6163 and, by voice vote, a quorum of Members being present, ordered the bill reported.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the proposed legislation may be referred to as the "Federal District Court Organization Act of 1984."

Section 2 amends 28 U.S.C. § 112(c) to designate Hauppauge as an additional place of holding court for the Eastern District of New York.

Section 3(a) amends 28 U.S.C. § 93(a) (1) and (2) by transferring McHenry and DeKalb Counties from the Eastern Division of the Northern District of Illinois to the Western Division of that district.

Section 3(b) provides that the transfer of McHenry and DeKalb Counties shall have no effect on actions which are pending in District Court for the Northern District of Illinois on the effective date of this Act.

Section 4 amends 28 U.S.C. § 93(b) by designating Champaign/Urbana as an additional place of holding court for the Central District of Illinois.

Section 5(a) amends 28 U.S.C. § 124(b) by creating the McAllen Division of the Southern District of Texas, and by transferring Hidalgo and Starr Counties from the Brownsville Division of that district to the McAllen Division.

Section 5(b) provides that the amendments made by section 5(a) shall have no effect on actions which are pending in the Southern District of Texas on the effective date of this Act.

Section 6 (a) and (b) amend 28 U.S.C. § 90(a) by transferring the counties of Fannin, Gilmer, and Pickens from the Atlanta Division of the Northern District of Georgia to the Gainesville Division of that District.

Section 6(c) amends 28 U.S.C. § 90(c) by moving the headquarters of the Swainsboro Division of the Southern District of Georgia to Statesboro, renaming the division as the "Statesboro Division," and repealing the designation of Swainsboro as a place of holding court in the Southern District of Georgia.

Section 6(d) provides that the transfer of three counties from the Atlanta Division of the Northern District of Georgia to the Gainesville Division of that district shall have no effect on actions which

are pending in District Court for the Northern District of Georgia on the effective date of this Act.

Section 7 amends 28 U.S.C. § 85 by designating Boulder as an additional place of holding court for the Judicial District of Colorado.

Section 8 amends 28 U.S.C. § 126 by designating Bennington as an additional place of holding court for the Judicial District of Vermont.

Section 9 provides that the effective date of this legislation is January 1, 1985.

Oversight Findings

In regard to clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the committee recognizes that, in addition to its responsibility to create judgeships pursuant to fair, systematic and open procedures, it should resolve questions relating to places of holding court and to district and division dividing lines in a similar manner. As a consequence, it is the view of the committee that the processing of district court organization legislation is most efficiently and expeditiously dealt with by formulation of an omnibus bill. Moreover, in this regard, the committee feels that it is better able to sort out meritorious and noncontroversial proposals from those requiring more study or consensus.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority or increased tax expenditures for the Federal judiciary.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

Cost Estimate

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the committee estimates that no costs will be incurred in carrying out the provisions of the reported bill.

Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget

Act of 1974, the following is the cost estimate on H.R. 6163 prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 20, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 6163, the Federal District Court Organization Act of 1984, as ordered reported by the House Committee on the Judiciary, September 18, 1984. We estimate that no significant cost to the federal government or to state or local governments would result from enactment of this bill.

H.R. 6163 would change the boundaries of divisions within certain judicial districts, would designate additional places of holding court in certain judicial districts, and would move the place of holding court in one judicial district. The changes would be made within judicial districts in the states of New York, Georgia, Texas, Illinois, Vermont, and Colorado. The realignments made by H.R. 6163 are expected to result in increased costs to the federal government in some areas, which would be offset by savings in others. Therefore, CBO estimates that no significant costs to the federal government would result from enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

COMMITTEE VOTE

H.R. 6163 was reported by the Committee on the Judiciary by voice vote, a quorum of Members having been present.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * * * *

PART I—ORGANIZATION OF COURTS

* * * * * * *

CHAPTER 5—DISTRICT COURTS

* * * * * * *

§ 85. Colorado

Colorado constitutes one judicial district.

Court shall be held at *Boulder,* Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling.

* * * * * * *

§ 90. Georgia

Georgia is divided into three judicial districts to be known as the Northern, Middle, and Southern Districts of Georgia.

Northern District

(a) The Northern District comprises four divisions.

(1) The Gainesville Division comprises the counties of Banks, Barrow, Dawson, *Fannin,* Forsyth, *Gilmer,* Habersham, Hall, Jackson, Lumpkin, *Pickens,* Rabun, Stephens, Towns, Union, and White.

Court for the Gainesville Division shall be held at Gainesville.

(2) The Atlanta Division comprises the counties of Cherokee, Clayton, Cobb, De Kalb, Douglas, [Fannin,] Fulton, [Gilmer,] Gwinnett, Henry, Newton, [Pickens,] and Rockdale.

Court for the Atlanta Division shall be held at Atlanta.

* * * * * * *

Southern District

(c) The Southern District comprises six divisions.

(1) * * *

* * * * * * *

(6) The [Swainsboro] *Statesboro* Division comprises the counties of Bulloch, Candler, Emanuel, Jefferson, Jenkins, and Toombs.

Court for the [Swainsboro] *Statesboro* Division shall be held at [Swainsboro.] *Statesboro.*

* * * * * * *

§ 93. Illinois

Illinois is divided into three judicial districts to be known as the Northern, Central, and Southern Districts of Illinois.

Northern District

(a) The Northern District comprises two divisions.

(1) The Eastern Division comprises the counties of Cook [De Kalb,] Du Page, Grundy, Kane, Kendall, Lake, La Salle, [McHenry,] and Will.

Court for the Eastern Division shall be held at Chicago.

(2) The Western Division comprises the counties of Boone, Carroll, *De Kalb,* Jo Daviess, Lee, *McHenry,* Ogle, Stephenson, Whiteside, and Winnebago.

Court for the Western Division shall be held at Freeport and Rockford.

Central District

(b) The Central District comprises the counties of Adams, Brown, Bureau, Cass, Champaign, Christian, Coles, De Witt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Kankakee, Knox, Livingston, Logan, McDonough, McLean, Macoupin, Macon, Marshall, Mason, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putman, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Warren, and Woodford.

Court for the Central District shall be held at *Champaign/Urbana*, Danville, Peoria, Quincy, Rock Island, and Springfield.

* * * * * * *

§ 112. New York

New York is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of New York.

Northern District

(a) * * *

* * * * * * *

Eastern District

(c) The Eastern District comprises the counties of Kings, Nassau, Queens, Richmond, and Suffolk and concurrently with the Southern District, the waters within the counties of Bronx and New York.

[Court for the Eastern District shall be held at Brooklyn and Hempstead (including the village of Uniondale).]

Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).

* * * * * * *

§ 124. Texas

Texas is divided into four judicial districts to be known as the Northern, Southern, Eastern, and Western Districts of Texas.

Northern District

(a) * * *

Southern District

(b) The Southern District comprises [six] *seven* divisions.

(1) The Galveston Division comprises the counties of Brazoria, Chambers, Galveston, and Matagorda.

Court for the Galveston Division shall be held at Galveston.

(2) The Houston Division comprises the counties of Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris, Madison, Montgomery, San Jucinto, Walker, Waller, and Wharton.

Court for the Houston Division shall be held at Houston.

(3) The Laredo Division comprises the counties of Jim Hogg, La Salle, McMullen, Webb, and Zapata.

Court for the Laredo division shall be held at Laredo.

(4) The Brownsville Division comprises the counties of Cameron, [Hidalgo, Starr,] and Willacy.

Court for the Brownsville Division shall be held at Brownsville.

(5) The Victoria Division comprises the counties of Calhoun, DeWitt, Goliad, Jackson, Lavaca, Refugio, and Victoria.

Court for the Victoria Division shall be held at Victoria.

(6) The Corpus Christi Division comprises the counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live oak, Nueces, and San Patricio.

Court for the Corpus Christi Division shall be held at Corpus Christi.

(7) The McAllen Division comprises the counties of Hidalgo and Starr.

Court for the McAllen Division shall be held at McAllen.

* * * * * * *

§ 126. Vermont

Vermont constitutes one judicial district.

Court shall be held at *Bennington,* Battleboro, Burlington, Montpelier, Rutland, Saint Johnsbury, and Windor.

* * * * * * *

○

Public Law 98-620
98th Congress

An Act

To amend title 28, United States Code, with respect to the places where court shall be held in certain judicial districts, and for other purposes.

Nov. 8, 1984
[H.R. 6163]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Trademark Clarification Act of 1984.

SHORT TITLE

SEC. 101. This title may be cited as the "Trademark Clarification Act of 1984".

15 USC 1051 note.

AMENDMENT TO THE TRADEMARK ACT

SEC. 102. Section 14(c) of the Trademark Act of 1946, commonly known as the Lanham Trademark Act (15 U.S.C. 1064(c)) is amended by adding before the semicolon at the end of such section a period and the following: "A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used".

DEFINITIONS

SEC. 103. Section 45 of such Act (15 U.S.C. 1127) is amended as follows:

(1) Strike out "The term 'trade-mark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." and insert in lieu thereof the following: "The term 'trademark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.".

(2) Strike out "The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." and insert in lieu thereof the following: "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.".

51-139 O - 85 (674)

(3) Add at the end of subparagraph (b) in the paragraph which begins "A mark shall be deemed to be 'abandoned'", the following new sentence: "Purchaser motivation shall not be a test for determining abandonment under this subparagraph.".

JUDGMENTS

SEC. 104. Nothing in this title shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title.

State Justice Institute Act of 1984.

TITLE II

SHORT TITLE

42 USC 10701 note.

SEC. 201. This title may be cited as the "State Justice Institute Act of 1984".

DEFINITIONS

42 USC 10701.

SEC. 202. As used in this title, the term—

(1) "Board" means the Board of Directors of the Institute;

(2) "Director" means the Executive Director of the Institute;

(3) "Governor" means the Chief Executive Officer of a State;

(4) "Institute" means the State Justice Institute;

(5) "recipient" means any grantee, contractor, or recipient of financial assistance under this title;

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States; and

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this title, a constitutionally or legislatively established judicial council acts in place of that court.

ESTABLISHMENT OF INSTITUTE; DUTIES

Corporation. 42 USC 10702.

SEC. 203. (a) There is established a private nonprofit corporation which shall be known as the State Justice Institute. The purpose of the Institute shall be to further the development and adoption of improved judicial administration in State courts in the United States. The Institute may be incorporated in any State pursuant to section 204(a)(6) of this title. To the extent consistent with the provisions of this title, the Institute may exercise the powers conferred upon a nonprofit corporation by the laws of the State in which it is incorporated.

(b) The Institute shall—

(1) direct a national program of assistance designed to assure each person ready access to a fair and effective system of justice by providing funds to—

(A) State courts;

(B) national organizations which support and are supported by State courts; and

(C) any other nonprofit organization that will support and achieve the purposes of this title;

(2) foster coordination and cooperation with the Federal judiciary in areas of mutual concern;

(3) promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

(4) encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

(c) The Institute shall not duplicate functions adequately performed by existing nonprofit organizations and shall promote, on the part of agencies of State judicial administration, responsibility for the success and effectiveness of State court improvement programs supported by Federal funding.

(d) The Institute shall maintain its principal offices in the State in which it is incorporated and shall maintain therein a designated agent to accept service of process for the Institute. Notice to or service upon the agent shall be deemed notice to or service upon the Institute.

(e) The Institute, and any program assisted by the Institute, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 (26 U.S.C. 170(c)(2)(B)) and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) which is exempt from taxation under section 501(a) of such Code (26 U.S.C. 501(a)). If such treatments are conferred in accordance with the provisions of such Code, the Institute, and programs assisted by the Institute, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

(f) The Institute shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, guidelines, and instructions under this title, and it shall publish in the Federal Register, at least thirty days prior to their effective date, all rules, regulations, guidelines, and instructions.

Federal Register, publication.

BOARD OF DIRECTORS

SEC. 204. (a)(1) The Institute shall be supervised by a Board of Directors, consisting of eleven voting members to be appointed by the President, by and with the advice and consent of the Senate. The Board shall have both judicial and nonjudicial members, and shall, to the extent practicable, have a membership representing a variety of backgrounds and reflecting participation and interest in the administration of justice.

42 USC 10703.

(2) The Board shall consist of—

(A) six judges, to be appointed in the manner provided in paragraph (3);

(B) one State court administrator, to be appointed in the manner provided in paragraph (3); and

(C) four members from the public sector, no more than two of whom shall be of the same political party, to be appointed in the manner provided in paragraph (4).

(3) The President shall appoint six judges and one State court administrator from a list of candidates submitted to the President by the Conference of Chief Justices. The Conference of Chief Justices shall submit a list of at least fourteen individuals, including judges and State court administrators, whom the conference considers best qualified to serve on the Board. Whenever the term of any of the members of the Board described in subparagraphs (A) and (B) terminates and that member is not to be reappointed to a new term, and whenever a vacancy otherwise occurs among those members,

the President shall appoint a new member from a list of three qualified individuals submitted to the President by the Conference of Chief Justices. The President may reject any list of individuals submitted by the Conference under this paragraph and, if such a list is so rejected, the President shall request the Conference to submit to him another list of qualified individuals. Prior to consulting with or submitting a list to the President, the Conference of Chief Justices shall obtain and consider the recommendations of all interested organizations and individuals concerned with the administration of justice and the objectives of this title.

(4) In addition to those members appointed under paragraph (3), the President shall appoint four members from the public sector to serve on the Board.

(5) The President shall make the initial appointments of members of the Board under this subsection within ninety days after the effective date of this title. In the case of any other appointment of a member, the President shall make the appointment not later than ninety days after the previous term expires or the vacancy occurs, as the case may be. The Conference of Chief Justices shall submit lists of candidates under paragraph (3) in a timely manner so that the appointments can be made within the time periods specified in this paragraph.

(6) The initial members of the Board of Directors shall be the incorporators of the Institute and shall determine the State in which the Institute is to be incorporated.

(b)(1) Except as provided in paragraph (2), the term of each voting member of the Board shall be three years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified.

(2) Five of the members first appointed by the President shall serve for a term of two years. Any member appointed to serve an unexpired term which has arisen by virtue of the death, disability, retirement, or resignation of a member shall be appointed only for such unexpired term, but shall be eligible for reappointment.

(3) The term of initial members shall commence from the date of the first meeting of the Board, and the term of each member other than an initial member shall commence from the date of termination of the preceding term.

Prohibition.

(c) No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(d) Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

(e) The members of the Board shall not, by reason of such membership, be considered officers or employees of the United States.

(f) Each member of the Board shall be entitled to one vote. A simple majority of the membership shall constitute a quorum for the conduct of business. The Board shall act upon the concurrence of a simple majority of the membership present and voting.

(g) The Board shall select from among the voting members of the Board a chairman, the first of whom shall serve for a term of three years. Thereafter, the Board shall annually elect a chairman from among its voting members.

(h) A member of the Board may be removed by a vote of seven members for malfeasance in office, persistent neglect of, or inability to discharge duties, or for any offense involving moral turpitude, but for no other cause.

(i) Regular meetings of the Board shall be held quarterly. Special meetings shall be held from time to time upon the call of the chairman, acting at his own discretion or pursuant to the petition of any seven members.

(j) All meetings of the Board, any executive committee of the Board, and any council established in connection with this title, shall be open and subject to the requirements and provisions of section 552b of title 5, United States Code, relating to open meetings.

(k) In its direction and supervision of the activities of the Institute, the Board shall—

(1) establish policies and develop such programs for the Institute that will further the achievement of its purpose and performance of its functions;

(2) establish policy and funding priorities and issue rules, regulations, guidelines, and instructions pursuant to such priorities;

(3) appoint and fix the duties of the Executive Director of the Institute, who shall serve at the pleasure of the Board and shall be a nonvoting ex officio member of the Board;

(4) present to other Government departments, agencies, and instrumentalities whose programs or activities relate to the administration of justice in the State judiciaries of the United States, the recommendations of the Institute for the improvement of such programs or activities;

(5) consider and recommend to both public and private agencies aspects of the operation of the State courts of the United States considered worthy of special study; and

(6) award grants and enter into cooperative agreements or contracts pursuant to section 206(a).

OFFICERS AND EMPLOYEES

SEC. 205. (a)(1) The Director, subject to general policies established by the Board, shall supervise the activities of persons employed by the Institute and may appoint and remove such employees as he determines necessary to carry out the purposes of the Institute. The Director shall be responsible for the executive and administrative operations of the Institute, and shall perform such duties as are delegated to such Director by the Board and the Institute. 42 USC 10704.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Institute, or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this title.

(b) Officers and employees of the Institute shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code.

(c)(1) Except as otherwise specifically provided in this title, the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.

(2) This title does not limit the authority of the Office of Management and Budget to review and submit comments upon the Institute's annual budget request at the time it is transmitted to the Congress.

(d)(1) Except as provided in paragraph (2), officers and employees of the Institute shall not be considered officers or employees of the United States.

(2) Officers and employees of the Institute shall be considered officers and employees of the United States solely for the purposes of the following provisions of title 5, United States Code: Subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions under the provisions referred to in this subsection at the same rates applicable to agencies of the Federal Government.

5 USC 8101, 8301 *et seq.*, 8701 *et seq.*, 8901 *et seq.*

(e) The Institute and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code, relating to freedom of information.

GRANTS AND CONTRACTS

42 USC 10705.

SEC. 206. (a) The Institute is authorized to award grants and enter into cooperative agreements or contracts, in a manner consistent with subsection (b), in order to—

Research and development.

(1) conduct research, demonstrations, or special projects pertaining to the purposes described in this title, and provide technical assistance and training in support of tests, demonstrations, and special projects;

Public information.

(2) serve as a clearinghouse and information center, where not otherwise adequately provided, for the preparation, publication, and dissemination of information regarding State judicial systems;

(3) participate in joint projects with other agencies, including the Federal Judicial Center, with respect to the purposes of this title;

(4) evaluate, when appropriate, the programs and projects carried out under this title to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have met or failed to meet the purposes and policies of this title;

Education.

(5) encourage and assist in the furtherance of judicial education;

(6) encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

(7) be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

(b) The Institute is empowered to award grants and enter into cooperative agreements or contracts as follows:

(1) The Institute shall give priority to grants, cooperative agreements, or contracts with—

(A) State and local courts and their agencies,

(B) national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments; and

Education.

(C) national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

(2) The Institute may, if the objective can better be served thereby, award grants or enter into cooperative agreements or contracts with—

(A) other nonprofit organizations with expertise in judicial administration;

(B) institutions of higher education; Education.

(C) individuals, partnerships, firms, or corporations; and

(D) private agencies with expertise in judicial administration.

(3) Upon application by an appropriate Federal, State, or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of Federal, State, or local government other than a court.

(4) Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts.

(c) Funds available pursuant to grants, cooperative agreements, or contracts awarded under this section may be used—

(1) to assist State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

(2) to support education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and to support national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques; Education.

(3) to conduct research on alternative means for using nonjudicial personnel in court decisionmaking activities, to implement demonstration programs to test innovative approaches, and to conduct evaluations of their effectiveness; Research and development.

(4) to assist State and local courts in meeting requirements of Federal law applicable to recipients of Federal funds;

(5) to support studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and to enable States to implement plans for improved court organization and finance;

(6) to support State court planning and budgeting staffs and to provide technical assistance in resource allocation and service forecasting techniques;

(7) to support studies of the adequacy of court management systems in State and local courts and to implement and evaluate innovative responses to problems of record management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

(8) to collect and compile statistical data and other information on the work of the courts and on the work of other agencies which relate to and effect the work of courts;

(9) to conduct studies of the causes of trial and appellate court delay in resolving cases, and to establish and evaluate experimental programs for reducing case processing time;

(10) to develop and test methods for measuring the performance of judges and courts and to conduct experiments in the use of such measures to improve the functioning of such judges and courts;

(11) to support studies of court rules and procedures, discovery devices, and evidentiary standards, to identify problems with the operation of such rules, procedures, devices, and standards, to devise alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and to test the utility of those alternative approaches;

(12) to support studies of the outcomes of cases in selected subject matter areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, to propose alternative approaches to the resolving of cases in problem areas, and to test and evaluate those alternatives;

(13) to support programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

(14) to test and evaluate experimental approaches to providing increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

(15) to carry out such other programs, consistent with the purposes of this title, as may be deemed appropriate by the Institute.

(d) The Institute shall incorporate in any grant, cooperative agreement, or contract awarded under this section in which a State or local judicial system is the recipient, the requirement that the recipient provide a match, from private or public sources, not less than 50 per centum of the total cost of such grant, cooperative agreement, or contract, except that such requirement may be waived in exceptionally rare circumstances upon the approval of the chief justice of the highest court of the State and a majority of the Board of Directors.

(e) The Institute shall monitor and evaluate, or provide for independent evaluations of, programs supported in whole or in part under this title to ensure that the provisions of this title, the bylaws of the Institute, and the applicable rules, regulations, and guidelines promulgated pursuant to this title, are carried out.

Study.

(f) The Institute shall provide for an independent study of the financial and technical assistance programs under this title.

LIMITATIONS ON GRANTS AND CONTRACTS

42 USC 10706.

SEC. 207. (a) With respect to grants made and contracts or cooperative agreements entered into under this title, the Institute shall—

(1) ensure that no funds made available to recipients by the Institute shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation or constitutional amendment by the Congress of the United States, or by any State or local legislative body, or

any State proposal by initiative petition, or of any referendum, unless a governmental agency, legislative body, a committee, or a member thereof—

(A) requests personnel of the recipients to testify, draft, or review measures or to make representations to such agency, body, committee, or member; or

(B) is considering a measure directly affecting the activities under this title of the recipient or the Institute;

(2) ensure all personnel engaged in grant, cooperative agreement or contract assistance activities supported in whole or part by the Institute refrain, while so engaged, from any partisan political activity; and

(3) ensure that each recipient that files with the Institute a timely application for refunding is provided interim funding necessary to maintain its current level of activities until—

(A) the application for refunding has been approved and funds pursuant thereto received; or

(B) the application for refunding has been finally denied in accordance with section 9 of this title.

(b) No funds made available by the Institute under this title, either by grant, cooperative agreement, or contract, may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

(c) The authorization to enter into cooperative agreements, contracts or any other obligation under this title shall be effective only to the extent, and in such amounts, as are provided in advance in appropriation Acts.

(d) To ensure that funds made available under this Act are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used—

(1) to supplant State or local funds currently supporting a program or activity; or

(2) to construct court facilities or structures, except to remodel existing facilities to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program.

RESTRICTIONS ON ACTIVITIES OF THE INSTITUTE

SEC. 208. (a) The Institute shall not— 42 USC 10707.

(1) participate in litigation unless the Institute or a recipient of the Institute is a party, and shall not participate on behalf of any client other than itself;

(2) interfere with the independent nature of any State judicial system or allow financial assistance to be used for the funding of regular judicial and administrative activities of any State judicial system other than pursuant to the terms of any grant, cooperative agreement, or contract with the Institute, consistent with the requirements of this title; or

(3) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that personnel of the Institute may testify or make other appropriate communication—

(A) when formally requested to do so by a legislative body, committee, or a member thereof;

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(B) in connection with legislation or appropriations directly affecting the activities of the Institute; or

(C) in connection with legislation or appropriations dealing with improvements in the State judiciary, consistent with the provisions of this title.

(b)(1) The Institute shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Institute shall enure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Institute nor any recipient shall contribute or make available Institute funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) The Institute shall not contribute or make available Institute funds or program personnel or equipment for use in advocating or opposing any ballot measure, initiative, or referendum.

(c) Officers and employees of the Institute or of recipients shall not at any time intentionally identify the Institute or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

SPECIAL PROCEDURES

42 USC 10708.

SEC. 209. The Institute shall prescribe procedures to ensure that—

(1) financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken; and

(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the recipient has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Institute to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Institute in accordance with procedures established in regulations promulgated by the Institute.

PRESIDENTIAL COORDINATION

42 USC 10709.

SEC. 210. The President may, to the extent not inconsistent with any other applicable law, direct that appropriate support functions of the Federal Government may be made available to the Institute in carrying out its functions under this title.

RECORDS AND REPORTS

42 USC 10710.

SEC. 211. (a) The Institute is authorized to require such reports as it deems necessary from any recipient with respect to activities carried out pursuant to this title.

(b) The Institute is authorized to prescribe the keeping of records with respect to funds provided by any grant, cooperative agreement,

or contract under this title and shall have access to such records at all reasonable times for the purpose of ensuring compliance with such grant, cooperative agreement, or contract or the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any recipient shall be submitted on a timely basis to such recipient, and shall be maintained in the principal office of the Institute for a period of at least five years after such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Institute may establish. Public availability.

(d) Non-Federal funds received by the Institute, and funds received for projects funded in part by the Institute or by any recipient from a source other than the Institute, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

AUDITS

SEC. 212. (a)(1) The accounts of the Institute shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken. 42 USC 10711.

(2) The audits shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audits shall be made available to the person or persons conducting the audits. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Institute. Report. Public availability.

(b)(1) In addition to the annual audit, the financial transactions of the Institute for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Institute are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Institute and necessary to facilitate the audit. The full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Institute shall remain in the possession and custody of the Institute throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, and other papers or property for a longer period under section 3523(c) of title 31, United States Code.

Report.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the Attorney General, together with such recommendations with respect thereto as the Comptroller General deems advisable.

Reports.

(c)(1) The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Institute.

(2) The Institute shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, person, or entity, which relate to the disposition or use of funds received from the Institute. Such audit reports shall be available for public inspection during regular business hours, at the principal office of the Institute.

Public availability.

REPORT BY ATTORNEY GENERAL

42 USC 10712.

SEC. 213. On October 1, 1987, the Attorney General, in consultation with the Federal Judicial Center, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the effectiveness of the Institute in carrying out the duties specified in section 203(b). Such report shall include an assessment of the cost effectiveness of the program as a whole and, to the extent practicable, of individual grants, an assessment of whether the restrictions and limitations specified in sections 207 and 208 have been respected, and such recommendations as the Attorney General, in consultation with the Federal Judicial Center, deems appropriate.

AMENDMENTS TO OTHER LAWS

SEC. 214. Section 620(b) of title 28, United States Code, is amended by—

(1) striking out "and" at the end of paragraph (3);

(2) striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) inserting the following new paragraph (5) at the end thereof:

"(5) Insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with the State Justice Institute in the establishment and coordination of research and programs concerning the administration of justice.".

AUTHORIZATIONS

42 USC 10713.

SEC. 215. There are authorized to be appropriated to carry out the purposes of this title, $13,000,000 for fiscal year 1986, $15,000,000 for fiscal year 1987, and $15,000,000 for fiscal year 1988.

EFFECTIVE DATE

42 USC 10701 note.

SEC. 216. The provisions of this title shall take effect on October 1, 1985.

TITLE III

Semiconductor Chip Protection Act of 1984.

SHORT TITLE

SEC. 301. This title may be cited as the "Semiconductor Chip Protection Act of 1984". 17 USC 901 note.

PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

SEC. 302. Title 17, United States Code, is amended by adding at the end thereof the following new chapter: Computers. Copyrights.

"CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

"§ 901. Definitions

17 USC 901.

"(a) As used in this chapter—

"(1) a 'semiconductor chip product' is the final or intermediate form of any product—

"(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

"(B) intended to perform electronic circuitry functions;

"(2) a 'mask work' is a series of related images, however fixed or encoded—

"(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

"(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

"(3) a mask work is 'fixed' in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration;

"(4) to 'distribute' means to sell, or to lease, bail, or otherwise transfer, or to offer to sell, lease, bail, or otherwise transfer;

"(5) to 'commercially exploit' a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only

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when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product;

"(6) the 'owner' of a mask work is the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter of such person or representative are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person's employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b);

"(7) an 'innocent purchaser' is a person who purchases a semiconductor chip product in good faith and without having notice of protection with respect to the semiconductor chip product;

"(8) having 'notice of protection' means having actual knowledge that, or reasonable grounds to believe that, a mask work is protected under this chapter; and

"(9) an 'infringing semiconductor chip product' is a semiconductor chip product which is made, imported, or distributed in violation of the exclusive rights of the owner of a mask work under this chapter.

"(b) For purposes of this chapter, the distribution or importation of a product incorporating a semiconductor chip product as a part thereof is a distribution or importation of that semiconductor chip product.

17 USC 902.

"§ 902. Subject matter of protection

"(a)(1) Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, is eligible for protection under this chapter if—

"(A) on the date on which the mask work is registered under section 908, or is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is (i) a national or domiciliary of the United States, (ii) a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party, or (iii) a stateless person, wherever that person may be domiciled;

"(B) the mask work is first commercially exploited in the United States; or

"(C) the mask work comes within the scope of a Presidential proclamation issued under paragraph (2).

President of U.S.

"(2) Whenever the President finds that a foreign nation extends, to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided in this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals,

domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

"(b) Protection under this chapter shall not be available for a mask work that—

"(1) is not original; or

"(2) consists of designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, is not original.

"(c) In no case does protection under this chapter for a mask work extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

"§ 903. Ownership, transfer, licensing, and recordation 17 USC 903.

"(a) The exclusive rights in a mask work subject to protection under this chapter belong to the owner of the mask work.

"(b) The owner of the exclusive rights in a mask work may transfer all of those rights, or license all or less than all of those rights, by any written instrument signed by such owner or a duly authorized agent of the owner. Such rights may be transferred or licensed by operation of law, may be bequeathed by will, and may pass as personal property by the applicable laws of intestate succession.

"(c)(1) Any document pertaining to a mask work may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. The Register of Copyrights shall, upon receipt of the document and the fee specified pursuant to section 908(d), record the document and return it with a certificate of recordation. The recordation of any transfer or license under this paragraph gives all persons constructive notice of the facts stated in the recorded document concerning the transfer or license.

"(2) In any case in which conflicting transfers of the exclusive rights in a mask work are made, the transfer first executed shall be void as against a subsequent transfer which is made for a valuable consideration and without notice of the first transfer, unless the first transfer is recorded in accordance with paragraph (1) within three months after the date on which it is executed, but in no case later than the day before the date of such subsequent transfer.

"(d) Mask works prepared by an officer or employee of the United States Government as part of that person's official duties are not protected under this chapter, but the United States Government is not precluded from receiving and holding exclusive rights in mask works transferred to the Government under subsection (b).

"§ 904. Duration of protection 17 USC 904.

"(a) The protection provided for a mask work under this chapter shall commence on the date on which the mask work is registered under section 908, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

"(b) Subject to subsection (c) and the provisions of this chapter, the protection provided under this chapter to a mask work shall end ten years after the date on which such protection commences under subsection (a).

"(c) All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

17 USC 905. **"§ 905. Exclusive rights in mask works**

"The owner of a mask work provided protection under this chapter has the exclusive rights to do and to authorize any of the following:

"(1) to reproduce the mask work by optical, electronic, or any other means;

"(2) to import or distribute a semiconductor chip product in which the mask work is embodied; and

"(3) to induce or knowingly to cause another person to do any of the acts described in paragraphs (1) and (2).

17 USC 906. **"§ 906. Limitation on exclusive rights: reverse engineering; first sale**

"(a) Notwithstanding the provisions of section 905, it is not an infringement of the exclusive rights of the owner of a mask work for—

"(1) a person to reproduce the mask work solely for the purpose of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or the circuitry, logic flow, or organization of components used in the mask work; or

"(2) a person who performs the analysis or evaluation described in paragraph (1) to incorporate the results of such conduct in an original mask work which is made to be distributed.

"(b) Notwithstanding the provisions of section 905(2), the owner of a particular semiconductor chip product made by the owner of the mask work, or by any person authorized by the owner of the mask work, may import, distribute, or otherwise dispose of or use, but not reproduce, that particular semiconductor chip product without the authority of the owner of the mask work.

17 USC 907. **"§ 907. Limitation on exclusive rights: innocent infringement**

"(a) Notwithstanding any other provision of this chapter, an innocent purchaser of an infringing semiconductor chip product—

"(1) shall incur no liability under this chapter with respect to the importation or distribution of units of the infringing semiconductor chip product that occurs before the innocent purchaser has notice of protection with respect to the mask work embodied in the semiconductor chip product; and

"(2) shall be liable only for a reasonable royalty on each unit of the infringing semiconductor chip product that the innocent purchaser imports or distributes after having notice of protection with respect to the mask work embodied in the semiconductor chip product.

"(b) The amount of the royalty referred to in subsection (a)(2) shall be determined by the court in a civil action for infringement unless the parties resolve the issue by voluntary negotiation, mediation, or binding arbitration.

"(c) The immunity of an innocent purchaser from liability referred to in subsection (a)(1) and the limitation of remedies with respect to an innocent purchaser referred to in subsection (a)(2) shall extend to any person who directly or indirectly purchases an infringing semiconductor chip product from an innocent purchaser.

"(d) The provisions of subsections (a), (b), and (c) apply only with respect to those units of an infringing semiconductor chip product that an innocent purchaser purchased before having notice of protection with respect to the mask work embodied in the semiconductor chip product.

"§ 908. Registration of claims of protection 17 USC 908.

"(a) The owner of a mask work may apply to the Register of Copyrights for registration of a claim of protection in a mask work. Protection of a mask work under this chapter shall terminate if application for registration of a claim of protection in the mask work is not made as provided in this chapter within two years after the date on which the mask work is first commercially exploited anywhere in the world. Termination.

"(b) The Register of Copyrights shall be responsible for all administrative functions and duties under this chapter. Except for section 708, the provisions of chapter 7 of this title relating to the general responsibilities, organization, regulatory authority, actions, records, and publications of the Copyright Office shall apply to this chapter, except that the Register of Copyrights may make such changes as may be necessary in applying those provisions to this chapter. 17 USC 701 *et seq.*

"(c) The application for registration of a mask work shall be made on a form prescribed by the Register of Copyrights. Such form may require any information regarded by the Register as bearing upon the preparation or identification of the mask work, the existence or duration of protection of the mask work under this chapter, or ownership of the mask work. The application shall be accompanied by the fee set pursuant to subsection (d) and the identifying material specified pursuant to such subsection.

"(d) The Register of Copyrights shall by regulation set reasonable fees for the filing of applications to register claims of protection in mask works under this chapter, and for other services relating to the administration of this chapter or the rights under this chapter, taking into consideration the cost of providing those services, the benefits of a public record, and statutory fee schedules under this title. The Register shall also specify the identifying material to be deposited in connection with the claim for registration. Regulations.

"(e) If the Register of Copyrights, after examining an application for registration, determines, in accordance with the provisions of this chapter, that the application relates to a mask work which is entitled to protection under this chapter, then the Register shall register the claim of protection and issue to the applicant a certificate of registration of the claim of protection under the seal of the Copyright Office. The effective date of registration of a claim of protection shall be the date on which an application, deposit of identifying material, and fee, which are determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration of the claim, have all been received in the Copyright Office. Effective date.

"(f) In any action for infringement under this chapter, the certificate of registration of a mask work shall constitute prima facie evidence (1) of the facts stated in the certificate, and (2) that the applicant issued the certificate has met the requirements of this chapter, and the regulations issued under this chapter, with respect to the registration of claims. Prima facie evidence.

"(g) Any applicant for registration under this section who is dissatisfied with the refusal of the Register of Copyrights to issue a

certificate of registration under this section may seek judicial review of that refusal by bringing an action for such review in an appropriate United States district court not later than sixty days after the refusal. The provisions of chapter 7 of title 5 shall apply to such judicial review. The failure of the Register of Copyrights to issue a certificate of registration within four months after an application for registration is filed shall be deemed to be a refusal to issue a certificate of registration for purposes of this subsection and section 910(b)(2), except that, upon a showing of good cause, the district court may shorten such four-month period.

5 USC 701 *et seq.*

17 USC 909.

"§ 909. Mask work notice

"(a) The owner of a mask work provided protection under this chapter may affix notice to the mask work, and to masks and semiconductor chip products embodying the mask work, in such manner and location as to give reasonable notice of such protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of notice for purposes of this section, but these specifications shall not be considered exhaustive. The affixation of such notice is not a condition of protection under this chapter, but shall constitute prima facie evidence of notice of protection.

Regulations.

Prima facie evidence.

"(b) The notice referred to in subsection (a) shall consist of—

"(1) the words 'mask force', the sumbol *M*, or the symbol Ⓜ (the letter M in a circle); and

"(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

17 USC 910.

"§ 910. Enforcement of exclusive rights

"(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights.

"(b)(1) The owner of a mask work protected under this chapter, or the exclusive licensee of all rights under this chapter with respect to the mask work, shall, after a certificate of registration of a claim of protection in that mask work has been issued under section 908, be entitled to institute a civil action for any infringement with respect to the mask work which is committed after the commencement of protection of the mask work under section 904(a).

"(2) In any case in which an application for registration of a claim of protection in a mask work and the required deposit of identifying material and fee have been received in the Copyright Office in proper form and registration of the mask work has been refused, the applicant is entitled to institute a civil action for infringement under this chapter with respect to the mask work if notice of the action, together with a copy of the complaint, is served on the Register of Copyrights, in accordance with the Federal Rules of Civil Procedure. The Register may, at his or her option, become a party to the action with respect to the issue of whether the claim of protection is eligible for registration by entering an appearance within sixty days after such service, but the failure of the Register to become a party to the action shall not deprive the court of jurisdiction to determine that issue.

Regulations.

"(c)(1) The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforce-

ment of the rights set forth in section 905 with respect to importation. These regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

"(A) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles. 19 USC 1337.

"(B) Furnish proof that the mask work involved is protected under this chapter and that the importation of the articles would infringe the rights in the mask work under this chapter.

"(C) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

"(2) Articles imported in violation of the rights set forth in section 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law. Seizure and forfeiture.

"§ 911. Civil actions 17 USC 911.

"(a) Any court having jurisdiction of a civil action arising under this chapter may grant temporary restraining orders, preliminary injunctions, and permanent injunctions on such terms as the court may deem reasonable to prevent or restrain infringement of the exclusive rights in a mask work under this chapter.

"(b) Upon finding an infringer liable, to a person entitled under section 910(b)(1) to institute a civil action, for an infringement of any exclusive right under this chapter, the court shall award such person actual damages suffered by the person as a result of the infringement. The court shall also award such person the infringer's profits that are attributable to the infringement and are not taken into account in computing the award of actual damages. In establishing the infringer's profits, such person is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the mask work.

"(c) At any time before final judgment is rendered, a person entitled to institute a civil action for infringement may elect, instead of actual damages and profits as provided by subsection (b), an award of statutory damages for all infringements involved in the action, with respect to any one mask work for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in an amount not more than $250,000 as the court considers just.

"(d) An action for infringement under this chapter shall be barred unless the action is commenced within three years after the claim accrues.

"(e)(1) At any time while an action for infringement of the exclusive rights in a mask work under this chapter is pending, the court may order the impounding, on such terms as it may deem reasonable, of all semiconductor chip products, and any drawings, tapes, masks, or other products by means of which such products may be reproduced, that are claimed to have been made, imported, or used in violation of those exclusive rights. Insofar as practicable, applica-

tions for orders under this paragraph shall be heard and determined in the same manner as an application for a temporary restraining order or preliminary injunction.

"(2) As part of a final judgment or decree, the court may order the destruction or other disposition of any infringing semiconductor chip products, and any masks, tapes, or other articles by means of which such products may be reproduced.

"(f) In any civil action arising under this chapter, the court in its discretion may allow the recovery of full costs, including reasonable attorneys' fees, to the prevailing party.

17 USC 912.

"§ 912. Relation to other laws

"(a) Nothing in this chapter shall affect any right or remedy held by any person under chapters 1 through 8 of this title, or under title 35.

17 USC 1-801 *et seq.*

"(b) Except as provided in section 908(b) of this title, references to 'this title' or 'title 17' in chapters 1 through 8 of this title shall be deemed not to apply to this chapter.

"(c) The provisions of this chapter shall preempt the laws of any State to the extent those laws provide any rights or remedies with respect to a mask work which are equivalent to those rights or remedies provided by this chapter, except that such preemption shall be effective only with respect to actions filed on or after January 1, 1986.

28 USC 1338, 1400, 1498.

"(d) The provisions of sections 1338, 1400(a), and 1498 (b) and (c) of title 28 shall apply with respect to exclusive rights in mask works under this chapter.

"(e) Notwithstanding subsection (c), nothing in this chapter shall detract from any rights of a mask work owner, whether under Federal law (exclusive of this chapter) or under the common law or the statutes of a State, heretofore or hereafter declared or enacted, with respect to any mask work first commercially exploited before July 1, 1983.

17 USC 913.

"§ 913. Transitional provisions

Prohibition.

"(a) No application for registration under section 908 may be filed, and no civil action under section 910 or other enforcement proceeding under this chapter may be instituted, until sixty days after the date of the enactment of this chapter.

Prohibition.

"(b) No monetary relief under section 911 may be granted with respect to any conduct that occurred before the date of the enactment of this chapter, except as provided in subsection (d).

"(c) Subject to subsection (a), the provisions of this chapter apply to all mask works that are first commercially exploited or are registered under this chapter, or both, on or after the date of the enactment of this chapter.

"(d)(1) Subject to subsection (a), protection is available under this chapter to any mask work that was first commercially exploited on or after July 1, 1983, and before the date of the enactment of this chapter, if a claim of protection in the mask work is registered in the Copyright Office before July 1, 1985, under section 908.

"(2) In the case of any mask work described in paragraph (1) that is provided protection under this chapter, infringing semiconductor chip product units manufactured before the date of the enactment of this chapter may, without liability under sections 910 and 911, be imported into or distributed in the United States, or both, until two years after the date of registration of the mask work under section

908, but only if the importer or distributor, as the case may be, first pays or offers to pay the reasonable royalty referred to in section 907(a)(2) to the mask work owner, on all such units imported or distributed, or both, after the date of the enactment of this chapter.

"(3) In the event that a person imports or distributes infringing semiconductor chip product units described in paragraph (2) of this subsection without first paying or offering to pay the reasonable royalty specified in such paragraph, or if the person refuses or fails to make such payment, the mask work owner shall be entitled to the relief provided in sections 910 and 911.

"§ 914. International transitional provisions 17 USC 914.

"(a) Notwithstanding the conditions set forth in subparagraphs (A) and (C) of section 902(a)(1) with respect to the availability of protection under this chapter to nationals, domiciliaries, and sovereign authorities of a foreign nation, the Secretary of Commerce may, upon the petition of any person, or upon the Secretary's own motion, issue an order extending protection under this chapter to such foreign nationals, domiciliaries, and sovereign authorities if the Secretary finds—

"(1) that the foreign nation is making good faith efforts and reasonable progress toward—

"(A) entering into a treaty described in section 902(a)(1)(A); or

"(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

"(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works; and

"(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

"(b) While an order under subsection (a) is in effect with respect to a foreign nation, no application for registration of a claim for protection in a mask work under this chapter may be denied solely because the owner of the mask work is a national, domiciliary, or sovereign authority of that foreign nation, or solely because the mask work was first commercially exploited in that foreign nation. Prohibition.

"(c) Any order issued by the Secretary of Commerce under subsection (a) shall be effective for such period as the Secretary designates in the order, except that no such order may be effective after the date on which the authority of the Secretary of Commerce terminates under subsection (e). The effective date of any such order shall also be designated in the order. In the case of an order issued upon the petition of a person, such effective date may be no earlier than the date on which the Secretary receives such petition.

"(d)(1) Any order issued under this section shall terminate if— Termination.

"(A) the Secretary of Commerce finds that any of the conditions set forth in paragraphs (1), (2), and (3) of subsection (a) no longer exist; or

"(B) mask works of nationals, domiciliaries, and sovereign authorities of that foreign nation or mask works first commercially exploited in that foreign nation become eligible for protection under subparagraph (A) or (C) of section 902(a)(1).

"(2) Upon the termination or expiration of an order issued under this section, registrations of claims of protection in mask works

made pursuant to that order shall remain valid for the period specified in section 904.

"(e) The authority of the Secretary of Commerce under this section shall commence on the date of the enactment of this chapter, and shall terminate three years after such date of enactment.

"(f)(1) The Secretary of Commerce shall promptly notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the issuance or termination of any order under this section, together with a statement of the reasons for such action. The Secretary shall also publish such notification and statement of reasons in the Federal Register.

Federal Register, publication. Report.

"(2) Two years after the date of the enactment of this chapter, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the actions taken under this section and on the current status of international recognition of mask work protection. The report shall include such recommendations for modifications of the protection accorded under this chapter to mask works owned by nationals, domiciliaries, or sovereign authorities of foreign nations as the Secretary, in consultation with the Register of Copyrights, considers would promote the purposes of this chapter and international comity with respect to mask work protection.".

TECHNICAL AMENDMENT

SEC. 303. The table of chapters at the beginning of title 17, United States Code, is amended by adding at the end thereof the following new item:

"9. Protection of semiconductor chip products ..... 901".

AUTHORIZATION OF APPROPRIATIONS

17 USC 901 note.

SEC. 304. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title and the amendments made by this title.

TITLE IV—FEDERAL COURTS IMPROVEMENTS

SUBTITLE A—CIVIL PRIORITIES

ESTABLISHMENT OF PRIORITY OF CIVIL ACTIONS

SEC. 401. (a) Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

28 USC 1657.

"§ 1657. Priority of civil actions

"(a) Notwithstanding any other provision of law, each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite the consideration of any action brought under chapter 153 or section 1826 of this title, any action for temporary or preliminary injunctive relief, or any other action if good cause therefor is shown. For purposes of this subsection, 'good cause' is shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit.

28 USC 2241 *et seq.*, 1826.

"(b) The Judicial Conference of the United States may modify the rules adopted by the courts to determine the order in which civil actions are heard and determined, in order to establish consistency among the judicial circuits.".

(b) The section analysis of chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1657. Priority of civil actions.".

AMENDMENTS TO OTHER LAWS

SEC. 402. The following provisions of law are amended—

(1)(A) Section 309(a)(10) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(10) is repealed.

(B) Section 310(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437h(c)) is repealed.

(2) Section 552(a)(4)(D) of title 5, United States Code, is repealed.

(3) Section 6(a) of the Commodity Exchange Act (7 U.S.C. 8(a)) is amended by striking out "The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.".

(4)(A) Section 6(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d(c)(4)) is amended by striking out the second sentence.

(B) Section 10(d)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h(d)(3)) is amended by striking out "The court shall give expedited consideration to any such action.".

(C) Section 16(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136n(b)) is amended by striking out the last sentence.

(D) Section 25(a)(4)(E)(iii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w(a)(4)(E)(iii)) is repealed.

(5) Section 204(d) of the Packers and Stockyards Act, 1921 (7 U.S.C. 194(d)), is amended by striking out the second sentence.

(6) Section 366 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1366) is amended in the fourth sentence by striking out "At the earliest convenient time, the court, in term time or vacation," and inserting in lieu thereof "The court".

(7)(A) Section 410 of the Federal Seed Act (7 U.S.C. 1600) is amended by striking out "The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.".

(B) Section 411 of the Federal Seed Act (7 U.S.C. 1601) is amended by striking out "The proceedings in such cases shall be made a preferred cause and shall be expedited in every way.".

(8) Section 816(c)(4) of the Act of October 7, 1975, commonly known as the Department of Defense Appropriation Authorization Act of 1976 (10 U.S.C. 2304 note) is amended by striking out the last sentence.

(9) Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(6)(A)) is amended by striking out "Such proceedings shall be given precedence over other cases pending in such courts, and shall be in every way expedited.".

(10)(A) Section 7A(f)(2) of the Clayton Act (15 U.S.C. 18a(f)(2)) is amended to read as follows: "(2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.".

(B) Section 11(e) of the Clayton Act (15 U.S.C. 21(e)) is amended by striking out the first sentence.

(11) Section 1 of the Act of February 11, 1903, commonly known as the Expediting Act (15 U.S.C. 28) is repealed.

(12) Section 5(e) of the Federal Trade Commission Act (15 U.S.C. 45(e)) is amended by striking out the first sentence.

(13) Section 21(f)(3) of the Federal Trade Commission Improvements Act of 1980 (15 U.S.C. 57a-1(f)(3)) is repealed.

(14) Section 11A(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(c)(4)) is amended—

(A) by striking out "(A)" after "(4)"; and

(B) by striking out subparagraph (B).

(15)(A) Section 309(e) of the Small Business Investment Act of 1958 (15 U.S.C. 687a(e)) is amended by striking out the sixth sentence.

(B) Section 309(f) of the Small Business Investment Act of 1958 (15 U.S.C. 687a(f)) is amended by striking out the last sentence.

(C) Section 311(a) of the Small Business Investment Act of 1958 (15 U.S.C. 687c(a)) is amended by striking out the last sentence.

(16) Section 10(c)(2) of the Alaska Natural Gas Transportation Act (15 U.S.C. 719h(c)(2)) is repealed.

(17) Section 155(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1415(a)) is amended by striking out "(1)" and by striking out paragraph (2).

(18) Section 503(b)(3)(E) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(3)(E)) is amended by striking out clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(19) Section 23(d) of the Toxic Substances Control Act (15 U.S.C. 2622(d)) is amended by striking out the last sentence.

(20) Section 12(e)(3) of the Coastal Zone Management Improvement Act of 1980 (16 U.S.C. 1463a(e)(3)) is repealed.

(21) Section 11 of the Act of September 28, 1976 (16 U.S.C. 1910), is amended by striking out the last sentence.

(22) (A) Section 807(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3117(b)) is repealed.

(B) Section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168) is amended to read as follows:

"INJUNCTIVE RELIEF

"SEC. 1108. No court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursu-

ant to this title except in conjunction with a final judgment entered in a case involving an action pursuant to this title.".

(23)(A) Section 10(b)(3) of the Central Idaho Wilderness Act of 1980 (Public Law 96-312; 94 Stat. 948) is repealed.

(B) Section 10(c) of the Central Idaho Wilderness Act of 1980 is amended to read as follows:

"(c) Any review of any decision of the United States District Court for the District of Idaho shall be made by the Ninth Circuit Court of Appeals of the United States.".

(24)(A) Section 1964(b) of title 18, United States Code, is amended by striking out the second sentence.

(B) Section 1966 of title 18, United States Code, is amended by striking out the last sentence.

(25)(A) Section 408(i)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(i)(5)) is amended by striking out the last sentence.

(B) Section 409(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(g)(2)) is amended by striking out the last sentence.

(26) Section 8(f) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 618(f)) is amended by striking out the last sentence.

(27) Section 4 of the Act of December 22, 1974 (25 U.S.C. 640d-3), is amended by striking out "(a)" and by striking out subsection (b).

(28)(A) Section 3310(e) of the Internal Revenue Code of 1954 (26 U.S.C. 3310(e)) is repealed.

(B) Section 6110(f)(5) of the Internal Revenue Code of 1954 (26 U.S.C. 6110(f)(5)) is amended by striking out "and the Court of Appeals shall expedite any review of such decision in every way possible".

(C) Section 6363(d)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 6363(d)(4)) is repealed.

(D) Section 7609(h)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 7609(h)(3)) is repealed.

(E) Section 9010(c) of the Internal Revenue Code of 1954 (26 U.S.C. 9010(c)) is amended by striking out the last sentence.

(F) Section 9011(b)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 9011(b)(2)) is amended by striking out the last sentence.

(29)(A) Section 596(a)(3) of title 28, United States Code, is amended by striking out the last sentence.

(B) Section 636(c)(4) of title 28, United States Code, is amended in the second sentence by striking out "expeditious and".

(C) Section 1296 of title 28, United States Code, and the item relating to that section in the section analysis of chapter 83 of that title, are repealed.

(D) Subsection (c) of section 1364 of title 28, United States Code, the section heading of which reads "Senate actions", is repealed.

(E) Section 2284(b)(2) of title 28, United States Code, is amended by striking out the last sentence.

(F) Section 2349(b) of title 28, United States Code, is amended by striking out the last two sentences.

(G) Section 2647 of title 28, United States Code, and the item relating to that section in the section analysis of chapter 169 of that title, are repealed.

(30) Section 10 of the Act of March 23, 1932, commonly known as the Norris-LaGuardia Act (29 U.S.C. 110), is amended by

striking out "with the greatest possible expedition" and all that follows through the end of the sentence and inserting in lieu thereof "expeditiously".

(31) Section 10(i) of the National Labor Relations Act (29 U.S.C. 160(i)) is repealed.

(32) Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(a)) is amended by striking out the last sentence.

(33) Section 4003(e)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1303(e)(4)) is repealed.

(34) Section 106(a)(1) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 816(a)(1)) is amended by striking out the last sentence.

(35) Section 1016 of the Impoundment Control Act of 1974 (31 U.S.C. 1406) is amended by striking out the second sentence. 2 USC 687.

(36) Section 2022 of title 38, United States Code, is amended by striking out "The court shall order speedy hearing in any such case and shall advance it on the calendar.".

(37) Section 3628 of title 39, United States Code, is amended by striking out the fourth sentence.

(38) Section 1450(i)(4) of the Public Health Service Act (42 U.S.C. 300j-9(i)(4)) is amended by striking out the last sentence.

(39) Section 304(e) of the Social Security Act (42 U.S.C. 504(e)) is repealed.

(40) Section 814 of the Act of April 11, 1968 (42 U.S.C. 3614), is repealed.

(41) The matter under the subheading "Exploration of National Petroleum Reserve in Alaska" under the headings "ENERGY AND MINERALS" and "GEOLOGICAL SURVEY" in title I of the Act of December 12, 1980 (94 Stat. 2964; 42 U.S.C. 6508), is amended in the third paragraph by striking out the last sentence.

(42) Section 214(b) of the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8514(b)) is repealed.

(43) Section 2 of the Act of February 25, 1885 (43 U.S.C. 1062), is amended by striking out "; and any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day".

(44) Section 23(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1349(d)) is repealed.

(45) Section 511(c) of the Public Utilities Regulatory Policies Act of 1978 (43 U.S.C. 2011(c)) is amended by striking out "Any such proceeding shall be assigned for hearing at the earliest possible date and shall be expedited by such court.".

(46) Section 203(d) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652(d)) is amended by striking out the fourth sentence.

(47) Section 5(f) of the Railroad Unemployment Insurance Act (45 U.S.C. 355(f)) is amended by striking out ", and shall be given precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence".

(48) Section 305(d)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(d)(2)) is amended—

(A) in the first sentence by striking out "Within 180 days after" and inserting in lieu thereof "After"; and

(B) in the last sentence by striking out "Within 90 days after" and inserting in lieu thereof "After".

(49) Section 124(b) of the Rock Island Transition and Employee Assistance Act (45 U.S.C. 1018(b)) is amended by striking out ", and shall render a final decision no later than 60 days after the date the last such appeal is filed".

(50) Section 402(g) of the Communications Act of 1934 (47 U.S.C. 402(g)) is amended—

(A) by striking out "At the earliest convenient time the" and inserting in lieu thereof "The"; and

(B) by striking out "10(e) of the Administrative Procedure Act" and inserting in lieu thereof "706 of title 5, United States Code".

(51) Section 405(e) of the Surface Transportation Assistance Act of 1982 (Public Law 97-424; 49 U.S.C. 2305(e)) is amended by striking out the last sentence. 49 USC app. 2305.

(52) Section 606(c)(1) of the Rail Safety and Service Improvement Act of 1982 (Public Law 97-468; 49 U.S.C. 1205(c)(1)) is amended by striking out the second sentence. 45 USC 1205.

(53) Section 13A(a) of the Subversive Activities Control Act of 1950 (50 U.S.C. 792a note) is amended in the third sentence by striking out "or any court".

(54) Section 12(a) of the Military Selective Service Act of 1967 (50 U.S.C. App. 462(a)) is amended by striking out the last sentence.

(55) Section 4(b) of the Act of July 2, 1948 (50 U.S.C. App. 1984(b)), is amended by striking out the last sentence.

EFFECTIVE DATE

SEC. 403. The amendments made by this subtitle shall not apply to cases pending on the date of the enactment of this subtitle. 28 USC 1657 note.

SUBTITLE B—DISTRICT COURT ORGANIZATION

SEC. 404. This subtitle may be cited as the "Federal District Court Organization Act of 1984". Federal District Court Organization Act of 1984. 28 USC 1 note.

SEC. 405. The second sentence of subsection (c) of section 112 of title 28, United States Code, is amended to read as follows:

"Court for the Eastern District shall be held at Brooklyn, Hauppauge, and Hempstead (including the village of Uniondale).".

SEC. 406. (a) Subsection (a) of section 93 of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "De Kalb," and "McHenry,"; and

(2) in paragraph (2)—

(A) by inserting "De Kalb," immediately after "Carroll,"; and

(B) by inserting "McHenry," immediately after "Lee,".

(b) The amendments made by subsection (a) of this section shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the effective date of this subtitle, and shall not affect any action pending in such court on such effective date. 28 USC 93 note.

(c) The second sentence of subsection (b) of section 93 of title 28, United States Code, is amended by inserting "Champaign/Urbana," before "Danville".

28 USC 124.

SEC. 407. (a) Subsection (b) of section 124 of title 26, United States Code, is amended—

(1) by striking out "six divisions" and inserting in lieu thereof "seven divisions";

(2) in paragraph (4) by striking out ", Hidalgo, Starr,"; and

(3) by adding at the end thereof the following:

"(7) The McAllen Division comprises the counties of Hidalgo and Starr.

"Court for the McAllen Division shall be held at McAllen.".

28 USC 124 note.

(b) The amendments made by subsection (a) of this section shall apply to any action commenced in the United States District Court for the Southern District of Texas on or after the effective date of this subtitle, and shall not affect any action pending in such court on such effective date.

SEC. 408. (a) Paragraph (1) of section 90(a) of title 28, United States Code, is amended—

(1) by inserting "Fannin," after "Dawson,";

(2) by inserting "Gilmer," after "Forsyth,"; and

(3) by inserting "Pickens," after "Lumpkin,".

(b) Paragraph (2) of section 90(a) of title 28, United States Code, is amended by striking out "Fannin,", "Gilmer,", and "Pickens,".

(c) Paragraph (6) of section 90(c) of title 28, United States Code, is amended by striking out "Swainsboro" each place it appears and inserting in lieu thereof "Statesboro".

28 USC 90 note.

(d) The amendments made by this section shall apply to any action commenced in the United States District Court for the Northern District of Georgia on or after the effective date of this subtitle, and shall not affect any action pending in such court on such effective date.

SEC. 409. Section 85 of title 28, United States Code, is amended by inserting "Boulder," before "Denver".

SEC. 410. The second sentence of section 126 of title 28, United States Code, is amended by inserting "Bennington," before "Brattleboro".

Effective date.
28 USC 85 note.

SEC. 411. (a) The amendments made by this subtitle shall take effect on January 1, 1985.

(b) The amendments made by this subtitle shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this subtitle.

SUBTITLE C—AMENDMENTS TO THE FEDERAL COURTS IMPROVEMENTS ACT OF 1982

Technical Amendments to the Federal Courts Improvement Act of 1982.

This subtitle may be cited as the "Technical Amendments to the Federal Courts Improvement Act of 1982".

28 USC 1 note.

SEC. 412. (a) Section 1292(b) of title 28, United States Code, is amended by inserting "which would have jurisdiction of an appeal of such action" after "The Court of Appeals".

(b) Section 1292(c)(1) of title 28, United States Code, is amended by inserting "or (b)" after "(a)".

SEC. 413. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended in the fourth sentence by inserting ", within 60 days after the determination becomes final," after "appeal such determination".

SEC. 414. (a) Sections 142, 143, and 144 of title 35, United States Code, are amended to read as follows:

"§ 142. Notice of appeal 35 USC 142.

"When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"§ 143. Proceedings on appeal 35 USC 143.

"With respect to an appeal described in section 142 of this title, the Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"§ 144. Decision on appeal 35 USC 144.

"The United States Court of Appeals for the Federal Circuit shall review the decision from which an appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue to the Commissioner its mandate and opinion, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(b) Paragraphs (2), (3), and (4) of subsection (a) of section 21 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1071(a) (2), (3), and (4)), are amended to read as follows:

"(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"(3) The Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to that court a brief explaining the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Commis-

sioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

35 USC 142 note. (c) The amendments made by this section shall apply to proceedings pending in the Patent and Trademark Office on the date of the enactment of this Act and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date.

28 USC 713 note. SEC. 415. Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982, was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act, so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.

SEC. 416. Title 28, United States Code, is amended in the following respects:

(a) There shall be inserted, after section 797 thereof, in chapter 51 thereof, the following new section 798, which shall read as follows:

28 USC 798. **"§ 798. Places of holding court; appointment of special masters**

"(a) The United States Claims Court is hereby authorized to utilize facilities and hold court in Washington, District of Columbia, and in four locations outside of the Washington, District of Columbia metropolitan area, for the purpose of conducting trials and such other proceedings as may be appropriate to executing the court's functions. The Director of the Administrative Office of the United States Courts shall designate such locations and provide for such facilities.

"(b) The chief judge of the Claims Court may appoint special masters to assist the court in carrying out its functions. Any special masters so appointed shall carry out their responsibilities and be compensated in accordance with procedures set forth in the rules of the court.".

(b) The caption of chapter 51, title 28, shall be amended to include the following item:

"798. Places of holding court; appointment of special masters.".

TITLE V—GOVERNMENT RESEARCH AND DEVELOPMENT PATENT POLICY

SEC. 501. Chapter 18 of title 35, United States Code, is amended—

(1) by adding "or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.)" immediately after "title" in section 201(d);

35 USC 201.

(2) by adding ": *Provided*, That in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act (7 U.S.C. 2401(d))) must also occur during the period of contract performance" immediately after "agreement" in section 201(e); and

Contracts with U.S. Grants. 35 USC 202.

(3) in section 202(a), by amending clause (i) to read as follows: "(i) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government,"; by striking the word "or" before "ii", and by adding after the words "security of such activities" in the first sentence of such para-

graph, the following: "or, iv) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under this subparagraph on the contractor's right to elect title to a subject invention are limited to inventions occurring under the above two programs of the Department of Energy."

(4) by amending paragraphs (1) and (2) of section 202(b) to read as follows: 35 USC 202.

"(b)(1) The rights of the Government under subsection (a) shall not be exercised by a Federal agency unless it first determines that at least one of the conditions identified in clauses (i) through (iv) of subsection (a) exists. Except in the case of subsection (a)(iii), the agency shall file with the Secretary of Commerce, within thirty days after the award of the applicable funding agreement, a copy of such determination. In the case of a determination under subsection (a)(ii), the statement shall include an analysis justifying the determination. In the case of determinations applicable to funding agreements with small business firms, copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration. If the Secretary of Commerce believes that any individual determination or pattern of determinations is contrary to the policies and objectives of this chapter or otherwise not in conformance with this chapter, the Secretary shall so advise the head of the agency concerned and the Administrator of the Office of Federal Procurement Policy, and recommend corrective actions. Small business.

"(2) Whenever the Administrator of the Office of Federal Procurement Policy has determined that one or more Federal agencies are utilizing the authority of clause (i) or (ii) of subsection (a) of this section in a manner that is contrary to the policies and objectives of this chapter, the Administrator is authorized to issue regulations describing classes of situations in which agencies may not exercise the authorities of those clauses."; Regulations.

(4A) By adding at the end of section 202(b) the following new paragraph: Contracts with U.S. Grants.

"(4) If the contractor believes that a determination is contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency, the determination shall be subject to the last paragraph of section 203(2).".

(5) by amending paragraphs (1), (2), (3), and (4) of section 202(c) to read as follows: Contracts with U.S. Grants.

"(1) That the contractor disclose each subject invention to the Federal agency within a reasonable time after it becomes known to contractor personnel responsible for the administration of patent matters, and that the Federal Government may receive title to any subject invention not disclosed to it within such time.

"(2) That the contractor make a written election within two years after disclosure to the Federal agency (or such additional time as may be approved by the Federal agency) whether the contractor will retain title to a subject invention: *Provided,* That in any case where publication, on sale, or public use, has initiated the one year statutory period in which valid patent protection can still be obtained in the United States, the period for election may be shortened by the Federal agency to a date that is not more than sixty days prior to the end of the statutory

period: *And provided further*, That the Federal Government may receive title to any subject invention in which the contractor does not elect to retain rights or fails to elect rights within such times.

"(3) That a contractor electing rights in a subject invention agrees to file a patent application prior to any statutory bar date that may occur under this title due to publication, on sale, or public use, and shall thereafter file corresponding patent applications in other countries in which it wishes to retain title within reasonable times, and that the Federal Government may receive title to any subject inventions in the United States or other countries in which the contractor has not filed patent applications on the subject invention within such times.

"(4) With respect to any invention in which the contractor elects rights, the Federal agency shall have a nonexclusive, nontransferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world: *Provided*, That the funding agreement may provide for such additional rights; including the right to assign or have assigned foreign patent rights in the subject invention, as are determined by the agency as necessary for meeting the obligations of the United States under any treaty, international agreement, arrangement of cooperation, memorandum of understanding, or similar arrangement, including military agreement relating to weapons development and production.".

International agreements. Defense and national security.

35 USC 202.

(6) by striking out "may" in section 202(c)(5) and inserting in lieu thereof "as well as any information on utilization or efforts at obtaining utilization obtained as part of a proceeding under section 203 of this chapter shall";

(7) by striking out "and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sales of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention" in clause (A) of section 202(c)(7);

Contracts with U.S. Grants.

(8) by amending clauses (B)-(D) of section 202(c)(7) to read as follows: "(B) a requirement that the contractor share royalties with the inventor; (C) except with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, a requirement that the balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, be utilized for the support of scientific research or education; (D) a requirement that, except where it proves infeasible after a reasonable inquiry, in the licensing of subject inventions shall be given to small business firms; and (E) with respect to a funding agreement for the operation of a Government-owned-contractor-operated facility, requirements (i) that after payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, 100 percent of the balance of any royalties or income earned and retained by the contractor during any fiscal year up to an amount equal to 5 percent of the annual budget of the facility, shall be used by the contractor for scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities

Small business.

that increase the licensing potential of other inventions of the facility; provided that if said balance exceeds 5 percent of the annual budget of the facility, that 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the same purposes as described above in this clause (D); and (ii) that, to the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by contractor employees on location at the facility."

(9) by adding "(1. before the word "With" in the first line of section 203, and by adding at the end of section 203 the following: 35 USC 203.

"(2) A determination pursuant to this section or section 202(b)(4) shall not be subject to the Contract Disputes Act (41 U.S.C. § 601 et seq.). An administrative appeals procedure shall be established by regulations promulgated in accordance with section 206. Additionally, any contractor, inventor, assignee, or exclusive licensee adversely affected by a determination under this section may, at any time within sixty days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand or modify, ", as appropriate, the determination of the Federal agency. In cases described in paragraphs (a) and (c), the agency's determination shall be held in abeyance pending the exhaustion of appeals or petitions filed under the preceding sentence.";

Regulations.

(10) by amending section 206 to read as follows: 35 USC 206.

"§ 206. Uniform clauses and regulations

"The Secretary of Commerce may issue regulations which may be made applicable to Federal agencies implementing the provisions of sections 202 through 204 of this chapter and shall establish standard funding agreement provisions required under this chapter. The regulations and the standard funding agreement shall be subject to public comment before their issuance.";

(11) in section 207 by inserting "(a)" before "Each Federal" and by adding the following new subsection at the end thereof:

"(b) For the purpose of assuring the effective management of Government-owned inventions, the Secretary of Commerce is authorized to—

"(1) assist Federal agency efforts to promote the licensing and utilization of Government-owned inventions;

"(2) assist Federal agencies in seeking protection and maintaining inventions in foreign countries, including the payment of fees and costs connected therewith; and

"(3) consult with and advise Federal agencies as to areas of science and technology research and development with potential for commercial utilization."; and

(12) in section 208 by striking out "Administrator of General Services" and inserting in lieu thereof "Secretary of Commerce".

(13) by deleting from the first sentence of section 210(c), "August 23, 1971 (36 Fed. Reg. 16887)" and inserting in lieu thereof "February 18, 1983", and by inserting the following before the period at the end of the first sentence of section 210(c) "except that all funding agreements, including those with other than small business firms and nonprofit organizations, shall

Contracts with U.S. Grants.

include the requirements established in paragraph 202(c)(4) and section 203 of this title."

(14) by adding at the end thereof the following new section:

Prohibition. 35 USC 212.

"§ 212. Disposition of rights in educational awards

"No scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee."; and

(15) by adding at the end of the table of sections for the chapter the following new item:

"212. Disposition of rights in educational awards.".

Approved November 8, 1984.

LEGISLATIVE HISTORY—H.R. 6163:

HOUSE REPORT No. 98-1062 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Sept. 24, considered and passed House.
Oct. 3, considered and passed Senate, amended.
Oct. 9, House concurred in Senate amendments.

○

APPENDIX II

ADDITIONAL MATERIALS

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

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

June 8, 1984

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:

Mr. Foley has asked me to respond to your May 30 letter requesting Judicial Conference views on pending bills relating to the geographic organization of the Federal Courts.

In September, 1978, the Judicial Conference adopted special procedures for consideration of proposals to modify judicial districts. The enclosed October 12, 1978, letter from Mr. Foley explains the Conference's procedures. As you will note, the Conference does not consider a proposed change unless both the district courts and circuit council affected have approved and filed a brief report summarizing their reasons therefor. In accordance with controlling Conference policy, the following views are submitted:

I. **Division Changes Within Districts**

A. **H.R. 813 (Rep. Jenkins)** - The transfer of Fannin, Gilmer and Pickens Counties from the Atlanta Division to the Gainsville Division of the Northern District of Georgia has been approved, but the transfer of Cherokee County has been disapproved.

B. **H.R. 1579 (Rep. Martin)** - The transfer of the counties of McHenry and DeKalb from the Eastern Division to the Western Division of the Northern District of Illinois has been approved.

C. **H.R. 2665 (Rep. Sieberling)** - No action has been taken on the proposal to create a new division in the Northern District of Ohio.

D. **H.R. 4662 (Rep. de la Garza)** - The creation of the McAllen Division in the Southern District of Texas and designation of McAllen as the place of holding court have been approved.

II. **Places of Holding Court**

A. **H.R. 313 (Rep. Roe)** - The proposal to designate Patterson, New Jersey, as a place of holding court has been disapproved by the Judicial Council of the Third Circuit.

B. **H.R. 2329 (Rep. Hubbard)** - The proposal to designate Hopkinsville as a place of holding court for the Western District of Kentucky has been disapproved by the Judicial Council of the Sixth Circuit. In addition, the Chief Judge for the Western District of Kentucky recommended that no action be taken on the matter.

C. **H.R. 3604 - (Rep. Tauzin and others)** - The designation of Houma, Louisiana, as a place of holding court for the Eastern District of Louisiana has been approved.

D. **H.R. 4179 (Rep. Madigan)** - The designation of Champaign/Urbana, Illinois, as a place of holding court in the Central District of Illinois has been approved.

E. **H.R. 5619 (Rep. Mrazek)** - Action on the proposed designation of Hauppauge as a place of holding court for the Eastern District of New York is not yet completed.

F. **H.R. (Rep. Thomas)** - The change of the place of holding court for the Swainsboro Division of the Southern District of Georgia from Swainsboro to Statesboro and the change of the name of the division to the Statesboro Division have been approved.

G. **H.R. 5777 (Rep. Jeffords)** - The designation of Bennington, Vermont, as a place of holding court in the District of Vermont has been approved.

On behalf of the Judicial Conference, I thank you for seeking our views, and express our genuine thanks for your willingness to devote valuable time to hearings on judicial housekeeping. Witnesses will be available to testify on behalf of the Judiciary at the hearings referenced in your letter.

Sincerely,

William James Weller
Legislative Affairs Officer

Enclosure

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

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

October 12, 1978

MEMORANDUM TO ALL CIRCUIT COURT JUDGES
DISTRICT COURT JUDGES
CIRCUIT EXECUTIVES

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

> The Judicial Conference reaffirms its previously stated belief that changes in the geographical configuration and organization of existing federal judicial districts should be enacted only after a showing of strong and compelling need. Therefore, whenever Congress requests the Conference's views on bills to:
>
> 1. create new judicial districts;
> 2. consolidate existing judicial districts within a state;
> 3. create new divisions within an existing judicial district;
> 4. abolish divisions within an existing judicial district;
> 5. transfer counties from an existing division or district to another division or district;
> 6. authorize a location or community as a statutorily designated place at which "court shall be held" under Chapter 5 of title 28 of the United States Code; or
> 7. waive the provisions of Section 142 of title 28, United States Code respecting the furnishing of accommodations at places of holding court --
>
> the Director of the Administrative Office shall transmit each such bill to both the chief judge of each affected district and the chief judge of the circuit in which each such district is located, requesting that the district court and the judicial council for the

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

William E. Foley
Director

I

98TH CONGRESS
1ST SESSION

H. R. 3919

To amend title 28, United States Code, to remove the requirement of an amount in controversy for certain actions involving common carriers.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 1983

Mr. CLINGER introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, to remove the requirement of an amount in controversy for certain actions involving common carriers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1337 of title 28, United States Code, is amended—

(1) in the section caption by striking out "; amount in controversy, costs";

(2) in subsection (a) by striking out ": *Provided,*" and all that follows through the end of the sentence and inserting in lieu thereof a period; and

(3) by striking out subsection (b) and redesignating subsection (c) as subsection (b).

(b) The item relating to section 1337 in the table of sections of chapter 85 of title 28, United States Code, is amended to read as follows:

"1337. Commerce and antitrust regulations.".

SEC. 2. Section 1445 of title 28, United States Code, is amended by striking out subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 3. The amendments made by this Act shall apply to actions brought after the date of the enactment of this Act.

O

Quality Foods Since 1883

OSCAR MAYER FOODS CORPORATION
GENERAL OFFICES
P.O. B... · TELEX 26 5464

September 8, 1983

Hon. Robert W. Kastenmeier
Subcommittee Chairman
Courts, Civil Liberties &
the Administration of Justice
Room 2232
Rayburn House Office Building
Washington, DC 20575

Dear Bob:

Public Law 95-486 (October 28, 1978) amended Title 28, Section 1337, U.S. Code to provide that a claimant could bring Federal action against a rail or motor carrier pursuant to the Carmack Amendment only when the amount in dispute for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

Public Law 95-486 was occasioned by a brief overload of the federal judiciary system. However, these conditiona no longer exist.

The Legislative Counsel has cleared a proposal to repeal the $10,000 restriction from Section 1337 to come before the subcommittee which you chair. Oscar Mayer Foods Corporation supports that proposal.

Title 28, Section 1337 was originally enacted in 1948 with no such restrictions except for actions brought in State courts. This section, as currently amended and when viewed in conjunction with venue provisions of U.S. Code, Title 49, Section 11707(d) amended by the Stagger's Act of 1980, serves to further reduce the forum in which we, as a claimant, can be heard. By limiting jurisdiction, the practice of forum shopping may be denied to the point that a plaintiff may be left no option but to plead his case in a court which has historically rendered decisions which were unfavorable to similar pleadings.

Oscar Mayer Foods Corporation respectfully requests your consideration of either introducing the proposal as a bill or co-sponsoring it.

If the proposal gains favor and is introduced, we urge you to schedule it for an early hearing before the members of your subcommittee.

Full information on this matter has been provided to your counsel, Mike Remington, and has been discussed with Judiciary Committee General Counsel, Alan Parker, by Bob Redding, Director of Federal Affairs for the Shipper's National Freight Claim Council.

Respectfully,

Jerry M. Hiegel
President

JMH:JVB:rlo

RAYOVAC CORPORATION

RAYOVAC

September 15, 1983

The Honorable Robert Kastenmeier
House of Representatives
Room 2232, Rayburn House Office Bldg.
Washington, DC 20515

Dear Mr. Kastenmeier:

I am writing in request of assistance on an important matter. RAYOVAC CORPORATION is domiciled in Madison, Wisconsin, with physical facilities located throughout the world. The assistance that we request is your support.

The matter relates to a legislative project which the Shipper's National Freight Claim Council, Inc. (of which RAYOVAC is a member) has adopted. That objective is to remove from the United States Code a requirement that before a company or person could take a freight claim matter to litigation in the Federal Courts, it would have to be of a value of at least $10,000, exclusive of interest and costs. The current law appears in Title 28, Sections 1331, 1337, and 1445, United States Code.

I have contacted your Madison office on September 14, 1983, requesting your support. They indicated that it was necessary to contact the Washington office. Also, full information has been provided to your counsel, Mr. Mike Remington. The matter has also been discussed with the Judiciary Committee General Counsel, Alan Parker.

Our request for support from you would be in your willingness to introduce or at least co-sponsor the bill. In addition, please see that an early hearing on the bill is scheduled as soon as it is introduced. I understand that the bill has now cleared the Office of Legislative Counsel of the House.

Please keep me informed on our progress. We are willing to assist in this process. Awaiting your response, I remain

Very truly yours,

Ronald S. Kreul

Ronald S. Kreul, CM
Rate Analyst

RSK:jmh

cc: Robert Redding

6414 Schroeder Road Madison, Wisconsin 53711 608/271 5454 Telex: 26-5462

SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.
425 13th Street, NW, Suite 915, Washington, DC 20004 ■ (202) 737-6444
ROBERT E. REDDING, *Director of Federal Affairs*

Repeal of $10,000 Jurisdictional Threshhold as a Condition Precedent to Federal Court Jurisdiction Over Cargo Loss and Damage Claims in Transportation

Table of Contents

Submitted by:

Robert E. Redding
Director of Federal Affairs
November 1, 1983

A. Jurisdiction over Liability for Interstate Cargo Loss and Damage Claims.

Historically, the State and Federal courts have exercised concurrent jurisdiction over cargo loss and damage claims arising from shipments in interstate commerce. Federal law prevails, however, according to the U.S. Supreme Court. Adams Express Company v. Croninger, 226 U.S. 491 (1913). Claims arising under Section 11707 of the Interstate Commerce Act, as amended (a portion of the so-called Carmack Amendment) are "federal questions."*/

B. History of Minimum Threshhold for Cargo Loss and Damage Litigation in Federal Courts.

Title 28, Section 1337. In 1948, Congress enacted Section 1337 of the United States Code (28 U.S.C. 1337) conferring original jurisdiction on the Federal District Courts of any civil action or proceeding arising under any Act of Congress regulating commerce. No minimum amount in controversy was required to invoke federal jurisdiction. In 1978, however, Section 1337 was amended to provide that action could be brought against a rail or motor carrier pursuant to the Carmack Amendment only when the amount in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs (Public Law 95-486, October 20, 1978).

Title 28, Section 1445. In 1948, Congress enacted Section 1445 of the United States Code (28 U.S.C. 1445) providing that civil actions in any state court against a rail or motor carrier brought pursuant to the Carmack Amendment could not be removed to a Federal District Court unless the matter in controversey exceeded $3,000, exclusive of interest and costs. In 1978, however, Section 1445 was amended to increase the $3,000 threshhold to a level of $10,000. (Public Law 95-486, October 20, 1978).

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*/Section 11707 is the recodified section of the Interstate Commerce Act, enacted on October 17, 1978 (P.L. 94-473). This provision was previously identified as section 20(11) of Part I of the Interstate Commerce Act and section 219 of Part II of such Act, applicable to rail and motor carriers respectively.

For the past five years, therefore, no Carmack cargo loss or damage liability issues could be litigated in the Federal courts, by original application or by removal from State courts, unless the amount at issue was at least $10,000.

Title 28, Section 1331. It is important to note a similar $10,000 minimum amount contained in Title 28, Section 1331 of the U.S. Code. This section, applicable to original jurisdiction of all civil actions in the Federal District Courts, was amended in 1958 to substitute $10,000 for $3,000. (Public Law 85-554, July 25, 1958). This Section was amended in 1980, however, to strike out completely the minimum amount of $10,000 (P.L. 96-486, December 1, 1980).*/

Excerpts from the United States Code, Annotated, are attached, consisting of Title 28, Sections 1331, 1337, and 1445.

C. The Issue.

Whether the threshhold requirment of $10,000 as the minimum amount in controversy for Federal District jurisdiction over rail/motor carrier cargo loss and damage issues should be eliminated from the United States Code.

D. Reasons Supporting Elimination of the $10,000 Threshhold Requirement.

1. Reportedly, the 1978 amendments to Section 1337 and 1445 establishing the $10,000 minimum amount for such litigation were enacted without any participation in or review of such legislation by the Interstate Commerce Commission.

2. The 1978 amendments were also enacted without the convening of public hearings before any House or Senate Committee at which private sector transport carriers and shippers could have been given the opportunity to testify on such legislation.

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*/ Section 1331 was amended in 1976 to strike out the $10,000 minimum amount where civil actions were brought against the United States (P.L. 94-574, October 21, 1976).

3. Reportedly, the $10,000 amendment originated in the Senate, and was added to the bill then under consideration regarding court caseload problems.

4. Reportedly, the only known basis for such legislation was the fact that a number of law suits on fresh produce claims had been instituted in the Federal District Court for the District of Massachusetts by a small group of receivers and their claim agent in Boston. Such suits were then filed in such Court because of an evidentiary ruling in the Massachusetts State Courts holding that Federal inspection certificates were inadmissible as evidence. This holding was later reversed, but the practice of Federal court filings was continued. House Report No. 95-117, p. 50.

Thus, the enactment of the $10,000 minimum was occasioned by a momentary overload of specialized produce cases in only one State (Massachusetts), yet it has since had nationwide application. This restriction also applies only to Section 11707 cases under the Interstate Commerce Act. Thus, "federal question" cases arising under the Carmack Amendment are treated differently from all other federal question controversies.

Moore's Federal Practice, Section 0.167[4], asks:

> "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?"

5. This unique condition unfairly forces loss and damage claimants to seek relief in State courts rather than having their cases heard by Federal court judges experienced in federal laws governing interstate commerce. Since 1978, parties at interest - shippers and carriers alike - have been confronted by State court decisions rendered in all 50 states, each one free to apply its own interpretation of common carrier liability.

6. The Interstate Commerce Commission reviewed this incongruous result for the first time in 1981 and advised Congress that "The Commission recommends re-

moval of the new [1978] inconsistency so that Carmack Amendment controversies can be handled in the same manner as other federal question cases." Rail Carrier Cargo Liability Study Report, September 29, 1981, page 40 (excerpt attached).

7. Two shipper/carrier parties sought I.C.C. support for the elimination of the $10,000 threshhold requirement, namesly (1) the Shippers National Freight Claim Council, a trade association of 600 shipper/receiver companies concerned about cargo loss and damage claims, and (2) the Atchison, Topeka and Santa Fe Railroad Company.

E. Corrective Legislation.

A bill to remedy this deficiency has been introduced in the House of Representatives. It is H.R. 3919, introduced by Congressman William F. Clinger, Jr., on September 19, 1983.

This bill has been referred to the House Judiciary Committee and will be under the direct consideration of the Subcommittee on Court, Civil Liberties and the Administration of Justice, chaired by Congressman Robert W. Kastenmeier.

The Subcommittee can be contacted at Room 2137, Rayburn House Office Building, Washington, D.C. 20515. The telephone number is (202) 225-3926. The Staff Counsel handling the matter is Michael Remington.

A copy of the bill is attached hereto.

EXCERPT FROM INTERSTATE COMMERCE COMMISSION RAIL CARRIER CARGO LIABILITY STUDY REPORT

Analysis

Jurisdiction today is concurrent over interstate cargo claims. Section 11707(d) provides that a civil action may be brought in a district court of the United States or in a state court However, federal law prevails.[20/] The Commission stated in Loss and Damage, supra, at 589-90:

> Section 20(11) of the act provides a statutory cause of action for loss or damage in transit caused by a carrier even though the statute, in effect, merely recodifies the common law right. In fact, it is sometimes anomalously called a right under the Federal common law. Carrier liability is determined with particular reference to Federal Statutes and decisions, and the undisputed effect of these is that although a carrier is not an insurer per se, it, nonetheless, is fully liable for damage to or loss of goods transported by it unless the loss or damage occurred as a result of one of the excepted cases. As a consequence, a carrier is virtually an insurer and the Federal law summarily invalidates carrier arguments to the contrary unless there is a correlation of the defense to an excepted cause, Commodity Credit Corporation v. Norton 167 F. 2d 161, 164 (1948). Neither the decisions of State courts which may be to the contrary... may overcome this governing principle. Missouri Pac. R. R. v. Elmore & Stahl, 377 U.S. 134 (1964), rehearing denied, 377 U.S. 948; and Condokes v. Southern Pacific Company, 303 F. Supp. 1158 (D. Mass. 1968). Conflicting interpretations, therefore, would have to be resolved in the Federal Courts.

Since Federal law prevails, claims arising under section 11707 are "federal questions" and the provisions of the Carmack Amendment govern exclusively, regardless of whether the plaintiff asserts a federal question. The right of removal to federal court, however, is limited. The $3,000 threshhold established in 1914 for removal was increased to $10,000 in 1978.

A $10,000 minimum was required to originate in federal courts. The threshhold was raised to eliminate the inconsistency between removal and original jurisdiction. thus, legislative history of Pub. L. 95-486, which amended 28 U.S.C. $1337 and $1445(b), stated:

> The Carmack amendment, 49 United States Code 20 (11), and 28 United States Code 1337, provide that suits may be brought in federal court against a railroad or motor carrier. However, there is no provision

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20/ Adams Express Co. v. Croninger, supra.

> in these statutes that assumes that the court will only hear substantial claims. This is a basic inconsistency with diversity and Federal question jurisdiction, which require a $10,000 minimum amount in controversy. 1978 U.S. Cong. & Adm. News, Page 3612

A new inconsistency exists now that Congress has recently removed the $10,000 threshhold for original jurisdiction in federal question cases. (Pub. L. 96-486.) Today, federal questions cases arising under the Carmack Amendment are treated differently from other federal question controversies. Moore's Federal Practice §0.167[4] asks, "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?"

The Commission recommends removal of the new inconsistency so that Carmack Amendment controversies can be handled in the same manner as other federal question cases.

Note 308

without authority of law. State of South Carolina ex rel. Mayhank v. South Carolina Electric & Gas Co., D.C.S.C.1941, 41 F.Supp. 111.

309. Other proceedings, effect on

Damages to condemnees' wine vat and wine therein as result of blasting operations in construction of pipeline across condemnees' property had nothing to do with just compensation for taking of pipeline right-of-way, and, therefore, dismissal of federal court action for just compensation for taking right-of-way would not affect condemnees' action against condemnor in another federal court for damages from blasting. DeSalvo v. Arkansas Louisiana Gas Co., D.C.Ark.1965, 239 F.Supp. 812.

310. Remand

Where district court had dismissed one count of complaint for failure to state a claim, and court of appeals had held that district court was without jurisdiction, proper procedure was to vacate order of district court insofar as it dismissed count in question, and to remand case to district court with directions to dismiss the count for lack of jurisdiction. Tiedemann v. Brownell, 1955, 222 F.2d 802, 96 U.S.App.D.C. 9.

Where the federal court has no jurisdiction of the action, it must either dismiss or remand it as justice may require. Mystic Milling Co. v. Chicago, etc., R. Co., C.C.Iowa 1904, 132 F. 280. See, also, Ronca v. Katalla Co., C.C.Wash.1910, 182 F. 946, affirmed 186 F. 30; Risley v. Utica, C.C.N.Y.1910, 179 F. 875; Pennsylvania Co. v. Bay, C.C.Ill.1905, 138 F. 203; Kinney v. Mitchell, Pa.1905, 130 F. 773, 69 C.C.A. 495.

District court had no discretion and would take jurisdiction where United States Supreme Court had held that plaintiffs were entitled to a determination on the merits and had returned case with a direction to district court to conduct further proceedings consistent with the Supreme Court opinion. Florida Limo & Avocado Growers, Inc. v. Paul, D.C.Cal.1961, 197 F.Supp. 780, affirmed in part, reversed in part on other grounds 83 S.Ct. 1210, 373 U.S. 132, 10 L.Ed.2d 248, rehearing denied 83 S.Ct. 1861, 374 U.S. 858, 10 L.Ed.2d 1082.

It is the duty of any federal court when defect of jurisdiction appears to dismiss or remand case as may be appropriate. Allen v. Southern Ry. Co., D.C.N.C.1953, 114 F.Supp. 72. See, also, Coffman v. City of Wichita, Kan., D.C.Kan.1958, 165 F.Supp. 705, affirmed 261 F.2d 112.

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85–554, § 1, 72 Stat. 415.

Historical and Revision Notes

Reviser's Note. Based on Title 28, U.S.C., 1940 ed., § 41(1) (Mar. 3, 1911, c. 231, § 24, par. 1, 36 Stat. 1091 [derived from R.S. §§ 563, 629]; May 14, 1934, c. 283, § 1, 48 Stat. 775; Aug. 21, 1937, c. 726, § 1, 50 Stat. 738; Apr. 20, 1940, c. 117, 54 Stat. 143).

Jurisdiction of federal questions arising under other sections of this chapter [with the exception of section 1332] is not dependent upon the amount in controversy. (See annotations under 35 C.J.S., p. 533, et seq., §§ 30–43. See, also, reviser's note under section 1332 of this title.)

Words "wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs," were added to conform to rulings of the Supreme

Court. See construction of provision relating to jurisdictional amount requirement in cases involving a Federal question in United States v. Sayward, 16 S.Ct. 371, 160 U.S. 493, 40 L.Ed. 508; Fishback v. Western Union Tel. Co., 16 S.Ct. 500, 161 U.S. 96, 40 L.Ed. 630; and Holt v. Indiana Manufacturing Co., 1900, 20 S.Ct. 272, 176 U.S. 68, 44 L.Ed. 374.

Words "all civil actions" were substituted for "all suits of a civil nature, at common law or in equity" to conform with Rule 2 of the Federal Rules of Civil Procedure.

Words "or treaties" were substituted for "or treaties made, or which shall be made under their authority," for purposes of brevity.

The remaining provisions of section 41(1) of Title 28 U.S.C., 1940 ed., are incorporated in sections 1332, 1341, 1342, 1345, 1354, and 1359 of this title.

Changes were made in arrangement and phraseology.

1958 Amendment. Pub.L. 85-554 included costs in catchline.

Subsec. (a). Pub.L. 85-554 designated the former entire section as subsec. (a) and substituted "$10,000" for "$3,000".

Subsec. (b). Pub.L. 85-554 added subsec. (b).

Effective Date of 1958 Amendment. Section 3 of Pub.L. 85-554 provided that: "This Act [amending this section and sections 1332 and 1445 of this title] shall apply only in the case of actions commenced after the date of the enactment of this Act [July 25, 1958]."

Legislative History: For legislative history and purpose of Pub.L. 85-554, see 1958 U.S.Code Cong. and Adm.News, p. 3099.

Cross References

Controversies involving pollution of waters, jurisdiction of actions by States, see section 466g—1 of Title 33, Navigation and Navigable Waters.

Costs on dismissal for lack of jurisdiction, see section 1919 of this title.

Federal Deposit Insurance Corporation as party, see section 1819 of Title 12, Banks and Banking.

Federal Reserve Bank as party, see section 632 of Title 12.

International Finance Corporation as party, see section 282f of Title 22, Foreign Relations and Intercourse.

International or foreign banking transactions, see section 632 of Title 12.

Federal Rules of Civil Procedure

Allegations of jurisdiction, form for, see Form 2.

Defenses and objections, see Rule 12.

Notes of Decisions

Scope of review by district court on carrier's action to vacate and set aside order of Commission denying application for additional authorization is limited to determination of whether Commission's action is supported by substantial evidence. Patterson v. U. S., D.C.Ark.1950, 178 F.Supp. 771.

If Commission has acted within scope of its statutory authority, has not arbitrarily or capriciously abused its discretion, has proceeded in accordance with essential requirements of due process, has acted upon adequate findings, and if there is in record, considered as a whole, substantial evidence and a rational basis to support Commission's findings, orders of Commission are entitled to finality and may not be set aside, modified or disturbed by court. Sites Freightlines, Inc. v. U. S., D.C.Or.1958, 158 F.Supp. 900.

Scope of court review of actions of Commission is limited to ascertaining whether there is warrant in law and facts for what Commission has done, and unless in some specific respect there has been prejudicial departure from requirements of law or abuse of Commission's discretion, reviewing court is without authority to intervene. Community & Johnson Corp. v. U. S., D.C.N.J.1957, 156 F.Supp. 440.

Scope of district court's review of order of Commission authorizing carrier to extend its inland water operations was limited to whether order and report encompassed the ultimate findings required by section 908(c) of Title 49, and whether such findings were founded upon adequate evidentiary findings which were in turn supported by substantial evidence in the record. Newtex S. S. Corp. v. U. S., D.C.N.Y.1952, 107 F.Supp. 289, affirmed 73 S.Ct. 285, 344 U.S. 891, 97 L.Ed. 694.

Where specially constituted district courts are required to review orders of Commission, scope of review is limited, and if Commission did not exceed the statutory limits of its discretion, and its findings are adequate and supported by evidence, courts will not upset its orders. Houff Transfer v. U. S., D.C.Va.1952, 105 F.Supp. 851.

The court has no competence to review conclusions of Commission on questions of rate making, so far as they involve matters peculiar to transportation. Baltimore & O. R. Co. v. U. S., D.C.N.Y.1938, 22 F.Supp. 533.

§ 1337. Commerce and anti-trust regulations

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

June 25, 1948, c. 646, 62 Stat. 931.

Historical and Revision Notes

Reviser's Note. Based on Title 28, U.S.C., 1940 ed., § 41(8), (23) (Mar. 3, 1911, c. 231, § 24, pars. 8, 23, 36 Stat. 1092, 1093; Oct. 22, 1913, c. 32, 38 Stat. 219).

Words "civil action" were substituted for "suits", in view of rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

Cross References

Jurisdiction of district courts over civil actions under antitrust laws, see section 15 of Title 15, Commerce and Trade.

Prevention and restraint of violations of,
- Clayton Antitrust Act, see section 25 of Title 15.
- Sherman Antitrust Act, see section 4 of Title 15.
- Wilson Tariff Act, see section 9 of Title 15.

Library References

Courts ⇨280 et seq.
Federal Courts ⇨197 et seq.

C.J.S. Federal Courts § 25(1) et seq.

On petition for review of an order of the Commission which interpreted a certificate of public convenience and necessity and ordered carrier to cease conducting operations outside the scope of that authority, the Court of Appeals was not concerned with either the weight of the evidence or the soundness of the Commission's reasoning. Chem-Haulers, Inc. v. I. C. C., C.A.5, 1979, 594 F.2d 166.

Interpretation of the scope of a certificate of public convenience and necessity issued by the Commission is primarily the responsibility of the Commission and the Court of Appeals will not reverse the Commission's interpretation unless it is capricious, arbitrary or clearly erroneous. Id.

In reviewing orders of Commission, reviewing court ought not to weigh evidence and should inquire into soundness of reasoning by which Commission reaches its conclusions only to ascertain that such conclusions are rationally supported; however, court is not precluded from intervening if Commission has failed to exercise its authority or discretion by an improper application of the law to the established facts. Bud Antle, Inc. v. U. S., C.A.Cal.1979, 593 F.2d 865.

Although scope of three-judge district court's review of Commission action was thoroughly circumscribed, scope of judicial review was not made more narrow by mere fact that certificate of public convenience and necessity had already been issued by the Commission. Aime Hellavance & Sons, Inc. v. U. S. I. C. C., D.C.Vt.1977, 440 F.Supp. 773.

In determining validity of Interstate Commerce Commission orders concerning freight rate increases the district court's function was not to conduct a trial de novo; however, it was limited to ascertaining whether there was warrant in the law and facts for what the Commission did. Canadian Nat. Ry. Co. v. U. S., D.C.D.C.1976, 425 F.Supp. 290, affirmed 97 S.Ct. 1638, 430 U.S. 961, 52 L.Ed.2d 352.

District court's scope of review of decisions of Commission is limited to determination of whether Commission's findings are supported by substantial evidence. A. Lindberg & Sons, Inc. v. U. S., D.C.Mich.1976, 408 F.Supp. 1032.

Action of Commission will be sustained if there is rational connection between facts found and conclusions reached; district court's inquiry on review is limited to ascertaining whether there is warrant in law and facts for what Commission has done. Id.

53. Payment of money

Shipper's petition for review of Commission order refusing to order refund of entire 14 percent increase on shipments between Canada and Eastern United States, rather than difference between 14 percent increase for domestic traffic and 12 percent increase for import-export traffic, involved a "payment of money" for purpose of district court jurisdiction as shipper sought nothing more than fixed sum of money and ruling would not have prospective effect and Commission made no claim that it could retroactively, nunc pro tunc, grant a 12 percent increase and although in six prior rulings Commission granted only 2 percent refund, there was no uniform policy to be overturned as in only one case had the shipper sought a 14 percent refund. Genstar Chemical Ltd. v. I. C. C., D.C.D.C.1980, 491 F.Supp. 391.

§ 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.

As amended Oct. 20, 1978, Pub.L. 95–486, § 9(a), 92 Stat. 1633; Oct. 10, 1980, Pub.L. 96–417, Title V, § 505, 94 Stat. 1743.

References in Text. Section 20(11) of part I of the Interstate Commerce Act, referred to in subsecs. (a) and (b), is classified to section 20(11) of Title 49, Transportation.

Section 219 of part II of such Act, referred to in subsecs. (a) and (b), means section 219 of part II of the Interstate Commerce Act, which is classified to section 319 of Title 49.

On petition for review of an order of the Commission which interpreted a certificate of public convenience and necessity and ordered carrier to cease conducting operations outside the scope of that authority, the Court of Appeals was not concerned with either the weight of the evidence or the soundness of the Commission's reasoning. Chem-Haulers, Inc. v. I. C. C., C.A.5, 1979, 594 F.2d 166.

Interpretation of the scope of a certificate of public convenience and necessity issued by the Commission is primarily the responsibility of the Commission and the Court of Appeals will not reverse the Commission's interpretation unless it is capricious, arbitrary or clearly erroneous. Id.

In reviewing orders of Commission, reviewing court ought not to weigh evidence and should inquire into soundness of reasoning by which Commission reaches its conclusions only to ascertain that such conclusions are rationally supported; however, court is not precluded from intervening if Commission has failed to exercise its authority or discretion by an improper application of the law to the established facts. Bud Antle, Inc. v. U. S., C.A.Cal.1979, 593 F.2d 865.

Although scope of three-judge district court's review of Commission action was thoroughly circumscribed, scope of judicial review was not made more narrow by mere fact that certificate of public convenience and necessity had already been issued by the Commission. Aime Hellavance & Sons, Inc. v. U. S. I. C. C., D.C.Vt.1977, 440 F.Supp. 773.

In determining validity of Interstate Commerce Commission orders concerning freight rate increases the district court's function was not to conduct a trial de novo; however, it was limited to ascertaining whether there was warrant in the law and facts for what the Commission did. Canadian Nat. Ry. Co. v. U. S., D.C.D.C.1976, 425 F.Supp. 290, affirmed 97 S.Ct. 1638, 430 U.S. 961, 52 L.Ed.2d 352.

District court's scope of review of decisions of Commission is limited to determination of whether Commission's findings are supported by substantial evidence. A. Lindberg & Sons, Inc. v. U. S., D.C.Mich.1976, 408 F.Supp. 1032.

Action of Commission will be sustained if there is rational connection between facts found and conclusions reached; district court's inquiry on review is limited to ascertaining whether there is warrant in law and facts for what Commission has done. Id.

53. Payment of money

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(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.

As amended Oct. 20, 1978, Pub.L. 95–486, § 9(a), 92 Stat. 1633; Oct. 10, 1980, Pub.L. 96–417, Title V, § 505, 94 Stat. 1743.

References in Text. Section 20(11) of part I of the Interstate Commerce Act, referred to in subsecs. (a) and (b), is classified to section 20(11) of Title 49, Transportation.

Section 219 of part II of such Act, referred to in subsecs. (a) and (b), means section 219 of part II of the Interstate Commerce Act, which is classified to section 319 of Title 49.

unpaid federal taxes exists against proceeds of action, and therefore, service of notice of commencement of proceedings on application upon United States and another judgment creditor did not constitute them parties compelling compliance with rules pertaining to conditions upon which United States may be named a party. Application of Meltzer, 1957, 167 N.Y.S.2d 69, 9 Misc.2d 464.

8. Amount in controversy

Under section 2410 of this title giving consent to sue United States to quiet title to property on which the United States claims a lien and this section authorizing United States to remove such a suit, if brought in state court, to federal court, where suit to quiet title to land upon which United States claimed a lien was removed by the government to federal court, and counterclaim for foreclosure of lien was filed, federal court obtained jurisdiction, although no claim upon any of the several parcels amounted to $3,000. Hood v. U. S., C.A.Wash.1958, 256 F.2d 522.

9. Sovereign immunity

Where District Director of Internal Revenue, who was named as an interpleaded defendant, was only a nominal party and his interest in controversy was not personal but merely representative of that of the United States, action in effect was one against United States and, as such, was not maintainable when government had not waived its sovereign immunity. Jacobs v. District Director of Internal Revenue, Borough of Manhattan, City of New York, D.C.N.Y.1963, 217 F. Supp. 104.

The United States did not waive its immunity to suit in an action to foreclose a mechanic's lien, by its removal of the action after it was interpleaded as a defendant in the state court action. S. & E. Bldg. Materials Co. v. Joseph P. Day, Inc., D.C.N.Y.1960, 188 F.Supp. 742.

Government's removal to federal district court of interpleader action brought in New York court against government and another was not tantamount to consent to be sued nor a waiver of its objection to jurisdiction of federal district court. Herter v. Helmsley-Spear, Inc., D.C.N.Y.1957, 140 F.Supp. 713.

Since waiver of immunity of the United States in action to foreclose lien on realty or personalty, on which the United States has or claims to have a lien, is granted on condition that the United States has the unqualified option to remove action to federal district court, immunity waived is conditioned on right of removal, and therefore federal district court could not remand action to foreclose liens under a contract for a public improvement, over objection of the United States. Vincent v. P. R. Matthews Co., D.C.N.Y.1954, 120 F.Supp. 102.

§ 1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 51 to 60 of Title 45, may not be removed to any district court of the United States.

(b) A civil action in any State court against a common carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 20 of Title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds $3,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

June 25, 1948, c. 646, 62 Stat. 939; July 25, 1958, Pub.L. 85-554, § 5, 72 Stat. 415.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., § 71 (Mar. 3, 1911, c. 231, § 28, 36 Stat. 1094; Jan. 20, 1914, c. 11, 38 Stat. 278; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54 [Derived from Act April 5, 1910, c. 113, § 1, 21 Stat. 552]).

ing on federal law. Harris v. City of Houston, Tex., C.A.Tex.1973, 476 F.2d 283.

In suit by co-chairman of state Democratic Party to enjoin defendants from continuing to act as county executive committeemen, removed by defendants to federal district court, defendants failed to carry their burden of proving that they would be denied, or could not enforce, their rights under Voting Rights Act, section 1973 et seq. of Title 42, and U.S. C.A.Const. Amend. 15 in state courts of Mississippi; remand to state court was therefore necessary. Jackson v. Riddell, D.C.Miss.1979, 476 F.Supp. 849.

Where district court had jurisdiction of removed civil rights case, jurisdiction of state courts ceased and not even consent of parties could empower district court to divest itself of jurisdiction and confer jurisdiction on state court by granting motion to remand following dismissal as to federal defendants. Johnson v. Jumelle, D.C.N.Y.1973, 359 F.Supp. 361.

§ 1444. Foreclosure action against United States

Supplementary Index to Notes

Nature of remedy 2a
Remand 10

2. Construction

The right to remove an action from state to federal court depends on the expression of the will of Congress as articulated in the various removal statutes. Hudson County Bd. of Chosen Freeholders v. Morales, C.A.N.J.1978, 581 F.2d 379.

2a. Nature of remedy

This section providing that an action brought in state court affecting property on which the United States has a lien may be removed by the government to federal court confers a substantive right to removal, independent of any other jurisdictional limitations. City of Miami Beach v. Smith, C.A.Fla.1977, 551 F.2d 1370.

4. —— Interpleader

Garnishment proceedings did not constitute interpleader action for purposes of this section. Western Medical Properties Corp. v. Denver Opportunities Inc., D.C. Colo.1980, 482 F.Supp. 1205.

6. Jurisdiction

Where United States redeemed property on which mortgage had been foreclosed and on which it held tax lien, and Government therefore had full title to such property, section 2410 of this title providing for express waiver of sovereign immunity for suits connected with property as to which United States "has or claims a mortgage or other lien" was inapplicable to waive sovereign immunity in mortgage lender's subsequent suit against Government to quiet title; where state court therefore had no jurisdiction over such suit, federal district court likewise had no jurisdiction thereover on removal. Fidelity Federal Sav. and Loan Ass'n v. U. S., D.C.Tenn.1978, 445 F.Supp. 683.

This section grants the United States a substantive right of removal and confers subject matter jurisdiction over such proceeding in federal district court. E. C. Robinson Lumber Co. v. Hughes, D.C. Mo.1972, 355 F.Supp. 1363.

9. Sovereign immunity

United States was entitled to remove tax sale purchasers' equity actions naming as defendants all persons shown by applicable county records to have any interest in land, including United States, and whether United States might prevail either because it was immune from suit or on merits did not affect right of United States to remove cases, for determination in federal court of those issues, under this section providing for removal of foreclosure actions against United States. Kasdon v. G. W. Zierden Landscaping, Inc., D.C.Md.1981, 512 F.Supp. 172.

10. Remand

Motion to remand to the state court a proceeding wherein movant sought return of certain money obtained during execution of a search warrant would be denied where the petition in state court, though not specifically seeking to quiet title to the property, clearly sought to remove the cloud of an Internal Revenue Service levy from movant's alleged title and, hence, explicitly challenged validity of a government tax lien and impinged directly on an interest of the United States in the property. Com. of Pa. v. Petito, D. C.Pa.1979, 476 F.Supp. 394.

§ 1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 51 to 60 of Title 45, may not be removed to any district court of the United States.

(b) A civil action in any State court against a common carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11707 of Title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds $10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

As amended Oct. 17, 1978, Pub.L. 95–473, § 2(a)(3)(A), 92 Stat. 1465; Oct. 20, 1978, Pub.L. 95–486, § 9(b), 92 Stat. 1634.

1978 Amendments. Subsec. (b). Pub.L. 95–486 substituted "$10,000" for "$3,000".

Pub.L. 95–473 substituted "section 11707 of title 49" for "section 20 of Title 49".

Legislative History. For legislative history and purpose of Pub.L. 95–486, see 1978 U.S.Code Cong. and Adm.News, p. 3349.

3. Purpose

Intended result of this section concerning suit under section 51 et seq. of Title 45 was to take such suit out of the operation of section 1441 of this title. Gamble v. Central of Georgia Ry. Co., C.A.Ala.1973, 488 F.2d 781.

in section 1605 of this title whenever a jurisdictional sovereign immunity defense is interposed. Upton v. Empire of Iran, D.C.D.C.1978, 459 F.Supp. 264.

1a. Organizations established by treaty

A federal district court had no jurisdiction under this section of a suit against an international organization which was a creature of treaty. Broadbent v. Organization of American States, D.C.D.C.1978, 481 F.Supp. 907, affirmed 628 F.2d 27.

2. Counterclaims

Where federal district court had subject-matter jurisdiction over certain claims in lawsuit by virtue of Foreign Sovereign Immunities Act this section and sections 1602-1611 this title and Edge Act, section 632 of Title 12, it likewise had ancillary jurisdiction to consider other claims which were logically related and which therefore resembled compulsory counterclaims. Corporacion Venezolana de Fomento v. Vintero Sales Corp., D.C.N.Y.1979, 477 F.Supp. 615.

3. Removal

Corporation owned by Government of India was "foreign state" and had right to remove case to federal court regardless of amount in controversy and had right to have matter tried by court without jury. Williams v. Shipping Corp. of India, D.C.Va.1980, 489 F.Supp. 526, affirmed 653 F.2d 873.

4. Jury trial

Proscription of this section and section 1441(d) of this title against jury trials in suits against foreign states does not violate the guarantee of the right to trial by jury under U.S.C.A.Const. Amend. 7, since the Amendment does not purport to require jury trial where none was required at common law and foreign sovereigns were immune from suit at common law. Williams v. Shipping Corp. of India, C.A.Va.1981, 653 F.2d 873.

No jury can be had in any action in a federal court against a foreign state or agency or instrumentality of a foreign state where federal jurisdiction is sought to be predicated on diversity of citizenship. Ruggiero v. Compania Peruana de Vapores Inca Capac Yupanqui, C.A.N.Y. 1981, 639 F.2d 872.

Even assuming that there was diversity jurisdiction as between plaintiff, who brought suit seeking damages allegedly sustained in collision between ship and dock, and liability insurer of the alleged tort-feasor, vessel owner which was a foreign sovereign, plaintiff was not entitled to jury determination of its claim and therefore, defendant's motion to strike jury was granted, in that congressional intent that a maritime tort case against a foreign sovereign should be without a jury was expressly provided by this section and awarding jury trial against liability insurer would frustrate goal of uniform treatment of foreign state. Goar v. Compania Peruana Vapores, D.C.La.1981, 510 F.Supp. 737.

5. Jurisdiction

Instrumentality of foreign government, which was "foreign state" for purposes of section 1603 of this title, did not have sufficient minimum contacts with the United States for district court to exercise personal jurisdiction over it pursuant to this section where plaintiff did not show that the instrumentality entered American marketplace to secure American technology, as plaintiff contended, the instrumentality appeared only to have communicated by mail or by telex to plaintiff, who happened to be located in United States, instrumentality did not deliberately attempt to associate itself with United States or to avail itself of benefits and protections of United States laws, and performance of any contract entered into was to take place in foreign country. Gilson v. Republic of Ireland, D.C.D.C.1981, 517 F.Supp. 477.

6. Actions by aliens

Suit brought in a federal court by an alien against a foreign state is properly filed under the terms of subsec. (a) of this section. Verlinden B. V. v. Central Bank of Nigeria, C.A.N.Y.1981, 647 F.2d 320.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

As amended Oct. 21, 1976, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub.L. 96-486, § 2(a), 94 Stat. 2369.

1980 Amendment. Pub.L. 96-486 struck out minimum amount in controversy requirement of $10,000 for original jurisdiction in federal question cases which necessitated striking the exception to such required minimum amount that authorized original jurisdiction in actions brought against the United States, any agency thereof, or any officer or employee thereof in an official capacity, struck out provision authorizing the district court except where express provision therefore was made in a federal statute to deny costs to a plaintiff and in fact impose such costs upon such plaintiff where plaintiff was adjudged to be entitled to recover less than the required amount in controversy, computed without regard to set-off or counterclaim and exclusive of interests and costs, and also struck out existing subsection designations.

1976 Amendment. Subsec. (a). Pub.L. 94-574 eliminated the $10,000 jurisdictional amount where the action is brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

Effective Date of 1980 Amendment; Applicability. Section 4 of Pub.L. 96-486 provided: "This Act [amending this section and section 2072 of Title 15, Commerce and Trade] shall apply to any civil action pending on the date of enactment of this Act [Dec. 1, 1980]."

Cross References. Convention on the Settlement of Investment Disputes, exclusive jurisdiction of district courts over actions and proceedings for enforcement of arbitration awards under the Convention, regardless of amount in controversy, see section 1650a of Title 22, Foreign Relations and Intercourse.

Reclamation projects, compensation for rights-of-way, see section 945b of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Pub.L. 94-574, see 1976 U.S.Code Cong. and Adm.News, p. 6121. See, also, Pub.L. 96-486, 1980 U.S. Code Cong. and Adm.News, p. 5063.

Library References

Federal Civil Procedure ⇐2729.
Federal Courts ⇐331 et seq.
C.J.S. Federal Civil Procedure § 1273.
C.J.S. Federal Courts § 310.

Supplementary Index to Notes

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF LEGISLATIVE COUNSEL

November 16, 1983

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

Thank you for your letter requesting the Commission's views on H.R. 3919, a bill to amend title 28, U.S.C., to remove the requirement of an amount in controversy for certain actions involving common carriers. Chairman Taylor has asked me to respond.

Currently, the federal district courts have original jurisdiction over civil actions arising under any Act of Congress which regulates commerce. However, if the action involves matters under section 11707 of title 49, (i.e., the liability of common carriers under bills of lading) the district courts have original jurisdiction over such action only if the controversy for each bill of lading exceeds $10,000, exclusive of interest and costs. Other federal question controversies do not have this restriction. This amount in controversy limitation also applies to the right to remove such actions from a state court to a district court.

Because of the Commission's pressing schedule of required Congressional oversight hearings, and also the imminent adjournment of Congress, there's been insufficient time to circulate H.R. 3919 to the Commission for formal comments. However, I note that in 1981, the Commission recommended to Congress that it make this legislative change. Ex Parte No. 403, Rail Carrier Cargo Liability Study, September 29, 1981, pp. 37-41. (See enclosure). In this Report, the Commission urged the elimination of the inconsistent treatment of actions arising under 49 U.S.C. 11707, as compared with other actions arising under the Interstate Commerce Act and other federal laws which are free from this $10,000 limitation.

Thank you again for your letter. If you need additional information, please let me know.

Sincerely,

Janice M. Rosenak

Janice M. Rosenak
Legislative Counsel

Enclosure

EX PARTE NO. 403

RAIL CARRIER CARGO LIABILITY STUDY

A REPORT TO CONGRESS

PURSUANT TO

SECTION 211 OF THE STAGGERS RAIL ACT OF 1980

INTERSTATE COMMERCE COMMISSION

SEPTEMBER 29, 1981

EXECUTIVE SUMMARY

The Staggers Rail Act of 1980 instructs the Interstate Commerce Commission and the Department of Justice to investigate independently whether rail carriers should continue to be subject to 49 U.S.C. §11707. This statutory provision effectively codifies the common law governing carrier cargo liability, thus providing a uniform, strict liability standard for railroads and transportation companies.

The legislative instructions to the Commission and the Department of Justice include ten specific issues to be addressed. The first three concern alternatives to the current liability regime. The remaining seven issues concern constraints on litigation, the filing of claims, and recovery of damages.

In conducting this study, the Commission solicited comments and replies from the public. Approximately 165 parties notified the Commission of their intent to participate. Of these, 112 provided comments and 26 submitted replies.

Based on a careful review of the origins of the common law, the changes made by the Staggers Act, and the arguments set forth by the parties, the Commission recommends that the Interstate Commerce Act be amended to:

- eliminate the venue restrictions contained in the Staggers Act,
- provide the courts with authority to award attorneys fees to successful claimants, and
- remove the $10,000 jurisdictional threshold for access to Federal Courts.

I. INTRODUCTION

Section 211 of the Staggers Rail Act of 1980 (Staggers Act) instructs the Interstate Commerce Commission and the Department of Justice to investigate independently whether rail carriers should continue to be subject to Section 11707 of Title 49, United States Code and to submit a report to Congress setting forth recommendations for appropriate legislative action. Section 11707 contains the Carmack Amendment of 1906 (Carmack) which codified the common law governing carrier cargo liability. It provides a uniform liability standard for railroads and transportation companies. Under Carmack, a railroad is absolutely liable for cargo if the shipper can show that the cargo was delivered to the carrier in good condition and the railroad fails to demonstrate that the sole cause of the loss or damage was due to one of the five common law defenses: (1) an act of God; (2) the public enemy; (3) an act of the shipper (4) public authority; or (5) the inherent vice or nature of the goods; and, in the majority of cases, that it was not negligent.

The legislative instructions to the Commission and the Department of Justice include ten specific issues to be addressed. The first three issues concern alternative liability regimes.

(1) Whether, in the case of traffic with respect to which rail carriers do not have market dominance, such carriers should be subject to any higher level of liability for loss and damage than they are willing to agree to with the shippers of such traffic.

(2) Whether, in the case of traffic with respect to which rail carriers have market dominance, such carriers should be subject to any greater liability than would be imposed under a statutory comparative negligence standard.

(3) Whether liability for damage to rail traffic should be determined under a no-fault liability system and what shippers should bear the cost of such a system.

The remaining seven issues concern constraints on litigation, the filing of claims, and recovery of damages. Some of these issues are specifically treated by the Carmack Amendment while others reflect current practice under the common law. These issues are:

(4) Whether venue in cases arising from rail carrier liability for damages to traffic should be further limited.

(5) Whether rail carrier property damage cases should be subject to laws other than Federal law.

(6) Whether the right to claims should be limited to either the shipper or receiver of property.

(7) Whether maximum time limits should be imposed on the filing of claims with rail carriers and the courts.

(8) Whether the prevailing party in a claims proceeding should be awarded attorneys fees in order to limit needless litigation.

(9) Whether excessive attorneys fees are awarded in cases under Section 11707 of Title 49, United States Code.

(10) Whether claimants should be able to recover damages in excess of the market value of the commodity transported unless liability for special or consequential damages is agreed to by the carrier in unity.

In conducting this study, the Commission solicited comments and replies from the public. Approximately 165 parties notified the Commission of their intent to participate. Of these, 112 provided comments and 26 submitted replies.

The report is divided into five sections. As background, Section II briefly traces the evolution of the common law to Carmack, describes the present liability limitations permitted by law, and discusses the potential benefits of a departure from strict liability. Sections III and IV provide detailed analyses of the ten issues set forth in the Staggers Act. Section V summarizes the recommendations contained in Section III and IV.

II. BACKGROUND

Evolution of Common Law to Carmack

The origins of common carrier liability date back to antiquity. The Roman Republic first codified laws concerning it around 200 B.C. and continued to refine them over several centuries. By the time of Justinian (4th Century A.D.) the Romans had established clear legal obligations between carriers and shippers and had introduced the idea of monetary damages in case of loss. Roman transportation contracts from around 150 AD have been studied and their liability provisions are remarkably similar to those which exist today. Roman commercial law passed almost unchanged into virtually every other legal system in later European history. This was because in medieval times the church had the duty of trying nearly all civil cases and the Roman mercantile laws were indispensible for fulfilling this duty.

Specifically, the liability of a carrier for loss or damage to property is part of the more general law of bailments (another Roman invention). A bailment is brought about by a transfer of property from one party to another for a special purpose. There are several different kinds of bailments depending on which party benefits from the transfer of property. At common law a carrier is an "extraordinary bailee" because he has such complete knowledge and control of the property, once it is in his possession.

The liability of a non-negligent common carrier was established very early by English courts in the 1601 decision Southcote v. Bennet, 4 Coke 83b, Cro. Eliz. 815. In that case, the court held the carrier liable even though he had been robbed.

The definitive statement on carrier liability was made in a famous decision by Lord Holt in Coggs v. Bernard, 2 Ld, Raym. 909 (1703). Seldom has any legal decision influenced legal practices over such a long span of time.

The decision turned on the question of the liability of a bailee offering a free service. The defendant had damaged a cask of brandy while moving it from one cellar to another. He refused to pay for the damages and the plaintiff sued, citing the 1601 decision in Southcote v. Bennet as authority for the carrier's absolute liability.

The judges ruled against the plaintiff and thereby overturned the rule of absolute liability for loss or damage by a gratuitous

bailee. However, Lord Holt went beyond the immediate decision and analyzed all aspects of bailments. He prescribed a number of rules that detailed varying degrees of care and liability applicable to different types of bailments. The degree of care ranged from a bailee who received goods for the benefit of the bailor, to whom he was liabile only for gross negligence, to the common carrier who was charged with the highest degree of care. In regard to the common carrier, Lord Holt reasoned:

> The law charges this person thus entrusted to carry goods, against all events, but acts of God, and the enemies of the King. For though the force be ever so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable. And this is a politic establishment, contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons,...for else these carriers might have an opportunity of undoing all persons that had dealings with them, by combining with thieves, etc., and yet doing it in such a clandestine manner as would not be possible to discover.

The American Colonies adopted the common law of England, including the strict law governing the liability of common carriers. As a result, Lord Holt's rationale continues to influence matters concerning responsibility for loss or damage not only in Great Britain but in the United States as well.

This body of law, with variations by state statutes, continued to control the liability of common carriers in this country until 1906. When the Act to Regulate Commerce was initially enacted in 1887 the only provision governing carrier

liability was one bringing it within Federal venue. The various states remained free to enact their own laws regulating cargo liability. The resulting confusion was well documented by the Supreme Court of Georgia in Southern Pacific Co. v. Crenshaw, S. Ga. App. 675, 687, 635 S.E. 865, where the court stated:

> Some states allowed carriers to exempt themselves from all or a part of the common law liability, by rule, regulation or contract; others did not; the Federal courts sitting in the various states were following the local rule. A carrier being held liable in one court when under the same set of facts he would be exempt from liability in another; hence this branch of interstate commerce was being subject to such a diversity of legislative and judicial holdings that it was practically impossible for a shipper engaged in a business that extended beyond the confines of his own state, or for a carrier whose lines were extensive, to know...what would be the carrier's actual responsibility as to the goods.

The Federal Government preempted the field with the passage of the Hepburn Rate Act of 1906. The Hepburn Act contained the Carmack Amendment (49 USC 20 (11)) which supplanted state law related to the liability of regulated interstate rail common carriers. The Carmack Amendment adopted the common law presumption that held the carrier absolutely liable for the loss or damage of goods entrusted to it, unless the shipper would not allow that the damage was due to one of the common law exceptions, and that it was not negligent. The Amendment established a uniform standard of liability for common carriers and required them to issue bills of lading that provided that no contract,

receipt, rule, or regulation could exempt carriers from liability for the full actual loss sustained by the owner of the goods transported. In addition, the amendment made carriers liable for the actions of their connecting carriers.

Notwithstanding passage of the Carmack Amendment, the railroads continued to limit their liability to less than the full actual value by publishing released rates. Shippers were forced to accept a lesser declared value in return for transportation of their shipments.

The Supreme Court, in Adams Express Co. v. Croninger, 226 U.S. 491 (1913), reviewed the lawfulness of liability limitations under released rates. Essentially, the court held that a carrier could, by a fair, open, just and reasonable contract limit the amount recoverable in case of loss or damage to an agreed value for allowing the shipper to use the lower of two or more rates. The Croninger case was followed by a series of similar court decisions,1/ reflecting the thinking of the Supreme Court that tariffs filed with the Interstate Commerce Commission were presumed to be a part of the transportation contract and, therefore, binding upon both shipper and carrier, including a released valuation incorporated in the bill of lading.

1/ Boston & Maine R. R. Co. v. Hooker, 233 U.S. 97; Atchison T. & S. F. Ry. Co. v. Robinson 223 U.S. 173; Kansas City So. Ry Co. v. Carl, 227 U.S. 639.

As a consequence of Croninger, carriers frequently evaded Carmack by publishing reduced rates based upon released values, or while setting full value rates at prohibitively high levels. Shippers effectively were denied a real choice. This situation resulted in the passage of the First and Second Cummins Amendments to former section 20 of the Act in 1915, 1916 respectively. The Second Cummins Amendment authorized carriers to limit their liability by publishing released rates. The released rates had to be approved by the Commission in advanced of publication and only with "value declared in writing by the shipper or agreed upon in writing as the released value of the property." This statutory scheme lasted until the passage of the Staggers Rail Act of 1980.

Rail Carrier Cargo Liability Today

Section 11707 of the Interstate Commerce Act codifies the Carmack Amendment including the presumption of carrier liability and the absolute liability standard. In addition, this statutory provision: (1) requires carriers to issue bills of lading; (2) provides that the liability imposed is for loss or damage by the receiving, intermediate, or delivering carrier; (3) provides that the receiving or delivering carrier may recover any amount paid to a claimant plus expenses from the carrier on whose line the loss or damage occurred; (4) specifies minimum time limits for filing claims and initiating litigation; and (5) limits venue.

The Staggers Act provides greater freedom with respect to liability issues in three ways. First, carriers were permitted to

establish released rates without prior Commission approval. This did away with the Commission's former practice of restricting released value rates to instances where traffic was highly susceptible to loss or damage where the value of the commodity was extremely high or difficult to determine. Now released rates are readily publishable, and subject only to protest or complaint alleging discrimination or rate unreasonableness if there is market dominance. A second change made by the Staggers Act was to permit deductibles. Prior to the Staggers Act, released rates were rates lower than full value rates which carried a limitation on the amount of damages recoverable in the event of loss or damage. Released rates may now specify a deductible in addition to the stated limitations on the amount recoverable.

The third significant change related to liability made by the Staggers Act is the qualified freedom to contract. Before the Staggers Act was promulgated, the lawfulness of rail transportation contracts was unclear. Prior to 1978, the Commission had generally ruled them unlawful per se. The Staggers Act expressly permits rail carriers to negotiate contracts that specify all terms of the shipping transaction including those related to liability.

Current Status of Full Value Rates

The Commission has held that the new authority to publish released rates without prior approval does not detract from the rail carrier's obligation, under the Interstate Commerce Act, to

maintain full value rates.2/

Former Section 20(11) of the Interstate Commerce Act provided that a common carrier was liable"... for the full actual loss, damage, or injury..." to property carried by it except for

> transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon in writing as the released value of the property in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared and released...

It has been held that this section affords the shipper the opportunity to declare a higher value for his property and consequently, incur greater shipping expense.3/ Similarly, it has been established that a common carrier cannot rely on a limited liability provision pursuant to section 20(11) unless the shipper had an opportunity to elect greater liability by paying a greater shipping charge.4/ This principle has also been applied

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2/ Ex Parte No. 390, Rail Rates Based on Limited Liability, served December 22, 1980.

3/ Sorensen - Christian Indus. Inc. v. Railway Express Ag., Inc., 434 F. 2d 867 (1970).

4/ Sorensen - Christian Indus. Inc. v. Railway Express Ag. Inc., supra.

to motor,5/ air,6/ and ocean carriers.7/

The legislative history of section 211 of the Staggers Act supports the Commission's construction. It states that, "Full value rates will of course continue in effect for the use of those shippers and receivers which choose not to utilize released rates established and filed under this provision or agree to other terms as part of a contract for services".8/

There is other evidence of congressional intent to require that full value rates be offered. Section 213 of the Staggers Rail Act (which amends section 10505) states that Commission exemption orders may not relieve a rail carrier from its common carrier liability under section 11707. The legislative history of section 213 states that the limitation as to section 11707 liability does not affect the ability of a carrier to offer "alternative terms".9/ Implicit in this statement is that these

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5/ Anton v. Greyhound Van Lines, Inc., 591 F.2d 103 (1978).

6/ Klicker v. Northwest Airlines, Inc., 563 F.2d 1310 (197).

7/ Pan American World Airways, Inc. v. California Stevedore & Ballast Co. 559 F2d. 1173 (1977) and General Electric Co. v. M.V. Lady Sohia, 458 F. Supp. 620 (1978).

8/ H.R. Rep. No. 96-1430, 96th Cong. 2d Sess. 102 (1980).

9/ H.R. Rep. No. 96-1430, 96 Cong. 2d Sess. 105 (1980).

terms are alternatives to full value liability required by section 11707. This is true not only for released rates but also for contract rates and deductibles.

If Congress explicitly intended the full liability regime of section 11707 to apply to rail carriers transporting commodities or performing services exempt from regulation, it is unlikely that it would have intended to have a lesser liability regime apply to carriers subject to regulation. It would be an incongruous result for deregulated transportation have a lower standard of liability than that imposed upon regulated transportation. However, as will be shown in part III below, this requirement to maintain full value rates, inadvertently or otherwise, creates a right without a remedy under situations where market dominance does not exist.

Changes Affecting Cargo Liability

A persistent argument in shipper comments is that no changes have occurred since 1906 to warrant a change in the law governing rail liability. The AAR, on the other hand, argues that the nature of shipping has changed radically since 1906, and that the liability regime must be altered to reflect modern shipping practices. The arguments of both the shippers and the railroads focus on the physical nature of the shipping transaction and ignore the major changes that have taken place in the regulation of railroads.

The total costs associated with loss and damage include:

1) the actual cost of the loss or damage

2) loss and damage prevention costs incurred by the railroads

3) loss and damage prevention costs incurred by shippers

4) private, informal costs incurred by carriers and shippers in settling loss and damage claims

5) the public cost of adjudicating disputed claims (transaction costs)

Economists agree that in the absence of significant transaction costs and where the parties are free to negotiate, total costs will be minimized, regardless of the assignment of liability.[10/]

If the carrier is strictly liable, it can be expected to incur prevention costs up to the point where an additional expenditure would exceed the amount saved in loss and damage. The prevention costs could take the form of direct expenditures for protective devices or services or could take the form of rate reductions to the shipper in return for its assumption of some liability. Conversely, if the carrier is not strictly liable it will be in the shipper's interest to incur prevention costs up to the point where an additional expenditure would exceed the amount

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10/ Coase, "The Problem of Social Cost, 3 J. Law and Econ. 1 (1960). See Demsetz, "When does the Rule of Liability Matter?" 1 J. Leg. Studies 13 (1972), and Browne, "Toward an Economic Theory of Liability," 2 J. Leg. Studies 323 (1973).

saved in loss and damage. As above, the prevention costs could take the form of (a) direct expenditures for protective devices or services or (b) higher rates to the railroad in return for the carrier assuming some liability. Thus, it is argued that as long as negotiation is possible and transactions costless, both carrier and shipper have incentives to allocate liability so that the total cost of loss and damage is minimized regardless of the initial common law or statutory law assignments. This result obtains whether or not the carrier is subject to competition from other carriers. However, if the carrier has some degree of monopoly power, or if the carrier is otherwise in a superior bargaining position vis-a-vis the shipper, the gains from any negotiated rearrangement of liability will likely accrue to the carrier. This may also remove the incentive that carriers now have to maintain a high standard of care, so as to avoid liability for loss and damage in transit.

Moreover, if significant transaction costs exist, bargaining may not rearrange liability in the most cost effective way simply because bargaining may not take place. The cost of negotiating a contract specifying liability may be prohibitive for a small or occasional shipper.

III. ALTERNATIVE LIABILITY REGIMES

The first three cargo liability issues that the Staggers Act requires the Commission to consider concern alternatives to the current strict liability imposed on railroads. This section addresses these issues in turn.

(1) Whether in the case of traffic with respect to which rail carriers do not have market dominance, such carriers should be subject to any higher level of liability for loss and damage than they are willing to agree to with the shippers of such traffic.

The railroads argue that in the absence of market dominance, they should not be required by law or regulation to offer full value rates. The shipping community is unanimous in its opposition to market dominance playing any role whatsoever in the cargo liability area. All shippers want the option of full value rates. Shippers argue that market dominance has no logical relationship to liability and that it is unworkable as a liability standard. With respect to the retention of full value rates, shippers argue that the railroads must be held strictly liable because they are in complete possession of the cargo. To relax their liability would place an impossible burden of proof on shippers. Further, strict liability provides the proper incentive for railroads to minimize loss and damage. The railroads counter that the forces of the marketplace will compel carriers to offer desirable transportation packages containing the lowest cost combination of rates and service terms, including liability conditions.

ANALYSIS

In analyzing this issue, it is important to review the general thrust of the Staggers Act with respect to the role assigned to competition. First, in the absence of market dominance

the Commission no longer possesses jurisdiction to find a rate unreasonable. Further, the Staggers Act gives carriers complete freedom to publish released rates that limit the amount of their recovery for loss or damage and that prohibit small claims through deductible provisions. Thus, although rail carriers are required to offer full value rates in which their liability is not limited, where market dominance is not deemed to exist the ICC is virtually powerless to prohibit the carriers from setting their full value rates at an unreasonably high level, so as to force shippers to either accept lower priced released rates (which limit the carrier's liability), or take their traffic elsewhere.

The argument against requiring full value rates is that with competition and freedom to negotiate, carriers will offer a variety of price-service options, and shippers will pick the package best suited to their particular needs. A full value rate will be offered voluntarily if it is cost-effective to the carrier.

Legally, the requirement for full value rates appears to create a right without a remedy in instances of non-market dominant carriers. Since 1976, a rail carrier that has effective competition on the traffic at issue may raise its rate on that traffic to any level it chooses. The Staggers Act further limits the jurisdiction of the Commission with regard to the reasonableness of a rate. The result may be that while a carrier is required to offer full value rates, those rates may be set at

levels excessively high in situations where market dominance is deemed not to exist. The shipper may accept the higher rate, elect the released rate, or choose another carrier with whom to do business (in markets where alternative carriage is feasible).

Arguably, a carrier who raises its full value rates to prohibitively high levels to force shippers to accept released rates may be engaging in an unreasonable practice in violation of 49 U.S.C. 10701(a). However, without jurisdiction over the rate level it would be difficult for the Commission to remedy this practice.

(2) Whether, in the case of traffic with respect to which rail carriers have market dominance, such carriers should be subject to any greater liability than would be imposed under a statutory comparative negligence standard.

The railroads argue that they should not be compelled to offer full value rates even in those instances where they are market dominant. Their primary argument is that the current law hampers their freedom to contract. They also argue that where market dominance exists, the shipper generally makes a substantial contribution to carrier income and therefore has considerable bargaining power. In the absence of freedom to contract, the railroads argue that a comparative negligence standard should be adopted. They further argue that Congress should alter the current burden of proof to implement a comparative negligence standard.

According to the railroads, the shipper and consignee generally have exclusive knowledge concerning origin condition, loading, and destination condition. Thus, it is argued that they should bear the burden of establishing that the loss or damage occurred in transit and the amount of the loss or damage. The carrier's burden should be to establish that shipper's instructions were followed and that no accident, rough or negligent handling occurred in transit. Based on this, the trier of fact should be allowed to assess all of the evidence and apportion the damages if warranted.

The shippers argue that the carrier is in complete possession of the goods while the shipper is not present to protect its interests. Thus, the carrier should continue to have the burden of proving not only that it was free of negligence, but that the cause of the loss or damage was due to one of the five common law defenses. They argue that the carrier would be in a position to set any terms on a "take it or leave it basis" if the current law is changed. With respect to comparative negligence, many shippers argue that once they have satisfied their burden of proof (i.e., shipped in good condition, received in damaged condition, and amount of damages) the carrier should be fully liable. This is so because the carrier has sole possession and control of the commodities while they are in transit, and to do otherwise would place an impossible burden of proof on the shippers.

The shippers assert that the comparative negligence is unacceptable and totally inappropriate as a standard for bailees-for-hire. This tort law standard arose as a result of dissatisfaction with the absolute defense of contributory negligence. It is applicable in situations where there is no contractual relationship between the parties, and both parties are present when the accident occurs. Tort principles are not applicable in contract law which governs claims for breach of bills of lading contracts.

Shippers state that the cases cited by the AAR in support of comparative negligence are in admiralty law (under Section 47 The Carriage of Goods By Sea Act (COGSA), 46 U.S.C. §1304 and its predecessor, Section 1 of the Harter Act, previously found at 46 U.S.C. §190) where this standard is accepted in ascertaining liability for collisions and strandings. It is rarely applicable to cargo loss and damage. The Committee on Transportation and Distribution of the Society of the Plastics Industry, Inc. (SPI) contends that shipper negligence was not at issue in Schnell v. The Vallescura, 293 U.S. 296 (1934), and that the Court in Vana Trading Co., Inc. v. S. S. Mette Skou, 556 F. 2d 100 (1977), did not apply the doctrine of proportionate fault. Shippers National Freight Claims Council (SNFCC) takes issue with AAR's statement that "many courts have in fact provided for a similar burden of proof." SNFCC asserts that besides Larry Sanwiches Inc. v. Pacific Electric R.R. Co., 318 F. 2d 690 (1963), only two other

courts have applied such a rule, both of which were subsequently overruled by the United States Supreme Court in Missouri-Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134 (1964). SNFCC also disagrees with AAR's position that a comparative negligence standard would decrease litigation. SNFCC contends a comparative negligence standard would further complicate claim negotiations, hinder voluntary settlements and thereby increase the number of claims filed with the courts.

ANALYSIS

Issue (2) suggests requiring full value rates, replacing strict liability with a comparative negligence standard, and altering the current burden of proof. Each point will be discussed individually.

Full Value Rates

Both the railroads and the shippers agree that the particular liability regime imposed by law affects negotiations. The railroads argue that under the current regime of full value rates, shippers do not have adequate incentives to negotiate and enter into contracts. On the other hand, shippers argue that if this requirement is eliminated, railroads will not have adequate incentives to offer protection to the shipping public against needless loss and damage in transit at reasonable rates.

Under current law, the Commission has jurisdiction to find rates unreasonable where they are above a given price/cost ratio and the rail carrier has market dominance. The argument

against requiring full value rates is that these rates will be offered in any case in situations where an efficient transportation package requires that carriers assume full liability. Among the arguments in favor of requiring full value rates are that they avoid the transaction costs associated with negotiating liability agreements, they avoid the use by carriers of liability as an additional avenue to exploit their captive shippers, and they provide some measure of certainty as to the determination of liability and thereby reduce unnecessary litigation. Further, they provide an incentive for carriers to maintain a high standard of care with respect to commodities under their control, and thereby avoid the costs associated with unnecessary and wasteful loss and damage in transit.

Comparative Negligence

The issue of a comparative negligence standard as presented by the railroads entails two changes. One change is to allow the courts to apportion the damages when both the carrier and shipper are negligent. The other is with regard to the burden of proof.

The concept of comparative negligence arose from a general dissatisfaction with the often inequitable results from the absolute defense of contributory negligence.11/ But, it has been held that because carrier liability is based on common law

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11/ Melesko v. Riley, 339 A.2d 479 (1975).

liability, the defense of contributory negligence is not available.[12] In comparative negligence cases, damages are awarded in proportion to fault. This concept has been adopted in the laws of admiralty, various federal statutes such as the Federal Employees Liability Act, 1910, 45 U.S.C.A. §§51-59, and state statutes almost exclusively related to personal injury suits.

Some apportionment statutes provide that if the defendant's fault or negligence is twice that of the plantiff the plaintiff receives two-thirds of his damages. Other such statutes apply only in cases where the fault of the plaintiff is slight or not as great as that of the defendant. Naturally, comparative negligence statutes are inapplicable where negligence on the part of the plaintiff cannot be proved by the defendant.

The comparative negligence concept is more readily utilized when the court, rather than a jury, determines damages. Cases with multiple parties greatly complicate the apportionment concept and are often too unwieldy or complex for the ordinary jury. Since each case turns on its own circumstances, there can be no definite rules. Cases which appear to be superficially similar in the conduct of the parties often have different results.[13] Further, complexity results from the various forms and applications of "the last clear chance rule." Some courts

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12/ Atlantic Coast Line R. Co. v. Rive, 169 Ala. 265, 52 So 918 (1910), 14 Am. Jur. 2d Carriers §530.

13/ Prosser W., Law of Torts, 4th Ed., 1974, §68.

hold that where the defendant has had an opportunity to avoid the harm the plaintiff's negligence is not the proximate cause of the injury.

The comparative negligence standard is applied after fault has been found in both parties and the damages are to be calculated. Implicit in this apportionment of damages is the necessary opportunity for the defendant to plead that plaintiff's negligence contributed to the injury. If such a standard is used, the present limited defense that an act of a shipper was the sole cause of the injury would have to be broadened to include contributing cause. The carrier might introduce evidence that the shipper improperly packaged or loaded the goods.

Failure to comply with AAR requirements for loading could be evidence of failure to exercise due care. A statutory comparative negligence standard would state when it will be applicable. It would be necessary to determine whether the standard would apply to all cases where there is any degree of shipper negligence or where shipper negligence is slight or not as great as defendants'.

While there may be cases where an apportionment of the loss would be more equitable, the extremely difficult problem of determining how to allocate the loss argues strongly against adopting such a standard.

Burden of Proof

Currently, in the majority of cases, the carrier must prove that it was not negligent and that the proximate cause of the loss

or damage was due to: (1) an Act of God, (2) the public enemy, (3) an act of the shipper, (4) an inherent characteristic of the goods, or (5) the public authority. The railroads propose that their burden of proof be lessened to proving simply that they were not negligent.

One of the distinguishing characteristics about cases involving carrier liability is the unusual burden of proof allocation. Burden of proof is a method used to resolve cases where the evidence is such that neither party can persuade the trier of fact. In this "stand off," civil law places on one of the parties the burden of persuading the jury by a preponderance of the evidence. In most negligence questions it is the plaintiff who must prove the defendant was negligent and thereby caused the injury; otherwise his case is lost. This is so in cases against private carriers.

However, the common carrier, as a virtual insurer of the goods, has the common law burden to prove that the loss or damage was caused by one of the above five exceptions. This burden occurs after the plaintiff has presented a prima facie case against the carrier by showing the shipment was in good condition at delivery, was in damaged condition upon arrival (or was not delivered with reasonable dispatch) and the amount of damages.[14]/

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[14]/ See 13 C.J.S. Carriers §254 for specific examples of proof.

There appears to be some controversy as to what occurs next. SNFCC cites Secy. of Agriculture v. U.S., 350 U.S. 162, 173, (1955), as holding that the carrier must, in addition to proving one of the exceptions, also prove it was not negligent. Geo. A. Hormel & Co. and Institute of Scrap Iron and Steel, Inc. also cite the United States Supreme Court decision of Elmore & Stahl, supra at 138 for this holding, as does The National Industrial Traffic League. However, William Prosser, a highly respected authority on the law of torts, states:

> It is generally agreed, however, that a carrier of goods, who is an insurer against everything but a few exceptional perils, has the burden of proving that the loss or damage to the goods falls within one of the exceptions, after which it is the prevailing view that the burden is upon the plaintiff to show any negligence of the carrier responsible for the harm under such circumstances. (Prosser, W., Law of Torts, 4th Ed., 1974-§38).

Several cites are given for this position, including Oakland Meat Co. v. Railway Express Agency, 46 Ill. App. 2d 176, 196 N.E. 2d 361, (1964), and Dobie, Bailments and Carriers, 1914, 348-9.15/

In either case, it remains for the carrier to show that the cause of damage or loss falls within one of the five exceptions. There are several reasons why the carrier is forced to present evidence as to the cause of the injury. A party should be required to put forth evidence or facts that are within its

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15/ Also see Am. Jur. 2d Carriers §§627, 630.

control or knowledge.16/ It is the carrier who has sole possession of the cargo while in transit. The shipper has lost all contact with the goods and has no knowledge of what transpires during this transit.

Likewise, the Supreme Court has stated:

> We are not persuaded that the carrier lacks adequate means to inform itself of the condition of goods at the time it receives them from the shipper, and it cannot be doubted that while the carrier has possession it is the only one in a position to acquire the knowledge of what actually damaged a shipment entrusted to its care. Elmore & Stahl, supra at 143-144.

Further support for the current burden of proof standard has been established by the courts. One has stated:

> A shipper has no control over goods once he delivers them to a carrier, and no opportunity to observe how they are handled. Without a rule akin to res ipsa loquitur a shipper would often have an intolerable task to prove negligence on the part of the carrier. Plough, Inc. v. The Mason & Dixon Lines, 630 F. 2d 468, 472 M. 1 (1980).

This res ipsa loquitur doctrine may be applied in negligence actions where: the event or injury ordinarily would not occur in the absence of negligence, the event was not due to the plaintiff's voluntary action, the event was caused by an instrumentality within the exclusive control of the defendant, and the evidence as to the true explanation of the event is more readily

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16/ Missouri Pac. R. Co. v. Whittenberg and Alson, 424 S.W. 2d 427 (1968).

accessible to the defendant than to the plaintiff.[17]/ If the plaintiff establishes these elements, then in the absence of an explanation by the defendant, there is reasonable evidence that the injury was due to lack of care or negligence. While not applicable per se in carrier liability cases, this doctrine has strikingly similar elements to that of common law liability.

The reasoning set forth by the courts with respect to the current burden of proof standard is compelling. A shift in the burden of proof would result in an insurmountable task for shippers.

(3) Whether liability for damage to rail traffic should be determined under a no-fault liability system and what shippers should bear the cost of such a system.

With the exception of the railroads, the commenting parties were unanimous in voicing strong objections to the establishment of a no fault liability regime in railroad loss and damage matters. There was general agreement by the objectors on the reasons why such a system was unworkable.

The general public's awareness of no-fault systems is essentially limited to those which apply in some states to automobile insurance policies. The idea behind these systems is to reduce litigation and administrative costs in automobile accidents by having each party's insurer pay its client's cost directly, regardless of fault. Since the question does not provide insight

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[17]/ Prosser, The Law of Torts, supra at §39.

as to what type of no fault system was envisaged, most commenters based their objections to any such system on a comparison of the circumstances which normally apply in an incident such as an automobile accident, with the type of incident involving the loss of or damage to a shipper's property while in transit.

Many of the parties pointed out the fact that in an automobile accident the owner of the property is in direct possession and control of his own property at the time of the accident. On the other hand, when a consignor ships his property on a railroad, he surrenders control and knowledge of his property to the carrier who becomes the only party with first-hand knowledge of circumstances which might contribute to loss or damage of the shipper's property.

In addition, the parties remarked on the implications of a no-fault system on the current rail rate structure. Because susceptibility to damage or loss is a crucial element in formulating the rate applicable for the shipment of any commodity, the parties suggested that the current rail rate structure, which already has the cost of potential loss and damage factored into it, would need to be revised downward under a no-fault system. No objecting party believed there was any likelihood of the railroads effecting such rate reductions should a no-fault system be installed.

The parties point out that under no-fault a shipper desiring insurance against loss and damage would be constrained to purchase

it from an outside insurer. However, a no-fault system precludes the subrogation of claims to the insurer. If an insured shipper's goods were destroyed in transit, the shipper's insurer would pay for the loss; however, the insurer would be prevented from instituting action for recovery against the carrier since there is a presumption of "no fault". Shippers argue that the consequences of this would be either a complete lack of companies willing to insure cargo or, if the insurance were offered its cost would be prohibitive.

The position of the railroads on this question is probably best summarized in the comments made by the AAR. It argues that the installation of such a liability regime was revolutionary, and suggests nine alternative no-fault systems for consideration. However, after analyzing the whole subject the AAR concluded that the right to contract with shippers within the framework provided by the Staggers Rail Act already allowed the voluntary incorporation of no-fault liability into contracts and that this would be sufficiently responsive to the demands of the market place.

ANALYSIS

Given the general agreement of both sides on this issue and the freedom to contract, no changes in this area seem necessary.

Recommendations

Full Value Rates

With respect to full value rates, the following options are available: (1) continue the full value rate requirement

recognizing that for many movements, given jurisdictional limitations, effective Commission enforcement cannot occur, (2) continue the requirement but with a viable remedy for violations, (3) release non-market dominant rail carriers from this requirement and allow them to negotiate liability terms with shippers, or (4) release all rail carriers from this requirement.

Options (1) and (3) are virtually the same. Both would essentially retain the status quo, the third option admitting explicity what the existing legislative scheme provides implicitly.

Where the rail carrier is deemed not to have market dominance over the involved traffic, the Commission has no effective means of prohibiting it from setting full value rates at levels sufficiently high as to make them an infeasible alternative to released value rates. However, where the carrier does have market dominance, the ICC has jurisdiction to disapprove a full value rate which is unreasonably high. Hence, an argument could be made that, at least where market dominance does not exist, the protections of the Carmack Amendment could be rendered impotent by a rail carrier seeking to make it economically infeasible for a shipper to accept any level of liability other than that expressed in its released rate. The existing regime requires only that it offer a full value alternative. It does not insist that the level of the full value rate be set at a reasonable level where market dominance is not deemed to exist. However, rail carriers do not appear to be engaged in widespread abuses of their opportunities

to discourage use of full value rates. One can only speculate as to why this is so. Perhaps (a) rail carriers fear that raising full value rates to excessive levels would cause a diversion of traffic to alternative modes or, (b) they fear that such action would prompt shippers to request legislative relief.

Option (2) would require promulgation of a statutory provision granting the Commission authority to regulate the level of a rate, but only with regard to the issue of the valuation of the commodity and the total costs associated with its loss and damage. The Commission would concentrate solely on the reasonableness of the liability factor incorporated into the rate itself.

The fourth option would place rail carriers in a position fundamentally different from that of motor carriers, who would still fall under the prescriptions of Carmack Amendment. It might lead rail carriers to maintain a lower standard of care in handling shipments than they presently do, resulting in unnecessary loss and damages, costs which are not recoverable. Shippers would incur transaction costs not now incurred in negotiating liability levels. Shippers with insufficient market power might be forced to accept the liability limitations dictated by the carriers and either purchase insurance to cover the possibility of loss, or self-insure. The Commission therefore does not recommend adoption of the fourth adoption.

It is clear that Congress intended that the Commission's implementation of the Staggers Rail Act not dilute the Carmack protections afforded shippers. For example, 49 U.S.C. §10505(e) specifies that "(n)o exemption order . . . shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with (49 U.S.C. §11707)." 49 U.S.C. §11707 imposes on the carrier liability for actual loss or injury to property shipped unless released rates under 49 U.S.C. §10730 have been accepted by the shipper as an alternative to otherwise applicable full value rates. Rather than recommending a specific legislative solution, we merely wish to appraise the Congress of the incongruity of encouraging full Carmack protection (by requiring a full value rates alternative) in situations where, because market dominance exists, the Commission is constricted from requiring meaningful full value alternatives, set at reasonable levels, to released rates.

Comparative Negligence

While the comparative negligence standard appeals to one's sense of equity, we do not recommend that it be adopted. There may be some inequity in the present system, but we have reservations about introducing a comparative negligence standard into cargo liability cases. The apportionment of damages according to fault is often a complex and highly arbitrary task, especially for a jury. An excessive numbers of appeals will inevitably follow the jury's assessment of fault. Additionally, the outcome is so uncertain that voluntary settlements may diminish and litigation increase.

Burden of Proof

As discussed above, in normal negligence suits, the plaintiff would have to plead and prove that the negligence of the defendant was the legal cause of the injury. The Commission does not recommend adoption of the AAR proposal to place this burden on the shipper. We believe forcing the shipper to show the cause of loss or damage is an intolerable burden.

No-Fault

No change is recommended in terms of implementing a no-fault liability concept. Railroads and shippers now have ample freedom and incentives to design and implement such a system through contracts and to allocate the cost in a manner agreeable to all.

IV. CONSTRAINTS ON LITIGATION AND RECOVERY

The remaining seven issues posed by the Staggers Act concern the laws and regulations that govern, in the absence of limitation by contract, who may sue for a loss and damage claim, in what courts, within what time limits, and how much can be recovered. This section takes up these seven issues in turn.

(4) Whether venue in cases arising from rail carrier liability for damages to traffic should be further limited.

Prior to the promulgation of the Staggers Act, a claimant could sue a carrier in any forum in which an action could be brought.[18/] The new provisions of section 11707(d)(2)(A) limit venue to three locales:

(1) Against the originating rail carrier in the judicial district in which the point of origin is located;

(2) Against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located if the delivering carrier operates a railroad or a route through such judicial district, or in the judicial district in which the point of destination is located; and

(3) Against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

18/ Aaacon Auto Transport, Inc. v. State Farm Mut. Auto Ins. Co., 537 F.2d 648, 654-55, (1976), cert den. 429 U.S. 1042 (1976).

The parties unanimously assert that venue should not be further restricted.

The majority of the parties did not comment in any detail on the present venue provisions; those who did, find them too narrow, biased in favor of the rail carriers and perhaps unlawful. They see the amended provisions as inconvenient and as not accomplishing the stated legislative goals. Shippers resent the limited access to state courts. SNFCC asserts that the above provisions take away the constitutional right of a plaintiff to sue a defendant anywhere the defendant chooses to do business. Maintaining business offices and similar activities should subject carriers to the service of process in those states and therefore their courts. SNFCC points out that a New York receiver of damaged goods that originated on a southern or western carrier is not permitted to sue that carrier in New York although the carrier has a business office there. A general creditor of that carrier, however, may sue in New York. SNFCC further asserts this right of election is important to an eastern receiver because of the more stable financial positions of the southern and western carriers vis-a-vis the eastern carriers. Similar contentions are made by the Chemical Manufactures Association (CMA) and the Fertilizer Institute.

Section 11707(a)(1) defines a delivering carrier as the carrier performing the line-haul transportation nearest the destination. The definition does not include a switching carrier

at destination. SNFCC states that some claimants will not be able to sue carriers in their own courts when the final delivery is made by a switching carrier.

The National Small Shipments Traffic Conference (NSSTC) and the Drug and Toilet Preparation Traffic Conference (DTPTC) refer to the remedies available to a carrier allegedly harmed by the plaintiff's choice of forum. The federal venue provisions in 28 U.S.C.§§1404 and 1406 permit the transfer of cases between the federal districts not only for improper venue but also for the convenience of parties and witnesses or in the interest of justice. Likewise, a carrier defendant may seek dismissal in a state court on the common law grounds of forum non conveniens. Transportation Indemnity Service argues that a claimant may not know where the damage occurred if there is no derailment or fire. One of the reasons for the Carmack Amendment was to relieve the plaintiff of the burden of determining which carrier was liable and thus, where on a through route the damage occurred.

The AAR seeks an amendment to section 11707(d)(2)(A)(iii) stating that the mere allegation of carrier negligence will not be sufficient to subject a carrier to distant jurisdiction.

ANALYSIS

The Congressional discussion of the amendments to Section 11707 is a succinct indication that because existing law permits an action wherever the carrier operates, venue is "virtually uncontrollable and frequently inconvenient."19/ Challenging the

19/ H.R. Rep. No. 96-1430, 86th Cong. 2d Session 103 (1980).

Staggers Act limitation on venue, the Commission's Office of Special Counsel points out that the origin point in section 11707(d)(2)(A)(i) may also be inconvenient for the carriers. Additionally, the site of the alleged damage in section 11707(d)(2)(A)(iii) may be just as inconvenient as before the amendment and certainly as uncontrollable.

As discussed below under issue (6), the party pursuing a claim may be the shipper, the receiver, or a third party. Depending on when title to the goods passes and the nature of the shipping practices, it may be appropriate for any of the three parties to file a claim. Thus, it would be very difficult to devise a set of statutes that provide an equitable and efficient forum in each of the many different situations that can arise. The Staggers restrictions appear to be unduly severe. We recommend that the current restrictions imposed by the Staggers Act should be repealed.

5) Whether rail carrier property damage cases should be subject to laws other than Federal law.

For purposes of uniformity and certainty in cargo liability, the AAR and a majority of the shippers favor applying only Federal law. AAR notes that under Federal law contracts of carriage have statutory force and effect. Several shippers point out that a majority for the Carmack Amendment was promulgated to end inconsistent state court decisions.

Other shippers prefer the use of both state and Federal law. CMA states that rail carrier liability has always been and should

continue to be the subject of applicable local, state, and Federal law. SNFCC finds merit in subjecting carriers to laws other than Federal law. In Brown v. American Transfer & Storage Co., 601 S.W. 2d 931 (1980), a carrier was found liable for treble damages and attorney's fees under Texas' Deceptive Practices Act. The states also have consumer laws to protect the public from unconscionable contracts. Western Growers Association (WGA) contends that shippers can and do bring actions against carriers under state laws for breach of contract and bad faith negotiation. Claimants should not be denied access to state courts merely because railroads are the defendants. Westinghouse asserts that Federal courts should use state substantive law and federal procedural law.

AAR seeks a clarification that released value rates (49 U.S.C. 10730) and contracts (49 U.S.C. 10713) are to be governed only by Federal Law. Atchison, Topeka and Santa Fe R. Co. (AT&SF) asks that the jurisdictional amount in Federal Courts be lowered from $10,000 dollars to $3,000 for purposes of cargo liability.

ANALYSIS

Jurisdiction today is concurrent jurisdiction over interstate cargo claims. Section 11707(d) provides that a civil action may be brought in a district court of the United States or in a state court. However, Federal law prevails.[20/] The Commission stated in Loss and Damage , supra, at 589-90:

20/ Adams Express Co. v. Croninger, supra.

> Section 20(11) of the act provides a statutory cause of action for loss or damage in transit caused by a carrier even though the statute, in effect, merely recodifies the common law right. In fact, it is sometimes anomalously called a right under the Federal common law. Carrier liability is determined with particular reference to Federal Statutes and decisions, and the undisputed effect of these is that although a carrier is not an insurer per se, it, nonetheless, is fully liable for damage to or loss of goods transported by it unless the loss or damage occurred as a result of one of the excepted cases. As a consequence, a carrier is virtually an insurer and the Federal law summarily invalidates carrier arguments to the contrary unless there is a correlation of the defense to an excepted cause, Commodity Credit Corporation v. Norton 167 F.2d 161, 164 (1948). Neither the decisions of State courts which may be to the contrary ... may overcome this governing principle. Missouri Pac. R. R. v. Elmore & Stahl, 377 U.S. 134 (1964), rehearing denied, 377 U.S. 948; and Condokes v. Southern Pacific Company, 303 F. Supp. 1158 (D. Mass. 1968). Conflicting interpretations, therefore, would have to be resolved in the Federal courts.

Since Federal law prevails claims arising under section 11707 are "federal questions" and the provisions of the Carmack Amendment govern exclusively, regardless of whether the plaintiff asserts a federal question. The right of removal to federal court, however, is limited. The $3,000 threshold established in 1914 for removal was increased to $10,000 in 1978.

A $10,000 minimum was required to originate in federal courts. The threshold was raised to eliminate the inconsistency between removal and original jurisdiction. Thus, legislative history of Pub. L. 95-486, which amended 28 U.S.C. §1337 and §1445(b), stated:

> The Carmack amendment, 49 United States Code 20(11), and 28 United States Code 1337, provide that suits may be brought in federal court against a railroad or motor carrier. However, there is no provision in these statutes that assumes that the court will only hear substantial claims. This is a basic inconsistency with diversity and Federal question jurisdiction, which require a $10,000 minimum amount in controversy. 1978 U.S. Cong. & Adm. News, Page 3612

A new inconsistency exists now that Congress has recently removed the $10,000 threshold for original jurisdiction in federal question cases. (Pub. L. 96-486.) Today, federal question cases arising under the Carmack Amendment are treated differently from other federal question controversies. Moore's Federal Practice §0.167[4] asks, "Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remain free of the over $10,000 limitation?"

The Commission recommends removal of the new inconsistency so that Carmack Amendment controversies can be handled in the same manner as other federal question cases. Amending 28 USC §1337 and §1445(b) would be consistent with the Commission's recommendation that current venue restrictions for Carmack liability cases be repealed. We see no overriding justification for the disparate treatment simply because the defendant is a rail carrier. For the exclusive Federal jurisdiction that the carriers request, Congress would have to enact legislation.

As to AAR's request for clarification of the status of the applicable law relating to released value rates and contracts, we

we can ascertain no legislative intent to alter the concurrent jurisdiction. Moreover, regarding contracts 49 U.S.C. 10713(i)(2) specifically provides for either State or Federal court jurisdiction unless the parties agree otherwise.

(6) Whether the right to claims should be limited to either the shipper or receiver of property.

The parties concur that the right to claims should not be limited to either the shipper or the receiver of property. Often the beneficial owner or holder of the title to the goods does not appear on the bill of lading. NRMA and CMA assert that such a restriction would deprive a property owner of the right of redress and that this constitutes confiscation of property in violation of the due process requirements of the Constitution.

AAR states that a carrier should be obligated to defend only one claim on any one contract of carriage. The party who recovers for the entire loss should hold the proceeds in constructive trust for the benefit of all who might have an interest. A carrier should not be compelled to pay twice for the same loss nor defend multiple lawsuits for that one loss.

SNFCC replies that many consolidators and freight forwarders find it difficult if not impossible to file only one claim arising from one carload. These claimants must have the right to file additional claims when they receive such claims from individual shippers owning the goods in the consolidated shipment.

Under current law, as stated in section 11707(a)(1), a carrier is "liable to the person entitled to recover under the receipt or bill of lading." The present system includes those who have an interest in the goods. There is a distinction, however, between who may file a claim and who may recover on a claim. The general rule is that the person who bears the loss is entitled to recover. The parties urge no alteration in the status quo.

In actual practice, however, the party bearing the risk of loss does not necessarily file a claim or recover. For example, a large shipper with an experienced traffic department may file claims for its customers as a courtesy or service.

Under the common law the risk of loss generally follows the "title" to the goods. The determination of the passage of the title to goods is not a simple matter. In present day commercial practices, sales are made under various terms:

> F.O.B. Place of Destination - When the term is F.O.B. destination the seller must transport the goods to that place at his own risk and expense and tender proper delivery. Thus, the risk of loss is on the seller during transit.
>
> F.O.B. Place of Origin. Section 2-319 of the Uniform Commerce provides that where F.O.B. origin is specified, the seller turning transit bears the risk and expense of putting the goods in possession of the carrier. The risk of loss is on the buyer.
>
> F.A.S. means "free along side" and requires the seller to deliver the goods to the pier or dock. Risk of loss remains in the seller until such delivery is completed.

> C.I.F. in a contract for the sale of goods, refers to "cost, insurance and freight," and means that the price includes the freight and surface costs to the named destination. Risk of loss, however, passes to the buyer once the seller has delivered the goods to the carrier at origin, prepaid the freight, obtained insurance, and mailed the shipping documents to the buyer.
>
> C. & F. another common shipping term, imposes the same obligations on the seller as C.I.F. except the requirement to pay for insurance. Augello, W., Freight Claims in Plain English, 1979, p. 214.

The complexity of ascertaining when title passes is so great that it is often necessary for the parties involved to resort to litigation just to determine ownership of the goods at a particular time. Often the party holding title to the goods is not named in the bill of lading or receipt although that party is entitled to recover for loss and damage.

Currently, the doctrine of res judicata prevents splitting a claim into individual causes of action. It requires all grounds on which a single claim is based to be asserted and included in one action. Failure to do so bars a separate suit. The question is what constitutes a single claim. As it stands now, where there is loss or damage to a consolidated carload, the receiver, shipper, or each owner of the goods can sue for recovery. Thus, a person with a beneficial interest may maintain an action against a carrier regardless of whether some other person has an interest also. However, recovery will bar another suit stating the same cause of action. The plaintiff who fully recovers must in turn account to any other party with an interest.

It does not appear that any changes are necessary with respect to who may file a claim. The parties are in broad agreement that the current arrangement is equitable and works well.

(7) Whether maximum time limits should be imposed on the filing of claims with rail carriers and the courts.

Stating that other transportation modes have shorter claim filing deadlines, AAR proposes to reduce the time limits for filing claims with carriers and courts to six months from delivery and one year from carrier's written declination, respectively. It also seeks a requirement of immediate notification of damage upon delivery so the carrier may inspect. Under their proposal, no lawsuit could be brought for 120 days after the submission of the claim to the carrier. At present, AAR alleges that some shippers concurrently file claims and lawsuits. Other shippers file only lawsuits. The carriers are then compelled into premature, expensive litigation. They assert that under the current law carriers are forced to contend with these untimely filed claims because the shippers are given nine months to file their written claims.

The vast majority of shippers do not favor a reduction in the existing time limitations. They state that the minimum time restraints of section 11707(e) are now used by the carriers as the contractual maximum. This section provides that a carrier cannot impose by rule or contract a period of less than nine months for

filing claims or less than two years for bringing a civil action. The two-year period begins to run with the disallowance of a claim by the carrier. Shippers allege that they often have difficulty in meeting these deadlines. They deny allegations of any deliberate plan to delay filing until just before the time limit. With current interest rates, shippers want their claims handled as quickly as possible.

Shippers state that AAR's reference to shorter claim filing times under the Carriage of Goods by Sea Act is misleading. Under COGSA there are time limits for reports of loss, not for damage claims. SNFCC asserts that the carriers have rules insisting upon notice of damage with 24 or 48 hours of delivery and while the car is under load. If the filing times are reduced, SNFCC asks that the new filing deadlines apply only to "notice" of loss or damage, not to the claim itself. This notice would relieve claimants of the duty to file formal claim documentation sooner than is now required by the carriers.

ANALYSIS

Section 11707(e) is permissive; it establishes minimum but not maximum filing times.[21/] The shippers assert that the carriers use this section to impose maximum filing deadlines. Discovery of damage or loss, investigation, and documentation requires time. Courts have held that the purpose of claim filing

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21/ See Chesapeake & O. R. Co. v. A. F. Thompson Mfg. Co., 270 U.S. 416 (1925).

time limits is to put a carrier on notice of potential liability.[22] However, some courts have held a claim must be a formal demand for payment with the requisite legal language.[23] SNFFC points out that Canadian bills of lading have no requirement for a demand for payment.

The provisions of the Carmack Amendment operate to supersede all state regulation requiring notice of loss and claim. It is not unlawful for a carrier to provide for a longer period of time to file a claim than that stated in section 11707(e).[24] It has been held that where a lawful contract provides for an initial notice of loss followed by a subsequent claim for damages, compliance with the former does not obviate the necessity of the latter.[25]

Under 49 C.F.R. 1005.5, a railroad is required to pay, decline, or make a firm offer of settlement within 120 days after receipt of a claim. If disposition is not possible, the carrier may make a written status report after 120 days and every 60 days thereafter. Shippers state that they experience excessive delay in the carriers' processing of claims. An advantage of the

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22/ Minot Beverage Co. v. Minn. & St. Louis Ry. Co., 68 F. Supp. 293, 296 (1946).

23/ Delaware L & W Ry. v. U.S., 123 F. Supp. 579 (1954).

24/ Productive Tool Corp. v. Pilot Freight Carriers, Inc., 33 N. C. App. 241, 234 SE. 2d 798 (1977).

25/ Union R.R. Co. v. Denver - Chicago Trucking Co., 126 Colo. 981, 253 P2d 437 (1953).

present minimum time limits is that the principle of equitable estoppel may be applied by the courts to preclude carriers from using such time limits as a defense when they have improperly prevented a claimant from meeting those deadlines.[26]/

It has been stated that no general rule can be laid down as to just what constitutes a reasonable time for giving notice of such claim. The question is largely dependent upon the particular circumstances of each case, including such factors as distance and facilities for communication, as well as the nature of the shipment. Whether a specified time limit for giving notice is reasonable is usually a question of fact for the jury although that may be deemed in some instances a question of law for the court.[27]/ The variety and complexity of shipping transactions argue against any shortening of the current time limits on filing claims and instituting litigation.

(8) Whether the prevailing party in a claims proceeding should be awarded attorneys fees in order to limit needless litigation.

The carriers oppose awarding attorneys' fees, noting that under present law such fees may not be awarded. They contend that there is no needless litigation since less than .01 percent of all claims (excluding perishables) result in litigation. Whirlpool Corporation and Sea Land Service, among others, feel that such an award may encourage litigation.

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[26]/ John Morrell & Co. v. Chicago R. I. & P. R. Co., 495 F. 2d 331 (1974).

[27]/ 14 Am. Jr. 2d Carriers §580.

A majority of the shippers, however, favor awarding attorneys' fees to the successful party. Transportation Indemnity Service states that claimants frequently accept less than 100 percent of the claimed amount in settlement because the costs of legal fee may exceed the differences. Frequently, claims are relatively small and attorneys'fees are prohibitive.

Transportation Indemnity Service states,

> From both a practical and economical standpoint, it is more advantageous for the railroad to demand a formal litigation rather than agree to voluntary settlement. This is based on the carrier's "Pre-Trial" Compromise Settlements, which usually represent at the most, 70% to 80% of the true carrier liability or claim amount. Refusal by the claimant (plaintiff) to accept this "Pre-Trial" settlement is severely looked upon with "dis-taste" by the respective court. On a claim representing $30,000, exclusive of cost and interest, acceptance of a 75% Pre-Trial Settlement will result in an immediate 25% Savings ($7,500) to the carrier, regardless of their actual liability. The claimant (plantiff), after legal fees, would only receive 34% to 56% recovery on the actual loss sustained. This 34% to 56% would be exclusive of the claimant's own internal administrative costs prior to the actual filing of legal action.

NSSTC and DTPTC assert that since a claimant is forced to sue in order to gain access to carrier records, only plaintiffs should be awarded attorneys' fees. Some shippers, like WGA, believe awarding attorneys' fee will prevent needless litigation. Several comments refer to sections 11711(d) and (c),The Household Goods Transportation Act of 1980, Pub. L. 96-454, which awards attorneys' fees under certain circumstances involving a dispute settlement program.

The AAR reports that

> shippers who cannot resolve small claims also have available to them the rail carrier's voluntary arbitration program under the auspices of the American Arbitration Association (AAA). In the period of time that this program has been in effect, nearly 8 million claims have been filed by shipper groups, and amicably resolved. Yet, a request to arbitrate has been made by both carrier and shipper in only 129 instances.

In answer to this, the SNFCC p. 18 alleges:

> the arbitration system to which they refer (AAA) is not mandatory on the railroads. Any individual railroad may refuse to arbitrate any particular claim when it fears an adverse decision, particularly when it knows that the claimant will withdraw the claim rather than incur the expense of litigation.

The reply statement submitted by CMA states: "The AAA, however, is not bound by the rules of the court and is comprised of arbitrators who know transportation law to a lesser degree than would a federal judge. This is born out by the fact that in over 4 years only 48 claims have actually been progressed through the full arbitration system to final award."

ANALYSIS

In Federal courts, attorneys' fees are normally not recoverable in an action for loss or damage to an interstate shipment.28/ However, the Federal courts have equitable power to award attorneys' fees where appropriate in the interest of

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28/ Atlantic Coastline R. Co. v. Riverside Mils, 219 U.S. 186 (1911).

justice, as where the losing party has acted in bad faith, wantonly, or for oppressive reasons.29/

There is some conflict of authority as to whether attorneys' fees are allowed even under state statutes which purport to authorize attorneys' fees. See 37 A.L.R. 3rd. 1125. There are cases where the awarding of attorneys' fees under these statutes is upheld.30/ Others have found such awards invalid as to claims involving interstate freight.31/ Similarly, there is conflict of authority as to whether statutes awarding attorneys' fees only to claimants are valid. Some courts have held that the strong public policy to protect small customers or shippers does not offend equal protection rights.32/ Others have found them invalid.33/

In Loss and Damage, supra, the Commission agreed that the principal purpose of allowing courts to award attorneys' fees was to induce carriers to pay just claims promptly, citing Pacific

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29/ Miller v. Accon Auth Transporters, Inc. 447, F. Supp. 1201. Hall v. Cole 412 U.S. 1 (1973).

30/ Missouri, K & T. R. Co. v. Harris, 234 U.S. 412 (1914); Struckland Transp. Co. v. Kool Kooshion Mfg. Co., 194 N.W. 676

31/ Southwestern Motor Transport Co. v. Valley Weathermakers, Inc. 427 S.W. 2d 597 (1968), Aaacon Auto Transport, Inc. v. Megna, 285 So. 2d 64 (1973).

32/ Smith v. Chicago, P. M. & O. R. Co., 157 N.W. 622 (1916) and, Missouri, K & T R. Co. v. Cade, 233 US 642 (1914).

33/ Dewel v. Northern P. R. Co. 170 P. 753 (1918) Wilder v. Chicago & W. M. R. Co., 38 NW 289 (1888). See 73 A.L.R. 3d. 515.

Gamble Robinson Co. v. Minneapolis, and St. L. Ry. Co., 105 F. Supp. 794, 806-7 (1952). However, proposed amendments to the Carmack Amendment granting attorneys' fees have not been successful.

Should a claim reach the courts, a carrier is given the right to recover from another carrier any amounts paid out to a shipper on the second carrier's behalf as well as "the amount of any expense reasonably incurred by it in defending any action at law" by a shipper. This appears to include the recovery of the first carrier's attorneys' fee.

The question posed by Congress raises the presumption that needless litigation has occurred in the past. In response the comments and replies indicate that only a very small percentage of claims actually result in litigation. SNFCC states that less than .25% of all claims filed against carriers have resulted in litigation. Although the AAR in its initial comments elaborated on the "Boston" problem, involving a disproportionate number of court suits as compared to the remainder of the nation, it states at page 41 of its reply, "It is clear that there is no current problem involving needless litigation." The AAR in its initial comments (p. 58) states, "The number of claims placed into litigation has, on deregulated shipments, dropped by more than 95%."

If the intent of the words "needless litigation" is interpreted to mean frivolous suits or suits in bad faith, it does

not appear that needless litigation exists. The primary check on needless litigation, as explained by Northwest Horticultural Council, is the shipper's "penalty of paying his own attorney's fees as well as collecting nothing for his efforts" (at p. 9).

It is instructive to note that the prevailing reason that claimants commence court action is the inability to secure needed information from the carrier. Several comments illustrate this problem.

- J.P. Stevens, p. 6, comments: "it (litigation) is often the only way a claimant can gain access to carrier records of the shipments."
- Phillips Petroleum, p.6, comments: "since this added expense may be the only recourse to obtain the facts and evidence in the sole and exclusive possession of the rail carrier."
- Growers and Shippers League of Florida, p. 8, comments: "In the consideration of claims, the carriers often refuse to disclose information concerning the handling of the shipment in the absence of litigation."
- Chevron comments: "When litigation is required by a claimant, the cause is usually the unwillingness of the carrier to furnish documentation, information solely within its possession."
- General Motors, p. 9 comments: "Because the railroad is normally in sole possession of the facts regarding the loss and damage and a shipper may be forced to litigate to gain access to those facts."
- Society of the Plastics, p. 18, comments: "In light of the fact that the only procedure whereby a shipper can obtain the information necessary to determine the validity of its claim is to file suit against the carrier."

- The Fertilizer Institute, p. 19, comments: "Very often, when claims are not settled, it is due to the carriers' refusal to negotiate or to even divulge information relative to the claim."

- Pillsbury Co. p. 14 "Only through court action can the carrier be required to allow access to its records."

- Crown Zellerback Corp. comments: "Carriers often refuse to release facts regarding their handling of shipments during the claim investigation resulting in the necessity to commence litigation.

The above comments suggest that "needless litigation" exists when claimants are forced to pursue court action in lieu of a railroad's voluntary disclosure of information.

The comments of the shippers, as well as the AAR, clearly indicate that court action is not a satisfactory alternative because it is prohibitively costly, and attorneys' fees reduce the recovery amount. The claimant is never made "whole," even if a favorable court judgment is obtained.

The Household Goods Transportation Act of 1980, S. 1798, provides for the payment of attorneys' fees under certain circumstances when a household goods carrier does not have an arbitration mechanism in place.

Section 7 of this Act, amending Section 11711 of the Interstate Commerce Act provides: "the shipper shall be awarded reasonable attorney's fees if

(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;

(2) the shipper prevails in such court action; and

(3)(A) No dispute settlement program approved under this section was availabe for use by the shipper to resolve the dispute; or

(B) a decision resolving the dispute was not rendered under a dispute settlement program approved under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

(C) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under such a decision has lapsed.

The House Report accompanying the Act states:

> For the purpose of discouraging shippers from filing nonmeritorious claims in court, the section provides for the award of attorney's fees to the successful carrier claimant where a shipper has brought court action in bad faith either (a) after a decision has been issued under the program or (b) after a shipper has instituted a proceeding under the program but before the decision has been rendered within the time frame or extension thereof provided under the program.
>
> The relevant provisions of state law will apply to the court's discretion for awarding attorneys' fees to either the shipper or the carrier where such state law is consistent with the provisions of this section.

It is not clear whether the award of attorneys' fees would increase or decrease litigation. Certainly, it would equalize the bargining power and in that respect it would increase the claimants' ability to bring suit in the instances when numerous legal costs would otherwise be prohibitive. On the other hand, carriers would have an incentive to settle these claims promptly and equitably.

The Commission has, in the past, supported the award of attorneys' fees to successful claimants on the premise that: (1) the law contemplates that the shipper be made "whole" as a result of loss and damage caused to shipper's goods while in the possession of the carrier, and; (2) that carriers would be given the incentive to resolve loss and damage claims promptly and equitably. The Commission has further supported and initiated legislation for the award of reasonable attorneys' fees absent an equitable, efficient and inexpensive arbitration program. The problems faced by claimants with loss and damage claims have not changed sufficiently to warrant reversal of this principle.

We, therefore, recommend legislation providing for the payment of reasonable attorneys' fees to successful claimants absent an equitable, efficient and inexpensive arbitration program.

(9) Whether excessive attorneys fees are awarded in cases under 11707 of Title 49, United States Code.

The parties correctly point out that since no attorneys' fees are now awarded in cases under section 11707, there can be no excessive awards. There is no evidence presented as to excessive awards under any state statutes.

(10) Whether claimants should be able to recover damages in excess of the market value of the commodity transported unless liability for special or consequential damages is agreed to by the carrier in unity.

Many of the comments perceived this question to involve two issues. The first is a tangential one pertaining to whether market value is the proper measure of general damages. The second addresses whether carriers should be liable for special damages and under what circumstances.

AAR asserts that the measure of general damages should be the actual decrease in value, the origin contract price, or the repair cost, whichever is least. The carriers state they should not be liable for special or consequential damages. They contend that with the freedom to contract, they may accept responsibility to pay special damages or agree to any other provision. As long as there is a rate structure which allows increases to cover special circumstances and if the agreement is made in writing at the time the transportation contract is entered into, then the measure of damages should be the subject of negotiation.

The majority of shippers stated that general damages should not be restricted to market value. Other measures proposed were market value plus profit lost, or plus attorneys' fees, or replacement cost, invoice value, full actual costs, or making the claimant whole.

The shippers' responses vary from arguing that there should be no special damages, or that they should be applicable only where the carrier is notified, or only where it agrees to be bound.

SNFCC states that the common law principle is that the owner be made whole for general damages. Thus, the carrier would be liable for the difference between the fair market value of the damaged goods at the time of delivery and the fair market value if delivered without damage. However, SNFCC notes that market value is not the sole measure of full actual loss and is not generally applied by the courts where it is shown that another method is preferable. F.J. McCarty Co. Inc. v. Southern Pacific Co., 428 F. 2d 690, (1970) and Great A & P Tea Co. v. A. T. & S. F. Ry. Co., 333 F. 2d 705 (1964), cert. den. 379 U.S. 967 (1965). SNFCC states that common law precludes recovery of special damages unless specifically agreed to by the parties. It claims that since carriers are not liable for special damages under present law, no legislation is required to protect them from such payments.

ANALYSIS

Full actual loss appears to be the preferred measure of damages with shippers. This was the measure used in former section 20(11). Because Congress felt "full" was surplus wording section 11707 now reads "actual loss". It seems clear that a plaintiff should not be in a worse position than if there had been no damage or loss. Full actual loss is consistent with the common law principle of making the plaintiff whole. Limiting the measure to market value of the transported commodity would preclude elements considered general damages by some courts. These include marginal profit on some costs, labor, administrative overhead, freight charges, interest and replacement costs.[34]/

The fundamental common law decision in this matter, Hadley v. Baxendale, 156 Eng. Rep. 145 (1845), allowed recovery of general damages, defined as those occurring naturally from the breach of contract. Damages in excess of this could be awarded only if they were in the contemplation of both parties as probable consequences of a breach. In other words, special damages were awarded only where foreseeable, since the contractor could refuse to accept the contract if foreseeable damages were too great. Given the common carrier obligation, this analogy may not, therefore, be appropriate.

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[34]/ Vacco Industries v. Navajo Freight Lines, 63 Cal. App. 3d 262, 133 Cal. Rpts. 628, (1976), cert. den. 431 U.S. 916 (1916).

Each case relies on its own set of facts. Courts often apply the fair market value measure for damages. However, other measures have been utilized. What is considered "general damages" may vary from court to court. Hence, the difference between special damages and general damages is not easy to define, and varies with the facts and circumstances as well as the actions of the parties in each particular case.

Perhaps a realistic example of a transportation service which possibly would involve special damages will be helpful. If a large company were building a new plant in a remote section of a western state, an enormous logistic exercise is necessary so that all parts, as well as the men and machines to assemble the plant, will arrive at the building site at the appropriate time. In the absence of such coordination, highly paid engineers might be left waiting for a machine part to arrive. Because of this, astute corporate executives have industrial traffic managers carefully pre-arrange the shipment of the factory components so that the chances of a foul-up are minimized. Typically, a large factory component manufactured in the east and shipped west would require bridge and tunnel clearances as well as the procurement of special cars whose use is controlled by the AAR.

Nonetheless, a number of things could happen to the shipment: Conceivably, the railroad might derail the car and totally destroy the machine. In the meantime, the engineering company would continue to bill the receiver for its equipment and men even

though they were doing nothing. It could also cost the receiver large sums for his own labor and delay, as well as contractual costs linked with arrival of the machine. So, under our legal current system how would the courts deal with the results of the derailment and could some of the damages awarded be defined as special or consequential?

Courts have differed on whether mere notice of these unusual circumstances to the carrier is sufficient to hold it liable for special damages. Some courts have held that the carrier must agree to accept the special conditions;35/ others do not require agreement.36/ The latter holds that if a carrier is told of the special significance of a commodity and the importance of prompt delivery, it will be liable for loss of profit due to unreasonable dispatch.

Thus, in our hypothetical situation a court could hold that the extra effort expended by the shipper and carrier alike in planning routes, obtaining special cars, and getting bridge and tunnel clearances was sufficient notice to the carrier of the possibility of special damages, and therefore it could award the

35/ Globe Ref. Co. v. Landa Cotton Oil Co., 190 U.S. 540 (1903).

36/ L. E. Whitlock Truck Serv. v. Regal Drilling Co., 33 F. 2d 488 (1964).

receiver's extra labor and contract costs as special damages. On the other hand, another judge guided only by the principle of "making the plantiff whole" could declare these extra costs as part of the general damages. A third court might award only the cost of replacing the machine by strictly construing the common law to require a written statement on the bill of lading.

The majority of courts award interest as an ordinary part of damages.[37]/ Typically this is a matter left to the discretion of the courts.[38]/ A few cases state that no interest is allowable.[39]/ Incidental damages which naturally and proximately arise from the loss or injury are awarded.[40]/

The cost of replacement is not deemed to be special damages[41]/ nor are demurrage charges and expenses for separating

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37/ Atlantic Coast Line Ry. Co. v. Roe, 118 So. 155, 96 Fla. 429 (1928).

38/ West Const. Co. v. Seaboard Air Line Ry. Co., 210 S.W. 633, 141 Tenn. 342 (1919).

39/ Fowler v. Davenport, 21 Tex 626 (also see 14 Am. Jur. 2d Carriers §647).

40/ Campbell Soup v. Darling Transfer Inc. 193 F. Supp. 408.

41/ Hycel Inc. v. American Airline Inc. 328 F. Supp. 190 (1971).

damaged goods from undamaged.[42]/ However, lost profits are awarded only to the extent they were in the contemplation of the parties at the time the contract of carriage was made.[43]/ Finally, it has been held that while remote or speculative damages are not recoverable[44]/, exemplary damages are if there is gross negligence or willful breach of duty.[45]/

Simply put, then, this is a very complicated issue. Since the common law already severely limits the awarding of special and consequential damages, any new system superceding it would require new legislation. However, a judge working under a statutory prohibition against special damages might still make an award larger than replacement cost because he perceives the extra costs as an equitable part of the general damages which should make the plaintiff "whole." Moreover, it is difficult to conceive of any legislation embracing all the possible circumstances which might occur without hamstringing judicial discretion.

In sum, we find that the current common law principle that allows the courts to award general damages, based on the facts of the individual case, in an amount that makes the claimant whole appears to work as well as any system can. No alternative is any more fair or predictable, or more capable of uniform application.

42/ Davis v. Clement Grain Co., 215 S.W. 545 (1923).

43/ Vacco, supra.

44/ Texas Instruments Inc. v. Branch Motor Exp. Co., 308 F. Supp. 1228 (1970), aff'd, 432 F2d 564 (1970).

45/ Schroeder v. Auto Drive Away Co., 114 Cal. Rptr. 22, 523 P.2d 662 (1974).

V. CONCLUSION

Without a clear Congressional statement to the contrary, the Commission will continue to require rail carriers to offer full value rates. However, the Commission wishes to point out to Congress that in the absence of market dominance, the only effect of this requirement may be the publication of excessively high full value rates in those cases where rail carriers choose to limit their liability. However, where market dominance exists, the Commission has jurisdiction to ensure the reasonableness of the total transportation package offered. Thus, where the Commission holds jurisdiction over rate reasonableness, it can ensure that full value alternatives are not offered at unrealistic rate levels. Hence, we do not recommend that the requirement that carriers offer full value rates be repealed.

The Commission does not believe a comparative negligence standard should be adopted, nor that the burden of proof now placed on the railroads should be altered. While a comparative negligence standard can, theoretically, yield more equitable results than the current standard, in reality, the apportionment of damages would necessarily be arbitrary and would be burdensome on the court system as well.

The Commisison does not recommend a no-fault system, nor any changes in the current system concerning which laws apply, who may file a claim, time limits, or special or consequential damage. We do, however, recommend that the Staggers Act limits on venue be repealed, that the $10,000 jurisdictional threshold be eliminated, and that attorneys' fees be awarded to successful claimants.

By the Commission, Chairman Taylor, Vice Chairman Clapp, Commissioners Gresham and Gilliam. Commissioner Gresham submitted a separate expression.

(SEAL)

JAMES H. BAYNE
Acting Secretary

SEPARATE EXPRESSION OF

COMMISSIONER GRESHAM

There are at least three portions of the Commission's study on which my views differ to some extent from those of the majority. The three areas which I address here are 1) elimination of the venue restrictions imposed by the Staggers Act, 2) full value rates, and 3) comparative negligence standards.

I am not adopting the majority's position on removal of the venue restrictions because I believe it is irresponsible to recommend a legislative change to Congress unless we can offer some concrete examples of problems which have arisen under the existing law. If we have no concrete examples to offer, as appears to be the case, we owe it to Congress to say so. This the majority fails to do.

I disagree with the study's position on requiring full value rates. First, the Commission can already control abuses which may arise in the market dominant sector pursuant to its maximum rate setting jurisdiction. Second, with regard to competitive, non-market dominant traffic, shippers have other price-service options available to them and can readily turn to other sources of transportation if the railroads ever attempt to engage in abuses. As indicated in the study, there has been no pattern of abuse. The railroads have not used unreasonably high rates to discourage the use of full liability tariffs. Perhaps the majority's position suffers from a failure to recognize that the railroad industry, like other privately owned businesses, is well aware that you do not succeed financially by alienating your customers. The majority seems to have ignored the realities of a competitive

market place. Finally, although there may be some "negotiation costs," the overall total cost to both carriers and shippers may be reduced through negotiation, a goal which they both obviously have in common.

On the subject of a comparative negligence standard, I believe the study too hastily dismisses this option. The study indicates that use of a comparate negligence standard probably would be more equitable. However, it makes no effort to determine how a workable system of applying this standard might be developed. This standard is applied to matters arising under certain other laws. Based on what the study says about the actual experience under these laws, the process may be complicated. However, that does not mean that no system can be devised which is workable, fair and much less complicated. I believe we were obliged to give more thought and effort to the development of a workable solution, rather than summarily writing off the possibility that we were even capable of developing a solution.

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

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

WILLIAM JAMES WELLER
LEGISLATIVE AFFAIRS
OFFICER

December 7, 1983

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Mr. Foley has asked me to respond to your letter of November 7, 1983, requesting the views of the Judicial Conference on H.R. 3919, a bill to repeal the amount in controversy requirement in certain actions arising under the Interstate Commerce Act. We appreciate this opportunity to comment.

As you know, the Judicial Conference supported repeal of the jurisdictional amount under the general federal question statute, 28 U.S.C. §1331, enacted in 1980. At that time, the Judicial Conference was greatly concerned about adding substantial numbers of cases that have minimal amounts in controversy under specific statutes. One such instance that Congress concurrently recognized was cases arising under the consumer product safety laws. Pub. L. 96-486, §3(a), 94 Stat. 2369, December 1, 1980, amending Pub. L. 92-573, §23, 86 Stat. 1226, October 27, 1972 (15 U.S.C. §2072(a)) (retaining $10,000 jurisdictional amount in consumer product safety cases).

We can foresee substantial numbers of minor cases arising under §1337 provisions, relating to the Interstate Commerce Act, as it would be amended by the bill. One instance of a large number of non-joinable, non-class action claims for small amounts of overcharging in shipping, filed in a single district court, is already a matter of record. This group of cases was the underlying reason for imposing the $10,000 jurisdictional amount. Pub. L. 95-486, § 9, 92 Stat. 1629, 1633, October 20, 1978. Federal court resources would be strained further than they are today if the courts were required to handle the large number of trivial claims that would arise from repeal of the jurisdictional amount. Accordingly, the Judicial Conference would not recommend the enactment of this measure.

If a further discussion of this recommendation would be useful, please let me know.

Sincerely,

Leland E. Beck
Counsel

SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.
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ROBERT E. REDDING, *Director of Federal Affairs*

Dispute Resolution Program for Shippers and Common Carriers of Property (Other than Household Goods), Including Conditional Payment of Attorney's Fees

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Need for alternative dispute resolution program for cargo loss and damage in transportation, including conditional payment of attorney's fees by shipper plaintiffs or carrier defendants in litigation.

1. Congress enacted such a program for the household goods transportation industry.

2. Interstate Commerce Commission supports such legislation.

Submitted by:
Robert E. Redding
Director of Federal Affairs
April 6, 1984

A. Need for an alternative dispute resolution system for cargo loss and damage in transportation

Although long sought by shipper interests, federal legislation has never been enacted to establish an alternative dispute resolution program applicable to common carrier liability for loss and damage of cargo in interstate commerce.

In addition, attorney's fees generally are not recoverable in actions for loss and damage claims on interstate movement of cargo, although some states allow them on intrastate traffic. No federal court is known to have awarded such fees in interstate actions, except in the exercise of its equitable powers, where appropriate in the interest of justice, such as when the losing party acted in bad faith, wantonly or for oppressive reasons. Miller v. Aaacon Auto Transport, 447 F. Supp. 1201 (S.D. Fla. 1978).

Shipping interests have previously sought legislation designed to correct an unduly advantageous position of the carrier in claim situations by the enactment of a Federal law imposing claimant attorney's fees on carrier defendants failing or refusing to agree to the arbitration of such claims (S. 1188, 95th Cong., 1st Sess.). In the absence of such a law, carriers have in many instances used dilatory tactics to evade liability for their negligence or to force acceptance of disallowances or partial payment for losses. Shippers have frequently been forced to write off transit losses rather than incur the substantial expense of litigation, or accept unreasonable settlements rather than lose the use of money tied up in a litigated claim.

Thus, the carriers in such instances possess an unfair advantage over shippers by often refusing to voluntarily settle a lawful claim. In many cases, the expense of litigation would exceed the amount of the claim.

1. Program enacted for household goods transportation industry

In 1980, Congress enacted an arbitration statute for transportation claims relating to the movement of household goods, by adding Section 11711 to Title 49 of the United States Code. (Household Goods Act of 1980, P.L. 96-454, October 15, 1980; Section 7 entitled "Disputes Settlement", attached.) This law provides for

the award of reasonable attorney's fees incurred by successful claimants in court litigation by household goods carriers when no dispute settlement or arbitration mechanism was made available to the claimant. For the purpose of discouraging shippers from filing nonmeritorious claims in court, the new law also provided for the award of reasonable attorney's fees incurred by the carrier in instances when the shipper of household goods brought a court action in bad faith. House Report 96-1372, September 23, 1980, p. 13.

The need for an alternative dispute resolution program for cargo claims of limited amount is as urgently needed today as it was needed for household goods claims in 1980. As is the case for many household goods shippers unfamiliar with legal principles, there are more shippers of cargo who are unsophisticated in claims and carrier liability issues than those who are knowledgeable in these subjects.

The reason is that the administration of cargo claims requires paralegal training. A cargo claim is a legal demand for damages incurred as a result of the carrier's breach of the transportation contract and is governed by the common law (which is expressed in court decisions), by statutory law (such as the Carmack Amendment to the Interstate Commerce Act and the Bill of Lading Act), by international treaties (such as the Warsaw Convention concerning air and the Carriage of Goods by Sea Act concerning maritime shipments), by federal regulations (such as Interstate Commerce Commission regulations in 49 C.F.R. 1005), by carrier tariff rules, and by the terms and conditions in bills of lading.

Relatively few shippers possess the training necessary to fully understand and apply these principles. Carriers, on the other hand, generally employ claims managers who are thoroughly trained and experienced in the law of carrier liability. The combination of superior training and the advantage of being the sole possession of the information about the facts of loss or damage, damaged goods, and the funds necessary to pay for such loss and damage places carriers in a superior bargaining

position vis a vis claimants, particularly in the face of expensive litigation to compel payment. This condition frequently results in arbitrary declinations of carrier liability or unreasonable offers of compromise on lawful claims.

2. Support by the Interstate Commerce Commission.

In September 1981, the Interstate Commerce Commission (Commission) rendered a report to Congress concerning various aspects of carrier liability for cargo shipments by rail. In this report, the Commission recommended "legislation providing for the payment of reasonable attorney's fees to successful claimants absent an equitable, efficient and inexpensive arbitration program." In reaching this decision, the Commission placed substantial weight on the fact that the prevailing reason for claimant court actions against carriers is the inability to obtain needed information from carrier defendants. A number of shipper comments to this effect were quoted in the report, including the following:

** Carriers often refuse to release facts regarding their handling of shipments during the claim investigation, resulting in the necessity to commence litigation.

** Only through court action can the carrier be required to allow access to its records.

** Very often, when claims are not settled, it is due to the carriers' refusal to negotiate or to even divulge information relative to the claim.

** When litigation is required by the claimant, the cause is usually the unwillingness of the carrier to furnish documentation, information solely within its possession.

** In the consideration of claims, the carriers often refuse to disclose information concerning the handling of the shipment in the absence of litigation.

** There is little incentive on the part of carriers to compromise claims disputes, and there is little leverage available to bring this about.

Noting the recent enactment of household goods legislation, the Commission found that a similar system of arbitration, coupled with the payment of attorney's fees, would equalize the bargaining power of the shipper/carrier parties and, in that respect, it would increase the claimant's ability to bring suit in instances

when numerous legal costs would otherwise be prohibitive. On the other hand, the Commission said that carriers would have an incentive to settle these claims properly and equitably. The Commission's report concluded as follows:

> "The Commission has, in the past, supported the award of attorney's fees to successful claimants on the premise that: (1) the law contemplates that the shipper be made 'whole' as a result of loss and damage caused to shipper's goods while in the possession of the carrier, and (2) that carriers would be given the incentive to resolve loss and damage claims promptly and equitably. The Commission has further supported and initiated legislation for the award of reasonable attorney's fees absent an equitable efficient and inexpensive abitration program."

It is of interest to note that the Commission in 1981 took other action to provide for the award of attorney's fees to parties involved in Commission adjudications pending as of October 1, 1981. Rules were adopted on September 16, 1981 to implement the Equal Access to Justice Act, a law passed by Congress to require federal agencies to award attorney's fees and other expenses to certain parties which prevail over the Federal Government in certain administrative proceedings. (P.L. 96-481, 94 STAT. 2325).

The Shippers National Freight Claim Council (Council) supports the enactment of cargo loss and damage legislation along the lines of that enacted in the Household Goods Act of 1980, to become applicable to trucking carriers, freight forwarders and railroads engaging in common carriage in interstate commerce.

The Council also proposes to limit the application of such legislative remedy to shipments of cargo, the value of which is $5,000 or less, inasmuch as there is less need for a mandatory arbitration system for larger claims.

CARGO DISPUTE SETTLEMENT LEGISLATION

Chapter 1 of title 9, United States Code, is amended by inserting after section 14 the following new section 15:

Section 15. Dispute settlement program for common carriers

(a) (1) One or more common carriers providing transportation of property (other than collect-on-delivery transportation of household goods as defined in 49 U.S.C. Section 10102 (10) (A))subject to the jurisdiction of the Interstate Commerce Commission under subchapters I, II and IV of chapter 105, hereinafter referred to as the Commission. Title 49 who want to establish a program to settle disputes between such carriers and shippers concerning the transportation of such property may submit an application for establishing such program to the Commission. Such application shall be in such form and contain such information as the Commission may, by regulation, require. The Commission shall review and approve, in accordance with the provisions of this section, each application submitted under this subsection.

(2) The Commission shall approve, at least within 45 days of its filing, any application to establish a program for settling disputes concerning the transportation of property which meets the requirements of subsection (b) of this section.

(3) The Commission may investigate at any time the functioning of any program approved under this section and, after notice and an opportunity for a hearing, may suspend or revoke its approval for failure to meet the requirements of this section and such regulations as the Commission may issue to carry out the provisions of this section.

(4) This dispute settlement program shall not apply to shipments of property the value of which exceeds $5,000 per shipment.

(b) No program for settling disputes concerning the transportation of property may be approved under this section unless the program is a fair and expeditious method for settling such disputes and complies with each of the following requirements and such regulations as the Commission may issue:

(1) The program is designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.

(2) The program provides for adequate notice of the availability of such program, including a concise easy-to-read, accurate summary of the program and disclosure of the legal effects of election to utilize the program. Such notice must be given to persons for whom such property is to be transported by the carrier before such property is tendered to the carrier for transportation.

(3) Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action under the program to resolve a dispute.

(4) Each person, authorized pursuant to the program to arbitrate or otherwise settle disputes, must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Commission may issue, to resolve such disputes fairly and expeditiously. The program must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decision-making process.

(5) The program must not require the shipper to agree to utilize the dispute settlement program prior to the time that a dispute arises.

(6) The program may provide for an oral presentation of a dispute concerning transportation of property by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

(7) Any person settling a dispute concerning transportation of property under the program must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered, except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the dispute settler may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

(c) Materials and information obtained in the course of decision-making process to settle a dispute under a dispute settlement program approved under this section may not be used to bring an action under section 11910 of Title 49.

(d) In any court action to resolve a dispute between a shipper of property and a common carrier providing transportation subject to the jurisdiction of the Commission under subchapters I, II and IV of chapter 105 of Title 49 concerning the transportation of property (other than household goods) by such carrier, the shipper shall be awarded reasonable attorney's fees if--

(1) the shipper submits a claim to the carrier within 9 months after the date the shipment is delivered or , in the event of non-delivery, within 9 months plus a reasonable time for delivery, whichever is later;

(2) the shipper prevails in such court action; and

(3) (A) no dispute settlement program approved under this section was available for use by the shipper to resolve the dispute; or

(B) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under such decision has elapsed.

(e) In any court action to resolve a dispute between a shipper of property and a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II and IV of chapter 105 of Title 49 concerning the transportation of property (other than household goods) by such carrier, such carrier, such carrier may be awarded reasonable attorney's fees by the court only if the shipper brought such action in bad faith--

(1) after resolution of such dispute under a dispute settlement program approved under this section; or

(2) after institution of a proceeding by the shipper to resolve such dispute under a dispute settlement program approved under this section but before (A) the period provided under subsection (b) (8) for resolution of such dispute (including, if applicable an extension of such period under such subsection) ends, and (B) a decision resolving such dispute is rendered under such program.

CENTURY MFG. CO.
9231 PENN AVENUE SOUTH/MINNEAPOLIS, MINNESOTA 55431 U.S.A. TELEPHONE 612/884-5811 TELEX: 29-0970

July 24, 1984

The Honorable Peter W. Rodino
House of Representatives
Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rodino:

In my position as Traffic Manager for Century Mfg. Co. it is one of my responsibilities to stay informed and abreast of all things both, local and national, that have an impact or bearing on our company and the distribution of our products. To help us in that objective, we are members of the Shippers National Freight Claim Council, Inc. They, in turn, have brought to our attention that House Bill 3919 is going to be heard on August 8, 1984, in front of the House Judiciary Subcommittee on Courts, Civil Liberties & The Administration of Justice.

As I understand it, the main thrust of this bill is the removal of the $10,000 minimum value requirement for litigation in the Federal courts on loss and damage claims arising out of shipments handled in interstate commerce. I am, at this time, asking your support in favor of passage of House Bill 3919. Without its passage, there is an inconsistency arising on cases under the Carmack Amendment that are currently being treated differently since Congress recently removed the $10,000 threshold for original jurisdiction in federal question cases. Why pick on Carmack Amendment cases when the balance of the Interstate Commerce Act, and all other federal laws, remains free of the over $10,000 limitation?

I sincerely hope that you agree with me and will take steps to remove this $10,000 threshold and reinstate consistency in our Federal court jurisdiction.

Very truly yours,

CENTURY MFG. CO.

Harry E.J. Marsh, Jr.
Traffic Manager

HM:jb

cc: Robert E. Redding
Director of Federal Affairs

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July 25, 1984

The Honorable Peter W. Rodino
U.S. House of Representatives
Room 2462 Rayburn House Office Bldg.
Washinton D.C. 20515

Dear Mr. Rodino:

This letter refers to Bill H.R.3919 concerning removal of the $10,000 litigation limits for federal courts. There is definitely two sides to this problem. Without certain limitation, federal courts can be choked by people with hurt feelings, whether real or imaginary. It would appear however, that if others are not restricted in use of federal courts, singling out transportation is not applying justice in an even-handed manner.

As a former Traffic Manager who handled $1½ to $2 million in freight bills per year, I never had occasion to file a claim of $10,000. The largest claim I have ever processed is $5,000. (Most claims ranged from $1,000 to $1,500.) In this respect, from a shipper's standpoint, a $10,000 limitation works a hardship.

There is another point which needs to be considered. Before the Motor Carrier Act of 1980, shippers had a strong ally in the Interstate Commerce Commission. I used them on many occasions to get problems off "dead center" which had been stymied for long periods of time. Today however, the ICC is reluctant to become involved in controversies between shippers and carriers. Controversies either have to be settled between the parties by negotiation, or else through the courts.

From a shipper's standpoint, it would be extremely helpful to have a knowledgeable person in a judicial role, able to easily resolve areas of disagreement in an impartial manner. We do have arbitration panels,

which certainly have value. It seems however, that a knowledgeable federal source outside of an arbitration panel for the lower dollar controversies in interstate traffic would be helpful.

Sincerely,

LENNOX INDUSTRIES INC.

Bob Baker

BOB BAKER
Administrative Aide

cc: The Honorable Howard L. Berman
The Honorable Carlos J. Moorhead

THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

Suite 410
1090 Vermont Avenue, NW
Washington, DC 20005
(202) 842-3870

Office of the Executive Vice President

July 26, 1984

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

Dear Chairman Kastenmeier:

The National Industrial Transportation League respectfully requests your support for legislation assuring that freight claims and liability issues have the same access to the courts as do routine business matters. This legislation, H.R. 3919, is scheduled to be considered shortly by your subcommittee.

The League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with freight services of all modes. It is the only nationwide organization representing shippers of all sizes and commodity lines using all modes of transportation to move their goods in interstate and international commerce. Our members, directly or indirectly, are responsible for the routing of about 80% of the country's commercial freight.

H.R. 3919 would include civil claims for cargo liability under the reforms that were extended to other types of federal civil claims in Public Law 96-486. This law removed the $10,000 minimum damage requirement for seeking relief under 28 USC 1331. We believe that this bill would promote uniformity in the application of justice, and benefit all segments of the transportation community, including consumers.

We thank you for this opportunity to present the views of the shippers, and look forward to working with you and your subcommittee to enact this reform into law.

Sincerely,

James E. Bartley

James E. Bartley
Executive Vice President

JEB:sac

SUBARU of AMERICA, INC.

7040 Central Highway PENNSAUKEN, NEW JERSEY 08109
Telephone (609) 488-8500 Cable: Mabosan Telex: 83-4582
DIRECT DIAL NUMBER: (609) 488-

July 27, 1984

Congressman Peter W. Rodino, Jr
Rayburn House Office Building, Room 2462
Washington, DC 20515

Dear Congressman Rodino:

As a member of the transportation community I seek your support to approve H.R. 3919 to remove the $10,000 minimum value requirement for litigating in the Federal courts on loss and damage claims.

Thank you.

Very truly yours,

John Graham
Domestic Traffic Manager

JG:sbb

cc: Joanne Welde

THE PILLSBURY COMPANY
PILLSBURY CENTER
MINNEAPOLIS, MINNESOTA 55402

July 31, 1984

The Honorable Peter W. Rodino, Jr.
The United States House of Representatives
Rayburn House Office Building
Washington, DC 20515

Re: H.R. 3919, Proposed Removal of the
$10,000 Minimum Value Requirement
for Litigating Transportation Loss and
Damage Claims in the Federal Courts

Dear Mr. Rodino:

The Pillsbury Company, a food company with production, distribution, and marketing facilities throughout the United States, effects extensive utilization of the transportation services of the Nation's railroads and motor carriers.

Transportation claim issues are an integral part of the total service provided by these carriers. The preponderance of claim instances are in the less-than-$10,000 category.

Pillsbury is a member of the National Industrial Transportation League and the Shippers National Freight Claim Council, Inc. Both of these organizations are seeking passage of this legislation.

The Pillsbury Company supports these efforts for a change in the current law.

Sincerely,

Eugene J. Mielke, Director
Transportation Litigation

EJM/p

GLENN M. ANDERSON
32D DISTRICT, CALIFORNIA

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300 LONG BEACH BOULEVARD
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LONG BEACH, CALIFORNIA 90801
TELEPHONE: (213) 548-2721

PLEASE ADDRESS REPLY TO MY:
☐ WASHINGTON OFFICE
☐ LONG BEACH OFFICE

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

COMMITTEES:
PUBLIC WORKS AND TRANSPORTATION
- CHAIRMAN, SURFACE TRANSPORTATION SUBCOMMITTEE
- MEMBER, AVIATION SUBCOMMITTEE
- MEMBER, WATER RESOURCES SUBCOMMITTEE

MERCHANT MARINE AND FISHERIES
- MEMBER, FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT SUBCOMMITTEE
- MEMBER, MERCHANT MARINE SUBCOMMITTEE
- MEMBER, PANAMA CANAL/OUTER CONTINENTAL SHELF SUBCOMMITTEE

- MEMBER, CONGRESSIONAL PORT CAUCUS
- MEMBER, CONGRESSIONAL SHIPYARD COALITION
- MEMBER, PUBLIC SHIPYARD COALITION
- MEMBER, CONGRESSIONAL TRAVEL AND TOURISM CAUCUS
- MEMBER, FEDERAL GOVERNMENT SERVICE TASK FORCE

August 8, 1984

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil
Liberties and the Administration
of Justice
Committee on Judiciary
U.S. House of Representatives
Washington, D.C.

Dear Mr. Chairman:

I understand that your Subcommittee will hold a hearing on August 9, 1984 on H.R. 3919, a bill to remove the present requirement in Title 29 of the U.S. Code of a minimum amount in controversy (i.e., $10,000, exclusive of interest and costs) before lawsuits could be filed in the Federal District Courts concerning cargo loss and damage in common carrier transportation.

Mr. Chairman, I would like to express my strong support for the enactment of this bill.

Our court system should be accessible to people who want to settle disputes, and generally it is. But in cases, the Federal court system is actually closed to those who want to bring such claims before it. Why is that? Is there a fear the courts will be clogged down with frivolous claims? It seems unlikely that one would pay the legal fees required to take, for example, a $5,000 dollar claim to Federal court unless it was with some confidence that he was going to win the case.

While there are those who would argue that a shipper has the recourse of taking his claim before a state court, this I would assert is a little like playing Russian Roulette with a 50-chambered pistol and 25 bullets. You're taking your chances and the results are dictated by no forces understood by man.

In 1980 the Congress and the President approved legislation which eliminated a similar $10,000 requirement applicable to federal questions generally. That being the case, how can we justify the retention of this burden on shippers concerned about substantial legal questions associated with cargo loss and damage? We should have amended Title 28 in this respect in 1978. We are overdue in correcting this mistake in 1984, an action that will benefit shippers, carriers and consumers.

I hope the Subcommittee will report H.R. 3919 favorably and support its approval by the full Judiciary Committee and on the House floor.

Best regards.

Sincerely,

GLENN M. ANDERSON
Member of Congress

cc: Mr. Moorhead
Mr. Rodino
Mr. Fish

GMA/ws

WILLIAM F. CLINGER, JR.
23RD DISTRICT, PENNSYLVANIA

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

COMMITTEES:
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RANKING MINORITY MEMBER
SUBCOMMITTEE ON SURFACE TRANSPORTATION
SUBCOMMITTEE ON WATER RESOURCES
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON COMMERCE, CONSUMER, AND MONETARY AFFAIRS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

August 9, 1984

Hon. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On September 19, 1983, I introduced H.R. 3919, a bill to amend Title 28, United States Code, to remove the existing requirement of the minimum amount in controversy (i.e., $10,000, exclusive of interests and costs) before lawsuits could be filed in the Federal District Courts relative to cargo loss and damage in transportation.

This bill was referred to the Committee on the Judiciary and is scheduled for hearing, I understand, on August 9, 1984, before your Subcommittee.

I introduced this bill to remove the $10,000 floor because of my belief that there is no real opportunity to build case law in this field to give a clear and consistant sense of direction to potential litigants in these cases. Access to the Federal courts should be broadened, as is the case today for all other federal questions which are subject to no such requirement.

The bill will help shippers, carriers and consumers. It will serve the goal of providing a "fair trial" under a uniform national body of law to all litigants. At the same time, it will not add unduly to the caseload of the federal courts. Although the average value of cargo claims for loss and damage in common carriage is below the $10,000 level, it should be clear that only those cases which stand on solid legal footing would be brought under the bright light of scrutiny in our Federal District Courts.

Accordingly, I hope the Subcommittee will report H.R. 3919 favorably and support its approval by the full Judiciary Committee and on the House floor.

With best regards,

Sincerely,

WILLIAM F. CLINGER, JR.
Member of Congress

cc: Mr. Moorhead
Mr. Rodino
Mr. Fish

WFC/jt

Congress of the United States
House of Representatives

437 Cannon House Office Building
Washington, DC 20515
Telephone: (202) 225-3661

Bruce A. Morrison
Member of Congress
Third District, Connecticut

October 22, 1984

Mr. William E. Foley
Director
Administrative Office of
the U.S. Courts
Washington, D.C. 20544

Dear Mr. Foley:

On August 9, 1984, you presented testimony on behalf of the Department of Justice in a hearing convened by the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Mr. William Welder of your staff appeared in person on your behalf.

Included in this hearing was H.R. 3919, a bill to amend the Judicial Code to remove the amount-in-controversy requirement for certain actions involving common carriers. In your prepared testimony you addressed this bill and stated that the Department of Justice would not recommend its enactment.

Some questions remain about the claims you made at the hearing. Could you please have your staff review such testimony and send me a response to the attached questions.

Thank you very much for your cooperation.

Sincerely,

Bruce A. Morrison

BRUCE A. MORRISON
Member of Congress

BAM/re
enclosure
cc: The Honorable Robert W. Kastenmeier

Committees: Judiciary
Banking, Finance and Urban Affairs
Select Committee on Children, Youth and Families

District Address: 85 Church Street
New Haven, Connecticut 06510
Telephone: (203) 773-2325

Congress of the United States
House of Representatives

437 Cannon House Office Building
Washington, DC 20515
Telephone: (202) 225-3661

Bruce A. Morrison
Member of Congress
Third District, Connecticut

October 22, 1984

Mr. Dennis Mullins
Deputy Asst. Attorney General
Office of Legal Policy
Department of Justice
Washington, D.C. 20530

Dear Mr. Mullins:

On August 9, 1984, you presented testimony on behalf of the Department of Justice in a hearing convened by the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Included in this hearing was H.R. 3919, a bill to amend the Judicial Code to remove the amount-in-controversy requirement for certain actions involving common carriers. At least half of your prepared testimony addressed this bill. You stated that the Department of Justice opposes the enactment of this legislation.

Some questions remain about the claims you made at the hearing. Could you please have your staff review such testimony and send me a response to the attached questions.

Thank you very much for your cooperation.

Sincerely,

Bruce A. Morrison

BRUCE A. MORRISON
Member of Congress

BAM/re
enclosure
cc: The Honorable Robert W. Kastenmeier

Committees: Judiciary
Banking, Finance and Urban Affairs
Select Committee on Children, Youth and Families

District Address: 85 Church Street
New Haven, Connecticut 06510
Telephone: (203) 773-2325

QUESTIONS FOR MR. MULLINS

1. Please refer to your testimony at page 2 where you quote from a Senate Committee report of 1977 regarding the Carmack Amendment cases filed in the Federal District Court of Massachusetts. In 1975, according to this report, 3,122 freight damage claims were filed.

   In the testimony of Mr. Foley, the Appendix B statistics indicate that a total of 10,422 cases were pending (I assume on June 30, 1975), of which 6,677 "Commerce" cases were pending, whatever they may include. If these numbers are accurate, can you explain the basis for the statement in the report that "on June 30, 1975, Carmack Amendment cases represented 64 per cent of the pending cases in [the federal district court of] Massachusetts..."?

2. On page 11 of your testimony you discuss the subject of conflicts among different state courts and state that "...we do not find that Carmack Amendment litigation is troubled by interjurisdictional differences to any unusual degree."
   Would you please explain the basis for this finding? On which state court decisions in the Carmack Amendment field do you rely?

3. Your testimony relies twice (pages 5 and 7) on cases arising under state laws. Isn't this irrelevant to the issue of Carmack cases because Carmack cases arise under federal law, the Interstate Commerce Act?

4. On page 9 of your testimony, you state that "...the number of Carmack Amendment cases brought in state court has always been far greater than the number brought in federal court...." Please provide the statistics supporting this conclusion.

5. On pages 2 and 15 of your testimony, you refer to a 1975 hearing on S.346 before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary. I assume you have extra copies of the transcript of this hearing and would appreciate your forwarding a copy to me.

Bruce A. Morrison, M.C.

I

98TH CONGRESS
1ST SESSION

H. R. 313

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Paterson, New Jersey, in addition to those places currently provided by law.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. ROE introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To provide that the United States District Court for the Judicial District of New Jersey shall be held at Paterson, New Jersey, in addition to those places currently provided by law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 110 of title 28, United States Code, is amended to read as follows: "Court shall be held at Camden, Paterson, Newark, and Trenton.".

O

ROBERT A. ROE
8TH DISTRICT, NEW JERSEY

PUBLIC WORKS AND TRANSPORTATION COMMITTEE
CHAIRMAN—WATER RESOURCES
SUBCOMMITTEES:
ECONOMIC DEVELOPMENT
INVESTIGATIONS AND OVERSIGHT
SCIENCE AND TECHNOLOGY
SUBCOMMITTEES:
ENERGY RESEARCH AND PRODUCTION
ENERGY DEVELOPMENT AND APPLICATIONS
INVESTIGATIONS AND OVERSIGHT

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202-225-6751

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22 NORTH SUSSEX STREET
DOVER, NEW JERSEY 07801
201-328-7413

158 BOONTON ROAD
WAYNE, NEW JERSEY 07470
201-696-2077

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

August 1, 1984

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
2137 Rayburn HOB
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to present information in support of my bill H.R. 313, to provide that the U.S. District Court for the Judicial District of New Jersey may be held in Paterson, in addition to those places currently designated. I have been introducing this measure for quite some time and am pleased to see it receive the subcommittee's consideration.

The need for H.R. 313 was recently highlighted in a front page article in the July 9, 1984, New York Times, entitled "U.S. Courts Being Swamped By Cases in New York Area". I have enclosed a copy of this article and would appreciate it being made a part of the record.

A quote from the above article sums-up the need for H.R. 313:

> "The consequences for the public in the Federal courts have been 'more delay, an inability to give full attention to some of the more difficult cases and a strong pressure from the appeals courts to keep people out of the Federal court system,' said Jack B. Weinstein, chief judge of the Federal Court for the Eastern District of New York. . . In addition three of the courts - those for the Southern and Eastern Districts of New York and the Federal Court that covers all of New Jersey - badly need more space, their officials say."

This requirement of more space was ably expressed by Mr. Allyn Lite, the Clerk of the Federal District Court in New Jersey:

> "The district's main courthouse in downtown Newark is already 'crowded to the point of discomfort,' he said, and a planned annex is not likely to be completed until at least 1988. Yet the court expects to add more judges to its Newark bench well before then, Mr. Lite noted.
> At the district's Camden site, 'we don't have an extra square inch to move,' he added, although there, too, the court intends to install another judge as soon as more appointments to the district are made."

Additional space, however, is not the only reason I introduced H.R. 313. As can be seen from the enclosed letter from the Honorable Joseph A. Falcone, the Passaic County, New Jersey, Prosecutor, which I would also like to be made a part of the record, considerable costs could be saved by local law enforcement agencies if H.R. 313 were enacted.

It is difficult to anticipate the costs associated with designating Paterson as the fourth city in New Jersey where the Federal District Court would meet, especially when initial outlays are considered against savings resulting from Judicial administration and a revitalised downtown Paterson. It has become apparent, however, that extra space in the present locations is not the sole answer.

Paterson is in the center of northern New Jersey's commerce. It is the Passaic County seat and at the hub of three state highways, thus being easily accessible to the thousands of northern New Jersey residents who find it difficult and costly to get to Newark.

In view of the above I would strongly urge the subcommittee to give H.R. 313 its most careful - and favorable - consideration. I would also, of course, be happy to provide any additional information.

With all good wishes.

Sincerely,

Robert A. Roe
Member of Congress

NY Times Monday July 9, 1984 Pg 1

RETAINS WIMBLEDON TITLE: John McEnroe celebrating 6-1, 6-1, 6-2 victory over Jimmy Connors in men's singles final lasting only 80 minutes. "That's the best I've ever played," he said. SportsMonday, page C1.

U.S. Courts Being Swamped By Cases in New York Area

By JOSEPH P. FRIED

Besieged by sharply higher caseloads, a shortage of judges and, in some areas, crowded quarters, the Federal District Courts in New York, New Jersey and Connecticut are struggling to keep up with their calendars, court officials say.

The crowded dockets sometimes mean that judges are forced to move along difficult and important cases rather than take the time they would like, according to court officials.

Between 1978 and last year, the increase in new cases in the six districts involved ranged from 44 to 140 percent. New legal actions are continuing to be filed at these same high levels, statistics provided by the officials show.

Civil Litigation Rises

But, the officials said in interviews, judicial appointments have not kept pace with the sharply increased caseloads, which they say have resulted largely from a steep rise in civil litigation rather than criminal prosecutions.

Officials in New York and New Jersey said increased litigation over attempts by the Reagan Administration to disallow some Social Security disability benefits was responsible for a good deal of the increase. Officials in Connecticut cited lawsuits by shipyard workers over asbestos.

Congress finally authorized some additional judgeships recently, but it will be a while before they are filled, and in some districts there will not be enough judges, court administrators say. Some administrators, citing already tight quarters, are also concerned that there will not be adequate space to handle the expansion.

Civil cases generally make up about 90 percent of the docket in the Federal District Courts, the basic trial courts in the Federal legal system. The calendar and manpower problems in the six district courts in New York, New Jersey and Connecticut reflect the situation in most of the 94 district courts across the country, according to court administrators.

In complaining about insufficient

Continued on Page B4, Column 5

veloped third world nations fly in groups into East Berlin's Schönefeld Airport and, without visas, are admitted to East Germany.

In a matter of hours, they take the subway to West Berlin — an open city — where they report to the police, seeking political asylum.

The thousands who reach West Berlin, with an automatic claim on the indulgence of the West German welfare state, are but one current of a wider flow of poor, hungry and persecuted immigrants who are crashing the gates of Western Europe.

Number of Aliens Unknown

As in the United States, the police and immigration officials have no precise idea of how many illegal aliens filter yearly into Western Europe and take up residence.

With the possible exception of Britain, which as an island has a certain advantage, the countries of Western Europe have not been particularly successful in closing the doors on illegal immigrants.

Until the European economies went into slump, cheap foreign labor had been welcome.

"Things have changed, and what was perfectly acceptable in the past is now a burden," commented Jan van Hoogstraten, who heads the Bonn office of

Continued on Page A4, Column 3

Is Thwarted by [redacted]

By IHSAN A. HIJAZI

Special to The New York Times

BEIRUT, Lebanon, July 8 — Moslems determined to learn the fate of missing relatives thwarted Government plans today to open more crossing points between the predominantly Moslem and Christian sectors of this city.

Only one crossing point between Moslem West Beirut and Christian East Beirut had been open since February. The Government's plan was to open three additional crossings today to help restore normal travel and activity as this capital city recovers from civil war.

The three routes were opened this morning to traffic but within two hours all had been obstructed. The protesters also closed the the one route that had been open — known as the museum crossing.

Militia Surrendered Posts

Later in the day, the city was back to one crossing point. But it was a different one, the road leading to the harbor. The port crossing was opened after Moslem militiamen in civilian clothes persuaded the demonstrators to leave.

The militiamen had moved off the city streets on Wednesday and turned their strongpoints over Lebanese Army in accor peace plan of the Cabir Unity under Prime M Karami.

The reopening of the West Beirut and East B stage in the Governme vive normal life and s non after nine years of sions and international

The protesters, led women, used barbed wi rubber tires to block t Tayoureh and Galerie southern suburbs.

They also threaten scheduled reopening port and international thorities did not take a thousands of cases of Most of the missing have been abducted by ing the civil strife.

The port and airp closed for five month period of inactivity in intermittent crises. Prepar made to resume work Middle East Airlines h flight schedule for next

An agreement rea militia factions to fr through the Internati of the Red Cross has carried out. A Red C tive here, Serge Cacia tives had visited t warned that if they

Continued on Pag

Growing Use Of Helicopter Is Challenged

By THOMAS J. LUECK

Special to The New York Times

'Amazing With S

WILLISTON, Vt., plan for coping wi termed "extraordin amazing" today by

Continued From Page A1

personnel and quarters at a time of swelling dockets, Federal judges are beginning to sound like many of their state and local counterparts, who, in cities like New York, have been plagued by such problems far longer.

The consequences for the public in the Federal courts have been "more delay, an inability to give full attention to some of the more difficult cases and a strong pressure from the appeals courts to keep people out of the Federal court system," said Jack B. Weinstein, chief judge of the Federal Court for the Eastern District of New York.

Chief Judge Constance Baker Motley of the Federal Court for the Southern District of New York said, "You can't spend as much time as you might on some of the important cases."

She added: "There is the pressure to get rid of cases, the emphasis on speed. I haven't heard talk about quality for a long time."

In addition three of the courts — those for the Southern and Eastern Districts of New York and the Federal Court that covers all of New Jersey — badly need more space, their officials say.

Growing Federal civil litigation includes suits by Federal agencies to curb noncriminal violations of Federal law and cases in which the agencies themselves are being sued for purported wrongs.

People and businesses also go to Federal court to sue each other or to sue local and state governments for reputed deprivation of rights or benefits protected by Federal laws or the Constitution. Suits involving state legal issues can also be brought in Federal court if the *litigants are from different states.*

Social Security Cases Rising

In all four Federal court districts in New York and in the New Jersey district, officials say that the surge in litigation over *Social Security disability* benefits is a key part of the increases they are struggling with. Actions by individuals fighting denial or termination of disability benefits have mounted, the officials say, as the Government in recent years has pursued tougher policies in handling claims for such benefits.

Noting the 700 disability benefit cases now in the Federal District Court in New Jersey, Allyn Lite, the clerk of court, said: "It's 15 percent of our *pending civil caseload.*"

In Connecticut, Sylvester Markowski, clerk of the Federal district covering all of that state, cited the lawsuits by workers who reported being harmed by asbestos while employed at shipyards. "By type, it's probably the largest," he said of the more than 500 asbestos actions awaiting resolution in his court.

In the Northern District of New York, an increase in state prisoners in recent years has contributed to a "barrage" of petitions *seeking* Federal Court review of state convictions, said Joseph Scully, the clerk of that court.

Such petitions, which are classified as civil litigation, account for a conspicuous portion of the increase in his district, along with the Social Security disability cases and civil rights suits, he said. The same categories of cases were cited by the Western District's clerk, John K. Adams.

More Room Is Sought

Cramped quarters are a key concern among some court administrators.

"It's frustrating and depressing," Mr. Lite, the clerk of the District Court in New Jersey, said of two of the three buildings his court occupies.

The district's main courthouse in downtown Newark is already "crowded to the point of discomfort," he said, and a planned annex is not likely to be completed until at least 1983. Yet the court expects to add more judges to its Newark bench well before then, Mr. Lite noted.

At the district's Camden site, "we don't have an extra square inch to move," he added, although there, too, the court intends to install another judge as soon as more appointments to the district are made. The district's *third site is* in Trenton.

Similarly in New York's Southern District, officials complain about serious constrictions in their landmark *1830's courthouse* in Foley Square in lower Manhattan. In the Eastern District, officials say the court desperately needs to take over more of the space in its courthouse in downtown Brooklyn, part of which now houses offices of the Internal Revenue Service.

In another aspect of court expansion, the Eastern District, which embraces Brooklyn, Queens, Staten Island and Long Island, is seeking to open a branch in Suffolk County. A steadily growing portion of the district's caseload originates *in Suffolk*, according to Richard H. Weare, the district executive.

The Suffolk branch would mark another step in the growing Federal Court presence in the suburbs of New York. Last fall the Southern District, the biggest and busiest Federal court district in the nation, opened a branch in White Plains. In addition to Manhattan, this district covers the Bronx and Westchester, Rockland, Orange, Dutchess, Putnam and Sullivan Counties.

New York's Western District holds court in Buffalo and Rochester, and the Northern District holds proceedings in Albany, Syracuse, Auburn, Binghamton and Utica.

The single district covering Connecticut has courts in Bridgeport, Hartford and New Haven, with a courtroom available in Waterbury.

New York Districts Hurting

In the three states, new Federal civil and criminal cases have increased most steeply in New York's Northern District, where the actions soared 140 percent from 1978 to last year. In that case the annual level of 762 new cases rose to 1,784. Meanwhile authorized judgeships in the district have risen from two to three since 1978.

As a result, "there's a year to two-year wait" for civil cases to come to trial in the district, said Mr. Scully, the court's clerk.

The smallest jump in new cases, 44 percent, was in the Southern District, where yearly filings rose from 7,275 in 1978 to 10,441 in 1983. The number of authorized judgeships there has not increased since 1978, officials said; it remains at 27, with three of the seats now vacant.

That court's problems are further complicated by the fact that its jurisdiction includes Manhattan and New York City's financial district, Chief Judge Motley said.

Nationally new cases in Federal District Courts rose 60 percent from 1978 to last year, according to the Administrative Office of the United States Courts in Washington. But the rise was entirely in civil cases, which jumped nearly 75 percent to 242,809 last year. New criminal cases totaled just under 35,000 in 1978 and again in 1983.

James Macklin, executive assistant director of the administrative office, said that reasons for the growth in litigation included Government policies, such as tougher disability benefit requirements and new laws extending *Federal rights*. The new rights include requirements for truth in lending and occupational safety.

Some experts say the calendar could be significantly thinned if the courts were no longer required to hear cases in which the only ground for Federal jurisdiction was that the parties were from different states. But others oppose this, saying it would simply force such cases into already overburdened state courts.

Mr. Macklin said a shortage of judges *was a problem in most of the nation's* Federal district courts. He said there were currently 515 authorized district judgeships, 15 of them vacant, and 185 senior district judges — jurists who have reached retirement age but have chosen to remain active and may handle as many or few cases as they wish.

A proposal for 59 more authorized district judgeships in the nation was long delayed, Mr. Macklin said because it was part of a disputed bill to overhaul the bankruptcy system. Congress finally passed the bill June 29, and eight of the new judgeships are planned for courts in New York, New Jersey and Connecticut. But it will still be a while before the posts are filled.

Office of
The Passaic County Prosecutor
Courthouse
Paterson, New Jersey 07505-2095
(201) 881-4800

JOSEPH A. FALCONE
PROSECUTOR

JOHN P. GOCELJAK
FIRST ASSISTANT PROSECUTOR
ANTHONY P. TIRINATO
DEPUTY FIRST ASSISTANT PROSECUTOR
THOMAS R. EDMOND
CHIEF OF COUNTY DETECTIVES

July 20, 1984

Honorable Robert A. Roe
Member of Congress
8th District, New Jersey
Room 2243
Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 313

Dear Congressman Roe:

I recently became aware of H.R. 313 which provides "... that the United States District Court for the Judicial District of New Jersey shall be held at Paterson, New Jersey, in addition to those places currently provided by law." As the Chief Law Enforcement Officer for Passaic County I enthusiastically support this legislation, particularly since there is an increasing need for my office to have ready access to the Federal District Court.

I am proud of the fact that my office is a proactive one. The results achieved during my term of office are a tribute to the fine men and women who serve me and the citizens of Passaic County. In 1983, of the 1,552 defendants whose cases reached final disposition, 93.5% were successfully prosecuted. In pursuing their right of appeal, many of these defendants filed habeas corpus petitions in the Federal District Court. Members of my Appellate Section file legal documents in opposition and appear, more often than not, in the Federal District Court in Newark. The time and expense of travelling to the City of Newark would certainly be significantly reduced if H.R. 313 becomes law.

cont'd.

In addition to the obvious benefits which would inure to law enforcement by passage of this Bill, I respectfully submit that the City of Paterson, which is in the midst of a renaissance under the dynamic leadership of Mayor Frank X. Graves, Jr., would be greatly aided in its efforts to become, once again, a model city.

Respectfully,

Joseph A. Falcone

JOSEPH A. FALCONE
COUNTY PROSECUTOR

JAF:baf

I

98TH CONGRESS
1ST SESSION

H. R. 813

To amend title 28, United States Code, to make changes in judicial divisions in the Northern District of Georgia.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1983

Mr. JENKINS introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 28, United States Code, to make changes in judicial divisions in the Northern District of Georgia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (1) of section 90(a) of title 28, United States Code, is amended—

(1) by inserting after "Barrow," the following: "Cherokee,";

(2) by inserting after "Dawson," the following: "Fannin,";

(3) by inserting after "Forsyth," the following: "Gilmer,"; and

(4) by inserting after "Lumpkin," the following: "Pickens,".

(b) Paragraph (2) of section 90(a) of title 28, United States Code, is amended by striking out "Cherokee,", "Fannin,", "Gilmer,", and "Pickens,".

SEC. 2. (a) This Act and the amendments made by this Act shall take effect one hundred and eighty days after the date of the enactment of this Act.

(b) Nothing in this Act shall affect the composition of any grand or petit jury or preclude service of any grand or petit juror summoned, empaneled, or actually serving on the effective date of this Act.

O

ED JENKINS
9TH DISTRICT, GEORGIA

COUNTIES:
BANKS, CHEROKEE, DAWSON, FANNIN, FORSYTH, FRANKLIN, GILMER, GORDON, GWINNETT (PART), HABERSHAM, HALL, HART, JACKSON, LUMPKIN, MURRAY, PICKENS, RABUN, STEPHENS, TOWNS, UNION, WHITE, WHITFIELD

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

217 CANNON HOUSE OFFICE BUILDING
WASHINGTON D.C. 20515
TELEPHONE: (202) 225-6211

COMMITTEES:
WAYS AND MEANS
SUBCOMMITTEES:
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STANDARDS OF OFFICIAL CONDUCT

DEMOCRATIC STEERING AND POLICY

CHAIRMAN, CONGRESSIONAL TEXTILE CAUCUS

July 27, 1984

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

Dear Mr. Chairman:

I appreciate your recent letter concerning an upcoming hearing by the Subcommittee to consider several bills relating to the geographic organization of the Federal courts. I am equally grateful for your consideration of HR 813, the bill which I introduced which would make changes in the judicial divisions of the Northern District of Georgia.

Enclosed herewith are responses to the questions which were raised in your letter. I have also enclosed statements of support from various members of the bar associations from each of the counties involved in the proposed change.

Finally, it should be pointed out that each county included in this bill lies wholly within my Congressional district. I am very familiar with the need for this legislation, having served as an Assistant United States Attorney in the Northern District of Georgia prior to my tenure in private law practice and to my election to the Congress.

Thank you for your consideration.

Sincerely,

EJ

ED JENKINS

ELJ:ss
Enclosures

INFORMATION SUBMITTED TO THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND ADMINISTRATION OF JUSTICE

by

REPRESENTATIVE ED JENKINS OF GEORGIA

July 27, 1984

1. What is the need, local or national, for the legislation you have proposed?

The need for this legislation is primarily local in nature. The counties of Cherokee, Gilmer, Pickens and Fannin are presently in the Atlanta Division of the Northern District of Georgia.

Jurors, attorneys and other interested parties have indicated they prefer to go to Gainesville rather than Atlanta, primarily because of convenience. These counties are located closer to the Gainesville Division than they are to the Atlanta Division.

My office receives constant requests from prospective jurors, particularly women, who are unable to make arrangements for transportation to Atlanta. The northernmost county currently in the Atlanta Division, Fannin County, is nearly 120 miles from Atlanta. Jurors and other parties traveling from those areas to Gainesville (only 60 miles) generally commute daily; those people have great difficulty in commuting to Atlanta. These distances are more critical inasmuch as a great portion of the mileage involved is necessarily traveled over mountainous roads.

The Gainesville Division of the District Court has a full complement of facilities and court-related support personnel. It is preferred over the Atlanta Division.

2. What are the anticipated costs of the reorganization you have proposed?

I do not believe there would be any additional costs involved with this reorganization other than initial expenditures for legal advertisements and related notices within the legal communities in the four counties. On the contrary, a net savings could be realized, in my opinion, because of the lesser costs for mileage expenses paid to jurors. Fewer miles would be involved.

3. What, if any, alternative means are available which might serve the same purposes which your legislation serves?

I am unaware of any alternative means to this situation.

4. Is there any identifiable support and/or opposition to your reorganization plan? If there is opposition, what causes the controversy?

There is considerable support for the bill as can be noted from the enclosures.

Also, an informal survey was taken among each county's bar associations concerning this proposal. The results are as follows:

COUNTY	SUPPORT	OPPOSE
Cherokee	6	0
Fannin	2	0
Gilmer	5	0
Pickens	3	0

Support for this proposal has also been received from United States District Court Judge William C. O'Kelley who is assigned to the Gainesville Division.

The Administrative Office of the United States Courts has approved the transfer of Fannin, Gilmer and Pickens Counties to the Gainesville Division, but disapproved of the transfer of Cherokee County. I am unaware of any substantive reasons for the disapproval involving Cherokee County. Four letters from attorneys in Cherokee County (Gober, Bray, McVay and Pope) are enclosed for your review.

I am hopeful that the Subcommittee will give favorable consideration to the bill as written.

MAR 19 1980

BOLING AND RICE
ATTORNEYS AT LAW
P. O. Box 244
CUMMING, GEORGIA
30130

LEON BOLING
ZACK RICE
LARRY BOLING

TELEPHONE
CUMMING 404 887-3152
ATLANTA 404 688-8855

March 14, 1980

Congressman Ed Jenkins
217 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman:

In response to your letter of March 10, 1980, I feel that the proposed legislation concerning the Northern Judicial District of Georgia would be beneficial. I agree that it would be much more convenient to have Cherokee, Fannin, Gilmer, Pickens and Gwinnett Counties included in the Gainesville Division rather than in the Atlanta Division.

We all appreciate the fine job you are doing for us in Washington.

Kindest regards,

Zack A. Rice

ZAR/mc

LAW OFFICES
McCUTCHEN & DIMMOCK
ELLIJAY, GEORGIA 30540

P. T. McCUTCHEN
AVARY DIMMOCK, JR.
J. CAREY HILL

AREA CODE 404
TELEPHONE 635-4186

March 18, 1980

Honorable Ed Jenkins
9th District Congressman
217 Cannon House Office Building
Washington, D. C. 20515

Dear Ed:

We appreciate your letter of March 10 concerning the make-up of the Atlanta and Gainesville Divisions of the Northern Judicial District of Georgia, and we are in favor of the proposed amendment so as to place Gilmer and other counties in the Gainesville Division instead of the Atlanta Division. We are sure that such change will be desired by all of the Ellijay attorneys.

Kindest personal regards and best wishes.

Sincerely,

P. T. McCutchen

Avary Dimmock, Jr.

J. Carey Hill

PTM:msl

LAW OFFICES OF
Jane Kent Plaginos
Post Office Box 808
111 Dahlonega Street
Cumming, Georgia 30130
Telephone (404) 887-2321

Jane Kent Plaginos
Martha D. Schoenfeld
Joseph E. Pirelli

March 17, 1980

The Honorable Ed Jenkins
House of Representatives
217 Cannon House Office Building
Washington, D.C. 20515

MAR 1980

Dear Sir:

I have your letter of March 10, 1980, and it would certainly appear to me that to include Cherokee, Fannin, Gilmer, Pickens, and Gwinnett Counties in the Gainesville Division rather than in the Atlanta Division would be a logical and more workable situation than it is to date.

I feel that it would give each County better representation to be in the Gainesville Division than they have now and are receiving from being in the Atlanta Division.

Certainly, the geographical location is more suitable to the Gainesville Division and population wise, we would be much better off and I hope that you will be successful in pursuing this Amendment to 28 U.S.C. 90.

If I can be of any help - and I certainly do not know how I could be - please call on me.

Respectfully,

JANE KENT-PLAGINOS

JKP:lp

SHINALL, KUCKLEBURG & KELL
ATTORNEYS AT LAW
P.O. Box 240
Cumming, Georgia 30130

Suite 204 South
210 Dahlonega Street
Cumming - 404 / 887-0400
Atlanta - 404 / 577-8744

John M. Shinall
Martha J. Kuckleburg
David F. Kell, Jr.

March 14, 1980

Representative Ed Jenkins
Congress of the United States
House of Representatives
217 Cannon House Office Building
Washington, D. C. 20515

Dear Representative Jenkins:

This will acknowledge receipt of your letter of March 19, 1980, regarding the possible restructuring of the Atlanta and Gainesville Divisions of the Northern Judicial District of Georgia.

Since my practice is located in Forsyth County, my Federal Court practice has already been centered in Gainesville. However, were I to take a case for a resident of one of the counties being considered, I would much prefer Gainesville over Atlanta. I support the legislative change you are proposing.

John Shinall and David Kell share my opinion on this matter.

Sincerely,

Martha J. Kuckleburg

MARTHA J. KUCKLEBURG

MJK/am

LAW OFFICES
BUFFINGTON & GOBER
211 EAST MAIN STREET / BUFFINGTON BUILDING
CANTON, GEORGIA 30114

HERBERT L. BUFFINGTON, JR.
CLYDE J. GOBER, JR.

(404) 479-5757
P. O. BOX 189

March 18, 1980

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

Dear Ed:

I am in receipt of your letter requesting information as to whether we feel that Cherokee County should be included in the Gainesville Division rather than the Atlanta Division of the Northern Judicial District of Georgia. I am wholeheartedly in favor of such a make-up of the Court. There are two factors that influence me to support it: (1) It is much easier to get to Gainesville from Canton, and to make arrangements with clients to meet in Gainesville for the Court appearances; and, (2) Attorneys from our area have much more in common with members of the Bar in the Gainesville Division than in the Atlanta Division, which makes the smooth running of the Court possible.

I hope these comments will be helpful in the making of your decision.

Yours very truly,

Clyde J. Gober, Jr.

CJGjr:mh

MAR 24 1980

Superior Courts

OF THE

Blue Ridge Judicial Circuit

MARION T. POPE, JR., JUDGE
CANTON, GEORGIA

CHEROKEE, FANNIN,
FORSYTH, GILMER
AND PICKENS COUNTIES

March 19, 1980

Honorable Ed Jenkins
9th District, Georgia
Congress of the United States
217 Cannon House Office Building
Washington, D. C. 20515

Dear Ed:

This will acknowledge your letter concerning the possibility of amending 28 U.S.C. 90 as to the make-up of the Atlanta and Gainesville Divisions of the Northern Judicial District of Georgia.

I have no objections to the proposal of including Cherokee, Fannin, Gilmer, Pickens and Gwinnett Counties; however, I don't know how the rest of the Bar Association feels about this matter. I will be contacting the officers of the Blue Ridge Bar and will ask that we call a meeting for their input on this matter.

With kindest regards, I am

Sincerely yours,

MARION T. POPE, JR.

MTPjr/mm

MAR 17 1980

BOBBY C. MILAM
ATTORNEY AT LAW
DEPOT AND WEST FIRST STREET
P. O. BOX 576
BLUE RIDGE, GEORGIA 30513

TELEPHONE
632-2225

March 14, 1980

Hon. Ed Jenkins
9th District Congressman
217 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Ed:

I am in receipt of your letter of March 10, 1980, with reference to the make-up of the Atlanta and Gainesville Division of the Northern Judicial District of Georgia.

I am sure that all members of the bar in our area would greatly appreciate Fannin County being placed in the Gainesville Division. Not only do I find it inconvenient to go to Atlanta, I also find that in jury cases we are really dealing with a type of jury which we normally are not familiar with. In addition to this, in the last few years, I have had numerous lady jurors come to me with reference to getting off the jury in Atlanta. Most have stated that they just would not go to Atlanta to serve because of fear and some who would normally be willing to serve state that they cannot drive in the Atlanta traffic. I not only feel that this would be a good change for the bar but would also be greatly appreciated by potential jurors.

Yours very truly,

BCM:ld

Bobby C. Milam

Gaines A. Tyler
Attorney at Law

Post Office Box 695 - Ellijay, Georgia 30540
404 635-4918

March 20, 1980

Hon. Ed Jenkins
217 Cannon House Office Building
Washington, D.C. 20515

Dear Ed:

In reply to your letter of March 10, 1980, concerning a Gainesville Division of the U.S. District Court, both myself and Brit Miller, my new associate, are in favor of such legislation.

If there is anything we may do, please do not hesitate to call upon us.

Very truly yours,

Gaines A. Tyler

GAT/bp

ROGER E. BRADLEY
ATTORNEY AT LAW
P.O. BOX 1107
BLUE RIDGE, GEORGIA 30513

OFFICE TELEPHONE
404/632-2027

RESIDENCE TELEPHONE
404/635-7895

March 20th, 1980

Honorable Ed Jenkins
217 Cannon House Office Building
Washington, D.C. 20515

Dear Ed:

I appreciate your letter of March 10, 1980.

I am of the same opinion as the several members of the bar that have suggested it would be more convenient to have Cherokee, Fannin, Gilmer, Pickens, and Gwinnett Counties included in the Gainesville Division.

From Ellijay, travel time to Gainesville is no greater than an hour and fifteen minutes and from Blue Ridge no greater than an hour and forty minutes. However, travel time to Atlanta is rarely less than two hours and can sometimes be much more.

Likewise, it appears that a case can be expedited in the Gainesville area with greater ease than it can in the Atlanta area.

With kindest regards.

Sincerely,

Roger E. Bradley

REB/sdr

ASSOCIATE OFFICE
611 SOUTH MAIN STREET
WOODSTOCK, GEORGIA 30188
404/926-4458

Law Offices
BRAY AND JOHNSON
ONE BROWN STREET
P O BOX 1034
CANTON, GEORGIA 30114
404/479-1426

ROGER M. JOHNSON · H. MICHAEL BRAY / JAMES R. GEE

March 24, 1980

MAR 27 1980

Honorable Ed Jenkins
Congressman, 9th District
217 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Ed:

I favor legislation that would amend the current law to allow Cherokee County to be included in the Gainesville Division rather than the Atlanta Division of the Northern Judicial District.

I trust things are going well with you in Washington and if you need any help down this way on anything, please do not hesitate to give me a call and simply let me know.

You might also put a bug in our good President's ear that the overwhelming vote he has received is not necessarily an absolute endorsement of his Presidency but it could be a no vote to Kennedy and a strong sense of loyalty to a fine Southerner.

Sincerely yours,

H. Michael Bray

HMB/st

ELIZABETH R. GLAZEBROOK
ATTORNEY AT LAW
P.O. BOX 545, CHEROKEE FEDERAL BUILDING
JASPER, GEORGIA 30143
TELEPHONE (404) 692-6459

MAR 31 1980

March 26, 1980

The Honorable Ed Jenkins
217 Cannon House Office Building
Washington, D.C. 20515

Dear Ed:

This is in response to your letter of March 10, 1980, concerning a possible amendment in 28 U.S.C. 90. Being a neophyte, I lack the personal experience to give an opinion. However, based on conversations with my colleagues as well as a personal preference of traveling to Gainesville rather than Atlanta, I would concur with the recommendation of including Pickens in the Gainesville Division rather than the Atlanta Division.

I appreciate your interest in pursuing this matter for us.

Warm personal regards.

Very truly yours,

Beth

Elizabeth R. Glazebrook

ERG/ls

LAW OFFICES
LIPSCOMB, MANTON, JOHNSON, MERRITT & GAULT
112 NORTH MAIN STREET
CUMMING, GEORGIA 30130

EMORY LIPSCOMB
JOHN P. MANTON
COY R. JOHNSON
JOHN L. MERRITT
RICHARD B. GAULT

TELEPHONES
404-887-7761 (CUMMING)
404-688-4177 (ATLANTA)

March 26, 1980

APR 01 1980

The Honorable Ed Jenkins
United States Representative
217 Cannon House Office Building
Washington, D. C. 20515

Dear Ed:

Thank you for your thoughtfulness in asking my opinion on the inclusion of Cherokee, Fannin, Gilmer, Pickens, and Gwinnett Counties in the Gainesville Division rather than the Atlanta Division of the Northern Judicial District of Georgia. This would seem to be a sensible alignment and would certainly be acceptable to me.

Thanks for the good work you are doing on behalf of the Ninth District and our country in these trying times. Please drop by to see us when you are in the area and let me know if I can ever be of assistance.

Sincerely yours,

Emory Lipscomb

EL/nbp

KIPLING LOUISE McVAY
ATTORNEY AT LAW

EXECUTIVE BUILDING
101 MAIN STREET
P. O. BOX 1096
CANTON, GEORGIA 30114

404/479-4333

October 26, 1981

Hon. Ed Jenkins
United States Representative
217 Cannon House Office Building
Washington, D. C. 20515

RE: Jurisdiction over Cherokee County Bankruptcy Cases

Dear Representative Jenkins:

First of all, let me take this opportunity to thank you for what I believe is good representation for the people of this district. I am particularly happy that we did not lose you in the recent reapportionment by the Georgia General Assembly.

I am writing concerning bankruptcy cases filed by Cherokee County citizens. Some years ago all Cherokee County cases were handled in Gainesville. For some reason the forum was moved to Atlanta. There are abundent attorneys qualified and experienced in handling bankruptcy cases right here in Canton and we would prefer to have our cases heard in Gainesville, rather than Atlanta.

I have not yet taken this matter before our Canton Bar Association, which meets infrequently, but I can say on behalf of myself and at least four other law firms who take cases in Bankruptcy Court that we would prefer to have our cases heard in Gainesville. I understand that you are in the process of introducing a bill to change the jurisdiction back to Gainesville and I am writing to encourage you to do so and to add my support to it. If there is any way that I can be of assistance to securing the passage of that bill, for example, by supplying your office with information about the practice by Canton attorneys, I would be most happy to take the opportunity to help you.

Your kind consideration and assistance will be, as always, appreciated.

Most sincerely,

Kipling L McVay

Kipling Louise McVay
Attorney at Law

tp

KIPLING LOUISE McVAY
ATTORNEY AT LAW

P. O. BOX 1096
(Upstairs Executive-Barrett Bldg.)
CANTON, GEORGIA 30114

404/479-4333

March 3, 1982

Hon. Ed Jenkins
United State Representative, Nineth District
217 Cannon House Office Building
Washington, D. C. 20515

RE: H. R. 5526

Dear Representative Jenkins:

Thank you very much for the photocopy of H. R. 5526 for a change in judicial divisions in the Northern District of Georgia so that Cherokee County is brought within the Gainesville District. I understand that there are many Atlanta attorneys and creditors who do not want to see this change , because of inconvenience to them. I am sure that you appreciate what the change would mean to the citizens of Cherokee County, among others, and how much we prefer to go to Gainesville rather than Atlanta.

I urge you to do everything possible to insure the passage of this legislation. If there is anything that I can do for you, such as present you with a resolution from the Blue Ridge Circuit or the Canton Bar Association, please let me know.

With best regards and appreciation for you, I am .

Most sincerely,

Kip McVay

Kipling Louise McVay
Attorney at Law

tp

CORNWELL AND CHURCH
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 849
TOCCOA, GEORGIA 30577

JAMES E. CORNWELL JR.
SAMUEL G. CHURCH

OF COUNSEL
FRANK L. GROSS
TELEPHONE
(404) 886-9451
S. BIG A ROAD

RECEIVED
APR 7 1982
ED JENKINS, M.C.

April 1, 1982

Honorable Ed Jenkins
217 Cannon House Office Building
Washington, D.C. 20515

Re: United States District Court
Gainesville, Georgia

Dear Ed:

This letter is written to you through my capacity as President of the Stephens County Bar Association reference the United States District Courthouse in Gainesville, Georgia. The bar association has authorized me to advise you that we have unanimously passed a resolution urging your continuing efforts in securing the passage of HR 5526, which would add four North Georgia counties into the jurisdiction of the Gainesville Court. The Stephens County Bar Association is of the opinion that the District Court in Gainesville is an intricate part of our judicial system in Northeast Georgia. I applaud all your efforts on behalf of the attorneys who so grequently utilize this Court.

If I may be of further assistance, please so advise.

Best and kindest regards.

Sincerely yours,

CORNWELL & CHURCH

James E. Cornwell, Jr.
President

STEPHENS COUNTY BAR ASSOCIATION

JECjr:wkb

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
1942 UNITED STATES COURTHOUSE
75 SPRING STREET, S. W.
ATLANTA, GEORGIA 30303

CHAMBERS OF
WILLIAM C. O'KELLEY, JUDGE

December 18, 1980

Honorable Ed Jenkins
United States Representative
217 Cannon House Office Building
Washington, D.C. 20515

Dear Ed:

This will confirm our telephone conversation of this date.

Following the luncheon meeting of you, Judge Vining, and myself of November 26, we discussed with the other judges the matter of your proposed legislation concerning the Gainesville division. We reported to them that you proposed to introduce legislation changing Fannin, Gilmer, Pickens, and Cherokee Counties from the Atlanta division to the Gainesville division. Your proposed legislation would take no action in regard to Gwinnett County. The judges of this court indicated their approval and support of your proposed action.

Judge Murphy is discussing with the local bar and other involved persons the possible transfer of Haralson County from the Newnan division to the Rome division. He will advise us at a later date if this is recommended.

I would appreciate if you could send me a copy of your proposed bill when it is introduced and let us know when and if you wish action taken on our part with the Judicial Council of the circuit and/or the Judicial Conference of the United States.

I wish for you and your family a very happy holiday season.

Sincerely,

Bill

William C. O'Kelley

WCO/ggp

I

98TH CONGRESS
1ST SESSION

H. R. 1579

To amend title 28, United States Code, to alter the composition of the Northern District of Illinois.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1983

Mrs. MARTIN of Illinois introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 28, United States Code, to alter the composition of the Northern District of Illinois.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 93 of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "De Kalb," and "McHenry,"; and

(2) in paragraph (2)—

(A) by inserting "De Kalb," immediately after "Carroll,"; and

(B) by inserting "McHenry," immediately after "Lee,".

SEC. 2. (a) The amendments made by the first section of this Act shall apply to any action commenced in the United States District Court for the Northern District of Illinois on or after the date of the enactment of this Act, and shall not affect any action pending in such court on such date of enactment.

(b) The amendments made by the first section of this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the date of the enactment of this Act.

O

LYNN MARTIN
16TH DISTRICT, ILLINOIS

COMMITTEES:
BUDGET
PUBLIC WORKS AND TRANSPORTATION

Congress of the United States

House of Representatives

Washington, D.C. 20515

WASHINGTON ADDRESS:
SUITE 1208
LONGWORTH HOUSE OFFICE BUILDING
PHONE: (202) 225-5676

DISTRICT OFFICES:
415 EAST STATE STREET
ROCKFORD, ILLINOIS 61104
PHONE: (815) 987-4329

430 AVENUE A
STERLING, ILLINOIS 61081
PHONE: (815) 626-1616

July 24, 1984

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

Dear Chairman Kastenmeier:

Thank you for your consideration of H.R. 1579, a bill I introduced to move DeKalb and McHenry Counties from the Eastern to the Western Division of the Northern District of Illinois. I am enclosing a letter received from the Federal Section Committee of the Winnebago County Bar Association which succinctly answers the questions you ask in your letter of June 28th.

Previously I have submitted to your Subcommittee letters of support from the Bar Associations of the affected counties, a letter from the Chief Judge of the Northern District in which he expresses no objection to this bill, and a letter of support signed by a majority of the Illinois Congressional Delegation. Copies of these documents again are submitted for the record.

Should you require any additional information, please contact me. I shall be delighted to conduct my part in the hearings in writing rather than offer oral testimony although I have a number of persons who would be more than willing to testify on behalf of this bill should you deem it necessary.

Sincerely,

LYNN MARTIN
Member of Congress

LM:fm

Enclosures

July 18, 1984

The Honorable Lynn Martin
U.S. House of Representatives
Suite 1208, Longworth House Office Building
Washington, DC 20515

Re: H.R. 1579

Dear Madam:

In response to your letter of July 2, 1984, our response to Chairman Kastenmeier's letter of June 28, 1984, is as follows:

1. The need for the legislation, both local and national, is clear. Rockford, which is the largest city in Illinois outside of Chicago, and the Western Division have been without full-time Federal Court service while smaller cities and areas such as Danville, East St. Louis, and Peoria have enjoyed such service for many years. Presently there are more than 500,000 people in the Western Division. The addition of the two counties would add more than 200,000 people who would receive Federal Court service. The two counties (HcHenry and DeKalb) are in much closer proximity to Rockford than to Chicago, and the attorneys and litigants will have much easier and less expensive access to the Federal Court. In addition, cases presently being filed in Chicago which arise in those counties will be removed from the Chicago docket and placed on the Rockford docket, thereby relieving the heavy caseload in Chicago.

2. Anticipated costs are minimal. We already have a court room, fully staffed clerk's office, and a District Judge who has been servicing the division on a part-time basis and will be assigned full time starting this fall. We also have a full-time Assistant United States Attorney assigned to the Western Division.

3. There are no satisfactory alternative means which would serve the same purposes which this legislation serves.

4. There is little or no opposition to the reorganization plan and no controversy to our knowledge. On the other hand, there is tremendous support for the legislation. The plan is endorsed by the following organizations: The Bar Associations of the following counties--McHenry, DeKalb, Winnebago, Stephenson, JoDaviess, Boone, Lee, Whiteside, Ogle, and Carroll, which constitute all of the counties in the proposed new district. In addition, the legislation

WINNEBAGO COUNTY BAR ASSOCIATION, INC.
321 WEST STATE STREET • SUITE 1201 • ROCKFORD, IL 61101-1183 • 815/964-8675

WCBA

The Honorable Lynn Martin
July 18, 1984
Page 2

has also been endorsed by the Illinois and Chicago Bar Associations, the United States District Court for the Northern District of Illinois, the Judicial Council of the Seventh Circuit, and the County Boards of McHenry and DeKalb Counties, among others.

I trust this is the information you desire. If we can give you any further information, we will be pleased to be of assistance.

Very truly yours,

(John Holmstrom, Jr.)

(Michael F. O'Brien)

(Francis E. Hickey)

Federal Section Committee,
Winnebago County Bar Association

JTHjr/saj

LYNN MARTIN
16TH DISTRICT ILLINOIS

COMMITTEES
BUDGET
HOUSE ADMINISTRATION

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

WASHINGTON ADDRESS
SUITE 1208
LONGWORTH HOUSE OFFICE BUILDING
PHONE (202) 225-5676

DISTRICT OFFICES
418 EAST STATE STREET
ROCKFORD ILLINOIS 61104
PHONE (815) 987-4328

420 AVENUE A
STERLING ILLINOIS 61081
PHONE (815) 626-1616

July 14, 1983

Honorable Peter W. Rodino
Chairman, Committee on the Judiciary
2137 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Rodino:

We the undersigned members of the Illinois delegation support the proposal, embodied by H.R. 1579, to move McHenry and DeKalb counties from the Eastern to the Western Division of the Northern Judicial District of Illinois.

We feel this legislation would make Federal Court Service in the Western Division more convenient, accessible, and efficient. In addition, the proposal enjoys the support of the Chief Judge of the U.S. District Court for the Northern District, the Judicial Council, and the Bar Associations of McHenry and DeKalb counties. It is also widely supported by attorneys in the current Western Division.

We hope that your consideration of H.R. 1579 will be favorable and expeditious.

Sincerely,

LYNN MARTIN, M.C.

EDWARD R. MADIGAN, M.C.

FRANK ANNUNZIO, M.C.

JOHN N. ERLENBORN, M.C.

GEORGE M. O'BRIEN, M.C.

JOHN EDWARD PORTER, M.C.

PHILIP M. CRANE, M.C.

PAUL SIMON, M.C.

Rodino, Peter W.
July 14, 1983
Page Two

RICHARD J. DURBIN, M.C.

ROBERT H. MICHEL, M.C.

WILLIAM O. LIPINSKI, M.C.

HENRY J. HYDE, M.C.

SIDNEY R. YATES, M.C.

LANE EVANS, M.C.

DANIEL B. CRANE, M.C.

TOM CORCORAN, M.C.

UNITED STATES DISTRICT COURT
Northern District of Illinois
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

FRANK J. McGARR
CHIEF JUDGE
(312) 435-5600

April 22, 1983

Mr. William J. Weller
Legislative Affairs Officer
Administrative Office
of the United States Courts
Washington, D.C. 20544

Dear Bill:

I apologize for not responding sooner to your inquiry of March 2, but it took some time for me to get this matter on the crowded agenda of our monthly judges meeting. You inquire for the benefit of the Judicial Conference concerning the views of the Northern District of Illinois on H.R. 1579.

H.R. 1579 will transfer two counties, McHenry County and DeKalb County, from the Eastern Division of the Northern District of Illinois, the division centered in Chicago, to the Western Division, centered in Rockford.

One of the judges in our court has inquired informally of many of the attorneys in those two counties concerning their views in the matter and the prevailing view seems to be a preference for the transfer of the two counties. In addition, we have resolutions from the bar associations of each of the two counties approving and requesting the transfer.

It is the view of our court that no serious dislocation of our activities would result, since we do have a judge covering the Western Division on a permanent assignment who would merely begin to spend more time in that division because more cases would be filed there. It is contemplated that the increase in filing might well justify his spending full time there, but until the statistics develop and the court considers the matter further, this decision has not yet been reached.

In sum, it is the view of the judges of the district court of the Northern District of Illinois that we have no objection to the transfer of the two counties to the Western Division, contemplated by H.R. 1579

Sincerely,

Frank J. McGarr

bjb

cc: The Honorable Walter J. Cummings

JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

COLLINS T. FITZPATRICK
CIRCUIT EXECUTIVE
PHONE (312) 435-5803

May 13, 1983

Mr. Michael F. O'Brien
Paddock, McGreevy & Johnson
850 North Church Street
P.O. Box 318
Rockford, Illinois 61105-0318

Dear Mr. O'Brien:

I am responding to your letter of May 9, 1983 regarding the position of the Judicial Council of the Seventh Circuit and the District Judges of the Northern District of Illinois on H.R. 1579 which would transfer DeKalb and McHenry Counties from the Eastern to the Western Division of the United States District Court for the Northern District of Illinois.

I have enclosed a copy of Chief Judge Walter J. Cummings' letter on behalf of the Judicial Council to Mr. William J. Weller of the Legislative Affairs Office of the Administrative Office of the United States Courts stating that the Council has no objections to the provisions of H.R. 1579. The Judicial Council is composed of all active circuit judges of the Court of Appeals and four district judges from throughout the circuit. The members are: Chief Judge Walter J. Cummings, Circuit Judges Wilbur F. Pell, Jr., William J. Bauer, Harlington Wood, Richard D. Cudahy, Jesse E. Eschbach, Richard A. Posner, John L. Coffey, Chief District Judge John W. Reynolds (Eastern District of Wisconsin), District Judge Cale J. Holder (Southern District of Indiana), Chief District Judge James L. Foreman (Southern District of Illinois), and Chief District Judge Barbara B. Crabb (Western District of Wisconsin).

I have also enclosed a copy of Chief Judge Cummings' letter of February 25, 1983 responding to Congresswoman Martin's request for his views concerning H.R. 1579.

Finally, I have enclosed a copy of a letter from Chief District Judge Frank J. McGarr of the United States District Court for the Northern District of Illinois stating that the judges of that court have no objection to the transfer of DeKalb and McHenry Counties to the Western Division.

Both letters of Chief Judge Cummings requested that the statute provide an effective date at least six months after the date of enactment in order that there be proper notice to the bar associations and the public, time for the court to revise the Jury Selection Plan, and time for the clerk to prepare new jury wheels for each division.

Sincerely,

Collins T. Fitzpatrick

Collins T. Fitzpatrick

Enclosures

cc: Chief Judge Walter J. Cummings
Chief District Judge Frank J. McGarr

CHAMBERS OF
WALTER J. CUMMINGS
CHIEF JUDGE
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

April 11, 1983

Mr. William J. Weller LAO
Legislative Affairs Officer
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Bill:

I am responding to your letter of March 2, 1983, regarding your request on behalf of the Court Administration Committee for the views of the Judicial Council on H.R. 1579. The bill would transfer DeKalb and McHenry Counties from the Eastern Division of the Northern District of Illinois to the Western Division.

The Judicial Council has no objection to the provisions of the bill. However, it is important that the bill have an effective date six months after the date of enactment in order that there be proper notice to the bar associations and the public, time for the court to revise the jury selection plan, and time for the clerk to prepare jury wheels for each division. It is also important that such a provision be added at the Committee stage.

Sincerely,

Walter J. Cummings

Walter J. Cummings
Chief Judge of the
Seventh Circuit

cc: Hon. Frank J. McGarr
Hon. Elmo B. Hunter

CHAMBERS OF
WALTER J. CUMMINGS
CHIEF JUDGE
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

February 25, 1983

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

Dear Congresswoman Martin:

Before responding to your letter of February 4, 1983, I consulted with Chief District Judge Frank J. McGarr of the United States District Court for the Northern District of Illinois.

It does not matter to the judges of the Northern District of Illinois or myself as to whether McHenry and DeKalb counties are in the Eastern or Western Divisions of the Northern District of Illinois. The only concern that we have is that the public and the bar of those counties be well served. You may want to consult with the bar associations and public officials in those counties as to their preference.

If you decide to introduce the draft bill enclosed with your letter, you should consider having it become effective six months after the date of enactment in order that there be proper notice to the bar associations and the public, time for the court to revise the jury selection plan, and time for the clerk to prepare new jury wheels for each division.

Sincerely,

Walter J. Cummings

Walter J. Cummings
Chief Judge of the
Seventh Circuit

ROBERT L. MORRIS
Attorney-at-Law
LANARK, ILLINOIS 61046

Associate
EDWARD J. MITCHELL
Attorney-at-Law

Telephone 493-6339
(Area Code 815)

September 23, 1982

Honorable Lynn Martin
Member of Congress
1318 E. State St.
Rockford, Ill. 61108

In Re: Carroll County Bar Association

Dear Congresswoman Martin:

I am writing to you on behalf of the Carroll County Bar Association. Attached hereto is a copy of the Bar Association's resolution which they recently passed requesting that a full-time federal judge be appointed for the western division of the northern district of Illinois together with the addition of McHenry and Dekalb counties to the northern district of Illinois. Any aid you could provide in connection with this matter would be greatly appreciated.

Yours truly,

Edward J. Mitchell

EJM:rsg
Enc.

RESOLUTION

I HEREBY CERTIFY, that I am Secretary-Treasurer of the Carroll County Bar Association of Carroll County, Illinois.

I FURTHER CERTIFY, that a meeting of the Association took place on September 13, 1982, at Quinn's of Mt. Carroll in the City of Mt. Carroll, County of Carroll and State of Illinois, and there was at said meeting a quorum present and voting throughout, and that the following resolution was unanimously adopted:

BE IT RESOLVED by the Carroll County Bar Association that the Bar Association hereby goes on record in favor of proposed changes to the federal court system whereby McHenry and Dekalb County would become part of the northern district of Illinois and a full-time federal judge would maintain an office at the Federal Building in Rockford to thereby better serve the western district of Illinois and to aid with the increased case load that would be required by the addition of McHenry and Dekalb County.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary-Treasurer of the Carroll County Bar Association.

Edward J. Mitchell
Secretary-Treasurer

DATE: _____ DOC# _____
AIDS: _____ REC# _____
CATS: _____
PLNA: _____
COMMENTS: _____
February 11, 1983

FEB 22 1983

Congresswoman Lynn Martir
Suite 1208
Longsworth House Office Building
Washington, D. C. 20515

Dear Congresswoman Martin,

The Boone County Bar Association unanimously supports the bill you introduced to transfer McHenry and DeKalb Counties to the Western Division of the United States District Court for the Northern District of Illinois. Our Bar Association has passed a resolution in favor of the move.

We think the addition of the two counties would be a significant step towards the appointment of a full-time federal judge in Rockford. We, therefore, urge you to make the bill a high priority on your legislative agenda.

Sincerely,

BOONE COUNTY BAR ASSOCIATION

Gerald F. Grubb, President

AUG 9

WCBA

August 4, 1982

The Honorable Lynn Martin
United States Representative
Room 1208 Longworth House Office Building
Washington, D. C. 20515

Dear Lynn:

As you are aware, the lawyers of the Western Division have, for as long as I can remember, attempted to establish full-time federal court service in the division.

Today, we are nearer to accomplishing that goal than ever before. When the court was first moved to Rockford in 1977, there were approximately 90 cases on the docket, and the filings were approximately 100 cases. We now have more than 200 cases on the docket and filings will exceed 225 cases for 1982, at the present rate.

In order to justify a full-time court in Rockford, filings should exceed 300 cases. At the present rate we will not exceed that number until 1985.

It has been suggested that two additional counties should be added to the division, to-wit: McHenry and DeKalb. Both of the bar associations of those counties have passed unanimous resolutions requesting that they be removed from the Eastern Division and added to the Western Division. The Winnebago County Bar Association has passed a resolution supporting that transfer. Copies of these resolutions are enclosed. The only change necessary would be to amend Title 28, Section 93(a). Adding these two counties would have many benefits for the lawyers and citizens of the area. In particular, it would benefit the lawyers and citizens of McHenry and DeKalb Counties. At the present time they are required to file and try their federal cases in Chicago which necessitates a one and one-half hour trip each time they must appear in court. If the court were located in Rockford, the trip would be reduced to approximately forty-five minutes and the attendant expenses would also be greatly reduced. This does not take into consideration the time saved because the parking in Rockford is so much more convenient. I would estimate a total saving of two hours per court appearance. The benefits to the litigants would obviously be very substantial.

Several other immediate benefits are also apparent, including:

1. The increased caseload would justify a full time federal court in Rockford immediately, resulting in better service to the citizens of the division.

WINNEBAGO COUNTY BAR ASSOCIATION, INC.
1201 TALCOTT BUILDING • ROCKFORD, IL 61101 • 815/964-9575

2. The courtroom and other facilities in Rockford would be better utilized, since they would be used on a full-time rather than a part-time basis.

3. The courtroom and chambers in Chicago could be better utilized than is presently the case. At the present time there are insufficient courtrooms in Chicago to accomodate the number of judges presently available and additional judges are scheduled to be added in the very near future. The new judges are required to use inadequate facilities at great inconvenience.

4. We will soon have a full-time law school at Northern Illinois University in DeKalb. A full-time federal court in Rockford would mutually benefit both the court and the law school. At the present time senior law students in Chicago law schools serve as externs for the federal judges thereby allowing the students to gain valuable experience and giving the courts badly needed assistance. The same practice could be adopted by the Western Division judge and the Northern Illinois University Law School, resulting in obvious benefits to both.

5. The taxpayers of the Rockford area and the Western Division, would, for the first time, receive the kind of federal court service long enjoyed by areas such as Peoria, Danville, Springfield and East St. Louis. They deserve no less.

Never has there been a more opportune time to provide federal court service to Rockford and the surrounding area. We would appreciate your introducing this legislation at the earliest possible time.

Sincerely,

Bradner C. Riggs/p.p.

BRADNER C. RIGGS
President

BCR:pp
Enclosures

WCBA

Be it known that on July 23, 1982 at a meeting of the Board of Directors of the Winnebago County Bar Association by unanimous vote of said Board, the following resolution was passed in principal:

RESOLVED, that the Winnebago County Bar Association continues in its long standing support of changes which would enhance the services of the United States District Court to the citizens of the Western Division of the Northern District of Illinois;

that in furtherance thereof, the Winnebago County Bar Association endorses the resolutions of the Bar Associations of McHenry County, Illinois and of DeKalb County, Illinois for transfer of said counties from the Eastern Division to the Western Division of the Northern District of Illinois;

further, the Winnebago County Bar Association authorizes the President of the Association to participate fully in efforts to implement said transfer.

Bradner C. Riggs pp

BRADNER C. RIGGS, President
Winnebago County Bar Association

Mary P. Gorman

MARY P. GORMAN, Secretary
Winnebago County Bar Association

WINNEBAGO COUNTY BAR ASSOCIATION, INC.
1201 TALCOTT BUILDING • ROCKFORD, IL 61101 • 815/964-9575

TO WHOM IT MAY CONCERN

BE IT KNOWN THAT on October 13, 1981 at a meeting of the DeKalb County Bar Association, with fifty-one (51) members present and voting, constituting a quorum, the following resolution was unanimously passed by the assemblage:

> RESOLVED, that the DeKalb County Bar Association joins and supports the petition of the McHenry County Bar Association to the Northern District Federal Court requesting said Federal Court disconnect McHenry and DeKalb Counties from the Eastern Division of said District Court, and connect said Counties to the Western Division of the Northern District Federal Court, which sits in Rockford, Illinois.

Respectfully,

Douglas Engel, President
DeKalb County Bar Association

Attest:
William E. Radke, Secretary
DeKalb County Bar Association

RESOLUTION

RESOLVED, that the McHenry County Bar Association petition the Northern District Federal Court requesting said Federal Court to disconnect McHenry County from the Eastern Division of said court and connect them to the Western Division of the Northern District Federal Court which sits in Rockford, Illinois.

BE IT FURTHER RESOLVED that the President of the McHenry County Bar Association is instructed to communicate with the officers of the DeKalb and LaSalle County Bar Associations to solicit their support with respect to this petition.

DEC 17 1982

VINCENT, ROTH & ELLIOTT, P.C.

James B. Vincent
Robert R. Roth
N. Richard Elliott

Attorneys at Law
Galena, Illinois 61036
Warren, Illinois 61087

Galena Office
Corner of Main & Perry
815/777-0833

Warren Office
115 East Main Street
815/745-2624

December 13, 1982

Galena, Illinois

DATE: ____ DOC# ____
AIR: ____ REC# ____
": ____
: ____
COMMENTS: ____

The Honorable Lynn Martin
United States House of Representatives
Suite 1208 Longworth House Office Building
Washington, D. C. 20515

Dear Representative Martin:

I am writing to you on behalf of the Jo Daviess County Bar Association. Our Bar Association strongly urges your support for the concept of joining DeKalb and McHenry Counties to the Western Division for the Federal District Court of the Northern District of Illinois. This would certainly be of benefit for the lawyers and their clients in this area.

If you need any further statements or documents, please feel free to contact the undersigned.

Thank you for your continued and past cooperation.

Very truly yours,

James B. Vincent, President
Jo Daviess County Bar Association

JBV/moj

DEC 20 19[illegible]

DEC 17 1982

STEPHENSON COUNTY BAR ASSOCIATION
FREEPORT, ILLINOIS 61032

December 16, 1982

The Honorable Lynn Martin
1318 East State Street
Rockford, IL 61101

Dear Representative Martin:

I enclose for your reference a resolution adopted by the Stephenson County Bar Association on August 19, 1982, at their regular meeting, endorsing the resolutions of the bar associations of McHenry and DeKalb Counties. A copy of said resolution is enclosed. It is the feeling of the Stephenson County Bar Association in support of this resolution that this would improve and enhance the services of the United States District Court to the citizens of the Western Division.

Thank you for your consideration on this matter.

Yours truly,

W. Neil Brown

WNB:gc

Enclosure

STEPHENSON COUNTY BAR ASSOCIATION
FREEPORT, ILLINOIS 61032

Be it known that on August 19th, 1982 at a meeting of the Stephenson County Bar Association, a quorum being present and voting by unanimous vote, the following resolution was passed.

RESOLVED, that the Stephenson County Bar Association continues in its long standing support of changes which would enhance the services of the United States District Court to the citizens of the Western Division of the Northern District of Illinois;

That in furtherance thereof, the Stephenson County Bar Association endorses the resolutions of the Bar Associations of McHenry County, Illinois and of DeKalb County, Illinois for transfer of said counties from the Eastern Division to the Western Division of the Northern District of Illinois;

Further, the Stephenson County Bar Association authorizes the President of the Association to participate fully in efforts to implement said transfer.

W. Neil Brown

President - W. Neil Brown
Stephenson County Bar Association

Ralph Elliot

Secretary - Ralph Elliot
Stephenson County Bar Association

I

98TH CONGRESS
1ST SESSION

H. R. 2329

To amend section 97 of title 28, United States Code, to permit Federal district court to be held in Hopkinsville, Kentucky.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1983

Mr. HUBBARD introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend section 97 of title 28, United States Code, to permit Federal district court to be held in Hopkinsville, Kentucky.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 97(b) of title 28, United States Code, is amended by inserting "Hopkinsville," after "Bowling Green,".

O

CARROLL HUBBARD
CONGRESSMAN
1ST DISTRICT, KENTUCKY

2182 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3115

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

AT LARGE MAJORITY WHIP

COMMITTEES:
BANKING, FINANCE AND URBAN AFFAIRS
MERCHANT MARINE AND FISHERIES
CHAIRMAN, SUBCOMMITTEE ON PANAMA CANAL/OUTER CONTINENTAL SHELF

July 24, 1984

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

Dear Mr. ~~Chairman~~ Bob:

I am writing to you in reference to your June 28 letter to me relative to your upcoming consideration of several bills relating to the geographic organization of the Federal Courts, including H.R. 2329, a bill to permit the U.S. District Court for the Western District of Kentucky to be held in Hopkinsville, Kentucky, in addition to those places currently designated.

Please know that I appreciate your providing me with the chance to respond to your questions in preparation for your one-day hearing.

Enclosed please find a copy of the July 20 letter to me from attorney Ben S. Fletcher III, President of the Christian County Bar Association, and Mr. Fletcher's original enclosures. I am also enclosing a July 18 letter to you from Hon. Sherrill L. Jeffers, Mayor of Hopkinsville, a July 17 letter from Hon. Frank M. Gary, Christian County Judge/Executive, a July 17 letter from Robert Carter, Chairman of the Hopkinsville-Christian County Industrial Development and Economic Authority, and two July 17 letters to you from Hon. Ben S. Fletcher III.

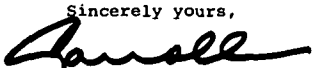
Although I am aware of the actions by the Judicial Council of the Sixth Circuit and the Chief Judge for the Western District of Kentucky, I urge you to favorably review this material. It is my hope that H.R. 2329 will be agreed to and reported to the full Judiciary Committee. Please know of my willingness to personally answer any questions that you or the members of your subcommittee might have.

Honorable Robert W. Kastenmeier
July 24, 1984
Page Two

Again, many thanks for allowing me the opportunity to present this information to you. I look forward to hearing from you as additional details become available. If you have any questions, do not hesitate to let me know.

With best wishes for you, I am

Sincerely yours,



Carroll Hubbard
Member of Congress

CH/mmf

Enclosures

LAW OFFICES
BEN S. FLETCHER III
1102 SOUTH VIRGINIA STREET PLAZA
POST OFFICE BOX 898
HOPKINSVILLE, KENTUCKY 42240

BEN S. FLETCHER III
DONNA A. CHU

AREA CODE 502
885-7671

JUL 23 1984

July 20, 1984

COPY

Carroll Hubbard
Congressman
1st District, Kentucky
Attn: Mary Martha Fortney
2182 Rayburn House Office Building
Washington, D.C. 20515

Re: Federal Court Situs
in Hopkinsville, Kentucky
H.R. 2329

Dear Carroll:

Enclosed is the information which has been compiled in cooperation with Mayor Sherry Jeffers' office concerning Mr. Robert Kastenmeier's requested answers to the four questions contained in his June 28, 1984 letter. Thank you very much for your assistance in helping Hopkinsville become a situs for a Federal court to sit. If there is anymore information you need, please feel free to contact me.

With kindest personal regards, I am

Cordially,

Ben S. Fletcher III, President
Christian County Bar Association

BSF:ai
Enclosures
cc: Honorable Sherrill L. Jeffers
Mayor, City of Hopkinsville

1. What is the need, local or national, for the legislation you have proposed?

   a. The caseload for the proposed Hopkinsville Division justifies the location of a Federal court in Hopkinsville. (See attached Exhibits 1,2 and Composite Exhibit 3).

   b. The Western District of Kentucky currently consists of the Louisville Division, Bowling Green Division, Owensboro Division and Paducah Division. Hopkinsville, Christian County, Kentucky is located in the Paducah Division. The proposal to hold Federal court in Hopkinsville, Christian County, Kentucky is necessary because Christian County is the second most populous county located in the Western District (excluding Jefferson County). Christian County also contains the Fort Campbell, Kentucky, Army base where over 20,000 troops (over 40,000 people including their families) are stationed. It is an inconvenience (and most costly to the Federal Government) for jurors, witnesses, attorneys, FBI agents and other court participants to travel from Christian County to the Paducah Division located in McCracken County. Due to the location of Fort Campbell in Christian County, Hopkinsville is a logical location for a Federal court to sit.

   c. Hopkinsville is the location of a jail facility which has been approved by the Federal Government for housing Federal prisoners, and currently houses Federal prisoners.

   d. The Federal Bureau of Investigation already has offices in Hopkinsville.

   e. One of the United States Magistrates for the United States District Court, Western District of Kentucky, John M. Dixon, Jr., currently holds court at Hopkinsville and Fort Campbell. Please see attached Composite Exhibit 3 which shows the large caseload handled by Judge Dixon in Hopkinsville and Fort Campbell, and the problem the United States Magistrate has had in finding a courtroom in Hopkinsville to conduct Federal hearings.

   f. Attached as Exhibits 4 and 5 are the existing United States Court Divisions for Bowling Green, Owensboro and Paducah and the proposed United States District Court Divisions for Bowling Green, Owensboro, Paducah and

Hopkinsville. The proposed new Divisions are equal in size and caseload as noted on the attached Exhibits 4 and 5 and also from the caseload statistics provided on Exhibits 1 and 2.

g. Hopkinsville-Christian County has a large minority population which exceeds 35% of the total population. Due to their socioeconomic status, it is difficult, if not impossible, for them to participate in the Federal court system since they must travel from 70 to 90 miles to Paducah.

2. What are the anticipated costs of the reorganization you have proposed?

a. One of the benefits to the Federal Government from locating a Federal court in Hopkinsville is the low cost it would entail. Enclosed as Exhibit 6 are photographs of the former United States Post Office located on Ninth Street in downtown Hopkinsville. This large building would certainly meet the physical requirements for a Federal court. This building currently houses a local museum, but the museum can be relocated to another suitable location thereby making the building available immediately for the court to sit. Also, the building has been occupied by the museum for several years so the inside of the building is in good physical condition. It is anticipated it would cost no more than $150,000.00 to equip the inside of said building in a manner appropriate for a Federal court. There is also more than adequate parking space to the back and side of the building for court personnel and participants to park. As noted on the attached July 18, 1984 letter from the Mayor of Hopkinsville, Sherrill L. Jeffers, the former Post Office building has been offered to the Federal Government for location of a Federal court. (See Exhibit 7). There will be no cost for location of an FBI office in Hopkinsville since one is already here. Also, as mentioned hereinbefore, Hopkinsville is a location of a modern jail facility which has been approved for housing federal prisoners. In fact, numerous federal prisoners are housed in Hopkinsville on a regular basis at the present time.

b. The only other costs associated with the location of a Federal court in Hopkinsville would be support court personnel. It is anticipated there will be a need for one United States District Court Clerk and one Deputy

Clerk, and one or two Deputy United States Marshalls to be located in Hopkinsville. Therefore, this would involve approximately four full time support personnel to be located at this site. The salary costs for these court personnel would be less than $100,000.00 per year.

c. In summary, it is anticipated rennovation costs will amount to $150,000.00 or less, and that it would cost less than $100,000.00 for court personnel per year to operate a Federal court in Hopkinsville.

3. What, if any, alternative means are available which might serve the same purposes which your legislation serves?

a. The only alternative means would be to continue holding court only in the Paducah Division which is 70 to 90 miles away.

4. Is there any identifiable support and/or opposition to your reorganization plan? If there is opposition, what causes the controversy?

a. The only so called opposition to a Federal court sitting in Hopkinsville comes from the Sixth Circuit Judicial Council. The Council did not believe enough case-related work was arising in the Hopkinsvile, Christian County, area to be served by the location to warrant the administrative burden of an additional statutory court situs. For the reasons stated in response to question no. 1, the available statistics indicate that there are as many cases being generated in the proposed Hopkinsville Division as are being generated in the Paducah, Bowling Green and Owensboro Divisions. Also, the United States Magistrate covering this area has an unusually high caseload. Furthermore, Fort Campbell, Kentucky is a large military base located in Christian County which generates a considerable number of cases to be handled by a Federal court. Lastly, as pointed out in response to question no. 2, the administrative cost is minimal.

b. Enclosed are letters from the Mayor, City of Hopkinsville, County Judge-Executive, County of Christian, Chairman, Industrial Development Economic Authority, Hopkinsville/Christian County Chamber of Commerce and Christian County Bar Association supporting the location of a Federal court in Hopkinsville. (See Exhibits 7, 8, 9, 10 and 11).

NUMBER OF CASES FILED
IN BOWLING GREEN, OWENSBORO
AND PADUCAH FOR 1981-82

BOWLING GREEN DIVISION

COUNTY	'81	'82
Adair	1	4
Allen	1	3
Barren	4	5
Butler	9	16
Casey	2	5
Clinton	2	3
Cumberland	1	4
Edmonson	3	6
Green	-	3
Hart	3	3
Logan	7	7
Metcalf	2	1
Monroe	3	-
Russell	6	7
Simpson	6	4
Taylor	4	2
Todd	2	2
Warren	29	37
TOTAL	85	112

OWENSBORO DIVISION

COUNTY	'81	'82
Daviess	18	61
Grayson	5	13
Hancock	6	8
Henderson	19	17
Hopkins	32	120
McLean	4	7
Muhlenberg	19	27
Ohio	9	14
Union	9	19
Webster	7	7
TOTAL	128	293

PADUCAH DIVISION

COUNTY	'81	'82
Ballard	3	8
Caldwell	4	2
Calloway	9	13
Carlisle	-	2
Christian	26	19
Crittenden	1	7
Fulton	3	4
Graves	12	10
Hickman	2	-
Livingston	9	7
Lyon	23	31
McCracken	35	47
Marshall	13	17
Trigg	2	2
TOTAL	142	169

EXHIBIT 1

NUMBER OF CASES FILED FOR
BOWLING GREEN, OWENSBORO, PADUCAH
AND HOPKINSVILLE AFTER REALIGNMENT
OF DIVISIONS BASED ON 1981-82 FIGURES

BOWLING GREEN DIVISION

COUNTY	'81	'82
Adair	1	4
Allen	1	3
Barren	4	5
Butler	9	16
Casey	2	5
Clinton	2	3
Cumberland	1	4
Edmonson	3	6
Green	-	3
Hart	3	3
Metcalf	2	1
Monroe	3	-
Russell	6	7
Simpson	6	4
Taylor	4	2
Warren	29	37
TOTAL	76	103

OWENSBORO DIVISION

COUNTY	'81	'82
Daviess	18	61
Grayson	5	13
Hancock	6	8
Henderson	19	17
McLean	4	7
Ohio	9	14
Union	9	19
Webster	7	7
TOTAL	77	146

HOPKINSVILLE DIVISION

COUNTY	'81	'82
Caldwell	4	2
Christian	26	19
Hopkins	32	120
Logan	7	7
Lyon	23	31
Muhlenberg	19	27
Todd	2	2
Trigg	2	2
TOTAL	115	210

PADUCAH DIVISION

COUNTY	'81	'82
Ballard	3	8
Calloway	9	13
Carlisle	-	2
Crittenden	1	7
Fulton	3	4
Graves	12	10
Hickman	2	-
Livingston	9	7
McCracken	35	47
Marshall	13	17
TOTAL	87	115

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
MIDDLE DISTRICT OF TENNESSEE
JOHN M. DIXON, JR.
UNITED STATES MAGISTRATE
P.O. BOX 627, HOPKINSVILLE, KENTUCKY 42240

July 18, 1984

Hon. Sherrill L. Jeffers
Mayor, City of Hopkinsville
101 North Main Street
Hopkinsville, Kentucky 42240

Dear Sherry:

Pursuant to your request, I am enclosing statistical information on Magistrate Dixon's caseload for the Western District of Kentucky. The statistics for the petty and misdemeanor cases include only the completed cases and the majority of these cases are heard at Fort Campbell, Kentucky. However, there are cases shown in these statistics from the Land Between the Lakes area and all LBL cases are heard in Hopkinsville. Also, it is sometimes necessary to hear some Fort Campbell cases in Hopkinsville.

All felony cases are heard in Hopkinsville. The figure shown for felony cases includes all cases in which any work was done on the case from issuing a warrant to the initial appearance of the defendant.

Whenever it is necessary to hear any case in Hopkinsville, we must request the use of one of the county courtrooms for the hearings. Although Judge Gary has been very cooperative, there are times when a county courtroom is not available and the hearings must be held in the conference room of Magistrate Dixon's law office.

I have also listed the number of defendants who were imprisoned in petty and misdemeanor cases. All these defendants were lodged in the Christian County Jail.

If I can supply any additional information, please let me know.

Sincerely,

Linda

Linda M. Withers
Secretary to Magistrate Dixon

Enclosure

COMPOSITE EXHIBIT 3

WESTERN DISTRICT OF KENTUCKY

DATE	PETTY OFFENSE CASES	MISDEMEANOR CASES	PERSONS IMPRISONED	FELONY CASES
Jun '84	322	12	3	1
May '84	325	19	2	1
Apr '84	526	7	1	0
Mar '84	258	8	1	0
Feb '84	153	16	3	4
Jan '84	139	7	0	0
Dec '83	229	8	1	0
Nov '83	158	7	0	4
Oct '83	110	11	1	0
Sep '83	108	16	1	0
Aug '83	101	8	2	0
Jul '83	110	9	1	3
Jun '83	132	10	3	0
May '83	122	23	2	0
Apr '83	219	21	2	1
Mar '83	212	7	1	2
Feb '83	56	8	1	2
Jan '83	157	13	0	4
Dec '82	174	7	0	1
Nov '82	176	8	1	4
Oct '82	135	12	1	1
Sep '82	87	5	0	0
Aug '82	149	13	2	0
Jul '82	136	16	1	0

COMPOSITE EXHIBIT 3

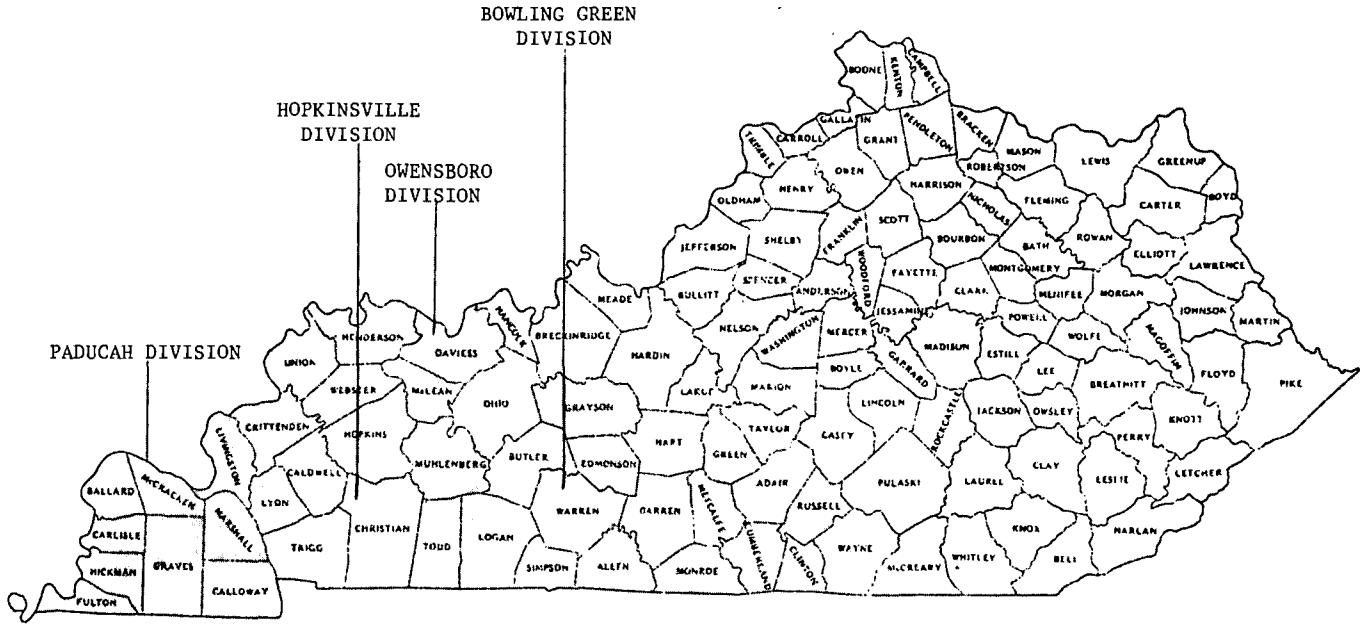
DATE	PETTY OFFENSE CASES	MISDEMEANOR CASES	PERSONS IMPRISONED	FELONY CASES
Jun '82	134	13	1	0
May '82	176	16	0	0
Apr '82	84	6	0	1
Mar '82	179	23	3	1
Feb '82	244	9	2	0
Jan '82	171	23	1	0
TOTALS	5,282	361	37	30

COMPOSITE EXHIBIT 3

EXHIBIT 4

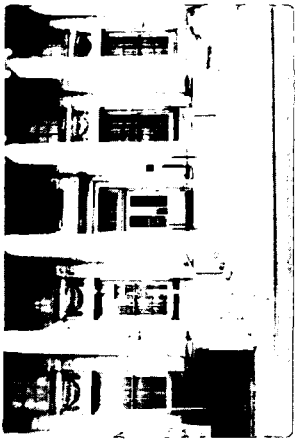
EXISTING UNITED STATES DISTRICT COURT DIVISIONS
FOR BOWLING GREEN, OWENSBORO AND PADUCAH

EXHIBIT 5



PROPOSED UNITED STATES DISTRICT COURT DIVISIONS
FOR BOWLING GREEN, OWENSBORO, PADUCAH AND HOPKINSVILLE

OLD UNITED STATES POST OFFICE BUILDING
HOPKINSVILLE, KENTUCKY



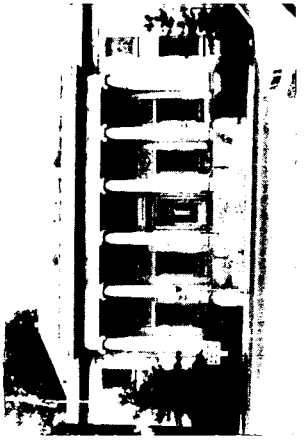


EXHIBIT 6

CITY OF HOPKINSVILLE
KENTUCKY
42240

SHERRILL L. JEFFERS
MAYOR

P. O. BOX 707
502/887-4000

July 18, 1984

Mr. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Washington, D.C. 20515

Dear Mr. Kastenmeier:

I strongly feel that Hopkinsville would be an appropriate location for a Federal Court because of the caseload and the geographical location of the City.

We have a government owned building which could certainly meet the physical requirements of the court, and I offer the City's full cooperation in the establishing of such a court here.

I urge that you give very serious consideration to a Federal Court sitting in Hopkinsville, Kentucky.

Sincerely,

Sherrill L. Jeffers

Sherrill L. Jeffers

SLJ:ewm

EXHIBIT 7

EXECUTIVE OFFICES

CHRISTIAN COUNTY

FRANK GARY
County Judge Executive

COUNTY COURT HOUSE
HOPKINSVILLE, KENTUCKY 42240

TELEPHONE
502-887-4100

July 17, 1984

To Whom It May Concern:

As Judge Executive of Christian County, I would like to encourage you to locate a Federal Court in our county seat, Hopkinsville.

We, in Christian County are very proud of our court facilities. We also have a modern, efficient county jail, which is the only Federally contracted jail for federal prisoners in this area.

We have an excellent building for the Federal Court to locate and I think you would find the cooperation of our citizens beneficial. We are a center for the five large neighboring counties, futhermore Fort Campbell is located in our county.

We hope you will visit us to see how much we have to offer. You have our sincere support in locating in Christian County.

Respectfully yours,

Frank Gary

Frank M. Gary
County Judge/Executive

FMG:mdg

EXHIBIT 8

HOPKINSVILLE • CHRISTIAN CO.
Industrial Development
& Economic Authority

July 17, 1984

Mr. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Washington, D.C. 20515

Dear Mr. Kastenmeier:

As a City/County organization dedicated to economic development of our area, we are in full support of the locating of a Federal Court in Hopkinsville.

We would appreciate your positive consideration in regard to this most important matter.

Sincerely,

Robert Carter
Chairman

ewm

EXHIBIT 9

P. O. BOX 1382
HOPKINSVILLE, KENTUCKY 42240
(502) 887-4022

LAW OFFICES
BEN S. FLETCHER III
1102 SOUTH VIRGINIA STREET PLAZA
POST OFFICE BOX 898
HOPKINSVILLE, KENTUCKY 42240

BEN S. FLETCHER III
DONNA A. CHU

AREA CODE 502
885-7671

July 20, 1984

Mr. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Washington, D.C. 20515

Dear Mr. Kastenmeier:

The Hopkinsville/Christian County Chamber of Commerce has unanimously passed a resolution approving the location of a Federal court in Hopkinsville, Kentucky. Due to the 70 to 90 mile trip that witnesses, court participants, attorneys and others must make to Paducah to participate in Federal court proceedings, it seems logical for a Federal court to be located in Hopkinsville. We have a large minority population in this area (over 35%) and due to their socioeconomic status it is extremely difficult for them to participate in Federal court proceedings in Paducah. Furthermore, over 20,000 troops are now located at Fort Campbell, Kentucky Army Post here in Christian County. These soldiers and their families, and the Federal court legal work generated therefrom, could best be handled by the location of a Federal court in Hopkinsville rather than requiring these soldiers and their families to travel to Paducah (some 90 miles away) to have their cases heard and to participate in the Federal court system.

Lastly, the location of a Federal court in downtown Hopkinsville in the former United States Post Office building would be of immense benefit to our downtown revitalization efforts. Downtown Hopkinsville has a large historical district and the location of a Federal court in the old post office building would serve as a cornerstone for this historic development.

Sincerely yours,

Ben S. Fletcher III
Vice President, Legislative Affairs
Hopkinsville/Christian County
Chamber of Commerce

BSF:ai

EXHIBIT 10

LAW OFFICES
BEN S. FLETCHER III
1102 SOUTH VIRGINIA STREET PLAZA
POST OFFICE BOX 888
HOPKINSVILLE, KENTUCKY 42240

BEN S. FLETCHER III
DONNA A. CHU

AREA CODE 502
885-7671

July 20, 1984

Mr. Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
Washington, D.C. 20515

Dear Mr. Kastenmeier:

The Christian County Bar Association is 100% behind the location of a Federal court in Hopkinsville, Kentucky. We have previously sent our views to the Sixth Circuit Judicial Counsel. The Christian County Bar Association feels the caseload in this area justifies the location of a Federal court in Hopkinsville. Furthermore, the location of a large military base in this County, Fort Campbell, Kentucky, with over 20,000 troops, generates a tremendous number of Federal cases which could and should be disposed of in Hopkinsville, Kentucky since this in the long run will save the Federal Government a considerable amount of money.

Cordially,

Ben S. Fletcher III, President
Christian County Bar Association

BSF:ai

EXHIBIT 11

I

98TH CONGRESS
1ST SESSION

H. R. 4179

To amend section 93 of title 28, United States Code, to permit Federal district court to be held in Champaign/Urbana, Illinois.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1983

Mr. MADIGAN introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend section 93 of title 28, United States Code, to permit Federal district court to be held in Champaign/Urbana, Illinois.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 93(b) of title 28, United States Code, is amended by inserting "Champaign/Urbana," before "Danville".

O

EDWARD R. MADIGAN
ILLINOIS

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

August 6, 1984

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for giving me the opportunity to comment on H.R. 4179, legislation I have introduced to authorize the Central District of Illinois to hold court in Champaign/Urbana. I will address each of the questions for which you have requested a response.

1. What is the need, local or national, for the legislation you have proposed?

Since the reorganization of the Eastern and Southern Districts into the Central District of Illinois in 1979, there has been a dramatic increase in the number of annual filings in the eastern division of the Central District. The filings have increased from 200 a year to almost 600. To help the eastern division handle the larger case load a new magistrate has been approved for the district. This judge will spend at least three out of five days in the eastern division, the remainder of that magistrate's time will be spent in Peoria. Since there is only one courtroom in the eastern division, a new one needs to be built in which this magistrate will be able to try jury cases, especially pro se prisoner civil rights cases which have accounted for a large portion of the increase of the case load. The new courtroom would also be used by visiting judges.

Danville, the site of the present courtroom, is no longer the center of population, communications, and transportation in the eastern division. Champaign/Urbana is a more centrally located city in the division and would be an ideal site for the new courtroom. Litigants and jurors would benefit from the improved location and it will also facilitate shuttling the

new magistrate between Peoria and the eastern division. Also, placing the new courtroom in Champaign/Urbana would allow the courts an opportunity to make use of the senior law students at the University of Illinois in the trial of pro se prisoner civil rights cases.

It is stressed that Champaign/Urbana would be an additional place for the court to sit. Danville will not be abandoned and will continue to be the official station of the Honorable Harold A. Baker.

2. What are the anticipated costs of the reorganization you have proposed?

No costs will be incurred by the passage of H.R. 4179. An additional courtroom needs to be built in the division. This bill only addresses the question of where to build the new courtroom. In the future there would be a request for funds to construct the additional courtroom in the Springer Federal Building in Champaign.

3. What, if any, alternative means are available which might serve the same purposes which your legislation serves?

The only alternative to solving the court's need for an additional courtroom facility would be to construct that courtroom in Danville. The cost would be approximately the same, but the new court would not be at the center of population, transportation or communication for the eastern division of the district.

4. Is there any identifiable support and/or opposition to your reorganization plan? If there is opposition, what causes the controversy?

The three judges of the district support the addition of Champaign/Urbana as a place for the court to sit. The Judicial Conference of the United States has approved it, as has the Judicial Council of the Seventh Circuit. You have already received the approval of the Administrative Office of the United States.

The Vermilion County Bar Association has expressed opposition to naming Champaign/Urbana as an additional place for the court to sit, under the misapprehension that Danville would no longer be a place for holding court. This bill would not have the court abandon Danville. Judge Baker will maintain Danville as his official station. Judge Baker addressed the Vermilion County Bar Association on July 31 to put their minds at ease that Danville will continue to be the primary place for holding court.

Again, thank you for the opportunity to provide your Subcommittee on Courts, Civil Liberties and the Administration of Justice with this information. Please let me know if there is anything else I can do to facilitate favorable action on H.R. 4179.

Sincerely,

Edward Madigan
Representative in Congress

ERM/jd

I

98TH CONGRESS
2D SESSION

H. R. 4662

To establish the McAllen Division of the Southern District Court of Texas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1984

MR. DE LA GARZA introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To establish the McAllen Division of the Southern District Court of Texas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 124 of title 28, United States Code, is amended—

(1) by striking out "six divisions" and inserting in lieu thereof "seven divisions";

(2) in paragraph (4) by striking out ", Hidalgo, Starr,"; and

(3) by adding at the end thereof the following new paragraph:

"(7) The McAllen Division comprises the counties of Hidalgo and Starr.

Court for the McAllen Division shall be held at McAllen.".

SEC. 2. (a) Except as otherwise provided in this section, the amendments made by this Act shall take effect on October 1, 1984.

(b) The amendments made by this Act shall not apply to any action commenced before October 1, 1984, and pending in the United States District Court for the Southern District of Texas on such date.

(c) Nothing in this Act shall affect the composition or preclude the service of any grand or petit juror summoned, impaneled, or actually serving in any judicial district on October 1, 1984.

O

KIKA DE LA GARZA
15TH DISTRICT, TEXAS

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

7 August 1984

Hon Robert W Kastenmeier, Chairman
Subcommittee on Courts, Civil Liberties
and The Administration of Justice
Committee on the Judiciary
2137 Rayburn HOB
Washington, D C 20515

Dear Mr Chairman:

This will reply to your letter to me of 28 June regarding my bill H R 4662, to establish a McAllen Division of the U S Southern District Court System of Texas. The attached is sent in response to notification from your subcommittee that the bill would be heard Thursday, 9 August in Room 2226 Rayburn and that written testimony would be sufficient.

Thank you for hearing my bill. With highest regards, I am

Sincerely

E (Kika) de la Garza, M C

gap

KIKA DE LA GARZA
18TH DISTRICT, TEXAS

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

STATEMENT BY
E (Kika) de la Garza
Before The
Subcommittee on Courts, Civil Liberties,
and The Administration of Justice
of the
Committee on the Judiciary
9 August 1984

Mr Chairman and members of the subcommittee, this is in support of my bill H R 4662, to establish a McAllen Division of the U S Southern District Court System of Texas. Your subcommittee asked for my response to four questions and I will take them in order as follows:

1.) What is the need, local or national, for the proposed legislation? Primarily, a jurisdictional division of the work at the Brownsville Division would effectively improve the administration of justice and alleviate problems creating undue economic burdens on the government. The vast geographic area of the Brownsville Division incurs large travel costs for court and executive branch employees. The high incidence of criminal arrests requirs a funneling of all prisoners to Brownsville, requiring transportation, posing security and travel problems. Such funneling results in the overcrowding of local jail facilities, creating a hardship and requiring lodging at facilities located great distances from Brownsville. The Brownsville jury wheel includes a mix of jurors from Hidalgo, Starr, Willacy and Cameron Counties which increases juror costs to the government and creates an inconvenience for the citizens of that division.

2.) What are the anticipated costs of the proposed reorganization? All of the law enforcement, prosecutorial and services agencies involved with the ordinary processing of criminal cases have been interviewed and offered impact statements which I will provide as to the budgetary considerations with the creation of a new division at McAllen. These agencies report significant savings in such areas as travel, per diem, transportation, vehicle depreciation, telecommunications, extra and overtime personnel and prisoner housing costs.

The following is a listing of the estimated reduction in costs, by the establishment of a McAllen Division, considering the objective and measurable factors previously mentioned:

Internal Revenue Service	$ 5,400
Federal Bureau of Investigation	54,000
U S Marshal Service	54,300
Drug Enforcement	130,000
Customs Agency	30,000
U S Probation	33,800
Border Patrol	62,000
Fish and Wildlife Agency	17,000
U S Attorney's Office	2,500
U S Customs Patrol	19,400
U S Courts	23,000
	$ 431,400

All of the above agencies' projections indicate a possible gross savings of $431,400 annually. All agencies involved either have existing duty stations or offices located in the McAllen area and claim there would be no cost of additional staffing since personnel exists at that location. As a matter of fact, it is predicted that there will be an economy in gained man hours which is not figured into these considerations as a result of time saved in transporting prisoners, attending court sessions as witnesses and performing other administrative duties outside of the McAllen area.

The only government agency requiring additional space, other than the U S Courts, will be the U S Attorney who estimates that lease space will represent a cost of approximately $13,500 annually. Courtrooms, chambers and clerk's office space with a maximum of two additional deputy clerks will represent an annual cost of approximately $111,000 for a total of $124,500 annually. Estimating a total savings of $431,400, less the anticipated additional annual cost to the U S Attorney and the U S Courts, an annual savings of approximately $306,900 is anticipated.

Let me add that in any consideration, the cost of jury management is a major factor. During the twelve month period ending in December of 1983 there were a total of 2,498 jurors summoned from the existing four county Brownsville Division. Of those summoned 42% were from Cameron/Willacy Counties while 58% were from Hidalgo and Starr Counties. The total estimated juror travel for the twelve

month period within the existing Brownsville jurisdiction represents 282,248 miles. The total estimated juror costs for travel for that period was approximately $58,000. By taking the average mileage within the two proposed divisional offices and applying that average to the number of jurors historically summoned within the two county areas for the proposed divisions, it is estimated that the jurors cost to the McAllen Division would be $11,000 annually while the cost at the proposed Brownsville Division would be $23,000 for a total of $34,000 representing a savings of $24,000 in juror travel. The additional advantage would be the reduction and inconvenience to jurors serving in the existing broad geographical area belonging to the Brownsville Division.

3.) What, if any, alternative means are available which might serve the same purposes which this legislation would serve? Quite honestly, I see no viable alternatives for the very considerations I will continue to point out serve to emphasize the value of establishing a new divisional office in McAllen.

4.) Is there any identifiable support and/or opposition to your reorganization plan, and if there is opposition, what causes the controversy? Although I have made substantive inquiries, I have never heard of any opposition to the relocation. The Hidalgo County Bar Association which also includes the surrounding County of Starr supports this effort. All members of the Bar have been kept thoroughly posted on the progress of this legislation. In short, during the course of preparing this testimony the prospect of establishing a divisional office at McAllen serving Hidalgo and Starr Counties has met with enthusiasm from all government agencies involved and previously mentioned herein.

Mr Chairman, even though the projected annual savings of involved agencies totals $431,400, the greatest advantages seem to be the substantive considerations dealing with man hour savings in the transportation of prisoners, improving the quality of justice and representation by minimizing travel for attorneys, jurors, litigants, witnesses and clients. Other subjective factors include the improvement of relationships between enforcement agencies and local commissioners courts which will possibly result in improved jail facilities and general working relationships among federal, state and local officers.

In short, the creation of this division, while expanding the levels of responsibility for administering such a district and increasing as well the responsibilities of the Chief Judge, the Clerk of the Court and the Public Defender, will serve the central purpose of the U S District Court through improved administration of justice at the grass roots level. I therefore close, Mr Chairman, by stating this is a situation desperately needed and one which needs addressing since as I stated previously I can personally see no alternative that approaches the value of establishing a new division office at McAllen.

I thank you for your attention.

In addition to to my written testimony I am enclosing letters from supporters which I feel support the wisdom of the creation of the McAllen Division from the standpoint of effective administration of justice and economy of operation.

CLARK & PRESTON, P.C.
P. O. BOX 1198
1420 CONWAY
MISSION, TEXAS 78572

JOHN W. CLARK
JOSEPH R. PRESTON

(512) 585-5068 or 585-4535

July 13, 1984

Hon. Kika De La Garza
U.S. House of Representatives
Washington, D.C. 20515

In Re: Creation of a McAllen Division within the United States District Court in the Southern District of Texas

Dear Congressman De La Garza:

Thank you for your letter of July 3, 1984 notifying us that a hearing has been set on H.R. 4662, your bill to create a McAllen Division in the U.S. District Court in the Southern District of Texas. I am writing this letter in the hope that it will be submitted at the hearing and considered by the Sub-committee on Courts, Civil Liberties and the Administration of Justice.

I am sure that you are familiar with the letter dated December 15. 1983 addressed to Chief Judge John B. Singleton and signed by the Hon. Jessie E. Clark, the Clerk of the Southern District. In that letter. there many reasons cited for the creation of a McAllen Division, and I would like to briefly summarize some of them.

As of course you are aware, there is a large geographical area involved in Brownsville Division. In order to commute to Brownsville from Mission, we must allot an hour and a half. Obviously if we have a setting in Federal Court at 8:30 a.m. this means that we must leave Mission at approximately 7:00 a.m. Those individuals who reside in Starr County, of course, must leave even earlier. This certainly is very wasteful in terms of travel time and expense. The same problem that the attorneys and litigants have is also shared by the governement. As Mr. Clark's letter indicated, the Jury wheel at Brownsville includes a mix of citizens from Hidalgo, Starr, Willacy and Cameron County. This means that many jurors must travel over an hour to serve on a Federal Court jury. In many cases, jurors who are selected from Hidalgo County must be on the road over two hours a day simply going to and from the Courthouse. This is extremely inconvenient for the jurors involved and of course it means additional costs for the government. In addition, there are problems with security and transportation of federal prisoners. All federal prisoners now must be taken to Brownsville and of course this creates security and travel problems. It also means additional cost to the government. In fact, Mr. Clark estimated in his letter that the government would be able to save

approximately three hundred and six thousand nine hundred dollars ($306,900.00) if a McAllen Division was established. While this amount may not be a large amount in terms of the Federal Government, it is certainly worth saving. Another important consideration is the fact that the Court system will operate much more efficiently if there is a Division established in McAllen. I might note that since we have two Federal District Judges currently in Brownsville, it would only be necessary to tranfer one to McAllen in order to provide a Judge for the McAllen Division.

In addition to the very sound reasons stated in Mr. Clark's letter, there are some additional considerations which I feel should brought to the sub-committee's attention. As you are aware the McAllen area is a fast growing area. When one considers the metropolitan area which contains McAllen, Mission, Pharr, San Juan, Alamo and Edinburg, the McAllen area is an area of fairly sizeable population. Although I do not have any up to the date census figures, I would estimate that this metropolitan area would total approximately 200,000 people. This is indeed a large population center. If the Valley's growth continues, the McAllen area can anticipate future growth. This means that there will be more business in the Federal District Courts and it will certainly be more convenient if a Federal District Court is located in McAllen.

In short, the establishment of a McAllen Division of the Southern District of Texas would be of benefit to everyone concerned. The taxpayers could be saved approximately $300,000.00 a year and those individuals residing in Hidalgo County and Starr County who have business before the Court, whether they be attorneys, litigants, or jurors, could be spared the necessity of having to drive over an hour. There is no opposition to the creation of this Division and I would respectfully urge that it be created.

Thank you for this opportunity to make our views known. We appreciat you efforts in behalf of this Bill.

Yours very truly,

CLARK & PRESTON, P.C.

By: /s/ Joseph R. Preston
Joseph R. Preston

JRP/ss

CLARK & PRESTON, P.C.
P. O. BOX 1188
1420 CONWAY
MISSION, TEXAS 78572

JOHN W. CLARK
JOSEPH R. PRESTON

(512) 585-8068 OR 585-4535

May 20, 1983

Rep. E. (Kika) de la Garza
Congress of the United States
House of Representatives
Washington, D.C. 20515

In Re: Hidalgo and Starr County Federal District Court

Dear Kika:

At this time, I feel that Hidalgo and Starr County have reached the population size and the volume of cases sufficient to justify the establishment of a Federal District Court for these two counties. This Court should be fully equipped with a U.S. Attorney's Office, U.S. Probation Office and Clerk's Office in order to function properly.

Thank you.

Yours very truly,

CLARK & PRESTON, P.C.

By: John W. Clark

JWC/jc
cc: Senator Lloyd Bentsen
U.S. Senate
Washington, D.C.

John G. Tower
U.S. Senate
Washington, D.C.

Ricardo Hinojosa
EWERS & TOOTHAKER
P.O. Box 3670
McAllen, Texas 78501

WIECH & BLACK
WIECH, BLACK, FLEMINO, HAMILTON, ROERIO, OLIVEIRA & FISHER
ATTORNEYS AT LAW
855 W. PRICE RD.- SUITE 26
BROWNSVILLE, TEXAS 78520
512 542-8666
CABLE ADDRESS: ENDPORT

JACK WIECH
JOHN WM. BLACK
TOM FLEMING
CHARLES E. HAMILTON
JEFFREY D. ROERIG
RENE O. OLIVEIRA
W. MICHAEL FISHER
RUBEN S. ROBLES

February 2, 1984

Hon. Eligio De La Garza
United States Representative
House Office Building
Washington, D. C. 20515

Dear Congressman De La Garza:

I read with interest in the Brownsville Herald on January 27, 1984, an article which discussed your pending legislation to create another division in the Southern District of Texas at McAllen.

As one who spends a substantial amount of time in Federal Court in Brownsville, I wish to endorse your proposal most enthusiastically.

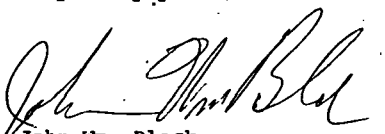
As I am sure you are aware, the docket in Brownsville has grown tremendously in the last few years. The establishment of another division in McAllen would relieve much of the congestion in the courthouse at Brownsville, both physically and as far as case flow.

I believe that establishing another division in McAllen would be cost effective in that jurors traveling from Starr County would have less distance to go and the Federal government would have to pay less for mileage. Additionally, prisoners from Starr and Hidalgo Counties would not have to be transferred to Brownsville for preliminary hearings, arraignments and trials. This would be a substantial savings for the Marshal's service.

I commend you for your introduction of this legislation and I hope that your colleagues in the Congress will see the merit to it and pass it quickly and the President

will sign it rapidly so this needed improvement in the administration of justice can be moved along with dispatch.

Very truly yours,



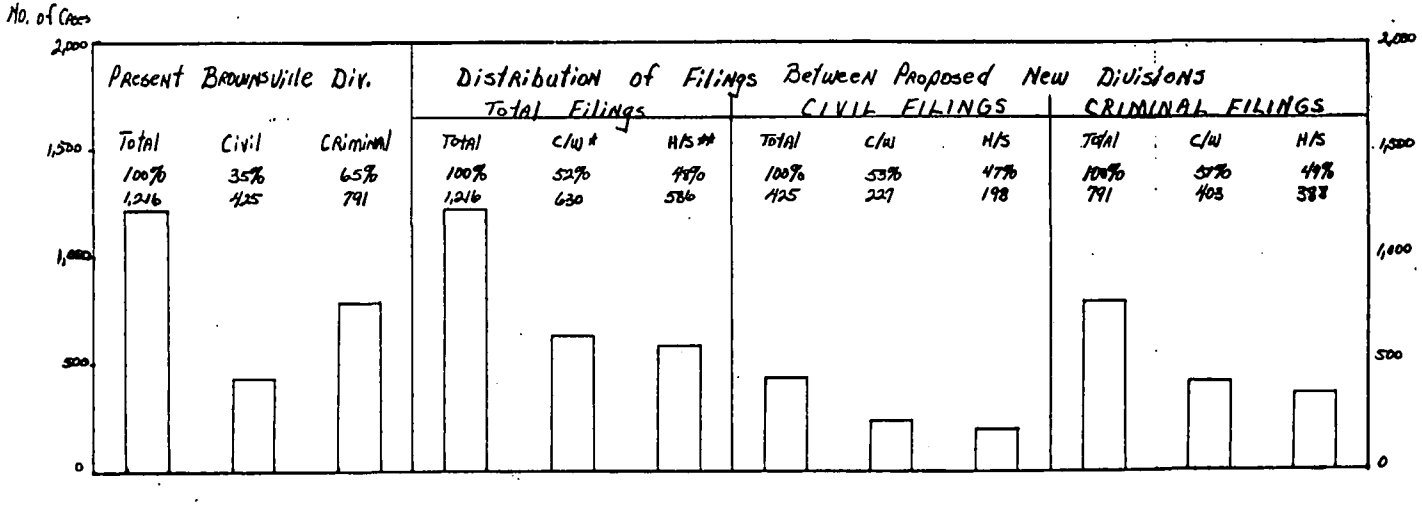
John Wm. Black

JWB:nf
cc Hon. Solomon Ortiz
Hon. Lloyd Bentsen, Jr.
Hon. Filemon Vela
Hon. Ricardo Hinojosa

Graph # 1

CASE LOAD COMPARISONS - BROWNSVILLE, TEXAS DIVISION

Based on Twelve Months Filings Ended Nov. 30, 1983

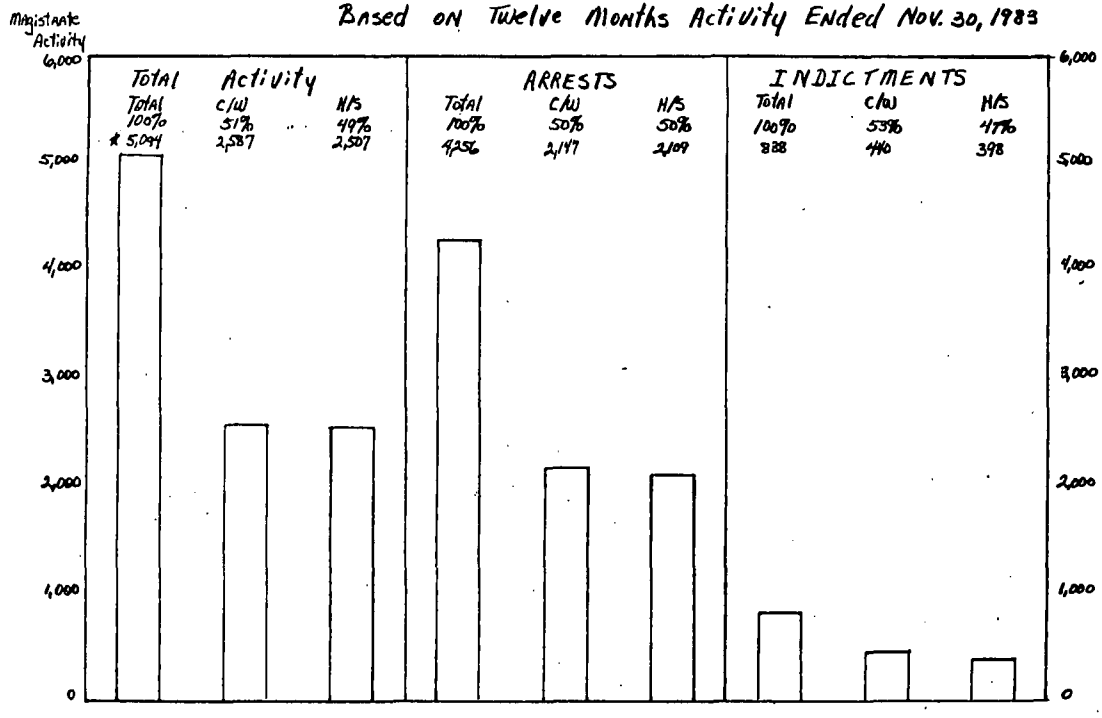


* CAMERON/WILLACY COUNTIES — NEW BROWNSVILLE DIVISION

** HIDALGO/STARR COUNTIES — NEW McALLEN DIVISION

Graph # 1 (Cont.) Magistrate Activicty - Brownsville Division

Based on Twelve Months Activity Ended Nov. 30, 1983

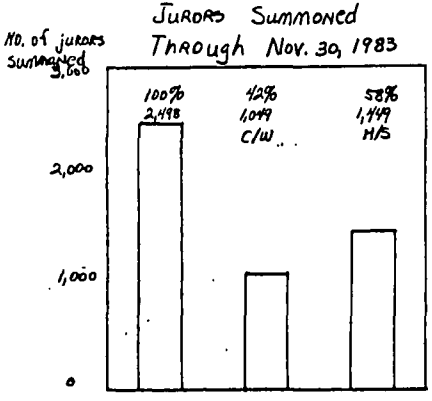


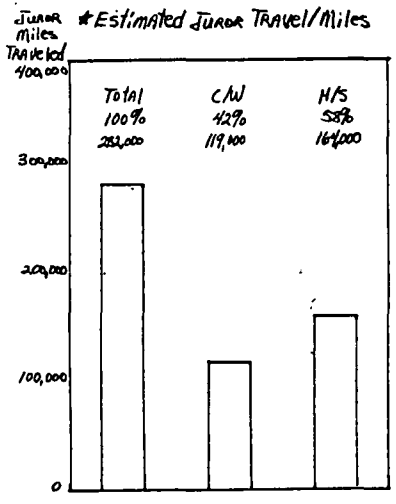
* Total Magistrate Activity

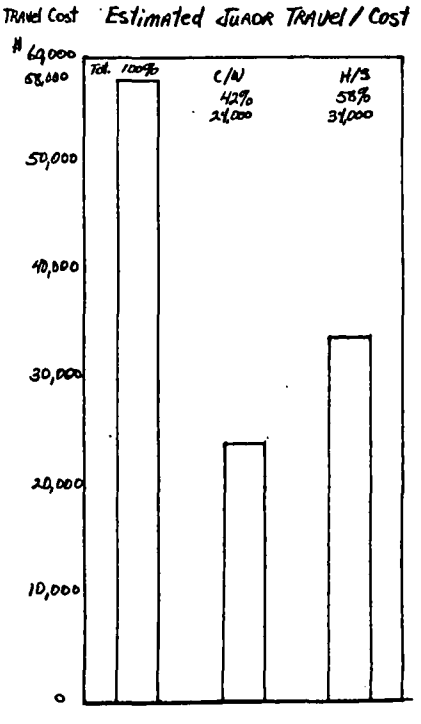
Arrests	4,256	84%
Indictments	838	16%
Total	5,094	100%

Graph # 2

Juror Cost/Travel Expense Analysis





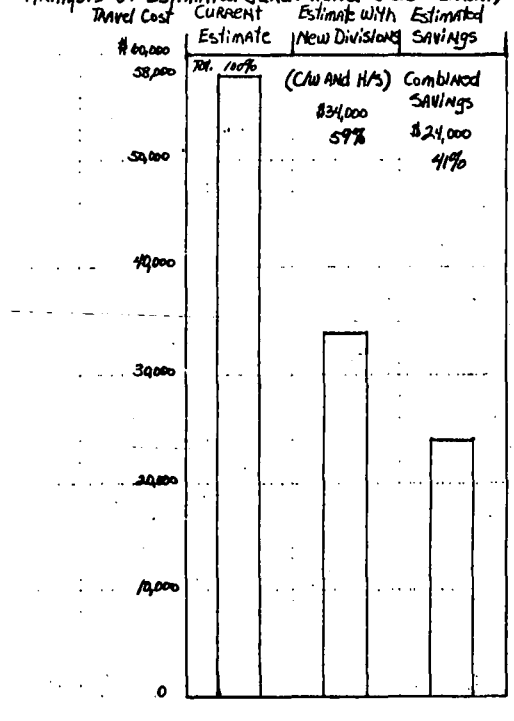


* Note: Greater percentage of jurors summoned from Hidalgo & Starr counties due to greater population in those counties. Travel cost is also higher due to division office being located in Brownsville rather than McAllen.

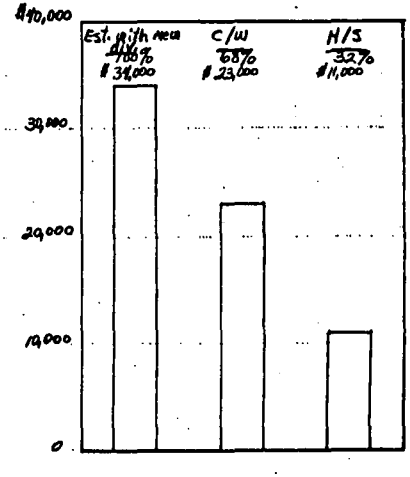
Graph # 2 (Cont.)

Juror Cost/Travel Expense Analysis (Cont.)

Analysis of Estimated Juror Travel Costs-Current/Proposed Divisions



Analysis of Estimated Juror Travel Costs with New Divisions



I

98TH CONGRESS
2D SESSION

H. R. 5777

To amend title 28 of the United States Code to provide for holding terms of the United States District Court for the District of Vermont at Bennington.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1984

Mr. JEFFORDS 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 for holding terms of the United States District Court for the District of Vermont at Bennington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 126 of title 28, United States Code, is amended by inserting "Bennington," before "Brattleboro".

O

JAMES M. JEFFORDS
VERMONT CONGRESSMAN

COMMITTEE ON AGRICULTURE
SUBCOMMITTEES:
LIVESTOCK, DAIRY AND POULTRY
RANKING MINORITY MEMBER
CONSERVATION, CREDIT AND
RURAL DEVELOPMENT

COMMITTEE ON EDUCATION AND
LABOR
SUBCOMMITTEES:
EMPLOYMENT OPPORTUNITIES
RANKING MINORITY MEMBER
POSTSECONDARY EDUCATION

SELECT COMMITTEE ON AGING

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

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121 WEST STREET
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(802) 773-3878

August 7, 1984

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Civil Liberties
and the Administration of Justice
U.S. House of Representatives
Washington, D.C. 20515

Dear Bob:

I want to thank you for scheduling consideration of H.R. 5777, legislation I introduced that would authorize the Judicial District of Vermont to hold court in Bennington, Vermont, in addition to those sites currently permitted. I believe this legislation is worthwhile and broadly supported, and am happy to respond to the questions outlined in your letter of June 28.

The need for this legislation is primarily local, and is precipitated by U.S. District Court Judge James Holden's decision to take senior status. For the past several years, Judge Holden has been commuting from his home in Bennington, Vermont to Rutland, Vermont to hold court. Upon assuming senior status, Judge Holden would like to hold court in Bennington rather than continuing to do so in Rutland.

Judge Holden's request is entirely reasonable. Bennington will provide a very useful additional site for the state of Vermont, as there currently is none in southwestern Vermont. The commute for Judge Holden, or anyone appearing in federal court from that area, will be greatly reduced. The current commute, to Rutland or Brattleboro, is a substantial distance under any circumstances, but is especially so in the winter months.

Judge Holden has ably served the judiciary and the bar for many years. With the caseload increasing in Vermont, and given his considerable experience, we would be remiss if we did not take this opportunity to continue to call upon his talents.

This legislation will very likely result in cost savings to the federal government. Under any circumstances, chambers would need to be provided to either Judge Holden or his successor Judge Billings. By authorizing federal court to sit in Bennington, the federal government will obtain, at no cost, the use of an additional courtroom. The Vermont Supreme Court and the Court Administrator have agreed to provide the use of either of the state's courtrooms in Brattleboro to Judge Holden

at no cost. The federal government will also save on travel reimbursement to Judge Holden.

Alternative means to serve the same purpose do not exist. As indicated above, requiring Judge Holden to hold court in Rutland would in all likelihood be more costly, and would be much more cumbersome. The same would be true of holding court in Brattleboro. I should note that 28 U.S.C. Sec. 128 also provides for holding court in the town of Windsor. This would be an even longer commute. Moreover, the facilities there are entirely inadequate and were relinquished to the postal service many years ago. The facility was later used by a state court of limited jurisdiction, but its use by the State of Vermont has since been terminated.

I am aware of no opposition to this reorganization plan, nor do I believe that any will materialize. As you can see from the enclosed documents, creating this additional site has widespread and enthusiastic support, including that of the Administrative Office of the United States Courts, the Judicial Council of the Second Circuit, the Vermont Bar Association, and the U.S. Attorney. This proposal also has the unanimous support of Vermont's Congressional delegation.

Again, I thank you and the members of the subcommittee for your consideration of this legislation. Please let me know if I can be of any further assistance.

Sincerely,

James M. Jeffords

cc: Hon. Carlos Moorhead
enclosures
JMJ:mp

OCT 18 1983

United States District Court

District of Vermont

Chambers of
James S. Holden

Rutland, Vt. 05701-0218
October 13, 1983

Received in Chambers
Date OCT 27 1983

Honorable Wilfred Feinberg
Chief Judge
U.S. Court of Appeals
U.S. Courthouse, Room 2004
Foley Square
New York, New York 10007

Dear Chief Judge Feinberg:

It is my understanding that an omnibus bill to amend Chapter 5 of Title 28, United States Code, concerning statutorily designated places where the district court shall be held and court facilities authorized, is presently awaiting action by the 98th Congress. The provisions of 28 U.S.C. § 462(b) prescribe that the Director of the Administrative Office of the United States Courts "... shall provide accommodations, including chambers and courtrooms, only at places where regular sessions of court are authorized by law to be held, but only if the judicial council of the appropriate circuit has approved the accommodations as necessary."

On January 29, 1984, I will become eligible for senior status as provided in 28 U.S.C. § 371. It is my intention thereafter to discharge all judicial duties for which I may be designated and assigned. It is my hope that such duties may be undertaken after January next at my official station, which will then be at Bennington, Vermont, where my permanent residence has always been located.

In the event the pending legislation should be expanded to amend 28 U.S.C. § 126 to include Bennington as a location for holding court in the district of Vermont, there would be no present need for the Director of the Administrative Office to provide a courtroom. In keeping with favorable federal and state judicial relations, federal court facilities, when not in use by the federal courts, have been made available to the state courts when needed. The chief justice of Vermont has assured me that the state court facilities at Bennington will be available for federal judicial proceedings. It is anticipated that when my successor is appointed, there will be a compelling need for courtroom and chambers to accommodate the requirements of both the active and senior federal judges.

Before looking toward a legislative solution to the approaching problem, it seems more orderly, and in keeping with the 1978 resolution of the Judicial Conference, to obtain preliminary consideration by the council and the appropriate committee of the Judicial Conference. It is for this purpose that I write at this time.

Respectfully,

James S. Holden

cc:

Honorable James L. Oakes
Honorable Sterry R. Waterman
Honorable Albert W. Coffrin
Honorable Robert T. Stafford
Honorable Patrick J. Leahy
Honorable James M. Jeffords
Steven Flanders, Esquire
Circuit Executive

pc: Congressman Jeffords (att: Mr. Mark Powden) 7/2/84

(Space)

United States District Court

District of Vermont

Chambers of
James S. Holden

Rutland, Vt. 05701-0218
November 3, 1983

Honorable George W. F. Cook
United States Attorney
P.O. Box 10
Rutland, Vermont 05701-0010

Joseph E. Frank, Esq.
President, Vermont Bar Association
Paul, Frank & Collins
P.O. Box 527
Burlington, Vermont 05402-0527

Leonard F. Wing, Esq.
President-Elect, Vermont Bar Association
Ryan, Smith & Carbine, Ltd.
P.O. Box 310
Rutland, Vermont 05701-0310

Gentlemen:

The appointment of an active full-time district judge to fill the vacancy created by my change from active to senior status may generate the need for additional court facilities. There is a possibility that Congress may include Bennington as an authorized location for holding federal court.

With this eventuality in mind, on October 13, 1983, I submitted a proposal to Chief Judge Feinberg, seeking approval of the Second Circuit Judicial Council. In 1978 the Judicial Conference of the United States adopted the following resolution concerning congressional action on places for holding court:

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

Honorable George W. F. Cook
Joseph E. Frank, Esq.
Leonard F. Wing, Esq.

November 3, 1983

It is now the policy of the Conference to solicit the views of the bar association and the United States Attorney for the district concerning the authorization for any new or additional place for holding court.

In keeping with this policy, the Circuit Executive has requested me to obtain your input on the proposal. So that your thoughts may be expressed to the Judicial Conference, your communication should be addressed to the Honorable Wilfred Feinberg, Chief Judge, U.S. Court of Appeals, U.S. Courthouse, Room 2004, Foley Square, New York, New York 10007.

Your expressions about the proposal will be much appreciated.

Sincerely,

James S. Holden

encl.
(pc ltr dated 10/13/83 to Chief Judge Feinberg)

cc:

Steven Flanders, Esquire
Circuit Executive

Honorable Albert W. Coffrin
Chief Judge, District of Vt.

pc: (7/2/84) Congressman Jeffords - Att. Mr. Mark Powden ✓

UNITED STATES COURTS
JUDICIAL COUNCIL OF THE SECOND CIRCUIT

STEVEN FLANDERS
CIRCUIT EXECUTIVE
(212) 791-0988

U. S. COURTHOUSE
NEW YORK, N. Y. 10007
(FTS) 668-0988

November 9, 1983

Mr. William James Weller
Legislative Affairs Division
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Bill:

This is to inform you that the Judicial Council of the Second Circuit has approved the request of Judge James S. Holden, District of Vermont, that Chapter 5 of Title 28 be amended to add Bennington to the list of places where court may be held in the District of Vermont. As is amply demonstrated in the attached letter from Judge Holden, dated October 13th, this modification will improve service to the bar and the public in Vermont at no cost to the government. Indeed, it is probable that a substantial savings will result, as the federal courts will obtain use at no cost of a courtroom in this new location, and the construction of chambers in question would probably be necessary in any case.

As you suggested when we spoke, I am hereby requesting that you take the necessary steps to bring this matter before the Committee on Court Administration and the Executive Committee of the Judicial Conference of the United States, so that the approval of the Judicial Conference (if granted) can be transmitted to Congress early next year. I understand that House consideration of other proposed modifications to Chapter 5 is anticipated as early as February 1984, but not before that.

I am authorized to tell you that Judge Holden has inquired of the views of the United States Attorney for the District of Vermont, and of state and local bar associations. The proposal has been energetically championed by the bar of Bennington County, and it has the approval of the United States Attorney and of the president and president-elect of the Vermont Bar Association. We are unaware of any opposition from any quarter.

Thank you for your assistance in this matter. I am sending copies of this letter, as noted below, to the recipients of Judge Holden's letter of October 13th.

Sincerely,

Steven Flanders

Steven Flanders

SF:MF

cc: Chief Judge Feinberg
Judge Oakes
Judge Waterman
Judge Holden
Judge Coffrin
Hon. Robert T. Stafford
Hon. Patrick J. Leahy
Hon. James M. Jeffords
Mr. Foley
Mr. Macklin

pc: Congressman Jeffords (Att. Mr. Mark Powden) ✓7/2/84

U.S. Department of Justice

United States Attorney
District of Vermont

Post Office Box 10
Rutland, Vermont 05701

802/775-1996
FTS/832-9231

November 9, 1983

Honorable Wilfred Feinberg
Chief Judge
United States Court of Appeals
U. S. Courthouse, Room 2004
Foley Square
New York, New York 10007

Dear Judge Feinberg:

Honorable James S. Holden, U.S. District Judge for Vermont, has asked me to comment on his letter to you of October 13, 1983 concerning the proposed designation of Bennington, Vermont as a cite for the undertaking of Judge Holden's judicial duties following his designation as a senior status judge on January 29, 1984.

This is to advise you and the judicial council that this office certainly endorses this proposal since it provides additional court resources in Vermont which are quite convenient to our U.S. Attorney's office in Rutland, Vermont. Driving time from our Rutland office to Bennington is considerably shorter than the other currently available federal court facilities outside of Rutland, that is, those facilities at Burlington, Brattleboro and Montpelier, Vermont.

Additionally, it is certainly within the best interests of the Department of Justice and the people of Vermont to continue to receive the dedicated judicial services of Judge Holden whose exemplary qualifications as a federal judge are indeed irreplaceable. As Judge Holden points out in his letter to you, there are wholly adequate state courtroom facilities available for federal court use in Bennington, and hence the proposal of Judge Holden only requires that chambers facilities be added.

Accordingly, as U.S. Attorney, I am pleased to support the proposal of Judge Holden and will be glad to provide any additional information upon receipt of a request.

Respectfully,

George W. F. Cook

GEORGE W. F. COOK
United States Attorney

GWFC:bw

pc: Congressman Jeffords - Att: Mr. Mark Powden (7/2/84)

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF
STERRY R. WATERMAN
U. S. CIRCUIT JUDGE
FEDERAL BUILDING
ST. JOHNSBURY, VERMONT 05819

November 14, 1983

Steven Flanders
Circuit Executive
United States Courts
United States Courthouse
New York, New York 10007

Dear Steve:

I have the copy of your letter to Bill Weller relative to Jim Holden's wish to add Bennington to the list of places where court may be held in the District of Vermont. I heartily approved of Jim's request when he made it, and I am delighted that you find it reasonable.

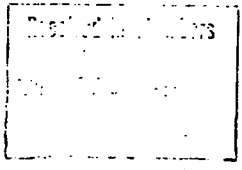
Jim has had a wonderful judicial experience and will keep at it, I am sure, after "retirement" at Bennington.

Sincerely,

Sterry R. Waterman

SRW:jd
cc: Hon. Wilfred Feinberg
Hon. James S. Holden
Mr. Foley

pc: (7/2/84) Congressman Jeffords - Att: Mr. Mark Powden



NOV 20 1983

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CHARLES F. RYAN (1901-1977)
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OF COUNSEL
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MARION T. FERGUSON
ELLEN W. BURGESS

TELEPHONE (802) 773-3344

November 18, 1983

Honorable Wilfred Feinberg
Chief Judge
U. S. Court of Appeals
U. S. Courthouse, Room 2004
Foley Square
New York, New York 10007

Dear Chief Judge Feinberg:

I am writing to you at the request of the Honorable James S. Holden, Chief Judge, U. S. District Court, District of Vermont, with respect to his request that Bennington, Vermont, be designated as an authorized location for the holding of federal court. I am writing to you not only as President-Elect of the Vermont Bar Association, but also as an active trial attorney.

I heartily endorse Judge Holden's request for an additional facility because, as you well know, the case load in Vermont is increasing annually and Judge Holden's change from active to senior status is indeed a loss to the judiciary and the bar in the state of Vermont. We hope he has many more years of active service, and if the designation of the additional facility in Bennington will enable him to serve the State which he has served so long and well, it should be done.

The facilities which Judge Holden has requested to be designated as additional facilities is more than adequate for the purpose of not only hearings, but of jury work in the event it is necessary.

May I apologize for being so tardy in replying to Judge Holden's request? I have been out of my office for an extended period of time involving a case in the Northern District of New York.

I trust the above will be of some assistance to you in your deliberations.

Very truly yours,

Leonard F. Wing, Jr.

pc: Congressman Jeffords (7/2/84)
Att: Mr. Mark Powden

LFW:ams

Vermont Bar Association

P. O. Box 100
Montpelier, VT 05602

802-223-2020
800-649-5153

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Sigmund J.A. Wysolmerski

November 18, 1983

Honorable Wilfred Feinberg
Chief Judge
U. S. Court of Appeals
U. S. Courthouse, Room 2004
Foley Square
New York, NY 10007

Dear Chief Judge Feinberg:

The Vermont Bar Association, through its Board of Managers, has considered whether Congress should be asked to add Bennington as an authorized location for holding federal court in Vermont.

The Board of Managers at its meeting today voted unanimously to support the proposal. Such action will facilitate continued service by Judge James S. Holden when he assumes senior status next January. In addition, the public will have the benefit of a federal judge being available more of the time in the extreme southern portion of Vermont, and the cost of adding Bennington as an authorized location probably will be less than the cost that would be involved in having Judge Holden quartered in Rutland or Brattleboro.

Copies of this letter are being sent to the Vermont Congressional Delegation with the expectation that they will support the proposal wholeheartedly.

Sincerely yours,

Joseph E. Frank

Joseph E. Frank
President

JEF/ah
cc: Hon. Robert T. Stafford
Hon. Patrick J. Leahy
Hon. James M. Jeffords
Hon. Albert W. Coffrin
Steven Flanders, Esquire
pc: Congressman Jeffords (Att: Mr. Mark Powden) 7/2/84

SUPREME COURT OF VERMONT
FRANKLIN S. BILLINGS, JR., CHIEF JUSTICE

(802) 828-3276
111 STATE STREET
MONTPELIER, VERMONT
05602

July 3, 1984

Hon. James Holden
United States District Judge
P.O. 218
207 Federal Building
Rutland, VT 05701

Dear Judge Holden:

This is to advise you that the Supreme Court and the Court Administrator hereby give you permission to use either the District Court or the Superior Court in Bennington in hearing cases that may come before you as a Senior District Judge. Obviously, you will have to coordinate the schedules with the various clerks involved since if the court is being used on State affairs, I believe, in this case, the Federal Government will have to defer thereto. However, when there are vacancies we will be most pleased to have you make use of the facilities without cost.

Kind personal regards.

Sincerely yours,

Franklin S. Billings, Jr.
Chief Justice

FSB:ab

LINDSAY THOMAS
FIRST DISTRICT, GEORGIA

WASHINGTON OFFICE:
427 CANNON BUILDING
(202) 225-4831

COMMITTEES:
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MERCHANT MARINE AND
FISHERIES

DISTRICT OFFICES:
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ROOM 240
OLD POST OFFICE BUILDING
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(912) 944-4074

161 S. MACON STREET
JESUP, GEORGIA 31545

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

March 28, 1983

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:

In accordance with our conversation in your office in January, I am enclosing as a matter for your information material which has been sent to me regarding the proposed relocation of the Swainsboro Division of the U.S. District Court in Georgia.

As we discussed, I appreciate your courtesy in advising me and working with me to fully and fairly deal with this matter in the event that the relocation proposal is submitted to your subcommittee by the Administrative Office of the Courts during this Congress.

Thank you for your attention to this matter.

Sincerely,

Lindsay

Lindsay Thomas
Member of Congress

Enclosure

PROPOSAL FOR THE MAINTENANCE OF
THE SWAINSBORO DIVISION

Since the early 1940s, there has existed, by act of Congress, the Swainsboro Division of the United States District Court for the Southern District of Georgia. For approximately twenty years, Emanuel County furnished, without charge to the U. S. Government, office space for use by the deputy clerk in the Emanuel County Courthouse and use of the courtroom itself for hearings and trials. In the mid-1960s, a new post office building was constructed in Swainsboro and the existing post office was converted and renovated for use as a Federal District Courthouse. In late 1979, members of the Statesboro Bar initiated a proposal to have the Swainsboro Division closed and a new division opened in Statesboro even though there is no building available for use by the Federal District Court other than the Bulloch County Courthouse.

The existing Federal Court facility in Swainsboro is more than adequate for the number and types of cases normally tried in a rural division of a district court. The courtoom itself is furnished quite nicely and is certainly of adequate size considering the modern movement toward smaller and more energy-efficient and audio-efficient courtrooms.

In the Courthouse building, there are fifteen separate offices for the use of Court officials, attorneys, witnesses and jurors, and the building itself is approximately 5,000 square feet. There is also a holding cell area in the basement capable of housing at least three prisoners during a Court proceeding. Additionally, immediately adjacent to the building and surrounding the building there is paved and lighted parking for over 200 vehicles.

Until recently, the library in the building itself contained both the United States and Georgia Codes Annotated. Although those volumes are no longer present in the Courthouse building, the Emanuel County Law Library is located on the second floor of the Emanuel County Courthouse, less than 100 yards away. That library contains a complete federal library, except for Federal Supplement, and both the Emanuel County and the Middle Judicial Circuit Bar Associations are currently exploring the possibility of purchasing that set and any other research materials necessary for efficient use of the District Court facility. Also, the resources of Emanuel County Junior College can be utilized for the creation of a joint library facility, should that be necessary, and there is a complete federal library, containing both Federal Supplement and Federal Rules Decisions, in the Louisville County Library thirty miles away. Emanuel County also makes available, without charge, the duplicating facilities in the Superior Court Clerk's Office.

In Swainsboro itself, there are more than adequate restaurant facilities, including national chains such as Western Sizzlin', McDonald's, Hardee's and Huddle House. There is also within walking distance from the Courthouse an extremely nice restaurant (G. C.'s) with a private room for use by jurors during trials.

Admittedly, motel facilities in Swainsboro create somewhat of a problem. However, in the last year private individuals, under the auspices of the Chamber of Commerce, contributed approximately $8,000.00 in donations for a motel feasibility survey by an accounting firm that specializes in this type of activity. That survey has been delivered to at least two investment groups and, in the opinion of the Chamber of Commerce, Swainsboro will have a

new motel facility by the fourth quarter of 1983 or the first quarter of 1984 at the very latest.

There is no court building in Statesboro for use of the Federal District Court except the existing Bulloch County Courthouse. Those courtroom facilities are already used by two Superior Court Judges, the State Court of Bulloch County and, when necessary, the Probate Court of Bulloch County. Unlike Swainsboro, one of the Superior Court Judges for Bulloch County has a fulltime office located in the Courthouse and, therefore, there would be no office space readily available for use by the District Judge, even if the Courtroom facilities themselves were available.

The District Courthouse in Swainsboro is currently used by the Federal Magistrate; the Bankruptcy Court, and the United States District Court. Should the Division headquarters be transferred to Statesboro, the Bulloch County Courthouse facilities would have to be used by those same officers. Since the County Courthouse's primary function is to serve the State and Superior Courts, the District Court, the Magistrate and the Bankruptcy Court would have to schedule their proceedings so as not to conflict with the Superior and State Court proceedings. Not only would that do serious harm to the concept of judicial economy and expeditious resolution of litigation, but it is simply inconceivable that this arrangement could exist for any extended period of time. It should be apparent to anyone aware of the nature of court proceedings that within a very short span of time, it would be necessary to expend tax monies to construct a federal facility in Statesboro, which is an obvious waste of resources considering the existence of a federally-owned and maintained facility in Swainsboro thirty-seven miles away.

Under the Statesboro proposal, except for the citizens and attorneys of Bulloch County, all other residents of the existing Swainsboro Division would have to travel significantly further distances to be involved in Federal Court. Should they be included in the proposed Statesboro division, or transferred to the Dublin Division, most of these people will be forced to travel at least twice as far to attend Federal Court as they are now required to do with the Court located in Swainsboro. It will be more convenient for those living in one county (Bulloch) and severely more inconvenient and expensive for all others affected by this proposal. That is the primary reason the individual attorneys and the organized Bar Associations of all the counties in the existing Swainsboro Division have virtually unanimously opposed the Statesboro proposal, particularly when they were made aware that the creation of a Statesboro division would result in the closing of the Swainsboro Division; a fact not revealed to them in 1979 when certain resolutions approving the creation of a Statesboro division were obtained from some of the Bar Associations. After being apprised of this information, each of these Bar Associations either formally or informally rescinded their previous resolutions and supported the Middle Circuit resolution to keep the Divisions as they now exist.

As the Swainsboro Division is presently constituted, the longest distance which any resident of that Division must travel is the thirty-seven miles from Statesboro to Swainsboro. Experience also shows that the vast majority of attorneys practicing in the Swainsboro Division come from the counties in that Division or from the Augusta area. Augusta is, of course, significantly closer to Swainsboro than to Statesboro.

If the Division were changed as outlined in the Statesboro proposal, virtually all residents of the proposed division, excluding Bulloch County, would travel further distances to Federal Court in Statesboro than they are now required to travel to attend Court in Swainsboro. Residents of Jefferson County and Emanuel County would apparently be moved to the Dublin Division and Dublin is thirty-five miles from Swainsboro and sixty miles from Louisville. Residents of Toombs County would be moving to the Statesboro division and would travel approximately twice as far as is now necessary. Highway availability is certainly no problem in the existing Division since Swainsboro is the only place in the United States where the two transcontinental highways, Highways 1 and 80, cross and Interstate 16 traverses Emanuel County and intersects with Highway 1 approximately fifteen miles south of Swainsboro and Highway 56 approximately fifteen miles west of Swainsboro. Swainsboro is also served by Greyhound Buslines; has its own airport with an OMNI location and is routinely used by corporate jets. It is approximately seventy miles from the Augusta airport and eighty miles from the Savannah airport, both of which are fully served by airlines such as Delta and Eastern in addition to local and regional airlines.

It has been argued that the caseload figures for the Swainsboro Division in recent years did not justify the maintenance of that Division. It is also argued in the Statesboro proposal that transfer of Division headquarters to Statesboro would result in an increased caseload. However, a review of the caseload figures in the Statesboro proposal shows clearly that this would be accomplished simply by moving Tattnall from the Savannah Division to the proposed Statesboro division. This would vastly increase the caseload

figures simply because of the number of prisoner habeas corpus petitions originating from Reidsville State Prison. Quite obviously, the same results could be accomplished by simply adding Tattnall County to the existing Swainsboro Division and Swainsboro is only forty miles away from Reidsville. It is also the understanding of the members of the Middle Judicial Circuit that the Reidsville habeas corpus petitions are currently being handled by the Federal District Judge already assigned to the Swainsboro Division, even though the cases are formally filed in the Savannah Division. Therefore, moving Tattnall County from the Savannah Division to the Swainsboro Division would simply formalize the process that is already in existence.

There is also contained within the Statesboro proposal a population argument that appears to propose that federal filings are in some manner related to the population of the counties in the District. There is simply no direct or indirect empirical relationship between the population of a region and the number of cases which are filed in Federal Court. The very nature of limited federal jurisdiction argues against such a conclusion. In point of fact, the least populous county in the Swainsboro Division is Jefferson County and yet the records would, in all probability, reflect a larger number of federal filings arising out of Jefferson County than any other area of the District.

The same fallacy exists in the argument that juror miles would be saved because the more populous counties are subject to have more jurors drawn for any given case. Certainly there is a relationship between the number of jurors eligible for service and the population of a given county, but the random selection of jurors for service on a particular panel should negate any relationship between jurors who actually must travel to appear in court and

the population of any specific county. It is not at all unusual in any given case in the Swainsboro Division to have certain counties overly represented and certain counties with little or no representation regardless of the population of any particular county in the Division. The proposition that juror miles can be saved by this proposed change is simply not provable and, in fact, is disproven by the realities of experience.

Finally, if it is suggested, however unrealistically, that monies can be saved by closing the Swainsboro Division and requiring the Federal Court to use the existing State Court facilities in Statesboro, the same is equally true for Swainsboro. Emanuel County has a Courthouse facility at least as adequate as that in Bulloch County and the county officials and the Judges of the Middle Judicial Circuit and the State Court of Emanuel County will cooperate just as fully as that promised by the same officials in Bulloch County. In actuality, the Superior Courtroom of Emanuel County is used less than that in Bulloch County since there is not a sitting judge with a permanent office in Swainsboro and the State Court of Emanuel County has its regular sessions at night. The proponents of the Swainsboro Division consider a sharing between the Federal and State Court officials to be inherently unworkable for any period of time, but, quite clearly, if it will be a success, it stands more of a chance of being a success in Emanuel County than in Bulloch County.

In conclusion, and with the unqualified support of those most affected by this proposed change, the proponents of the Swainsboro Division assert that the facts simply do not support and actually strongly mitigate against the closing of a forty-year-old Division simply to create a new division thirty-seven miles away.

U.S. Department of Justice

United States Attorney
Southern District of Georgia

Post Office Box 2017
Augusta, Ga. 30903

file

May 25, 1984

Honorable Robert Kastenmeier
U.S. House of Representatives
Washington, D.C.

Re: U.S. Federal Courthouse
Swainsboro, Georgia

Dear Congressman Kastenmeier:

I have been notified by Mr. Gerald Edenfield, Attorney at Law, Statesboro, Georgia, that a bill is pending in Congress to move the U.S. Federal Courthouse from Swainsboro, Georgia to Statesboro, Georgia. He requested that I express my views to you.

I can tell you that there is simply no comparison in the Swainsboro location as opposed to Statesboro. In Swainsboro, the courthouse is not adequate from any standpoint. Motel or hotel accomodations in Statesboro are very good whereas in Swainsboro, I think there is only one small motel. Consequently, just about all parties involved in federal litigation have to stay in Statesboro or elsewhere.

Consequently, the U.S. Attorney's office would be very much in favor of a move from Swainsboro to Statesboro of the U.S. Federal Courthouse.

Sincerely,

Hinton R. Pierce
United States Attorney

HRP:jmc

cc: Mr. Gerald Edenfield
Hon. Anthony A. Alaimo
Hon. B. Avant Edenfield
Hon. Dudley H. Bowen, Jr.
C. Marshall Cain

P.S. I would like to make it clear that I am not speaking on behalf of the Administration or the Department of Justice. This is simply the view of the U.S. Attorney's Office in this district.

LINDSAY THOMAS
FIRST DISTRICT, GEORGIA

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COMMITTEES:
AGRICULTURE
MERCHANT MARINE AND
FISHERIES

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

July 6, 1984

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ROOM 240
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(912) 944-4074

101 N. MACON STREET
JESUP, GEORGIA 31545

Honorable Robert J. Kastenmeier
2232 Rayburn House Office
Building
Washington, D.C. 20515

Dear Bob:

This letter is in further reference to the reports your staff is presently studying concerning a recommendation by the Administrative Office of the Courts to close the Swainsboro Division of the U. S. District Court for the Southern District of Georgia and create a new division in Statesboro.

Recently, it was brought to my attention that on Page 3 of Swainsboro's report reference was made to my opposition to this proposal. I am enclosing a copy of this page for convenient reference. This statement is misleading as I have advised you that I am and will continue to remain neutral on this issue and will abide by your Committee's recommendation. I did wish to make this point clear as this report is reviewed.

Thank you for your assistance. Please let me know if I might provide you with further information.

Sincerely,

Lindsay Thomas
Member of Congress

Enclosure

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

August 7, 1984

The Honorable Lindsay Thomas
U.S. House of Representatives
Washington, D.C. 20515

Dear Lindsay:

This letter is in response to your request that the Subcommittee on Courts, Civil Liberties, and the Administration of Justice review the materials relating to the creation of a Statesboro Division of the Southern District of Georgia.

First, I want to thank you for your cooperation and for the excellent information you supplied to the Subcommittee. The materials you submitted were extremely thorough and enabled us to make a very informed decision. I also want to commend you for the neutrality you have displayed throughout this evaluation.

Having reviewed all the materials, we have decided to accept the Judicial Conference's recommendation that a Statesboro division be created. A section of the omnibus bill relating to district court reorganization reflects this decision.

Again, thank you for your assistance and cooperation in this matter.

Sincerely,

ROBERT W. KASTENMEIER
Chairman
Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

RWK:mhs

A Proposal for a Statesboro Division of the Federal District Court, Southern District of Georgia

INTRODUCTION

Statesboro is the logical choice for the Federal District Court in Southeast Georgia. As the following materials demonstrate, the reasons for this conclusion are numerous. Statesboro is the most sensible location in terms of efficient administration of the federal court system in this part of the state. In addition, Statesboro is the geographical, population, and commercial center for this region and is best able to supply the support services necessary for effective court administration.

Perhaps the most compelling reason for locating a division of the Southern District in Statesboro is illustrated by the tables included as Exhibits "A" through "D". These tables demonstrate that the proposed realignment of the division will equalize the case load distribution among the judges in the Southern District. Under the new arrangement, the judge handling the Augusta, Dublin and Statesboro divisions will have approximately the same case load as Judge Edenfield in Savannah. Currently, the Savannah division alone handles approximately three hundred more cases each year than the combined caseloads of the Augusta, Dublin, and Swainsboro divisions. Equalization of division caseloads will increase court efficiency and expedite case disposal.

Statesboro's central geographic location also figures prominently in increased court efficiency. Reduced travel time for prospective jurors will increase court competency and may possible improve jury quality. In addition to being centrally located, Bulloch County is the most populous of the counties currently comprising the Swainsboro division. Thus, a further savings in juror travel time and mileage expenses can be realized. See Exhibit "C", infra.

Statesboro already hosts a wide variety of federal agencies, a fact more fully covered by Exhibit "E". Many of these agencies currently provide services for a multi-county area, with Statesboro as the base.

Statesboro is well able to provide the support services necessary for the court personnel, lawyers, witnesses, and jurors present each session of court. Its many motels and restaurants are detailed in Exhibit "F" and offer over 400 rooms and 50 eating places to choose from.

Statesboro is conveniently close to major highways leading to the rest of the area, including Interstate 16, U. S. Highways 25/301 and 80, and State Highways 67, 46 and 24. The Statesboro airport provides full charter plane service and the Savannah airport, offering Delta, Eastern and National air service, is only 50 miles away. Statesboro is also served by Greyhound and Continental Trailways bus systems.

Statesboro is the regional commercial center for the area, attracting customers, employees, and other persons from the surrounding counties. Major retailers such as J. C. Penney, K-Mart and Roses are here, as well as major manufacturing concerns such as Brooks Instruments, Cooper-Wiss, and Royden Wear. Many companies have also chosen Statesboro as a regional base, as is more fully shown by Exhibit "G". Bulloch County's newly-enlarged hospital provides services to nearby counties, as does the recently completed Regional Library. See Exhibit "H", infra.

The importance of Georgia Southern College and its effect on the community cannot be ignored. One of the few institutions in the University System which continues to grow, Georgia Southern offers many facilities, programs, and services which greatly enhance the area and encourage new growth. A new Continuing Education building offers a spacious auditorium and other facilities for conferences or other programs.

As the enclosed pictures vividly illustrate, Bulloch County possesses a fine, modern courtroom facility, conveniently located and convenient to use. The superior court and state court judges have all pledged their support and cooperation in making the courtroom available for use by the federal court system.

In addition to the superior courtroom, other facilities are available for trial use, should the occasion arise. A picture of the grand jury room has been included

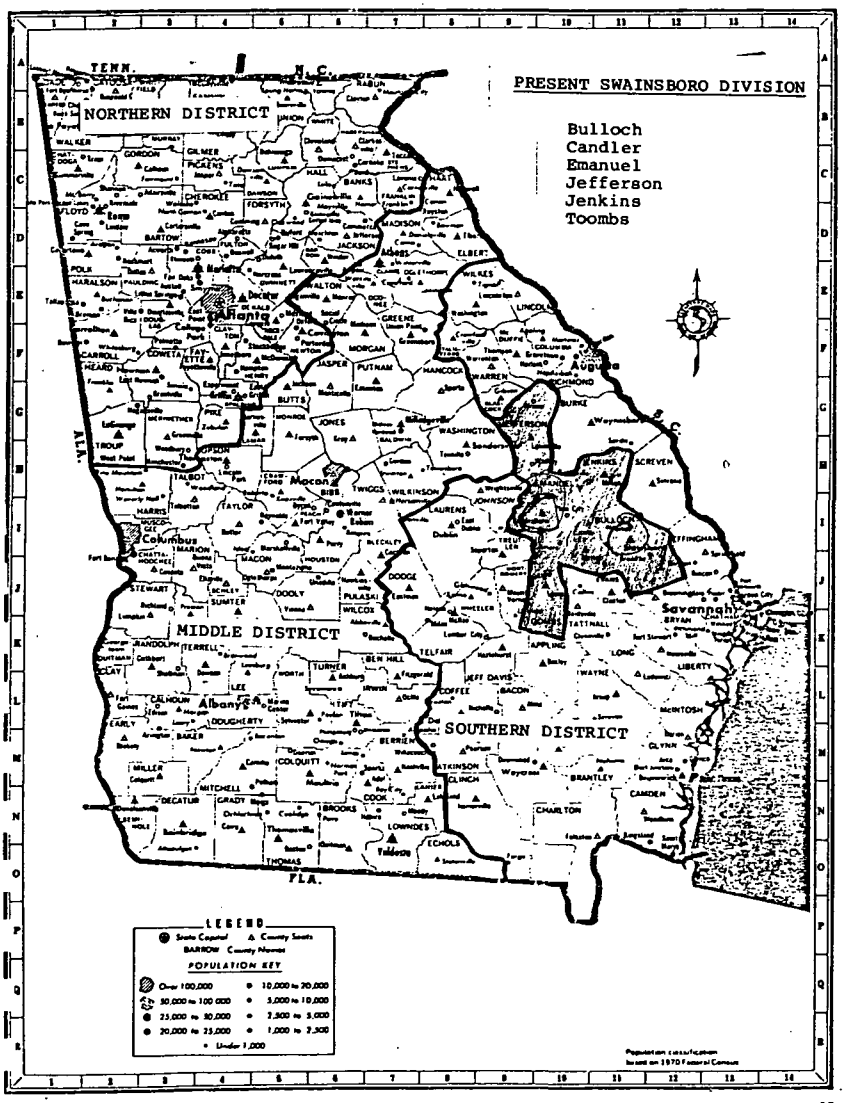
in this presentation. This room is available for use as a second courtroom, should there ever be a conflict between the federal and superior court schedules.

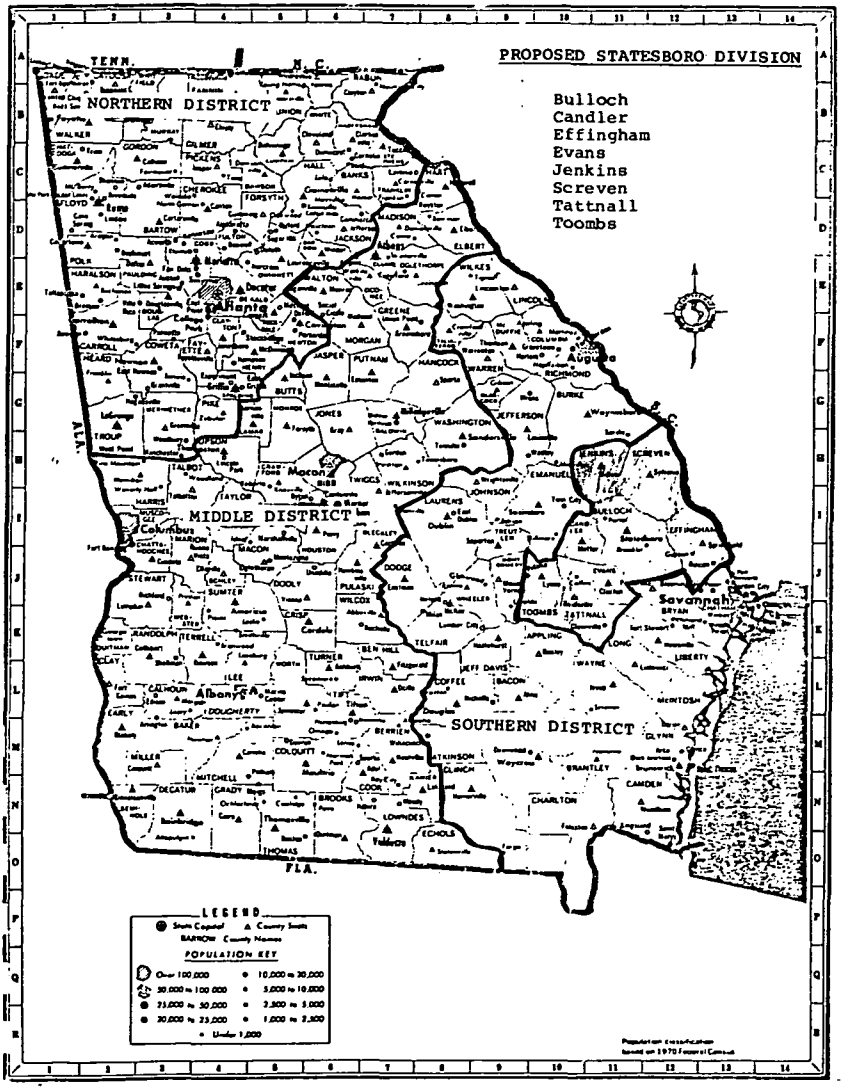
There is an additional courtroom located at the Statesboro Police Department, which handles Statesboro's Recorder's Court proceedings. This courtroom has also been used for worker's compensation, social security, and other administrative proceedings. It is available for use as an additional courtroom as needed, and the recorder's court judge has pledged his cooperation in making this facility available.

In addition, this facility is ideally suited for handling federal prison cases. A maximum security jail facility meeting federal standards is adjacent to the courtroom and can house up to 14 prisoners at one time. This courtroom combines spacious facilities with maximum security to a degree not found at the typical courthouse. Photographs of both the courtroom and the jail facilities are included in this presentation.

Statesboro also offers a law library of unusual depth for a town of its size. The local law library has been merged with the law library at Georgia Southern College. The numerous volumes available at the library are listed in Exhibit "I", infra. The law library also subscribes to Westlaw, computerized legal research, making other current legal research available at the touch of a button.

The totality of the evidence leads to the conclusion that Statesboro and Bulloch County is the best possible site for a new federal court. This contention is borne out by the materials that follow for consideration.


PRESENT SWAINSBORO DIVISION
Bulloch
Candler
Emanuel
Jefferson
Jenkins
Toombs
NORTHERN DISTRICT
MIDDLE DISTRICT
SOUTHERN DISTRICT
TENN.
N.C.
S.C.
ALA.
FLA.
Atlanta
Augusta
Macon
Columbus
Albany
Savannah
LEGEND
POPULATION KEY


PROPOSED STATESBORO DIVISION
Bulloch
Candler
Effingham
Evans
Jenkins
Screven
Tattnall
Toombs
NORTHERN DISTRICT
MIDDLE DISTRICT
SOUTHERN DISTRICT
TENN.
N.C.
S.C.
ALA.
FLA.
Atlanta
Augusta
Macon
Columbus
Albany
Savannah
LEGEND
POPULATION KEY

AVERAGE CASE FOR 1979 - 1982

4.5 Years

DIVISON	CRIMINAL	CIVIL	TOTAL
AUGUSTA	23	280	303
DUBLIN	5	77	82
SWAINSBORO	4	77	81
SAVANNAH	43	492	535

PROJECTED CASE LOAD/YEAR

AUGUSTA	23	280	303
DUBLIN*	7	109	116
STATESBORO**	5	200	205
SAVANNAH***	37	308	345

* 42% population increase.

** 17% population increase over Swainsboro Division plus addition of Habeas Corpus petitions and Civil Rights actions.

*** 19% population decrease.

NOTE: Under the projected case load distribution after the creation of the Statesboro Division, the activity of the two rural divisions (Dublin and Statesboro) would be increased more than 100% over the current activity of the Dublin and Swainsboro Divisions.

In addition the case load would be much more evenly distributed between the four divisions affected under the proposed realignment.

EXHIBIT "A"

JURORS - SWAINSBORO DIVISION

(1975 - 1979)

4.5 Years

TOTAL	AVG/YR
335	74

JURORS - SWAINSBORO DIVISION

(1979 - 1982)

3.5 Years

TOTAL	AVG/YR
80	23

JURORS - DUBLIN DIVISION

(1975 - 1979)

4.5 Years

TOTAL	AVG/YR
253	56

JURORS - DUBLIN DIVISION

(1979 - 1982)

3.5 Years

TOTAL	AVG/YR
112	32

EXHIBIT "B"

SOUTHERN DISTRICT OF GEORGIA

POPULATION BY PROPOSED DIVISIONS

(1980 Census)

STATESBORO	
BULLOCH	35,785
CANDLER	7,518
EFFINGHAM	18,327
EVANS	8,428
JENKINS	8,841
SCREVEN	14,043
TATTNALL	18,134
TOOMBS	22,592
	133,668
DUBLIN	
DODGE	16,955
JOHNSON	8,660
LAURENS	36,990
MONTGOMERY	7,011
TELFAIR	11,445
TREUTLEN	6,087
WHEELER	5,115
EMANUEL	20,795
JEFFERSON	18,403
	131,461
CHATHAM	
CHATHAM	202,226
BRYAN	10,175
LIBERTY	37,583
	249,984

EXHIBIT "C"

SOUTHERN DISTRICT OF GEORGIA

POPULATION OF DIVISIONS BY COUNTIES
(1980 Census)

AUGUSTA	
BURKE	19,349
COLUMBIA	40,118
GLASCOCK	2,382
LINCOLN	6,716
MCDUFFIE	18,546
RICHOMND	181,629
TALIAFERRO	2,032
WARREN	6,583
WILKES	10,951
	288,306
DUBLIN	
DODGE	16,955
JOHNSON	8,660
LAURENS	36,990
MONTGOMERY	7,011
TELFAIR	11,445
TREUTLEN	6,987
WHEELER	5,115
	92,263
SWAINSBORO	
BULLOCH	35,785
CANDLER	7,518
EMANUEL	20,795
JEFFERSON	18,403
JENKINS	8,841
TOOMBS	22,592
	113,934
SAVANNAH	
BRYAN	10,175
CHATHAM	202,226
EFFINGHAM	18,327
EVANS	8,428
LIBERTY	37,583
SCREVEN	14,043
TATTNALL	18,134
	308,916

EXHIBIT "D"

FEDERAL AGENCIES LOCATED IN STATESBORO

U. S. Government, Dept. of Agriculture
Agriculture Stabilization and Conservation County Committee
Federal Building

Farmers Home Administration
Federal Building

Soil Conservation Service
Area Office
Federal Building

Dept. of the Air Force
Det. 3-1st Combat Eval. Gp.
Highway 301 North

Altamaha Area Community Action Authority, Inc.
Headstart Center
Highway 80 West

Army Recruiting Station
110 Savannah Avenue

Federal Bureau of Investigation
Federal Building

General Services Administration
Federal Building

Health Education & Welfare
Dept. of Social Security Administration
21 N. Zetterower Avenue

Marine Corps Recruiting Station
110 Savannah Avenue

National Guard Armory
Highway 301 North

Navy Recruiting Station
110 Savannah Avenue

Organizational Maintenance Shop No. 7
Ga. National Guard
Highway 301 North

Post Office
Federal Building

Small Business Administration
Northgate Office Center

USAF Recruiting Office
110 Savannah Avenue

EXHIBIT "E"

LODGING AND FOOD SERVICES IN STATESBORO

MOTELS (No. of Rooms)

Aldred's Trellis Garden Inn (60)
Bryant's Master Host Inn (44)
Budget Inn (28)
Crossroads Motel (34)
Holiday Inn (130)
Parkwood Motel (25)
Quality Inn (42)
Stiles Motel (30)
Wildes Motel (21)

RESTAURANTS

Archibald's
Biltmore Restaurant
Boyd's Pit Barbecue
Candy Hilliard's
Captain D's
Charlie's Restaurant
Dairy Queen of Statesboro
The Deli
Dingus Maghee's
Domino's Pizza
Dutch Treat
Ella's Diner
Franklin's Restaurant
Hardee's
Holiday Inn Restaurant
House of Sirloin
Kentucky Fried Chicken
Maryland Fried Chicken
McDonald's
Pardners III
Peking Restaurant
Pizza Hut
Pizza Inn
R. J.'s Steakery
Shoney's
Snooky's
Sub Station II
Vandy's Barbecue
Webb's Nic Nac Grill
Wendy's
Western Sizzlin

EXHIBIT "F"

COMPANIES WITH REGIONAL OR DISTRICT

OFFICES IN STATESBORO

International Harvest

Ralston Purina Company

Southeastern Chemical Corporation

Kelley Manufacturing Company

U.S.S. Agri-Chemical Company

Hannah Supply Company

John Deere Tractor Company

Poultry House

International Business Machines

Omark Industries

John Hancock Mutual Life Insurance Company
Farm Mortgage Division

Cooper-Wiss

ITT Grinnell Corporation

T. J. Morris Company

A. M. Braswell, Jr. Food Company

Robbins Packing Company

Brooks Instrument Division
Emerson Electric Company

Timesaver, Inc.

Farmer Automatic

American Safety Products

EXHIBIT "G"

STATESBORO-REGIONAL MEDICAL CENTER

ORIGIN OF INPATIENT ADMISSIONS AT
BULLOCH MEMORIAL HOSPITAL

BULLOCH	4,337
SCREVEN	652
BRYAN	242
EMANUEL	403
JENKINS	103
CANDLER	262
TATTNALL	246
EVANS	195
TOOMBS	79
EFFINGHAM	149
Other Counties	372
Other States	25
TOTAL	7,092

This information is based on discharges rather than admissions. It does include newborns.

Reporting period: October 1, 1980 through September 30, 1981.

EXHIBIT "H"

LEGAL RESEARCH MATERIAL

BULLOCH COUNTY LAW LIBRARY	GEORGIA SOUTHERN COLLEGE LIBRARY
Georgia Collection	
Ga. Code Ann. (Harrison)	Ga. Code Ann. (Harrison)
Georgia Laws 1933-1981	Georgia Laws 1935-1981
Georgia Reports* Vol. 1-247	Southeastern Reports (Ga., S.C., N.C., Va. & W. Va.) 1st Series-Vol. 1-200 2nd Series-Vol. 1-289
Georgia Appeal Reports* Vol. 1-156	
West's Georgia Digest Vol. 1-23	West's Southeastern Digest 1st Series-Vol. 1-35 2nd Series-Vol. 1-53
Shepard's Georgia Citations*	Shepard's S.E. Reporter Citations*
No	Encyclopedia of Georgia Law Vol. 1-30
No	Brown's Georgia Pleading & Practice Forms-Vol. 1-10
No	Rules & Regulations of State of Georgia - 8 Vols.
Opinions of Attorney General thru 1974	Opinions of Attorney General 1954-1980
Georgia Senate Journal 1962-1980	No
Georgia House Journal 1962-1980	No

EXHIBIT "I"

LEGAL RESEARCH MATERIAL

BULLOCH COUNTY LAW LIBRARY	GEORGIA SOUTHERN COLLEGE LIBRARY
Federal Collection	
No	United States Code*
United States Code Annotated	United States Code Annotated
No	United States Statutes at Large Vol. 1-84
No	U. S. Code Congressional & Administrative News, 1974-1981
No	Code of Federal Regulations*
U. S. Supreme Court Reporter (Law. Ed.)* 1st Series-Vol. 1-100 2nd Series-Vol. 1-69	United States Reports* Vol. 1-443
Federal Reporter* 1st Series-Vol. 1-300 2nd Series-Vol. 1-675	Federal Reporter* 1st Series-Vol. 1-300 2nd Series-Vol. 1-671
No	Federal Supplement* Vol. 164-181 only
Shepard's U. S. Citations*	Shepard's U. S. Citations*
Shepard's Federal Citations*	Shepard's Federal Citations*
U. S. Supreme Court Digest (Law. Ed.) Vol. 1-20	West's Federal Practice Digest Vol. 1-92
No	Modern Federal Practice Digest Vol. 1-58

LEGAL RESEARCH MATERIAL

BULLOCH COUNTY LAW LIBRARY	GEORGIA SOUTHERN COLLEGE LIBRARY
Federal Collection (Continued)	
American Law Reports 1st Series-No 2nd Series-No 3rd Series-Vol. 1-100 4th Series-Vol. 1-16 Federal-Vol. 1-59	American Law Reports 1st Series-Vol. 1-175 2nd Series-Vol. 1-100 3rd Series-Vol. 1-100 4th Series-Vol. 1-15 Federal-No
BNA - U. S. Law Week	BNA - U. S. Law Week
No	CCH Labor Law Reporter
No	BNA - Labor Policy & Practices
No	CCH Employment Practices
No	Bromberg, Securities Law
No	P-H Securities Regulations
Tax Collection	
No	P-H Federal Taxes - 1982
No	P-H Estate & Gift Taxes
No	P-H State & Local Taxes-Georgia
No	U. S. Board of Tax Appeals Reports* Vol. 1-47
No	Tax Court Reports* Vol. 1-9 & 35-76

LEGAL RESEARCH MATERIAL

BULLOCH COUNTY LAW LIBRARY		GEORGIA SOUTHERN COLLEGE LIBRARY
	Tax Collection (Continued)	
No		P-H Tax Court Reported Decisions* Vol. 49-79
No		P-H Tax Court Memo Decisions* 1968-1982 - Vol. 37-50
No		American Federal Tax Reports (AFTR)* 2nd Series-Vol. 1-48
No		P-H Estate Planning 6 Vols.
No		Institute on Estate Planning 16 Vols.
	Other	
No		Code of Laws of South Carolina (Annotated)
No		South Carolina Regulations
No		South Carolina Court Rules
No		Northeastern Reporter 1st Series - Vol. 1-200
No		Decennial Digest (West) 3rd Series-Vol. 1-28 4th Series-Vol. 1-33 5th Series-Vol. 1-52 6th Series-Vol. 1-36 7th Series-Vol. 26-38

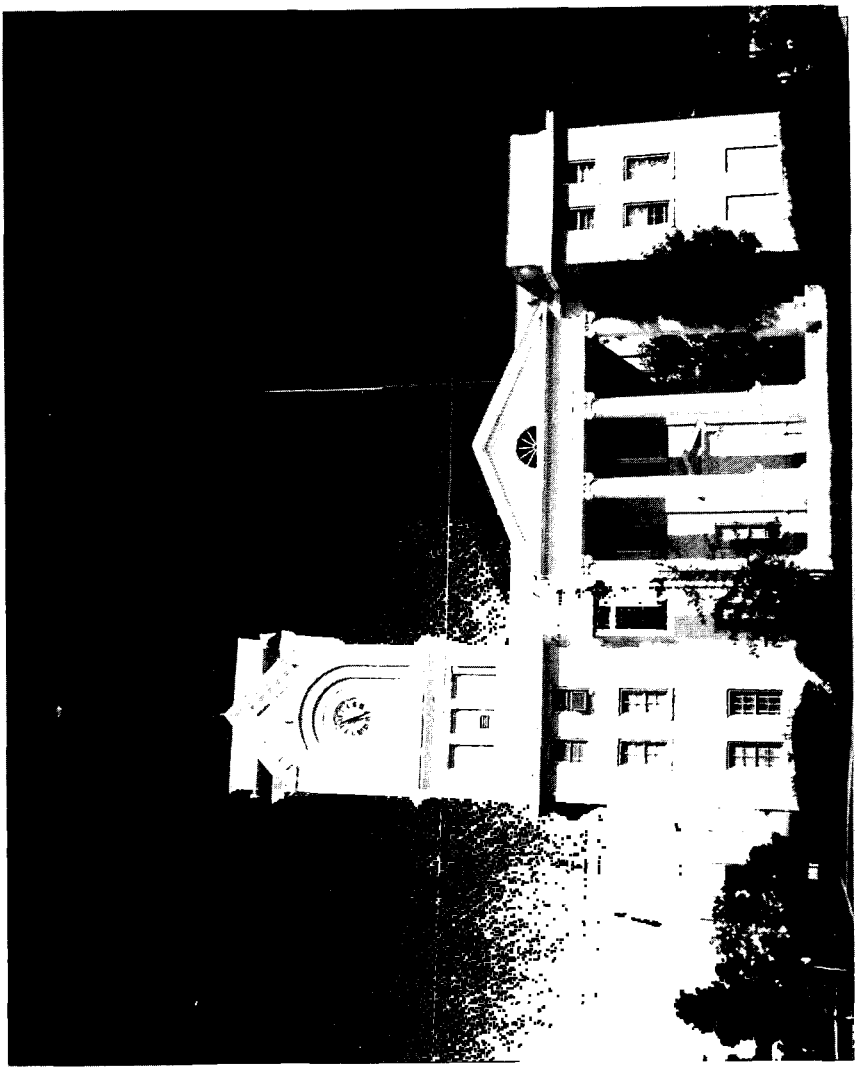
LEGAL RESEARCH MATERIAL

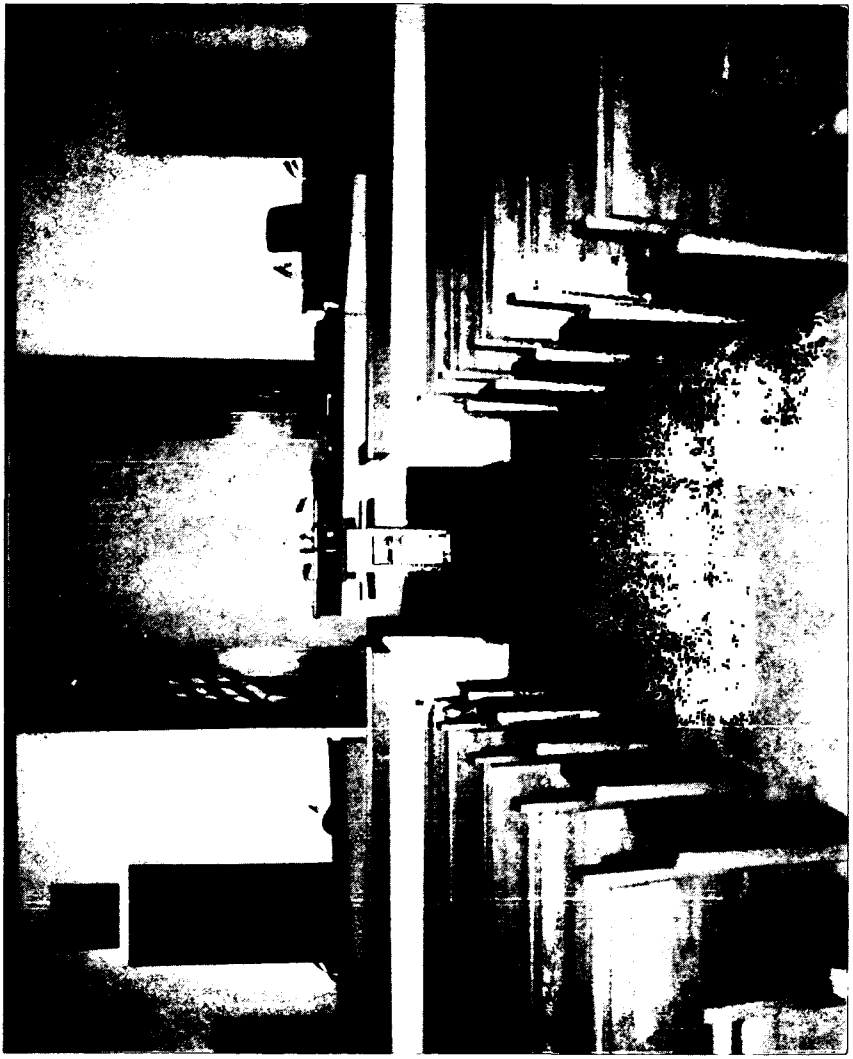
BULLOCH COUNTY LAW LIBRARY	GEORGIA SOUTHERN COLLEGE LIBRARY
Other (Continued)	
No	General Digest - 4th Series Vol. 1-40, 1967-1976
Jest's Words & Phrases Vol. 1-46	No
Bogert - Trusts & Trustees 19 Vols.	No
Fletcher Composition Forms Annotated 2 Vols.	No
Anderson - Uniform Commercial Code 9 Vols.	Anderson -Uniform Commercial Code 9 Vols.
Corpus Juris Secundum Vol. 1-101A	Corpus Juris Secundum Vol. 1-101A
O'Neal on Close Corporations Vols.	No
Banks & Banking Vols. 1-9	No
Orgel on Valuation Under Eminent Domain 2 Vols.	No
Collier on Bankruptcy* Vol. 1-7	No
Fletcher Cyclopedia Corporations Vol. 1-20	No

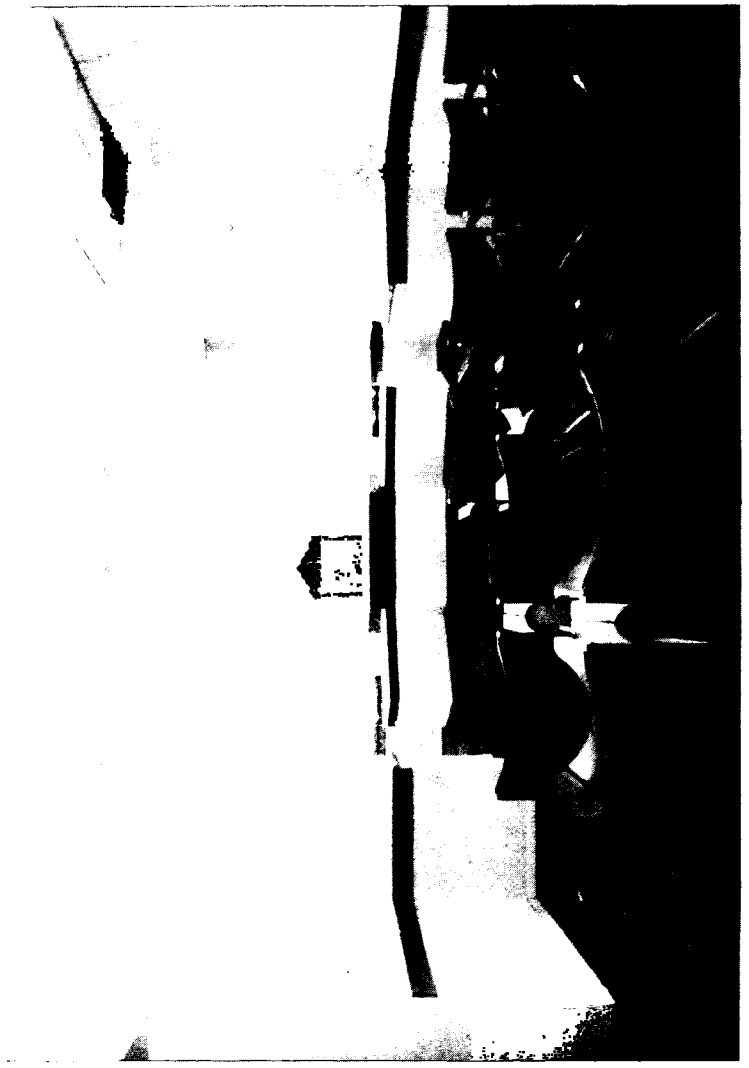
LEGAL RESEARCH MATERIAL

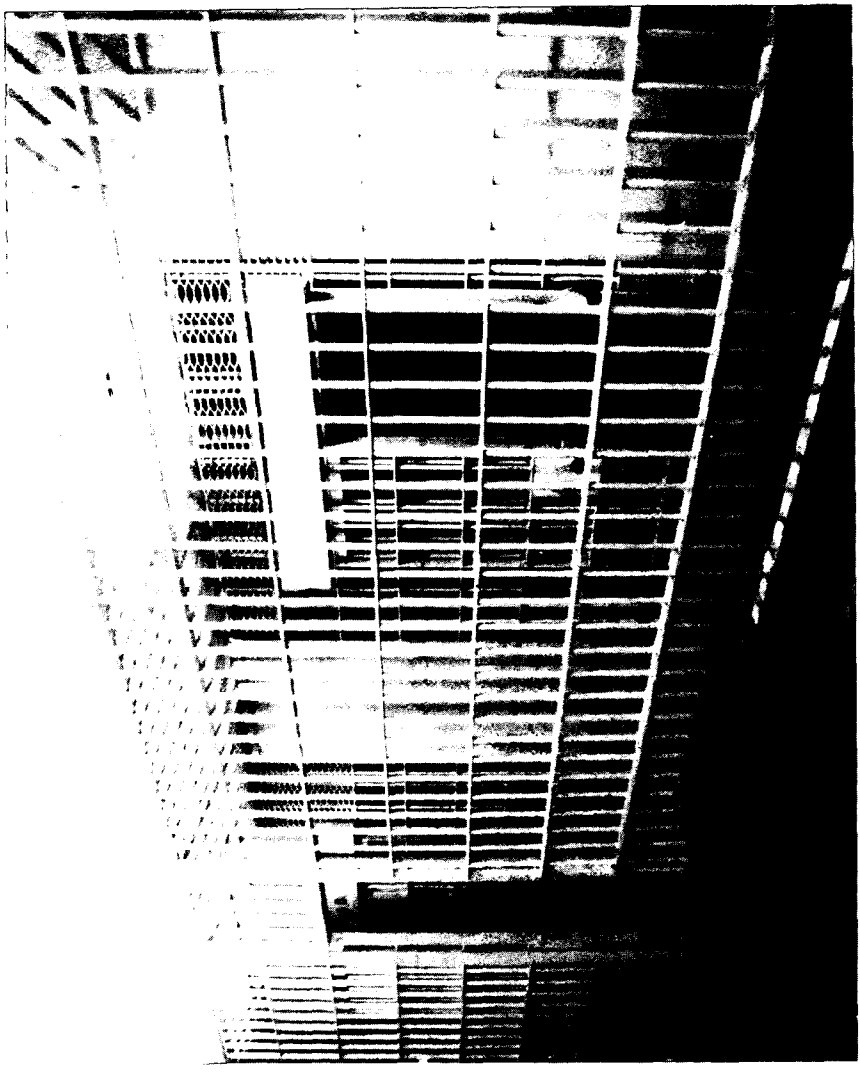
BULLOCH COUNTY LAW LIBRARY	GEORGIA SOUTHERN COLLEGE LIBRARY
Other (Continued)	
No	Restatement - Conflict of Laws - 2nd 3 Vols. Property 5 Vols. Property 2nd 2 Vols. Trusts 2nd 3 Vols. Torts 2nd 11 Vols. Agency 2nd 3 Vols.
No	Black's Law Dictionary
No	Ballantine's Law Dictionary
Martindale-Hubbel Law Directory 1981	Martindale-Hubbel Law Directory 1980
Law Reviews	
No	UGA Law Review - complete
No	Mercer Law Review - complete
No	Emory Law Review - complete
No	Vanderbilt Law Review - complete
No	Harvard Law Review - complete
No	Yale Law Review - complete
No	Columbia Law Review - 1971-
No	Georgetown Law Review - 1949-
No	George Washington Law Review 1969-

*COMPARABLE MATERIAL IS CONTAINED IN LEXIS DATA BASE.









RESOLUTION

GEORGIA, BULLOCH COUNTY.

We, the undersigned, being practicing attorneys in the Ogeechee Bar Association, and it being understood that the Ogeechee Bar Association is an organized bar association comprised of attorneys practicing in the Ogeechee Circuit, and

WHEREAS, a part of our practice involves participation in the federal courts; and

WHEREAS, we desire to go on record requesting that a division of the United States Federal District Court for the Southern District of Georgia be located in Statesboro, Georgia.

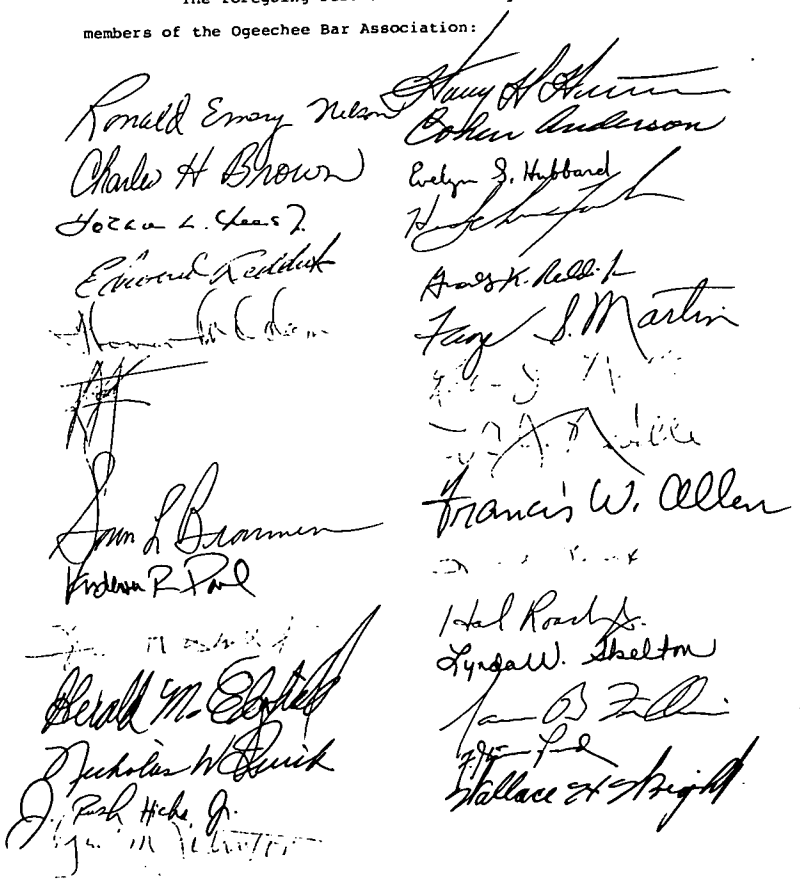
NOW THEREFORE, BE IT RESOLVED that the Ogeechee Bar Association, by a vote of its members at its meeting on February 11, 1983, does hereby desire and request that the division of the United States Federal Court for the Southern District of Georgia presently located in Swainsboro, Georgia, be moved and located in Statesboro, Georgia.

This the 11th day of February, 1983.

President

Secretary

The foregoing resolution is hereby endorsed by these members of the Ogeechee Bar Association:



Faye Sanders Martin
Judge of the Superior Courts
Ogeechee Judicial Circuit
Room 207, Bulloch County Courthouse
Statesboro, Georgia 30458

Mailing Address
P. O. Box 803

Counties
Bulloch
Effingham
Jenkins
Screven

Telephone
(912) 764-6095

January 26, 1983

The Honorable Anthony A. Alaimo
Chief Judge, U. S. District Court
P. O. Box 944
Brunswick, Georgia 31420

Dear Judge Alaimo:

As Judges of the Bulloch Superior Court, we would like to offer our unqualified endorsement of the proposal to establish the Federal District Court for this area in Statesboro.

Statesboro is a conveniently located, thriving community, well able to accomodate the needs of federal district court.

In addition, Bulloch County offers an attractive, modern courtroom, readily capable of serving as the federal district courtroom. Both of us pledge to fully cooperate with you and the other federal judges so as to make the courtroom available for your use should the proposal be accepted.

We think you will find that the Bulloch County courtroom will be convenient to use and readily accessible for use as a federal district courtroom and offer our support to the proposal.

Yours very truly,

W. Colbert Hawkins, Senior Judge

Faye S. Martin

Faye Sanders Martin

FSM/lc

STATE COURT OF BULLOCH COUNTY

JUDGE
Francis W. Allen
Post Office Box 473
Statesboro, Georgia 30458

SOLICITOR
Robert S. Lamer
36 S. Main Street
Statesboro, Georgia 30458

CLERK
Sherri Akins
Bulloch County Court House
Statesboro, Georgia 30458

SHERIFF
Arnold Ray Alms
Bulloch County Court House
Statesboro, Georgia 30458

TERMS
Second Monday
Each Month

January 26, 1983

The Honorable Anthony A. Alaimo
Chief Judge, U. S. District Court
P. O. Box 944
Brunswick, Georgia 31420

Dear Judge Alaimo:

As Judge of the State Court of Bulloch County, I am writing to inform you of my complete support of the proposal to establish the Federal District Court for Eastern Georgia in Statesboro.

Bulloch County State Court is generally held in the Bulloch County Courtroom on the third Monday of each month. Any conflict this might pose with the federal court could easily be worked out, however, as there are other court rooms available for us whenever necessary.

Statesboro is the geographical, commercial, and population center for the area presently encompassed by the Swainsboro Division. For these reasons, it is, in my opinion, the logical site for the Federal District Court and I offer my cooperation and support in implementing this proposal.

Yours very truly,

Francis W. Allen, Judge

FWA/cb

BOARD OF COMMISSIONERS OF BULLOCH COUNTY
STATESBORO, GEORGIA 30458

January 24, 1983

Honorable Anthony A. Alaimo
Chief Judge, U.S. District Court
Box 944
Brunswick, Ga. 31520

Dear Judge Alaimo:

On behalf of the Bulloch County Board of Commissioners, we invite you to establish a Federal Court in Statesboro, our county seat, which already serves as a central service point for a sizeable region of east Georgia.

We know that a large number people and businesses in the surrounding counties already trade here, visit here, and seek various services here. The East Georgia Extension Service Office here serves some thirty-six (36) counties in the East Georgia region. Georgia Southern College is a major institution in our region. Many business offices and federal agencies are centered here for the region.

You may be assured of our full cooperation and support for the operation of Federal Court in Bulloch County and our Courthouse. The downtown Statesboro location is convenient for your staff, jurors, and others who would use the facility here. Restaurants, motels and shops are nearby.

There are many advantages for you and your Court in Bulloch County, and we invite you to become a part of our fine community. Please call if the Commissioners may be of service to you in any way.

Sincerely,

Denver Lanier, Chairman
Board of Commissioners
Of Bulloch County

DL/sr

CITY OF STATESBORO
Office of J. Thurman Lanier, Mayor
STATESBORO, GEORGIA

January 27, 1983

Honorable Anthony A. Alaimo
Chief Judge
U.S. District Court
P.O. Box 944
Brunswick, Georgia 31520

Dear Judge Alaimo:

You are invited to select Statesboro as the best location for a new Federal Court to serve the east Georgia region around Statesboro. Transportation by numerous highways will allow jurors from the surrounding region to save time in travel to court sessions. The Statesboro Airport provides full service fixed base operator, charter air service and lighted, paved 5000 feet long runways which may be used for the Court.

The Statesboro hub is increasing in importance as a regional center. Many companies operate offices here or base representatives here to serve a multi-county area, sometimes even parts of several counties affiliated with Georgia Southern College, the major institution of higher learning in east Georgia. Many of the stores, other services, professions and industries here draw on the surrounding region for their customers and employees. All this makes Statesboro prominent in the region.

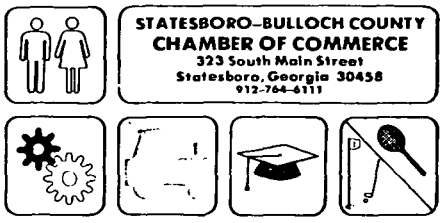
You will find, Judge Alaimo, the people of our area hospitable to the Court's personnel and jurors. The City of Statesboro desires quality economic growth, and we invite you to consider all of our advantages as a location for Court.

Please let us know if we may assist further in any way.

Sincerely,

J. Thurman Lanier, Mayor
City of Statesboro

JTL/sm



STATESBORO-BULLOCH COUNTY
CHAMBER OF COMMERCE
323 South Main Street
Statesboro, Georgia 30458
912-764-6111

January 25, 1983

Honorable Anthony A. Alaimo
Chief Judge, U. S. District Court
P.O. Box 944
Brunswick, Georgia 31520

Dear Judge Alaimo:

You are invited to consider the establishment of a Federal Court in Statesboro, which would place the Court in an excellent location to serve the needs of the people in the east Georgia region.

Statesboro has become very regional in its position in the lives of many people in the surrounding counties. Industrial plants attract workers from several counties. Excellent shopping centers draw in customers from the Central Ogeechee River Empire (CORE) area. Large retail stores here such as Belk, K-Mart, Rose's and J. C. Penney depend on the surrounding regional market area. Customers, employees, clients of the many professional services, patients for our regional hospital and for our growing medical group of specialists come into Bulloch County from the trade region for their needs. Excellent restaurants and lodging accommodations here help attract regional trade.

Other indicators of the regional pull of Statesboro are the new Regional Library serving five counties and the district office of the Small Business Administration.

Our largest regional facility is Georgia Southern College which has 6800 students. Faculty, staff and students include commuters from the nearby counties. Many services and conferences are offered for the east Georgia region, through Georgia Southern College.

Judge Alaimo, we believe the best interests of the Federal legal processes will be served by the establishment of a Court in Statesboro. We invite your consideration, and if we may assist in any way, please let us know.

We look forward to having the Court in Statesboro.

Sincerely,

Terrell Reddick, CPA
President

Addendum to the Proposal for a Statesboro Division of the Federal District Court, Southern District of Georgia

46-215 O - 85 - 14

TO WHOM IT MAY CONCERN:

This addendum is provided to supplement and update a previous proposal concerning the removal of the Federal Court facilities from Swainsboro to Statesboro. This move has been requested by the United States District Court Judges, United States Attorney, Bulloch County Superior Court Judges, the Savannah Bar Association, and others and will serve the convenience of the residents of the Southern District of Georgia.

The following listed letters and documents are attached hereto to demonstrate that the Swainsboro facilities are inconvenient, inadequate, and are not being used:

(1) Letter from United States District Court Judge Anthony A. Alaimo, United States District Court Judge B. Avant Edenfield, and United States District Court Judge Dudley H. Bowen, Jr.

(2) Report of Proceedings for the Judicial Conference of the United States.

(3) Letter from United States Attorney Hinton R. Pierce.

(4) Letter from William T. Moore, former United States Attorney, Southern District of Georgia.

(5) Resolution of Savannah Bar Association.

(6) Transcript of Proceedings before Judge William C. O'Kelley in Archie Woodrow Moore case.

(7) Order denying trial situs in Swainsboro Division in Leroy Blitch case.

(8) Letter from Asst. Professor Lynda Skelton Hamilton of Georgia Southern College.

Litigants in the Swainsboro Division, whether in civil or criminal proceedings, are not being afforded the opportunity for a trial by their peers in that geographical area merely because of the inconvenience of the Federal Court being in Swainsboro, and the inadequacy of the facilities there.

At the present time, cases on the Federal civil calendar take a substantial period of time to be reached because they must be woven into already-full trial calendars in Augusta, Savannah or Brunswick. Parties and attorneys from the rural areas are forced to travel to one of these cities for status conferences, pre-trial hearings, and the trial of their cases.

The State Judiciary has pledged its support for the use of the Superior Court building in Bulloch County. Please see attached letter from Bulloch County Superior Court Judges Faye S. Martin and William J. Neville. The accomodations in Statesboro, both as to courtroom facilites and for motel and restaurant facilities, make Statesboro the logical choice for the federal court.

In a previous submission, the legal research material showed a distinction between the Bulloch County Law Library and the Georgia Southern College legal periodicals. The Bulloch County Law Library and the Georgia Southern College Library have now been combined into one legal research facility.

For all of these reasons, and for those outlined in the attached proposal, the federal court for this area needs to be located in Statesboro.

United States District Court

B. Avant Edenfield
Judge

Southern District of Georgia
Savannah, Georgia 31412

P. O. Box 9865

May 25, 1984

The Honorable Lindsay L. Thomas
United States Representative
First Congressional District
427 Cannon Building
Washington, D.C. 20510

Dear Congressman Thomas:

It is our understanding that the issue of moving the federal courthouse from Swainsboro to Statesboro will be considered in the very near future. As judges involved in using the courtroom, we wanted to take this opportunity to express our viewpoint on the matter. We would appreciate your pssing this information on to the Congressional Subcommittee considering this bill.

Our experience has shown that the courthouse and court facilities in Swainsboro are simply inadequate for our use.

The courthouse itself is outmoded; there is insufficient office space available so pretrials and all other procedures must be held in the courtroom.

The jury room is located downstairs, down a fairly-steep incline. It is hazardous for jurors to be sent to the jury room and be recalled or to request instructions after they have been sent to the jury room as it would require them to climb the narrow, deep stairs.

We no longer hold criminal trials in Swainsboro as security for the Court, the jurors and prisoners poses a real problem.

Equally important is the lack of amenities in Swainsboro. The restaurants and motel facilities are inferior and insufficient for use by court personnel, witnesses, Marshals, jurors and others who must use the courtroom. In recognition of this fact, both the Administrative Office of the U.S. Courts and the Justice Department have authorized court personnel to stay in either Statesboro or Dublin when using the Swainsboro courthouse. This policy has been in effect for approximately four years.

Because of the inadequacies in both the courthouse and the support facilities, we find it more convenient to schedule trials for either Savannah or Augusta. Except for bankruptcy court, the Swainsboro courtroom is rarely used. While this can create an inconvenience for parties and attorneys on occasion, the inconvenience of everyone concerned in using the Swainsboro

courthouse is far greater.

Statesboro is the logical alternative for a federal court. For one thing, it is centrally located geographically. Swainsboro is only 35 miles from the federal courthouse in Dublin. Statesboro is approximately 60 miles from Savannah, 80 miles from Augusta and 70 miles from Dublin.

Our experience in the District indicates to us that there is more legal activity arising out of Statesboro than any other city or county within the present Swainsboro Division. Statesboro is the most populous of the cities. It is already a regional center on many levels - industry, retailing, health care, education and others. It is the logical choice for a federal court in that area of the District.

Statesboro also contains a fine modern courthouse, far larger than the one in Swainsboro. There is also a grand jury room and office space. The Superior Court and State Court judges and county officials have all pledged their support in accommodating the federal court schedule.

The new Recorder's courtroom in Statesboro is located adjacent to a modern jail facility approved for use by the U.S. Marshal's Service. The Swainsboro jail is not approved, making it difficult to hear any criminal matters there. The support services in Statesboro are excellent. There are many fine motels and restaurants for use by court personnel, jurors, attorneys and witnesses.

Georgia Southern College is located in Statesboro and its facilities are also available for Judicial Conferences. The combined Bulloch-Georgia Southern Law Library offers access to a complete federal library, the most complete outside of one of the state's law schools, including computerized legal research.

Georgia Southern College also has a strong criminal justice department. Opportunities would exist for students to study and participate in a federal system of justice.

The merits of the proposal to move the court have been studied by many different groups and all have endorsed the plan, with the exception of the Swainsboro Bar Association. The three judges of the Southern District of Georgia have long supported the court's relocation to Statesboro.

Based on our experience, we wholeheartedly request and endorse the proposal to move the court to Statesboro. It would improve the quality of services and justice to people in the Southern District of Georgia, and would make it much easier for us to carry out our assigned duties.

Thank you for your consideration of our views.

Very truly yours,

ANTHONY A. ALAIMO
CHIEF JUDGE, U.S. DISTRICT COURT

B. AVANT EDENFIELD
JUDGE, U.S. DISTRICT COURT

DUDLEY H. BOWEN, JR.
JUDGE, U.S. DISTRICT COURT

REPORT

of the

PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 12-13, 1981

Washington, D.C.
1981

15. Western District of Oklanoma

Enid - Release all except one courtroom, a judge's chambers, reception room, jury deliberation room and probation office space

In view of the provisions of 28 U.S.C. 1393 relating to venue, the Committee recommended against the complete closing of a facility in a statutory division of a district court where that facility is the only place of holding court in that division, but suggested further study and close scrutiny in the event Congress decides to change the venue statute. As to certain places of holding court in districts which do not have statutory divisions, the Committee has directed the Administrative Office to restudy possible closure taking into consideration the following factors:

1. Distances to be traveled and the availability of transportation for lawyers, parties, witnesses and jury members.

2. Actual annual usage by judges, court personnel and other government agencies.

3. Effect of closure on other trial costs.

4. Projected increase or decrease of usage.

5. Importance of federal court presence.

Places of Holding Court

The Chief Judge of the Southern District of Georgia had requested that the headquarters of the Swainsboro Division be changed from Swainsboro to Statesboro, that the division be renamed the "Statesboro" Division, and that the facility at Swainsboro be closed. This would enable the court to use the new state court facilities at Statesboro without charge to the government. The Conference was advised that the proposal had been approved by the Judicial Council of the Fifth Circuit and accordingly approved the proposal, which will require statutory change.

U.S. Department of Justice

United States Attorney
Southern District of Georgia

Post Office Box 2017
Augusta, Ga. 30903

May 25, 1984

Honorable Robert Kastenmeier
U.S. House of Representatives
Washington, D.C.

Re: U.S. Federal Courthouse
Swainsboro, Georgia

Dear Congressman Kastenmeier:

I have been notified by Mr. Gerald Edenfield, Attorney at Law, Statesboro, Georgia, that a bill is pending in Congress to move the U.S. Federal Courthouse from Swainsboro, Georgia to Statesboro, Georgia. He requested that I express my views to you.

I can tell you that there is simply no comparison in the Swainsboro location as opposed to Statesboro. In Swainsboro, the courthouse is not adequate from any standpoint. Motel or hotel accomodations in Statesboro are very good whereas in Swainsboro, I think there is only one small motel. Consequently, just about all parties involved in federal litigation have to stay in Statesboro or elsewhere.

Consequently, the U.S. Attorney's office would be very much in favor of a move from Swainsboro to Statesboro of the U.S. Federal Courthouse.

Sincerely,

Hinton R. Pierce
United States Attorney

HRP:jmc

cc: Mr. Gerald Edenfield
Hon. Anthony A. Alaimo
Hon. B. Avant Edenfield
Hon. Dudley H. Bowen, Jr.
C. Marshall Cain

P.S. I would like to make it clear that I am not speaking on behalf of the Administration or the Department of Justice. This is simply the view of the U.S. Attorney's Office in this district.

SPARKMAN, HARRIS & MOORE
ATTORNEYS AT LAW
22 EAST BAY STREET
SAVANNAH, GEORGIA 31401

CHARLES L. SPARKMAN
STANLEY E. HARRIS, JR.
WILLIAM T. MOORE, JR.
JAMES P. GERARD

TELEPHONE:
(912) 236-1321

May 30, 1984

Honorable Lindsay Thomas
Congress of the United States
Room 427, Cannon Building
Washington, D.C. 20515

Dear Congressman Thomas:

It is my understanding that there is soon to be a committee hearing on the issue of whether the United States District Courthouse should be moved from Swainsboro, Georgia to Statesboro, Georgia. I will appreciate it if you will see that this letter and the views expressed herein are placed before the committee reviewing this question.

I have been a practicing trial attorney in both state and fsderal courts in the Southern District of Georgia since 1964. Prom July, 1977 through June, 1981 I served as the United States Attorney for the Southern District of Georgia and the Swainsboro Division of United States District Court was, and still is, in the Southern District of Georgia. Since leaving the United States Attorney's Office, I have engaged in an active civil and criminal trial practice in the Southern District and elsewhere. Based upon my prior and present experience, I feel that I am as qualified as anyone, and more qualified than most, to inform the committee that there are a great many problems with holding court proceedings in Swainsboro. These problems could, in my opinion, be eliminated by transferring the court to Statesboro, Georgia.

During the four years that I served as the Chief Federal Law Enforcement Officer in the Southern District, I was personally confronted with many problems caused by the location of the Federal Courthouse in Swainsboro. Some of these problems are:

1. The courthouse itself is structurally and functionally inadequate.
2. There are no proper holding facilities for federal prisoners.
3. Courtroom security is practically non-existant.
4. There is not proper office space available for the U.S. Attorneys Office to interview witnesses, prepare for trial, or conduct trial activities when trying a case there.
5. One of the most serious drawbacks is the lack of a federal library for use by the Court, U.S. Attorney's Office personnel or defense counsel.

The combination of these deficiencies make it extremely difficult to prosecute or defend a federal case in Swainsboro.

One of the worst problems for the prosecutors and defense counsel who have to try cases in Swainsboro is the lack of adequate motel accomodations. During my service as United States Attorney, the motel accomodations were so inadequate that I officially authorized all office personnel who had to conduct business in Swainsboro to stay overnight at motels in Statesboro and travel the thirty miles back and forth each day. I made this authorization even though I was budget conscious and was trying to eliminate unnecessary travel time and travel expense, but I simply could not tolerate the motel situation in Swainsboro. It is my understanding that there has been little or no change in the past three years.

Based upon my prior experience, all federal prisoners who are not out on bond and are facing trial in Swainsboro are housed in the Chatham County Courthouse in Savannah, Georgia. Needless to say, it is much closer and easier for the U.S. Marshal's Service to transfer these prisoners to Statesboro for court appearances than it would be to transfer them to Swainsboro which requires additional travel of approximately 30 miles.

I do not have any special interest either in Swainsboro or Statesboro and my comments are merely to try and inform the Congress on conditions as I have personally observed them in the past twenty years as a practicing attorney in this district and more particularly in the past seven years as the former U.S. Attorney and now active defense counsel. It is my sincere belief that a majority of the lawyers in the Southern District of Georgia who have to practice in United States District Court would welcome the move from Swainsboro to Statesboro and would consider such a move a progressive step in the administration of justice in this district. It is my opinion that any non-partisan viewer of this situation will have to reach the conclusion that in the administration of justice and in the interest of judicial economy that both the government and the private citizens who must come before the Court in the Southern District of Georgia will be best served if the Federal Courthouse is moved from Swainsboro to Statesboro.

Congressman Lindsay Thomas
May 30, 1984
Page Three

Thank you for seeing that these comments are made known to the committee. I will be pleased to personally answer any questions concerning the same.

Sincerely,

William T. Moore, Jr.
Attorney at Law

WTM/ml

bcc: Gerald Edenfield

RESOLUTION

SAVANNAH BAR ASSOCIATION

WHEREAS, the Chief Judge of the United States District Court for the Southern District of Georgia has proposed moving the seat of the Swainsboro division of the Court from Swainsboro to Statesboro; and

WHEREAS, this proposal, if adopted, will affect members of this Association who practice in the federal courts; and

WHEREAS, the President of the Association assigned the proposal to the "Blue Ribbon" Committee for study and evaluation; and

WHEREAS, the Committee reported on March 1, 1983, finding generally that the proposed shift from Swainsboro to Statesboro would be advantageous from the standpoint of the members of this Association since the round-trip distance from Savannah would be reduced approximately 70 miles, superior motel and restaurant facilities would be available at Statesboro, and a more complete law library would be available; and

WHEREAS, Statesboro is more centrally located within the District than Swainsboro and generally would be a more convenient location for judges, lawyers, parties, witnesses, and court personnel;

NOW, THEREFORE, BE IT RESOLVED by the Savannah Bar Association that it endorses the proposal of the Chief Judge of the United States District Court for the Southern District of Georgia to move the seat of the Court's Swainsboro Division from Swainsboro, Georgia to Statesboro, Georgia.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SWAINSBORO DIVISION

LEROY BLITCH	§	
VS.	§	CIVIL ACTION FILE NO. CV 682-101
REDMAN HOMES, INC. and INTERTHERM, INC.	§	

O R D E R

On March 31, 1983, this case was transferred for purposes of trial from the Swainsboro Division to the Augusta Division of this Court. On April 13, 1983, plaintiff filed a motion to retain trial situs in the Swainsboro Division. Plaintiff contends that transferring the trial to Augusta creates hardship and inconvenience for the parties and witnesses.

Title 28 U.S.C. §1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The Fifth Circuit has held that the decision to transfer a case is within "the sound discretion of the trial court." Beardon v. United States, 320 F.2d 99 (5th Cir. 1963), cert. denied, 376 U.S. 922, 11 L.Ed.2d 616 (1964); see also Aguacate Consolidated Mines, Inc. v. Deeprock, Inc., 566 F.2d 523 (5th Cir. 1978); United States v. Ponder, 475 F.2d 37 (5th Cir. 1973); Nowell v. Dick, 413 F.2d 1204 (5th Cir. 1969).

Furthermore, a district court may, on its own motion, raise the issue of transfer of venue. See, e.g., Lead Industries Ass'n v. Occupational Safety and Health Administration, 610 F.2d 70 (2d Cir. 1979); Riordan v. W. J. Bremer, Inc., 466 F.Supp. 411 (S.D.Ga. 1979); National Acceptance Company of America v. Wechsler, 489 F. Supp. 642 (N.D.Ill. 1980); see also 15 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §3844, at 208-209.

While the Court recognizes that the plaintiff and several witnesses are from Swainsboro and may, therefore, be slightly incovenienced by transferral of the trial to Augusta approximately seventy miles away, the Court also recognizes from first-hand experience that trying the case in Swainsboro will greatly incovenience all parties and witnesses involved because of the inadequate court facilities there. Perhaps the most inadequate of the facilities is the jury room. The room is located in the basement of the courthouse, with access provided by a set of steep and narrow stairs that can be reasonably described as dangerous. The jury room itself is quite small, and the bathroom for female jurors is exceedingly cramped. This Court is convinced that the interests of justice are not served by severely inconveniencing jurors when clearly adequate facilities are available only seventy miles away.

Aside from the inadequacies of the jury room, the Court takes notice of several other shortcomings at the Swainsboro site. The Swainsboro courthouse contains no public telephone and no law library. Seating in the courtroom is inadequate if more than thirty prospective jurors are on the panel.

Furthermore, the Court will be try. other cases in Augusta and transferal of the instant case will allow for more efficient and convenient use of prospective jurors. One of the major inconveniences of a civil trial is the inconvenience caused to those who are called as jurors and prospective jurors. This inconvenience to the public can be minimized by transferring this case to Augusta.

Having balanced the relatively slight inconvenience of driving seventy miles from Swainsboro to Augusta against the serious inadequacies of the courthouse facilities in Swainsboro, the Court concludes that the transfer of the trial from Swainsboro to Augusta promotes the interests of justice and, on balance, provides for the convenience of the parties and witnesses involved in this case. Plaintiff's motion to retain the trial situs in the Swainsboro Division is, therefore, DENIED.

SO ORDERED, this 20th day of April, 1983.

CHIEF JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	FILE NO. 282-14
	)	
ARCHIE WOODROW MOORE, et al,	)	
	)	
Defendants.	)	

- - -

Transcript of proceedings before The Honorable WILLIAM C. O'KELLEY, U. S. District Judge, in Atlanta, Fulton County, Georgia, on Tuesday, July 27, 1982, in the above-styled matter.

- - -

APPEARANCES OF COUNSEL:

For the Government: WILMER PARKER, III, Esq.
GLEN COOK, Esq.

For the Defendants: P. BRUCE KIRWAN, Esq.
MITCHEL P. HOUSE, JR., Esq.
JOHN R. MARTIN, Esq.

- - -

Linda Fincannon
Official Court Reporter
1949 Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

AGO.

WHEN I ASKED IF ANYONE WANTED TO ADD ANYTHING, AND YOU APPARENTLY DON'T, I WAS NOT SUGGESTING THAT YOU SHOULD BECAUSE I THINK I HAVE REVIEWED EVERYBODY'S SUBMISSIONS.

TENTATIVELY I HAVE DETERMINED A RULING. WHILE IT IS NOT IN FINAL FORM, I HAVE A DRAFT READY THAT NEEDS SOME REVISION.

LET ME ASK -- AND OBVIOUSLY THE DECISION HAS TO BE MADE ON SOME FACTOR OTHER THAN THE FACILITIES IN SWAINSBORO, BUT HAVE ANY OF THE THREE OF YOU BEEN TO THAT COURTHOUSE?

MR. KIRWAN: I HAVE NOT, YOUR HONOR.

THE COURT: MR. HOUSE?

MR. HOUSE: I HAVE NOT BEEN INSIDE IT.

THE COURT: IT IS NOT A BAD LOOKING FACILITY FROM THE OUTSIDE.

MR. HOUSE: YES, SIR.

THE COURT: IT IS AN OLD POST OFFICE THAT WAS CONVERTED INTO A COURTHOUSE.

I DISCUSS IT AT SOME LENGTH IN MY PROPOSED DRAFT.

IT IS A VERY UNSATISFACTORY ARRANGEMENT, EXTREMELY UNSATISFACTORY.

I WOULD LIVE WITH THE UNSATISFACTORINESS.

MY INCLINATION IS TO TRANSFER THE CASE BECAUSE -- IN BALANCING THE TEST AS IT IS APPLIED OTHERWISE BUT, GENTLEMEN, THAT COURTHOUSE -- THE COURTROOM, ITSELF, IS NOT THAT BAD. THE WORKING AREA -- BY THE WORKING AREA I MEAN THE AREA IN FRONT OF THE RAIL. THAT IS WHAT I CONSIDER THE WORKING AREA, AND THAT IS THE IMPORTANT THING. IT IS FAIRLY ADEQUATE IN SIZE. IT WOULD ACCOMMODATE THE PARTIES AND LAWYERS INVOLVED IN THIS CASE. IT WOULD ACCOMMODATE THE JURY. IT WOULD ACCOMMODATE THE COURT AND CLERK. THAT IS NO GREAT PROBLEM.

IT IS BETTER, MR. KIRWAN, MR. MARTIN, THAN OUR OLD SECOND FLOOR COURTROOMS, SUBSTANTIALLY BETTER THAN THAT.

THE AREA BEHIND THE RAIL IS NOT VERY ADEQUATE. IT WOULD BE ADEQUATE ONCE YOU GOT THE CASE UNDER WAY, BUT IT WOULD NOT ACCOMMODATE THE JURORS IN MY JUDGMENT, PARTICULARLY IF I GRANT YOUR MOTION FOR EXTRA JURORS.

IT WOULD SEAT JUST ABOUT THE PANEL THAT YOU WOULD STRIKE FROM WITHOUT BRINGING IN CHALLENGES FOR CAUSE OR ANYTHING FOR EXCESS. IT WOULD SEAT ABOUT -- DIDN'T YOU COUNT ABOUT 32?

THE CLERK: YES, SIR.

THE COURT: I MEAN CROWDED. THAT IS ABOUT ALL IT WOULD ACCOMMODATE.

AS YOU KNOW, WE HERE NEVER USE THAT

AS A BASIC PANEL. IT IS USUALLY AT LEAST 35 TO 38, AND IF I GIVE YOU EXTRA STRIKES IT WOULD BE -- THAT IS EVEN WHEN WE ARE JUST DRAWING THEM DOWN OUT OF THE POOL.

IF WE WERE BRINGING THEM IN AS INDIVIDUAL PANEL WE WOULD HAVE MORE THAN THAT. IN GAINESVILLE WE USUALLY BRING IN AROUND 40 OR 45.

THAT CAUSES ME SOME CONCERN.

THERE IS ONLY ONE BOOK IN THE BUILDING, AND THAT IS WEBSTER'S DICTIONARY, ABRIDGED VERSION, THE ONLY BOOK IN THE BUILDING.

THERE IS NO FACILITY AT ALL FOR DEFENSE COUNSEL AND DEFENDANTS TO USE TO CONFER EXCEPT TO CONFER IN THE COURTROOM OR IN A LOBBY WHICH IS NOT VERY LARGE OR TO CONFER OUT ON THE SIDEWALK.

THE MAIN FLOOR OF THE COURTHOUSE CONSISTS OF A COURTROOM AND A LITTLE SMALL LOBBY THAT IS HALF THE SIZE OF THIS COURTROOM, THIS OFFICE. A SMALL OFFICE OFF OF THAT WHICH IS A CLERK'S OFFICE AND THEN A ROOM OFF OF THAT WHICH WOULD BE THE JUDGE'S OFFICE THAT HAS ONE WALL WITH BOOK SHELVES ON IT WITH ONE DICTIONARY IN IT.

THERE IS NO PUBLIC TELEPHONE AT ALL IN THE BUILDING. THERE IS ONE TELEPHONE LINE INTO THE BUILDING, AND THAT IS INTO MY OFFICE OR IN THE JUDGE'S OFFICE. WELL, WITH AN EXTENSION IN THE CLERK'S OFFICE, ONE LINE WITH TWO EXTENSIONS.

THERE IS A LITTLE ROOM THAT I WAS TOLD WAS THE COURT REPORTER'S OFFICE, AND THAT IS THE MAIN FLOOR. THAT IS ALL THERE IS ON THE MAIN FLOOR.

THAT LITTLE ROOM WOULD NOT ACCOMMODATE -- WELL, IT WOULD BE ADEQUATE FOR A COURT REPORTER, BUT IT WOULD NOT BE ADEQUATE IF DAILY COPY WERE BEING REQUIRED, AND THERE IS NO MOTION FOR DAILY COPY, EVEN THOUGH THERE WAS SOME INDICATION AT ONE TIME YOU WERE GOING TO ASK FOR IT.

IT WOULD NOT BE ADEQUATE TO PUT TYPISTS OR COMPUTER EQUIPMENT, MORE THAN ONE PERSON. THE LITTLE ROOM WAS ABOUT TEN BY TWELVE?

THE CLERK: IT WASN'T THAT LARGE, JUDGE.

THE COURT: IT WASN'T THAT LARGE?

THE CLERK: NO, SIR.

THE COURT: IT APPARENTLY HAD BEEN USED IN THE LAST TRIAL WHICH WAS THE ONE YOU REFERRED TO IN YOUR AFFIDAVIT, IT APPARENTLY HAD BEEN USED DURING THAT TRIAL AS A WITNESS ROOM BECAUSE IT IS THE ONLY PLACE ON THE MAIN FLOOR YOU COULD PUT WITNESSES.

THE WITNESS ROOM IS ABOUT THAT SIZE ALSO, AND IT IS IN THE BASEMENT, AND THE D. A. HAS AN OFFICE IN THE BASEMENT, AND THAT IS THE ONLY THING HALFWAY ADEQUATE IS THE DISTRICT ATTORNEY'S OFFICE. IT DOESN'T HAVE A PHONE IN IT BUT SIZEWISE IT IS BIG ENOUGH TO ACCOMMODATE SEVERAL PEOPLE.

THERE IS NO SPACE, AS I SAID, FOR DEFENSE COUNSEL.

THERE IS A LITTLE SMALL LOCK UP. I DON'T KNOW WHETHER YOU ARE GOING TO HAVE ANY PEOPLE IN CUSTODY OR NOT. IF YOU DID, THEY CAN HEAR EVERYTHING THAT GOES ON IN THE JURY ROOM.

THE JURY ROOM IS DOWN IN THE BASEMENT, AND I WON'T DESCRIBE IN DETAIL ITS INADEQUACIES, BUT IT IS NOT VERY BIG. I WOULD HATE TO BE ON A JURY AND LOCKED UP IN THAT ROOM FOR A WEEK OR TWO WEEKS OR THREE WEEKS AT A TIME BECAUSE YOU WOULD SOON GET AT EACH OTHER'S THROATS.

THE JURY ROOM IS NOT HALF THE SIZE OF ONE OF OUR JURY ROOMS HERE. I WOULD SAY ABOUT HALF THE SIZE, AND YOU COULDN'T TAKE ANY FAT WOMEN BECAUSE THE LADIES' BATHROOM HAS THE BASIN ALMOST OVERHANGING THE TOILET, AND IT IS DOWN SOME STEPS THAT I CONSIDERED DANGEROUS.

AS I SAID, THIS WAS A REVISED POST OFFICE. IT IS DOWN IN AN AREA THAT APPARENTLY WAS THE MECHANICAL AREA OR STORAGE AREA OR SOMETHING AT ONE TIME. THE TREAD IS NARROWER ON THE STEPS THAN A NORMAL STEP, AND THEY ARE HIGHER, AT LEAST THEY SEEMED THAT WAY TO ME.

I UNDERSTAND THAT THE SOUTHERN DISTRICT HAS BEEN TRYING TO ABANDON THIS FACILITY, AND I UNDERSTAND WHY AFTER I HAVE BEEN THERE.

YOU MAY NOT BE AWARE OF IT, BUT THEY

PETITIONED THE JUDICIAL COUNSEL A YEAR OR TWO AGO TO MOVE THE FACILITY TO STATESBORO, AND IF STATESBORO WERE THE PLACE OF HOLDING COURT I WOULD LOOK WITH FAVOR ON THAT REQUEST, FRANKLY.

BUT IN SWAINSBORO -- THERE'S NO WITNESS FROM SWAINSBORO AND I WILL DISCUSS ALL THAT AT LENGTH.

THE FACTORS I HAVE JUST MENTIONED, I WOULD LIVE WITH THOSE FACTORS IF THE OTHER TESTS THAT ARE SET FORTH IN BURNS WERE MET.

IN MY PROPOSED ORDER I IMMEDIATELY STATE THAT IT IS OBVIOUSLY CLOSER AND WOULD BE SOMEWHAT MORE CONVENIENT FOR THE DEFENDANTS AND SOME OF THE WITNESSES. THAT IS A QUESTION OF DEGREE, AND IT IS RELATIVELY MINOR DEGREE AS COMPARED TO THE BURNS CASE. IT IS 15 OR 18 MILES EACH WAY DIFFERENCE, BUT THEN BEYOND THAT FOR ALL OTHER WITNESSES IT IS A SUBSTANTIAL INCONVENIENCE.

THE BEST I COULD DETERMINE THERE IS NO PUBLIC TRANSPORTATION IN AND OUT OF THERE.

JERRY EVANS AND I WENT DOWN THERE. I JUST WANTED TO SEE THE PLACE AND INSPECT THE ENTIRE THING.

I PROMISED MYSELF AFTER KEY WEST AND AFTER PANAMA CITY I WOULD NEVER TRANSFER A CASE ANYWHERE WITHOUT FIRST SEEING THE FACILITIES, AND I INTEND TO LIVE UP TO THAT, MR. KIRWAN. YOU HAVE BEEN WITH ME ON ONE OF THOSE.

MR. MARTIN, I BELIEVE YOU WERE WITH ME

ON THE OTHER ONE.

MR. MARTIN: ONLY TANGENTIALLY. I DIDN'T SPEND ANY TIME THERE.

THE COURT: WELL -- I WENT THERE FOR THE FIRST TIME WHEN I WAS READY TO START THE TRIAL, BUT THOSE FACTORS JUST CONFIRM THAT I WOULD BE WISE TO -- I KNOW YOU VOLUNTEERED THAT YOU WOULD PUT A LIBRARY THERE. I FRANKLY QUESTION THAT YOU COULD AFFORD TO PUT A LIBRARY THERE THAT I WOULD CONSIDER ADEQUATE TO DEAL WITH THE QUESTIONS THAT WOULD ARISE BUT EVEN IF YOU DID I DON'T KNOW WHERE YOU WOULD PUT THEM.

MR. HOUSE: I THINK MERCER UNIVERSITY WOULD PROVIDE A LIBRARY.

WHEN WE MADE THE OFFER, WE WERE IN A POSITION TO PERFORM. IT WAS NOT AN IDLE OFFER.

THE COURT: VERY KIND OF THEM, EXCEPT I DON'T KNOW WHERE YOU WOULD PUT IT BECAUSE THE BOOK SHELVES WOULD ACCOMMODATE UNITED STATES CODE ANNOTATED MAYBE, AND THAT IS ABOUT ALL. THERE IS ONE WALL -- THE LITTLE OFFICE IS -- WELL, THE OFFICE IS A LITTLE LARGER THAN ONE OF MY LAW CLERK'S OFFICES HERE. I WOULD SAY THAT OFFICE IS TEN BY FOURTEEN MAYBE. MAYBE TWELVE BY FOURTEEN, BUT ONE WALL HAS BOOK SHELVES ON IT AND THAT IS ALL AND IT IS THE WALL THE DOOR IS IN ALSO SO YOU HAVE GOT A WALL LESS THE DOOR OF BOOK SHELVES.

IT WOULD POSSIBLY HOLD THE UNITED STATES CODE ANNOTATED. IT WOULD HOLD THE GEORGIA CODE AND POSSIBLY -- BECAUSE THE GEORGIA CODE DOESN'T TAKE UP AS MUCH SPACE, AND POSSIBLY WOULD HOLD THE UNITED STATES CODE ANNOTATED BUT THAT IS ABOUT IT.

THE WORKING AREA IN THE COURTROOM, AS I SAID, IS PROBABLY THE -- THAT AND THE U.S. ATTORNEY'S OFFICE ARE THE TWO MOST ADEQUATE FACILITIES, PARTS OF THE FACILITY.

PARKING WOULD BE ADEQUATE. EASY GETTING IN AND OUT OF THE COURTHOUSE. IT WOULD BE VERY PLEASANT. IT IS A BUILDING USED FOR ABSOLUTELY NOTHING ELSE.

THE BUILDING OVERALL, THE ENTIRE BUILDING OVERALL IS I WOULD SAY SMALLER THAN OUR CEREMONIAL COURTROOM, A GOOD BIT SMALLER.

THE CLERK: YES, SIR.

THE COURT: A GOOD BIT SMALLER THAN OUR CEREMONIAL COURTROOM, AND I AM TALKING ABOUT THE OVERALL DIMENSIONS OF THE BUILDING, BUT IT IS A RIGHT ATTRACTIVE BUILDING FROM THE OUTSIDE. IT IS APPARENTLY AN OLD POST OFFICE THAT THE COURT OUTGREW.

WHEN YOU COME IN OFF THE STREET YOU ARE IN JUST A LITTLE LOBBY ALCOVE WHERE I GUESS AT ONE TIME WAS WHERE YOU GO BUY STAMPS AND DROP YOUR MAIL, AND THE COURTROOM IS BUILT BACK IN WHAT WAS THE WORK AREA OF THE POST OFFICE.

MY UNDERSTANDING IS THE THING IS STILL PENDING EITHER BEFORE CONGRESS OR BEFORE THE ELEVENTH CIRCUIT JUDICIAL CONFERENCE ABOUT CHANGING THAT TO STATESBORO, AND AS I SAID IF IT WERE STATESBORO I THINK YOUR MOTION WOULD BE PERFECT, BUT I DON'T SEE HOW WE COULD TRY IT IN STATESBORO BUT PRESENTLY THERE IS NO STATUTORY AUTHORIZATION FOR IT AND EVEN IN STATESBORO YOU WOULD HAVE TO USE STATE COURT FACILITIES.

BUT IN ANALYZING WITNESSES FROM THE AFFIDAVIT OR THE LIST SUBMITTED BY THE GOVERNMENT FROM 110 WITNESSES OR 111, WHATEVER IT WAS, VARIOUS PLACES, I SEE NOTHING BUT PROBLEMS IF WE HAD IT -- YOU WOULD HAVE HALF YOUR WITNESSES WOULD BE HAVING TO COMMUTE EVERY DAY.

THAT BRINGS UP ANOTHER THING. THERE ARE I BELIEVE THREE LITTLE MOTELS THERE, NONE OF WHICH I WOULD BE WILLING TO STAY IN, AND I DON'T SAY THAT IT MAKES ANY DIFFERENCE TO ME BECAUSE I WOULD HAVE A CAR TO DRIVE SOMEWHERE ELSE, BUT I WOULD HAVE SOME CONCERN ABOUT WITNESSES AND OTHER PEOPLE WHO HAVE TO COME DOWN THERE, AS WELL AS YOU. I DON'T THINK ANY OF YOU WOULD BE HAPPY OR COMFORTABLE IN ANY OF THE LOCAL MOTELS.

IT IS MY UNDERSTANDING THE MOTELS IN STATESBORO ARE VERY ADEQUATE BUT THAT IS SOME DISTANCE AWAY. THAT IS WHERE THEY PUT THE JURY FOR THE LAST TRIAL THEY HAD THAT YOU REFERRED TO.

NOW, MY UNDERSTANDING, THAT TRIAL JUST LASTED TWO DAYS OR THREE DAYS AT THE MOST. YOU TOOK THE AFFIDAVITS AND APPARENTLY YOU KNOW BETTER THAN I DO, BUT I DON'T THINK THE AFFIDAVITS SAID, BUT I THINK THAT IS WHAT I WAS TOLD BY THE COURT FOLKS DOWN THERE, THAT IT WAS OVER ONE NIGHT, I THINK, OR MAYBE OVER TWO NIGHTS. I AM NOT SURE. IT WOULD EITHER BE TWO DAYS AND ONE NIGHT OR 3 DAYS AND TWO NIGHTS.

YOU LISTED A LARGE NUMBER OF WITNESSES WHICH SEEMED INCONSISTENT WITH THE LENGTH OF TIME THAT I THOUGHT THE TRIAL TOOK.

JUDGE ALAIMO TRIED THE CASE, AND I THOUGHT HE TOLD ME HE WAS ONLY THERE TWO DAYS.

MR. HOUSE: THE LAWYER THAT TRIED THE CASE SUPPLIED US THE NUMBER, SO I ASSUMED HE WAS CORRECT.

THE COURT: YOU KNOW, THEY MAY HAVE HAD A LOT OF THEM WHO WERE IN AND OUT REAL FAST, JUST PROVING DOCUMENTS OR SOMETHING, AND IT MAY BE THAT I HAVE THE WRONG IMPRESSION AS TO THE LENGTH OF IT.

BUT THAT CAUSED ME A GREAT DEAL OF CONCERN. I WOULD HAVE PREFERRED TO HAVE TRIED IT IN THE DIVISION WHERE THE DEFENDANTS LIVE IF THE BURNS TEST OTHERWISE FIT. I THINK THAT'S PART OF IT.

NOW, THAT BRINGS ME TO THIS QUESTION. THE GOVERNMENT MADE A MOTION WHICH I GUESS YOU WOULD SAY WASN'T

TIMELY BUT IT WAS, IF ANYTHING, A RESPONSE TO YOURS, AND THEY SUGGESTED THE SAVANNAH DIVISION.

THE SAVANNAH DIVISION CERTAINLY IS MORE CONVENIENT TO EVERYBODY THAN IS THE BRUNSWICK DIVISION.

NOW, YOU OBJECTED TO THEIR MAKING A MOTION, BUT I THINK UNDER RULE -- ISN'T IT RULE 16?

MR. PARKER: EIGHTEEN IS THE ONE TO SET THE PLACE OF TRIAL AT THE COURT'S DISCRETION.

THE COURT: UNDER RULE 18 I THINK THE RESPONSIBILITY IS ON ME TO ESTABLISH THE PLACE, BUT ONE OF THE REASONS I WANTED TO WAIT, MR. HOUSE, MR. KIRWAN, BECAUSE YOU DIDN'T REALLY ADDRESS IT IN YOUR MOTIONS.

DO YOU VIEW THAT SAVANNAH IS NOT AN APPROPRIATE PLACE OR THERE IS SOME PROBLEM IF WE HAVE IT IN SAVANNAH?

MR. HOUSE: JUDGE, I VIEW ANYPLACE --

THE COURT: OTHER THAN SWAINSBORO, BUT LET'S ADDRESS THAT QUESTION.

MR. HOUSE: THAT WASN'T WHAT I WAS GOING TO SAY.

I VIEW ANYPLACE WHERE WE DO NOT HAVE A PANEL FROM THE SWAINSBORO DIVISION AS THE WRONG PLACE FOR THIS TRIAL.

THE COURT: WELL, YOU KNOW, I THOUGHT -- I READ THAT IN YOUR MOTION, AND THAT CAUSED ME SOME CONCERN,

BUT THE RULE DOESN'T ADDRESS WHERE THE JURORS COME FROM. IT IS THE PRACTICE AS I UNDERSTAND IT IN EACH DIVISION DOWN THERE TO DRAW JURORS FROM THAT DIVISION.

IN THE BURNS CASE, THEY WERE DRAWING THEM DISTRICT WIDE. YOU KNOW, I DON'T HAVE ANY GREAT PROBLEM. THEN WE ADD AN ADDITIONAL PROBLEM OR INCONVENIENCE WITH THE JURORS WHO -- THOSE HAVE THE STRANGEST SHAPED DIVISIONS DOWN THERE.

WHERE IS THAT NOTEBOOK?

THE LAW CLERK: I CAN BRING IT VERY EASILY.

THE COURT: THOSE ARE THE STRANGEST SHAPED DIVISIONS. IT IS KIND OF A Y SHAPED OR T SHAPED, AND SOME OF THE JURORS COULD BE UP IN A NECK. I AM NOT QUESTIONING THE WISDOM OF CONGRESS AND HOW THEY LAID THEM OUT.

I DON'T KNOW OF WHAT THE AUTHORITY WOULD BE FOR BRINGING JURORS FROM ONE DIVISION TO ANOTHER DIVISION IS WHAT I AM SAYING.

I READ WITH GREAT INTEREST YOUR ARGUMENT IN THAT REGARD AND THE ARGUMENT ABOUT COASTAL PEOPLE AS OPPOSED TO INLAND PEOPLE. I DON'T KNOW WHETHER I AGREE THAT THERE IS MERIT TO IT, BUT I READ IT WITH INTEREST AND GAVE IT CONSIDERATION.

YOU HAVE GOT ONE FINGER THAT RUNS WAY UP. STATESBORO REALLY -- I HAVE ALWAYS THOUGHT WAS FAIRLY CLOSELY TIED TO SAVANNAH. IT PROBABLY HAS MORE IN COMMON

ACADEMIC EXCELLENCE
GEORGIA SOUTHERN COLLEGE

DEPARTMENT OF FINANCE & LAW
GEORGIA SOUTHERN COLLEGE
LANDRUM BOX 8151
STATESBORO, GA 30460-8151
TELEPHONE: 912-681-5575

SCHOOL OF BUSINESS

June 21, 1984

To Whom It May Concern:

This letter is written in support of the request to locate the Federal Court of the Southern District of Georgia in Statesboro, Georgia.

Statesboro is the home of Georgia Southern College, a senior college within the University System. It has approximately 7,000 undergraduate students and a graduate program. Among its academic offerings are a Criminal Justice program in the Political Science Department and numerous law and government courses in the School of Business. It has a significant legal collection in its Library, consisting of a merger of all materials from the Bulloch County Law Library and the Georgia Southern College legal collection.

It would be of great benefit to the students of Georgia Southern College to have the Federal Court located in Statesboro so that they could observe the workings of our criminal and civil justice system.

Sincerely,

Lynda Skelton Hamilton

Lynda Skelton Hamilton, J.D.
Asst. Professor

LSH/rph

Faye Sanders Martin
Judge of the Superior Courts
Ogeechee Judicial Circuit
Room 207, Bulloch County Courthouse
Statesboro, Georgia 30458

Mailing Address
P.O. Box 803

Counties
Bulloch
Effingham
Jenkins
Screven

Telephone
(912) 764-6095

June 12, 1984

The Honorable Lindsay Thomas
United States Representative
427 Cannon Building
Washington, D. C. 20510

Dear Congressman Thomas:

As Judges of the Superior Court of Bulloch County, we want to reaffirm our commitment to the proposal of moving the federal court from Swainsboro to Statesboro.

Statesboro has a spacious, modern courtroom that is more than adequate to handle federal trials and hearings. There are only four terms of Superior Court each year, meaning that the courtroom is only occupied eight to ten weeks per year. For hearings and non-jury matters, the grand jury room is available and the Recorder's courtroom, which is used only one morning per week, is also available when needed. It is already used on occasion for worker's compensation and social security hearings.

We will work with the federal court judges and administrators in sharing the court facilities, and foresee no problems in accommodating the federal court in the existing Bulloch Superior Court.

We also pledge to make our offices, conference rooms and other facilities connected with the operation of the court available to the federal judges for their use for pretrial conferences, status conferences, and when court is in session.

We think the federal court would find the Bulloch County courtroom and facilities very convenient for their use, and pledge our full support and cooperation to shared use of the facilities.

Yours very truly,

Faye Sanders Martin

Faye Sanders Martin
Chief Judge

W. J. Neville

William J. Neville
Judge

A PROPOSAL FOR THE CONTINUATION OF THE SWAINSBORO DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

PROPOSAL FOR THE CONTINUATION OF THE SWAINSBORO DIVISION

Although the Swainsboro Division of the United States District Court for the Southern District of Georgia has been in existence since the 1940s, the movement has been revived to close the Swainsboro Division and create a new division in Statesboro, Georgia, 37 miles away. With the exception of the addition of one or two counties, the proposed division would be the same as the existing one, except the headquarters of the division would be moved to Statesboro. That is the purpose behind the proposal, even in light of the existing congressional mandate requiring Court to be held in Swainsboro, and in the face of the simple fact that there is an existing Federal Court facility in Swainsboro and none in Statesboro. The determination of federal court districts and the designation of the courts for those districts is strictly a matter for congressional action and, for this reason, we are directing our proposal to this Congress, which ultimately must make the decision.

Prior to addressing the merits or demerits of the various proposals, we feel it is essential that one understand the historical background behind this movement. In the 1960s, the Bulloch County Bar first approached the local congressmen with the idea of transferring the headquarters of the Division to Statesboro. That effort met with little success and the issue lay dormant until the late 1970s. At that time, there appeared to be a movement underway in the Southern District to consolidate all federal court business in the three metropolitan areas of the District:

Brunswick, Savannah and Augusta (See Exhibit "A"). Apparently, it was felt that this type of consolidation would be more convenient for the federal court personnel, even though it would be significantly less convenient for the parties, attorneys, jurors and witnesses residing in the rural areas of the District. Nonetheless, this appeared to be the impetus for a rejuvenation of the Statesboro proposal and it received the support of the three judges in the District.

In the fall of 1979, members of the Emanuel County and Jefferson County Bar Associations learned that, unbeknownst to them, the bar associations of the other counties within the Swainsboro Division and certain counties bordering on that Division were approached by representatives of the Bulloch County Bar and asked to endorse the resolution calling for the creation of a Statesboro division. Favorable action was obtained from all of these counties, but it was not until the Toombs County Bar was approached that it was finally revealed that the true effect of the proposal would not be to create an additional division, but to close the existing Swainsboro Division in favor of transferring the Division headquarters to Statesboro. Upon learning of the true effect of the proposal presented to them, virtually all the bar associations, formally or informally, rescinded their prior support (See examples, Exhibits "B"-"G").

During this same period of time, then Congressman Ronald "Bo" Ginn was approached by proponents of the proposal and apparently lead to believe that congressional action to achieve their purpose was unnecessary. Once the Emanuel County Bar became aware of what was transpiring, Congressman Ginn was contacted and made aware that action of this type

could only be taken with the approval of Congress since the districts and the headquarters for the districts are, and must be, established by statute. Congressman Ginn immediately expressed his opposition to the proposal and no further attempt at congressional action was undertaken. Subsequently, with the resignation of Congressman Ginn and the election of Congressman Lindsay Thomas, the proposal was resubmitted and, again the Congressman in whose district these divisions lie took immediate and expressed opposition.

The desire of the Bar in Bulloch County and the community to have a federal court located in Statesboro is certainly understandable. Likwise, the objections of the Emanuel County Bar are equally understandable, but, at the very least, the burden of justifying such a move must be placed upon the proponents. In addition, the move is opposed by the bars of the other counties that now comprise the existing Division. In other words, this proposal is supported by one county and the district court judges, but opposed by all others who would be affected by this change.

In order to appropriately assess this situation, we feel that it is necessary to consider the facts and not just the personal opinions of those who support either concept. The proponents of the Swainsboro Division feel strongly that an objective consideration of these facts will lead inevitably to the conclusion that there is no economic, judicial, or political justification for closing one district solely for the purpose of creating a new headquarters 37 miles away.

I. SWAINSBORO--THE CITY

(See Descriptive Exhibit "G")

The City of Swainsboro and its closely adjacent suburbs have a population of approximately 12,000 people. Emanuel County, of which Swainsboro is the major metropolitan area, has a population of approximately 20,000. Swainsboro is located in the very center of the County and is the only place in the United States where the two transcontinental highways, Highway 1 and Highway 80, intersect. In addition, Interstate 16 traverses Emanuel County and intersects major thoroughfares approximately 15 miles from Swainsboro. Swainsboro also has an airport facility, which is currently undergoing a federally-financed expansion, and is capable of and does serve small to medium-sized corporate jets.

The City of Swainsboro sits physically in a triangle between the metropolitan areas of Augusta, Macon and Savannah. Each of these cities is, of course, served by the major airlines, and none of these airports are more than an hour-and-a-half drive from Swainsboro.

Swainsboro, and Emanuel County, is, as one would expect, still an agriculturally-dominated area. However, the City has several very strong industries in both agricultural and nonagricultural product production fields. Previously-developed industrial sites; good access to transportation routes; the presence of a vocational-technical school and a junior college, and a good labor force, can only mean that Swainsboro's industrial development will continue to expand.

In the City itself, there are numerous eating establishments, including chains such as McDonald's, Hardee's and Huddle House. There are also several locally-owned restaurants, one of which is in walking distance of the existing Federal Courthouse facility, and has a private room for the use of jurors and Courtroom personnel. There are also two restaurants outside the City limits that are famous throughout this area of the State for fresh seafood and local dishes.

Everyone acknowledges that the only problem in Swainsboro at this time is the lack of adequate motel facilities. However, the Mayor of Swainsboro, who is also an architect and industrial developer, is beginning construction on a new 30 to 40-room motel facility which will compete with and, in fact, surpass any existing motel in the areas adjacent to this Division. The Mayor has committed that he and his staff will work closely with the Court officials to reserve in advance blocks of rooms for their use while holding Court in Swainsboro.

II. SWAINSBORO--THE DIVISION

Since at least the 1940s, the Swainsboro Division has existed by virtue of Congressional action, serving the counties of Emanuel, Bulloch, Candler, Jenkins, Toombs and Jefferson. Even a cursory review of the map of Georgia (Exhibit H), contained in this Proposal, shows that Emanuel County and Swainsboro are most centrally located for the headquarters of this Division.

For many years, there was no Federal Court facility in Swainsboro and the Federal Court utilized the County-owned Superior Court facilities. In fact, for a number of years, Emanuel County provided to the government free of charge an office for the use by the Clerk of the Southern District in the Emanuel County Courthouse.

Some years ago, a new post office facility was constructed in Swainsboro and the existing post office building was converted to a Courthouse. Enclosed with this Proposal are pictures of the exterior and interior of the facility, along with a detailed floorplan. As can easily be seen, the facility itself is more than adequate for holding hearings and trials, and there is certainly no shortage of available office space. In addition, immediately adjacent to the facility is a 200-plus paved and lighted parking area, constructed by the City of Swainsboro so that access and parking for jurors, witnesses, Court officials and attorneys, is more than adequate. Anyone the least bit familiar with the parking problem in downtown Statesboro, and particularly in the Courthouse area, would understand why this easily-accessible parking area is of such importance to those who use the facility.

In the Statesboro Proposal, it is made to appear that the facility is simply not being used a sufficient amount to justify its continued existence. Pretermitting the efficacy of these statistics, it should be noted that they are at least two, if not three, years old. Since the time of that usage survey, bankruptcy filings in the Swainsboro Division have increased dramatically, and a parttime U.S. Magistrate is located in Swainsboro. It is conservatively estimated that over the last twelve months, the Bankruptcy Court and the U.S. Magistrate alone have used

the facility an average of ten days a month. Therefore, the building itself is being utilized by the Federal Court system approximately 50% of the working days in any given month, which is quite high for a rural federal court division.

One problem that has been mentioned recently is the expense the government goes to in providing routine maintenance to this facility since there is no GSA or government maintenance office nearby. That is an understandable budgetary consideration, but it is a problem which can be easily alleviated. Both the City of Swainsboro and the County of Emanuel have committed to assume the responsibility for routine maintenance and cleaning of the Courthouse facility if it is allowed to remain in Swainsboro. Both of these entities have fulltime maintenance and cleaning personnel on staff and have agreed to take over these responsibilities without charge to the government. That alone is clear evidence of the commitment that this community and its governing officials have to a continuation of this Division.

The most salient fact to be first considered by anyone reviewing these proposals is the simple fact that a Federal Court facility already exists in Swainsboro where there is none in Statesboro. It has been contended that the Federal Court can simply make use of the County Courthouse facilities in Bulloch County, but that proposal is patently unrealistic. Bulloch County has one courthouse with two courtrooms, one of which is very small and basically unsuited for jury trials. In addition, the courthouse facilities are used by two superior court judges, one state court judge, one probate judge, and one senior superior court judge. In any federal court division, the facilities must be available for use by the

federal district judge, the bankruptcy judge, the bankruptcy trustees, and the U.S. magistrate. It is simply inconceivable that all of these various judicial officials can share one court facility without resulting confusion, questions of jurisdiction, and ultimate delays in the judicial process.

Everyone is certainly aware of the increasing jurisdictional conflicts between federal and state courts. This problem could only be exacerbated by any arrangement which requires one judge or the other to schedule his calendar around the calendar of another judge of a different court. For example, what will happen if a federal speedy trial criminal case must be tried in Statesboro at the same time the two courtrooms are being used by the superior court judges of Bulloch County for state trials? Will the federal court require that the state trial proceedings be continued, or will the federal indictment be dismissed because of the court's inability to try the case within the time periods prescribed by federal law? The number of speedy trial demands in federal court, coupled with the extensive use of the county facilities by the state courts, makes this problem more than simply hypothetical or illusory.

As is clear from the above, a sharing of facilities is an unworkable proposal. If this Statesboro proposal is adopted, within a very short time there will have to be an appropriation for construction of a new federal court facility in Statesboro. In these days of budget cuts and budget deficits and attempts to save federal tax monies whenever possible, the adoption of a proposal which will inevitably result in the expenditure of tax monies to construct a facility 37 miles away from an existing courthouse cannot be economically or politically justified.

Contained within the Statesboro proposal are many allegations that the facility in Swainsboro is inadequate. Except for the very, very rare case involving a multitude of parties and witnesses, the Swainsboro facility is perfectly adequate for the type of trials that normally arise in rural federal divisions. Certainly there will be cases which require the use of a large facility, but that occurs even in the metropolitan areas of the Southern District. Last year, it was necessary that a federal drug trial be moved to the Civic Center in Augusta because the court facility there was inadequate. In the Swainsboro Division, that is very, very much the exception, and certainly not the rule.

It is also alleged in the Statesboro proposal that caseload and facility usage would be increased by moving the headquarters to Statesboro and that juror miles could be saved. Of course, any attempt to equate county population with potential federal court litigation is fallacious at best. The limited nature of federal jurisdiction, by definition, means that there is no direct relationship between the population of an area and the number of federal filings. In fact, Jefferson County is the least populous county in the existing Swainsboro Division, but in all probability accounts for a significant number of cases in that Division. More importantly, the caseload figures in the Statesboro proposal are based upon including Tattnall County, the location of the largest Georgia State prison facility, in the proposed Statesboro division, thereby bringing into that division all of the federal habeas corpus filings arising out of that prison. The same result would be reached if Tattnall County were simply added to the Swainsboro Division and, in fact, it is our understanding that the federal judge assigned to the Swainsboro Division is now handling those cases even

though they are docketed in the Savannah Clerk's Office. Therefore, the caseload argument contained in the Statesboro proposal is something less than illuminating.

The same holds true for the argument concerning the saving of juror miles. As can easily be seen, Swainsboro is now in the very center geographically of this Division. Statesboro is more to the South and East and is on the very outskirts of the existing Division and would be centrally located only by the inclusion of counties between Bulloch and Chatham not currently contained in the Swainsboro Division. As for jurors, witnesses and parties in the existing counties, moving the headquarters to Statesboro would be convenient only for those citizens in Bulloch County. Citizens of every other county in the existing Division would either drive the same distance or significantly further distances to attend court in Statesboro than they must now drive to attend in Swainsboro. Also, the random selection of jury panels employed by the federal courts in the Southern District negates any relationship between population and juror residence on any particular panel for any particular trial. Therefore, the juror mile consideration is equally fallacious.

It is also alleged that the Court facility in Swainsboro is inadequate because it contains no federal library. It should be noted that a library did, until recently, exist in that Courthouse until the subscriptions of the books were cancelled by persons unknown and for reasons unknown. However, a County law library is located in the second floor of the County Courthouse and it contains sufficient federal volumes for all but the most extensive research. The Superior Court Clerk's Office also makes available to the federal judges and their lawclerks the

County-owned copying facilities without charge and those facilities and the library are located less than a hundred yards from the Federal Courthouse. It should also be noted that the Bulloch County library facilities are nothing more than the same county-financed facilities as exist in Swainsboro and, therefore, no better research service would be available if the Court were located in Statesboro unless federal monies were used to supplement the existing library or create a new one. Certainly, if those funds are available, they can just as easily be allocated for the existing facility in Swainsboro. It should also be noted in passing that the very best federal research library between Macon and Savannah is located in Louisville, Georgia, only 30 miles away and is routinely used by lawyers and judges throughout this area of the State.

The closing and creating of federal court divisions is an extremely important adjunct to the orderly and equitable administration of justice in our federal judicial system. Decisions of this type cannot and should not be based upon political considerations or even the personal wishes of court personnel. They must be based upon the facts and must be factually supportable. The proponents of the Swainsboro Division assert that no facts exist which support the closing of this 40-year-old Division with its own Courthouse facility to create a new division and ultimately construct a new building 37 miles to the East.

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

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

October 15, 1980

TO: Chief Judges, United States Courts of Appeals
Chief Judges, Selected United States District Courts
Bankruptcy Judges, Selected Bankruptcy Courts

SUBJECT: Space Utilization Survey

Since many of you have expressed concern over my letter of September 29, 1980, and our tentative recommendations for closure of certain space within various courts, I wish to clarify a few points.

First, the survey was conducted solely because of a requirement imposed upon us by the House Appropriations Subcommittee which was concerned about the high cost of space being utilized by the Judiciary. The survey period was limited due to the need to present our findings and recommendations to the Court Administration Committee in time to include some discussion of the matter in my testimony before the House Subcommittee in January or February of next year.

The recommendations for which I asked your comments are strictly preliminary, based only on our review of the survey results and my staff's limited knowledge of the courts concerned. It is for this reason that I seek your assistance, realizing that only through your knowledge and earnest cooperation can we reach well-grounded, considered recommendations. I assure you that the final recommendations submitted by the Administrative Office to the Subcommittee on Judicial Improvements will be made in light of your comments. No closures will take place without the express approval of at least the circuit council and the Court Administration Committee, and probably the Judicial Conference. It may very well be that the Committee or the Conference will direct that the resultant recommendations should go to the Congress for their consideration.

Finally, I realize that the time provided to you for comments was extremely short, and since I do need your comments, I or a member of my staff will contact you if we have not received your comments by the time we begin to put together our final report for the Subcommittee, a report which should reach the members by about December 15, 1980.

EXHIBIT "A"

In closing, I trust that this letter has more adequately explained my position and my earnest need for your comments.

Sincerely,

William E. Foley
Director

Southern District of Georgia
Recommendations

City	Recommendations
Brunswick	Recommend releasing the magistrate's courtroom (851 square feet) and sharing the district courtroom. During the survey period the district courtroom was used seven days in February, and 15 days each in March and April, and the magistrate's courtroom was utilized two days in February and one day each in March and April. The chief judge of the district and one part-time magistrate are headquartered at Brunswick. Annual Savings - $5,063
Dublin	Recommend closing this entire facility. The district courtroom was used one day each in March and April by the bankruptcy court. The bankruptcy court could make arrangements to rent needed space on a day-to-day basis if required to sit in Dublin. There are no court officers headquartered at Dublin. The nearest facility is at Augusta, 90 miles northeast. Annual Savings - $28,520
Swainsboro	Recommend closing the entire facility for same reasons as discussed in Dublin. The courtroom was used three days in March (two days by the district court and one day by the bankruptcy court) and one day in April by the bankruptcy court. The facilities were not used during the month of February. The nearest facility is at Augusta, 78 miles northeast. Annual Savings - $15,398
Waycross	Recommend closing this entire facility. The district courtroom was used one day during the survey period and the bankruptcy courtroom was used one day each in February and March and 12 days in April. There are no court officers housed at Waycross and there are facilities at Brunswick, 57 miles to the east. The bankruptcy court could rent space on a day-to-day basis if required to sit at Waycross. Annual Savings - $70,477

RESOLUTION

WHEREAS it has been brought to the attention of the Middle Judicial Circuit Bar Association that there is currently pending a proposal to restructure the Divisions of the Federal District Court for the Southern District of Georgia and,

WHEREAS it further appears that this redistricting proposal would result in the closing of the Federal District Courthouse in Swainsboro, Georgia and a Division of the Middle Judicial Circuit into separate Federal Divisions centered in Dublin and Statesboro, Georgia and,

WHEREAS it is the unanimous opinion of the members of the Middle Judicial Circuit Bar Association that this proposal would result in unnecessary expenditure of tax monies to construct new facilities in Statesboro, Georgia only thirty-seven (37) miles away from existing facilities and would also require construction and maintenance of a Federal Library in Statesboro, Georgia when there is a well-equipped and adequate Federal Library in Louisville convenient for the use of the attorneys practicing in the District Court in Swainsboro, Georgia and,

WHEREAS it would be more economical and convenient to enlarge the numbers of counties encompassed by the Swainsboro Division instead of creating a new Statesboro Division,

NOW, THEREFORE, BE IT RESOLVED that the Middle Judicial Circuit Bar Association expressed unanimous and stringent opposition to the above referred to proposal.

This 7th day of November, 1979.

PRESIDENT

ATTEST:
SECRETARY

EXHIBIT "B"

RESOLUTION

WHEREAS, we, the undersigned members of the Jefferson County, Georgia, Bar have heard reports that it is being proposed that the Swainsboro Division of the United States District Court for the Southern District of Georgia be abolished, with the probable result that Jefferson County would be placed in the Dublin Division;

WHEREAS, we are entirely pleased with the present divisions of the District; and,

WHEREAS, we feel that the proposed change would be detrimental to our clients;

NOW, THEREFORE, we hereby resolve to urge that no such change be made and that the Swainsboro Division be kept intact.

This 15th Day of November, 1979.

EXHIBIT "C"

NOW, THEREFORE BE IT RESOLVED that the Emanuel County Bar Association expresses unanimous and stringent opposition to the above referred to proposal and specifically requests that approval of proposal be denied by the appropriate administrative body.

This 9th day of November, 1979.

PRESIDENT

ATTEST:

SECRETARY

EXHIBIT "D"

RESOLUTION

WHEREAS, the Tattnall County Bar Association has previously endorsed the creation of a new Division for the United States District Court for the Southern District of Georgia, to be centered in Bulloch County, Georgia, and,

WHEREAS at the time of this endorsement, the members of this Bar were not aware that the effect of this new Division would be to close the Swainsboro Division and transfer certain of those counties to the Dublin Division,

NOW, THEREFORE, BE IT RESOLVED that the Tattnall County Bar Association does not view the closing of the Swainsboro Division as advantageous to the Southern District of Georgia, and believes such a move would adversely affect the public as well as the members of the Bar in our area.

EXHIBIT "E"

RESOLUTION

WHEREAS it has been brought to the attention of the Emanuel County Bar Association that there is currently pending the proposal to restructure the divisions of the Federal District Court for the Southern District of Georgia and,

WHEREAS it further appears that a portion of this redistricting proposal would result in the closing of the Federal District Courthouse in Swainsboro and a transfer of Emanuel County to the jurisdiction of the Federal District Court in Dublin and the construction and maintenance of a new Federal District Court building in Statesboro, Georgia, and,

WHEREAS it is the unanimous concensus of the members of the Emanuel County Bar Association that such a proposal is dertimental to the interest of the citizens located in the Swainsboro Division of the Federal District Court and would result in unnecessary expenditure of tax monies to construct a new Federal Courthouse only thirty-seven (37) miles away from an existing facility and,

WHEREAS historically the location of the Federal District Courthouse in Swainsboro has efficiently served the needs of all of the citizens of the Swainsboro Division and,

WHEREAS it would be more economical and convenient to enlarge the number of counties encompassed by the Swainsboro Division instead of the creating a new Statesboro Division and a transfer of the counties in the Swainsboro Division to the Dublin Division and,

WHEREAS there now exists a well equipped Federal Library in Louisville convenient for the attorneys and judges practicing in the Swainsboro Division and a transfer to Statesboro would entail the construction and maintenance of a Federal Library in Statesboro since an adequate one does not presently exist,

RESOLUTION

WHEREFORE, the Toombs County Bar Association having been requested to express an opinion as to its preference for placement in a Federal division of the Southern District of Georgia as between Dublin, Georgia and Statesboro, Georgia;

BE IT RESOLVED, that by a vote of ten to three, that the present division at Swainsboro, Georgia be maintained. However, in the event that the proper Federal authorities choose to move the Swainsboro Division and divide the counties therein between Dublin and Statesboro, the Toombs County Bar Association, by a vote of eleven for and two abstaining, choose to be placed in the Statesboro Division as it may be constituted.

This 6th day of November, 1979.

Charles H. Andrew, Jr.

Charles H. Andrew, President
Toombs County Bar Association

EXHIBIT "F"

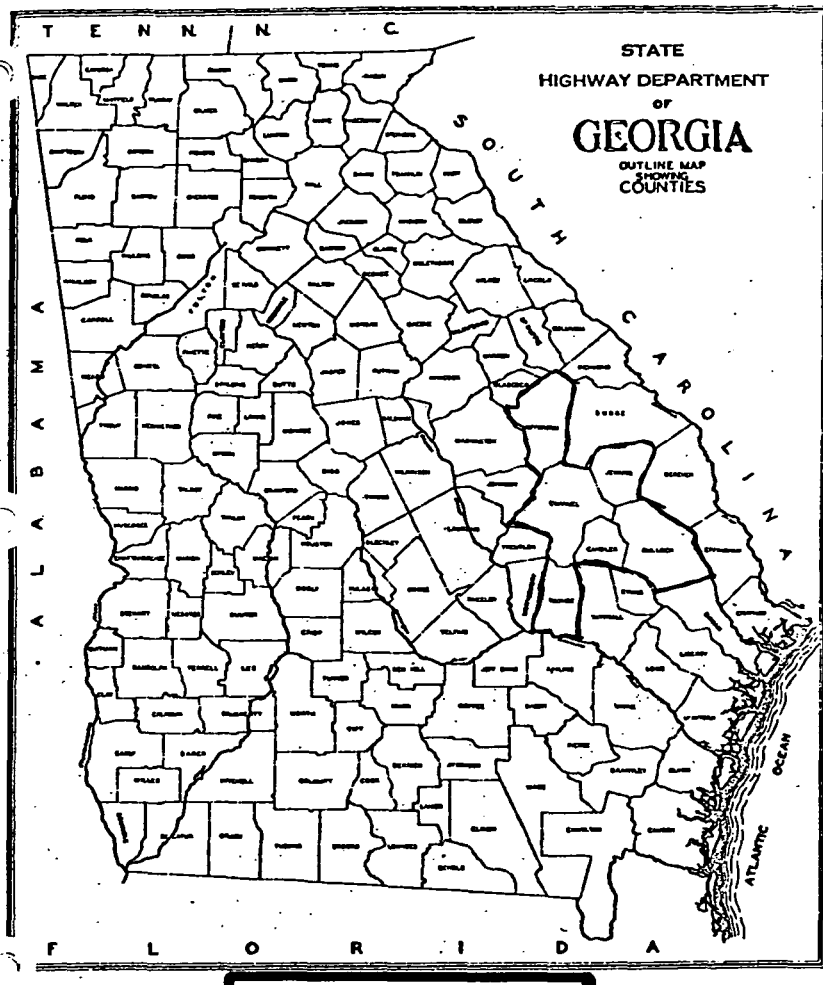

STATE
HIGHWAY DEPARTMENT
OF
GEORGIA
OUTLINE MAP
SHOWING
COUNTIES
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
FLORIDA
ATLANTIC OCEAN

EXHIBIT "H"

THE EMANUEL COUNTY CHAMBER OF COMMERCE

124 North Main Street
Swainsboro, Georgia 30401
912-237-6426

EMANUEL COUNTY AND SWAINSBORO, GEORGIA
(Supplement to Economic Profile)

TRANSPORTATION:

Interstate 16 (14 miles from Swainsboro)
U.S. Highways - 1 and 80
Georgia Highways - 4, 23, 26, 46, 56, 57, and 192

Motor Freight Terminals in Swainsboro
Bowman, Carolina and United Parcel Service

Motor Freight Lines - (serving Emanuel County)
Bowman, Brown, Overnight, Thurston, Johnson, Roadway, McLean, Spector, Old Dominion, Pilot, Watkins, Gateway, Mercury, & Carolina.

Railroad
Georgia and Florida Railroad (Southern Railway System)

rport
odern, lighted, all weather airport. Runway - 4200 feet.

Bus Line
Greyhound and Trailways

Air Freight
Air Parcel Systems - up to 70 lbs. in Georgia. Overnight direct delivery to Atlanta Airport - Brown, & Bowman. Augusta Air Cargo.

Commerical Airports
Augusta and Savannah Airports are approximately 1 hour and 15 minutes from Swainsboro. Eastern, Delta, and others serve these airports.

INDUSTRIAL SITES:

Emanuel County has two industrial parks, both of which are located within the city limits of Swainsboro.

Magic Mall Industrial Park contains approximately 500 acres and is about 10% occupied.

Utilities and access roads are in place, the present and future surroundings are established and a site layout plan has been completed. Magic Mall is just off I-16 (11 miles), 169 miles southeast of Atlanta and about 85 miles west of the port of Savannah via I-16.

ighted, four-lane industrial highway connecting to U.S. 1 runs through the site. The gusta to Vilalia line of the Georgia and Florida Railroad (Southern Railway) traverses the park. Sites with and without rail access are available. Three companies are presently located in the park.

The Light Industrial Park contains 150 acres of which about 45 are available. All utilities and access roads are in place. The Light Park borders U.S. 1 and is also 11 miles from I-16. Rail service is not available. Five companies are now operating in the park.

Both parks are owned by the Emanuel County Industrial Development Authority.

Several privately owned sites are also available throughout Emanuel County.

LABOR:

The Emanuel County trade area is approximately 50,000. A willing and productive labor force is available for most job classifications. Swainsboro Area Vocational-Technical School will assist in training for specialized jobs through the Quick-Start program. A current wage, salary and fringe benefit survey is available upon request.

CITY/COUNTY SERVICES

Swainsboro, Twin City and the other communities, as well as Emanuel County, all have progressive, openminded governments. They realize the importance of a sound industrial base and are eager to work with prospective industry in meeting their requirements.

INDUSTRIAL DEVELOPMENT AUTHORITY:

The Emanuel County Industrial Development Authority is available to assist industry in locating their plant and in financing through Revenue Bonds.

EMANUEL COUNTY JUNIOR COLLEGE:

Swainsboro enjoys a "college town" atmosphere as the home of Emanuel County Junior College. Present enrollment is approximately 450 students. Emanuel County Junior College offers Associate Degrees in the Liberal Arts and prepares students for transfer to senior colleges. Emanuel County Junior College is part of the University System of Georgia.

Special programs of particular interest to industry and business are the one year Certificate Programs for Business Management. Subjects in this program include personnel practices, inventory control, production scheduling, plant layout and labor and human relations. Entrance requirements for this program are simply a high school or GED diploma. Supervisory & Pre-Supervieory Development Programs are also available. Georgia Southern, a 4 year college with an enrollment of over 6,500, is located 37 miles away in Statesboro.

SWAINSBORO AREA VOCATIONAL-TECHNICAL SCHOOL

Swainsboro Tech serves a 15 county area surrounding Emanuel County and is particularly important to existing industry for employee training. In addition, Swainsboro Tech offers the Quick Start Program for employee training in specific skills as required by new industry. Subjects taught include electronic technology, machine shop - tool & die, electical construction and business education (Accounting, Clerical, & Secretarial). Swainsboro Tech also offers programs in auto mechanics, nursing, drafting, heating & airconditioning, cosmotology and other areas.

The Administration of Swainsboro Tech is anxious to assist new and existing business & industry by training employees for the specific skills they require.

CULTURAL AFFAIRS

The Emanuel Arts Council is dedicated to providing cultural programs in Swainsboro. Musical plays and programs, symphonies, dinner theaters and art shows have been held since the organization of the Council in early 1979. The Council has grown and more programs are planned for the future.

EMANUEL COUNTY CHAMBER OF COMMERCE
124 North Main Street
Swainsboro, Georgia 30401
912/237-6426

1980 County Data Report

Population:	1970	Estimated 1980
Emanuel County	18,357	20,600
Swainsboro (County Seat)	7,325	8,000
Twin City	1,119	1,300
Adrian	705	740
Stillmore	522	550
Oak Park	226	240
Garfield	214	225
Nunez	191	205
Summertown	157	165

Climate: Altitude 330 feet; Rainfall average is 51.75 inches; seasonal mean average temperature 67.80°, winter 48.80°, County Land Area: 686 square miles

News Media: "The Blade" - weekly (circulation - 5,700)
Radio Station WJAT (AM/FM) 800/98.3 on dial
Radio Station WXRS (AM) 1590 on dial

Education:	Enrollment
Swainsboro Area Vo-Tech	524
Emanuel County Junior College	402
Kindergarten through 12th Grade (Emanuel County)	4,560
David Emaneul Academy	330

Library:	Volumes
Franklin Memorial Library (Public)	
Emanuel County Junior College (Open to Public)	23,321

Churches: Fifty-three (53) Most Denominations

Industry:		Employees
Manufacturing Firms:		
In Swainsboro	21	2,171
In County	7	558
Total	28	2,729

Major Products: Processed lumber, men's and boy's sport shirts, fire control systems, metal utility houses, funiture, undershirts, storm doors and windows, metal parts, plastic products, electric signaling devices, lawnmowers, cloth goods, playground equipment, confections, pre-fabricated houses, turpentine products, and cabinets.

Health Facilities:	Beds	Employees
Emanuel County Hospital	73	235
Emanuel County Hospital Nursing Home	47	30
Swainsboro Nursing Home	104	66
Twin View Nursing Home	110	75
Emanuel County Health Department	-	11
Medical Doctors - 10		
Dentists - 3		

Civic Clubs: Business and Professional Women's Club, Exchange Club, Jaycees, Jaycettes, Kiwanis, Lions, Rotary.

Recreation: Swainsboro- Fulltime Recreation Department, Nine-hole municipal golf course, Harmon Park w/4 lighted tennis courts and 3 fishing ponds, 2 parks, 2 swimming pools, 2 tennis courts, six lighted ball fields, and Country Club. (New Recreation complex is now under construction).

Seating capacity of largest banquet room: 250 seats Emanuel County Junior College Student Center;
Seating capacity of largest auditorium: 1,000 seats (Swainsboro High School)

Travel Accomodations: 164 motel rooms

Retailing: Retail Sales 1978 - $64,396,000

Telegraph: Western Union 1-800-257-2241 Also local agent.

Banking: Four excellent state banks, total assets - $71,053,566
Savings and Loan Association - $20,691,377

Taxes: Swainsboro: $7.00/$1,000 of assessed valuation, 100% of fair market value
Twin City: $15.00/$1,000 of assessed valuation, 40% of fair market value
Emanuel County: County - $13.32, school - $11.25, Georgia 25¢= $24.82/$1,000 of assessed valuation, 40% of fair market value

Major Crops: Corn, soybeans, peanuts, tobacco

Transportation: Modern, lighted, all weather airport - 4,200 feet
Nearest Commerical Air transportation: Savannah and Augusta
Bus Lines: Greyhound
Railroad: Georgia and Florida RR (Southern Railway System)
Motor Freight Lines: Two local terminals plus UPS distribution center. 8 interstate and 3 intrastate carriers provide daily services
Air Freight: 5 carriers provide air freight service

City Services
Source - 8 deep wells
Pumping Capacity - 5,957 gallons/minute
Storage Capacity - 818,000 gallons
Plant Capacity - 8,578,000 gallons/day
Present Consumption - 2,500,000 gallons/day
Residential Water Rate - $4 per 3,000 gallons
Sewerage Charge - 50% of the amount charged for water
Outside City Water Rate - $6 per 3,000 gallons
(10¢ per hundred over 3,000 inside city limits; 15¢ per hundred over 3,000 outside city limits)
City Garbage Collection - Free

Cable Television: Clearview Cable TV - 12 channels

Electric Power: Georgia Power Company; Altamaha Electric Membership Corporation

Natural Gas: Georgia Natural Gas Company

Fire Protection: Seven fulltime, 21 volunteer; Swainsboro fire insurance rate - Class 7
Emanuel County - Class 10

Police Protection: Swainsboro - 15; Sheriff's Department 17; State Patrol 1P

Government: Swainsboro - Mayor and Six Councilmen
County - Three Commissioners

For additional information, contact the Emanuel County Chamber of Commerce, Randy Cardoza, Executive Director

Prepared: November, 1979

EMANUEL COUNTY CHAMBER OF COMMERCE

STATE OFFICES & FACILITIES LOCATED IN SWAINSBORO

Agriculture Grain Grading Laboratory
Georgia National Guard Company - Defense Department
Agriculture Home Economics School Lunch - Education Department
State Surplus Property Warehouse - Education Department
Emanuel County Junior College
Forestry Unit - Forestry Commission
Forestry Weather - Forestry Commission
Child Support Recovery Unit - Human Resources Department
Office of Rehabilitation Service - Human Resources Department
Ogeechee Area Alcohol & Drug Clinic - Human Resources Department
Juvenile Court Services
Work Incentive Program - Labor Department
Offender Rehabilitation - Probation Parole
Ogeechee Area Mental Health - Mental Retardation Center
Georgia State Patrol - Public Safety Department
Alcohol & Tobacco Tax Enforcement Div. - Revenue Department
Resident Engineer - Transportation Department
Highway Division Shop - Transportation Department
University of Georgia Extension Service
Veterans Services Department
Department of Family & Children Services
Health Department
Swainsboro Area Tech School

FEDERAL OFFICES LOCATED IN SWAINSBORO

Agricultural Stabilization & Conservation County Committee
Farmers Home Administration County Office
United States District Courthouse & Clerk's Office
Social Security Administration
IRS Alcohol & Tobacco Tax Division

UNIVERSITY OF GEORGIA

County Extension Service

124 North Main Street Swainsboro, Georgia 30401 912-237-6426/6427

RESTAURANTS

NAME	SEATING CAPACITY	SPECIALITY
Aunt Evelyn's	80	Seafood
Coffee Cup	34	
Dairy Queen	88	
Family Restaurant & Bakery	40	Fresh do-nuts
GC's Restaurant	150	
Hardee'sRRestaurant	38	
Kentucky Fried Chicken	50	
Maryland Fried Chicken	25	
Pizza Hut	42	
Ray's Restaurant	300	
Sam's Drive In		
Snack Shack	17	
Tick Tock Restaurant	300	
Ware's Restaurant	120	Bar-B-Que
Coleman's Lake Restaurant	400	Seafood
McKinney's Pond	225	Seafood
Tastee-Freeze	100	

MOTELS

Bob White Motel	38 units
Mark Swain Motel	28 units
Peebles-Motel	23 units
Tick Tock Motel	56 units
Wayside Manor	14 units

Miscellaneous

Two new shopping areas are being developed in Swainsboro at present. One, to be located in the downtown area will include major drug and shoe store chains. In addition, extra retailing space will be constructed. Construction is expected to start immediately. The other, store in the planning stages, will be located on the southern edge of the city limits. Grocery and variety stores are anticipated with several others expected to go in also. Plans also include room for a restaurant.

Developers of two restaurant chains are now considering Swainsboro for projects. They are Western Sizzlin and Huddle House.

A local group is interested in a motel project and has asked a motel management group for development assistance.

EMANUEL COUNTY JUNIOR COLLEGE

The Junior College opened in the fall of 1974. The founding of the two-year college was the top local news story of the 1970's. It has contributed substantially to the local economy, has increased the awareness of the cultural aspects of life among our citizens and has brought a bevy of outstanding educators and good citizens here.

When the Junior college first opened in 1974 it's enrollment was 160 and there are now over 400 students enrolled at the college. The Junior College has kept its staff at 18 faculty members for the last 6 years, although both new night and day courses have developed, along with a new business program.

SWAINSBORO AREA VOCATIONAL-TECHNICAL SCHOOL

The Vo-Tech School has an enrollment of over 600 students. The purpose of Swainsboro-Tech is to bridge the gap between what a student knows when he gets out of high school and what he needs to know to get a job, and to provide practical training to meet the needs of modern society. T

There are 65 night and day faculty members to help meet the needs of Swainsboro-Tech. Students are assisted in finding jobs by the school. Each year, representatives of business and industry are invited to Swainsboro-Tech to interview graduating students for potential employment.

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