TO CREATE A TENTH JUDICIAL CIRCUIT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

SEVENTIETH CONGRESS
SECOND SESSION

ON

H. R. 5690
H. R. 13567
H. R. 13757

Serial 23—Part 2

MAY 10, DECEMBER 4, 1928, JANUARY 11, 1929

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1929

CONTENTS

	Page
Statement of—	
Hon. Maurice H. Thatcher, a Representative in Congress from the State of Kentucky	64
Hon. William Howard Taft, Chief Justice of the United States	66
Hon. Willis Vandevanter, Associate Justice, Supreme Court of the United States	69
Hon. W. A. Ayres, Representative in Congress from the State of Kansas	78
Hon. Chester I. Long, Wichita, Kans	70
Hon. Maurice H. Thatcher, resumed	89
Hon. Walter H. Newton, Representative in Congress from the State of Minnesota	92
Hon. Chester I. Long, resumed	92
Nelson H. Loomis, Omaha, Nebr	96
Communications filed:	
Letters from judges of the eighth circuit	102
Letters from district judges of the eighth circuit	109
Letters from judges of State courts	123
Letters from bar associations	125
Letters from members of the Kansas bar	132
Letters from members of the Minnesota bar	148
Letters from members of the New Mexico bar	152
Letters from members of the Utah bar	154
Letters from other attorneys	160

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SEVENTIETH CONGRESS

GEORGE S. GRAHAM, Pennsylvania, *Chairman*

LEONIDAS C. DYER, Missouri.
WILLIAM D. BOIES, Iowa.
C. A. CHRISTOPHERSON, South Dakota.
RICHARD YATES, Illinois.
IRA G. HERSEY, Maine.
EARL C. MICHENER, Michigan.
ANDREW J. HICKEY, Indiana.
J. BANKS KURTZ, Pennsylvania.
C. ELLIS MOORE, Ohio.
GEORGE R. STOBBS, Massachusetts.
JAMES F. STROTHER, West Virginia.
FIORELLO H. LAGUARDIA, New York.
HOMER W. HALL, Illinois.
HATTON W. SUMNERS, Texas.
ANDREW J. MONTAGUE, Virginia.
JOHN N. TILLMAN, Arkansas.
FRED H. DOMINICK, South Carolina.
SAMUEL C. MAJOR, Missouri.
ROYAL H. WELLER, New York.
ZEBULON WEAVER, North Carolina.
HENRY ST. GEORGE TUCKER, Virginia.

GUILFORD S. JAMESON, *Clerk*
M. D. TURTON, *Assistant Clerk*

SUBCOMMITTEE NO. 2 OF THE COMMITTEE ON THE JUDICIARY

IRA G. HERSEY, Maine, *Chairman*

RICHARD YATES, Illinois.
ANDREW J. HICKEY, Indiana.
C. ELLIS MOORE, Ohio.
FRED H. DOMINICK, South Carolina.
SAMUEL C. MAJOR, Missouri.
ZEBULON WEAVER, North Carolina.

TO CREATE A TENTH JUDICIAL CIRCUIT

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Thursday, May 10, 1928.

The committee met at 10.45 o'clock a. m., Hon. George S. Graham (chairman) presiding.

Mr. GRAHAM. Gentlemen, we have before us a bill intended to recast the districts for the circuit courts of appeals of the United States. As you will appreciate, this is a most important measure, and we have, at the request of the subcommittee, invited the Chief Justice and Mr. Justice VanDevanter to appear before the committee to-day, which they have kindly consented to do, and show that by their presence here, to give us their suggestions upon this bill.

Mr. Thatcher is the author of this particular bill (H. R. 5690). I suggest, Mr. Thatcher, that you explain in a few words the purpose and scope of the bill.

STATEMENT OF HON. MAURICE H. THATCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. THATCHER. Gentlemen of the committee and Mr. Chief Justice, hearings have been conducted on this measure, and they have been printed.

As brought out before the subcommittee, this subject is one that has been given much consideration by the American Bar Association at its various meetings, and finally a subcommittee was appointed to consider the question; and they made recommendations. Mr. Merrill Moores, a former Member of Congress, was asked to take special charge of it, and came here and assisted in presenting it. I was asked to introduce the measure, embodying the recommendations of this subcommittee. Those recommendations are embodied in this bill.

In substance, the bill undertakes to change the first and second circuits, because of the special congestion in the Second Circuit Court of Appeals, and also make a change in the eighth circuit, which is very large in area and very large in volume of business, and everything of the sort.

The change proposed in the first and second circuits is to take Vermont and Connecticut from the second circuit, the New York circuit, and put those two States in the first circuit, where business is relatively small.

Then in the eighth circuit, which is tremendously large, it is proposed to cut that in two, by an east and west line, for the reason that all of the railroads of importance are trunk lines running east and west. The Circuit Court of Appeals of the Eighth Circuit, as at present constituted, is made up of the States of Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Utah, and Wyoming.

In the proposal contained in this bill the eighth circuit will include the districts of Colorado, Kansas, Missouri, New Mexico, and Oklahoma, and the ninth circuit will contain the districts of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming, leaving the tenth district as it is, including Hawaii and Alaska.

Mr. Chief Justice TAFT. That is, you mean as the ninth circuit now is?

Mr. THATCHER. As the ninth circuit now is.

There has been some suggestion in the hearings that Arkansas makes some objection to going into the fifth circuit; and the proponents of the bill have simply undertaken to submit as best they can the facts involved, as to area, population, and litigation, and all the related questions; and what they are seeking to do is to get the facts before the committee, and with the assistance of the committee, and within the discretion of the committee, to make any changes from the present bill as may be deemed necessary in order to relieved this congestion which undoubtedly exists.

And I might add that, of course, the view of the Chief Justice and Associate Justice Van Devanter ought to be very important to the committee in dealing with this question.

Mr. SUMNERS. May I ask one question just in that connection? Has this committee that sought to recast that old eighth circuit taken into consideration the advisability of considering whether or not those

States which would be split off from it could be grouped in one circuit?

Mr. THATCHER. Yes, there has been some discussion of that.

Mr. HERSEY. Mr. Chairman, in order that the committee and the Chief Justice may understand the matter a little more fully, I will say that I am the chairman of the subcommittee which had the hearings on the subject which have been printed.

The CHAIRMAN. Yes.

Mr. HERSEY. And in those hearings we took a number of days and went fully over these different districts; and we heard Mr. Thatcher; Mr. Merrill Moores appeared as an attorney in the matter and Mr. Paul as attorney for the western districts. And we have in this printed record, besides that, the testimony of other witnesses, as well as letters from, I think, all the judges in these circuits, practically; and with scarcely an exception they are in favor of a change in the circuits.

If the members of the committee only had time it would be well for them to look over the printed hearings. And I do not know whether the Chief Justice has perused this evidence or not, but there are some references in there to a report from the Chief Justice himself in 1927 in regard to these districts. And there is a recommendation of the American Bar Association that the matter shall be laid over and be discussed at the next meeting of the bar association, and not passed upon at this time.

I simply state those facts to show that there is a little disadvantage in discussing this, because I do not think, outside of my subcommittee—I do not think the rest of the committee, or even the Chief Justice himself, have familiarized themselves with the evidence taken before my committee, which, I think, includes the testimony of everybody except the Chief Justice himself, who is interested in the matter as to these districts.

The CHAIRMAN. Well, Mr. Hersey, this is not taking the matter out of the hands of your subcommittee. But, in view of your suggestion that the committee would like to hear from the Chief Justice and justices of the Supreme Court, the general committee thought it would be a courteous thing to invite them to appear before the general committee and not before a subcommittee.

Mr. HERSEY. I hope the chairman will understand that I am not making any objections whatever to that. We will have great pleasure, the members of our subcommittee, in hearing the Chief Justice in this matter, and it will be a great help to us.

The CHAIRMAN. Yes.

Mr. HERSEY. I was simply stating that a great many things were in this record of the hearings that have not been brought to the attention of the full committee, or even, I think, to the Chief Justice.

The CHAIRMAN. Well, they will be when you make your report. Now, this in effect the hearing of your subcommittee; and there are two additional witnesses here, besides those you have heard already; and you can make up your report to the general committee, based on all this testimony.

Mr. HERSEY. Yes; it will be a pleasure to hear them. I just wanted to have it understood that we just had this evidence printed.

The CHAIRMAN. Yes. Now, Mr. Chief Justice, will you address the committee?

STATEMENT OF HON. WILLIAM HOWARD TAFT, CHIEF JUSTICE OF THE UNITED STATES

Mr. Chief Justice TAFT. Gentlemen of the committee, this matter has occupied the attention of a number of very active lawyers for some time.

My impression is (and my impressions with respect to the matter have differed from time to time) that when you really come to the question of division, you are going to find great difficulties in making a general bill like this, or making general changes like these. With my colleague, Mr. Justice Van Devanter, I have been over this again and also again with Mr. Merrill Moores, who was a classmate of mine at Yale. He has a capacity for keeping at a thing which is most commendable; and he has come to us a number of times to speak on the subject.

But I think you want a frank statement; and with your permission, I will make it as frank as I can.

This bill would not be objectionable at all if it were beginning a new matter. But in the formation of the circuits you are going to have conditions and associations that exist and that have grown up for years that you can not ignore.

The circuits have been formed, in some degree, I think, by reason of the convenience of transportation. I tried my hand, as the chairman of the conference of the senior circuit judges. I concluded it would be a good deal harder to effect an agreement with the judges than in a committee of Congress.

The outstanding evil in the present system is the size of the eighth circuit. These changes suggested in this large bill include, for instance—and I thought that would be a good thing myself—taking Vermont and Connecticut and putting them in the first circuit and relieving the New York circuit, the second circuit, and making New York a circuit by itself.

But when you come to calculate the changes that would thus make toward equality they are not ponderable. The amount of business that comes from Vermont is very little, and the amount of business that comes from Connecticut, while more and more important, is in a State that is wholly tributary to New York City. Their lawyers object very seriously—all the lawyers in that neighborhood whom I have seen—to sending them to Boston instead of to New York, because New York is the place to which they have always gone.

And so with respect to Arkansas. Arkansas has been close to the Indian Territory, and their lawyers there have always been used to being in the eighth circuit; and they have their rules of law, so far as they are local, affected by their relation to the eighth circuit.

My own impression is that the best thing to do, if you want to do something that can be done at once and not involve conflicting considerations, is merely to divide the eighth circuit and let all the other circuits stand as they are. I have reached that deliberate conclusion after making as much investigation as I can. I do not know that my colleague will agree with me in that, but the eighth

circuit can be divided. When you have divided that, you will have avoided the one feature in the present situation that is objectionable.

The eighth circuit can be divided by putting Arkansas, Missouri, Iowa, Minnesota, and the two Dakotas in a circuit, to be called the eighth circuit—well, I think, perhaps, you might include Nebraska, though I think Nebraska ought to go in the other circuit. That would include in the tenth circuit, if you call it such, Oklahoma, Kansas, Nebraska, Colorado, Wyoming, New Mexico, and Utah, that are all now in the eighth circuit. That would make a circuit of the eighth circuit, with business about twice as much as the proposed tenth circuit. The inequality would be less with Nebraska in the tenth circuit.

I am told that the judges of that circuit have all agreed on such a division. They have put Nebraska into the eighth circuit, and it seems to me it ought to go into the tenth, because Nebraska is near Kansas and Wyoming and there is a railroad line from Chicago to Colorado through Wyoming and Nebraska.

Mr. THATCHER. May I ask the Chief Justice a question?

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER. There is no private opinion on the part of the proponents of the bill; we are just trying to work out a solution.

Mr. Chief Justice TAFT. I know you are.

Mr. THATCHER. And the proposed division east and west was based largely on the idea that the main railroad systems were east and west trunk lines, and that the travel east and west was easier than by the north and south lines. That was the determining factor in making an east and west line division of the States in the present eighth circuit. We thought that was a very important consideration.

Now, as to Arkansas, in the hearings it is disclosed that we agree that Arkansas might, because of traditional and court procedure considerations, remain in the old eighth circuit. There is no objection to that. That would satisfy the Arkansas people. So we agreed on that. The only question is whether that division should be east and west or north and south.

Mr. Chief Justice TAFT. Well, they have gotten used to the north and south communication between St. Louis and St. Paul.

Mr. THATCHER. Well, that is easy.

Mr. Chief Justice TAFT. That is easy.

Mr. THATCHER. Yes; it is the western part where the trouble would arise.

Mr. Chief Justice TAFT. And that would be in the proposed retained eighth circuit. Now, the ease with which you could go from Omaha to Colorado and to Utah would be a consideration there; you would be right on the line of the railway there. And, of course, that western territory is a wide territory, and not very fully populated. But I am only——

Mr. THATCHER (interposing). Now, pardon me. Your suggestion now is to retain the old eighth circuit. We know that Judge Sanborn would like, for sentimental reasons, to retain the name there.

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER. And there is no objection to that. It is just a question of relieving the congestion. Now, your suggestion would

be to have Minnesota, Iowa, Missouri, and Arkansas in the old circuit; and where would you put Oklahoma?

Mr. Chief Justice TAFT. I would put that in the other circuit.

Mr. THATCHER. In the new circuit?

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER. Then Kansas and Nebraska?

Mr. Chief Justice TAFT. Well, Kansas in the new circuit, and, I think, Nebraska, too.

Mr. THATCHER. Then the Dakotas?

Mr. Chief Justice TAFT. The Dakotas are really tributary to Minnesota, in a sense, and therefore you might put them into the so-called "Mississippi circuit." This would not be inconvenient for them, because they are tributary to Minnesota.

Mr. THATCHER. You would have a line like this [indicating on map], omitting Nebraska, but including the two Dakotas, Iowa, Missouri, Arkansas, and Minnesota in the old eighth circuit?

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER. And then in the new circuit, which would be called either the ninth or the tenth——

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER (continuing). You would include Oklahoma, Kansas, Nebraska, New Mexico, Colorado?

Mr. Chief Justice TAFT. And Wyoming and Utah.

Mr. THATCHER. And Wyoming and Utah. Then you would have in the present ninth circuit——

Mr. Chief Justice TAFT. Then I would not change anything in the other circuits, just because of the difficulty you will find in making changes.

Mr. THATCHER. The difficulty is whether the circuit judges will be willing to agree to that; do you think they would?

Mr. Chief Justice TAFT. You say they would not be?

Mr. THATCHER. No; I mean do you think they would be, or that they would not be willing?

Mr. Chief Justice TAFT. Yes; I know they would. At least I have been told so by a gentleman who came to me from them, who said that they had a conference and agreed, except that they thought Nebraska should go in the other circuit. There is no circuit judge in Nebraska; so that there is no difficulty about changing that, so far as that is concerned.

Mr. THATCHER. I am perfectly willing to accept that suggestion, if we can get an agreement on it. It is just a question of meeting the situation.

Mr. Chief Justice TAFT. Well, of course, I could not be a warrantor that there would be an agreement. But I think that you will find that that will come with comfort to the circuit judges. Five circuit judges would be in the Mississippi circuit—if I may call it that—the eighth circuit. One gentleman, who is capable of retiring very soon, certainly, is in the Colorado district, and then there would have to be two or three additional circuit judges. There would not be any additional circuit judges needed in the eighth circuit at all.

Mr. THATCHER. Well, under this proposed plan, as embodied in this bill, there would be no needed increase in the number of circuit

judges in the entire country. Now, under your suggestion, would there be any need for any increase?

Mr. Chief Justice TAFT. Yes; there would be need for two circuit judges in the tenth circuit.

Mr. THATCHER. We were trying to avoid the need for increasing the number of circuit judges, if possible; and that was another consideration that was involved in this proposal.

Mr. Chief Justice TAFT. In the eighth circuit, among other troubles there, they have six circuit judges. It makes it possible, therefore, to have two wholly different courts in personnel in the same circuit. That is not a good thing; because there is nobody in one part of the court to tell the other part, in a good many cases, what the first part had decided. So that it is hard to keep their decisions always reconciled.

Mr. THATCHER. Well, the testimony in this matter shows that 40 per cent of the decisions in the eighth circuit are written by district judges?

Mr. Chief Justice TAFT. Yes.

Mr. THATCHER. More than in any other circuit in the United States?

Mr. Chief Justice TAFT. But Mr. Justice Van Devanter was for a great many years a circuit judge in that circuit, that covered, while he was there, all the territory between the Mississippi River and the top of the Rocky Mountains; and I think he is better able to say something about that circuit than anybody, and I defer to him.

STATEMENT OF HON. WILLIS VAN DEVANTER, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES

The CHAIRMAN. Mr. Justice Van Devanter, the committee will be glad to hear from you.

Mr. Justice VAN DEVANTER. Mr. Chairman and gentlemen of the committee. I have not thought about this matter recently. I am very glad to come and do anything I can that will be of assistance to you. I have no disposition to advocate anything. I think I have written a letter or two to some of the committees; perhaps bar association committees, and it may be to committees here in Congress. But whatever I wrote was at the solicitation of those who were giving attention to the subject; and I think I gave expression to some alternatives, one of which would be to make a Rocky Mountain circuit out of the States in the western part of the eighth circuit, including one or two from the ninth circuit. Another was to divide the eighth circuit along a line running somewhat from east to west, but not making many other changes.

I think there was another that included making a change in the fifth circuit, which is the Gulf circuit, as well as in the eighth. But I do not recall having discussed the matter beyond whatever there may be in those letters.

Mr. THATCHER. May I interrupt you for a moment, Mr. Justice Van Devanter?

Mr. Justice VAN DEVANTER. Yes.

Mr. THATCHER. There is one thing about the bill that I did not state at the outset. Georgia is taken from the fifth circuit, and

would be included in the fourth circuit. What do you think of that suggestion?

Mr. Justice VAN DEVANTER. Then you would have to take Florida out also, I should think; you could hardly take Georgia without taking Florida.

Mr. THATCHER. Florida is still left in the fifth circuit in the bill.

Mr. Justice VAN DEVANTER. Very well. But I agree in the main with what the Chief Justice has said. It is not for me to tell you whether the task is difficult, or whether you wish to undertake a task that is difficult.

But if I were approaching the question, I would say that any general recircuiting of the United States would be pretty near impossible; that the opposition which would come, born of the natural disposition to leave things go in their accustomed way, would imperil the measure. And also, that it would prevent your doing the things that you think there is really great need of accomplishing. There may be a need for a change in the first circuit. I think what is proposed, in eliminating Vermont and Connecticut and putting them in the first circuit, is not a very material matter. There is little business in Vermont. To change it from the second circuit would not relieve that circuit much, and it would not add much to the first circuit. It would make some difference to take Connecticut out of the first circuit. But we all know that Connecticut is just next door to New York City, the great metropolis of the country; and to send Connecticut over to Boston, for those things that are involved in whether it is in one circuit or another, would result in inconvenience to litigants and to the bar in Connecticut. There hardly would be enough of advantage in the way of relief to the second circuit to justify the disadvantage which would result to the people of Connecticut.

The big thing that demands attention is the situation in the eighth circuit. There are 13 States, geographically large, in that circuit. The same population distributed over 13 States makes more business for the Federal courts than if that population is in one State or in a half dozen. Diversity of citizenship and some other considerations that make for Federal jurisdiction are multiplied in proportion to the number of States.

Another thing of importance is that there is not a transcontinental railroad, so-called, in the United States that does not traverse that circuit. The Northern Pacific; the Union Pacific; the Atchison—sometimes called the Santa Fe—the Rock Island; the Milwaukee—all in my time have gone through receiverships, some of them more than once.

Mr. Chief Justice TAFT. You left out the Northern Pacific and the Great Northern, did you not?

Mr. Justice VAN DEVANTER. I meant to include the Northern Pacific but not the Great Northern. The Great Northern traverses that circuit but I do not recall that it has been in a receivership.

But now, turning to the geography of the situation in the eighth circuit, if I may I will go over to your map and illustrate it:

Here [indicating on map] is the Mississippi River, and this [indicating] is the eighth circuit. It extends from this river on the east to the west side of the Rocky Mountains, to the western side of

Utah. And it extends from the Canadian possessions [indicating], our northern boundary, to the Mexican boundary [indicating]. It has 18 States. They are Minnesota, Iowa, Missouri, Arkansas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado, New Mexico, and Utah.

A mountain circuit could be made, including Montana, Wyoming, Utah, Colorado, and New Mexico, and possibly Idaho. That would have in it some advantages, in that the problems in the litigation in those States are much the same. But such a circuit would not have much business. The States have comparatively a meager population, and the appellate court in the circuit probably would have the least business of any of the Federal appellate courts.

But the existing circuit may be divided in another way, as by including Minnesota, North Dakota, South Dakota, Iowa, Nebraska, and Wyoming—six States—in one circuit, and by including Utah, Colorado, New Mexico, Kansas, Missouri, Arkansas, and Oklahoma—seven States—in another. In the distribution of business, I think a little more than half would be in the northern of the two circuits; certainly this would be true when the particular business from Oklahoma which is temporary only has ceased.

Mr. THATCHER. Mr. Justice Van Devanter, I believe that your suggestion is practically the same as the suggestions that are contained in this bill. Now, the proposed ninth circuit in the bill is made up of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming. That is substantially the same as your suggestion, or exactly the same?

Mr. Justice VAN DEVANTER. Yes; that is my chief suggestion.

Mr. THATCHER. And the suggestions that you have just made were the suggestions that were made in the form of the bill as drafted—along east and west lines?

Mr. Justice VAN DEVANTER. You are right.

Another suggestion relates to Texas which is a great State geographically, in population, and in resources. It is equal to three or four others, and equal to half a dozen of those which are as yet undeveloped. We hope that they will develop later on. Texas has a system of law taken from the civil law, or largely so. Mr. Summers, of your committee, will know to what extent. Louisiana is also largely a civil law State. It may be that the fifth circuit could be relieved. As it is now, that circuit takes in Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas. Outside of New York, Texas has more United States district judges and more Federal judicial districts than does any other State; and they are busy districts. If Louisiana and Texas were made a circuit, and Arkansas or Oklahoma or both, were included, it would bring things together that are much alike, and would make a compact circuit.

I think it better in dividing the eighth circuit, to do so by an east and west line, rather than by a north and south line, and as the matter presents itself to my mind it is better that the east and west line should take the southern boundaries of Iowa, Nebraska, and Wyoming—all States north of that line and now in the eighth circuit being put in one circuit and those lying south of the line being put in another circuit. The two circuits would

then be reasonably compact and would be adjusted to recognized routes of travel and commerce.

If any member of this committee has any questions to ask, I shall be glad to answer them, or to try to do so. Otherwise, I have nothing further to offer.

Mr. THATCHER. In the bill, the proposed eighth circuit, or whatever you choose to call it, is made up of those States you have just enumerated—Colorado, Kansas, Missouri, New Mexico, and Oklahoma.

Mr. Justice VAN DEVANTER. Then, I think it would be well to leave it just that way.

Mr. THATCHER. Well, one of the circuits would be the States you have just enumerated, except as to Arkansas, which the proponents of the bill are perfectly willing to have go into the new circuit, for the reasons you have mentioned—Colorado, Kansas, Missouri, New Mexico, and Oklahoma.

Mr. Justice VAN DEVANTER. I should add Arkansas.

Mr. THATCHER. Add Arkansas?

Mr. Justice VAN DEVANTER. Yes.

Mr. DYER. Mr. Justice Van Devanter, you stated, I believe, in the beginning that, from a practical standpoint, there would come difficulties that we would encounter in trying to make a general change; that the advisable thing to do is to relieve the congestion in the present eighth circuit by dividing that into two circuits?

Mr. Justice VAN DEVANTER. Either that, or along with it make some purely incidental changes. There are now six circuit judges in the eighth circuit. It was said that 40 per cent of the opinions of the circuit court of appeals in that circuit are written by district judges sitting in the circuit court of appeals. I should think that a correct estimate as far as it relates to the past.

Mr. DYER. Very largely so.

Mr. Justice VAN DEVANTER. But I should expect that, since they have only recently secured six circuit judges, the proportion of opinions written by district judges will be reduced in the future.

There is another thing to which the Chief Justice has called attention: The court of appeals in that circuit is sitting, as he indicated, in two divisions. It really is sitting in three. It is sitting with two district judges at St. Paul, calling in a district judge; with two circuit judges at St. Louis, calling in a district judge; and likewise at Denver.

It is impossible for each of those courts acting separately—although the same court—to have present knowledge of what the others are doing; and it unavoidably detracts from the continuity and harmony of their lines of decision.

That has been a great circuit; and has had some great circuit judges. Justice Brewer used to be one of them; also, Judge Caldwell. I am loath to see the work get so large that it necessitates a division of the court for the purpose of keeping abreast with the work. The division detracts from the prestige of the court—and this notwithstanding the greatest diligence on the part of the individual judges.

Mr. SUMNERS. Mr. Justice Van Devanter, is the eighth circuit the only circuit where that evil exists with reference to a divided court?

Mr. Justice VAN DEVANTER. I think that it is the only one in which it exists in a large or noticeable degree. In some of the other circuits it is present in only a minor degree. You have recently authorized additional circuit judges in three or four circuits, which has relieved the situation.

Mr. SUMNERS. It does not exist in the ninth circuit. I assume, does it?

Mr. Justice VAN DEVANTER. Not much in the ninth circuit. There is a reason for that: The ninth circuit not only has had three circuit judges of its own, but it has assigned to it by the Chief Justice one of the circuit judges who came from the Commerce Court, which was abolished. This gives them four judges, all taking part in the work. And, while geographically the ninth circuit is large, its volume of business is not nearly so large as that of the eighth circuit.

Mr. YATES. What is your answer to that problem?

Mr. Justice VAN DEVANTER. The answer would be to make two circuits, either out of exactly that which is now the eighth circuit, or out of part of that which is now the eighth circuit, and to have in each of the two circuits a single circuit court of appeals, acting with the same and not a changing membership.

Mr. Chief Justice TAFT. In the second circuit, where they have now four circuit judges—they need another one—they never have a district judge sitting in the circuit court of appeals.

Mr. SUMNERS. The practice is not a good one, is it, Mr. Chief Justice, to have district judges sitting in the circuit court of appeals?

Mr. Chief Justice TAFT. It is a good deal better to have the circuit judges confine their duties, so far as they can, to the circuit court of appeals work; and you get very much more continuity of opinion in that court by having it composed entirely of circuit court judges.

Mr. Justice VAN DEVANTER. A circuit court judge, being a continuing member of the court, has a larger degree of independence than a district judge who is invited to sit for one or only a few cases.

Mr. SUMNERS. Mr. Justice Van Devanter, I understand from the statements you have just made that you can get your territory so large that the addition of judges to the court does not relieve the situation?

Mr. Justice VAN DEVANTER. I think that is true of the eighth circuit now.

Mr. SUMNERS. Yes.

Mr. Justice VAN DEVANTER. I think it has helped to have two more circuit judges, that, to have six instead of four. But that has not reached the root of the trouble.

Mr. SUMNERS. There is too much territory?

Mr. Justice VAN DEVANTER. Yes; and therefore too much scattering.

Mr. LAGUARDIA. Mr. Justice Van Devanter, you spoke of the condition in the eighth circuit, owing to having three different courts of appeals sitting and making different rulings and findings. Does that increase the work of the United States Supreme Court on appeal?

Mr. Justice VAN DEVANTER. Yes; in two ways: In some cases it becomes apparent that there has not been that continuity and harmony of decisions—I am not talking about a personal want of harmony—that would be expected from a single circuit. And even

where that is not apparent in particular cases, its existence in others is drawn in as a basis for seeking a review upon certiorari. Not unnaturally defeated litigants think that the other judges, if sitting, might have decided differently.

Mr. MOORE. Mr. Justice Van Devanter, did you suggest what you thought the attitude of the judges would be in the eighth circuit to the plan you suggested?

Mr. Justice VAN DEVANTER. I can not speak for them. I know all of them personally.

It is an old saying that no king ever likes to cut up his territory. So perhaps there may not be entire harmony among the judges as to how the circuit should be divided.

Mr. DYER. The division suggested by you leaves four of them in the eighth circuit—four of the present circuit judges would be in the eighth circuit?

Mr. Justice VAN DEVANTER. No; three.

Mr. DYER. Yes; I see.

Mr. Justice VAN DEVANTER. Yes; there would be three in the northern and three in the southern.

Mr. DYER. Well, Missouri could furnish a couple of additional judges, if need be. [Laughter.]

The CHAIRMAN. Yes—if Congress assented.

Mr. Justice VAN DEVANTER. There is this to be said of the judges in the eighth circuit—that they are all now active and right at their work. One of them is quite beyond the age when he may retire if he wishes; and one has recently passed that age. So there may be changes.

Mr. THATCHER. Now, this division would not involve an increase in the number of circuit judges?

Mr. Justice VAN DEVANTER. No; not unless after it was tried a larger number is found necessary.

Mr. THATCHER. What do you think of the advisability of taking Georgia from the fifth circuit and putting it in the fourth? There has been such a suggestion, and that is included in this bill. That is a small change.

Mr. Justice VAN DEVANTER. If you are not going to make any change in the fifth circuit—in the western part of it——

Mr. THATCHER (interposing). No change in it at all.

Mr. Justice VAN DEVANTER (continuing). There might be some advantage in putting Georgia into the fourth circuit, because that circuit has, I think, now the least business of any circuit.

The CHIEF JUSTICE. No; the first circuit has.

Mr. THATCHER. Yes; the first circuit has the least.

Mr. Justice VAN DEVANTER. Well, the least except in the first. There might be some advantage about that. But if you are going to make any changes over in the western part of the fifth circuit, it probably would be better to leave Georgia where it is.

Mr. THATCHER. Well, there is no change in that.

Mr. Justice VAN DEVANTER. Then I would think the weight of advantage would be in putting Georgia in the fourth circuit; but I do not look on it as necessary.

Mr. THATCHER. May I ask you this? As regards the second circuit, have you any suggestions to make?

Mr. Justice VAN DEVANTER. The second circuit?

Mr. THATCHER. Yes; the New York circuit—in order to relieve the congestion?

Mr. Justice VAN DEVANTER. The changes already suggested would relieve it a little; not much.

Mr. THATCHER. No; but have you any other suggestions?

Mr. Justice VAN DEVANTER. No; I do not think of any. It has been said that if only one State were left in the circuit, that would leave a singular situation, unsuited to our Federal court system. But I think there is nothing in that. New York, with all its business and commercial connections with other parts of the world, furnishes enough business in the Federal courts to constitute one circuit by itself. It has a good many districts, and the district judges are grinding out cases that have to be reviewed. There is no constitutional or other objection to putting New York, a single State, in a circuit alone, if it has the requisite business.

Mr. STOBBS. In that connection, I would like to corroborate what the Chief Justice and Mr. Justice Van Devanter have said. They have said that Vermont and Connecticut are very anxious to stay with New York. And the Connecticut men have their business connections and banking connections with New York, and have practically no banking connections with Boston whatsoever. It is always with New York. And it is the same thing in the case of Vermont. I know how their Congressmen feel about it.

Mr. LAGUARDIA. If Massachusetts does not want them, we will keep them. [Laughter.]

Mr. STOBBS. We had just as soon have them; but I think their wishes ought to be consulted. They are good people in Connecticut and Vermont.

The CHAIRMAN. The further consideration of this matter is remanded to the subcommittee having it in charge.

Mr. THATCHER. Mr. Chairman, are you going to have the hearing of this morning printed?

The CHAIRMAN. Yes; it has been reported by the stenographer for that purpose.

(Thereupon, at 11.55 o'clock a. m., the committee adjourned.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 11 OF THE
COMMITTEE ON THE JUDICIARY,
Tuesday, December 4, 1928.

The subcommittee met at 9.30 o'clock a. m. Present: Hon. Ira G. Hersey (chairman of the subcommittee), presiding, Mr. Moore, Mr. Dominick, Mr. Major, and Mr. Weaver.

Mr. HERSEY. The committee will be in order. This is a hearing on two bills, H. R. 13757, introduced by Mr. Thatcher, and H. R. 13567, introduced by Mr. Newton. The bills are printed herewith.

[H. R. 13567, Seventieth Congress, first session]

A BILL To amend sections 116, 118, and 120 of the Judicial Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 116 of the Judicial

Code (being section 211 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 110. There shall be ten judicial circuits of the United States, constituted as follows:

"First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, Maine, and Porto Rico.

"Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

"Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

"Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

"Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

"Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

"Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

"Eighth. The eighth circuit shall include the districts of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Arkansas.

"Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Arizona.

"Tenth. The tenth circuit shall include the districts of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico."

SEC. 2. Section 118 of the Judicial Code (being section 213 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 118. There shall be in the second, sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the eighth circuit five circuit judges; and in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate: *Provided, however*, That any circuit judge of the eighth circuit as heretofore constituted, who resides within the eighth circuit as hereby constituted, shall be, and is hereby, assigned as a circuit judge to such part of the former eighth circuit as is hereby constituted the eighth circuit; and any circuit judge of the eighth circuit as heretofore constituted, who resides within the tenth circuit as hereby constituted, shall be, and is hereby, assigned as a circuit judge of such part of the former eighth circuit as is hereby constituted the tenth circuit. Each circuit judge shall receive a salary of $12,500 a year, payable monthly. Each circuit judge shall reside within his circuit, and when appointed shall be a resident of the circuit for which he is appointed. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law. Nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided by other sections of the Judicial Code."

SEC. 3. Section 120 of the Judicial Code (being section 223 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 120. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston, and, when in its judgment the public interests require, the court of appeals of that circuit shall hold a sitting at San Juan, Porto Rico; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond and in Asheville, North Carolina; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis and Saint Paul; in the ninth circuit, in San Francisco; and each year in two other places in said circuit to be designated by the judges of said court; in the tenth circuit, in Denver and in Oklahoma City, provided that suitable rooms and accommodations for holding court at Oklahoma City are furnished free of expense to the United States; and in each of the above circuits terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That terms shall be held in Atlanta on the first Monday in October, in Forth Worth on the first Monday in November, and in Montgomery on the third Monday in October. All appeals and other appellate proceedings which may be taken or prosecuted from the district

courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or, in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting. All appeals and other appellate proceedings which may be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals wherever the said court shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or, in the opinion of the court, are entitled to be brought to a speedy hearing.

"In all circuits where territorial changes are made herein, all appeals, writs of error, or other proceedings which are (at the time this act becomes effective) under submission in a circuit court of appeals as heretofore constituted shall proceed to final action upon such submission; all other appeals, writs of error, or other proceedings shall, by order of such court of appeals, be transferred to and thereafter be in the court of appeals to which they would have gone had this act been in full force at the time they began."

[H. R. 13757, Seventieth Congress, first session]

A BILL To amend sections 116 and 118 of the Judicial Code, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 116 of the Judicial Code as amended (United States Code, title 28, section 211), is hereby amended to read as follows:

"SEC. 116. There shall be ten judicial circuits of the United States, constituted as follows:

"First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, Maine, and Porto Rico.

"Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

"Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

"Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, South Carolina, and the Virgin Islands.

"Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

"Sixth. The sixth circuit shall include the districts of Tennessee, Kentucky, Ohio, and Michigan.

"Seventh. The seventh circuit shall include the districts of Illinois, Indiana, and Wisconsin.

"Eighth. The eighth circuit shall include the districts of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming.

"Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Arizona, Hawaii, and Alaska.

"Tenth. The tenth circuit shall include Arkansas, Missouri, Oklahoma, Kansas, Colorado, New Mexico, and Utah."

SEC. 2. Section 118 of the Judicial Code, as amended (United States Code, title 28, section 213), is hereby amended to read as follows:

"SEC. 118. There shall be in the second, sixth, and seventh circuits, respectively, four circuit judges, and in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate: *Provided, however*, That any circuit judge of the eighth circuit as constituted immediately prior to the enactment of this act, who resides within the eighth circuit as hereby constituted, shall be assigned as a circuit judge to the eighth circuit as hereby constituted; and any circuit judge of the eighth circuit as constituted immediately prior to the enactment of this act, who resides within the tenth circuit as hereby constituted, shall be assigned as a

circuit judge of the tenth circuit as hereby constituted. Each circuit judge shall receive a salary of $12,500 a year, payable monthly. Each circuit judge shall reside within his circuit, and when appointed shall be a resident of the circuit for which he is appointed. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law. Nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided by other sections of the Judicial Code."

SEC. 3. A term shall be held annually by the circuit courts of appeals in the eighth and tenth circuits at the following places, and at such times as may be fixed by said courts, respectively, to wit: In the eighth circuit, in Saint Paul and Cheyenne; and in the tenth circuit, in Saint Louis and Denver, and in Oklahoma City: *Provided*, That suitable rooms and accommodations for holding such court in Oklahoma City are furnished free of expense to the United States. In each of the circuits named in this section terms may be held at such other places, and at such times as said courts may, respectively, from time to time designate.

SEC. 4. All appeals, writs of error, and other appellate proceedings originating in any of the district courts of the eighth circuit, as hereby constituted, now pending and undetermined, shall be heard and determined by the circuit court of appeals of that district; and, in like manner, all appeals, writs of error, and other appellate proceedings originating in any of the district courts of the said tenth circuit, as hereby constituted, now pending and undetermined, shall be heard and determined in the circuit court of appeals of that circuit; and all circuit courts of appeals and district courts wherein there are pending any such proceedings at the time this act shall take effect, are empowered and directed to make all necessary orders, and to take all necessary action, to render effective these provisions.

SEC. 5. All acts and parts of acts inconsistent or in conflict herewith are hereby repealed.

We will hear first from Mr. Ayres, Representative from Kansas.

STATEMENT OF HON. W. A. AYRES, REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. AYRES. Mr. Chairman and gentlemen of the committee, Senator Long, who is a former Member of this House and of the United States Senate, and also former president of the American Bar Association, is more familiar with this matter than I am. He is very much interested in these bills, or, rather, in the division of this circuit. He also has a message from the American Bar Association and from the Kansas Bar Association. He probably can relate to you much more concerning these measures than anyone else, because he has had this matter under consideration not only as a member of the American Bar Association, but also as a member of the Kansas Bar Association. So I will introduce the committee to Senator Long.

Mr. HERSEY. Before you proceed, Senator, I wish to make this statement for your information, at least: The original hearing in this matter was on H. R. 5690, a bill introduced by Mr. Thatcher, which was a bill to change all the circuits in the United States. After hearings to quite an extent on that bill, Mr. Thatcher abandoned his position of changing all the circuits and put in a bill, H. R. 13757, which is the one now before you, which is to change the eighth circuit only, making two circuits of it. Isn't that the purpose of that bill?

Mr. AYRES. Yes.

Mr. HERSEY. We will hear you now, Senator Long, on that bill.

STATEMENT OF HON. CHESTER I. LONG, WICHITA, KANS.

Mr. HERSEY. What is your business?

Mr. LONG. I am a practicing lawyer.

Mr. HERSEY. All right. You may make your statement.

Mr. LONG. I am a member of the special committee of the American Bar Association that has been considering this subject for some time. I did not request this hearing this morning in behalf of the special committee. I only wanted to have an informal talk with the members of your subcommittee in regard to the situation, and arrange for a hearing later. But, as I am here and as most of the members of the subcommittee are here, and as Mr. Thatcher, who is the author of one of these bills, is here, I will express to you not only my personal view but the views of the association as voiced in its resolution at the Seattle meeting.

Mr. HERSEY. What was the date of that meeting?

Mr. LONG. The action of the association was taken on July 27, 1928.

The chairman of this special committee, of which I am a member, is Mr. A. C. Paul, of Minneapolis, Minn., who has given a great deal of consideration to this matter and who, I think, was present at a hearing that this subcommittee had on the 11th of May, 1928, when you heard Chief Justice Taft and Justice Van Devanter on this question.

The matter has been before the American Bar Association for several years. We have discussed the question of rearranging all the circuits. No conclusion has ever been reached upon it. The objections that were raised to the changes that were proposed were so numerous that that plan was finally abandoned, and a special committee was appointed within the last year to consider this question, and I am a member of that committee.

It may be of some interest to you to have the names of the members of that subcommittee. The question has resolved itself into a division of the eighth circuit, which is composed of 13 States, and is the largest circuit in the United States. The special committee is from that circuit.

The chairman of the special committee is Mr. A. C. Paul, of Minneapolis, Minn. The other members are George B. Rose, of Little Rock, Ark.; Robert S. Gast, Pueblo, Colo.; DeLoss C. Shull, Sioux City, Iowa; Jesse A. Miller, Des Moines, Iowa; Thomas F. Doran, Topeka, Kans.; Chester I. Long, Wichita, Kans.; F. H. Stinchfield, Minneapolis, Minn.; W. H. H. Piatt, Kansas City, Mo.; Ralph A. Van Orsdel, Omaha, Nebr.; J. O. Seth, Santa Fe, N. Mex.; Charles A. Pollock, Fargo, N. Dak.; James C. Denton, Tulsa, Okla.; John H. Voorhees, Sioux Falls, S. Dak.; Charles R. Hollingsworth, Ogden, Utah; and Albert W. McCollough, Laramie, Wyo.

Mr. THATCHER. When was this committee appointed, Senator?

Mr. LONG. This special committee was appointed last January by the executive committee of the American Bar Association.

Mr. THATCHER. Its members, naturally, are all lawyers within the eighth circuit?

Mr. LONG. Yes, sir.

When the association abandoned the plan to change all the circuits, it came to the proposition of dividing the eighth circuit——

Mr. THATCHER. When did the American Bar Association abandon the idea of changing all the circuits?

Mr. LONG. The last time that it was up was at the Buffalo meeting in September, 1927.

Mr. THATCHER. This matter was held in abeyance, as I understand it, from what Mr. Moores said. He was a member of the original committee.

Mr. LONG. Yes. No definite action was taken. The question came before our standing committee on jurisprudence and law reform. That was the committee of which Mr. Moores was a member. It had this matter in charge. It was at the meeting in April, 1928, that the executive committee appointed this special committee to deal with this subject.

There are two bills pending before this committee providing for a division of the eighth circuit. They are radically different. The Thatcher bill does not change the circuits outside of the eighth, but as to that circuit it has these provisions: "The eighth circuit shall include the districts of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming." As to the tenth circuit it provides: "The tenth circuit shall include Arkansas, Missouri, Oklahoma, Kansas, Colorado, New Mexico, and Utah."

Mr. THATCHER. My bill, Senator, makes an east-and-west division. Mr. Newton's bill has a north-and-south division.

Mr. LONG. Yes; yours is an east-and-west division. But by looking at the map you will see that the tenth circuit according to your bill is composed of Arkansas, Missouri, Oklahoma, Kansas, Colorado, New Mexico, and Utah.

The other bill is known as the Newton bill; and this map, which I now call to your attention, follows the provisions of the Newton bill. It makes two circuits of the eighth circuit. Under the division proposed by that bill the eighth circuit will consist of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Arkansas. The new tenth circuit will be composed of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico.

Mr. MOORE. The tenth circuit is the same in the Thatcher bill as it is in the Newton bill, isn't it?

Mr. LONG. No. If you will look at this map, you will see that the tenth circuit of the Thatcher bill is composed of Arkansas, Missouri, Kansas, Colorado, New Mexico, and Utah. The tenth circuit of the Newton bill is composed of Kansas, Oklahoma, Colorado, New Mexico, Utah, and Wyoming.

These two bills have been under consideration by the American Bar Association before the special committee; and that committee, at a meeting held prior to the annual meeting of the association at Seattle, unanimously favored the Newton bill, which is the one that I have just read from.

The report of this special committee was presented to the association with an amendment providing for a term of court in Kansas. The committee originally—I was not present at the first meeting of the committee, I was informed by its chairman that that no provision was made for a term of court in Kansas because it did not know

where to put it; the committee was not informed as to what city it would be placed in.

At a meeting of the members of the American Bar Association at Seattle, they unanimously selected Wichita as the place for a term of court in Kansas. That amendment was agreed to by the committee and reported to the association, and the association approved the Newton bill with the amendment and passed a resolution to that effect.

I offer now the resolution adopted by the American Bar Association at its meeting at Seattle, Wash., on July 27, 1928. This is the resolution:

Resolved That the Newton bill, H. R. 13507, providing for a division of the eighth circuit, be indorsed and recommended for passage by Congress, with the following amendment:

In section 3, line 15, of the bill, after the word "Denver" insert "in Wichita";

Resolved further, That the special committee be continued, with authority in the president of the association to fill any vacancies in the committee and to appoint additional members, if this seems advisable.

This resolution is quoted in a certificate of the executive secretary of the association. I will leave this original certificate with the committee.

Mr. HERSEY. Without objection, this will be received and printed.

Mr. LONG. I will also leave with the committee a certified copy of a resolution adopted by the Kansas State Bar Association indorsing the Newton bill, with the amendment suggested for terms of court at Wichita. This resolution was adopted on November 16, 1928.

Mr. HERSEY. Without objection, that will also be received and placed in the record.

Mr. LONG. This resolution is as follows:

Resolved That the Kansas State Bar Association, in annual meeting duly assembled at Hutchinson, Kans., on November 16, 1928, approves the Newton bill, H. R. 13507, Seventieth Congress, first session, for the division of the eighth judicial circuit and the creation of the tenth judicial circuit composed of the districts of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico, with an amendement as follows: "In line 19, section 3, page 4, after the word 'Denver' insert 'in Wichita' so as to also provide for terms of court at Wichita, Kans."

(At this point Mr. Newton entered the room.)

Mr. LONG. I wish to repeat for Mr. Newton's information the statement that I made at the beginning of this hearing.

I did not intend, Mr. Newton, to have a hearing on this matter to-day. I simply intended to talk informally with the members of the committee, and arrange for a hearing later as planned by Mr. Paul, the chairman of the special committee of the American Bar Association which is considering this matter. But Mr. Ayres and Mr. Hersey thought I had better present the matter to the committee formally.

Mr. HERSEY. You can understand that we could not take informal testimony and put it in the record, so it was better to do it this way.

Mr. LONG. I have spoken of the action of the American Bar Association at its Seattle meeting, indorsing the bill which you introduced, with the amendment providing for terms of court in Wichita,

Kans. I have also called attention to the way in which the Thatcher bill divides the eighth circuit, which is an entirely different way from what your bill divides it.

Now, I do not know whether the subcommittee has had before it a letter of June 30, 1928, from the six circuit judges of the eighth circuit.

Mr. HERSEY. Addressed to whom?

Mr. LONG. Addressed to Mr. Paul.

Have you presented that, Mr. Newton?

Mr. NEWTON. I have not presented anything to the committee, because no hearings have been had on my bill. I would be very glad to have you present it.

Mr. HERSEY. Have you the original letter there?

Mr. LONG. Yes. I have the original letter, signed by Judge Kimbrough Stone, of Missouri, presiding judge of the eighth circuit. It discusses quite fully the Thatcher bill and the Newton bill, and analyzes the business in the two proposed circuits as shown by the business of 1927, indorses the Newton bill, and has this as its final paragraph: "I am authorized by Judges Lewis, Kenyon, Van Valkenburgh, Booth, and Cotteral to say that they have seen and approved the above statements."

I will not take the time to read that letter unless the committee so desires.

Mr. HERSEY. It speaks for itself. Without objection, it will be placed in the record as part of the hearing.

(The letter referred to is printed at the end of the hearing.)

Mr. LONG. At the hearing had before this subcommittee in May, 1928, which has not been printed, but of which I have an abstract taken from the United States Daily, Chief Justice Taft indorsed a division of the eighth circuit along the lines of the Newton bill, except that he thought Nebraska should be placed in the new tenth circuit. Justice Van Devanter had somewhat different views.

Mr. THATCHER. My bill was drawn in line with the views of Justice Van Devanter.

Mr. LONG. It was?

Mr. THATCHER. Yes. The bill I presented covered, of course, a number of circuits. It was introduced at the instance of the committee of the American Bar Association. The division of the eighth circuit, where the load was heaviest, was made according to the views of Justice Van Devanter. He believed, and so stated to this committee, that the logical division of the enghth circuit was an east-and-west division, because all the trunk-line railroads run east and west; and that if you had a north-and-south division, you would have a great deal of confusion, especially in railroad litigation; and he thought that, the lines of travel being east and west, the situation would be more conveniently met by an east-and-west division than by a north-and-south division. So my bill was drawn on the basis of that argument.

(Discussion off the record.)

Mr. LONG. That is all I wish to say this morning. As I said, this is not a formal hearing by the committee of the American Bar Association. Mr. Paul intends to have that in January. I was here and could not be here after to-morrow, and Mr. Ayres very kindly

told me that he would get a few of the committee together, and your chairman arranged to have the subcommittee meet and hear me.

Mr. HERSEY. Let me ask you a question, Mr. Long. In the paper that you have submitted here, containing the indorsement of certain judges in the present eighth circuit of the Newton bill, as I understand it, do you have all the judges in the eighth circuit?

Mr. LONG. All the circuit judges. There are six of them.

Mr. HERSEY. We don't care for the opinion of any other judges than those.

Mr. THATCHER. What is the attitude of the district judges in the eighth circuit?

Mr. LONG. So far as I know, all of them are in favor of the Newton bill. They agree with the circuit judges.

I thank you for hearing me.

Mr. THATCHER. Have you any formal statement from the district judges?

Mr. LONG. No. I haven't, but it can be obtained. Mr. Paul can get that if the subcommittee so desires.

Mr. THATCHER. I suppose the committee could ascertain that?

Mr. LONG. Yes.

Mr. HERSEY. Are there any further questions, Mr. Thatcher, of Senator Long?

Mr. THATCHER. What do you say in response to the argument made by Justice Van Devanter about the trunk-line railroads running east and west, and the lines of travel being naturally east and west as against north and south in the eighth circuit? That was one of the chief arguments that were made, and it appealed to me in the drafting of the bill. I thought it was a very strong argument.

Mr. LONG. I have heard that argument. There is force in that one particular—the foreclosure of mortgages on railroads.

Mr. THATCHER. I am talking about the means of travel.

Mr. LONG. But the means of travel in the new tenth circuit are such that the most convenient arrangement that can be made is to have the tenth circuit composed of Kansas, Oklahoma, Colorado, Wyoming, Utah, and New Mexico. No more convenient arrangement can be made for places of terms of court than is contained in the Newton bill with the amendment.

We lawyers from Kansas do not object to going to Oklahoma City or to St. Louis. But when we file a case in the office of the clerk of the circuit court of appeals, we do not know whether the case will be heard at Oklahoma City, St. Louis, or at St. Paul; and St. Paul is very inconvenient for all the Southern States. It is inconvenient for Oklahoma and Kansas and all that part of the circuit.

Mr. THATCHER. Of course, the bill that I introduced has St. Paul in the old eighth circuit, and that circuit has no contact with the new tenth circuit, that is, it is entirely separate from the new tenth circuit.

Mr. LONG. Yes; but I am speaking of the present condition there.

Now, there are great difficulties about satisfying the lawyers, who are largely interested in this matter; and the strength of the Newton bill is that, so far as I know, there is no objection to it from the practicing lawyers, and the judges.

There was an effort made to put Arkansas in the tenth circuit, but the lawyers in that State objected. They wanted to be in the

same circuit with St. Louis. I think that objection had the indorsement of their bar association. So that plan was abandoned.

I think this is the most convenient and satisfactory arrangement that can be made.

I want to say to Mr. Newton that I have heard from the clerk of the Supreme Court of the United States that there should be some amendment of your bill, in relation to making it sure that the jurisdiction of the first circuit containing Boston——

Mr. LONG. That is the circuit that has jurisdiction of appeals from Porto Rico and the Canal Zone? I think there is nothing in your bill——

Mr. THATCHER. The Canal Zone appeals are to the New Orleans circuit, but Porto Rico is in the Boston circuit.

Mr. LONG. Then it should cover both. He said that an amendment should be made to your bill so that under the new arrangement that situation would not be disturbed.

Mr. NEWTON. Yes. The clerk called my attention to that just before the adjournment.

Mr. LONG. So I think your bill should be amended in that regard.

Mr. NEWTON. I have not done anything on that, but I have it in mind.

Mr. LONG. He told me that he would call your attention to it.

Mr. NEWTON. Yes. He did.

Mr. LONG. That is all I have to say in regard to the matter. I would be glad to answer any questions that you may desire to ask.

Mr. HERSEY. Are there any further questions, Mr. Thatcher?

Mr. THATCHER. I don't think that I have.

Mr. HERSEY. Have you any questions, Mr. Newton, of the witness?

Mr. NEWTON. No.

Mr. HERSEY. Has any member of the committee any questions to ask of the witness?

Mr. NEWTON. I would like to ask just this one question: My impression is, Senator, that practically every—and I get this only by hearsay from Mr. Paul—that practically every State bar association in the present eighth circuit indorses this division embodied in the so-called Newton bill. That is correct, isn't it?

Mr. LONG. That has been my information. I haven't that officially. I only have that from our State. But I understand that it has been generally indorsed, and I also understand that it is generally satisfactory to and is indorsed by the district judges.

Mr. NEWTON. That is true of the district judges in my State. One of the judges is sick, and I have not learned his view, so I haven't the views of all the State district judges. Two of them favor it. The other man no doubt would favor it, except that he is ill so that no one has ascertained his views.

Mr. LONG. I know that the judge from Kansas, Judge McDermott, who is a new judge, favors the bill. I know the views of Judge Phillips of New Mexico. I do not know the views of Judge Pollock, the other judge from Kansas. I know the views of these two judges. I understand that it is quite generally indorsed by the district judges, as it is unanimously indorsed by the circuit judges.

It is hoped that early action can be obtained on this. I do not desire to press the matter at the moment without the consent of Mr. Paul. I think he intends to be here for the hearing early in January

with a view of trying to get definite action on the bill just as soon as possible.

Mr. AYRES. There is a matter, however, in which my city is vitally interested at this particular time. I wonder if we couldn't at this hearing get some kind of agreement out of the two proponents of these bills regarding this amendment.

Mr. THATCHER. As to holding terms of court in Wichita?

Mr. AYRES. Yes, because at this time the Supervising Architect, or, rather, his office, is drawing plans for a new Federal building out there at Wichita. I asked him to hold up these plans at this time so that in case the circuit court of appeals is located in the city of Wichita and they hold court there, some provision can be made for the three judges; and they are holding up those plans at this very moment and will hold them until we get some assurance either from this committee or some one that this amendment will be made in either of these bills, whichever may be passed. Then they can go ahead with these plans and go ahead with the building.

Mr. THATCHER. I have no objection to that.

Mr. HERSEY. Have any of the members any further questions?

Mr. THATCHER. I would suggest this, Mr. Chairman: I have no particular pride in this matter at all. I introduced this bill in an effort to solve this situation. I did it at the instance of the bar association and this committee, relying largely on Justice Van Devanter's argument as to where the eighth circuit should be diveded. That argument appealed to me very strongly, and it appealed to the subcommittee in the same way.

I might suggest that the views of the district judges be also ascertained by the subcommittee so that we may have the full picture—the whole thing. The situation is no doubt entitled to relief. There is no question about that.

Mr. LONG. There is no question about that.

Mr. THATCHER. And then let the committee take the whole case and determine which plan it thinks is a fair solution, by getting the full expression from the district judges as well as from the circuit judges and from the bar association. I think the committee ought to get all that information together.

Mr. LONG. That information is in the possession, as I understand, of Mr. Paul at the present time.

Mr. THATCHER. So far as Wichita is concerned, I would have no objection to having the bill amended so as to include Wichita. I think there is strength to the argument that has been given for it.

Mr. AYRES. You would have no objection to amending your bill in the same way that it is proposed to amend the Newton bill?

Mr. THATCHER. No.

Mr. AYRES. What I want is to be able to go to the supervising architect with some assurance that he can go ahead with these plans and prepare for three circuit judges there.

Mr. THATCHER. Of course, the bill would have to be passed first.

Mr. AYRES. I understand that.

Mr. NEWTON. My understanding is that this Wichita proposition came out this summer at the meeting of the bar association; is that right?

Mr. AYRES. Yes.

Mr. NEWTON. At the meeting at which they indorsed my bill?

Mr. LONG. Yes; when they indorsed your bill. I was advised by Mr. Paul, the chairman, that at a meeting at which I was not present they provided for no term of court in Kansas because they did not know at what city to place it.

Mr. THATCHER. This doesn't affect Oklahoma City in either case; does it?

Mr. LONG. No. It leaves Oklahoma City and Denver as they are now. There are terms of court in those places, and these bills do not affect that.

Mr. THATCHER. I don't know whether there would be any controversy over those places.

Mr. HERSEY. Is that all, Mr. Newton? Do you want a continuance of the hearing?

Mr. NEWTON. Yes. I would like to have the committee continue the hearings until some time in the future, and I will let Mr. Paul know. He will be very glad to come down here at any time that would fit in with the convenience of the committee and that would not interfere with some important engagement that he might have.

Mr. LONG. He has an engagement now during the first part of this month that prevents his being here. I wrote to ask him to be here.

Mr. HERSEY. Who is to obtain the opinions of the district judges? Are they to be obtained by Mr. Thatcher or Mr. Newton, or shall the subcommittee obtain these opinions?

Mr. THATCHER. If I may make the suggestion: I think that the committee had better do it. I think the committee had better submit these bills to them and get their expression of opinion.

Mr. LONG. If that information has already been collected by Mr. Paul from these judges, and if he has the resolutions of the different bar associations and will turn them over to this subcommittee, it will save this subcommittee a lot of correspondence and trouble. But any way which may be desired by the subcommittee——

Mr. NEWTON. I will immediately communicate with Mr. Paul and make inquiry as to the district judges and as to the bar association indorsements, and then request him to send down here whatever he has, advising me of those that he may not have; and then this committee can communicate directly with those from whom he has not an opinion and get it.

Mr. HERSEY. All right.

Are there any further questions this morning?

Mr. LONG. This hearing will be continued at the call of the chairman?

Mr. HERSEY. Yes.

Mr. NEWTON. Let me also say this: That in talking with Circuit Judge Booth, who I have known for a good many years—he is a resident of my city—I understand that one of the principal objections to the other division proposed by Mr. Thatcher's bill was that, as I understand it, some of the States that have like problems, legal problems, were put in the tenth circuit and others were left in the eighth circuit; and that there is a very substantial advantage from the standpoint of uniformity in decisions and certainty in the law, where there is so much litigation of that particular type, to have them all embodied in the eighth circuit. That is correct, isn't it, Senator?

Mr. LONG. Either in the eighth or tenth.

Mr. NEWTON. Yes. To have them all in the same circuit.

Mr. THATCHER. As I understand it, you can not get a complete identity of these questions under either circuit proposition?

Mr. NEWTON. But this division comes as close to it as it can possibly be made to. It does, does it not, Senator, take in in the tenth circuit practically all of these questions?

Mr. LONG. It takes in what might be known as the Indian litigation; that is, litigation growing out of conditions in Oklahoma; and it takes in oil litigation that is present in Oklahoma, Kansas, New Mexico, and Colorado.

Mr. THATCHER. You have oil litigation also in Arkansas, haven't you?

Mr. LONG. Yes; some. There is not very much, but there is some.

Mr. NEWTON. Do I understand that the letter of Circuit Judge Stone, bearing date of St. Paul, Minn., June 30, 1928, to Mr. Paul as chairman of the American bar committee on the division of the eighth circuit has been made a part of the record?

Mr. LONG. Yes. I presented that this morning.

Mr. HERSEY. And the action of the Kansas Bar Association has also been made a part of the record.

Mr. NEWTON. I also wrote to the committee on the 18th of February in reference to H. R. 5690.

Mr. HERSEY. That is a part of the record that we printed.

Mr. NEWTON. That is Judge Booth's opinion.

Mr. HERSEY. It is in the printed record. There is a part of the record that we have not had printed, the part which contains the statements of the two judges.

Mr. LONG. May I ask, will the hearing of this morning be printed, or will you wait until it is completed by the presentation of this other information?

Mr. HERSEY. The committee have not decided yet.

Mr. LONG. I think we will want to present some additional information before it is printed.

Mr. HERSEY. The case is still open.

Mr. LONG. I think you have not printed what was said by Chief Justice Taft and by Justice Van Devanter.

Mr. HERSEY. We may print parts of it. Just at present the case is not closed.

If there is nothing further, the committee will stand adjourned.

(Thereupon, at 10.15 o'clock, a. m., the subcommittee adjourned.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. II OF THE COMMITTEE ON THE JUDICIARY,
Friday, January 11, 1929.

The subcommittee met at 10 o'clock a. m., Hon. Ira G. Hersey presiding, and Messrs. Yates, Moore, Dominick, Major, and Weaver, present.

There were present before the subcommittee: Hon. Walter H. Newton, a Representative in Congress from the State of Minnesota; Hon. Maurice H. Thatcher, a Representative in Congress from the State of Kentucky; Mr. Chester I. Long, Wichita, Kansas, and Mr. Nelson H. Loomis, Omaha, Nebr.

Mr. HERSEY. The subcommittee will come to order. This is a continuation of hearings upon H. R. 3757, known as the Thatcher bill, and 13567, known as the Newton bill, to amend the judicial code.

Since our last meeting the chairman has received from the eighth judicial circuit and that part of the tenth circuit that would be affected by the divisions covered by these two bills, certain letters approving and disapproving one or the other of these bills, and at this time the Chair thinks that these letters should go into the record before any oral testimony is received from either one party or the other, as it may take care of certain claims, and without objection these letters will be read at the present time.

Mr. MAJOR. Are you going to read them and put them into the record, too?

Mr. HERSEY. Yes; for the purpose of the hearing. In the absence of the clerk I will ask Mr. Newton to read these letters, if he will.

Mr. THATCHER. May I ask, Mr. Chairman, were both bills submitted to all the district judges? Did you send out both bills?

Mr. HERSEY. I had nothing to do with sending out the bills.

Mr. THATCHER. I just wondered whether both bills were sent out. Some of the letters do not indicate that both bills were received.

Mr. NEWTON. I did not send out the Thatcher bill because I had word about a year ago, before I introduced H. R. 13567, that the Thatcher bill was not satisfactory to certain judges, so I did not send the Thatcher bill.

Mr. LONG. At the hearing in December I presented the statement of Presiding Judge Stone of the eighth circuit, which was concurred in by the other five circuit judges (indorsing the Newton bill and opposing the Thatcher bill. The subcommittee at that time requested the views of the 27 district judges of the circuit and the State bar associations. I suggested to Mr. Paul, chairman of the special committee, that there be sent to the district judges, Judge Stone's letter that analyzed both bills. What was done further than that I do not know.

STATEMENT OF HON. MAURICE H. THATCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. THATCHER. My understanding was, or impression, that both bills would be sent to the district judges, so that they would have both bills before they would submit their comments. I read over yesterday the various letters that come from the district judges, and I think there are only three or four instances where they seemed to have before them the Thatcher bill. They seemed to have Judge Stone's letter and they seemed to have the Newton bill, but they did not seem to have the Thatcher bill.

Mr. LONG. Judge Stone's letter analyzed both bills, and how the circuit would be divided by each bill.

Mr. THATCHER. I understand.

Mr. LONG. I have not seen Mr. Paul since I was here in December. He is ill at present. He was to be here at this hearing. Not being able to come, he requested me to come, so I did.

Mr. THATCHER. I am sorry that the district judges did not have both bills before them.

Mr. HERSEY. They did, Mr. Thatcher, from the tone of their letters.

Mr. THATCHER. Some did and some did not, apparently.

Mr. LONG. Nearly all of them referred to your bill because it was the first. It is the bill that the American Bar Association has had under consideration for several years. So I think they were familiar with your bill.

Mr. THATCHER. Now, Judge Hersey, I am called to another meeting, and I would like to make just one other little statement and then be excused. So far as I know the bill that I introduced was the original bill on the subject, so far as this Congress is concerned.

Mr. LONG. I think it was.

Mr. THATCHER. That was the bill that was formulated as the result of representations made by a subcommittee of the American Bar Association, of which subcommittee Mr. Merrill Moores is a member and Mr. Henry W. Taft is a member, and framed with the general approval of Mr. Strawn who was president of the American Bar Association at the time. That applied to the whole country.

Mr. LONG. Yes.

Mr. THATCHER. Including, of course, the eighth circuit as one feature, where relief is undoubtedly needed. It was believed that there was relief also needed in certain other circuits, but because of conflicting sentiments in these other circuits it finally narrowed itself down to the point where everybody agreed that the eighth circuit should have some relief, and my bill was modified by eliminating the provisions as to other circuits. My bill was based more particularly on the views of Justice Van Devanter, who made a very strong statement before this subcommittee, and who was of the opinion that an east and west division would be more logical than a north and south division. That seems to be the bone of contention, and I was very much struck with his argument, which came to me before I introduced the bill originally, and I accordingly introduced it.

Also, my bill does not increase the number of circuit judges. I am a member of the Appropriations Committee, and I know how we try to avoid increasing the expense of the administration, if possible. Of course some time we will have to increase the number of judges, but wherever possible we seek to avoid it—Congress does—and that was also in my mind in the drafting of that bill, that we should avoid increasing the number of circuit judges and the consequent expense; that that was a consideration that was worth while if the work could be done. Our idea in that bill was that by dividing the districts, the courts could be brought nearer home to the people.

Mr. LONG. Dividing the circuits.

Mr. THATCHER. Dividing the circuits—that the courts could be brought nearer home to the people, and in that way possibly get along without additional judges.

Now, as I say, I do not know whether these district judges have had my bill before them or not, but I must go to another meeting now, and that is the statement I wanted to make.

Mr. HERSEY. Before you go, Mr. Thatcher, I might say to you that I have had no correspondence with these parties about nor sent any bills to them except by request.

I have received from judges, attorneys, and bar associations in the districts covered by this bill, certain correspondence, and I will call your attention to it. I think you have seen it all.

Mr. THATCHER. I have seen it all. I went over the epitome that you have of it.

Mr. HERSEY. And before you go I wish to state that perhaps it would be too late to read them at the present time, but I will simply state to you that from a compilation of this correspondence the Newton bill has been approved by four United States circuit judges of the following States: Colorado, Missouri, Minnesota; 16 United States district judges of the following States: Arkansas, Colorado, Iowa, Kansas, Missouri, Minnesota, New Mexico, Oklahoma, and South Dakota; three judges of the State Supreme Court of Kansas; five judges of the judicial districts of Kansas; the United States district attorney for North Dakota; the American Bar Association; the State Bar Association of Kansas, 600 members; Arkansas, South Dakota, Minnesota, New Mexico, Colorado, and Missouri; 52 of the attorneys of Kansas; 42 of the attorneys of New Mexico; three attorneys of Arkansas; two attorneys of Minnesota; one attorney of Iowa; one attorney of Colorado; one attorney of Utah. And Judge Munger, judge of the United States District Court of Nebraska, has sent in a letter, not favoring the Newton bill, but favoring the Thatcher bill. He seems to be the only one.

Now, that is a compilation of the correspondence that I have received.

Mr. THATCHER. May I ask who wrote the district judges?

Mr. HERSEY. I do not know who wrote the district judges. The letters from the district judges came right in after our hearing, as though they had both bills before them, and I simply as chairman took care of the correspondence and answered them that I had received their letter about the matter.

Mr. THATCHER. I thought that the committee was going to send out requests for information.

Mr. HERSEY. No; I did not, for the reason that I supposed somebody had sent them the two bills.

Mr. THATCHER. Of course, I made no effort to reach them myself. I thought the committee would reach them direct.

Mr. HERSEY. I rather think, perhaps, Mr. Paul took care of that.

Mr. NEWTON. That is correct. Upon adjournment of this committee I communicated with Mr. Paul and asked him, as the official representative of the American Bar Association, to contact the State bar associations and the various district judges, which he did, and the Chair has heard direct from some, and in addition to those whom the Chair mentioned, I have received several. For example, I have a letter from Judge Kenyon indorsing it, which makes the last circuit judge of the circuit, making it unanimous for them.

I did not say anything to Mr. Paul about presenting the Thatcher bill, because I did not understand that I was to do so.

Mr. HERSEY. I have gone over quite carefully the correspondence that I have received, and I have noticed that a number of these judges say they have received Mr. Paul's letter asking them to write the chairman of the committee as to their opinion, and so forth.

Mr. NEWTON. He may have done it.

Mr. HERSEY. I gathered that Mr. Paul was the one who had done it, Mr. Thatcher. Of course, I don't know.

Mr. THATCHER. Well, I had been hopeful that the committee itself would communicate with them.

Mr. HERSEY. Of course, that would have been all right; but I thought somebody was taking the work away from the committee.

Mr. THATCHER. In that way both bills would have been sent.

Mr. HERSEY. I gathered that they had both bills, because they characterized both bills one way or the other.

Mr. THATCHER. Well, I don't know. I think some of them have and some have not.

Mr. HERSEY. I can not conceive that they would say, "I favor this bill instead of the Thatcher bill," without having both before them.

Mr. THATCHER. I judge Mr. Paul sent out a copy of Judge Stone's statement of the matter.

Mr. LONG. I requested him to do that.

Mr. THATCHER. And I think they have been guided by that analysis in making their judgment.

I will have to go now. It is a question for the committee to determine. I can see that there ought to be relief in that district. Personally, I would like to see the expense of additional circuit judges saved, if that economy can be effected and relief be given.

Mr. LONG. I want to say one word on that before you leave.

Mr. HERSEY. It is a little bit out of order at the present time. I hardly know how the evidence is going in. You wish to ask Mr. Thatcher a question?

Mr. LONG. Yes. Speaking about not increasing the number of circuit judges, are you aware that the work of the eighth circuit court of appeals has so increased that one-third of its opinions are now written by district judges?

Mr. THATCHER. That has all been brought out here, and that is the reason that the eighth circuit was divided in the bill that I introduced; but the proponents of the Thatcher bill thought that by the division proposed in the Thatcher bill, possibly that situation would be largely remedied by the division, by keeping the sittings of the circuit courts closer to the people.

Mr. HERSEY. You have no objection, Mr. Thatcher, that this correspondence from the judges and attorneys and those interested should go into the record?

Mr. THATCHER. Oh, no. The only regret that I have about that feature is that I do not believe the Thatcher bill has gone to all of the district judges, and they have had just sort of an ex parte presentation, apparently. But I concede that relief ought to be granted, and it is for the committee to determine, in their judgment, of course, what is the best form of relief. If Mr. Newton had been first in the field on this subject, of course, I never would have presented a bill; but I first undertook to cover the whole field and then finally it became narrowed down to one circuit where about everybody agreed there ought to be relief, and my bill was drawn with the approval of Judge Van Devanter and, as I understood, of Chief Justice Taft at the time; but afterwards the Chief Justice seemed to be influenced by Justice Sanborn's view of the situation, and who had rather some sentimental ideas about keeping the old circuit intact. Of course, he is not with us any more.

Now, I will leave you gentlemen, as I have to go to another committee meeting.

Mr. HERSEY. Is there any objection on the part of the committee to these statements before the committee from the district judges, the circuit judges, the bar associations, the attorneys affected by this measure or these two measures, going into the record? (There was none.) They will go in. I will hand them to the reporter without reading them. It will be quite a long reading unless you want to take up the time of the committee for that.

STATEMENT OF HON. WALTER H. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. NEWTON. May I say just a word. My interest in this dates back over quite a long period of time, because, knowing Circuit Judge Sanborn for a good many years, and also Circuit Judge Booth, when I am home I rather keep in touch with the situation, and I therefore knew something of the congestion in the court and the necessity for doing something. When the Thatcher bill was proposed and it got out into the eighth circuit, there was very substantial opposition to it. For example, Circuit Judge Booth, in whom I have the greatest confidence, wrote me somewhat at length setting forth the reasons why, in the interest of the administration of justice out there and uniform decisions and all of that, the division proposed in the Thatcher bill would not do.

Then I conferred with Mr. Paul, who is very much interested in it, and I think Senator Long. That was before the bill, I think, was introduced—it may have been just afterwards—and I introduced the measure, and did so with the understanding at the time that that sort of a division would meet with the approval of all of the sitting circuit judges.

I shall present to the committee before I leave, letters from something like 20 or more very prominent practicing lawyers in Minnesota, and then several letters from the United States district judges approving this proposed division, and I think that is all that I care to say at the present time, and I want to again present to the committee former United States Senator Long, who is representing the American Bar Association, and who appears also in lieu of Mr. Paul. Mr. Paul has been ill and expected to be able to be here early in January, but has been prevented by illness from doing so.

Mr. HERSEY. Senator Long testified at the last meeting of our committee.

STATEMENT OF HON. CHESTER I. LONG, WICHITA, KANS.

Mr. LONG. I did not think I could be here at this meeting, so you very kindly heard me at the hearing in December, but I am here to-day because Mr. Paul, the chairman of the special committee of the American Bar Association wanted me to be present to-day. I reported to him about the hearing on the 4th of December.

I do not want to unduly take the time of the committee. I want to refer, however, to two or three letters that I have here. Mr. Thatcher is right in the statement that his bill was introduced before

the bill of Mr. Newton, and that is what brought forth the Newton bill. The Thatcher bill was so unsatisfactory to the judges and lawyers of the eighth circuit that a special committee was appointed by the American Bar Association, of which Mr. Paul is chairman and of which I am a member, to consider this subject. I was not present when the Newton bill was drafted, but it was drawn with a view of expressing the views of the judges and lawyers of the eighth circuit on the division.

I call attention to a statement in the letter from Judge Stone, of which you have already a copy in your proceedings.

Mr. HERSEY. Have we the original?

Mr. LONG. Yes; you have the original. It was introduced at the last hearing. I presented it, and I call attention to a statement in that letter, in which he discusses the Newton bill. He says:

The Newton bill also makes two circuits [after discussing the Thatcher bill it places Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota in the proposed eighth circuit, and Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming in the proposed tenth circuit. On the basis of cases filed in 1927 there are 222 cases in the first group and 179 in the second. On the three-year average there are 232 in the first and 174 in the second group.

To take care of this difference, the Newton bill provides for five judges in the first group and four judges in the second. By this increase in the present six judges to nine in both of the two new circuits, the bad effect of dividing the circuit is lessened. Also, the bill leaves all of the mountain States' litigation in one circuit. The Thatcher bill would be positively harmful to the work of this circuit and result injuriously to the litigants and lawyers. The Newton bill is far better than the Thatcher bill and is the best and most workable division of the present circuit into two circuits which has been suggested.

You have the letter in full in your files.

Mr. HERSEY. That is the same letter you are reading from?

Mr. LONG. Yes. Now here is a letter that is addressed to the chairman of this subcommittee, from Circuit Judge Booth.

Mr. HERSEY. Have I got that in my file?

Mr. LONG. You have that letter. May I have the time to call your attention to it?

Mr. HERSEY. Certainly.

Mr. LONG. It discusses this situation so clearly that I would like to present it to the committee. It is dated December 31, and it was written after the other hearing, and directed to you as chairman of the subcommittee:

May I be permitted to express my views in support of the division of the eighth judicial circuit as proposed——

Mr. YATES. Pardon me, what district is he in?

Mr. LONG. He is one of the circuit judges of the eighth circuit. He is one of the present circuit judges and would be one of the judges in the new eighth circuit.

Mr. YATES. Where does he write from?

Mr. LONG. He writes from Minneapolis, Minn. He formerly was a district judge before he became a circuit judge. He says:

May I be permitted to express my views in support of the division of the eighth judicial circuit as proposed in the Newton bill before your committee. Two main questions arise:

First. Is any division necessary; second, Is the division as provided in the Newton bill the best one at present attainable.

The grounds for holding that a division is necessary have been given many times during the past few years, yet it may not be amiss to restate some of the more important ones:

(1) The great territorial size of the present eighth circuit 13 States, 6 more than any other circuit.

(2) The large population of the present eighth circuit—upwards of 18,000,000—4,000,000 more than the circuit next in size and 11,000,000 more than the smallest circuit.

(3) The ever-increasing work that the circuit judges are called upon to do: (*a*) As members of the circuit court of appeals. The number and character of the appealed cases are such that the circuit judges find it impossible to dispose of them without calling district judges to sit in the circuit court of appeals. To such an extent is this found necessary that approximately one-third of the opinions of the court are written by district judges. (*b*) As members of the so-called 3-judge court (one of whose members must be a circuit judge). The sittings of these courts have been largely increased in number by a recent amendment to section 266 of the judicial code. (*c*) A third class of work, which is performed almost entirely by the presiding judge of the circuit court of appeals, is the administration work. In the 13 States composing the circuit there are 18 districts; there are 25 district judges on active duty in these districts. Sickness or absence from home or disqualification in a particular case makes necessary the furnishing of a substitute judge for the particular case. All this must be arranged in timely fashion by the presiding judge so that the work of the district courts may go on without undue interruption. Other branches of administrative work need not be mentioned.

(4) The heavy burden imposed upon the district judges by the condition of affairs in the circuit court of appeals outlined above. It often happens that the district judges can respond to a call to sit in the circuit court of appeals only at the cost of delaying and perhaps neglecting the work in their respective districts.

(5) The necessary frequent and complete changes in the personnel of the circuit court of appeals, with the resulting impossibility of preserving uniformity of decision—a matter of highest importance.

(6) The large expenditure of time by the various judges and by the attorneys in travel to and from the four widely separated places of holding court.

The foregoing grounds for a division, and others of a like nature, are recognized as valid by the judges and lawyers throughout the circuit, and a division is generally regarded as a pressing necessity.

The method of division remains to be considered. A number of different plans have been proposed. One of them involved the transfer of Arkansas to the fifth circuit, a transfer of Utah to the ninth, and a division of the remainder into two parts. This plan met with strong opposition from both of the States mentioned.

Another plan proposed a division of the present eighth circuit into three circuits.

These and other plans have been abandoned because it has been recognized that the wishes of the districts within the circuit should, so far as feasible, be given weighty consideration. A twofold division has been deemed the most practicable. It has been found impossible to make a division that would provide for the two parts exact equality as to either area, population, or amount of litigation, and certainly is not as to all three. After long study the plan in the Newton bill has been devised as fulfilling the requirements of the situation in a manner that meets with very general satisfaction. By the bill the present circuit is divided into two new circuits, the eighth and the tenth, regard being had in making the division both to the amount and to the character of the litigation of the two groups. The places of holding court have been preserved both in the new eighth and in the new tenth. It is true that the new eighth will have a larger volume of business than the new tenth, but this is compensated for the the new eighth being given one more circuit judge.

But a most important point in favor of the plan of the Newton bill is that it has met with far greater approval than any other plan that has been proposed. The Newton bill has been approved by the American Bar Association. It has already been approved by the State bar associations of six of the States of the present eighth circuit; it has met with the unanimous approval of the circuit judges of the present eighth circuit and with the approval of all the district judges in the circuit with the possible exception of two or three: and,

so far as I can learn, it has met with wide approval of the members of the bar of those States where no action has yet been taken by the bar associations.

Under all these circumstances it is my opinion that attempts to change the plan proposed in the Newton bill would be productive of decreased rather than increased approval within the present eighth circuit. Accordingly, I am heartily in favor of the Newton bill in the present form.

I must apologize for the length of this letter, but the subject seemed to demand it.

Yours very respectfully,

W. F. BOOTH,
United States Circuit Judge.

That is an analysis of this situation that I thought was so clear that I wanted it presented to the subcommittee.

Mr. HERSEY. If you will leave that with the committee—you have presented the original here?

Mr. LONG. Yes. Now, I call attention to three paragraphs in a letter from District Judge George T. McDermott.

Mr. HERSEY. Has the committee received that?

Mr. LONG. No; the committee has not. This is a letter to Senator Curtis, but there are three paragraphs referring to this situation that I wish to read into the record:

This circuit, comprising 13 States, and approximately a thousand miles square, is many times larger geographically than any other circuit excepting the ninth; it has about 18,000,000 people in it, which is five or six million more than the next largest circuit, and many times larger than some others. The drain on clients of having to go to such great distances to have their matters heard is so heavy, and the work of the circuit is so large that Judges Taft, Van Devanter, and Butler are insisting that it should be divided.

Because it was apparent that division is coming, for more than three years the lawyers and judges have been working on various suggested methods of division. A division has been arrived at which is incorporated in the so-called Newton bill, that met with the approval of all the circuit judges, practically all of the districts judges, and the bar associations of most of the States and the American Bar Association.

It is a matter in which the lawyers, and back of them their clients, are more interested in than the judges. Before I expressed an opinion I talked with every lawyer that was in this office for months. I then presented it to the executive committee of the State Bar Association, and later it was presented to the State Bar Association itself. The Newton bill has the unanimous approval of the lawyers of Kansas. It carries with it a sitting at Wichita, which is much more favorably located, as far as the balance of the circuit is concerned, than is Topeka or Kansas City, and this has the approval of the lawyers up here.

Judge McDermott lives in Topeka, the capital of the State.

Mr. HERSEY. Will you leave that letter with the committee? We do not have that.

Mr. LONG. I will see that you get a copy of it.

Mr. HERSEY. Let us have the original, if you have it there.

Mr. LONG. No; I do not have the original. The original was sent to Senator Curtis.

Mr. HERSEY. This is a copy of the letter to Senator Curtis? The committee would like to have the original for the record, if we can get it. Can you get it from Senator Curtis and give it to the chairman?

Mr. LONG. There has been some suggestion in regard to the Newton bill, if it is reported favorably by the committee, as to whether or not it should provide that Porto Rico, the Virgin Islands, and the Canal Zone should be attached to the circuits where they are now

attached. I think that is unnecessary, because the bill does not amend those sections.

Mr. HERSEY. I think, having generally received the attention of these judges and bar associations and lawyers, that the committee ought not to permit any amendments to it that would be vital, you understand, without referring it back again to these judges.

Mr. LONG. It does not attempt to amend the sections of the Judicial Code giving jurisdiction on appeals from the Canal Zone and Porto Rico. Those sections are not referred to at all.

Mr. HERSEY. Have you anything further, Senator?

Mr. LONG. I have not.

Mr. NEWTON. Mr. Chairman, in connection with this measure, we have with us Judge Loomis, of Omaha, Nebr., who has some views to present to the committee in connection with it. As I understand it, he indorses the general principle embodied in the bill, but has a matter of change in detail with reference to the holding of court.

STATEMENT OF NELSON H. LOOMIS, OMAHA, NEBR.

Mr. HERSEY. Are you a judge of a court in the district?

Mr. LOOMIS. No; I am just a practicing lawyer in Omaha, Nebr. I am here to represent the Nebraska State Bar Association.

Mr. HERSEY. Have you written the committee about the matter?

Mr. LOOMIS. No, sir.

Mr. HERSEY. We will hear your testimony.

Mr. LOOMIS. The Nebraska State Bar Association had a committee appointed to look into this matter. I was appointed chairman of the committee and that is why I am here.

The Nebraska State Bar Association approves a division of the circuit, but wishes me to present the advantages of Omaha as a place for the sitting of the court, the United States Circuit Court of Appeals. Judge Van Valkenberg, one of the circuit judges, in writing to you about it, made this suggestion in regard to the matter:

> I do not know, of course, what the views of the Nebraska bar may be. It is perhaps desired that a sitting of the court may be provided for Omaha. That provision, however, could be made, if desirable, without reference to the circuit in which the State is placed.

Mr. HERSEY. That provision is not in the bill, is it?

Mr. LOOMIS. It is not in the bill now. The bill provides for sessions of the court at St. Louis and St. Paul.

Mr. LONG. In the new eighth circuit?

Mr. LOOMIS. In the new eighth. At the present time the court sits at St. Paul, St. Louis, and Denver, and I believe there is a provision for Oklahoma City.

Mr. LONG. There is a provision for Oklahoma City.

Mr. LOOMIS. I have a number of maps here showing the boundaries of the eighth circuit and the location of Omaha and these other places. I will be very glad to pass them around to the committee.

Mr. HERSEY. You are speaking now upon the advisability of this committee amending the bill so as to include Omaha as a place of sitting?

Mr. LOOMIS. That is it exactly.

Mr. HERSEY. And you speak now for your bar association?

Mr. LOOMIS. Yes, sir.

Mr. HERSEY. Well, what about the judges who preside there—would preside there? Have they been consulted in the matter?

Mr. LOOMIS. To a limited extent. Not very largely.

Mr. HERSEY. You have nothing to present to the committee of the consent of these judges to that place of sitting?

Mr. LOOMIS. No, sir; I am just here to present the matter on its merits. The judges now meet in three or four—four different places, and when you consider the location of Omaha I think you will agree that it is a very proper place for the court to sit. To emphasize the importance of Omaha, and without desiring to say anything against the other two places, I would say that if one place were to be selected, Omaha would be the more natural location for the circuit court to sit in the eighth district than either of the other two places.

Mr. HERSEY. Do you not think it would be better if this bill—the Newton bill—were to be passed by Congress without any amendments with regard to that, and afterwards to introduce a new bill fixing a place for the sitting of the court at Omaha; submit that bill to the judges interested in the court for an opinion, and also to the Attorney General? That has been the custom of this committee.

Mr. LOOMIS. Well, this bill fixes two places for holding the court.

Mr. HERSEY. Yes; but all the evidence so far has gone upon the bill as it is; without any amendments.

Mr. MOORE. Mr. Chairman, if I may observe, why not get some evidence now and then from the attorneys? What is the use of hearing the judges alone? We can hear the gentleman, if he represents the bar association, surely.

Mr. HERSEY. We are going to hear him, but I was asking him the question about pressing it upon the committee.

Mr. LOOMIS. The American Bar Association has suggested Wichita as an additional place in which to hold court in the new tenth circuit, and that will constitute an amendment to this bill.

In the Thatcher bill, in one of the circuits, three places are provided for as points at which the court should meet. Now, the Nebraska bar was not informed about this division until it was well under way. It is only recently that we have had knowledge in regard to it. It trickled through to us subsequent to your former meeting, at which Chief Justice Taft and Justice Van Devanter appeared. It came before the Bar Association of Nebraska, which met during the holidays, and the committee in charge has had no opportunity of conversing with the judges about it to any great extent; but the propriety of holding a term of court at Omaha seems so reasonable and so palpable that I think the Nebraska Bar Association thought that all that would be necessary would be to have somebody appear before this committee and call attention to the advantages of Omaha. You can look at the map and see its location.

Furthermore, Omaha is a gateway. It is a great railroad center. All of the roads running east and west through Iowa and Nebraska center there. It is a night's ride from St. Paul and Minneapolis in the best of trains. It is a night's ride from Kansas City, Mo. It is a night's ride from St. Louis. It is not far from the western part of the new district, the trend of travel being towards Omaha. It is a

very convenient place for lawyers to reach. We have the facilities for holding court there and we think we are making a very reasonable request in asking that a session of court be held in Omaha. The court now sits in four places, and as the American Bar Association has proposed an amendment fixing Wichita as the place in the tenth, we think we are entirely within our rights in asking that Omaha be selected; and I doubt, Mr. Chairman, if any of the judges will object to the sitting of the court in Omaha.

Mr. YATES. May I ask a question there? The court now sits at St. Louis, St. Paul, Denver, and Oklahoma City, does it not?

Mr. LOOMIS. Yes, sir.

Mr. YATES. How would it be if this were added? You would not change any of those four? Would you make it five?

Mr. LOOMIS. It would be in the other circuit.

Mr. YATES. St. Louis, St. Paul, and Omaha?

Mr. LOOMIS. Yes.

Mr. YATES. And in the other Denver and Oklahoma City and Wichita?

Mr. LONG. There would be three places in each of the new circuits.

Mr. LOOMIS. Yes, sir.

Mr. NEWTON. Judge Loomis, Omaha forms sort of one apex of a triangle, St. Paul being at one end and St. Louis at the far end, and that is about the arrangement, is it not, geographically?

Mr. LOOMIS. Yes, sir. I do not know that you are familiar, Mr. Chairman, with the railroad facilities for reaching Omaha, or how many members of the committee are; but it is very conveniently located and very easily reached, and we also have facilities for holding court there.

Mr. HERSEY. You understand, Mr. Loomis, I do not have any leanings either one way or the other in regard to this new matter that you have raised this morning, and I judge from your statement that the judges affected by that change have not been consulted, nor has the Attorney General had his attention called to it, as we always require that any change made in the holding of courts should be referred to the Attorney General's office for an opinion. Do you wish this matter held up until we can get those opinions?

Mr. LOOMIS. I do not want to hold this up, Mr. Chairman. I think the gentlemen back of this bill are anxious to hurry it along. I do not want to hold it up.

Mr. HERSEY. Who would be the judge? What judges would be affected by this change, who would hold court there?

Mr. LOOMIS. Judge Kenyon, who lives very near Omaha, in Iowa; Judge Booth, of Minneapolis; and Judges Stone and Van Valkenberg, of Kansas City, Mo.

Mr. HERSEY. And you do not have their opinion upon this change?

Mr. LOOMIS. Well, I have heard from Judge Van Valkenburgh, and it was from my correspondent in Kansas City that I understood he would not object. District Judge Woodrough, of Omaha, was not in Omaha and I could not consult him, but he certainly would not object to this change. I had an opportunity of talking with District Judge Munger about it.

Mr. HERSEY. Judge Munger seems to favor it. Judge Munger is the only one in opposition to the Newton bill among the correspondents.

Mr. LOOMIS. In talking with me he seemed to be favorable to the plan of dividing the circuit and of having court held in Omaha.

Mr. HERSEY. And he says in conclusion—he expresses himself in favor of the Thatcher bill instead of the Newton bill and says:

I think that any bill that is adopted should include a provision for a term of the court of appeals at Omaha as a reasonable requirement.

Mr. LOOMIS. By the way, Judge Phillips, of New Mexico, has been consulted about it. He is favorable to holding a term of court in Omaha.

Judge Van Valkenburgh, in the letter I have just read, suggested that it could be taken care of, so far as holding court in Omaha is concerned, in any division of the circuit which may be made. And if the committee, without holding this matter up, desires to hear from the other judges, I imagine we could get word from them very quickly, if that seems necessary. But these gentlemen here, who are looking after the passage of the Newton bill, have been examining into the matter. They are fully advised, and I believe they could have something to say about it. I do not believe there will be any objection on their part.

Mr. HERSEY. The committee was anxious, and I assume the proponents of this measure were anxious, to have some legislation during this term of Congress.

Mr. LOOMIS. That is very satisfactory to us, and I do not want to say or do anything, Mr. Chairman, that would interfere with that at all——

Mr. LONG (interposing). Just a moment, Mr. Loomis. Do I understand that it is the purpose of this committee on these changes of terms of court to refer the matter to the Attorney General?

Mr. HERSEY. Yes; always.

Mr. LONG. I did not know that.

Mr. MOORE. Mr. Chairman, may I ask either Mr. Newton or Senator Long do they know of any objections particularly to including Omaha as a place for holding court?

Mr. NEWTON. I will say this: That I personally have no objection at all to it, and I have not heard directly from any of the circuit judges, but through Mr. Paul when I was home over New Year's, I learned from him that Judge Stone was not favorable to adding to the number of places for holding court. In fact, he thought that it would be better if only one place was designated in any one of the circuits for holding court. That is, his impression being that an itinerant circuit court of appeals was not necessary.

I do not know whether it was from Mr. Paul or somebody else, but anyway hearsay, I heard that Judge Booth did not feel that there was an occasion to add to the number, but that he did not consider it serious enough to object to it if the committee felt that they wanted this bill passed in that way; that he considered that a matter of detail. What he was mainly interested in was a division of the court along the lines proposed. Now, this, you will appreciate, is hearsay, because I have not talked directly with either one of those two judges, but I have reason to believe, of course, that the report came accurately.

Mr. HERSEY. Will you take it upon yourself, Mr. Loomis, to have these judges affected by this change in the term of court consulted and have them communicate with this committee as to their views?

Mr. LOOMIS. I will be very glad to do that.

Mr. HERSEY. In a week or 10 days.

Mr. LOOMIS. I hope it will not delay the bill. I will take the matter up immediately and see the Attorney General while I am here.

Mr. HERSEY. I assume this committee would want this evidence printed, if they wanted to make a final report.

Mr. LOOMIS. I think I can say also that Judge McDermott, district judge of Kansas, who has been consulted about the matter, would not object to it.

Mr. HERSEY. Would you have them communicate with the committee at once in regard to this change?

Mr. LOOMIS. Well, Mr. Chairman, shall I consult the judges who would be in the new eighth circuit?

Mr. HERSEY. The judges who would be holding court at that place.

Mr. LONG. That would not affect the tenth circuit.

Mr. HERSEY. No; I do not think it would. Is that favorable to the committee, that he should do that? If there is no objection, that may be done.

I want you to feel that the Chair feels that, having gone for this long time through these hearings, communicating with these judges in regard to these two bills, that to adopt an amendment now that might affect the judges in the change at this time without consulting them would not be quite proper.

Mr. LONG. In the change in the bill as printed, in regard to a term of court at Wichita, that has been under consideration in the new tenth circuit, since July.

Mr. HERSEY. It is in the bill, is it?

Mr. LONG. It is not in the bill as printed but the bill was approved by the American Bar Association at the Seattle meeting with that amendment. So far as I know there is no opposition from any of the circuit judges that would sit in the new tenth circuit.

Mr. HERSEY. You have no objection, so far as you know, Senator, to the introduction of Omaha as a place for holding court?

Mr. LONG. I only know this, the same information that Mr. Newton has given the committee was given to me in regard to the attitude of the circuit judges. That was all. I assume that Judge Kenyon would be favorable to it, living so near Omaha. I have been advised, the same as Mr. Newton has, that Judge Booth, while not unfavorable to Omaha, does not want to increase the number of places for holding court.

Mr. LOOMIS. We would suggest that if only one place is selected, Omaha is the logical and central place. We want to urge that as strongly as we can.

Mr. HERSEY. Will this incur any additional cost upon the Government?

Mr. LOOMIS. I can not see where it would cost any more. I should think it would be more economical. It is more centrally located, more easily reached.

Mr. HERSEY. Is there a court house in Omaha, facilities for holding court there?

Mr. LOOMIS. Yes; we have the court house and everything. And we have as good railroad facilities for reaching Omaha as there are in the country.

Mr. HERSEY. All right. Now have you anything further, Judge?

Mr. LOOMIS. No; that is all.

Mr. HERSEY. Have you anything further, Mr. Newton?

Mr. NEWTON. Mr. Chairman, I have a letter here which I will present for the record, from District Judge John B. Sanborn of Minnesota, expressing approval of the general principles embodied in the Newton bill.

Mr. HERSEY. I think we may put that in, if you have the original.

Mr. NEWTON. No; I do not happen to have it. It is a personal letter to me.

Mr. HERSEY. I think we have a letter to the committee from Judge Sanborn.

Mr. NEWTON. He is a nephew of Circuit Judge Sanborn, and in reference to Circuit Judge Sanborn's opinion he says: "I will not attempt to quote the opinion of the other judges, who can speak for themselves, but Judge Sanborn"—that is Walter Sanborn—"was convinced that if the circuit was to be divided"—the old gentleman did not want to see it divided, although he said it seemed to be inevitable—"it should be divided along the lines of your bill, and that the methods of division proposed by the Thatcher bill were impracticable and would not do."

Mr. HERSEY. That is evidence from the dead?

Mr. NEWTON. Yes; and if I may present that letter.

(The letter referred to is on file with the committee.)

Then here is a letter that Representative Dyer of your committee asked me to present in his absence, from District Judge Ferris, who sits in circuit court quite a bit.

Mr. HERSEY. Is it addressed to Mr. Dyer?

Mr. NEWTON. Yes; addressed to Mr. Dyer.

Mr. LONG. Approving your bill?

Mr. NEWTON. Approving the Newton bill. I think Senator Long, you read a statement, either this time or previously, from Circuit Judge Stone, a letter dated June 30?

Mr. LONG. I did; addressed to Mr. Paul.

Mr. NEWTON. That is in the record.

Mr. LONG. That is in the record.

Mr. NEWTON. Then I have a letter from Circuit Judge Booth, addressed to me, dated February 7, 1928, pertaining to both the Thatcher and the Newton bill—that is, the idea presented in the Newton bill—which I think would be helpful to the committee.

Then I have photostatic copies of 11 or 12 letters here from district judges. Some of those letters the Chair may have in his possession. If so, there is no occasion to present the copies.

Mr. HERSEY. Suppose you present them, and I will go through the whole correspondence before you hand them to the reporter and see that they are not duplicated. We can do that if the committee has no objection.

Mr. NEWTON. Then I have letters here from very prominent practitioners at the bar in the State of Minnesota, indorsing the general principles embodied in the Newton bill. You read the Booth letter into the record?

Mr. LONG. Yes; I read that, addressed to the chairman of the committee.

Mr. HERSEY. We have that.

Mr. YATES. These will all be printed, will they, Mr. Chairman?

Mr. HERSEY. That is for the committee to say.

Mr. NEWTON. And the statement in reference to the indorsement by the American Bar Association, you put that into the record, Senator?

Mr. LONG. Yes.

Mr. NEWTON. From Mr. Paul?

Mr. LONG. No; I did not.

Mr. HERSEY. Mr. Paul testified before the committee early in the proceedings.

Mr. NEWTON. Here is a letter dated December 11, which pertains to some other matters, but in it he says:

> The Newton bill has also been indorsed by the State Bar Associations of Minnesota, South Dakota, Kansas, Arkansas, New Mexico, and I think will be indorsed by several of the other associations.

That is in a letter to me of December 11, 1928.

Now I think, Mr. Chairman, I have given the committee about all I have in the way of documentary evidence relating to this. My interest in it is to relieve the work of the present circuit court, and after all due consideration has been given to the question of the amount of litigation and the questions involved, and all of that, the best judgment of those concerned is that a division substantially along the lines presented in the Newton bill is the one that would best fit into the situation out there in the eighth circuit.

Mr. HERSEY. Then the committee will consider the hearing closed, with the exception of the letters of approval from the judges, which Judge Loomis is to get and send to the committee.

That is all, gentlemen. I wish the committee would remain for a few minutes for an executive session.

(Whereupon, at 11.10 o'clock a. m. the subcommittee went into executive session.)

(The following communications received were ordered printed in the record:)

LETTERS FROM JUDGES OF THE EIGHTH CIRCUIT

The following are the judges of the eighth circuit who wrote as follows in regard to the Newton and Thatcher bills:

Hon. Kimbrough Stone, circuit judge, Kansas City, Mo.
Hon. Robert E. Lewis, circuit judge, Denver, Colo.
Hon. William S. Kenyon, circuit judge, Fort Dodge, Iowa.
Hon. Wilbur F. Booth, circuit judge, Minneapolis, Minn.
Hon. Arba S. Van Valkenburgh, circuit judge, Kansas City, Mo.
Hon. John H. Cotteral, circuit judge, Guthrie, Okla.
Hon. John E. Martineau, district judge, eastern district Arkansas, Little Rock, Ark.
Hon. Frank A. Youmans, district judge, western district Arkansas, Fort Smith, Ark.
Hon. John Foster Symes, district judge, Colorado, Denver, Colo.

Hon. Charles A. Dewey, district judge, southern district Iowa, Des Moines, Iowa.
Hon. George C. Scott, district judge, northern district Iowa, Sioux City, Iowa.
Hon. Martin J. Wade, district judge, southern district Iowa, Davenport, Iowa.
Hon. John C. Pollock, district judge, Kansas, Kansas City, Kans.
Hon. George T. McDermott, district judge, Kansas, Topeka, Kans.
Hon. William A. Cant, district judge, Minnesota, Duluth, Minn.
Hon. John B. Sanborn, district judge, Minnesota, St. Paul, Minn.
Hon. Joseph W. Molyneaux, district judge, Minnesota, Minneapolis, Minn.
Hon. Charles B. Faris, district judge, eastern district, Missouri, St. Louis, Mo.
Hon. Charles B. Davis, district judge, eastern district, Missouri, St. Louis, Mo.
Hon. Albert L. Reeves, district judge, western district, Missouri, Kansas City, Mo.
Hon. Merrill E. Otis, district judge, western district, Missouri, Kansas City, Mo.
Hon. Thomas C. Munger, district judge, Nebraska, Lincoln, Nebr.
Hon. Joseph W. Woodrough, district judge, Nebraska, Omaha, Nebr.
Hon. Colin Neblett, district judge, New Mexico, Santa Fe, N. Mex.
Hon. Orie L. Phillips, district judge, New Mexico, Albuquerque, N. Mex.
Hon. Charles F. Amidon, district judge, North Dakota, Fargo, N. Dak.
Hon. Andrew Miller, district judge, North Dakota, Fargo, N. Dak.
Hon. Robert L. Williams, district judge, eastern district, Oklahoma, Muskogee, Okla.
Hon. Franklin E. Kennamer, district judge, northern district, Oklahoma, Tulsa, Okla.
Hon. Edgar S. Vaught, district judge, western district, Oklahoma, Oklahoma City, Okla.
Hon. James D. Elliott, district judge, South Dakota, Sioux Falls, S. Dak.
Hon. Tillman D. Johnson, district judge, Utah, Salt Lake City, Utah.
Hon. T. Blake Kennedy, district judge, Wyoming, Cheyenne, Wyo.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT, OFFICE OF THE CLERK,
St. Louis, Mo., December 22, 1928.

Mr. A. C. PAUL,
Chairman Special Committee on American Bar Association on Division of the Eighth Circuit, etc., Minneapolis, Minn.

DEAR SIR: It is, I believe, certain that the eighth circuit must be divided sooner or later. The division proposed in the Newton bill is fair in view of the business now arising in the two proposed circuits. I indorse the bill and join in urging its passage by Congress, although I must say it is with regret I contemplate a severance of official relations with the circuit and district judges who will belong to the new eighth circuit.

Very truly,

TILLMAN D. JOHNSON.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT,
Minneapolis, Minn., February 7, 1928.

Hon. WALTER H. NEWTON,
Representative Fifth Minnesota District, House of Representatives, Washington, D. C.

DEAR CONGRESSMAN NEWTON: Your favor of recent date inclosing copy of H. R. 5690, a bill to amend sections 116 and 118 of the Judicial Code, that is, to recircuit the United States, came duly to hand, and I thank you for the same.

Two questions naturally arise in regard to the bill: First, as to the necessity for a recircuiting; second, as to the merits of the proposed plan. As to the first question, there probably will not be much difference of opinion; and certainly I think everyone acquainted with the situation in the eighth circuit would agree that a change is necessary there. As to the merits of the pending bill there probably will be wide difference of opinion. I do not feel that I have sufficient information to give any opinion on the proposed recircuiting, except

so far as it affects the eighth circuit. The pending bill takes from the eighth circuit two States, Arkansas and Utah, attaches them to other circuits, and divides the remaining States of the circuit into two circuits. From what information I have been able to gather there is a feeling against attaching to other circuits any of the States now constituting the eighth circuit. The reason for this feeling is that there are differences both in procedural and in substantive law in the different circuits; and such States as Arkansas and Utah, which have become accustomed to the law as it now exists in the eighth circuit, naturally would oppose being attached to other circuits where the differences above mentioned would be met. If, however, it is finally determined that these two States shall be attached to other circuits, then I think that the proposed division of the remaining States of the eighth circuit is as fair as could be made.

My own opinion on the matter of changes in the eighth circuit is that none of the States should be attached to other circuits but that the present circuit should be divided into three parts instead of two. In one I would place Minnesota, North Dakota, South Dakota, Iowa, and Nebraska. In the second, Missouri, Arkansas and Kansas. In the third, Colorado, New Mexico, Oklahoma, Utah, and Wyoming. This division would make an approximately equal division of the present work. It would be a division that would probably be sufficient for the growing needs for a good many years to come, and it would require no changes in the present places of holding terms of court; and, furthermore, it groups the States, to a considerable extent, in accordance with the classes of litigation most prominent therein; and, finally, I think it would be a division that would meet the convenience of attorneys and litigants better than any other.

In giving you these views I am, of course, speaking only my own personal opinion, although from talking with a number of judges, both circuit and district, and with a considerable number of lawyers, I have reason to believe that the views I have expressed are widely held.

Yours very truly,

W. F. BOOTH.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT.
Minneapolis, Minn., December 31, 1928.

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives, Washington, D. C.

DEAR SIR: May I be permitted to express my views in support of the division of the eighth judicial circuit as proposed in the Newton bill now before your committee?

Two main questions arise: First, is any division necessary; second, is the division as provided in the Newton bill the best one at present attainable.

The grounds for holding that a division is necessary have been given many times during the past few years, yet it may not be amiss to restate some of the more important ones:

(1) The great territorial size of the present eighth circuit—13 States—six more than any other circuit.

(2) The large population of the present eighth circuit—upwards of 18,000,000—4,000,000 more than the circuit next in size and 11,000,000 more than the smallest circuit.

(3) The ever increasing work that the circuit judges are called upon to do: (*a*) As members of the circuit court of appeals. The number and character of the appealed cases are such that the circuit judges find it impossible to dispose of them without calling district judges to sit in the circuit court of appeals. To such an extent is this found necessary that approximately one-third of the opinions of the court are written by district judges. (*b*) As members of the so-called, three-judge courts (one of whose members must be a circuit judge). The sittings of these courts have been largely increased in number by a recent amendment to section 266, Judicial Code. (*c*) A third class of work which is performed almost entirely by the presiding judge of the circuit court of appeals is the administration work. In the 13 States composing the circuit there are 18 districts. There are 25 district judges on active duty in those districts. Sickness or absence from home or disqualification in a particular case makes necessary the furnishing of a substitute judge for the particular case. All this must be arranged in timely fashion by the presiding

judge, so that the work of the district courts may go on without undue interruption. Other branches of administrative work need not be mentioned.

(4) The heavy burden imposed upon the district judges by the condition of affairs in the circuit court of appeals outlined above. It often happens that the district judges can respond to a call to sit in the circuit court of appeals only at the cost of delaying and perhaps neglecting the work in their respective districts.

(5) The necessarily frequent and complete changes in the personnel of the circuit court of appeals with the resulting impossibility of preserving uniformity of decisions—a matter of the highest importance.

(6) The large expenditure of time by the various judges and by the attorneys in traveling to and from the four widely separated places of holding court.

The foregoing grounds for a division, and others of a like nature, are recognized as valid by the judges and lawyers throughout the circuit, and a division is generally regarded as a pressing necessity.

The method of division remains to be considered. A number of different plans have been proposed. One of them involved the transfer of Arkansas to the fifth circuit, a transfer of Utah to the ninth, and a division of the remainder into two parts. This plan met with strong opposition from both of the States mentioned.

Another plan proposed a division of the present eighth circuit into three circuits.

These and other plans have been abandoned, because it has been recognized that the wishes of the districts within the circuit should, so far as feasible, be given weighty consideration. A twofold division has been deemed the most practicable. It has been found impossible to make a division that would provide for the two parts exact equality as to either area, population, or amount of litigation, and certainly not as to all three.

After long study the plan in the Newton bill has been devised as fulfilling the requirements of the situation in a manner that meets with very general satisfaction. By the bill the present circuit is divided into two new circuits—the eighth and the tenth—regard being had in making the division both to the amount and to the character of the litigation of the two groups. The places of holding court have been preserved both in the new eighth and in the new tenth circuit. It is true that the new eighth will have a larger volume of business than the new tenth, but this is compensated for by the new eighth being given one more circuit judge. But a most important point in favor of the plan of the Newton bill is that it has met with far greater approval than any other plan that has been proposed. The Newton bill has been approved by the American Bar Association. It has already been approved by the State bar associations of six of the States of the present eighth circuit. It has met with the unanimous approval of the circuit judges of the present eighth circuit, and with the approval of all of the district judges in the circuit, with the possible exception of two or three; and, so far as I can learn, it has met with wide approval of the members of the bar of those States where no action has yet been taken by the bar associations.

Under all these circumstances, it is my opinion that attempts to change the plan proposed in the Newton bill would be productive of decrease rather than increase of approval within the present eighth circuit. Accordingly, I am heartily in favor of the Newton bill in its present form.

I must apologize for the length of this letter, but the subject seemed to demand it.

Yours respectfully,

W. F. BOOTH,
United States Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT,
Denver, Colo., May 19, 1928.

Hon. IRA G. HERSEY,
Washington, D. C.

MY DEAR SIR: I thank you very much for a copy of H. R. 13757. I think it very important that the phrase "and to be a circuit judge thereof" be inserted after the word "constituted" in lines 9 and 13 on page 3 of the proposed bill. Unless that be done it seems to me that the circuit judges of the eighth circuit will continue to be circuit judges of that circuit and only assigned as

such to the two proposed new circuits. This will be so especially as to the circuit judge residing within the proposed tenth circuit. I have indicated on the proposed bill the places of insertion of the suggested phrase, and will be obliged to you if you will see that the suggestion is complied with, unless you for sufficient reasons think otherwise.

It seems to be generally agreed that the eighth circuit is so large territorially and the business of the court so heavy that it should be divided, and the proposed division is, I think, the best that has been suggested. It will apportion the business of the present court fairly equally, and the new circuits will be reasonably compact in territory.

With regards, I am

Very truly,

ROBT. E. LEWIS, *Circuit Judge.*

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT.
St. Paul, Minn., May 21, 1928.

HON. IRA G. HERSEY,
House of Representatives, Washington, D. C.

MY DEAR MR. HERSEY: To-day I received a copy of Thatcher H. R. 13757, which you were kind enough to have Mr. Jameson send me. This was the first information which any of the judges had that such a bill had been introduced. Even a hasty reading reveals defects which are important, while the main plan is dangerous to the efficient handling of work in this circuit. If the good of the litigants in these 13 States is to be the criterion, there is no justification for the division provided for in this bill.

While mere geography is the least test, yet even that fails, for the area of the new tenth circuit is almost half as large again as that of the new eighth (659,865 as to 456,140 square miles).

The prime consideration which should govern any division of this circuit is the efficient caring for the work in the new circuits. As this bill provides for only three judges in each of the new circuits, the work should be as evenly divided as possible. On the basis of this bill and the number of cases filed in the calendar year of 1927 (the latest available data), the new eighth would have 122 and the tenth 255 cases. Taking the average for the last three calendar years, the figures are 122 for the new eighth and 205 for the new tenth. Neither of these estimates includes 24 tax-appeals cases, filed in 1927, of which 17 were in the new tenth. Also, the new tenth would have practically all of the Indian litigation (from Oklahoma) and much of the mountain States litigation—both classes being among the most difficult now in the circuit. Thus more than two-thirds of the litigation (including the most difficult) would fall in the new tenth.

The experience of this court (apparently, also, of the Supreme Court) shows that 30 opinions is a good year of work for an appellate judge. That means that each of the contemplated judges of the new tenth would sit in about 90 cases annually. This gives a maximum of 270 cases in which three circuit judges (always sitting separately with two district judges) could sit annually. Compare this with the 1927 cases (including the 17 tax appeals, 272 cases) and with the 3-year average (including the 17 tax appeals of 1927, a fraction over 270 cases), and it is clear that it would be a very rare occasion where even two circuit judges could sit together. Also in the tenth there are 15 district judges, including Judge Pollock, who can serve if he wishes to. Every one of these judges has a struggle to keep pace with his trial work. Their present work on this court of appeals is a severe burden and interferes with their trial work, although in the present circuit we have 25 district judges (including Judges Pollock and Wade) who may be used. What will happen in the tenth with the increased demand for district judges on the court of appeals, passes beyond a prophecy into a certainty—either they will decline to serve on the court of appeals and that court will, for the first time in its history, fall hopelessly behind in its docket or they will serve and the district courts will fall behind. Another result is that district judges will be longer getting out opinions in the court of appeals. These conditions will apply to 7 States having 10 districts.

Another consideration is that the mountain States are to be divided. Already in two circuits they are to be put into three. In those States are large property rights depending upon the law of riparian ownership, irrigation, or mining. There are already important differences between the present eighth and

ninth circuits as to some of this law. Obviously, there should be no further opportunity for similar divergence, if it can be avoided.

There are other specific objections to this bill as framed, but the above are so fundamental and so far reaching in effect that I think they will show the advisability of further hearing from the eighth circuit upon that part of the bill. Realizing that the litigants, lawyers, and judges in the eighth circuit would know better what that circuit needed than lawyers having little or no litigation in that circuit and not living therein, the executive committee of the American Bar Association recently appointed a committee of lawyers in the eighth circuit to consider this matter and report to the association at its next meeting this summer. This committee is composed of a member from each State in the circuit, with Mr. A. C. Paul, of Minneapolis, as chairman. That committee is starting earnestly to work to ascertain the sentiment of the lawyers in the several States of the circuit. By the next session of Congress this sentiment will have been collected and can be presented to your committee. As it is now, scarcely any lawyers in the circuit know of this contemplated legislation, although they and their clients are the ones most interested and most affected thereby. I can think of no possible reason why the proponents of this particular measure should want to press it to immediate report.

My belief, amounting to a certainty, is that the bar of this circuit will overwhelmingly condemn this bill, and it seems to me to be wiser that they should be heard before it is reported from the committee rather than after it is reported and possibly gets further on in its course.

Let me again thank you for your courtesy in having a copy of this bill sent me and to express my appreciation of your thoughtful consideration.

With the greatest respect, believe me,

Very truly yours. KIMBROUGH STONE, *Presiding Judge.*

[Telegram]

ST. PAUL, MINN., *May 22, 1928.*

HON. IRA G. HERSEY,
House of Representatives, Washington, D. C.:

Thank you very much for having Mr. Jameson send me copy of Thatcher bill, 13757. This was first information such a bill had been introduced. The former Thatcher bill was harmful to the work of the eighth circuit, but this bill is positively dangerous to that work. The judges here are unanimous in condemning it, and the lawyers here attending the court feel the same way. We very much desire to be heard upon it by the committee. Am to-day writing you.

KIMBROUGH STONE,
Presiding Judge Eighth Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT,
St. Paul, Minn., May 22, 1928.

HON. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR MR. HERSEY: In reading the copy of the letter sent you yesterday I find typographical error which should be corrected. In the third paragraph, fourth sentence, the figures 122 should be 129 so that the sentence would read: "Taking the average for the last three calendar years, the figures are 129 for the new eighth and 265 for the new tenth."

Sincerely yours. KIMBROUGH STONE.

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT,
St. Paul, Minn., June 30, 1928.

HON. A. C. PAUL,
Chairman American Bar Committee on Division Eighth Circuit.

DEAR MR. PAUL: You have asked me to advise you as to the relative merits of the Newton bill (H. R. 13507) and the Thatcher bill (H. R. No. 13757), both now pending before Congress and both proposing a division of the eighth

circuit. I shall not discuss whether there is need for any division of the circuit, but shall confine myself to your inquiry regarding the merits of the above two bills.

Each of these bills divides the present circuit into two circuits. The vital difference between the bills are the number of circuit judges provided for and the lines of division. Each of these two matters is of prime importance in properly taking care of the court of appeals litigation in the 13 States involved. Where the amount of work to be done can not be controlled, if a division of that work is to be made it becomes important to test the consequences of the particular division of work proposed as affected by the amount of work to be done in each proposed division and by the force which is to be provided to do that work.

1. Any division of the present circuit without increase of judges harmful: Because the court can now utilize any of the six circuit judges anywhere in the circuit. Three judge cases and other special duties would be delayed during court sittings and illness or other cause affecting attendance of one judge at sittings would materially interfere if there be only three circuit judges to each new circuit. Also, any abnormal increase in cases for a term or year could not be promptly cared for.

2. Thatcher bill harmful to circuit: Because (*a*) it is grossly unfair in dividing the work in the circuit. That bill makes two circuits—Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming in the proposed eighth circuit; and Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Utah in the proposed tenth circuit. In the calendar year 1927, 130 cases were filed in the first group and 271 in the second. The average annual filing for the three calendar years 1925-1927 was 132 for the first group and 273 for the second group—on either basis, more than twice the cases in the second group. In the second group is also much of the especially difficult litigation (Indian in Oklahoma, and mining, irrigation, etc., in Colorado, New Mexico, and Utah).

As this bill provides for but three circuit judges in each of these two circuits (or groups), the inevitable result in the second group would be that two district judges would have to sit in every case, in order to keep up with the docket. This is so because the experience of this court has shown that 30 opinions is a good annual average for a judge working diligently, which means that each judge can sit in only 90 cases a year. As this group averages 270 or more cases annually, the above result is inevitable. This extensive use of district judges would seriously interfere with and delay trials in the district courts. Two-thirds of the opinions would be written by district judges and such opinions would often be delayed because of pressure of district court work on those judges.

(*b*) The bill would further divide the Mountain States. This is bad because those States have special classes of litigation (mining, irrigation, etc.) involving important property rights. Already vital differences exist as to some of such law between this and the ninth circuit. There should be no opportunity for a third divergence through the further dividing of such States.

3. The Newton bill: This bill also makes two circuits. It places Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota in the proposed eighth circuit; and Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming in the proposed tenth circuit. On the basis of cases filed in 1927 there are 222 cases in the first group and 179 in the second; on the 3-year average there are 232 in the first and 174 in the second group. To take care of this difference, the Newton bill provides for five judges in the first group and four judges in the second. By this increase from the present six judges to nine in both of the two new circuits, the bad effect of dividing the circuit is lessened. Also, the bill leaves all of the Mountain States litigation in one circuit.

The Thatcher bill would be positively harmful to the work of this circuit and result injuriously to the litigants and lawyers. The Newton bill is far better than the Thatcher bill and is the best and most workable division of the present circuit into two circuits which has been suggested.

The above is a very concise statement of the situation as I view it and many of the statements might be elaborated upon.

I am authorized by Judges Lewis, Kenyon, Van Valkenburgh, Booth, and Cotteral to say that they have seen and approve the above statements.

With personal regards,

Sincerely yours, KIMBROUGH STONE

UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT,
Kansas City, Mo., December 22, 1928.

Hon. INA G. HERSEY,
Judiciary Committee,
House of Representatives, Washington, D. C.

MY DEAR HERSEY: You have already received a letter from Judge Stone on behalf of the circuit judges for this circuit with respect to the Newton and Thatcher bills for the division of this circuit, now pending before your committee. There are perhaps one or two matters that have arisen which should require an additional word. It is my understanding that the Newton bill, as framed, meets the approval of all the circuit judges, and, with few exceptions, of the district judges, in the circuit; also that of the bar in general. A departure from the terms of that bill in any material respect would throw the matter back into a situation where an entire readjustment would be necessary. It is our position that if the circuit is to be divided, and we think that is the view of the Chief Justice and Justices of the Supreme Court and of the Congress, then the Newton bill presents by all means the most satisfactory division that can be made from the standpoint of convenience, apportionment of work, and like character of litigation in the districts composing the newly established circuits. We also feel that it is desirable to have this question settled, and settled satisfactorily, at as early a date as possible. The uncertainty existing is injurious.

It has been brought to my attention that it has been suggested that Nebraska should be placed in the new tenth instead of being left, as it is under the Newton bill, in the eighth. This suggestion is made in the view that this will more nearly equalize the work of the two circuits. It will be found, upon examination, that placing Nebraska in the new tenth will give that circuit substantially more cases for the circuit court of appeals than will fall to the eighth. I can not see that anything is to be gained by this change. On the other hand, such a change would upset the approximate unanimity of opinion now existing and may have the effect of delaying or embarrassing the division of the circuit in the near future. Furthermore, the litigation arising in Nebraska is more nearly of the character of that of the States with which it is aligned in the Newton bill. I do not know, of course, what the views of the Nebraska bar may be. It is perhaps desired that a sitting of the court may be provided for Omaha. That provision, however, could be made, if desirable, without reference to the circuit in which the State is placed. So far as my individual opinion may be of interest, I earnestly urge support of the Newton bill. Of course, unless that bill carries with it the additional circuit judges therein provided no division of the circuit should be made. The work can be disposed of to better advantage by the circuit as it now stands than by a divided circuit with but the same number of judges.

Very respectfully,

ARBA S. VAN VALKENBURGH,
Circuit Judge.

LETTERS FROM DISTRICT JUDGES IN THE EIGHTH CIRCUIT

The following are the United States District Judges of the Eighth Circuit:

ARKANSAS

Frank A. Youmans, Fort Smith, Ark., western district.
John E. Martineau, Little Rock, Ark., eastern district.

COLORADO

John Foster Symes, Denver, Colo.

IOWA

George C. Scott, Sioux City, Iowa, northern district.
Martin J. Wade, Davenport, Iowa, southern district.
Charles A. Dewey, Des Moines, Iowa, southern district.

KANSAS

George T. McDermott, Topeka, Kans.
John C. Pollock, Kansas City, Kans.

MINNESOTA

William A. Cant, Duluth, Minn.
Jos. W. Molyneaux, Minneapolis, Minn.
John B. Sanborn, St. Paul, Minn.

MISSOURI

Charles B. Faris and Charles B. Davis, St. Louis, Mo., eastern district.
Albert L. Reeves and Merrill E. Otis, Kansas City, Mo., western district.

NEBRASKA

Thomas C. Munger, Lincoln, Nebr.
Joseph W. Woodrough, Omaha, Nebr.

NEW MEXICO

Colin Neblett, Santa Fe, N. Mex.
Orie L. Phillips, Albuquerque, N. Mex.

NORTH DAKOTA

Andrew Miller, Fargo, N. Dak.

OKLAHOMA

R. L. Williams, Muskogee, Okla., eastern district.
Franklin E. Kennamer, Tulsa, Okla., northern district.
Edgar S. Vaught, Oklahoma City, Okla., western district.

SOUTH DAKOTA

James D. Elliott, Sioux Falls, S. Dak.

UTAH

Tillman D. Johnson, Salt Lake City, Utah.

WYOMING

Thomas Blake Kennedy, Cheyenne, Wyo.

DISTRICT COURT OF THE UNITED STATES.
DISTRICT OF NORTH DAKOTA,
Fargo, N. Dak., June 5, 1928.

Mr. A. C. PAUL, *Chairman, Minneapolis, Minn.*

DEAR MR. PAUL: I am glad of any occasion for writing you a letter. It stirs many old memories. I am sending you, under separate cover, a copy of the Forum showing my retirement.

I have examined the bill for the division of the eighth circuit. It seems a good division. The court town for Oklahoma and Kansas would be Kansas City and that would be convenient. I suggest that Montana be put into the tenth circuit. That would suit the people of Montana better than the present arrangement. It is a great hardship on them to have to go to San Francisco. The proposal to divide the eighth circuit has been up many times, and as I recollect, Montana was always hooked up with the east in such divisions.

I hope life is being kind to you.

Sincerely yours,

CHARLES F. AMIDON.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, December 15, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: There are two bills pending, having for their purpose the division of the eighth judicial circuit. They are commonly spoken of as the Newton bill, H. R. 13567, and the Thatcher bill, H. R. 13757. I have had occassion to examine both of these proposed statutes.

The Newton bill makes a territorial division of the Circuit that is fairly equal and compact. But the chief advantage of the Newton bill over the Thatcher bill is that it divides the circuit along the lines of the character of litigation arising in each of the proposed circuits. In the eighth circuit, as proposed by the Newton bill, the cases arising are of a similar general character. The same is true of the proposed tenth circuit, where questions arise out of oil lands, mining claims, and irrigation rights. Such cases are common to the states of the New circuit, but most uncommon to the states of the proposed eighth circuit.

This division of the work of the present eighth circuit into two circuits, somewhat according to the character of the litigation in each, appears to be an ideal arrangement. The result would be that the courts would develop efficiency as well as dispatch in handling the work. This result is more difficult of attainment if one court is to deal with cases of a very different character.

I therefore feel that if the present circuit is to be divided, that the division should be along the line of the Newton bill, H. R. 13567.

Yours respectfully,

CHARLES B. DAVIS,
United States District Judge.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF IOWA,
Des Moines, Iowa, December 17, 1928.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: Having expressed my approval of a division of the present eighth circuit into two circuits, to be known as the eighth and the tenth circuits, it has been suggested that I write to you expressing my approval of the proposed plan.

As I have been a district judge of the United States court only since February, 1928, my knowledge of the necessity for the change is necessarily limited. However, I have served on the circuit court of appeals and have had occasion to observe the tremendous amount of work and the diversity of cases arising and pending before the circuit court of appeals of the eighth district, and there can be no question that sooner or later a division of some kind will have to be made.

The present plan to leave the States of North Dakota and South Dakota, Nebraska, Minnesota, Iowa, Missouri, and Arkansas in the eighth circuit, and the remaining States in a new circuit to be denominated the tenth circuit, is a proper division, in my opinion, as it divides the cases that naturally arise in the plains States from those which grow out of controversies relating to oil, mining, and water rights which are peculiar to the mountain States and Arkansas and Oklahoma.

I therefore indorse the proposed change as suggested by the inclosed map.

Very sincerely yours,

CHARLES A. DEWEY,
Judge United States District Court.

Proposed division eighth circuit (Newton Bill H. R. 13507) and cases docketed 1927

EIGHTH		TENTH	
Arkansas	31	Colorado	22
Iowa	27	Kansas	27
Minnesota	44	New Mexico	6
Missouri	69	Oklahoma	88
Nebraska	31	Utah	12
North Dakota	8	Wyoming	6
South Dakota	12		
Total	222	Total	161
Tax Appeals	17		
Trade Commission	1		
Grand total	240		

The 17 tax appeals are from: Missouri and the Federal Trade Commission appeal from Arkansas.

The plan of dividing the eighth circuit had the indorsement of the late Judge Sanborn, and has the indorsement of Circuit Judges Stone, Lewis, Kenyon, Van Valkenburgh, and Booth, and of District Judges Faris, Elliott, Amidon, Youmans, Symes, Kennedy, Sanborn, Wade, and Phillips.

UNITED STATES DISTRICT COURT,
DISTRICT OF SOUTH DAKOTA.
Sioux Falls, S. Dak., December 19, 1928.

Hon. A. C. PAUL,
Chairman Special Committee, American Bar Association,
Minneapolis, Minn.

MY DEAR SIR: I am in receipt of your favor of the 21st ultimo, inclosing me copy of the Newton bill (H. R. 13507), proposing a change of the eighth circuit; also inclosing map showing the proposed arrangement.

The work of the eighth circuit has increased to such an extent that a change in the boundaries of the circuit is imperative. Experience has demonstrated the difficulty of getting additional circuit judges to do the work, and the tendency of Congress to place an additional burden upon the circuit judges in cases pending in the district courts, and the acts of Congress giving these cases preference over the appellate work all tend to make it more difficult for the circuit judges to do the work of the circuit. The increase in appeals in recent years has made it necessary to rely upon district judges, thus changing the personnel of the court of appeals constantly, to its disadvantage, overburdening the members of the court of appeals, and handicapping them in the performance of their duties.

As a matter of sentiment I regret the thought of changing the boundaries of the eighth circuit. From a practical standpoint, however, I deem it necessary. The creation of the tenth circuit, eliminating the States of Wyoming, Colorado, New Mexico, Kansas, and Oklahoma from the eighth circuit appeals to me as being along the right lines. I can think of criticism of this plan, but I can think of no plan that is not subject to criticism, perhaps more serious than the one proposed. The 3-circuit plan does not appeal to me at all.

Yours truly,

JAS. D. ELLIOTT,
United States District Judge.

UNITED STATES DISTRICT COURT,
DISTRICT OF SOUTH DAKOTA,
Sioux Falls, S. Dak., December 19, 1928.

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: My attention has been called to H. R. 13507, which has been referred to the subcommittee of which you are chairman, having for its purpose a change of the eighth circuit. This was called to my attention last June, and I inclose you copy of my reply, which expressed my judgment of the situation.

I earnestly favor the Newton bill and the establishment of the new eighth circuit as therein provided.

Yours truly,

JAS. D. ELLIOTT,
United States District Judge.

UNITED STATES DISTRICT COURT,
DISTRICT OF MINNESOTA,
Duluth, Minn., January 3, 1929.

Hon. IRA C. HERSEY,
House of Representatives,
Washington, D. C.

MY DEAR SIR: In connection with the Newton bill for the division of the eighth circuit, I write to express my agreement with the terms thereof. Any circuit as large as the eighth presents difficulties when a division thereof is proposed, and criticism may be urged with respect to any suggestion along that line which may be made. My thought, however, is that in the first place the circuit in all probability should be divided, and, secondly, the division proposed is the wisest and best which can be worked out.

Very truly yours,

WM. A. CANT.

UNITED STATES DISTRICT COURT,
DISTRICT OF WYOMING,
Cheyenne, Wyo., May 29, 1928.

Mr. A. C. PAUL,
Chairman Committee on Division of Eighth Circuit,
Minneapolis, Minn.

DEAR MR. PAUL: I am in receipt of your communication under date of May 21st with reference to the proposed division of the eighth circuit, and a copy of the bill introduced in Congress having for its purpose such a division. You have asked for my views upon it. It will be with keen regret that I see the passing of the old eighth circuit, and yet I suppose that the territory which it covers and the extent of the business make it imperative that a division will have to take place sometime. Considering this feature of it, I am inclined to believe that the one which is proposed in the Newton bill is perhaps the most logical of any which have been suggested. It leaves the four so-called Rocky Mountain States together in the new circuit, which is very desirable inasmuch as, generally speaking, they have the same legal questions and problems. I feel that I can get some personal pleasure out of the proposed division if it becomes a law, by virtue of the fact that my good friend Judge Lewis, of Colorado, will become the Senior Circuit Judge of the new circuit. You may record me as not being opposed to the new division when the time is ripe for splitting the eighth circuit. I am

Very truly yours,

T. BLAKE KENNEDY,
United States District Judge.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, May 22, 1928.

Mr. A. C. PAUL,
Minneapolis, Minn.

MY DEAR MR. PAUL: I note your letter of yesterday inclosing a copy of the Newton bill, which proposes to divide the ninth circuit and to create therefrom a new circuit to be known as the tenth circuit.

I have carefully read and considered the proposed bill and on first blush I felt that the division should be along the lines between Iowa and Missouri, Nebraska and Kansas, Wyoming and Colorado-Utah. I am thoroughly convinced that the district as now constituted is too large and should be divided.

On further consideration, I believe that the method of division proposed in the bill is better than that held in mind by me. This for the reason that the

litigation in at least five of the six States proposed for the tenth circuit is sui generis, in that it largely differs in kind from that of the Mississippi Valley States.

From the five States held in mind, the litigation involves mines and mining, homesteads and irrigation, Indian laws, and oil leases, and others peculiar alone to Oklahoma, New Mexico, Colorado, Wyoming, and Utah. I think this consideration a strong legalistic reason for separating the Mississippi Valley States from the mountain mining States.

I think the division should be made. It will furnish an excuse for the appointment of three more circuit judges, and will do away with the necessity of working district judges on the court of appeals, thus avoiding a part at least of that diversity of opinion which has made it difficult, if not impossible, to know what the law is on many subjects in this circuit.

Very truly yours,

C. B. FARIS.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MISSOURI,
St. Louis, December 6, 1928.

Col. L. C. DYER,
House of Representatives, Washington, D. C.

DEAR COLONEL DYER: I have delayed answering your request of some days since to furnish you with my views as to the necessity and feasibility of the proposed bill to divide the eighth circuit and erect out of the territory now contained therein two new circuits, to be called, respectively, the eighth and tenth circuits.

Two bills are pending. One proposes to divide the present circuit by a line running east and west along the boundaries between Missouri and Iowa, Nebraska and Kansas, and Wyoming and Colorado. The other, the Newton bill, proposes to make such division as will leave Minnesota, the two Dakotas, Nebraska, Iowa, Missouri, and Arkansas in the existing eighth circuit and erect Colorado, Oklahoma, Kansas, New Mexico, Utah, and Wyoming into a new circuit to be called the tenth circuit.

I am attaching a map which shows proposed line of division in red and black, as also the population and cases on appeal for the year 1928. This map follows, as forecast, the proposals of the Newton bill (H. R. 13567).

The division proposed by the Newton bill divides the present circuit along what I may call legalistic lines as nearly as can be. By this I mean that the nature of the litigation coming up from Colorado, Utah, Wyoming, New Mexico, Oklahoma, and part of Kansas largely differs from that coming up from the Mississippi Valley States. It consists largely of cases involving mining, irrigation, homesteads, oil leases, and matters concerning Indian lands, laws, and allotments, things about which the bar in the valley knows little or nothing and which, therefore, to a judge from a valley State, present questions that being wholly novel, are infinitely troublesome.

I think the division should be made in accord with the proposals in the Newton bill. I think the division should be had and had at once, or that the number of the circuit judges should be increased to nine, so that the judges coming from the mountain and mining States can sit in and decide those questions peculiar to such latter States.

Now, district judges are sitting in and writing opinions in more than 40 per cent of the cases heard by the court of appeals of the present eighth circuit. The result is such contrariety of opinion that neither the bench nor the bar can even guess what the rule of law is on many vital questions of law because two rules utterly contradicting each other have been solemnly laid down as the law in the circuit. And this, too, in many cases without either discussing or overruling the contradictory cases.

The district judges are submerged by the work in their own courts and can not spare the time now exacted from them. If they do, they are forced to neglect the district-court work and skimp the appellate-court work, by writing crude and unconsidered opinions—at least I speak for myself and from my own experience.

A condition which requires 40 per cent of the appellate-court work to be done by the district-court judges is so unsatisfactory as to be well-nigh disgraceful. I am of the view that a division of the circuit as proposed in the Newton bill will afford the quicker and better measure of relief from an unthinkable situation.

I am sorry that I am so crowded with work that it is not possible for me to go more fully into the conditions and arguments which call for relief. But I am glad to give you my own personal view of the bills pending, even though I have to do it crudely and hurriedly.

Very truly yours,

C. B. FARIS.
United States District Judge.

UNITED STATES DISTRICT JUDGE'S CHAMBERS,
EASTERN DISTRICT OF ARKANSAS,
Little Rock, Ark., December 24, 1928.

Hon. IRA C. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: This is to express my approval of the Newton bill for the division of the eighth circuit. The work in this circuit has increased to such an extent that the circuit ought to be divided.

The division proposed in the Newton bill is one that will be most satisfactory to this State. It leaves Arkansas with those States with which it is most intimately associated in a commercial way.

Legal questions arising in the eighth circuit, as proposed by the Newton bill, will be more akin to each other, than if the present eighth circuit was so divided as to include in it States whose business is largely agricultural and commercial and also the States farther west, where questions of irrigation, mining, and Indian claims will be involved.

Yours truly,

JOHN E. MARTINEAU,
United States District Judge.

UNITED STATES DISTRICT COURT,
DISTRICT OF MINNESOTA,
St. Paul, Minn., December 31, 1928.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: It has been apparent for some time that there must be a division of the eighth judicial circuit. The only question is as to how it shall be divided.

In my opinion, the Newton bill provides the most satisfactory manner of division and one which has met with the approval of all of the circuit judges, who are, perhaps, more interested in the subject than anyone else.

Placing the States of Wyoming, Colorado, Utah, Kansas, and Oklahoma in a new circuit, to be called the tenth, and providing for four circuit judges, and leaving the other States in the eighth and providing for five judges, will, in my judgment, be entirely satisfactory to the Federal bench and bar. In the States which will compose the new tenth circuit, there are classes of litigation which very seldom arise in the other States; and, if the division is made, it will relieve the district judges to a very considerable extent from the burden of devoting more time than they can reasonably spare to the work of the circuit court. It would naturally be difficult to find a division of the circuit which would be agreeable to everyone, but this matter has been the subject of discussion among all of the judges and a great many lawyers for a number of years, and the division proposed by the Newton bill has met with entire approval in the State of Minnesota, and, I understand, with very general approval elsewhere throughout the circuit.

Very truly yours,

JOSEPH W. MCLYNEAUX,
United States District Judge.

UNITED STATES COURT CHAMBERS,
Kansas City, Kans., December 7, 1928.

Hon. CHESTER I. LONG,
Attorney at Law, Wichita, Kans.

DEAR SENATOR LONG: I have your letter of December 4 to Mr. Paul. I take it that you desire an expression from me as to the matter of the division of the eighth circuit.

I have no fixed opinion as to the necessity of a division of this circuit. I know it is a very large circuit, not only from the standpoint of business to be

transacted, but from the standpoint of distances to be traveled by counsel in presenting appeals. If the circuit is to be divided, I am entirely satisfied that the bill must contain a provision for an increase in the circuit judges, such as is contemplated by both bills that are before the Congress. The reason is obvious: If the circuit is divided without increasing the number of circuit judges, the work of both the proposed circuits will be badly hampered because of the loss of flexibility in handling the work of the circuits.

I take it from your letter that some division of the circuit will be accomplished because of the urgency of the Chief Justice and the Associate Justices who are responsible for the proper administration of the litigation of the entire company. If it is to come about, I want to very strongly urge that the Newton bill go through as it is. Probably no bill can be drawn that will provide mathematical precision as to the amount of future business, but after all the amount of business is but one consideration. Other considerations are train service to the various points where the courts would be held; perhaps a more serious consideration is the general similarity in the character and type of business in the States affected. There are other considerations, all of which have received most careful consideration during the last year by all of the circuit judges of the eighth circuit; by all of the district judges; by the bar associations of many of the States; by meeting of all th elawyers of the eighth circuit who were at Seattle; and by the American Bar Association itself. Without a single dissent, as far as I am advised, the Newton bill has been approved. If a substantial change is made in the bill, there is immediate loss of indorsement of all of the judges and the lawyers interested. Of course the changed bill might receive the approval of some of them involved, but the point is that the Newton bill now has that approval which approval is lost if the bill is changed.

I therefore sincerely hope that Congress can see its way clear to pass the bill which so far as I am advised has the indorsement of everybody directly affected. It may be the indorsement is not unanimous; but the indorsment is remarkable in that all of the circuit judges, and as far as I am advised all of the district judges, and all of the bar associations that have been consulted about the matter, approve.

Yours very truly,

GEO. T. MCDERMOTT.

TOPEKA, KANS., *December 20, 1928.*

HON. IRA G. HERSEY,
Member of Congress,
House of Representatives, Washington, D. C.

DEAR SIR: Concerning the Newton bill, which provides for a division of the present eighth circuit, some time ago I indorsed this bill in a letter to Mr. A. C. Paul, chairman of the bar association committee that has the matter in charge. It is suggested that this indorsement should have gone to you.

I have felt that it is a matter which concerns the lawyers and the people back of them more than it does the judges. Before I indorsed the Newton bill I presented the two different divisions suggested by the Newton bill and the Thatcher bill to all of the lawyers in the State who were in court on business. I later presented them to the executive committee of the State bar association and later to the full membership of the State bar association. The preference for the Newton bill was unanimous.

I later attended a meeting at Seattle of all of the lawyers present at the American bar meeting from the present eighth circuit. The Newton bill was indorsed by that group, about 50 lawyers, without dissent, and later by the association itself. I understand it has the approval of all of the circuit judges and most of the district judges.

No division can be mathematically perfect nor meet the views of everyone. The support of the Newton bill is so nearly unanimous and its general principles are so fundamentally sound that I hope it is passed as drawn. Any change in it would disrupt the accord with which it has been received. Congress will be in session for a great many years to come, and if in practice any rough spots develop they can later be ironed out. If the division is to come, I hope the Newton bill passes.

Yours very truly,

GEO. T. MCDERMOTT.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OKLAHOMA,
Tulsa, Okla., January 3, 1929.

Hon. IRA G. HERSEY,
Member Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: Hon. Chester I. Long, of Wichita, Kans., member of the special committee of the American Bar Association, and Hon. J. C. Denton, of Tulsa, Okla., member of the same committee, have requested me to present to you my views with reference to the division of the eighth circuit.

The Newton bill, as I understand, proposes to leave Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri, and Arkansas in the eighth circuit and to create a new tenth circuit which will include the States of Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma.

I am in favor of the Newton bill with the exception that it be amended so as to include Arkansas in the tenth circuit; this for the reason that it would be a more equitable division of the business arising within the States. Arkansas is also an oil-producing State; so is Oklahoma and Kansas. This would more nearly assimilate litigation of a similar class and insure uniformity of decisions affecting property rights.

Yours very truly,

F. E. KENNAMER

UNITED STATES DISTRICT COURT,
DISTRICT OF NEBRASKA,
Lincoln, Nebr., January 8, 1929.

Hon. IRA G. HERSEY, M. C.,
Washington, D. C.

DEAR SIR: I have been asked to express my opinion as to bills for the division of the eighth circuit of the United States Court of Appeals. As between the Thatcher and the Newton bills I think the Thatcher bill is preferable. The bar association of this State at their annual meeting recently expressed the opinion that the division should be made on somewhat different lines from either of these bills, and I think that the division proposed by the bar association is preferable to either of the two pending bills. I think that any bill that is adopted should include a provision for a term of the court of appeals at Omaha as a reasonable requirement.

Respectfully,

THOS. C. MUNGER.

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF NORTH DAKOTA,
Fargo, N. Dak., January 9, 1929.

Hon. IRA HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: I have had called to my attention the proposed division of the eighth circuit as provided in the bill, commonly known as the Newton bill. The proposed division provided for in this bill, so far as I know, seems to be entirely satisfactory to the bar and judiciary of this circuit, as well as the writer of this letter.

Very truly yours,

ANDREW MILLER.

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MISSOURI.
Kansas City, December 22, 1928.

Hon. IRA G. HERSEY,
Member of Congress, Washington, D. C.

MY DEAR MR. HERSEY: If there is to be a division of the eighth circuit, I strongly favor the Newton bill, H. R. 13567.

Very sincerely yours,

MERRILL E. OTIS, *District Judge.*

UNITED STATES COURT CHAMBERS,
DISTRICT OF NEW MEXICO.
Albuquerque, N. Mex., May 25, 1928.

HON. A. C. PAUL,
Chairman Special Committee, American Bar Association,
Chicago, Ill.

DEAR MR. PAUL: This will acknowledge your favor of the 21st instant with inclosures.

I have carefully examined the Newton bill, H. R. 13507. It is my opinion that the eighth circuit must be divided and that this bill proposes the most practical and equitable division that can be worked out. I am heartily in favor of the, and hope that it may be enacted into law by the next Congress.

With kind regards, I am,

Yours very truly,

ORIE L. PHILLIPS, *District Judge.*

UNITED STATES COURT CHAMBERS,
DISTRICT OF NEW MEXICO.
Albuquerque, N. Mex., December 18, 1928.

HON. IRA G. HERSEY,
House Office Building, Washington, D. C.

MY DEAR MR. HERSEY: I am advised by Hon. Chester I. Long that you are chairman of a subcommittee of the House Judiciary Committee which has under consideration certain proposed legislation to divide the eighth circuit, and that you are desirous of having the opinion of the United States district judges in the eighth circuit upon this matter.

It is my opinion that there exists a real necessity for the division of the eighth circuit, and that the division proposed in the Newton bill, H. R. 13507, will fairly and equitably divide the work in such circuit and will tend to the convenience of litigants and counsel in cases to come before the courts of appeals in the proposed eighth and tenth circuits provided for in the Newton bill. I am advised that there is a proposed amendment to provide a term of court at Wichita, Kan. I think this a desirable amendment.

You no doubt have, or soon will have, a copy of a letter written by Hon Kimbrough Stone, senior circuit judge of the eighth circuit, to Hon. A. C. Paul, chairman of the special committee of the American Bar Association, on the division of the eighth circuit under date of June 30, 1928. Permit me to say that I concur in what Judge Stone therein says concerning the Thatcher bill.

Yours very truly,

ORIE L. PHILLIPS, *District Judge.*

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MISSOURI,
Kansas City, December 18, 1928.

HON. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: My attention has been called to the several measures now pending before your body in relation to a proposed division of the eighth circuit.

I do not agree that the circuit should be divided, but if a division is to be made then the provisions of the Newton bill would make a division far more satisfactory. This bill would constitute the new tenth circuit out of the following States: Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah.

This provision would result in bringing the mining and irrigation States into a compact circuit, where the same court could pass on and become more or less expert in relation to the subject matter. By mining, I mean to include oil as well as the precious metals. Both Oklahoma, Kansas, and Wyoming have considerable oil litigation, whereas Colorado, Utah, and New Mexico have litigation in respect of the precious metals.

Although Nebraska borders Kansas on the north, yet the absence of north and south transportation facilities put these two States, so far as the con-

venience of the public is concerned, at a great distance from each other. In my judgment, the natural association and the similarity of litigation, to say nothing of the convenience of the public, would be best served by the division proposed in the Newton bill.

Very truly yours,

ALBERT L. REEVES.

UNITED STATES DISTRICT COURT,
DISTRICT OF MINNESOTA,
St. Paul, Minn., May 30, 1928.

Mr. A. C. PAUL,
Chairman Special Committee American Bar Association,
Minneapolis, Minn.

MY DEAR MR. PAUL: I have your letter of May 21, inclosing copy of the Newton bill (H. R. 13507), proposing a division of the eighth circuit.

You and I have frequently discussed this matter, and you know that I feel this is the only practical way in which to divide the circuit. This division is satisfactory to the circuit judges, and ought to meet with very little opposition in Congress. I consider it absolutely impractical to attempt to put any States into the eighth circuit which have heretofore been out of it, or to take any of the States out of the eighth circuit and put them into any of the existing circuits. I am sure that to attempt to do that would create political opposition which could not be overcome and which would defeat any division at all.

Very truly yours,

JOHN B. SANBORN.

UNITED STATES DISTRICT COURT,
DISTRICT OF MINNESOTA,
St. Paul, Minn., December 14, 1928.

HON. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: Mr. Paul sent to me a copy of a letter which you had written to him with reference to the division of the eighth circuit proposed by the bill which you have introduced in Congress, in which you refer to indorsements by judges, bar associations, etc. I wrote Mr. Paul not very long ago, stating that I approved the division which you advocate, but it occurs to me that you and the committee probably want the reasons which seem to make it advisable to pass the bill.

I was appointed to this court in 1925, and since that time I have heard this matter discussed by all of the circuit judges with the exception of Judge Cotteral and by most of the district judges. I had a great many conversations about it with my late cousin, Judge Walter H. Sanborn, who for some 35 years was the presiding judge of this circuit. I will not attempt to quote the opinions of the other judges, who can speak for themselves, but Judge Sanborn was firmly convinced that if the circuit was to be divided—and he stated that seemed to be inevitable—it should be divided along the lines of your bill, and that the method of division proposed by the Thatcher bill was impractical and would not do. Judge Booth and I have had frequent talks during the last four years on this same subject, and, while we both at first were of the opinion that a division of the circuit into three parts might be worked out satisfactorily, we ultimately came to the conclusion that, from a practical standpoint, the division now proposed is the best that can be worked out. My advice is that all of the district judges of this circuit with the exception of Judge Scott, have indorsed this division, that all of the circuit judges have indorsed it, and that it has met with almost the universal approval of the bar. I was at the meeting of the Minnesota State Bar Association when the matter was brought up, and there was not a single dissenting voice.

I know that it has been said that there has been no agitation among the lawyers of the circuit for the proposed division or any division. It is not probable that there would be any such agitation unless the situation became so bad that lawyers were unable to get their cases tried in any part of the circuit within a reasonable time. As you know, the average lawyer in this or any other State does not very often get in the Federal courts unless he is a patent attorney or engaged in the business of defending bootleggers, and therefore he is not particularly agitated by the conditions in those courts. As soon, however, as conditions in this circuit have been explained to lawyers they

have invariably approved the division of it along the lines which we are referring to. There is no doubt, however, but that the circuit could run along for years as it is now, without there being any general uprising on the part of the bar.

It is frequently erroneously stated that the reason why a division is necessary is because the calendars of the circuit court of appeals are congested. As a matter of fact, no such condition could exist under the system which has been for many years in vogue and which consists of calling in sufficient district judges to do the work which the circuit judges are unable to do. Obviously, under such a system it would be possible to call in all of the district judges to do the appellate work, whereupon all appeals would stop and the court would catch up. The difficulty in this circuit, as I see it, is that the court of appeals can only do about half of the work, and some 50 per cent of the opinions must be written by district judges. My own experience will perhaps give some idea of how this works out. I sat, first, for one week on the court of appeals in May, 1926, and then sat a week in September, 1926, two weeks in May, 1927, one week in January, 1928, and one week in May ,1928, a total of six weeks in two years. It is generally assumed that one judge can write about 30 opinions a year, and I think it is safe to say that usually a judge will write not more than one opinion a week. Three judges sit at a time, and each judge will usually have five or six opinions to write after sitting for one week, so that one week on the court would mean about a month and a half altogether. Six weeks on the court would therefore mean about nine months' work. Where a district judge has a busy district—and I do not know of any of them in the eighth circuit any more that are not busy—he finds it difficult to do his share of the work of the court of appeals, and the time either comes out of the judge's nights, holidays, Sundays, and vacation or out of the time that should be devoted to the trial of lawsuits, or both.

It is unquestionably an excellent thing for a trial judge to be called to sit on the court of appeals, and also for the appellate judges to have him there, but it is necessarily carried too far in this circuit in my judgment. Frequently now the court is composed of two district judges and one circuit judge. Such a situation naturally results in inconsistent rulings, in the writing of opinions which are not as carefully considered as they should be, and in the neglect of important trial work.

To my mind, it would not be advisable to increase the number of circuit judges to take care of the situation, because there would be so many that it would still be difficult to secure uniformity of opinion, and I do not believe that Congress would consent to create the number of circuit judges necessary to do the greater part of the appellate work of this circuit. I think there should be 10, although under the bill proposed by you the eighth would have only 5, and the tenth 4, making 9 altogether.

Unless there is to be this increase in the number of circuit judges in the territory comprising the eighth circuit as a whole, it would, in my judgment, be far better not to pass the bill. The division is not going to reduce the amount of litigation in this territory, and to merely divide the circuit, without providing the additional judges, would be of no benefit to anyone.

I understand there has been some talk as to putting Nebraska into the new tenth circuit. I think this would be a mistake, for the reason that the litigation which arises in Nebraska is substantially the same as that which arises in the other States which it is proposed to put into the new eighth, whereas in the other States which will be in the tenth the important litigation is largely of the same class, involving litigation relating to oil, mining, water rights, lands, irrigation, Indians, etc.

I also understand that it has been proposed that Montana come into the tenth, and that Utah be attached to the ninth. From a theoretical standpoint, this might seem advisable, but my opinion is that the moment Congress undertakes to make changes in other circuits there will be trouble. There are some differences in rules, holdings, and practice in the various circuits, and the bench and bar of Montana would probably object to coming into the eighth, while the lawyers and judges of Utah might object to going into the ninth. It seems to me that the one immediate problem is the division of the eighth circuit. After that has been accomplished, the switching of States from the eighth to the ninth, or from the ninth to the eight, could be proposed and dealt with as a separate problem.

While I am giving you in this letter my personal views, these have been formed after discussions of this question with judges and lawyers who are interested. If there is any further information which I can give or secure for

you, have no hesitation in letting me know. Mr. A. C. Paul has very unselfishly interested himself in this matter, with no other idea than to bring about the most satisfactory solution of the problem, and I am in thorough accord with his ideas with reference to it.

Sincerely yours,

JOHN B. SANBORN.

UNITED STATES DISTRICT COURT,
DISTRICT OF COLORADO,
Denver, May 23, 1928.

A. C. PAUL, Esq.,
Chairman Special Committee American Bar Association,
Minneapolis, Minn.

DEAR MR. PAUL: I have your letter of May 21, inclosing copy of the Newton bill, proposing a division of the eighth circuit, and also a map showing the proposed arrangement.

It is generally recognized, of course, that there is great need of a division of this circuit, both on account of the amount of business, and the divergence of views that is creeping into its opinions, which necessarily follows from the large number of circuit and district judges that at various times sit on the court.

The plan submitted, I think, is the best that can be devised, and you may record me as approving the same.

Yours very truly,

J. FOSTER SYMES, *District Judge.*

UNITED STATES DISTRICT COURT,
DISTRICT OF COLORADO,
Denver, December 20, 1928.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: I desire to indorse the bill now pending in Congress providing for the division of the present eighth judicial circuit into two circuits, the new circuit to comprise the States of Colorado, Wyoming, Utah, New Mexico, Oklahoma, and Kansas.

The reasons in support thereof have no doubt been called to your attention by the American Bar Association and other organizations. I am fully in accord with the same. I take it it is not necessary to repeat them, other than to say that it will result in a more prompt decision of appellate cases going up from the district courts of the States mentioned and relieve the present court, which is now overburdened with work.

Yours very truly,

J. FOSTER SYMES, *District Judge.*

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF OKLAHOMA,
Oklahoma City, Okla., December 24, 1928.

Hon. IRA G. HERSEY,
House Judiciary Committee,
Washington, D. C.

In re Newton bill providing for division of eighth circuit, United States Court of Appeals.

DEAR SIR: I have been requested by Hon. A. C. Paul, of Minneapolis, Minn., chairman of the American Bar Association subcommittee on division of the eighth circuit to advise you relative to my attitude as a district judge on the proposed division.

My investigation of this matter leads me to the belief that the circuit should be divided provided proper provision is made for additional circuit judges. It is my understanding that the Newton bill, although I have not seen it, provides for five circuit judges for the new eighth circuit and four for the new tenth circuit; that the bill also provides for the following States to be in the eighth circuit: Minnesota, North Dakota, South Dakota, Nebraska, Iowa,

Missouri, and Arkansas, and that the new tenth circuit shall include the States of Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma.

My judgment is that if Arkansas is taken from the proposed new eighth circuit and added to the proposed tenth circuit we would have a more equitable division of the business of the present circuit, and I therefore desire to give my approval of the Newton bill as submitted with the provision that Arkansas be added to the tenth circuit. This conclusion is based upon a careful tabulation of the business of the present circuit as shown by the letter of Hon. Kimbrough Stone, senior circuit judge of the eighth circuit, dated June 30, 1928, and addressed to Hon. A. C. Paul as chairman of the American Bar Committee, and which letter, I assume, is before your committee.

Yours very truly,

EDGAR S. VAUGHT, *District Judge.*

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF IOWA,
Iowa City, Iowa, July 17, 1928.

Hon. A. C. PAUL,
Minneapolis, Minn.

MY DEAR PAUL: Thanks for your letter inclosing copy of Judge Stone's letter. I have gone over it carefully, and I concur absolutely in what Stone says. Up to this time I have not seriously considered the problem of work, judges, etc., in. I can see that the bills present important problems, and am satisfied that Stone has analysed it right.

Sincerely,

MARTIN J. WADE, *District Judge.*

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF IOWA,
Santa Monica, Calif., January 3, 1929.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN HERSEY: Judge Sanborn, of St. Paul, writes me that you are the chairman of the subcommittee which has the Newton bill under consideration which provides a method of dividing the eighth district. I am in hearty accord with the provisions of the bill and hope the same may be passed without delay.

Sincerely,

MARTIN J. WADE.

MUSKOGEE, OKLA., *December 21, 1921.*

Hon. IRA G. HERSEY,
House Judiciary Committee,
Washington, D. C.

HONORABLE SIR: With reference to the two bills pending for division of the eighth circuit and creation of the proposed tenth circuit, I believe that the Newton bill is the more desirable and may I lend my indorsement to same?

Yours most truly,

R. L. WILLIAMS,
United States Judge for the Eastern District of Oklahoma.

UNITED STATES DISTRICT COURT,
EIGHTH CIRCUIT, WESTERN DISTRICT OF ARKANSAS,
Fort Smith, Ark., May 23, 1928.

A. C. PAUL, Esq.,
Minneapolis, Minn.

DEAR SIR: I have your letter of the 21st instant inclosing copy of bill to amend sections 110, 118, and 120 of the Judicial Code, and also map showing division of the eighth circuit as provided in the bill.

The division appears to me to be as satisfactory as can be made.

Yours very truly,

F. A. YOUMANS.

UNITED STATES DISTRICT COURT,
EIGHTH CIRCUIT, WESTERN DISTRICT OF ARKANSAS,
Fort Smith, Ark., December 10, 1928.

Hon. IRA C. HERSEY,
House of Representatives,
Washington, D. C.

DEAR SIR: It has been suggested to me that an expression of opinion from the United States district judges in the eighth circuit upon the question of a division of that circuit is desirable.

From my viewpoint as a district judge, the principal reason for a division of that circuit is the necessity under present conditions for the service of district judges in the circuit court of appeals. The district judge who performs that service must to some extent neglect the business of his district.

If the division of the circuit is made, in my opinion the division proposed by the Newton bill is preferable, because a more nearly proportionate division of the appellate business in the territory involved will result therefrom.

Yours very truly,

F. A. YOUMANS.

OFFICE OF THE UNITED STATES ATTORNEY,
DISTRICT OF NORTH DAKOTA,
Fargo, December 17, 1928.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: My attention has been called to the bill which Congressman Newton has introduced in Congress to divide the eighth circuit, and I very vigorously approve such proposed division.

The condition in the eighth circuit at this time is serious, and a division of the circuit seems to be the only solution. It is a very bad thing for an appellate court to have so many different judges write its opinions because the inevitable result is that one banc will decide the matter one way, and the next group of judges will decide it the exactly opposite way, and then there are two rules in force in the circuit.

Precise instances of that condition now exist in the eighth circuit, due, I think, to the congestion of work, and the inability on the part of the appellate court properly to care for its own work.

I hope the Newton bill will pass.

Very truly yours,

SETH W. RICHARDSON.

LETTERS FROM JUDGES OF STATE COURTS

The following letters are from State judges:

THE SUPREME COURT OF KANSAS,
Topeka, December 31, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I beg to give my indorsement of the Newton bill for the creation of two circuits out of the present eighth Federal judicial circuit. At the recent annual meeting of the Kansas State Bar Association at Hutchinson the respective merits of the two proposed bills, the Newton bill and the Thatcher bill, were carefully considered, and it was, I believe, the unanimous opinion of that body that the Newton bill was much better adapted to the needs of the States concerned than its rival.

Doubtless it is needless for me to suggest that the advice of the Federal judges of the eighth circuit on the respective merits of the two bills is bound to be helpful to you and your associates of the Judiciary Committee, and it is because I feel assured they hold the same view that the lawyers do concerning this important matter that I have presumed to address you.

I am, sir, with sincere respect,

Yours very truly,

JOHN S. DAWSON.

THE SUPREME COURT OF KANSAS,
Topeka, January 8, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee of the House of Representatives,
Washington, D. C.

DEAR SIR: Pardon me for taking this liberty with you, but I am writing to urge you to do all in your power to secure the passage of the Newton bill (H. R. 13507), which concerns the division of the eighth Federal judicial circuit. My reason for urging the passage of this bill is that it will better accommodate the lawyers and the general public of the district for its division in the manner prescribed in that bill.

Yours most respectfully,

JOHN MARSHALL.

THE SUPREME COURT OF THE STATE OF KANSAS,
Topeka, January 3, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR MR. HERSEY: I understand that two bills are now pending in Congress for the division of the eighth Federal judicial circuit, one being known as the Newton bill (H. R. 13507) and the other as the Thatcher bill (H. R. 13757).

The terms of these bills have been given much consideration by the members of the bar of Kansas, and particularly so at the recent meeting of our State bar association. I have personally given the matter some attention and, while as a member of the supreme court of this State, perhaps my interest in it is general rather than specific, I am convinced that the provisions of the Newton bill are much to be preferred. I am, therefore, writing you my earnest approval of the Newton bill and to respectfully urge its passage by Congress at an early date.

Yours very truly,

W. W. HARVEY.

DISTRICT COURT, THIRD JUDICIAL DISTRICT, SECOND DIVISION,
Topeka, Kans., December 31, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee of the House of Representatives,
Washington, D. C.

DEAR SIR: My attention has been called to two bills now pending in Congress for the division of the eighth Federal judicial circuit, one known as the Newton bill (H. R. 13507) and the other as the Thatcher bill (H. R. 13751), by Thomas F. Doran, Esq., of this city, as member of the committee of the American Bar Association on division of the eighth circuit.

Since being on the bench I have not been as familiar as formerly with the business of the eighth Federal judicial circuit but am very well advised of the pressing need of a division of this judicial circuit.

After a consideration of the merits of the two bills referred to, I am of the opinion that the Newton bill makes a much more logical apportionment of the territory now comprised in the eighth judicial circuit, taking into account particularly the amount of business which has heretofore been done in the States which will be included in each of the two new circuits, respectively, and the character of the business which will hereafter be done in them if a division shall be made. In particular, I believe that the work of the judges of the eighth circuit, both of the court of appeals and the district judges, will be much embarrassed by the passage of the Thatcher bill and that the relief which is desired and is so much needed will not be realized if that bill becomes a law.

Very truly yours,

GEORGE H. WHITCOMB.

THIRD JUDICIAL DISTRICT, FIRST DIVISION,
Topeka, Kans., January 5, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: My attention has been called to the fact that there is now pending before Congress two bills for the division of the eighth Federal judicial circuit,

From the facts presented to me with reference to the matter, I believe a better division would be made if the provisions of what is known as the Newton bill (H. R. 13567) were followed, rather than those of the Thatcher bill (H. R. 13757).

I believe the Newton bill is the one which should pass, and I will be glad to have you use your best efforts to that end.

Yours truly,

GEO. A. KLINE.

OFFICE OF THE DISTRICT COURT,
Olathe, Kans., January 4, 1928.

Hon. IRA G. HERSEY,
Washington, D. C.

DEAR SIR: My attention has been called to the two bills now pending in Congress for the division of the eighth Federal judicial circuit, one known as the Newton bill (H. R. 13567) and the other the Thatcher bill (H. R. 13757), and I am taking the liberty of writing you at this time to urge the passage of the Newton bill.

Yours very truly,

G. A. ROBERDS,
Judge Tenth Judicial District of Kansas, Olathe, Kans.

LETTERS FROM BAR ASSOCIATIONS

AMERICAN BAR ASSOCIATION,
Chicago, Ill., October 3, 1928.

I hereby certify that at a regular meeting of the American Bar Association held at Seattle, Wash., on Friday, July 27, 1928, the following resolution was adopted:

"*Resolved*, That the Newton bill (H. R. 13567), providing for a division of the eighth circuit, be indorsed and recommended for passage by Congress, with the following amendment:

"In section 3, line 15, of the bill (attached hereto and marked 'Exhibit A'), after the word 'Denver' insert 'in Wichita.'

"*Resolved further*, That the special committee be continued, with authority in the president of the association to fill any vacancies in the committee and to appoint additional members, if this seems advisable."

OLIVE G. RICKER, *Executive Secretary.*

EXHIBIT A

A BILL To amend sections 110, 118, and 120 of the Judicial Code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 110 of the Judicial Code (being section 211 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 110. There shall be 10 judicial circuits of the United States, constituted as follows:

"First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, Maine, and Porto Rico.

"Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

"Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

"Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

"Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

"Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

"Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

"Eighth. The eighth circuit shall include the districts of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Arkansas.

"Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, Hawaii, and Arizona.

"Tenth. The tenth circuit shall include the districts of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico."

SEC. 2. Section 118 of the Judicial Code (being section 213 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 118. There shall be in the second, sixth, seventh, and tenth circuits, respectively, four circuit judges; and in the eighth circuit five circuit judges; and in each of the other circuits three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate: *Provided, however*, That any circuit judge of the eighth circuit as heretofore constituted, who resides within the eighth circuit as hereby constituted, shall be, and is hereby, assigned as a circuit judge to such part of the former eighth circuit as is hereby constituted the eighth circuit; and any circuit judge of the eighth circuit as heretofore constituted, who resides within the tenth circuit as hereby constituted, shall be, and is hereby, assigned as a circuit judge of such part of the former eighth circuit as is hereby constituted the tenth circuit. Each circuit judge shall receive a salary of $12,500 a year, payable monthly. Each circuit judge shall reside within his circuit, and when appointed shall be a resident of the circuit for which he is appointed. The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law. Nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided by other sections of the Judicial Code."

SEC. 3. Section 120 of the Judicial Code (being section 223 of title 28 of the United States Code) is hereby amended to read as follows:

"SEC. 120. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston, and, when in its judgment the public interests require, the court of appeals of that circuit shall hold a sitting at San Juan, Porto Rico; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond and in Asheville, North Carolina; in the fifth circuit in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in St. Louis and St Paul; in the ninth circuit, in San Francisco; and each year in two other places in said circuit to be designated by the judges of said court; in the tenth circuit, in Denver, in Wichita, and in Oklahoma City, provided that suitable rooms and accommodations for holding court at Oklahoma City are furnished free of expense to the United States; and in each of the above circuit terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, and in Montgomery on the third Monday in October. All appeals and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals in cases of injunctions and in all other cases which, under the statutes and rules, or, in the opinion of the court, are entitled to be brought to a speedy hearing, may be heard and disposed of wherever said court may be sitting. All appeals and other appellate proceedings which may be taken or prosecuted from the district court of the United States at Beaumont, Texas to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals wherever the said court shall sit, in cases in injunctions and in all other cases which, under the statutes and the rules, or, in the opinion of the court, are entitled to be brought to a speedy hearing.

"In all circuits where territorial changes are made herein, all appeals, writs of error, or other proceedings which are (at the time this act becomes

effective) under submission in a circuit court of appeals as heretofore constituted, shall proceed to final action upon such submission; all other appeals, writs of error, or other proceedings shall, by order of such court of appeals, be transferred to and thereafter be in the court of appeals to which they would have gone had this act been in full force at the time they began."

RESOLUTION

Resolved, That the Kansas State Bar Association, in annual meeting duly assembled at Hutchinson, Kans., on November 16, 1928, approves the Newton bill, H. R. 13507, Seventieth Congress, first session, for the division of the eighth judicial circuit and the creation of the tenth judicial circuit composed of the districts of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico, with an amendment as follows: In line 10, section 3, page 4, after the word "Denver," insert "in Wichita," so as to also provide for terms of court at Wichita, Kans.

WICHITA, KANS., *November 23, 1928.*

I hereby certify that at the annual meeting of the Kansas State Bar Association held at Hutchinson, Kans., Friday, November 16, 1928, a resolution was adopted, of which the above is a true and correct copy.

W. E. STANLEY,
Secretary of the Kansas State Bar Association.

ROSE, HEMINGWAY, CANTRELL & LOUGHBOROUGH,
Little Rock, Ark., December 31, 1928.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

MY DEAR MR. HERSEY: I beg leave to inclose a certified copy of the resolution of the Arkansas State Bar Association favoring the passage of the Newton bill.

Very truly yours, G. B. ROSE.

RESOLUTION OF THE ARKANSAS STATE BAR ASSOCIATION

Whereas, there is now pending in the Congress of the United States the two following bills to divide up the Circuit Court of Appeals of the United States for the Eighth Circuit:

(*a*) The Thatcher bill, which provides that the eighth circuit shall be composed of the States of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming, and further provides that a new circuit to be known as the tenth circuit be established, to be composed of the States of Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Utah.

(*b*) The Newton bill, which provides that the eighth circuit shall be composed of the States of Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska, and further provides that a new circuit, to be known as the tenth circuit, be established, to be composed of the States of Wyoming, Utah, Colorado, New Mexico, Oklahoma, and Kansas.

Therefore, be it

Resolved by the Arkansas State Bar Association, That the Newton bill be approved, and that the secretary be instructed to send a copy of this resolution to the secretary of the American Bar Association, the chairman of the Judiciary Committees of the United States Senate and House of Representatives, and to the Senators and Representatives in the Congress from Arkansas, with the request that the Senators and Representatives from Arkansas work for and urge its passage.

STATE OF ARKANSAS,
County of Pulaski, ss:

I say that I am the secretary of the Arkansas State Bar Association and that the foregoing resolution was unanimously adopted at its meeting held in Hot Springs, Ark., in May, 1928.

Witness my hand this 31st day of December, 1928.

ROSCOE R. LYNN, *Secretary.*

ADAMS & GAST,
Pueblo, Colo., December 14, 1928.

Hon. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

MY DEAR MR. HERSEY: Since Mr. Paul speaks with authority for the American Bar Association's committee on the division of the eighth circuit, of which I am a member, it is unnecessary for me to say that I approve the Newton bill.

But you will be interested to know that this measure, amended to provide for a term of court at Wichita, was indorsed unanimously, as I recall, at the September meeting of the Colorado Bar Association. If you do not have a copy of that resolution, a line to Harrie E. Humphreys, secretary of the Colorado Bar Association, Equitable Building, Denver, Colo., will bring it to your desk.

Cordially yours,

ROBERT S. GAST.

DIVISION OF EIGHTH CIRCUIT

SHEARER, BYARD & TROONER,
Minneapolis, Minn., December 14, 1928.

Hon. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: I am sending you herewith copy of resolution passed at the meeting of Minnesota State Bar Association last July. You doubtless know that a similar resolution was unanimously passed by the American Bar Association last July at Seattle.

I believe it is the purpose now to get prominent attorneys in each of the eighth and tenth circuits (as proposed) to write, indorsing the proposed division. I shall get some letters soon from Minneapolis and St. Paul attorneys and send to the chairman of the House Judiciary Committee, Mr. Ira G. Hersey, and a copy to you. I hope it may be possible to get action on your bill at this short session.

Yours very truly,

JAMES D. SHEARER.

RESOLUTION PASSED UNANIMOUSLY BY THE MINNESOTA STATE BAR ASSOCIATION AT ITS ANNUAL MEETING AT MINNEAPOLIS, MINN., JULY 12, 1928

Mr. James D. Shearer, from the committee on uniform procedure in Federal courts, offered the following resolution:

"*Be it resolved by the Minnesota State Bar Association in annual meeting assembled*, That the Newton bill (H. R. 13567), now pending before the Congress for the division of the eighth judicial circuit, so that upon the passage of said bill the eighth circuit will consist of the States of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, and the new tenth circuit will then consist of the States of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming, is believed to be as fair and reasonable a division as can be made of the litigation arising, and likely to arise for some time to come in said respective circuits.

"*Resolved further*, That the provision in the Newton bill for the appointment of two additional circuit judges for the proposed eighth circuit and one additional circuit judge for the proposed tenth circuit is, in our opinion, necessary to properly take care of the litigation in such proposed circuits; and we respectfully ask the Congress of the United States to pass the Newton bill (H. R. 13567)."

I, Chester L. Caldwell, secretary of the Minnesota State Bar Association, do hereby certify that the resolution above set forth is a full and true copy of the same as passed by the said association at the annual meeting thereof held at Minneapolis, Minn., on the 12th day of July, 1928, as taken from and compared with the original resolution as recorded in the transcript of the proceedings of said meeting.

Witness my hand and the seal of the association this 22d day of December, 1928.

[SEAL.] CHESTER L. CALDWELL, *Secretary.*

GERMAN, HULL & GERMAN,
Kansas City, Mo., January 3, 1930.

Hon. IRA C. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: At the request of Mr. A. C. Paul, of Minneapolis, Minn., chairman of the American Bar Association's committee on division of the eighth circuit, I inclose certificate from the secretary of the Missouri Bar Association in regard to a resolution passed at the meeting of that association, held September 28, last.

Yours very truly,

C. W. GERMAN.

I, the undersigned, secretary of the Missouri Bar Association, do hereby certify that the following is a true and correct copy of a resolution offered to the association at its annual meeting held in St. Louis, Mo., on September 28, 1928, and that said resolution was carried without a dissenting vote, as follows, to-wit:

"Whereas there are pending in Congress at this time two bills providing for a division of the eighth judicial circuit, one of said bills being known and designated as the Thatcher bill and the other being known as the Newton bill; and

"Whereas the division of said circuit as provided in the Thatcher bill would work a great hardship on the judges, the lawyers, and litigants of the State of Missouri and upon the new circuit, of which the State of Missouri is to be a part; and

"Whereas the division as provided by said Thatcher bill would be unjust and unfair; and

"Whereas the division as provided by the Newton bill would be fair, equitable, and just, both to the judiciary and the bar of the present eighth circuit: Now, therefore, be it

"*Resolved*, That the Missouri State Bar Association indorses the Newton bill; and be it further

"*Resolved*, That the Missouri State Bar Association is opposed to any division of the eighth circuit unless additional judges are provided therefor; and be it further

"*Resolved*, That Hon. Kimbrough Stone, the presiding judge of the eighth circuit, be advised forthwith of the action of this association."

JAMES A. POTTER,
Secretary of the Missouri Bar Association.

JANUARY 1, 1929.

GILBERT & HAMILTON,
Santa Fe, N. Mex., December 17, 1928.

Hon. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: The question of a proposed division of the eighth judicial circuit is one of vital interest to all of the practicing attorneys in New Mexico. Under the present conditions New Mexico litigants have been limited, as a practical matter, to the presentation of their cases at the Denver term of court, which has frequently resulted in long and expensive delays and in the dissatisfaction bound to follow a decision participated in by district judges.

I understand that there is great likelihood of some division of the circuit being made at the present term of Congress, and if this be possible I would like, both as a practicing attorney within the circuit and as president of our State bar association, to strongly recommend the adoption of the Newton bill for such division.

Both because of the convenience of attorneys in attending terms of the circuit court and because of the similarity of legal questions which would be likely to arise from the States embraced within the proposed tenth circuit, as defined by the Newton bill, it would be greatly to the advantage of attorneys and litigants in New Mexico to have that measure adopted rather than the Thatcher bill.

This entire question was thoroughly discussed at the last meeting of the New Mexico Bar Association, at which time a resolution was unanimously adopted by our association, recommending that the provisions of the Newton bill be enacted into law.

I beg to inclose you a certified copy of that resolution herewith.

Very truly yours,

CARL H. GILBERT,
President New Mexico Bar Association.

RESOLUTION INDORSING H. R. 13567

Whereas the existing conditions in the Eighth Judicial Circuit of the United States require a division of the circuit, in order to effect uniformity and continuity of judicial decisions; and

Whereas a division of such circuit along the lines hereinafter indorsed, will fairly an dequitably divide the work in such circuit and will tend to the convenience of litigants and counsel in cases to come before the circuit courts of appeal: Now, therefore, be it

Resolved by the Bar Association of the State of New Mexico, on this 14th day of August, 1928, That we indorse and recommend the passage by Congress of H. R. 13567, commonly known as the Newton bill, dividing the eighth judicial circuit and creating a new circuit, to be designated as the tenth circuit, comprising the States of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico. Be it further

Resolved, That copies of this resolution, duly certified, be forwarded by the secretary of this association, to Hon. Sam. G. Bratton, and Hon. Bronson Cutting, Senators from New Mexico, and Hon. John Morrow, Member of Congress from New Mexico, and to the respective chairmen of the Senate and House Judiciary Committees.

STATE OF NEW MEXICO,
County of Santa Fe, ss:

I, the undersigned, secretary-treasurer of the Bar Association of the State of New Mexico, do hereby certify that the above and foregoing contains a full and complete copy of the resolution of the said bar association duly passed on the 14th day of August, 1928, indorsing the Newton bill, H. R. 13567, as the same remains on file and of record in my office at Santa Fe, N. Mex.

Witness my hand and the seal of the said Bar Association of the State of New Mexico, this 15th day of December, 1928.

JOSÉ D. SENA,
Secretary-Treasurer, New Mexico Bar Association.

STATE BAR ASSOCIATION OF UTAH,
Salt Lake City, Utah, January 8, 1929.

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: We are advised that the Newton bill, which provides for a division of the eighth circuit by carving out from it certain States to form a new circuit to be designated the tenth, is shortly to come up for hearing before your committee.

We assume from the information that has come to us that it is generally agreed that something must be done by way of relieving the eighth circuit from its present overburden. There has been some talk of detaching Utah from the eighth circuit and attaching it to the ninth circuit. The bar association of this State, and, we believe we are safe in saying, all the attorneys practicing here, would be very much opposed to such an arrangement. Some important differences exist as to property rights between the law as developed by the ninth circuit and the eighth circuit, and it would be very unfortunate if Utah were now transferred to the ninth circuit and compelled to accommodate itself to the changes such transfer would inevitably involve.

In our judgment the division proposed by the Newton bill is a most happy one, as the States proposed to be grouped together in the new circuit have much

in common in the nature of the special classes of litigation that find their way into the courts.

We respectfully urge that your committee favorably report the Newton bill and that it be enacted into law by the Congress.

Yours very truly,

A. E. BOWEN, *President.*

SOUTH DAKOTA BAR ASSOCIATION,
Pierre, S. Dak., January 7, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I am inclosing a certified copy of a motion which was unanimously carried at the last annual meeting of this association, held at Yankton, S. Dak., on September 6, 1928, relative to the so-called Newton bill, pertaining to the division of the present eighth circuit of the United States Circuit Court of Appeals.

I might personally add that so far as I know, there is no opposition to this bill among the bar of this State, but on the contrary all of the members whom I have heard discuss the question are wholeheartedly in favor of the proposed division.

Very truly yours,

KARL GOLDSMITH, *Secretary.*

PARTIAL TRANSCRIPT OF MINUTES OF ANNUAL MEETING OF SOUTH DAKOTA BAR ASSOCIATION HELD SEPTEMBER 6, 1928

Mr. J. H. VOORHEES. "May I bring one thing before the association as a matter of new business. This is with reference to a matter of Federal legislation; it has to do with a proposed division of the eighth judicial circuit, as I dare say you all know, the largest circuit in the United States, not only in area but in volume of business. It has six circuit judges, there are 13 States in the circuit, including, of course, South Dakota, but the business is so heavy that you hardly ever see an opinion of the circuit court of appeals in which the court hearing the case is composed of three circuit judges. It has been recognized for three or four years that it was desirable to divide the circuit or increase the judges to relieve that situation. There was a bill introduced in Congress, known as the Thatcher bill, about a year ago, which divided the circuit into two circuits and in some way affected the ninth circuit. That bill was not satisfactory to anybody. When I say anybody, I mean the judge of the circuit court and the district judges. Last spring, however, a bill was introduced known as the Newton bill, which divides the circuit into two circuits. Under that bill, Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska comprised the eighth circuit. The other States, Wyoming, Colorado, Utah, Kansas, Oklahoma, and New Mexico would comprise the tenth circuit. The bill provides five circuit judges for the eighth circuit, which would be the one including South Dakota, and four circuit judges for the new tenth circuit. That would provide nine circuit judges, divided among two circuits, to take care of the work in the present thirteenth circuit in the now proposed eighth and tenth circuits.

"President Strown, of the American Bar Association, appointed a special committee last spring composed of one or more lawyers in the present eighth circuit, to consider that question. That committee reported in Seattle unanimously in favor of the so-called Newton bill and the report was adopted and approved by the American Bar Association. The Newton bill has the approval of all of the judges of the eighth circuit. I have a letter written by Judge Stone, who is now the presiding judge of the eighth circuit, approving the bill, and I also have a letter from Judge Elliott, our district judge, likewise approving it. I bring this matter before the association at the present time to ask the association to indorse, if it will, the Newton bill, so our influence may be added to that of the American Bar Association.

"I move you, Mr. President, therefore, that the South Dakota Bar Association, at this meeting, approve House bill No. 18567, introduced by Mr. Newton, of New Mexico, entitled 'A bill to amend sections 116, 118, 136,

of the judicial code"; that the association recommend to the Congress the enactment of the bill and that we also recommend specially to the Senators and Representatives of South Dakota the approval of the bill and ask their aid in securing its enactment."

Motion duly seconded and carried.

I hereby certify that the above and foregoing is a true and correct copy of a part of the minutes of a meeting of the South Dakota Bar Association, held at Yankton, S. Dak., on the 6th day of September, 1928.

KARL GOLDSMITH, *Secretary.*

LETTERS FROM MEMBERS OF THE KANSAS BAR

JUNCTION CITY, KANS., *January 7, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee of the House of Representatives,
Washington, D. C.

DEAR SIR: There has been brought to my attention the Newton bill (H. R. 13567) and the Thatcher bill (H. R. 13757) both having to do with the creation of a new circuit court of appeals. I think, without question, the lawyers of this district prefer the Newton bill. The reasons given by the circuit judges of the present eighth circuit seems to compel this view.

Your favorable action in regard to the Newton bill instead of the Thatcher bill will be highly appreciated.

Very truly yours,

U. S. WEARY, *Attorney at Law.*

ATWOOD, KANS., *January 5, 1929.*

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: I find upon investigation that most of the judges and lawyers in this part of the country favor the Newton bill (H. R. 13567) for the division of the eighth Federal judicial circuit. Trust you will use your efforts for the passage of this bill.

Yours truly,

C. A. P. FALCONER, *Attorney at Law.*

KANSAS COOPERATIVE WHEAT MARKETING ASSOCIATION,
Wichita, Kans., January 7, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I wish to urge upon you the passage of H. R. 13567, known as the Newton bill, relative to the creation of a new circuit court of appeals.

That it is necessary that the eighth circuit be divided seems to be generally conceded; however, there is another bill pending before Congress for the same purpose which, in my opinion, would not be at all satisfactory to the lawyers and litigants of the circuit.

The advantages of the Newton bill over the Thatcher bill are very clearly set out in a letter by Circuit Judge Kimbrough Stone to Hon. A. C. Paul, chairman of the American Bar Committee on division of the circuit, to which letter your attention has no doubt been called. There is no need for me to restate the reasons given by Judge Stone, but in my opinion they are conclusive.

I am a member of the executive council of the Kansas State Bar Association, and this matter has been discussed in our bar association and also on several occasions by the executive council. The executive council is unanimous in supporting the Newton bill, and a resolution was passed at the last meeting of the State Bar Association indorsing it.

I have never heard of any lawyer in Kansas being in favor of the Thatcher bill.

Yours very truly,

BENJ. F. HEGLER, *General Counsel.*

WINFIELD, KANS., *January 7, 1929.*

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I am writing you concerning the two bills now pending in Congress for the division of the eighth Federal judicial circuit, one known as the Newton bill and the other as the Thatcher bill.

From a study of the provisions of these two bills, I am convinced that the Newton bill will fit the needs of the present territory in the circuit court, and in fact the Thatcher bill would be a detriment to the business of this particular territory as well as the business of the present circuit court as a whole.

As a practitioner in the Federal court, I would earnestly request the favorable consideration in the Newton bill by your committee and urge its passage.

Respectfully yours,

J. A. MCDERMOTT.

WICHITA, KANS., *January 7, 1929.*

MR. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: We have seen a copy of a letter written by Circuit Judge Stone to Hon. A. C. Paul, chairman of the American bar committee on division of the eighth circuit. The reasons urged in the said letter why the Newton bill should be preferred to the Thatcher bill coincide with our views on the subject. All of the members of our firm join in saying that we are in favor of the Newton bill and we urge that the Newton bill be passed instead of the Thatcher bill.

Very truly yours,

BROOKS, BROOKS & FLEESON,
By WILLARD BROOKS.

MALLOY, DAVIS & WHITE,
ATTORNEYS AT LAW,
Hutchinson, Kans., January 5, 1929.

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: As a member of the court of appeals of the eighth circuit, I desire to respectfully protest against the passage of the bill pending before Congress known as the Thatcher bill, H. R. 13757; and also to indorse the bill pending before Congress known as the Newton bill, H. R. 13567.

The grouping of the States under the Thatcher bill, considered both with reference to the inequality of the average number of cases as well as the usual subjects of litigation, would be regrettable; and the failure to increase the number of the circuit judges would be manifestly unfair both to the judges themselves and the litigants within the circuits.

The grouping of the States provided for in the Newton bill is decidedly preferable when measured by the considerations referred to; and particularly it is to be commended in its provision for five judges in the first group (which has the heavier amount of litigation) and four judges in the second.

I sincerely trust that the expressions of preference for the Newton bill heretofore made by the State Bar Association of Kansas and the American Bar Association which, as I understand, have the concurrence of the interested circuit judges and a large number of the practicing attorneys throughout the circuit, may bear fruit in the consideration of these two measures.

Very respectfully yours,

A. C. MALLOY.

TOPEKA, KANS., *January 5, 1929.*

HON. IRA G. HERSEY,
Judiciary Committee of the House of Representatives,
Washington, D. C.

DEAR SIR: My attention has been called to two bills which are pending in Congress for the division of the eighth judicial circuit. One of the bills is known as the Newton bill (H .R. 13567), and the other as the Thatcher bill (H. R. 13757).

I have considered the merits of each of these bills and I am of the opinion that the Newton bill is far better than the Thatcher bill, and I therefore urge the adoption of the Newton bill.

These bills are of course very familiar to you and it is not necessary to enter into an extended discussion of them, but simply to state that in my opinion the Newton bill is the one which should be passed by Congress.

I beg to remain,

Yours very truly,

CHARLES BLOOD SMITH.

HIAWATHA, KANS., *January 4, 1928.*

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: The Kansas State Bar Association at its November, 1928, meeting approved the Newton bill (H. R. 13507) providing for a division of the eighth Federal judicial circuit. I desire to express to you my personal approval of the above bill as against the division of the district as provided by H. R. 13757. Many substantial reasons can be given for the approval of the Newton bill. Perhaps the most important one is the division of the work in the two proposed districts and the number of judges provided to do the work. Taking into account the amount of work, the number of judges, and the grouping of the States into the proposed new districts, I favor the Newton bill and would be pleased if your committee could report favorably.

Yours very sincerely,

W. E. ARCHER, *Lawyer.*

OFFICE OF FINLEY, ALLEN & DUNHAM,
Chanute, Kans., January 2, 1920.

In re Newton bill, H. R. 13507.

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives, Washington, D. C.

DEAR SIR: The Kansas State Bar Association has endeavored to carefully analyze the provisions of the above-named bill, as well as the Thatcher bill. The belief of our association is that the Newton bill is more desirable.

It would appear to me that the several clearly delineated reasons for the justified preference of the Newton bill, as disclosed by Circuit Judge Kimbrough Stone, in his letter sometime back, addressed to Mr. Paul, chairman of the American Bar committee on division of the circuit, presents very clearly acceptably urgent reasons and sound arguments in favor of the Newton bill as against the Thatcher bill; and particularly it would seem to me that the approval of Judge Stone's analysis and recommendations as to the Newton bill given by Judges Lewis, Kenyon, Cotteral, Booth, and Van Valkenburgh, should give real weight to Judge Stone's position.

We lawyers in Kansas urge upon your committee favorable consideration of the recommendations of the committee of the American Bar Association, with reference to the proposed division of the eighth circuit. Surely that body should and would give as fair, favorable, and unbiased consideration to the attempted proper solution of this matter, as could be given by any group of persons properly interested in the solution of the attendant difficulties.

I believe that all of the States as suggested by the Thatcher bill as constituting the proposed tenth circuit, would be more benefited by the arrangement with reference to the divisions as suggested in the Newton bill, both for the reason that the calendar can be more easily kept clearly because of the more evenly balanced amount of litigation with the attendant provision for the additional three circuit judges; and the prevention of the further division of the Mountain States where a large part of the litigation dealing with irrigation and mining property rights already is confronted with the vital differences presently existing as to some of the law under the decisions rendered in the eighth and ninth circuit, as suggested by Judge Stone.

I urge your committee's favorable consideration of the Newton bill.

Yours very truly,

JAMES A. ALLEN,
Former President Kansas State Bar Association.

EUREKA, KANS., *January 1, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I understand there are two bills pending before your committee for the division of the eighth judicial circuit known as the Thatcher bill and the Newton bill.

It seems to me that the Newton bill is the one which should be reported favorably by your committee for the reason that the division as provided by the Newton bill is a more logical division, and for the further reason that the Thatcher bill provides for a division without an increase in the number of judges, it being possible now to use the six circuit judges over the entire eighth circuit as now constituted, but under the Thatcher bill the tenth circuit would have three circuit judges with considerably more business in it than the proposed new eighth circuit, and the result would be that a considerable portion of the circuit-court work in the tenth circuit would have to be performed by the district judges, thereby delaying the trial work in the district courts. I feel certain that the lawyers throughout the territory comprising the proposed new tenth circuit will favor the Newton bill, and I trust that your committee will act favorably upon it.

Very truly yours,

GORDON A. BADGER.

KANSAS CITY, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Washington, D. C.

DEAR SIR: It may not be in order for the attorneys practicing in this circuit to express their views on the two bills now pending in Congress for division of the eighth Federal judicial circuit, but being in active practice before this court for a great many years I want to add my approval, with the balance of the lawyers of this circuit to the Newton bill. I personally know that the judges of the circuit court and possibly most of the district judges favor the Newton bill, and the fact that the judges as well as the practicing attorneys have studied the Newton bill and find it to be the best and most workable it seems to me is sufficient reason why the Newton bill should have favorable consideration. The reasons for the preference have no doubt been outlined to you by the judges and surely will persuade you to take favorable action in urging the passage of the Newton bill.

Yours very truly,

A. L. BERGER.

TOPEKA, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: As a member of the American Bar Association I wish to state that the association has approved the Newton bill (H. R. 13507), providing for the division of the eighth judicial circuit into two circuits. The Kansas State Bar Association also favors this bill in preference to the Thatcher bill (H. R. 13757).

So far as I can ascertain, the practicing lawyers generally in the eighth circuit favor the Newton bill and feel that it is the best and most workable method that has been suggested of dividing the present eighth circuit into two circuits.

It provides for the placing of seven States in the proposed eighth circuit and six States in the new proposed tenth circuit and provides for five circuit judges in the first group with the largest population and four judges in the second group. While this would increase the present number of six circuit judges to nine in the two circuits, the bad effect of dividing the circuit would be lessened and in addition the Newton bill would leave the litigation of the Mountain States and the heavy oil and gas producing States in one circuit.

Personally, I respectfully urge that the Newton bill be passed.

Yours very truly,

LUTHER BURNS.

TOPEKA, KANS., *January 3, 1929.*

Hon. IRA G. HERSEY, M. C.,
House of Representatives, Washington, D. C.

DEAR SIR: Our firm favors the enactment into law the Newton bill, with reference to a change of the eighth Federal judicial circuit.

Yours truly,

CRANE, MESSICK & CRANE.
By A. E. CRANE.

SEDAN, KANS, *December 31, 1928.*

The Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: My attention has been called to the pendency before your committee of the two bills to divide the eighth Federal judiciary circuit, and from my knowledge of the facts, I have no hesitancy in urging that the one known as the Newton bill should be passed in preference to the Thatcher bill. I feel that the Newton bill provides for division of the circuit on a basis which would group States more similar from the standpoint of procedure and natural economic conditions than the other and would also equip both circuits with judges sufficient at least to meet the needs of the present. It would seem apparent, offhand, that a division of the circuit for the purpose of expediting business would be an absurdity unless provision was made for the necessary additional judges to handle the work in the circuit, which, I understand, is not provided for in the Thatcher bill.

I have no doubt that your committee will seriously consider the situation from all angles and that having done so will determine that the Newton bill is the proper one to meet the problems which are intended to be remedied.

Respectfully submitted.

J. W. DALTON.

CLAY CENTER, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: Our attention has been called to two bills now pending in Congress for the division of the eighth Federal judicial circuit; one is known as the Newton bill (H. R. 13567), the other the Thatcher bill (H. R. 13757), and we have been informed as to the provisions of each.

After full consideration of these bills we are unqualifiedly in favor of the passage of the Newton bill and are consequently opposed to the Thatcher bill.

We very strongly indorse the Newton bill and desire to urge its passage.

Yours very truly,

DAVIS & BEALL.

GOODLAND, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

MY DEAR MR. HERSEY: I note that there is pending in Congress two bills for the division of the eighth Federal judicial circuit; one known as the Newton bill (H. R. 13567) and the other the Thatcher bill (H. R. 13757), and I write you as a member of the Kansas bar and from one of the States which will be affected by this legislation regarding these two bills.

In my opinion the Thatcher bill is harmful in that it makes no provision for additional judges and the circuit is not divided as to the amount of litigation or type of litigation. The Thatcher bill would divide the Mountain States, which have a peculiar and special class of litigation, being mining, irrigation, etc.

The Newton bill in my opinion is an equitable division of the amount of work and classifies the States so that the Mountain States litigation is in one circuit. It also provides for an increase in judges which will eliminate delays, which all judges, lawyers, and other parties interested desire.

The writer has served as a member of the judiciary committee in the house of representatives in our State legislature for two terms and knows that a vast amount of the legislation which is presented should never be recommended by the committee.

I sincerely trust the Judiciary Committee of the House will recommend the Newton bill for passage, and that the report of your committee on the Thatcher bill be that it be not passed.

Sincerely yours,

ELMER E. EUWER.

TOPEKA, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: This is to inform you that I am in favor of the Newton bill (H. R. 13567), relating to the division of the eighth Federal judicial circuit.

The committee of the American Bar Association on the division of the eighth Federal judicial circuit has unanimously approved the Newton bill; all of the circuit judges and nearly all, if not all, the district judges favor said bill.

This bill has been approved by the Kansas State Bar Association and the American Bar Association.

I trust that you can see your way clear to support this bill and that your committee will speedily report the same to the House of Representatives.

Yours sincerely,

LEONARD S. FERRY.

WESTMORELAND, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: As members of the bar and as individuals who desire to see the laws of this country executed as rapidly as may be done with safety, we are writing you requesting and urging that you do all you can to secure the passage of the Newton bill (H. R. 13567), as we believe that this will materially assist in the disposition of the work before the circuit court.

Trusting and believing that you will give your best efforts for the advancement of all things helpful to the judiciary department, we are,

Very truly yours,

BROOKENS, FRANCIS & HART,
By E. S. FRANCIS.

ST. JOHN, KANS., *January 10, 1929.*

Congressman IRA G. HERSEY,
Washington, D. C.

DEAR SIR: I am writing you in the interest of what is known as the Newton bill, now pending before Congress, to divide the eighth judicial circuit. I hope the Judiciary Committee, of which you are a member, will report this bill favorably and that it will pass Congress. I believe it is a much more desirable bill than the Thatcher bill.

Very truly,

ROBERT GARVIN.

SYRACUSE, KANS., *January 3, 1929.*

Hon. IRA G. HERSEY, M. C.,
Washington, D. C.

DEAR SIR: My attention has been called to the fact that there are two bills now pending in Congress for the division of the eighth Federal judicial circuit. One is known as the Newton bill, H. R. 13567, and the other the Thatcher bill, H. R. 13757.

I desire to state that I am in favor of the Newton bill, 13567, the same being approved by the Kansas State Bar Association and the American Bar Association and a large portion of the practicing lawyers of the circuit. I have

carefully read the merits relating to the Newton bill, and the objections to the Thatcher bill, which I think would be harmful to this circuit.

Trusting that you may see your way clear to urge the passage of the Newton bill,

Yours truly,

GEORGE GETTY,
Attorney and Counselor-at-Law.

LAWRENCE, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY, M. C.,
Washington, D. C.

DEAR MR. HERSEY: My attention has been called to two bills now pending in Congress for division of the eighth Federal judicial district. One is known as the Newton bill, H. R. 13567; the other as the Thatcher bill, H. R. 13757.

While I do not have before me a complete copy of these bills, yet from press reports and information obtained from some of the Federal judges, I am convinced that the Newton bill, H. R. 13567, if enacted, would more adequately cure the situation than would the Thatcher bill, for two or three reasons.

1. The Newton bill would be more satisfactory from the standpoint of territorial division.

2. From similarity of character of litigation, especially since it would include in the tenth circu't most of the oil, mining, and irrigation litigation, which is now included in the eighth circuit.

3. It provides for a more equal division of number of cases based on past experiences.

4. It provides for an increase in the number of judges, and to my way of thinking, there is no good purpose in dividing the eighth circuit, considering the large territory embraced in it and the number of cases pending, unless there be an increase of judges provided for.

Knowing that you and your committee will give this matter careful consideration, I remain,

Very sincerely,

M. A. GORRILL, *Attorney.*

ELDORADO, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee of the House of Representatives,
Washington, D. C.

DEAR SIR: I am writing you pertaining to the proposed legislation dividing the eighth Federal judicial circuit involved in what is known as the Newton bill(H. R. 13567), and the Thatcher bill (H. R. 13757).

Being located in the eighth circuit as it is now constituted, I am naturally concerned with reference to the proposed division of that circuit.

From the investigation of the proposed bills which I have been able to make from such consideration as I have been able to give the matter, I am thoroughly convinced that as between the two bills, that the Newton bill should pass, as I believe the division and the provisions of the Newton bill better meet the needs of the litigants, the lawyers, and the judges than the Thatcher bill, and I trust that the Newton bill will receive favorable consideration at the hands of the commi tee and the Congress.

Very truly,

K. M. GEDDES, *Attorney.*

WICHITA, KANS., *January 9, 1929.*

Hon. IRA G. HERSEY,
Washington, D. C.

DEAR SIR: We want to write you in indorsement of the Newton bill (H. R. 13567), for the division of the eighth Federal judicial circuit. As you know, probably, all of the judges of the circuit, both circuit and district, favor the Newton bill as against the Thatcher bill. The former has been approved by the American Bar Association and also by our Kansas State Bar Association, and we believe, without exception, by the practicing lawyers of the circuit who have expressed any opinion on the subject.

One of the very important points in favor of the Newton bill is that the number of judges for the two circuits has been increased. We believe that without an increase in the number of judges it would be better not to divide the circuit at all, for, with but three circuit judges to each circuit, it would necessitate the use of district judges in appeal cases when they really haven't time to spare from their duties as district judges.

Another important point in favor of the Newton bill is the proposed division of the States composing the circuit. The two circuits ought to each have about the same amount of business and then the States should be so divided as to put all the mountain States in one circuit and the agricultural States in the other as far as may be.

We are very much in favor of the Newton bill and hope that your committee will so recommend.

Yours very truly,

CAMPBELL, GLENN & CAMPBELL,
By W. M. GLENN.

PLEASANTON, KANS., *January 3, 1920.*

Hon. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

MY DEAR SIR: In regard to the Newton bill (H. R. 13567) and the Thatcher bill (H. R. 13757):

I believe that the grouping of the States and provision for judges upon a division of the eighth circuit as provided in the Newton bill is a better arrangement than that provided in the Thatcher bill.

I earnestly recommend the passage of the Newton bill.

Very truly yours,

JOHN A. HALL, *Lawyer.*

MEDICINE LODGE, KANS., *January 4, 1920.*

Hon. IRA G. HERSEY,
House Office Building,
Washington, D. C.

DEAR SIR: There is pending before the Judiciary Committee of the House of Representatives, among others, two bills, one known as the Newton bill (H. R. 13567); the other the Thatcher bill (H. R. 13757).

These bills are for the division of the eighth Federal judicial circuit. I am quite familiar with the work and the class of litigation now pending in this circuit. I have been in the active practice for a number of years, both in Kansas and in Oklahoma.

In my judgment the Thatcher bill will not meet the requirements of these States. Those States having the same class of litigation, in my judgment, should be retained in the same circuit, so that we may have, as near as possible, a universal ruling in various questions coming up in this particular class of litigation. The Thatcher bill will not give us sufficient judges to properly take care of the litigation in what would be under that bill the tenth circuit.

I sincerely trust that your committee will recommend for passage the Newton bill, as requested by the American Bar Association.

Thanking you kindly, I am,

Very truly yours,

ADRIAN S. HOUCK.

WELLINGTON, KANS., *January 2, 1920.*

Hon. IRA G. HERSEY,
Washington, D. C.

DEAR SIR: The lawyers of Kansas are very deeply interested in the bill for the division of this judicial district. They look upon the Newton bill (H. R. 13567) as being a fair bill and one which would do justice to the situation in this circuit.

The Thatcher bill is entirely unacceptable to them. They can not see the reason or logic for passing the Thatcher bill. It seems to be urged for purely local reasons. The character of the litigation, the amount of business trans-

acted, and every other public consideration would seem to support the Newton plan.

I sincerely hope the committee will find it proper to urge the passage of the Newton bill.

Yours very truly,

ED. T. HACKNEY, *Attorney at Law.*

FORT SCOTT, KANS., *January 2, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I am writing to you to urge upon you the merits of what is known as the Newton bill, H. R. 13567, and to express the general disapproval, in the territory affected, of the Thatcher bill, H. R. 13757.

The division of the work and of the territory of the present eighth circuit as it will be accomplished by the Newton bill is along logical lines and will result in general satisfaction to the bar and expedition of the work.

The Newton bill has received consideration at the American Bar Association and Kansas State Bar Association and has to my certain knowledge in my attendance at the meetings of both these associations received thorough consideration and hearty approval.

I do trust that in the consideration to be given by your committee the Newton bill may be preferred and the Thatcher bill disapproved.

Very respectfully,

DOUGLAS HUDSON, *Attorney at Law.*

ABILENE, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: The lawyers of Kansas are keenly interested in two bills now pending in Congress for the division of the eighth Federal judicial circuit; one is the Newton bill, H. R. 13577; and the other is the Thatcher bill, H. R. 13757.

We feel that the Thatcher bill would be harmful to the circuit because it is unfair in dividing the work of the circuit, and because of its provision for the division of the Mountain States.

The Newton bill has been approved by a very large portion of the practicing lawyers of the circuit, and we trust that it will receive the support of your committee.

Very truly yours,

ARTHUR HURD.

YATES CENTER, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I am writing you in reference to the bills now pending in Congress for the division of the eighth Federal judicial circuit.

After investigation of the bills pending, and being interested as a member of the bar of the State of Kansas, I am of the opinion that the Newton bill, H. R. 13567, would be more satisfactory to the people of Kansas than any other bill now pending.

It seems to me that the other bill would make too hard service on the judges. The judges of our courts are now overworked and any legislation should tend to lessen this work rather than extend it, for it is a well-known fact that judges generally are underpaid and overworked, which is very detrimental to the judiciary of the Nation.

Respectfully,

W. E. HOGUELAND.

OTTAWA, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR JUDGE: My attention has been called to two bills pending in Congress relating to the division of the eighth Federal judicial circuit, one known as the Newton bill and the other as the Thatcher bill.

The Newton bill has been approved by the Kansas State Bar Association, and I think that it provides for a more satisfactory solution of the problem than the Thatcher bill.

Yours very truly,

WILBUR S. JENKS.

CHANUTE, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I want to urge for your consideration the Newton bill, H. R. 13507.

I believe a division of the eighth Federal judicial circuit is necessary, and I think the provisions of the Newton bill take better care of the work of the circuit than any other bill that I know of.

Very truly yours,

JOHN J. JONES, *Attorney at Law.*

CLAY CENTER, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

In re division of the eighth Federal judicial circuit.

DEAR SIR: I am writing you concerning the Newton bill and the Thatcher bill. I am well satisfied that the Thatcher bill should be defeated and the Newton bill should be passed. The Thatcher bill would make a very bad division by reason of placing a large proportion of litigation in one of the divisions, and also by reason of dividing a certain quality of litigation, mining, etc.

Circuit Judge Kimbrough Stone, in a letter some time ago to Hon. A. C. Paul, chairman of the American Bar Committee, covered the ground thoroughly and truthfully. I assume your committee has copy of that letter.

Lawyers here in this part of Kansas who practice in the Federal court favor the Newton bill over the Thatcher bill.

I hope that your investigation will constrain you to the support of the Newton bill.

Yours truly,

C. VINCENT JONES, *Lawyer.*

BELOIT, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: My attention has been called to two bills pending before Congress with reference to the division of the eighth Federal judicial circuit, one being known as the Newton bill and the other the Thatcher bill.

There is no question but there should be a division of the eighth circuit. However, the Thatcher bill would, in my judgment, be very prejudicial. I have both bills before me, and it seems to me that the Newton bill would be very helpful. The Kansas State Bar Association has approved the Newton bill, as has also the American Bar Association. As far as I am able to determine, practically all of the practicing lawyers of the circuit prefer the Newton bill.

I am therefore writing to urge that the committee give favorable consideration to the Newton bill.

Very truly yours,

C. L. KAGEY, *Lawyer.*

COFFEYVILLE, KANS., *January 1, 1929.*

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

Re Newton bill, H. R. 13567.

DEAR MR. HERSEY: I write to urge the passage of the above bill now before your committee. An examination of the contents of this bill compared with the Thatcher bill convinces me that the Newton bill should be passed and is preferable. I trust that the Newton bill will receive a favorable report and be passed.

Thanking you, I am

Yours very truly,

DALLAS W. KNAPP,
Attorney-at-Law.

LIBERAL, KANS., *December 31, 1928.*

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.:

In re Newton bill, H. R. 13567; Thatcher bill, H. R. 13757.

DEAR SIR: I take this liberty of addressing you relative to the above named bills, and stating to you that my associates in the legal profession, as far as I am able to learn, as well as myself, are greatly interested in and favor the Newton bill, and we hope that you will use your influence in the passage of that bill in preference to the Thatcher bill, as we feel that it is far more beneficial to the legal profession, the litigants and the courts of the territory affected by these two bills.

I sincerely trust that the Newton bill will receive your careful and favorable consideration and support.

Yours very truly,

G. L. LIGHT,
Judge Thirty-ninth Judicial District.

BELOIT, KANS., *January 2, 1929.*

HON. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: There are two bills now pending in Congress for the division of the eighth Federal judicial circuit; one is known as the Newton bill, H. R. 13567; the other, the Thatcher bill, H. R. 13757.

I desire to earnestly urge the passage of the Newton bill. I have read both of the bills and have discussed each of them with lawyers who had read and were familiar with each of the bills. The consensus of opinion as expressed by a majority of these lawyers with whom I have talked favors the passage of the Newton bill.

Trusting that you will give the matter your careful consideration, I am,

Very sincerely,

FRANK A. LUTZ,
Attorney and Counsellor at Law.

LAWRENCE, KANS., *December 31, 1928.*

HON. IRA G. HERSEY, M. C.,
Washington, D. C.

DEAR SIR: At the request of Mr. Thomas F. Doran, of Topeka, Kans., I am writing you in regard to the bills now pending in Congress for a division of the eighth Federal judicial circuit. From all I can learn from conversations among lawyers of this vicinity, I am satisfied that the bill known as the Newton bill, H. R. 13567, will be the most acceptable to them.

Yours very truly,

HUGH MEANS,
Judge of the Fourth Judicial District.

LINCOLN, KANS., *January 2, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

MY DEAR SIR: As a lawyer engaged in the active practice in Kansas and adjoining States, I desire to express to you my approval of the Newton bill relative to division of eighth Federal judicial circuit, and herewith respectively urge the passage of the Newton bill.

Very truly yours.

JOHN J. MCCURDY, *Attorney at Law.*

LINCOLN, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Washington, D. C.

MY DEAR SIR: There is now pending in Congress two bills for a division of the eighth Federal judicial circuit. One is the Newton bill (H. R. 13567).

From all that I can learn from the lawyers over Kansas, this Newton bill is the most satisfactory and provides for a better division of the territory than the other bill. So would be pleased to have you support and urge the passage of the Newton bill.

It seems to provide for a division that will enable the judges to keep the business nearer up to date.

Yours respectfully,

E. A. MCFARLAND.

STOCKTON, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I am writing you in the interest of the Newton bill (H. R. 13567) now pending in Congress for the division of the eighth Federal judicial circuit. This bill has been thoroughly discussed and approved by the Kansas State Bar Association, and I have also discussed the same with some of the leading lawyers of Kansas, and all lawyers that I have talked with are very much in favor of this bill, and I therefore earnestly urge the passage of the Newton bill.

Yours very truly,

O. O. OSBORN.

PITTSBURG, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I have been informed that there is now pending before Congress two bills for division of the eighth Federal judicial circuit, one known as the Newton bill (H. R. 13567) and the other known as the Thatcher bill (H. R. 13757).

I am very much interested in any act of Congress dividing the territory now embraced within the eighth Federal judicial circuit because I practice in this circuit and have quite a number of cases before the circuit court. I do not know where the cases which have been tried before the circuit court originated or what effect a division of the circuit would have on the work to be perofrmed by the circuit and district judges. However, a study of this matter has been made by Circuit Judge Kimbrough Stone, and, according to the data presented by him the Newton bill would make the most equitable division of the circuit, and by reason of the number of circuit judges assigned to each of the circuits created by the division the work required to be performed by such judges could be performed more promptly and would be better for litigants and attorneys than the division proposed in the Thatcher bill. For these reasons, I respectfully urge that you support the Newton bill.

Very truly yours,

C. O. PINGRY.

TOPEKA, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR MR. HERSEY: There are two bills pending in Congress for the division of the eighth Federal circuit, one known as the Newton bill (H. R. 13567), the other as the Thatcher bill (H. R. 13757).

All of the circuit judges and practically all of the district judges approve the Newton bill. The Newton bill has been approved by the American Bar Association, also by the Kansas State Bar Association. The Kansas lawyers as a unit approve the Newton bill. The Shawnee County bar, of which I am president, without dissent approve the Newton bill.

The reasons why the Newton bill should be passed are set out by Circuit Judge Stone in a letter to Hon. A. C. Paul, chairman of the American Bar committee on division of the circuit. I will not bother quoting you Judge Stone's letter as no doubt you have a copy of it in your possession.

To my mind, there is no reason why the Thatcher bill should be passed, but every reason why the Newton bill should be passed.

Very truly yours,

D. E. PALMER, *General Attorney.*

KANSAS CITY, KANS., *January 2, 1929.*

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR MR. HERSEY: I want to add my name to those favoring the division of the eighth Federal judicial circuit and in that connection to voice my preference for the division as shown in the Newton bill (H. R. 13567).

I have had more or less business in the circuit court of appeals of this circuit for over 15 years and of necessity have become somewhat familiar with the congestion which the court has experienced and the difficulties attendant upon that condition. The need of the division is undoubtedly an imperative one, needing the immediate and serious attention of Congress. I hope something can be done concerning the matter very soon.

Respectfully yours,

FRED ROBERTSON.

ABILENE, KANS., *January 3, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

MY DEAR SIR: I have noted with some interest the provisions of the Newton bill (H. R. 13567) and the Thatcher bill (H. R. 13757), now pending before Congress. These bills, as I understand them, provide for the division of the present circuit court of the eighth judicial circuit.

After considering the terms of both of these bills it appears to me that the Newton bill is highly preferable. It is well known that special classes of litigation covering mining, irrigation, etc., are handled by the courts in Colorado, New Mexico, Utah, Wyoming, and to some extent in Kansas, and it appears to me that this would be an ideal group of States to be placed in the proposed new tenth circuit. The class of litigation from these States is entirely different from that which ordinarily arises in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, which are almost exclusively agricultural States.

While the presumption exists that the United States circuit judge knows all about everything, it seems to me that he in common with the rest of mankind becomes more proficient and efficient by devoting his attention to the law concerning a few particular questions than where he is compelled to spread out over the whole field of litigation.

I think it is only common sense to have these districts so arranged that these judges may be enabled to specialize to a certain extent at least. It appears to me that this Newton bill makes this provision. It also provides for five judges in the circuit covering the States that have been producing an average of 232

cases per annum and it provides for four judges in the circuit covering the States that have been producing 174 cases per annum. This provision seems to have embodied a considerable amount of good common sense also.

For these reasons I feel that the Newton bill should be adopted by Congress rather than that proposed by Mr. Thatcher and I feel sure that this would meet the approval of the bar generally in Kansas.

Very sincerely yours,

C. E. RUCH.

COUNCIL GROVE, KANS., *January 3, 1928.*

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR MR. HERSEY: I am writing you with reference to the Newton bill (H. R. 13507), relating to the division of the eighth Federal judicial circuit.

In the matter of the above bill I understand that it is more preferable and workable than another bill which has been introduced, known as the Thatcher bill (H. R. 13757). The Kansas State Bar Association and the American Bar Association have approved the Newton bill, and I believe a large portion of the practicing lawyers favor it.

I believe that the Newton bill will expedite work and provide for a proper division of the litigation that comes up in the respective States, which would compose the eighth and tenth circuits. This is for the purpose of adding my support for and urging the passage of the Newton bill, believing it to be the proper solution of the matter.

Very truly yours,

HARRY E. SNYDER, *Attorney.*

LAWRENCE, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY, M. C.
Washington, D. C.

MY DEAR SIR: There is now pending, as you know, in Congress two bills touching a division of the eighth Federal judicial circuit. One is known as the Newton bill (H. R. 13507) and the other the Thatcher bill (H. R. 13757).

It would seem from the standpoint of a practicing lawyer that the Newton bill is the better one, more workable and in every respect superior. I have before me a letter written by Circuit Judge Kimbrough Stone to Hon. A. C. Paul, chairman of the American bar committee on division of the circuit. Without going into detail, it would seem to me that Judge Stone's analysis of these two bills is very convincing, and the reasons he therein assigns for favoring the Newton bill is to my mind very convincing.

Very respectfully yours,

C. A. SMART.

INDEPENDENCE, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: The Kansas State Bar Association, with a membership of approximately 600 of the foremost lawyers of the State, have approved the Newton bill relative to a division of the eighth Federal circuit, and as president of the association and as one of the lawyers of Kansas I take great pleasure in indorsing the Newton bill, and urge that it be passed.

I feel sure that it will meet the approval of every lawyer in this State and of all litigants having business in the Federal courts. As I understand the situation, the Newton bill would be much more acceptable to us than the Thatcher bill, and while it creates three more judicial positions the great development in industry and mining in this circuit in the last decade have increased Federal business to such an extent that nine judges for the two divisions would not be at all excessive.

Very truly,

CHAS. D. SHUKERS.

STONE, MCCLURE, WEBB & JOHNSON,
Topeka, Kans., December 31, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I understand you have pending before you two bills respecting the creation of a tenth circuit court of appeals, being a division of the eighth circuit, one known as the Thatcher bill and the other the Newton bill.

I am thoroughly familiar with the present eighth circuit court, having practiced here for more than 30 years. I am sure that the Newton bill is the one which should be recommended for passage. It groups the States so that those whose interests are similar will be placed together. It also is more adapted to the lines of transportation. In my opinion it would be a great mistake to adopt the Thatcher bill. It would be better to leave the circuit as it is, although I strongly favor the division of the eighth circuit along the lines drawn in the Newton bill. The eighth circuit at present is too large, involves a long line of travel on the part of attorneys, and imposes too much work upon one circuit court. The division of the circuit has been carefully considered by the circuit judges, and has been definitely approved by the presiding Justice Kimbrough Stone, and his associates, Judges Lewis, Kenyon, Van Valkenburgh, Booth, and Cotteral. I know that it also has the approval of those district judges who from time to time have been called to service on the circuit court of appeals.

Yours very sincerely,

ROBERT STONE.

FREDONIA, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: As chairman of the local bar of Wilson County, Kans., and as an individual practician, I deem it my duty to write you urging the passage of the Newton bill, the same being H. R. 13507. Also to advise you that we are opposed to what is known as the Thatcher bill, the same being H. R. 13757, and request that the same be not passed.

If the eighth Federal judicial circuit district is to be divided the Newton bill will meet with our approval. The objections to the Thatcher bill are so obvious, in that it does not properly divide the district, either as to the important kinds of litigation pending in the various States or as to the number of cases to be tried in each circuit. The Newton bill, in our judgment, by the employment of additional judges, and its more equitable division of the circuits—that is, as to the amount of litigation and the kinds of litigation—would meet with our approval.

Trusting that you will use your influence for the passage of the Newton bill and against the Thatcher bill, I am,

Yours very truly,

J. L. STRYKER.

INDEPENDENCE, KANS., *January 1, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR MR. HERSEY: As a Kansas lawyer, practicing in the eighth Federal judicial circuit, I am, of course, very much interested in the bills pending in Congress for the division of this circuit, which is quite large and has a great volume of business. One of these bills is known as the Newton bill (H. R. 13507), and the other as the Thatcher bill (H. R. 13757).

I am very much in favor of the Newton bill. I believe this bill is fair in the division of the circuit and comes much more nearly equitably dividing the circuit, not only as to convenience in attending the circuit court in the fair division of the business that the present circuit must transact.

I will very greatly appreciate anything you may do in behalf of the Newton bill.

Yours very truly,

CHESTER STEVENS.

ANTHONY, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I have been studying, to some extent, the proposed Thatcher bill (H. R. 13757) and the proposed Newton bill (H. R. 13567) for a division of the eighth circuit, and having been a practitioner for some 40 years in that circuit, I am very much interested in the bill that seems to be the most advantageous to all concerned, which seems to be the Newton bill, owing to the fact that the territory is grouped better and more equitably according to the amount of business and the providing for judges to properly care for the same.

Permit me to urge, in my feeble way, the passage of the Newton bill, which seems to meet with the approval of a number of the leading members of the bar in Kansas.

Yours truly,

E. C. WILCOX.

CUNNINGHAM, WALKER & LEACH,
Arkansas City, Kans., December 31, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: We are advised that there is now up for consideration before your body what is known as the Newton bill (H. R. 13567) and another one known as the Thatcher bill (H. R. 13757).

Please be advised that the lawyers of this vicinity are very much interested in the Newton bill and wish to see the same enacted, and that we are in no wise satisfied with the provisions of the Thatcher bill.

The amount of work and the number of cases handled by the circuit court would seem to speak for itself in favor of the Newton bill, as it is the only fair division of the circuit, taking into consideration the amount of business handled for the past two or three years.

We therefore respectfully urge you to consider our wishes in this matter and do what you can toward having the Newton bill receive immediate favorable consideration.

Very respectfully,

CUNNINGHAM, WALKER & LEACH,
By D. ARTHUR WALKER.

MISSOURI-KANSAS-TEXAS RAILROAD CO.,
Parsons, Kans., January 7, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I understand that two bills are pending having for their purpose the division of the eighth Federal judicial circuit. These bills are the Newton bill (H. R. 13567) and the Thatcher bill (H. R. 13757).

After considering these bills it occurs to me that the Newton bill is by far the better bill and provides a much better method of taking care of the business of this circuit.

Very truly yours,

W. W. BROWN.

DORAN, KLINE, COLMERY & COSGROVE,
Topeka, Kans, January 7, 1929.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

MY DEAR MR. HERSEY: I have carefully examined the provisions of House bill 13567, known as the Newton bill, for the division of the eighth judicial circuit, and I have no hesitancy in saying that I am unqualifiedly in favor of the Newton bill and opposed to the Thatcher bill for reasons clearly stated

in letter of Judge Kimbrough Stone and also letter from Judge Booth, copies of which I presume are in your possession.

I earnestly urge the adoption of the Newton bill, but would like to see an amendment attached fixing a seat of hearing at Wichita, Kans. This amendment has been approved by the members of the Kansas State Bar Association and will be, as I understand it, generally satisfactory to the bar of this and adjacent States in the new tenth circuit, if the Newton bill is adopted.

Very truly yours,

THOMAS F. DOBAN.

We, the undersigned members of the Shawnee County, Kansas, Bar Association, approve the statements of the above letter and urge the passage of the Newton bill.

CLAYTON E. KLINE.
HARRY W. COLMERY.
M. F. COSGROVE.

HOLTON, KANS., *December 31, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives.
Washington, D. C.

DEAR MR. HERSEY: I am personally interested in the passage of the Newton bill, being H. R. 13507, and I am writing you this letter in order that the committee may have an expression of my views in this matter as a lawyer concerned, if the committee cares to use the expressions of the various lawyers concerned in determining which of the two bills is the better.

I have talked to a number of lawyers concerned, and it is the unanimous opinion that the Newton bill will insure the proper and prompt disposition of litigation arising in the proposed districts, and it is also the unanimous opinion that the litigation arising in the districts can not be properly or promptly disposed of under the Thatcher bill.

I beg permission to submit the above to the committee and trust this expression will be of some benefit to it in determining its ultimate action in this matter.

Yours very truly, FLOYD W. HOBBS.

LETTERS FROM MEMBERS OF THE MINNESOTA BAR

NORTHERN PACIFIC RAILWAY CO.,
St. Paul, Minn., December 17, 1928.

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: Having practiced law in the Federal courts of the eighth circuit for 50 years and being familiar with the volume and character of the business coming before those courts, I indorse unqualifiedly the bill before your committee to divide the eighth circuit into a new eighth and tenth. The present circuit is unwieldy in size and for a long time has had very much more business before its courts than any other circuit—indeed, more than the judges can well dispose of. Present conditions will get worse rather than better, because the population and business of the circuit is growing much more rapidly than the country's average.

Yours truly, C. W. BUNN.

DOHERTY, RUMBLE, BUNN & BUTLER,
St. Paul, January 2, 1929.

Hon. WALTER A. NEWTON,
House of Representatives,
Washington, D. C.

DEAR SIR: I have before me a map prepared to accompany the Newton bill (H. R. 13507) for the division of the eighth Federal circuit into two circuits to be known as the eighth and tenth. The proposal to divide the eighth circuit in some way or another has been active for a number of years. The fundamental cause is of course the extreme size of the circuit. From this size results necessarily the large number of circuit judges, larger, I understand, than in any other circuit at the present time, and from that fact, combined

with the fact that three judges at the time hold the court, arises a serious danger of inconsistency of decision. If judges A, B, and C hold court this week, and judges D, E, and F hold it next week, it is obvious that there is a danger that their mental backgrounds and attitudes may differ, and their decisions, while of equal authority and proceeding from the same court, may not attain the complete harmony which should characterize the decisions of any important appellate court.

I can not say that this danger has resulted in any actual inconsistency of decisions of the eighth circuit. The judges of that circuit are now and for many years have been among the best in the country. There is, however, the danger which I mention and which I believe the judges themselves recognize.

It is obvious also that a stretch of territory extending from Duluth to the southern boundary of New Mexico is entirely too large for convenient administration. Lawyers from New Mexico and Oklahoma frequently must attend court at St. Paul to argue their cases, and while I personally have never had to go to Denver, many Minnesota lawyers have found that necessary on cases which arose in Minnesota. The convenience and advisability of some division of the Circuit is, I think, admitted by everyone.

The question which has hitherto prevented action has been what division should be made. About a year ago I happened to be a member of a committee of the Ramsey County Bar Association on this subject, and we gave it a good deal of study. A number of divisions were then proposed. The committee is now out of office and I do not speak for the association, but on the basis of proposals then made and the study which we then gave to them I am able to say that the proposal represented by the Newton bill is entirely satisfactory, and I am therefore very glad to support it. I have no doubt that the passage and approval of this bill would result in an improvement, particularly in the matter of speed in the disposition of cases and the work of the principal Federal appellate court in this part of the country.

Very truly yours,

CHARLES BUNN.

BROWN, SOMSEN & SAWYER,
Winona, Minn., January 2, 1920.

Hon. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: We very much favor the bill you introduced in the last Congress (H. R. 18507) for division of the eighth circuit. The reasons for the change have been stated over and over again. We very much hope this bill can pass.

Yours very truly,

BROWN, SOMSEN & SAWYER.

COBB, HOKE, BENSON, KRAUSE & FAEGRE,
Minneapolis, January 5, 1920.

Hon. WALTER H. NEWTON,
Washington, D. C.

MY DEAR MR. NEWTON: The plan to relieve conditions in the eighth circuit embodied in the above bill offers the most feasible remedy which has been proposed.

I sincerely hope that this bill can be passed at the present session of Congress, so that the much-needed relief can be realized as soon as possible.

Very truly yours,

JOHN C. BENSON.

ST. CLOUD, MINN., *January 5, 1920.*

Hon. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: Permit me to state that I most cordially indorse the provisions of your bill (H. R. 18507) providing for the division of the eighth circuit into the eight and tenth circuits, for it is very clear that the volume of business requires the enactment of this bill into law.

Yours very truly,

R. B. BROWER.

GUESMER, CARSON, BROWN & LOUGHIN,
Minneapolis, Minn., January 8, 1930.

Hon. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: I trust your bill will be put through at the earliest possible time. The eighth circuit has always embraced too much territory which has entailed a great waste of time and unnecessary expense to litigants. The changes your bill proposes will be a big improvement.

Of course we must have judges enough to do the work. As it is at present, the judges have to choose between working themselves to death or slighting their work or delaying it. We have to bear in mind that the country has developed rapidly, and litigation has multiplied. State courts have become overloaded so that cases receive inadequate attention. In view of the importance of the cases that go before the Federal courts, it is imperative that we always have enough judges to give each case the most thorough and careful consideration. One way to do this is to take the overload off of existing judges and transfer it to other judges, apointed for that purpose. Nothing creates so much dissatisfaction on the part of a citizen as to get inadequate consideration of his case in court. Conversely, the Government is always likely to be safe so long as it is the experience of citizens that they get careful and thorough consideration at the hands of the courts whenever they have occasion to go there, and can bring their controversies before the courts without needless expense.

With best wishes for your continued success, I am,

Yours truly,

ARNOLD L. GUESMER.

JUNELL, DORSEY, OAKLEY & DRISCOLL,
Minneapolis, December 11, 1928.

Hon. WALTER NEWTON,
House of Representatives, Washington, D. C.

DEAR WALTER: I have observed that there are a number of bills which have a common object of seeking to restrict the jurisdiction and function of the Federal courts, and naturally assume that you are opposing all of them. If there is anything that we can do at this end effectively, please let me know.

Very truly yours,

JOHN JUNELL.

NORTHERN PACIFIC RAILWAY CO.,
LAW DEPARTMENT,
St. Paul, Minn., December 18, 1928.

Hon. WALTER H. NEWTON,
House of Representatives, Washington, D. C.

DEAR MR. NEWTON: We are very much interested in the bill which you introduced in Congress for the purpose of dividing the eighth judicial circuit. Mr. Bunn suggested that you would be glad to know how attorneys generally feel about this plan, and I can advise you that from the experience of attorneys in this department we believe that, if adopted, the bill will afford much needed relief to the judges of this circuit.

With best wishes for the new year, I am

Yours truly,

D. F. LYONS.

MILLER, KELLY, SHUTTLEWORTH & MCMANUS,
Des Moines, January 2, 1930.

DIVISION OF EIGHTH JUDICIAL CIRCUIT

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: Since the introduction of the Thatcher bill and the Newton bill in the House, a letter in reference to these bills has been mailed to each lawyer residing in Iowa, who is a member of the bar of the United States Circuit Court of Appeals of the Eighth Circuit. An exceptionally large number of

these lawyers replied. I have read the replies. Each one who expresses a preference for one or the other of the two bills indorses the Newton bill. No one indorses the Thatcher bill.

If the eighth circuit is to be divided, the lawyers of Iowa, who are members of the bar of the eighth circuit, desire the passage of the Newton bill.

I trust you will give consideration to their wishes.

Very truly yours,

JESSE A. MILLER.

O'BRIEN, HORN & STRINGER,
ATTORNEYS AT LAW,
St. Paul, December 17, 1928.

Hon. WALTER NEWTON,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: May I express my pleasure at the fact that you have introduced in Congress a bill dividing the present eighth circuit of the United States.

Like yourself, I have realized not only that the present circuit was too large, but that because of its size there came within its jurisdiction cases of such entirely different characteristics that the work of the judges was rendered peculiarly difficult.

In the division proposed in your bill the States are so allocated between the eighth and tenth districts that the character of the litigation in each will be along quite similar lines, and I congratulate you both on the attempt to divide the district and the form of the division suggested in your bill.

Yours truly,

THOMAS D. O'BRIEN.

JAMISON, STINCHFIELD & MACKALL,
Minneapolis, December 17, 1928.

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR MR. HERSEY: There is pending before your committee the Newton bill, providing for the division of the eighth circuit.

As a member of the committee of the American Bar Association having this matter in mind, I have become familiar with the sentiment of this community. I think it is almost wholly favorable to the passage of the Newton bill. I hope it may be done and quickly.

Some additional pleasure comes to me in writing you by reason of my place of origin—Danforth, Me. I have seldom known Maine people to be unsympathetic—when one or both of them is not living in Maine.

Very sincerely yours.

F. H. STINCHFIELD.

STRYKER & STRYKER,
St. Paul, Minn., December 21, 1928.

Hon. WALTER H. NEWTON,
Member of Congress, Washington, D. C.

DEAR MR. NEWTON: Permit me to say a word in favor of the division of the eighth circuit, as proposed by the American Bar Association and indorsed by most of the circuit and district judges of this circuit.

For more than 30 years my practice has been almost exclusively in the Federal courts, and I know that the judges of the court of appeals of this circuit consider more cases than they ought to be required to decide, and are forced to call upon district judges for assistance with the result that work in the trial courts is delayed. The geographical area of the circuit is such that attendance upon the court involves excessive travel for attorneys and useless expenses for litigants.

After considerable study of possible apportionment of the States in the circuit, I believe that the division indorsed by the American Bar Association is as satisfactory to the bench and bar as any that can be made.

Yours very truly,

JOHN E. STRYKER.

SULLIVAN, NEUMEIER & NOLAN,
Stillwater, Minn., January 3, 1929.

Hon. WALTER A. NEWTON,
House of Representatives, Washington, D. C.

DEAR SIR: My attention has been called to the fact that you have introduced H. R. 13507 to divide the eighth circuit into eighth and tenth circuits so that there will remain in the eighth circuit the States of Arkansas, Missouri, Iowa, Nebraska, North and South Dakota and Minnesota.

The lawyers of Minnesota, according to my information, are practically unanimous in their approval of the plan of dividing and arranging the circuits as proposed in your bill and it gives me great pleasure to indorse the bill.

Yours very truly,

GEORGE H. SULLIVAN.

SANBORN, GRAVES & ANDRE,
ATTORNEYS AND COUNSELORS AT LAW,
St. Paul, Minn., January 4, 1929.

Hon. WALTER A. NEWTON,
House of Representatives, Washington, D. C.

DEAR SIR: We are very much interested in the Newton bill designed to divide the eighth circuit in the way proposed by it, and heartily indorse the same. We believe that the bill is expressive of the sentiment prevailing throughout the circuit, and has more general approval than any other bill which could be proposed. We sincerely urge that the same have early attention and be passed, if possible, at the present short session of Congress.

Yours very truly,

SANBORN, GRAVES & ANDRE.
By BRUCE W. SANBORN.

LETTERS FROM MEMBERS OF THE NEW MEXICO BAR

ROSWELL, N. MEX., *December 22, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives, Washington, D. C.

DEAR SIR: I am greatly interested in the passage of the Newton bill (H. R. 13507), which is now under consideration by a subcommittee of the Judiciary Committee of the House of Representatives, and of which subcommittee, I have been advised, you are chairman.

The bar in my section of the State of New Mexico very generally approve of this bill and would like very much to see it passed, especially as the need of it is felt very definitely in this section of the country.

Very respectfully,

REID, HERVEY, DOW & HILL.
By HIRAM M. DOW.

ALBUQUERQUE, N. MEX., *December 31, 1928.*

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: I am advised that you are chairman of the subcommittee considering the several proposed bills for dividing the eighth circuit.

The lawyers of this circuit are, I believe, practically unanimous in favor of a division and the only controversy seems to be as to how the division shall be made.

Under present conditions, district judges write a large proportion of the opinions of the circuit court and this is unsatisfactory to many of us.

The Newton bill (H. R. 13507) makes a division which, in my opinion, meets the situation from the standpoint of population, geographical alignment, and character of litigation common to the States involved much better than other bills pending, and I hope your committee will see fit to recommend its passage.

Very truly,

S. BURKHART.

ALBUQUERQUE, N. MEX., *December 15, 1928.*

Hon. IRA G. HERSEY, M. C.,
House Judiciary Committee, Washington, D. C.

DEAR SIR: The bar of this State is very much interested in the passage of the bill for the division of the present eighth judicial circuit, and I sincerely hope you will do what you can to bring that about.

The eighth circuit is very large as to territory, and while the business of the circuit at the time of its creation was not so large it has now grown to a point where the court constantly finds it necessary to call in district judges to assist in the work of the circuit court of appeals, and, even at that, the circuit judges, it seems to me, have a bigger job on their hands than they should, in all fairness, be called upon to do. The creation of a new tenth circuit, as provided in the bill, would, in addition, make work in the court much more convenient to the bar of this State.

My present understanding is that you favor the passage of the bill, and I hope that, if there is anything I can do to assist in its passage, you will command me fully.

Sincerely yours,

C. M. BOTTS.

SILVER CITY, N. MEX., *December 10, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: I understand that you are chairman of the subcommittee which has in charge the bill for the division of the eighth circuit known as the Newton bill (H. R. 13507).

As a member of the bar of New Mexico I desire to express to you my entire approval of this measure and my desire that it be enacted into law as speedily as possible. It is highly desirable that matters before the circuit court of appeals should be heard by circuit judges. The pressure of work in the present eighth circuit has, for some time, made this impossible. If this bill should become law this pressure would be greatly relieved. Geographically the proposed division is very satisfactory. I believe that the feeling of the great majority of the members of the New Mexico bar is in accordance with the views I am expressing, and I request that you do everything possible to forward the passage of the measure at as early date as possible.

Yours respectfully,

PERCY WILSON.

CLAYTON, N. MEX., *December 17, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: As bar commissioner of the eighth judicial district of the State of New Mexico and speaking for the lawyers of that district, we would respectfully urge the favorable consideration of the Judiciary Committee upon the Newton bill (H. R. 13507), having for its purpose the division of the eighth circuit.

The bar of New Mexico would, I believe, unanimously favor this measure because of its very manifest advantage in the matter of facilitating the work of the circuit court of appeals upon cases emanating from New Mexico.

The bar of this State have long felt that the eighth circuit as now constituted was too large and that its volume of work was too great to be handled with dispatch and efficiency.

We would, therefore, respectfully urge the favorable report of your committee upon this measure and your continued support of the measure before Congress.

I am, respectfully yours,

HUGH B. WOODWARD,
Bar Commissioner, Eighth Judicial District.

SANTA FE, N. MEX., *December 17, 1928.*

Hon. IRA G. HERSEY,
House of Representatives,
Washington, D. C.

DEAR SIR: It is my understanding that you are chairman of the subcommittee in charge of the matter of dividing the eighth circuit. It is also my understanding that there are a number of bills under consideration by your committee having to do with this division.

After a somewhat careful consideration of the matter, it strikes me that the Newton bill (H. R. 13507), which leaves the States of Minnesota, North and South Dakota, Nebraska, Iowa, and Arkansas in the old eighth circuit, and puts Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma in the proposed tenth circuit, is the most practical bill when considered from all angles.

This bill will tend to make two reasonably compact and contiguous circuits and make it possible for lawyers in the new tenth circuit to reach the headquarters of the circuit without the delays incident to the present situation.

I therefore desire to indorse the so-called Newton bill.

Very truly yours,

E. R. WRIGHT.

ALBUQUERQUE, N. MEX., *December 15, 1928.*

Mr. IRA G. HERSEY,
Chairman House Judiciary Committee,
Washington, D. C.

DEAR SIR: I understand that there is pending before the House Judiciary Committee H. R. 13507, known as the Newton bill and designed to divide the eighth circuit by creating a tenth circuit, to be made up of the States of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico.

I have practiced in the New Mexico court for over 16 years and during such time at least half of my work has been in Federal court and the United States Circuit Court of Appeals. At least in so far as attorneys and litigants in New Mexico are concerned, the bill pending is very meritorious. Under the present organization of the eighth circuit the handling of appeal matters in cases arising in New Mexico is both inconvenient and expensive. The only session of the court which is in any measure convenient to New Mexico attorneys is that held once a year at Denver. The other sessions held at St. Paul and St. Louis are of course at such a great distance as to involve a good deal of extra time and expense.

So long as the business of the eighth circuit was such as not to warrant a division we have tried to be content and patient here in New Mexico with the situation as it has existed. However, now that the business of the eighth circuit has reached the volume which it has, we feel that it is not only necessary and proper that the circuit be divided on account of the volume of business, but also that such division be along such geographical lines as will best serve the interests not only of lawyers, but of more importance still, the litigants who have the extra cost and expense to pay.

By means of this letter I desire to voice my approval of this present bill and to urge its passage.

Yours truly,

GEORGE S. DOWNER.

ALBUQUERQUE, N. MEX., *December 18, 1928.*

Hon. IRA G. HERSEY,
House of Representatives,
Washington, D. C.

MY DEAR SIR: I am advised that special committee of the House Judiciary Committee, of which you are the chairman, has under consideration the Newton bill (H. R. 13507), providing for the division of the eighth judicial circuit and creating a new circuit consisting of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

The New Mexico State Bar Association discussed this bill at its recent summer session, and passed unanimously a resolution indorsing it, and I am

advised that Mr. J. O. Seth, of Santa Fe, sent you a certified copy of the resolution.

As a member of the State Board of Bar Commissioners of New Mexico, I have taken some interest in this matter, and know the attitude of all members of the board and know that they are quite favorable to this measure. Of course, your committee will have before it all the facts we have before us, and I presume I could not be of any assistance by going into details as to the advantages of this bill. The State Board of Bar Commissioners felt satisfied that the immense amount of business in the circuit justified the division of the circuit, to say nothing of the inconvenience now being suffered by residents of New Mexico, Colorado, Wyoming, and Utah in presenting cases before the court at its sessions at St. Paul and St. Louis.

I certainly trust that your committee will see its way clear to make a favorable report on this bill to the House Judiciary Committee.

Yours truly,

J. M. HERVEY.

ALBUQUERQUE, N. MEX., *December 17, 1928.*

Hon. IRA G. HERSEY,
Chairman House Judiciary Committee,
Washington, D. C.

DEAR MR. HERSEY: Pending before the House Judiciary Committee at this time is H. R. 13567, known as the Newton bill, which has for its purpose a division of the eighth circuit court and the creation of a new circuit to include New Mexico, Colorado, Wyoming, Utah, Kansas, and Oklahoma, to be named the tenth circuit.

This bill deserves careful consideration, and in my opinion, as an attorney practicing in the Federal court in New Mexico for many years, should become a law at the earliest possible time. The matter of expediting litigation is becoming of more and more importance. Congested court dockets and the law's delay are responsible in many instances at present for business interests surrendering valuable legal rights, or accepting unsatisfactory compromises, rather than participate in long-drawn-out litigation. In my opinion, as an attorney, there is every reason to urge that this bill become law.

The measure now before your honorable committee will be of the greatest possible assistance to the people of the great southwestern area. These States are naturally in a position to be grouped into an independent circuit. Contiguous as to territory, the litigation will be to a certain extent kindred, because, in a general way most of the problems that will eventually be brought into a United States court will involve public lands, oil and gas problems, rights of Indians, and rights to ownership of the waters of public streams. It seems to me that your committee has before it an opportunity to report favorably on this measure and make it possible for the Southwest, a rapidly developing section of America, to build up and efficiently maintain a division of the circuit court of appeals of which the entire judiciary and bar will be proud; and I urgently request you, sir, to further, if you can consistently do so, the interests of this measure, so that it may be reported favorably out of your committee, and placed on its way to final passage in the very near future.

Yours very truly,

W. A. KELEHER.

PATTON & PATTON,
Clovis, N. Mex., December 17, 1928.

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: As a member of the bar of the eighth circuit I am writing you in the interest of the Newton bill (H. R. 13567), now under consideration by your subcommittee. I heartily favor the creation of the new tenth circuit as provided in the bill. In the first place, I could not conceive of a more favorable or fortunate geographical arrangement. The two seats of court would be easily accessible to all points in the new district. While under the present arrangement the court sits at St. Louis and Denver, a few years ago I had a motion which demanded immediate attention and was forced to go to St. Paul for oral

argument on my motion. Such trip necessarily involved considerable expense to my client and loss of time to me.

I would think that a great part of the work of this court is devoted to the interpretation and construction of the statutes of the States of the circuit. In this connection I call attention to the fact that there is a decided similarity in the statutes of these six States embraced in the new proposed circuit, and there is also a like similarity in the resources of these States as well as the character of commercial enterprises. To my mind, it would be an advantage to have a circuit in which there was not a great diversity of statutory laws, of resources and commercial enterprises.

My further information is to the effect that the volume of business in the eighth circuit has grown so that the judges of the circuit are unable to give attention to the case coming before the court and that it is necessary in the majority of cases to call in district judges to sit.

I sincerely trust that this bill as proposed will pass.

Respectfully,

HARRY L. PATTON.

ROBERTS & PRICE,
Santa Fe, N. Mex., December 18, 1928.

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: As a practicing attorney in the eighth circuit I believe that the Newton bill (H. R. 13501), which leaves the States of Minnesota, North and South Dakota, Nebraska, Iowa, Missouri, and Arkansas in the old eighth circuit and places Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma in the proposed tenth circuit, would prove the most satisfactory to the members of the bar of any of the various proposals before Congress.

The six States grouped in the proposed new tenth circuit all have irrigation problems, and the majority of them have mining problems, which are not common to the other States.

Undoubtedly there should be a division of the eighth circuit, because of the increased business and the long distance which the attorneys are required to travel in order to present their questions to the court. This group would place the court in reach of all the attorneys in the new circuit, would give us judges familiar with our problems, and the creation of the new circuit would expedite the work and obviate the necessity of calling in district judges so frequently.

I sincerely trust it will meet with the favorable consideration of your committee.

Very truly yours,

O. J. ROBERTS.

SIMMS & BOTTS,
Albuquerque, N. Mex., December 15, 1928.

Hon. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: As a member of the bar of the present eighth circuit of the United States and a practitioner therein, I desire to express my approval of the proposition of the proposed change to create the tenth circuit out of the States of Wyoming, Colorado, Utah, Kansas, Oklahoma, and New Mexico. I think it will be for the best interest of the litigants and all parties concerned.

Yours truly,

JOHN F. SIMMS.

SANTA FE, N. MEX., *December 17, 1928.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: It is understood that a subcommittee of the Judiciary Committee of the House of Representatives, of which you are chairman, has under consideration the various proposals for the division of the eighth circuit. I desire to take this opportunity of indorsing the bill introduced by Mr. Newton (H. R.

13507), which divides the eighth circuit by the creation of a new tenth circuit consisting of Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma.

As a member of the special committee of the American Bar Association appointed for the consideration of this matter I have given a great deal of study to it. There could scarcely be any question as to the necessity of a division of the eighth circuit. The very large territorial extent of the circuit and the great distances which must be traveled to the places where court is held, the large volume of business necessitating the continued calling in of district judges, would seem to make imperative a division of some kind. An examination of the reported cases decided by the eighth circuit court of appeals will show that fully one-third of the opinions of the court are written by district judges and that district judges sit in more than 75 per cent of the cases decided. The practice of having district judges sit is, with some notable exceptions, unsatisfactory to the bar. In addition, the large number of circuit judges and the designation of district judges for the work has undoubtedly a tendency to cause a lack of continuity in the decisions of the court.

There has been a great deal of discussion as to the manner in which the circuit should be divided, and it seems to me that the Newton bill presents the most satisfactory solution of this problem. When the volume of work arising in the various States is considered and the geographical situation, it would seem that the Newton bill makes as fair and satisfactory a division as may be made. There should also be noted in its favor the fact that it groups together in one circuit States which have a large volume of litigation of a similar nature; for instance, matters involving oil, mining, Indians, and public lands. It seems to me that the Newton bill furnishes the most satisfactory solution of the problem that could be devised.

Respectfully,

J. O. SETH.

ALBUQUERQUE, N. MEX., *December 15, 1928.*

Hon. IRA G. HERSEY,
House of Representatives, Washington, D. C.

DEAR SIR: It has been brought to my attention that you are the chairman of the subcommittee in charge of the matter of dividing the eight circuit. I also understand that there are a number of proposed bills under consideration by your committee having to do with this division.

I desire to take this opportunity of indorsing the measure known as the Newton bill (H. R. 13507), which leaves the States of Minnesota, North and South Dakota, Nebraska, Iowa, Minnesota, and Arkansas in the old eighth circuit, and puts Wyoming, Utah, Colorado, New Mexico, Kansas, and Oklahoma in the proposed tenth circuit.

Of course, there has been a lot of discussion among laywers in the eighth circuit as to the method of dividing the circuit, most of the attorneys and judges in the circuit realizing the necessity for an early division of the circuit because of its great size and the vast number of cases that come before the court for consideration which has resulted in a large percentage of the decisions being written by district judges, which has not been at all satisfactory to the lawyers in the circuit.

As I stated before, the main question has been how the circuit should be divided. I believe that the Newton bill is the most satisfactory one that has come to my attention, when it is considered from the standpoint of population, geographical alignment, and the character of litigation that is common to the States within the new proposed circuit.

Very truly yours,

F. W. VELLACOTT.

LETTERS FROM MEMBERS OF THE UTAH BAR

OGDEN, UTAH, *January 5, 1929.*

Hon. IRA G. HERSEY,
Judiciary Committee, House of Representatives,
Washington, D. C.

DEAR SIR: There is pending before your committee the Newton bill for a division of the present eighth circuit and which creates from former eighth circuit States a new circuit to be known as the tenth circuit.

I am assuming that it is agreed that there should be a division of the eighth circuit and that convincing reasons for the division will be presented to your committee.

The Newton bill is the best plan for the division of the circuit. It had careful consideration at a meeting at Seattle in July last of many lawyers from the eight circuit, and those lawyers unanimously approved the Newton bill.

The special committee of the American Bar Association, appointed to consider the matter—and of which I have the honor to be the Utah member—made its report to the general meeting of the American Bar Association held at Seattle, and that report, which carried with it the approval of the Newton bill, was unanimously approved by the association.

Furthermore, after careful consideration, all of the circuit judges of the eighth circuit, and all of the district judges, with two or three exceptions, have approved the Newton bill.

All the Utah lawyers with whom I have talked about the matter are strongly in favor of the Newton bill. All of the Utah lawyers with whom I have talked are opposed to any plan which would detach Utah from a group of States now in the eighth circuit and transfer it to the ninth circuit, which was a proposal made some time ago. I also understand that the lawyers of Arkansas are opposed to the suggestion made some time ago which would transfer Arkansas from the eighth circuit to the fifth circuit.

The Newton bill makes a splendid division of the States, and especially the so-called Mountain States. Those States have special classes of litigation, mining, irrigation, etc., involving important property rights. Already vital differences exist as to some of such law between the eighth and ninth circuits, and there should be no opportunity for a third divergence through further dividing such States.

Utah has been in the eighth circuit for 35 years, and a certain body of law has been built up, and every Utah lawyer, in my opinion, would say unhesitatingly that Utah should remain in a circuit comprising States formerly with it in the eighth circuit.

Trusting that the Newton bill will receive the favorable report of your committee and that it will be passed by Congress, I am,

Respectfully,

C. R. HOLLINGSWORTH,
Former President State Bar Association of Utah.

HOUSE OF REPRESENTATIVES,
Washington, D. C., January 13, 1930.

HON. IRA G. HERSEY,
House of Representatives, Washington, D. C.

MY DEAR COLLEAGUE: I am inclosing a letter from Mr. Charles R. Hollingsworth, formerly president of the Utah State Bar Association, with reference to Congressman Newton's bill which provides for a division of the eighth circuit by carving out from it certain States to form a new circuit.

I shall appreciate it very much if this letter is printed in your hearings. It contains my sentiments regarding this matter. I feel sure that practically all of the lawyers are in favor of the measure.

Very sincerely yours,

DON B. COLTON.

OGDEN, UTAH, *January 7, 1930.*

HON. DON B. COLTON,
House of Representatives, Washington, D. C.

DEAR MR. COLTON: The subcommittee of the House Judiciary Committee, of which Congressman Hersey is chairman, will hold a meeting January 11 to consider the Newton bill for the proposed division of the eighth circuit.

As you are aware, the eighth circuit now constitutes 13 States: Minnesota, Iowa, Missouri, Arkansas, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Wyoming, Colorado, New Mexico, Utah.

The eighth circuit is the largest of the nine circuits in population, in area, and in States (six States more than in any other circuit) and is, as I recall, the second in Federal cases, civil and criminal, commenced in the Federal courts of the 13 States.

For some years suggestions have been made to divide the eighth circuit. The business of the eighth circuit court of appeals is ever increasing, and with the present six judges it is necessary to call in district judges to such an extent that approximately one-third of the opinions are prepared by district judges. The matter was temporarily cared for a few years ago by increasing the circuit judges of the eighth circuit from four to six. This increase of judges has not afforded the necessary relief.

The matter has been discussed frequently by the lawyers residing in the eighth circuit when together at the annual meetings of the American Bar Association. At the meeting held in Buffalo in 1927 a meeting of eighth circuit lawyers was held and a committee was appointed to look into the matter, consisting of one lawyer from each of the 13 States. Mr. A. C. Paul, of Minneapolis, was made chairman and I was the member from Utah. Thereafter the executive committee of the American Bar Association created a special committee on the division of the eighth circuit. Mr. Paul continued as chairman of the committee, and I have remained as the Utah member.

The committee under Mr. Paul's direction considered the matter very carefully and unanimously decided to propose a division of the eighth circuit and to create a new circuit to be called the tenth circuit, and to consist of States now in the eighth circuit, the eighth circuit to consist of Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Missouri, and Arkansas; the tenth circuit to consist of the States of Colorado, Wyoming, Utah, Kansas, Oklahoma, and New Mexico.

Mr. Paul, under the direction of the committee, caused H. R. 15307 to be introduced by Congressman Newton of Minnesota, on May 5, 1928.

Attached hereto is a map which shows the proposed division of the eighth circuit and also a copy of the Newton bill.

At the meeting of the American Bar Association held at Seattle in July, 1928, there was a meeting of the lawyers of the eighth circuit, and the committee's report proposing the division suggested above and as carried out in the Newton bill was presented and unanimously adopted, with the slight amendment that terms of court in the tenth circuit be held in some city in the State of Kansas as well as at Denver and Oklahoma City, as provided in the bill.

Mr. Paul's committee presented its report to the Seattle meeting of the American Bar Association and the association unanimously approved the report and the proposed division of the eighth circuit.

Utah has been in the eighth circuit for over 35 years and a certain body of law has been built up and every Utah lawyer would say that Utah should remain in a circuit comprising States formerly with it in the eighth circuit.

Both the substantive and procedural law of each circuit differ in some respects from that of other circuits. A change that would interfere as little as possible with these matters would seem desirable. For instance, the law as to water rights is different in the ninth circuit (California and the coast States) from that of the eighth circuit. The Mississippi Valley and the territory to the west are rapidly developing and naturally the business of the Federal courts keeps pace with the development of the country. The tendency is more and more toward increased litigation in the Federal courts, at least in the eighth circuit. This is due in part because the acts of Congress which are productive of litigation in the Federal courts are increasing year by year.

It is proper to call your attention to a bill introduced by Congressman Thatcher, known as H. R. 13757, now pending, which divides the eighth circuit into two circuits, the new eighth circuit to contain Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming, and to make the tenth circuit constitute the States of Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, and Utah.

At one time it was proposed to transfer Arkansas to the fifth circuit and to place Utah in the ninth circuit, and perhaps these transfers are still a part of the Thatcher bill.

The Thatcher bill is harmful to the circuit because it is unfair in dividing the work in the circuit. In the calendar year 1927 there were 130 cases in the first group and 271 in the second group. The average annual filing for the years 1923 and 1927 is 122 for the first group and 273 for the second group. On either basis more than twice the cases are in the second group. Also in the second group is much of the especially difficult litigation, Indian in Oklahoma, and mining, irrigation, etc., in Colorado, New Mexico, and Utah.

The Thatcher bill would further divide the Mountain States. This is bad because those States have special classes of litigation, mining litigation, etc.,

involving important property rights. Already vital differences exist as to some of such law between the eighth and ninth circuits. There should be no opportunity for a third divergence through the further dividing of such States.

The Thatcher bill provides for three circuit judges in each of the two circuits. In the second group the inevitable result would be that two district judges would have to sit in every case in order to keep up with the docket. Therefore, the opinions to be written by the district judges would often be delayed because of the pressure of their district court work. Then the three judge cases and other special duties would be delayed during court sessions. Any cause affecting attendance of one judge would materially interfere if there be only three circuit judges to each new circuit.

The Newton bill unanimously approved, as stated, would as to cases docketed in 1927 have 220 cases in the first group or the new eighth circuit, and 170 in the second group or the proposed tenth circuit. To care for this difference the Newton bill provides for five judges in the first group or new eighth circuit and four judges in the new or tenth circuit.

Thus, the Newton bill, would increase the present six circuit judges to nine for both of the two new circuits. The bad effect of dividing the circuit is lessened by the Newton bill and the provisions proposed by that bill leaves all of the Mountain States' litigation in one circuit.

It was agreed that the Thatcher bill would be harmful to the work of the circuit and result injuriously to the litigants and lawyers. The Newton bill is far better than the Thatcher bill and is the best and most workable division of the present circuit into two circuits which has been suggested.

The Newton bill, after careful consideration, has been approved by all of the circuit judges of the eighth circuit and all of the district judges of the eighth circuit with two or three exceptions.

Mr. Paul, the chairman of our committee, will not be able to attend the meeting on January 11, but former Senator Chester I. Long, of Kansas, will present the matter, and I am sure from my familiarity with the matter that convincing reasons will be presented for the necessity of dividing the eighth circuit, and that the plan covered by the Newton bill is the best one that can be devised.

As for the Utah member of the special committee which was continued by the American Bar Association for the present year, have been requested by Mr. Paul, chairman, to take up the matter with you and to ask that you consider the matter and to say that the committee would much appreciate your support of the Newton bill.

Thanking you very much for your attention, and with kind personal regards, I am,

Sincerely, C. R. HOLLINGSWORTH.

LETTERS FROM OTHER ATTORNEYS

LITTLE ROCK, ARK., *December 20, 1928.*

HON. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: I take great pleasure in indorsing the letter of December 17 to you from Mr. George B. Rose, indorsing the Newton bill.

The Arkansas Bar Association unanimously adopted the resolution at its last meeting indorsing this bill. All of the lawyers with whom I am acquainted concur in this indorsement.

Please advise if any assistance can be rendered in its passage from the lawyers of this bar.

Yours very truly, ASHLEY COCKRILL.

LITTLE ROCK, ARK., *December 21, 1928.*

HON. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: The bar of Arkansas is intensely interested in the division of the eighth circuit as proposed in the Newton bill. I have discussed the matter with many of the leading lawyers of the State, and all have expressed themselves as very much in favor of the division as proposed in that bill.

Very truly yours,

CHAS. T. COLEMAN.

LITTLE ROCK, ARK., *December 17, 1928.*

Hon. IRA G. HERSEY,
House Judiciary Committee, Washington, D. C.

DEAR SIR: As a member of the special committee of the American Bar Association on the division of the eighth circuit, I take the liberty of urging the passage of the Newton bill.

It has become absolutely necessary to divide the circuit. There is more work in the circuit court of appeals than can be attended to by the circuit judges; so that in a majority of cases district judges are called in who can not have the requisite familiarity with the prior decisions of the appellate court, and there results an unhappy want of harmony in laying down the law, and also great delays in disposing of business. The Newton bill seems to be the only satisfactory solution of the question. It leaves in the eighth circuit those States whose business is agricultural and commercial, and it puts into the tenth circuit those States whose questions are mostly irrigation, mining, and Indian claims. As the circuit stands now, there are so many questions arising that it is impossible for one set of judges to become thoroughly familiarized with them all. Under the proposed division, this would be facilitated. It would also be an advantage to have two places for holding the court, one in the north of St. Paul, where the court can meet in summer, and the other in St. Louis, where it can meet in winter, thus enabling the court to work at all seasons of the year with the least possible discomfort.

Hoping that you will not consider this letter presumptious, I am,

Very truly yours,

G. B. ROSE.