TO CHANGE THE JUDICIAL CIRCUITS OF THE UNITED STATES AND TO CREATE A TENTH JUDICIAL CIRCUIT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

SEVENTIETH CONGRESS

FIRST SESSION

ON

H. R. 5690

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TO CHANGE THE JUDICIAL CIRCUITS OF THE UNITED STATES AND TO CREATE A TENTH JUDICIAL CIRCUIT

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 2 OF THE
COMMITTEE ON THE JUDICIARY,
Friday, February 3, 1928.

The subcommittee met at 10 o'clock a. m., pursuant to notice.

Present: Mr. Hersey (presiding), Mr. Moore, Mr. Strother, Mr. Dominick, and Mr. Weaver.

Mr. HERSEY. The committee will be in order. There has been notice given, gentlemen of the committee, that we would hear H. R. 5690, to amend 116–118 of the Judicial Code, affording 10 judicial circuits for the United States, introduced by the gentleman from Kentucky, Mr. Thatcher. The bill is as follows:

[H. R. 5690, Seventieth Congress, first session]

A BILL To amend sections 116 and 118 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. 116. There shall be ten judicial circuits of the United States, constituted as follows:

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

"Second. The second circuit shall include the districts of 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 Georgia.

Fifth. The fifth circuit shall include the districts of Alabama, Arkansas, Florida, Louisiana, Mississippi, 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 Colorado, Kansas, Missouri, New Mexico, and Oklahoma.

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

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

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 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. Each circuit judge shall receive a salary of $12,500 a year, payable monthly. Each judge 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 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."

I understand, Mr. Thatcher, you wish to proceed this morning?

Mr. THATCHER. Yes.

Mr. HERSEY. And have present some witnesses. But it might be well in the conduct of this matter that, having very recently had objections filed, that you might know the nature of the objections in putting in your evidence, so that you may have those objections before you when you put in your evidence. We have present here Mr. Marshall, the Assistant Attorney General, representing the Attorney General's office, and the gentleman from Arkansas, Mr. Rose, filed with the committee this morning the following telegram:

LITTLE ROCK, ARK.,
January 31, 1928.

Hon. GEORGE S. GRAHAM,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.

House bill 5690 divides eighth circuit, throwing Arkansas into fifth. We are sure great majority of our people prefer going to St. Louis rather than New Orleans. Judges in eighth circuit are familiar with Arkansas laws, while judges in fifth know nothing of them and are accustomed to very different systems. We suggest that Minnesota, Iowa, Missouri, Oklahoma, and Arkansas constitute eighth circuit, where all but one of the present circuit judges now live and where systems of law are much the same, and that tenth circuit be composed of Dakotas, Nebraska, Kansas, and other States west in eighth circuit, where problems are mostly of irrigation and mining. We are advised matter will come before Judiciary Committee Friday.

ROSE, HEMINGWAY, CANTRELL AND LOUGHBOROUGH.

Mr. HERESY. This morning I received from Mr. Newton, Member of Congress from Minnesota, a communication saying:

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 18, 1928.

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

MY DEAR JUDGE HERSEY: This bill to revise the existing territorial limits of the circuit courts of appeal was submitted by me to Circuit Judge Wilbur F.

Booth, of Minneapolis. I know Judge Booth very well. He is one of the ablest jurists in the West, and I have every confidence in his judgment.

He writes me, giving his own personal views as follows:

"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 gether, 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."

I will appreciate it if you will bring the views of Judge Booth to the attention of the members of the subcommittee and have them incorporated in your printed hearings, if you deem the latter advisable. I trust that his comments may be helpful to you in connection with this important measure.

Thanking you, I remain

Very truly yours,

WALTER H. NEWTON.

Mr. HERSEY. The Attorney General here is represented by Mr. Marshall. Mr. Marshall, will you present to the committee the opinion of the Attorney General?

STATEMENT OF JOHN MARSHALL, ASSISTANT ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE

Mr. MARSHALL. I want to file with the committee, if I may, a letter from the Acting Attorney General this morning, which, in brief, outlines his position.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., February 2, 1928.

Hon. GEORGE S. GRAHAM,
Chairman Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: I have the honor to refer further to your letter of the 23d ultimo, transmitting for consideration and recommendation (H. R. 5690) a bill to amend sections 116 and 118 of the Judicial Code. The Attorney General

has been absent from the office on account of illness for the past week and no conclusion has yet been reached in the matter. However, there are submitted herewith copies of letters received from the Chief Justice and certain senior circuit judges with respect to the subject of the bill. Letters were addressed to all the senior circuit judges, but not all of them have yet replied.

Respectfully,

WILLIAM D. MITCHELL,
Acting Attorney General.

Mr. MARSHALL. I will also file copies of letters received from the senior circuit judges.

Mr. HERSEY. Will you read those as you go along?

Mr. MARSHALL. Yes, sir.

UNITED STATES COURTS,
Manchester, N. H., January 22, 1928.

MY DEAR ATTORNEY GENERAL: Yours of the 16th inclosing bill providing for rearrangement of the districts in some of the circuits received. I have no suggestions to make. Thank you for sending me the bill. Best wishes to you.

Yours truly,

GEO. H. BINGHAM.

UNITED STATES CIRCUIT COURT OF APPEALS,
THIRD JUDICIAL CIRCUIT,
Philadelphia, January 20, 1928.

The ATTORNEY GENERAL,
Washington, D. C.

SIR: First, the territorial limit of our circuit is preserved intact; is satisfactory.

Second, heretofore the Virgin Islands have been incorporated in our circuit. We are satisfied to have that continued.

Third, I note the bill makes no provision for appeals from Panama and from the District Court in China. Is that not an oversight?

Fourth, should there not be some provision in the bill enabling the existing circuit courts of appeal to dispose of all appeals, writs of error, and proceedings taken up to the date of this new act going into effect?

Respectfully submitted.

JOSEPH BUFFINGTON.

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND JUDICIAL CIRCUIT,
January 20, 1928.

To the ATTORNEY GENERAL,
Washington, D. C.

DEAR SIR: We have considered House bill No. 5690 referring to the redistribution of States to the circuits of the United States, with particular note to our own second circuit, and we beg leave to say that in its present form it is not desirable for this circuit. Some of the objections are:

(*a*) That it would afford no relief to the work of our circuit court of appeals, as may be ascertained by examining the number of appeals coming from Connecticut and Vermont during the five years last past, which States it is proposed in the bill shall become part of the first circuit. From 1922 to 1926, inclusive, appeals from Vermont in the agregate amount to 18, an average of less than 4 a year; from Connecticut, 26, an average of slightly more than 9. This represents a little less than an average week's work, hardly perceptible, when it is remembered that the average of appeals from New York during the same period was 353 and during the last two years 390.

(b) Judge Thomas W. Swan, of the court, officially resides in Connecticut. If Connecticut were made a part of the first circuit it would be necessary for him to change his residence to this circuit; if this were not done his services would not be available here. This circuit requires an additional circuit judge and could ill afford to be reduced to three.

(*c*) The statute permits judges to be assigned by the senior circuit judge from the various district courts within the circuit to help out in other districts within that circuit. As a result New York has been able to secure the services

of the district judges of Connecticut and Vermont and they have been of material assistance from time to time in keeping up with the necessary disposition of the business of the circuit. The office of a second district judge for Connecticut has recently been created and a new judge is about to be appointed. Considering the volume of work in Connecticut he, when appointed, and his associate will be available to spend much time in other districts of the circuit, particularly in the southern and eastern districts, where the calendars are very congested.

(*d*) New York City is a more convenient place and involves less expense in travel for Connecticut lawyers to come to than Boston, where the circuit court of appeals for the first circuit convenes. It is no more convenient for lawyers from Vermont to go to Boston.

(*e*) It is our opinion that to require New York State alone to constitute one circuit would be unfortunate and very provincial.

We therefore suggest to the Attorney General and the Congress of the United States that if the bill be passed it be so modified as to the second circuit that it remain as it is now constituted—Vermont, Connecticut, and New York.

Respectfully,

MARTIN T. MANTON,
LEARNED HAND,
THOMAS W. SWAN,
AUGUSTUS H. HAND,
United States Circuit Judges for the Second Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND JUDICIAL CIRCUIT,
January 20, 1928.

Hon. JOHN G. SARGENT,
Attorney General, Washington, D. C.

DEAR SIR: Answering your communication as to House bill No. 5690, I have consulted the members of the bench of the circuit court of appeals for the second circuit and they are unanimous in their opposition to the redistribution of States in circuits, in so far as it provides for placing Vermont and Connecticut in the first circuit. I am sending herewith a letter stating the objections, in which all the judges have joined.

Very truly yours,

MARTIN T. MANTON,
U. S. Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
St. Louis, Mo., January 24, 1928.

Hon. JOHN G. SARGENT,
Attorney General, Washington, D. C.

DEAR GENERAL SARGENT: I have received your letter of January 16, 1928, regarding the bill, H. R. 5690, for an amendment of title 28 of the United States Code so as to make 10 judicial circuits in the United States. I earnestly protest against designation the districts of Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming the ninth circuit. They constitute the greater part of the eighth circuit and they contain the older States of Iowa, Nebraska, Minnesota, and the Dakotas which have formed a large portion of that circuit and the portion from which Mr. Justice Miller, Mr. Justice Van Devanter, Mr. Justice Butler, and Judge Dillon were appointed to their positions as judicial officers. This portion of the circuit as it now stands, I think, should continue to retain the old name of the eighth circuit.

Second. Three circuit judges will be entirely insufficient to do the work of the circuit court of appeals coming from these States. These are the States in the circuit which are most rapidly increasing in population, in wealth and in business and in which the most important litigation in the eighth circuit arises. They ought to have at least six judges. I have not the time at this moment to examine the cases that have been coming from the various districts or the business that comes to the present circuit court of appeals from this portion of the circuit, but I think that the population and the business of this portion of the circuit would be as great as that of the present seventh circuit.

Very respectfully,

WALTER H. SANBORN,
Senior Circuit Judge.

PORTLAND, OREG., *January 23, 1928.*

HON. JOHN G. SARGENT,
Attorney General, Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: I have just received your letter of the 16th instant with the inclosure of H. R. 5690. The provisions of that bill were discussed at some length at the conference of the circuit judges with the Chief Justice last September. Serious objection was made, so far as it affected their circuits, by at least three of the circuit judges, and I received the impression that the present division of circuits is preferable to that which is proposed in the bill.

As to the ninth circuit, I see no ground for objection except that the addition of Utah to a proposed tenth circuit will make it necessary to provide for that circuit a fourth circuit judge, since with the present division the work in the ninth circuit is all that three judges can reasonably attend to satisfactorily and promptly.

Respectfully,

WM. B. GILBERT.

SUPREME COURT OF THE UNITED STATES,
Washington, D. C., January 19, 1928.

HON. JOHN G. SARGENT,
Attorney General, Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: I have yours of January 16, inclosing a bill to amend sections 116 and 118 of the Judicial Code, by providing for an additional judicial circuit and the rearrangement of judicial districts comprising some of the existing circuits. I have read through the bill hastily, and only have one suggestion now to make. I think the States named in the eighth circuit should be called the ninth circuit, and the States named in the ninth circuit should be called the eighth circuit, for the reason that the States named in the ninth circuit have been more associated with the old circuit than those named in the eighth circuit.

As ever,

Sincerely yours,

WM. H. TAFT.

This suggestion was one made by Judge Sanborn, the oldest circuit judge in commission and of the eighth circuit.

Mr. HERSEY. Do you wish to make a statement at the present time, Mr. Marshall?

Mr. MARSHALL. No; I think in view of the fact that the Attorney General has been ill and has not had time to consider the matter I had rather not.

Mr. HERSEY. Very well, we will hear you now, Mr. Thatcher.

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

Mr. THATCHER. Mr. Chairman and gentlemen, this bill has been introduced as the result of suggestions which have been made by the American Bar Association. Mr. Merrill Moores, who is present to-day, a former Member of Congress, was appointed chairman of a subcommittee to prepare a bill to relieve the condition of congestion of the circuit courts of appeals in the country. He and the subcommittee have spent a great deal of time on the measure, and this is the result of their best judgment.

I might say also that the Supreme Court has appreciated the need for relief for the circuit court districts of the country.

There is no pride of authorship involved in this bill. The primary question is whether or not there is congestion, overcrowding of the dockets, delay in the determination of litigation, of such a character

as to justify some action of relief. This bill represents the best judgment of those who have given most careful study to the subject.

I suppose any bill that would be presented would bring more or less opposition from some judge or lawyer here and there. We want to submit the general facts involved, and if we are able to show you there is need for relief, then if this committee or the full committee shall determine that there should be some adjustment concerning these districts other than that proposed by the bill, we will be perfectly satisfied with your action. We want to give you all the facts.

I also wrote to all the circuit judges in the country, but most of them who cared to take any part in the matter replied to the Attorney General, and I only had one or two letters in response to my letters.

Mr. HERSEY. May I ask you here; you have 10 circuits now?

Mr. THATCHER. Nine. It is proposed to make a tenth circuit.

Mr. HERSEY. You propose to make a new circuit?

Mr. THATCHER. Yes.

Mr. HERSEY. How many judges have you?

Mr. THATCHER. There will be no increase in the number of judges.

Mr. HERSEY. Your new circuit will not call for another judge?

Mr. THATCHER. There will be a reallocation of judges.

Mr. HERSEY. It won't require another judge?

Mr. THATCHER. No, sir.

Mr. DOMINICK. What is your plan in creating the additional circuit?

Mr. THATCHER. The idea has been to so shape the districts that with the ordinary allocation of three to a district it will be sufficient, and in the middle of the district there will be——

Mr. DOMINICK. That was the question I was about to ask. As I understand it, under the present, arrangement, with nine circuits and nine justices, each justice, you might say, is assigned to a circuit.

Mr. THATCHER. Yes.

Mr. DOMINICK. I don't recollect whether that is by rule of court or by law. Which is it, Mr. Marshall?

Mr. MARSHALL. I am not certain about that situation.

Mr. DOMINICK. I don't know just how it came about.

Mr. THATCHER. Mr. Moores says that he remembers the statute, it says that there shall be one assigned to each circuit. I don't remember whether that was done by statute.

Mr. MOORES. I have talked with a number of judges and several justices of the Supreme Court and they were all agreed there would have to be 10 circuits.

Mr. THATCHER. I will ask, Mr. Chairman, that there be read into the record a copy of the present, existing law creating the present circuit districts, and then the bill, of course, to follow.

Mr. HERSEY. Have you the law there?

Mr. THATCHER. Yes; I have it here. Section 211—

CIRCUITS

SEC. 211 (U. S. Code, sec. 116, amended). There shall be nine 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 Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, Oklahoma, and New Mexico.

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

Mr. HERSEY. You are adding how many circuits to the present ones?

Mr. THATCHER. Just one making a total of 10.

Mr. HERSEY. Making some change in these others.

Mr. THATCHER. Yes. The Pacific coast circuits, in the bill, ought to be amended to include appeals from the District Court of China.

Mr. DOMINICK. I believe there will be added to the fourth circuit, Georgia.

Mr. DOMINICK. Florida is not in the fourth circuit.

Mr. MARSHALL. It just leaves Florida in the fifth.

Mr. DOMINICK. The change in the fourth is to have it continued as it is now with the addition of Georgia.

Mr. THATCHER. That is right. We will have an increase of one State in the fourth circuit, Georgia.

Mr. HERSEY. Are you changing the salaries there now?

Mr. THATCHER. No, sir; just conforming to the old law. We have prepared here two maps, the one on the left with the districts indicated in red figures shows the present districts, and the one on the right with the blue figures shows the districts proposed by this bill. It seems that the eighth circuit perhaps is the district where there is the greatest congestion. It is a tremendous district in population and business.

Mr. HERSEY. Let me ask one question, i I may interrupt you there. Before us here we have objections from judicial departments, and the Department of Justice and from judges in these circuits, and we have also, as I understand it, these telegrams to the effect that the American Bar Association is opposed to this.

Mr. THATCHER. No, no. It is for it.

Mr. HERSEY. It is said here——

Mr. THATCHER. That is a mistake. Mr. Moores can speak about that presently. In other words, I am going to let Mr. Moores follow me and he is chairman of the subcommittee of the American Bar Association.

Mr. HERSEY. He represents the American Bar Association?

Mr. THATCHER. He is chairman of the committee appointed to prepare this bill.

Mr. HERSEY. They initiated the bill?

Mr. MOORES. I have the order of the American Bar Association to be here.

Mr. HERSEY. I just wanted to know who initiated the proceeding.

Mr. THATCHER. The American Bar Association is trying to solve this problem, and this is its best judgment. With this general pre-

liminary statement I want Mr. Moores to be heard and Mr. Strickland, who represents also the American Bar Association, to give you a detail of the facts involved.

As I stated at the outset, it is a question whether this relief is needed. If it is not, then we have no business here with this bill. If it is needed, then we want to work out a solution. We have proposed this solution, believing it to be a proper one, but if the committee determines there is need for relief, very well; or if it determines that the bill should be modified, that the proposed districts should be changed in some other way, then we have no objection.

We want relief. We ask your assistance. Of these gentlemen who are making opposition, some of them are making them on sentimental grounds; some may have valid objections. If there are adequate reasons for opposing the bill, or changing it, we want them brought out here. Let the committee have all the facts. Then, we want litigants, lawyers, and the courts to have relief, as the Supreme Court evidently believes should be given, and also the American Bar Association and most of the circuit judges.

Mr. DOMINICK. There has been no recommendation by a conference of judges on this matter?

Mr. THATCHER. No.

Mr. DOMINICK. Has it ever been seriously considered by them?

Mr. THATCHER. There was discussion here in Washington about it last winter. I think one or two of the judges for senitmental reasons do not like the change, do not like to change the names of their districts. If we might hear Mr. Moores now, he could furnish valuable information.

STATEMENT OF HON. MERRILL MOORES, FORMER MEMBER OF CONGRESS, REPRESENTING THE BAR ASSOCIATION

Mr. MOORES. I represent the American Bar Association, Mr. Chairman——

Mr. HERSEY. In what capacity?

Mr. MOORES. As chairman of the subcommittee that prepared this bill. Henry W. Taft is chairman of that committee. He is in Europe or he would be here. I am directed by him and by Silas H. Strawn, president of the American Bar Association, who wrote and said to me he had been here and consulted with Mr. Strickland, and wants him also to represent the American Bar Association. Mr. Strickland is not a member of the subcommittee, but he is a member of the committee on jurisprudence and law reform. Mr. Strawn wrote me he had consulted with Mr. Strickland, and we represent tht American Bar Association.

Mr. STRICKLAND. And I would like to ask permission to file a letter from the American Bar Association indicating that fact.

AMERICAN BAR ASSOCIATION,
January 26, 1928.

HON. MAURICE H. THATCHER,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: I regret exceedngly that other imperative engagements will prevent me from attending the hearing on your bill (H. R. 5690), set for Friday, February 3, 1928, at 10 o'clock, before the House Committee on the Judiciary. Mr. Merrill Moores, chairman of the subcommittee of the American Bar Association on jurisprudence and law reform, and also Mr. Reeves

T. Strickland, of Washington, a member of our committee, will appear and present the views of the American Bar Association.

I thank you very much for calling the matter to my attention when I was in Washington on Monday last.

With assurances of my esteem and high regard, I am

Cordially yours,

SILAS H. STRAWN.

Mr. MOORES. If your honor please, there has been a complaint among the lawyers in the eighth circuit, which includes 13 States, practically, excepting Texas, all the States between the Mississippi River and the Rocky Mountains, that the Circuit Court of Appeals in the Eighth Circuit is overworked. The lawyers are compelled to attend circuit courts of appeals in four or five different places, and it is a long journey from most of the States to any of these places. The court is supposed to meet at St. Paul, St. Louis, and Denver, or Cheyenne. If that circuit should be continued, it ought to meet somewhere in addition to those places now fixed by law.

The reason for the suggestion of Mr. George Rose, of Little Rock, who is the only dissenting member, so far as I know, of our committee, was that he thought that the district should be split upon a north-and-south line, but, as every member of this committee knows, the lines of communication west of Iowa are east and west in that circuit. The trunk lines run east and west.

Mr. HERSEY. But you have not attempted in your bill to change the place of the sittings of the court?

Mr. MOORES. No. I was going to ask the committee this. Mr. Thatcher and I attended a meeting of the council of the senior judges of the appellate court in December, and both of us presented the matter to them.

Mr. HERSEY. Where was that held?

Mr. MOORES. In Washington and held under the law.

Mr. HERSEY. Those proceedings are in print?

Mr. MOORES. I haven't seen them.

Mr. MARSHALL. They make a report that is set out in the Attorney General's report as to their recommendations.

Mr. MOORES. The primary purpose of this bill is for relief.

Mr. HERSEY. You say they made certain recommendations. What were they?

Mr. MOORES. They did not make recommendations; the only objections we heard were based upon sentimental reasons as Mr. Thatcher mentioned. Judge Sanford wanted to continue in the eighth circuit. He wanted the eighth circuit the biggest circuit in the country. He wanted the eighth circuit to carry forward the history of the court, but he finally recognized the district ought to be split. But he wants the number eight.

There was in the Bar Association a contention that the Pacific coast circuit should retain its own number, nine, and that a new circuit ought to be created which should be either the eighth or the tenth—in the bill the coast circuit is made the tenth. There was some objection from California, but not very much except sentiment as to the number of the circuit.

As originally prepared, the bill took Tennessee out and put it in the fifth circuit, which is small—not in territory, but small in amount of litigation, comparatively—and we had included West Virginia and taken Tennessee out of the sixth circuit, and the West Virginia lawyers appeared before this committee in force, backed up by two or three lawyers from Virginia, two good lawyers and a judge from North Carolina, all lawyers of high standing, who wanted West Virginia to continue in the circuit; and the committee resolved we would put West Virginia back where it was, and that was the only complaint as reported in the American Bar Association.

Mr. HERSEY. Have you the action of the American Bar Association in a resolution or anything of that sort?

Mr. MOORES. The American Bar Association did not act for this reason, the committee acted. The American Bar Association favored reporting a bill for relief as I have stated.

Mr. HERSEY. They didn't put that in the form of a vote or resolution?

Mr. MOORES. No. I will say not, for this reason, that they thought it would be only decent to submit the proposed bill to the council of judges, which was to meet in September, about two or three weeks later than the meeting of the American Bar Association.

Mr. HERSEY. Was it submitted to them?

Mr. MOORES. It was, and the judges took no action upon it. That is, the senior judges of the circuit, who constitute the official body now.

Mr. HERSEY. I want to refresh my memory. What was the purpose of that meeting of judges, or council of judges? Will you insert in the record the law upon the matter?

Mr. MOORES. I will read it.

(The extract from the law follows:)

SEC. 218, United States Code (p. 893). *Conference of circuit judges; Reports to circuit judges by district judges; Expenses of judges attending.*—It shall be the duty of the Chief Justice of the United States, or in case of his disability, of one of the other justices of the Supreme Court, in order of their seniority, annually, to summon to a conference on the last Monday in September, at Washington, District of Columbia, or at such other time and place in the United States as the Chief Justice, or, in case of his disability, any of said justices in order of their seniority, may designate, the senior circuit judge of each judicial circuit. If any senior circuit judge is unable to attend, the Chief Justice, or in case of his disability, the justice of the Supreme Court calling said conference, may summon any other circuit or district judge in the judicial circuit whose senior circuit judge is unable to attend, that each circuit may be adequately represented at said conference. It shall be the duty of every judge thus summoned to attend said conference, and to remain throughout its proceedings, unless excused by the Chief Justice, and to advise as to the needs of his circuit and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The senior district judge of each United States district court, on or before the 1st day of August in each year, shall prepare and submit to the senior circuit judge of the judicial circuit in which said district is situated a report setting forth the condition of business in said district court, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending as said district judge may deem proper, together with recommendations as to the need of additional judicial assistance for the disposal of business for the year ensuing.

Said reports shall be laid before the conference herein provided, by said senior circuit judge, or, in his absence, by the judge representing the circuit at the conference, together with such recommendations as he may deem proper.

The Chief Justice, or, in his absence, the senior associate justice, shall be the presiding officer of the conference. Said conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment and transfer of judges to or from circuits or districts where the state of the docket or condition of business indicates the need therefor, and shall submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business.

The Attorney General shall, upon request of the Chief Justice, report to said conference on matters relating to the business of the several courts of the United States, with particular reference to causes or proceedings in which the United States may be a party.

The Chief Justice and each justice or judge summoned and attending said conference shall be allowed his actual expenses of travel and his necessary expenses for subsistence, not to exceed $10 per day, which payments shall be made by the marshal of the Supreme Court of the United States upon the written certificate of the judge incurring such expenses, approved by the Chief Justice.

Mr. HERSEY. Now, after this conference in which this matter was brought before them, as I understand you——

Mr. MOORES. Yes; and they did not take any action on it.

Mr. HERSEY. The needs of the district and everything are provided by law, and they took no action whatever?

Mr. MOORES. They took no action whatever.

Mr. HERSEY. What construction did you put on that, that having taken no action, they do not admit it necessary to change the circuits?

Mr. MOORES. Just a minute. I will read you their report.

Mr. HERSEY. Did they report upon the matter at all?

Mr. MOORES. I was proposing to read it to you.

Mr. HERSEY. It is not necessary to encumber the record with it if they took no action.

Mr. MOORES. Mr. John Marshall, who is Adsistant Attorney General, told me this morning that the eighth circuit was badly behind, and the figures are given in that report at another place, and it seems to me they are two or three hundred cases behind, and most of the other circuits are pretty well up.

Mr. HERSEY. Were you putting in figures with regard to the congestion?

Mr. MOORES. I have not been able to get hold of the figures from the reports.

Mr. THATCHER. We want the privilege of submitting figures.

Mr. MOORES. I have submitted figures here which are from the committee report of the American Bar Association, and I would like to have those put in. They are from Appendix C, at page 137 of the Report of the Committee on Jurisprudence and Law Reform, prepared by Henry W. Taft, chairman. His report begins at 140 and covers a number of other matters.

Mr. HERSEY. Can you put in just what applies to this?

Mr. MOORES. Here are the appendices which show exactly the total population, wealth, civil and criminal litigation in each of the circuits as now existing and as proposed.

(The tabulation follows:)

APPENDIX C

Statement of statistics in relation to population, wealth, and litigation in the proposed new 10 circuits

Circuit	Population	Wealth	Federal litigation	
			Civil	Criminal
First:				
Present	6,964,659	$18,258,831,000	1,478	1,567
Proposed	8,697,718	24,387,316,000	1,686	1,890
Second:				
Present	12,118,336	43,163,747,000	7,704	9,994
Proposed	10,385,277	37,035,262,000	7,496	9,701
Third: Present and proposed	12,098,920	[1] 41,253,699,000	3,641	3,253
Fourth:				
Present	9,465,396	20,508,174,000	2,720	7,976
Proposed	15,248,565	24,943,837,000	3,401	8,184
Fifth:				
Present	14,464,831	24,784,731,000	3,733	8,028
Proposed	1[illegible] 321,203	23,487,569,000	3,481	7,397
Sixth: Present	14,182,321	[1] 37,705,055,000	3,866	9,586
Seventh: Present and proposed	12,047,737	[1] 38,928,601,000	2,917	2,381
Eighth:				
Present	17,908,163	58,353,151,000	4,860	8,155
Proposed	8,501,574	24,320,239,000	2,713	4,844
Ninth:				
Present	6,880,945	28,128,376,000	3,148	6,649
Proposed	7,565,339	30,749,654,000	1,795	2,449
Tenth: Proposed	7,719,539	30,722,232,000	3,951	6,819

[1] Unchanged.

NOTE.—The above statistics as to population are taken from the census of 1920; as to wealth, from the World Almanac; and as to Federal litigation from the Attorney General's Report of 1926.

APPENDIX D

Statement of statistics in relation to population, wealth, and Federal litigation (both civil and criminal), arranged with reference to the several States

State	Population	Wealth	Federal litigation	
			Civil	Criminal
Alabama	2,348,174	$3,002,043,000	312	1,057
Alaska	55,036		522	195
Arizona	334,162	1,314,291,000	193	940
Arkansas	1,752,204	2,599,617,000	381	1,069
California	3,426,861	15,031,734,000	1,449	1,924
Colorado	939,629	3,229,412,000	279	357
Connecitcut	1,380,631	5,286,445,000	141	109
Delaware	223,003	625,765,000	74	75
District of Columbia	437,571	1,697,270,000	3,827	10,588
Florida	968,470	2,440,491,000	713	965
Georgia	2,895,832	3,896,759,000	633	1,608
Hawaii	255,912		37	566
Idaho	431,866	1,533,961,000	228	422
Illinois	6,485,280	22,232,794,000	2,163	1,733
Indiana	2,930,390	8,829,726,000	345	255
Iowa	2,404,021	10,511,682,000	348	479
Kansas	1,769,257	6,264,058,000	411	148
Kentucky	2,416,630	3,582,391,000	680	4,217
Louisiana	1,798,509	3,416,860,000	517	974
Maine	768,014	2,006,531,000	101	253
Maryland	1,449,661	3,990,730,000	723	1,558
Massachusetts	3,852,356	12,960,839,000	597	624
Michigan	3,668,412	11,404,861,000	953	1,633
Minnesota	2,387,125	8,547,918,000	608	778
Mississippi	1,790,618	2,177,690,000	435	534
Missouri	3,404,055	9,981,409,000	973	1,717
Montana	548,889	2,223,189,000	410	512
Nebraska	1,296,372	5,320,075,000	368	516
Nevada	77,407	541,716,000	153	465
New Hampshire	443,083	1,347,135,000	165	290

Statement of statistics in relation to population, wealth, and Federal litigation (both civil and criminal), arranged with reference to the several States—Continued

State	Population	Wealth	Federal litigation	
			Civil	Criminal
New Jersey	3,155,900	$11,794,189,000	1,719	925
New Mexico	360,350	851,836,000	117	341
New York	10,385,277	37,035,262,000	7,496	9,701
North Carolina	2,559,123	4,543,110,000	523	1,855
North Dakota	646,872	2,467,772,000	174	151
Ohio	5,759,394	18,489,552,000	1,756	1,655
Oklahoma	2,028,283	3,993,524,000	933	2,231
Oregon	783,389	3,419,459,000	331	412
Pennsylvania	8,720,017	28,833,745,000	1,848	2,253
Porto Rico	1,296,809		145	102
Rhode Island	604,397	1,924,326,000	170	328
South Carolina	1,683,724	2,404,845,000	385	831
South Dakota	636,547	2,925,968,000	173	404
Tennessee	2,337,885	4,228,251,000	477	2,081
Texas	4,663,228	9,850,888,000	1,123	2,890
Utah	449,396	1,535,477,000	88	134
Vermont	352,428	842,040,000	67	184
Virginia	2,309,187	4,891,570,000	499	670
Washington	1,356,621	5,122,405,000	540	1,249
West Virginia	1,463,701	4,677,919,000	590	3,062
Wisconsin	2,632,067	7,866,081,000	409	363
Wyoming	194,402	976,239,000	124	121

Mr. THATCHER. Referring to the eighth circuit, that is the circuit where the greatest congestion is. Those figures appear there.

Mr. MOORES. The eighth circuit is very much larger than the fifth, although Texas is in the fifth. I made the figures up for all the circuits, and the areas were unsatisfactory because they did not give, for illustration, the amount of litigation there would be in each court. They indicate the inconvenience of the lawyers going 600 miles to a circuit court of appeals, but it is just as bad to go from Florida or the west end of Texas to New Orleans as it would be anywhere in the eighth circuit, so I don't think that the matter of area would, alone, be determining.

Mr. HERSEY. Have you given to the reporter that part you want made a part of the record?

Mr. MOORES. Yes, sir. We tried earnestly and did a great deal of work to adjust the circuits according to litigation, primarily; secondly, according to population and wealth; but we could not find anything satisfactory. Extra judges are required in San Francisco, because of the admiralty work. They have also extra district judges in Oregon.

Mr. HERSEY. How many judges have you now in New York State?

Mr. STRICKLAND. Four, I think.

Mr. HERSEY. Circuit judges?

Mr. STRICKLAND. Four at the present time.

Mr. THATCHER. Six district judges in New York City.

Mr. MOORES. We have four circuit judges, and there is the southern district on Manhattan Island that has six district judges.

Mr. HERSEY. That is part of New York.

Mr. MOORES. Yes.

Mr. HERSEY. Can you tell me how many circuit judges you have in New York State?

Mr. MOORES. We have four, and the itinerant judges.

Mr. HERSEY. How many have you in the eighth district?

Mr. MOORES. Six. In the ninth district, Judge Hunt, who was one of the itinerant judges in the commerce court—and being a circuit court judge can not be removed from office. No judge's salary can be reduced. He serves for life, and can only be removed for lack of good behavior.

Mr. THATCHER. This bill would not have the effect of legislating any circuit judge out of office, of course?

Mr. MOORES. No. It would not. It wouldn't put any judge out of office. The Chief Justice can assign them to duty anywhere.

I am going to give you pages 157 and 158. The changes here had to be made because of the sending of West Virginia back to that circuit and putting Tennessee back in the sixth. We have made the thing just as even as we possibly could. Of course, New York has necessarily very much more admiralty litigation, and all the coast States have more police court litigation than the interior States; but that increase in litigation in the coast States has been because the coast States have ports, not only ports of entry, but ports, like Florida, that are not ports of entry, but where people can get in.

We have tried to equalize things to the utmost of our ability.

On the Arkansas matter, I have this suggestion to make, that the proposed eighth circuit would be a little larger if Arkansas was retained in the eighth and Oklahoma put down with Texas; and the means of communication between Arkansas and St. Louis are just as good by the Katy, and other lines between Oklahoma and Fort Worth, where the Circuit Court of Appeals of the Fifth Circuit sits, make communication with Oklahoma better than with St. Louis.

Mr. HERSEY. You have the right to offer amendments to the bill.

Mr. MOORES. If you want to change the numbers, we haven't any objection at all. The numbers are nothing. If people like Judge Sanford want to remain in the eighth circuit, call his circuit the eighth, and call the St. Louis circuit the ninth, so far as that is concerned. I believe the thing will be a little bit evener if Arkansas should be attached to the Iowa and Missouri circuit and Oklahoma put in the fifth.

Mr. THATCHER. What would be the attitude of the Oklahoma people?

Mr. MOORES. That is a question we considered, and I haven't heard any objection to the present status, but one of these States ought to go out if we are going to preserve the equality. These maps show the present and the proposed status. It may not be convenient to put them in the record, but the committee may have them.

Mr. HERSEY. What did you say they were?

Mr. MOORES. They show the present and proposed status. You can see at a glance from these numbers that all the districts are contiguous in every circuit; and you can see at a glance as to the possibility of any further changes in the line of having any further contiguous districts, and the equality of litigation.

Mr. HERSEY. In a letter read to the committee this morning, presented by Mr. Newton, of Minnesota, there was a complaint that this would legislate out of office Judges Sanford, Kenyon, and Booth.

Mr. MOORES. It would not legislate any judge out of office. The Constitution protects every one of them. It is purely sentiment

with Judge Sanford, and he is a judge who is getting quite old, but he is a very great judge.

Mr. HERSEY. You mean even if you changed the districts it would not change the term of office of the judge?

Mr. MOORES. It would not change the term of office. Any judge could be assigned to work in any other circuit court. I heard this story from a very great friend of Judge Sanford's——

Mr. HERSEY. Do you think you ought to put that in the record, Mr. Moores, some witness testifying through you?

Mr. MOORES. Yes; it is hearsay. Now, as to Judge Bingham's statement, he had no suggestion to make at all. I don't think there is anything in the objections of the judges in New York City. It will take 64 cases away from them and it will take a good many admiralty cases away. They will go to Boston, if they are in the first circuit, instead of New York City.

Mr. THATCHER. Mr. Moores, how long has this subject been discussed in the American Bar Association?

Mr. MOORES. Our committee has made three successive reports.

Mr. HERSEY. Through the Congress?

Mr. MOORES. No.

Mr. HERSEY. This is the first appearance of the bill?

Mr. MOORES. Yes. We have simply reported.

Mr. HERSEY. You reported to the American Bar Association?

Mr. MOORES. To the American Bar Association, and they approved our report every time, but this is the first specific bill that has been reported. It was reported because our committee had come to the conclusion that there was more chance of the bill passing if it was presented to Congress than if we just shed tears over the matter.

STATEMENT OF REEVES T. STRICKLAND, WASHINGTON, D. C., MEMBER OF THE AMERICAN BAR ASSOCIATION

Mr. HERSEY. As a member of the committee of which Brother Moores is the chairman——

Mr. STRICKLAND. No, I am a member of the committee on jurisprudence and law reform. I have been a member of this committee for four or five years, and from the time I first went on it, this question of redistricting the circuit courts of appeal in the United States has been the subject of discussion in our committee. It has been the subject of a number of reports and a number of communications and reports made to Henry W. Taft, who was chairman of it. He has taken a personal interest in it, and has written to many of the judges. Three years ago, if I remember correctly, it was assigned to Mr. Moores to make a detailed report. The detailed report Mr. Moores has presented here to-day in the shape of the figures which are to go into the record. This same bill was the subject of discussion in 1925 at two meetings of the committee, one in Washington and one in New York, and the same in 1927. The last meeting, in New York City, on the 1st of December, 1927, was the last meeting. We took up the subject in Mr. Taft's office in New York City. At that time Mr. Moores brought his report up, and the thing was very thoroughly discussed by the committee, and Mr. Taft, and we agreed to adopt what Mr. Moores had prepared as a recommendation of our committee on behalf of the association.

I can add very little more to what Mr. Moores has said, because he has gone into it in detail, and my information is that this is about the consensus of that committee and all the members who were present. I think there were 14. It was the consensus of opinion that this bill, as recommended, be passed, with such amendments as might be found necessary.

Mr. HERSEY. The Chair would like to inform the witness that from the objections filed here, from those who can not be present here to-day, that the committee would have, of course, the necessity of having a further hearing later on, after Brother Thatcher's evidence has been printed, and then they will come here. Now, have you any suggestions to make?

Mr. STRICKLAND. I want to add one more thing, that at the meeting of the American Bar Association in Buffalo last September, our committee held an open session in which all those who wanted to speak against the bill might come. There was quite a crowd there, and a great number of men availed themselves of that privilege, and as a result of that Mr. Moores made some changes which were adopted in the New York meeting of our committee.

Mr. DOMINICK. Did you have any memorials, or do you know of any agitation among any of the State bar associations?

Mr. STRICKLAND. No, sir; not that I know of. I have a personal letter from some gentleman who signs himself as a member of the West Virginia Bar Association, which I replied to, and he appeared at the meeting in Buffalo and made his explanation.

Mr. DOMINICK. But so far as you know, your committee, and also the American Bar Association, have only been moved by the individual request, or, you might say, the individual members of the American Bar Association.

Mr. STRICKLAND. That is it.

Mr. DOMINICK. And no action has been taken by any of the respective State associations?

Mr. STRICKLAND. Not so far as I know.

Mr. THATCHER. Of course, the American Bar Association is made of membership throughout the country.

Mr. STRICKLAND. Twenty-six thousand members, pretty well divided among the States.

Mr. HERSEY. Brother Thatcher, I think we all have a tender feeling for the American Bar Association, and most of us are members, and we do not think the American Bar Association has any ulterior motive.

Mr. STRICKLAND. May I say this, Mr. Chairman: So far as I am concerned, my idea is to do the right thing.

Mr. HERSEY. You are here acting in an official position, representing the American Bar Association?

Mr. STRICKLAND. Yes, sir. I am asking you to give it to them if they need it. If they don't, do not give it to them.

Mr. MOORES. May I make just one suggestion. I think there should be another section added to the bill; that it go into effect on the first Monday in October after it passes. That is when the circuit courts meet, and we want it in effect with the new circuit, and that would give them six months or a year after the change occurred. The other suggestion is this: If you change the numbers of the circuits, you ought by all means to rewrite section 126 of the Judicial

Code, on page 894, section 223, for this reason: That it provides where the circuit court of appeals shall sit, and you want them to sit in their circuits, in their respective circuit courts of appeals; and if the numbers are changed, that section ought to be amended and added to.

Mr. THATCHER. Let me suggest on that, with the committee's permission, we will submit with our testimony, suggestions for such amendments.

Mr. HERSEY. You better prepare your amendments for the next meeting.

Mr. THATCHER. Yes.

Mr. HERSEY. In writing. The Chair was about to suggest that there would be a meeting for those who are in opposition to this bill, at which time they would be heard, and then you will be allowed to put in any rebuttal you wish, so that everybody can have full hearing. Can you suggest to the Chair when you can have that meeting? We wish to give them as much time as we can, because we want this evidence to be printed.

Mr. THATCHER. We want them to be heard.

Mr. HERSEY. Would three weeks from to-day be all right?

Mr. THATCHER. I think so.

(Whereupon at 12.30 o'clock a. m., the committee adjourned.)

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 2 OF THE
COMMITTEE ON THE JUDICIARY,
Friday, March 2, 1928.

The subcommittee met at 10 o'clock a. m., Hon. Ira G. Hersey (chairman) presiding.

Present: Messrs. Hersey, Moore, Yates, Dominick, and Major, members of the subcommittee. Also Representative Thatcher of Kentucky, and former Representative Merrill Moores of Indiana.

Mr. HERSEY. The committee will be in order. Mr. Thatcher, when we adjourned the hearings a couple of weeks ago, there was an understanding that the hearings would be continued to-day. At that time, as I understand it, you had very nearly finished putting in your evidence. Have you anything further to present?

Mr. THATCHER. We have some further evidence that we perhaps might offer in rebuttal to any objections which might be raised. We thought, if it would be agreeable to the committee, that Mr. Paul might state his attitude toward the bill, and then we would see what his objections were and then see whether we could meet them.

Mr. HERSEY. Mr. Paul sent a telegram to the committee, but as he is here in person, it will not be necessary for me to read the telegram, and we will hear Mr. Paul later.

I wish to call the attention of the committee and of the proponents of the bill to certain communications which have been received by the committee which have not up to this time been put into the record.

The first communication is one from Judge Stone of Kansas City, Mo., attached to which is a table setting forth the cases filed in the

United States Circuit Court of Appeals, Eighth Circuit, for certain calendar years.

I will read the communication.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Kansas City, Mo., February 20, 1928.

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

DEAR SIR: A bill (H. R. 5690) is in the Judiciary Committee of the House which affects the structure of several of the circuits and radically changes this, the eighth circuit. It is now before a subcommittee, of which you are chairman.

Except as to the eighth circuit the changes are slight, consisting of shifting the States of Vermont, Connecticut, and Georgia. The vital changes are in the eighth circuit, where Arkansas and Utah are entirely detached and the remaining States roughly divided into two circuits.

According to the press reports the sole reason for this bill is the "congestion" of the litigation in the circuits and "particularly in the eighth circuit," where, it is said, the court is "from 200 to 300 cases behind docket." Therefore, I assume that the main purpose is to relieve the "congestion" in the eighth circuit which is said to be behind with its docket. I have been a member of the Court of Appeals for the Eighth Circuit for more than 11 years. Not once during that time has that court ever been one case behind its docket and it is not now. Until this year (1928) this court has held its three statutory terms annually and no case returnable to any of those terms which was ready for presentation and where the parties wanted to present it has ever (within my knowledge) failed of a prompt hearing at the first term to which it was returnable. This year (1928) there will be four terms because Congress recently added the Oklahoma City term (which has just been finished after three weeks of hearings). The hearings at the terms last from a scant two wekes at Denver to nine weeks at St. Louis—though the addition of the Oklahoma City term has this year cut the St. Louis term to six weeks and that will probably be as long as the hearings will last at any term in the visible future.

The above has been written because I knew that the gentlemen were mistaken if they stated to the committee that the eighth circuit was behind in its docket and I feel those gentlemen, as well as the committee would want your action to be based upon facts. The condition (present or past) of the docket in the eighth circuit can not be any reason for disturbing the present structure of that circuit because that court has always and now does keep up with its docket and no litigant therein is delayed in the orderly hearing of his case.

If there are other reasons why this circuit should be reconstructed, of course, that is another matter and doubtless the committee will want to investigate the merits of such reasons. Assuming that one consideration in any plan will be the amount of litigation and how a change in the structure of the circuit would affect such, I inclose a table of cases filed, from each State in the circuit, for each of the calendar years 1922–1927, inclusive, which was prepared by the clerk at my request.

If the circuit is to be divided, there are several matters of real importance, not mentioned in bill 5690, which would require treatment therein to avoid uncertainty, confusion, and injustice. There are probably others but I beg your indulgence to suggest only three.

First. The status of the present circuit judges. I take it, without question, that the proponents of the bill have no intention and the Congress would not knowingly countenance the legislating of those judges out of office. The bill seems framed, in this respect to utilize the present judges of this circuit since three naturally fall in each of the two new circuits into which the bill divides the present eighth circuit. Yet there would certainly arise a question as to such status and obviously, it would result in confusion, embarrassment, possible friction and uncertainty. This arises not alone from the standpoint of the judges but also from litigants who assuredly ought to know that the persons sitting as judges on their cases are in fact and law such. I have no embarrassment in suggesting this matter because, as the bill is now framed and as I presume it will, in that respect, remain, I am left in the proposed new eighth circuit and I was appointed to the eighth circuit. But other judges of this court would be affected and, I am sure, Congress does not desire to affect any of them. To remedy this omission in the bill, I suggest an amendment which will incorporate the thought following: Add to section 118 of the bill as now framed, "and nothing in this act shall in

any wise affect the status of the now judges of the present eighth circuit (a portion of the present eighth circuit), formed by this act, within which they now reside."

Second. There will have to be provision for times and places for holding the terms of court in each circuit. This will require amendment of section 126 of the Judicial Code (sec. 223 of the United States Code), which prescribes the terms for the courts of appeals. I respectfully suggest that when the committee has determined (if it should) that this circuit should be divided and the geography of the new circuits is settled, then the experience of the judges falling within each of such new circuits might be useful to the committee in reaching the most effective solution of this matter of the terms of courts and I am sure such is at the disposal of the committee if it is desired. Naturally, the sole desire of the judges is to have their work arranged so that they can do it most effectively and with the greatest satisfaction to the litigants. However, my present purpose is solely to direct attention to the necessity of making some provision as to terms of court.

Third. Another necessity is to provide for litigation now in this court of appeals or on its way here. This might be a jurisdictional matter which would vitally affect such litigation. The bill should clearly and definitely state to which court of appeals these cases, from the several States affected, should be assigned or transferred.

I am sure you will know that my only purpose in this letter is to aid you and the committee in consideration of this very important measure. I have no desire to intrude my views but I think my long and intimate familiarity with the work of this circuit justifies me in believing that the experience and information so gained might be of use to you in this matter. In that spirit only, it is respectfully tendered to you in this letter and if I can further serve the committee in any way I should esteem it a privilege.

Very respectfully yours,

KIMBROUGH STONE.

Cases filed in United States Circuit Court of Appeals, Eighth Circuit, from each State and Board of Tax Appeals during calendar years 1922, 1923, 1924, 1925, 1926, and 1927

	1922	1923	1924	1925	1926	1927
Arkansas	36	41	24	39	25	30
Colorado	3	23	22	18	29	22
Iowa	14	19	21	24	23	23
Kansas	23	19	24	41	29	36
Minnesota	20	31	37	22	61	32
Missouri	53	51	68	87	76	58
Nebraska	45	54	44	46	46	35
New Mexico	8	10	5	10	4	7
North Dakota	8	12	5	8	3	8
Oklahoma	24	58	69	69	97	95
South Dakota	9	15	10	9	5	14
Utah	8	11	11	15	11	7
Wyoming	3	3	13	10	10	10
Total	254	347	353	398	419	377
Federal Trade Commission				1	1	
U. S. Board of Tax Appeals						24
Grand total	254	347	353	399	420	401

Another communication which I should like to read to the committe and have incorporated in the record is one from Rose, Hemingway, Cantrell & Loughborough and is as follows:

LITTLE ROCK, ARK., *February 17, 1928.*

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

MY DEAR MR. DYER: I am much interested in H. R. 5690, which proposes to take Arkansas away from the eighth circuit and put it into the fifth. The bill was originally prepared by a committee of the American Bar Association, merely upon geographical grounds, and without consulting the States interested. It made a number of changes, but it was found that they were objected to by the States concerned in every instance, except that Vermont was not unwilling to

go into the first circuit. The only matter in which there is any controversy now is the division of the eighth circuit. This seems inevitable, in view of the fact that the work of the circuit is so enormous that the circuit judges can not decide all the cases, and have to bring in district judges continually, thus making it impossible to have that continuity and uniformity of decision which is essential to the proper administration of justice.

When it comes to making the division, I can not help but feel that St. Louis would be extremely unwilling to see Arkansas put into the fifth circuit. I am advised that of all the States, Arkansas does most business with St. Louis, and is her best customer. On the other hand, Arkansas has almost no business with New Orleans. It buys from that city a little sugar and molasses and a few bananas, and that is all; while we look to St. Louis as our financial and business capital. A great part of the litigation in the Federal courts, therefore, concerns St. Louis business men, who would naturally be opposed to having their litigation sent away to New Orleans.

Moreover, the circuit judges in the eighth circuit have been for years accustomed to administering Arkansas law as the act creating Oklahoma Territory extended Arkansas law over it, it would be a pity to separate the two States, compelling two sets of judges to familiarize themselves with the same system of jurisprudence. If Arkansas is put into the fifth circuit, the judges there will have to learn Arkansas law, and in the learning will no doubt make many mistakes, some of which will be prejudicial to people living in Missouri.

It seems to me that the logical division of the eighth circuit would be to include therein the States of Minnesota, Iowa, Missouri, Arkansas, and Oklahoma, which have substantially the same questions, being agricultural and manufacturing States, and putting into the new tenth circuit the States west of them, whose questions are largely of irrigation and mining. The judges of the eighth circuit will thus be relieved of the necessity of familiarizing themselves with mining and irrigation laws, which are very complicated. If you should divide the circuit by an east and west line it would require all the judges to familiarize themselves with every kind of problem which could arise in any jurisdiction, and would be quite a burden. Moreover, the north and south line of division is very desirable, in that it permits a winter session at St. Louis and Oklahoma City and a summer session at St. Paul, thus enabling the judges of the circuit court of appeals to function under the most favorable conditions, and accomplish the maximum of work. It should also be borne in mind that all the circuit judges, except Judge Lewis, have been commissioned for the eighth circuit, and therefore there would be no inconvenience in a partition which would leave them in the circuit for which they were appointed.

I beg your pardon for addressing to you so tedious a communication; but I feel that it is a matter which concerns your State almost as much as it does Arkansas, and I therefore take the liberty of setting out my views fully.

It was my expectation to appear before the committee in person on March 2, but a trip to Europe will prevent that.

Very truly yours,

G. B. ROSE.

Mr. HERSEY. The committee has also received a telegram from Salt Lake, Utah, dated February 3, 1929, as follows:

CHAIRMAN JUDICIARY COMMITTEE,
House of Representatives, Washington, D. C.:

In behalf of the Utah State Bar Association I want to vigorously oppose H. R. 5690 in so far as it proposes to include Utah in the ninth circuit. Utah belongs in a group of States which now composes the eighth circuit because of the interpretation of various questions of law by this circuit and which have become established in this State.

RICHARD W. YOUNG,
President Utah State Bar Association.

Mr. HERSEY. The next communication I have before me is a relegram from Mr. Paul, but as I have already stated, he is present and will be heard to-day, so we will not burden the record with that.

There is some communication here from Vermont, in the form of a letter to the committee from Ernest W. Gibson, Representative in Congress from the second district of Vermont, as follows:

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 8, 1928.

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

DEAR MR. HERSEY: I am informed that the bill (H. R. 5690) which calls for recircuiting the whole country, making 10 instead of 9 judicial circuits, has been referred to a subcommittee of the Committee of the Judiciary, of which you are chairman.

Hon. Harland B. Howe, district judge of Vermont, has written me that he is strongly opposed to the feature of the bill which would put Vermont in a circuit with Connecticut instead of in the New York circuit where it is now located, and that such a change would work a hardship upon the members of the Vermont bar.

I have received a large number of letters from members of the Vermont bar protesting against this proposed change in so far as Vermont is concerned, and I will inclose some of the letters herewith for your perusal.

With best regards, I am,

Sincerely yours,

E. W. GIBSON.

Mr. HERSEY. Mr. Gibson incloses with that letter a letter from Theriault & Hunt, Montpelier, Vt., dated February 3, 1928, which will be made a part of the record.

The letter referred to is as follows:

MONTPELIER, VT., *February 3, 1928.*

Hon. E. W. GIBSON, *Washington, D. C.*

DEAR MR. GIBSON: H. R. 5690 we note calls for recircuiting the whole country, making 10 instead of 9 circuits, putting Vermont and Connecticut in the first circuit and leaving New York in a circuit by itself. Just what the purpose of this is, we do not know, but there is one thing certain: We can not see wherein any advantage comes to Vermont by reason of such a change. We believe the present circuit arrangement, with Vermont in the second circuit, is as it should be, and feel that this bill should not become a law.

We do not know that our views in the matter will have any bearing on the situation, but we feel that you will be interseted in the views of local practicing attorneys.

We shall appreciate hearing from you, but assure you that at present we are decidedly opposed to the bill.

With kindest regards, we are

Sincerely yours,

THERIAULT & HUNT.

Mr. HERSEY. The next communication is a letter dated February 3 from Holden & Healy, attorneys at law, Bennington, Vt. That letter will also be made a part of the record.

BENNINGTON, VT., *February 3, 1928.*

Hon. E. W. GIBSON,
United States Congress, Washington, D. C.

DEAR MR. GIBSON: I am very much against the proposal to put Vermont in the first circuit instead of the second circuit. To be sure I am going out of practice here, but I am interested in the subject matter. The lawyers here who go to the circuit court of appeals have become accustomed to the practice in this circuit. It is more convenient and less expensive for most of us to go to New York than to Boston. I hope you will do everything you can to defeat this bill.

I am going to Washington soon and hope to have the pleasure of seeing you there before long.

With best wishes, I am,

Very truly,

ROE E. HEALY.

Mr. HERSEY. The next communication is a letter dated February 3, from Fred E. Gleason, attorney and counsellor at law, Montpelier, Vt.

This letter will also be made a part of the record.

MONTPELIER, VT., *February 3, 1928.*

Hon. E. W. GIBSON,
House of Representatives, Washington, D. C.

DEAR MR. GIBSON: I am advised that House bill 5690 has for its purpose the recircuiting of the entire country so as to provide for 10 instead of 9 circuits and joining Vermont with Connecticut in the first circuit.

I find that other members of our bar, in common with myself, feel that from our standpoint this action is most undesirable; that it would result in great inconvenience and that our district as it is is far preferable. No doubt the proponents of this bill have some arguments in its favor but these I have not heard.

I wish most respectfully to protest against the bill and to urge that you, if you can conscientiously do so, oppose it emphatically and work for its rejection.

Respectfully and sincerely,

FRED E. GLEASON.

Mr. HERSEY. The next is a letter from Porter, Witters & Longmoore, also dated February 3, 1928.

The letter referred to is as follows:

ST. JOHNSBURY, VT., *February 3, 1928.*

Hon. E. W. GIBSON,
Washington, D. C.

DEAR SIR: We have seen a copy of House Bill 5690 which provides for the recircuiting of the whole country putting Vermont and Connecticut in the first circuit and leaving New York in a circuit by itself. The members of this firm are much opposed to this bill and trust that every endeavor will be made to prevents its passage.

Yours truly,

PORTER, WITTERS & LONGMOORE.

Mr. HERSEY. The next is a letter from John W. Gordon, dated February 4, addressed to Ernest W. Gibson, and is as follows:

BARRE, VT., *February 4, 1928.*

Hon. ERNEST W. GIBSON,
House of Representatives, Washington, D. C.

MY DEAR MR. GIBSON: I understand that House bill 5690 is intended to recircuit the whole country, making 10 instead of 9 circuits and putting Vermont and Connecticut in the first circuit.

I don't like this change and hope that it will be defeated. I think our present arrangement for the circuit court of appeals is very satisfactory. The circuit court has always designated a certain day or week in which Vermont cases could be heard, and so long as this arrangement continues we think that Vermont will be accommodated better by remaining in the same circuit that it has been. If it should be necessary to change, I think that we ought to be circuited so as to have the court of appeals at Boston rather than some point in Connecticut.

Trusting you are well and enjoying your work, I am

JOHN W. GORDON.

Mr. HERSEY. The next letter is another letter addressed to Mr. Gibson from Webster E. Miller, attorney at law, Montpelier, Vt.

That letter will be made a part of the record.

MONTPELIER, VT., *February 6, 1928.*

Hon. ERNEST W. GIBSON,
Member of Congress, Washington, D. C.

DEAR COLONEL GIBSON: I am interested in House bill No. 5690, recircuiting the whole country, making 10 instead of 9 circuits, putting Vermont and Connecticut in the first circuit and leaving New York in a circuit by itself.

Personally I feel that things are all right as they are and that such a change might mean the reduction of the number of district judges and Vermont might lose her representation. I am opposed to the change.

If your views are consonant with mine, I trust you will vigorously oppose the passage of this bill.

Respectfully and sincerely yours,

WEBSTER E. MILLER.

Mr. HERSEY. The next is a letter from Elwin L. Scott, attorney at law, city of Barre, Vt., dated February 6, 1928, addressed to Hon. E. W. Gibson.

BARRE, VT., *February 6, 1928.*

Hon. E. W. GIBSON,
Member of Congress, Washington, D. C.

DEAR CONGRESSMAN: House bill 5690, recircuiting the whole country, making 10 instead of 9 circuits, putting Vermont and Connecticut in the first circuit, and leaving New York in a circuit by itself, has recently come to my attention As a member of the bar from Vermont and admitted to practice in the United States circuit I feel that there are plenty of sufficient reasons of which you are familiar why you should do all in your power as United States Senator to oppose the change and I request and trust you will do so.

Sincerely yours,

ELWIN L. SCOTT.

Mr. DOMINICK. If you will pardon me, Mr. Chairman, for an observation, I do not know how many other letters you have, but I was wondering whether, as there are some gentlemen present who want to be heard, we might put the rest of the communications in the record and hear these gentlemen first.

Mr. HERSEY. I am reading them for the benefit of the committee and of the gentlemen present, to show them where the objections are coming from. There are only two more.

The next is a letter from Senator Bingham of Connecticut, addressed to Mr. Hersey, and is as follows:

UNITED STATES SENATE,
March 1, 1928.

DEAR CONGRESSMAN HERSEY: Understanding that your subcommittee of the House Judiciary Committee is about to hold a hearing on H. R. 5690, a bill to provide for the rearrangement of the Federal circuits, I am venturing to send you the inclosed letter which I have just received from Judge Edwin S. Thomas, of the United States District Court, District of Connecticut, in opposition to this measure.

I am in receipt of a somewhat similar communication from Judge Thomas W. Swan, who argues that to have a circuit embrace only a single State would be contrary to historical tradition and the underlying notion which led to the creation of Federal circuits.

Judge Swan points out also that the proposed transfer of Connecticut to the first circuit would not relieve the congestion of the second circuit.

It will be appreciated if these arguments can be considered by your committee in connection with this bill.

Sincerely yours,

HIRAM BINGHAM.

Hon. IRA G. HERSEY, M. C.,
House of Representatives.

Mr. HERSEY. Accompanying the letter from Senator Bingham is a letter to Senator Bingham from Judge Thomas, setting forth his opinion as to the bill, and giving certain information in the form of a table. That letter will also be made part of the record.

(The letter referred to is as follows:)

UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT,
New Haven, Conn., February 29, 1928.

HON. HIRAM BINGHAM,
United States Senator, Washington, D. C.

DEAR SENATOR BINGHAM: So far as Connecticut is concerned this bill takes our State out of New York and the second circuit and puts us in the first circuit at Boston. In my opinion this will be a mistake.

While it is true that Connecticut is a New England State, nevertheless its business interests and associations, its general tendency and leaning in all matters are very largely with and toward New York. The lawyers of the State, I believe, will much prefer to be connected with the second circuit. Our close proximity to New York, as you know, makes for a natural association with New York in almost every line of endeavor.

If the reason for putting Connecticut in the first circuit is to relieve the labors of the circuit court of appeals for the second circuit, it is not forceful enough to offset the great inconvenience which will be caused counsel in appeal cases if they are obliged to go to Boston. Judge Manton, the presiding judge of the circuit court of appeals has compiled a table of appeal cases from Connecticut, which is as follows:

Connecticut:

1922	8
1923	11
1924	12
1925	7
1926	8

I send these observations for your careful consideration if and when the bill is presented for your attention.

With kind personal regards, I am,

Sincerely yours,

EDWIN S. THOMAS,
United States District Judge.

Mr. HERSEY. I believe that those are all the communications that the committee has received to date, and I have read them for the benefit of the proponents of the bill, as well as those who oppose it.

Mr. Thatcher, do you wish to present anything further before we take up the statements of those who are opposed to the bill?

Mr. THATCHER. We have some further evidence to present, but as you have read those letters of objection, and if it is satisfactory to the committee, we should like to hear Mr. Paul's objections.

Mr. HERSEY. He is opposed to the bill, or is he in favor of it?

Mr. THATCHER. He is opposed to it, or at least to certain features of it.

Mr. HERSEY. Then, as I understand it, you give way to those who are opposed to it?

Mr. THATCHER. Yes, in order to see what his objections are, and then we may want to put in some additional matters, to meet those objections.

Mr. HERSEY. Then we will hear from Mr. Paul.

STATEMENT OF AMASA C. PAUL, MINNEAPOLIS, MINN.

Mr. HERSEY. Will you state your full name, please?

Mr. PAUL. Amasa C. Paul.

Mr. HERSEY. Your business?

Mr. PAUL. I am a lawyer, a member of the bar in Minneapolis, and have been in practice for 44 years.

Mr. HERSEY. Whom do you represent?

Mr. PAUL. I represent a committee of lawyers of the eighth circuit. That committee was composed at the Buffalo meeting of the American Bar Association. It is not a bar association committee, but it is a voluntary committee that was arranged at that meeting.

Mr. MOORES. I do not think that you were there, were you, Mr. Paul?

Mr. PAUL. I think I was there.

Mr. MOORES. I beg pardon.

Mr. PAUL. I have been a member of the executive committee of the American Bar Association for three years, and I attended all of its meetings for many years.

Mr. HERSEY. Is that the Bar Association of Minneapolis to which you refer?

Mr. PAUL. No; the American Bar Association, the national association, which has 26,000 members.

There has been for some time considerable feeling that the eighth circuit is too large. It comprises 13 States. It has docketed each year something over 400 cases from the districts of the various States.

As Judge Stone states in his letter that has been read, this court has never been behind with its work or behind with its dockets. Every case that goes on the docket is disposed of at that term of court and usually the opinions come down within a few months.

Judge Sanborn told me at one time that he never went on the bench at the beginning of a term with any undecided cases on his hands.

We have three terms—this year we have four. The term at St. Louis begins the 1st of September, the term at St. Paul begins the 1st of May, and the term at Denver in September. Now, we have a term of court in Oklahoma, Oklahoma City, which was held in January, and there were 65 cases on the docket for the Oklahoma term.

Mr. MOORES. Do you ever hold court at Cheyenne, Wyo.?

Mr. PAUL. I do not think so. It is possible that they have held court there.

Last summer the advance program of the American Bar Association contained this bill, or substantially this bill, as a bill that had been prepared by the committee on jurisprudence and law reform, of which Mr. Henry W. Taft is chairman, and of which Mr. Moores is a member and, I think, chairman of the subcommittee.

It seemed to me from an examination of this bill that it would not be a desirable change, that there were many things about it that would not be satisfactory, and I had a notice put up in the Statler Hotel, asking eighth circuit lawyers who were interested to meet in one of the rooms in the hotel, the day before the meeting of the committee on jurisprudence and law reform.

We had 30 lawyers at this meeting, and I have the minutes of the meeting, which I will refer to later.

We voted at that meeting to have a committee attend the meeting of the committee on jurisprudence and law reform, and object to this bill, in so far as it related to the eighth circuit; and we went before the committee. George Rose, of Little Rock, from whom a letter has been read, spoke for Arkansas. Mr. Hollingsworth, of Ogden, spoke for Utah; making objections to putting those two States out of the circuit.

After we were before the committee Mr. Taft made a report to the bar association for his committee, and in reference to this bill in which he said—I read from the annual report of the American Bar Association which has just been issued. This is volume 52, containing the report of the American Bar Association, 1927.

Mr. MOORE. From what page are you reading, please?

Mr. PAUL. Page 78.

Mr. TAFT. The committee on jurisprudence and law reform has had the honor of submitting one of the lengthiest of the reports that have been submitted to this annual meeting of the association. I hope to make the statement of the contents of that report briefer than almost any other statement that has been made concerning the contents of any report.

In the first place, Mr. President, I desire to ask permission to withdraw that part of the report which recommends a certain rearrangement of the circuits of the United States. That is the second of the three recommendations.

Your committee anticipated that the question of rearranging the circuits of this country was a matter involving consideration of transportation, tradition, convenience of witnesses, convenience of courts, convenience of counsel, and some other things which bore upon the subject. It anticipated that any tentative plan that it might submit would be met by considerations which would have to be duly weighed before any conclusion was arrived at.

Nevertheless, in order to inaugurate the general subject, it proposed and recommended in this report an arrangement of the circuits which is embodied in the supplement to the report. After the report had been printed and distributed some very weighty considerations were presented to the committee—only day before yesterday—by delegations from some of the States which were affected by the rearrangement. A lengthy hearing was had upon the subject. One State particularly, east of the Mississippi River—

He says "east of the Mississippi River." It should be west of the Mississippi. I believe he refers to Arkansas.

Mr. MOORES. That was West Virginia.

Mr. PAUL. Very well; I thought the reference was to Arkansas. [Continuing reading:]

One State particularly, east of the Mississippi River, was very much aggrieved that it had been proposed to separate it from the circuit in which it had always been.

Mr. MOORES. They were opposed to putting it in the sixth. The committee took that back.

Mr. PAUL [continuing reading]:

Upon careful consideration of the whole subject and in view of the fact that if that change were made it would dislocate the entire arrangement east of the Mississippi River, the committee decided that the wise thing to do was to take all these things into consideration and postpone until next year a definite report upon the subject.

At the meeting of the lawyers that I referred to, I called attention to the fact that the division on the line proposed would not relieve the situation very much.

I have here a table of the cases that were docketed in the court of appeals for the eighth circuit in the fiscal year ended July 1, 1926.

In taking Arkansas out of the eighth circuit, the court would be relieved of 40 cases, assuming that there would be about the same number as in 1926.

Taking out Utah, it would be relieved of 10 cases.

The division which is proposed by this bill putting Colorado, Kansas, Arkansas, Missouri, Oklahoma, and New Mexico into one division would give that circuit on the basis of the 1926 business 292 cases, while the other proposed circuit, consisting of Minnesota,

Iowa, Nebraska, North Dakota, and South Dakota, would give that circuit 130 cases.

That is not a fair division of the work. You would have three judges in the proposed new eighth circuit, who would be expected to take care of 292 cases, and three judges in the new proposed ninth circuit with 130 cases.

One of the circuit judges suggested to me that a division into two circuits was not going to relieve the court for any great length of time; that this division would not make any real relief, and this judge suggested that the circuit ought to be divided into three parts; that there was business enough in the circuit for three circuit courts of appeals.

I gave the matter some study to see how the circuit could be divided into three parts and I figured out that on the basis of the 1926 business, this could be done in this way:

Minnesota, Iowa, Nebraska, North Dakota, and South Dakota would have 130 cases. That is what is proposed as the ninth circuit now, except that this bill adds Wyoming, which has only 14 cases.

In the St. Louis circuit there would be: Missouri, 74 cases; Kansas, 44 cases; Arkansas, 40 cases; or a total of 158 cases.

Mr. THATCHER. There would be three States in that circuit, then?

Mr. PAUL. Three States in that circuit, with 158 cases.

The other circuit, Colorado, Wyoming, Utah, New Mexico, and Oklahoma, would have 158.

Geographically, they come very close, except Oklahoma, which just touches Colorado here at this little corner [indicating on map], but the other parts are compact.

I suggested this division at this meeting of the eighth circuit lawyers at Buffalo, and it was quite favorably received, and a motion was carried recommending that division.

A committee was later appointed consisting of one lawyer from each State, and I was made the chairman of that committee.

We were to follow this matter up, not necessarily adhering to this particular plan, but to find out the sentiment of the lawyers and the judges in the eighth circuit in reference to it.

Mr. DOMINICK. If you will pardon me, Mr. Paul, for interrupting you, I did not quite understand what your proposed division contemplated. Is that proposed division that you suggested there as to three circuits, a division of one circuit?

Mr. PAUL. Yes. That simply divides the eighth circuit; it does not put anything out, or take anything in, but it divides it.

Mr. DOMINICK. In other words, your plan would be——

Mr. THATCHER (interposing). To make three circuits instead of two.

Mr. PAUL. Three instead of two, and of course that would mean three additional judges; because we have six judges now, and if you had three for each circuit, it would require three additional judges.

As it is now, if this plan were carried out—and if it is convenient to the committee, I will refer to these circuits by the city where the court would be held—St. Paul circuit would have three judges. It would not need any more; they would be Judge Sanborn, Judge Kenyon, and Judge Booth.

The St. Louis circuit has two, Judge Stone and Judge Valkenburgh; and the Denver circuit would have one, Judge Lewis. It

would require one other circuit judge in the St. Louis circuit and two in the Denver circuit.

Mr. DOMINICK. Under that plan it would require two circuit courts of appeals, if no changes were made in the other circuits at all?

Mr. PAUL. It would make three circuit courts of appeals where we have now only one, and the St. Paul circuit would have two terms a year, naturally, and St. Louis the same, and Denver the same.

There is now a term at Oklahoma.

But let me tell you what happened to my plan. The lawyers that were present at that meeting, as I say, unanimously approved the plan that I had suggested. This was the resolution which was offered by Judge W. I. Snyder, of Salt Lake, Utah:

Resolved, It is the opinion of the lawyers of the eighth circuit, at meeting assembled on the 30th day of August, 1927, that a division of the present eighth circiut should be made in three parts as indicated by Mr. A. C. Paul and that the new unit comprising Minnesota, Iowa, North Dakota, South Dakota, and Nebraska be known as the eighth circuit.

That resolution was adopted by the 30 lawyers who were present, and they were from nearly all parts of the circuit.

The reason for adding that clause, that the St. Paul unit should be known as the eighth circuit, was this: Judge Walter H. Sanborn had been on the Circuit Court of Appeals for the eighth circuit since the court was organized, 35 years, and do not think that he has ever been very enthusiastic about a division of the circuit.

He has been the presiding judge for many years, but he has said to me many times, in speaking about the matter: "I would not oppose a division of the circuit, but if it is divided I should like very much to see that St. Paul circuit over which I would preside called the eighth circuit, to finish up my career as the presiding judge of the eighth circuit."

We made this suggestion to the lawyers at Buffalo, and that clause was added to that resolution.

After I returned to Minneapolis, and later in the fall, I wrote a letter to each of the circuit judges out there outlining this plan, and outlining what had been done at Buffalo, and I got letters in reply from all of them.

None of them were very enthusiastic. One of them quite heartily approved the plan, and others said perhaps it was the best that could be done; but two letters were very decidedly opposed to it.

These letters were from Judge Kenyon, of Iowa, and Judge Lewis, of Denver. I have those letters. I do not know that I care to have them put into the record. but I have them and the members of the committee may see them if they wish.

Mr. HERSEY. Most of the judges have expressed themselves on this bill already, have they not?

Mr. PAUL. I was not here the other time, when you had your other hearing. I heard Judge Stone's letter this morning.

Mr. THATCHER. Have you the letters also of those circuit judges who favored this bill, or acquiesced in this suggestion?

Mr. PAUL. Yes; I have them.

Mr. THATCHER. We would have no objection to having them all put in as a matter of record, if it is convenient; that is, all of them, both for and against.

Mr. HERSEY. Do you wish them put in the record, Mr. Paul?

Mr. THATCHER. Have you got them all, both for and against?

Mr. PAUL. I have them all.

Mr. HERSEY. Do you wish to put them in?

Mr. PAUL. I think I would rather not, without their consent.

Mr. HERSEY. If you do not want them in, we shall not insist on their being made a part of the record.

Mr. THATCHER. Mr. Chairman, if he would be willing to state the judges who had approved the plan, we should like to have that in the record.

Mr. PAUL. The judge who approved the plan particularly was——

Mr. MOORES. That is the three-circuit plan?

Mr. THATCHER. Yes; the three-circuit plan. Will you give us the names of those?

Mr. PAUL. Judge Booth approved the plan of the division into three circuits. Judge Stone said that when the movement reaches the stage where a congressional bill to effect it is to be drawn, he thinks the present circuit judges should be consulted as to the times and places for holding terms in their respective circuits. He also said: "I think the division suggested by you and your committee is as good as any."

Mr. HERSEY. That is not very helpful to us, Mr. Paul, because as I understand it, those letters allude to a circuit which is not in question here.

Mr. PAUL. No; it is not.

Mr. MOORES. They offer a proposal; they suggest three circuits. If we are going to divide this circuit, and this is a discussion as to whether it should be three circuits or two circuits, it would seem to be pertinent.

Mr. HERSEY. What I am getting at is this: The proponents suggest the bill as drawn here. Do you wish to amend it in any way?

Mr. THATCHER. We want the committee to have the benefit of all the facts. We have no pride of opinion in this matter at all. We feel that the relief ought to be granted. If the creation of the three districts will grant the relief in a better form than two districts, in the judgment of the committee, very well. What we want to do is to get the relief. We want you to have all the facts, and if you conclude that the relief ought to be granted, then it is for you to say whether you want it in the form of two districts or three districts, or in any other form. We would like to have all the facts before the committee.

Mr. HERSEY. Let the committee vote upon whether they want all of these letters made a part of the record or not.

Mr. MAJOR. Mr. Paul does not want the letters to be put in the record.

Mr. MOORE. They are personal correspondence and I do not think that the committee would want to insist on their being submitted for the record.

Mr. PAUL. I will communicate with the judges.

Mr. HERSEY. Mr. Paul has stated the substance of what they contain. He has stated the opinions of the judges, as expressed in the letters.

Mr. THATCHER. Mr. Chairman, if Mr. Paul will just state the names of the judges who favor the proposal and the names of the

judges who oppose it, so that we may have that picture before us, we shall be quite satisfied.

Mr. PAUL. I have practically stated that already. Judge Kenyon and Judge Lewis positively opposed the plan. Judge Booth was for it. The other three judges, Judge Sanborn, Judge Stone, and Judge Van Valkenburg said that if the circuit was to be divided, they thought that this was as good a plan as any, or perhaps better.

Mr. DOMINICK. The opinions of those judges, Mr. Paul, were expressed for or against your proposed plan; is that right?

Mr. PAUL. My proposed plan. That was all that was before them.

Mr. MOORE. Mr. Paul, do any of the judges in those letters say whether or not they favor leaving the circuit as it is?

Mr. PAUL. Three of them very nearly say that.

Mr. MOORE. Which three?

Mr. PAUL. Judge Sanborn, Judge Stone, and Judge Van Valkenburg.

Mr. HERSEY. We have their late communications in the record.

Mr. PAUL. I do not know that there will be any harm, Mr. Chairman, in putting these letters into the record.

Mr. HERSEY. They are your own correspondence. The committee do not wish to insist that you put in your private correspondence.

Mr. PAUL. Then I think that I will just wire these judges and ask them if I may use it for that purpose.

Mr. HERSEY. Ask if you may put them in?

Mr. PAUL. I will ask if I may.

Mr. HERSEY. Do you want to put them in?

Mr. PAUL. I do not want them to criticize me for putting in a letter that they might not want to be published.

Mr. HERSEY. You want to communicate with the judges?

Mr. PAUL. Yes; I will wire them to-night—each of them—and when I get the replies I will send them up to-morrow or Monday.

Mr. HERSEY. Very well.

Mr. PAUL. Let me say another word or so in connection with this proposed division that you have here. I do not know whether you have heard from the Wyoming lawyers, but those that were at the meeting at Buffalo were opposed to being put into the circuit of St. Paul if there was a division. They claim it is much more convenient for them to go to Denver. Practically all of their cases—I think all—are heard at the Denver term, and they did not want to be sent to St. Paul for the hearing of their cases.

You have heard from George Rose in reference to Arkansas, but I do not know whether you have had any communication from Utah beyond the telegram from Mr. Young, president of the Colorado Bar Association.

I might say that after the meeting of the bar association at Buffalo I received a telegram from the president or the secretary of the Colorado Bar Association, stating that that association had indorsed the three-circuit plan that I had suggested. It is true that the circuit is too large and the district judges were called upon constantly to sit in the court of appeals.

Mr. HERSEY. You are speaking of the eighth circuit now?

Mr. PAUL. The eighth circuit. I do not remember ever having been in that court for a long time and finding three circuit judges on

the bench. It has occurred at times, but usually two circuit judges and one district judge are holding the court, and it is said that 40 per cent of the decisions of that court are written by district judges.

The fact that the court must change its personnel, as it does nearly every week, means that we find three judges sitting this week and next week perhaps one of those drops out and some other judge takes his place.

Mr. HERSEY. Your plan would mean two new circuit judges in the eighth circuit?

Mr. PAUL. My plan would give three new judges. In the three circuits, we would have six.

Mr. HERSEY. Would there be three new ones?

Mr. PAUL. Three new ones.

Mr. HERSEY. Three new circuit judges to be added?

Mr. PAUL. Yes, sir. We would have three circuits. We now have six circuit judges. That would make three in each circuit. It would mean that we would have nine in the territory where we now have six.

Mr. HERSEY. Does your plan change any of the other circuits at all?

Mr. PAUL. Not at all.

Mr. HERSEY. You wish to leave them as they are?

Mr. PAUL. As they are, make no change in any other circuit.

I think it will eventually have to come to this. My hope is that this committee will not act on this bill at this time.

I read to you Mr. Taft's report in which he said that the matter should go over in his committee for another year. We appointed, at the Buffalo meeting, a committee of one lawyer from each State, and it was our plan to give this matter thorough study and see if we could not find some way, some plan, that would be satisfactory to the judges and to the lawyers of the circuit.

We had not gone far enough. I have the names of that committee here and I should like to read them, with the permission of the committee. This committee consists of (reading):

George B. Rose, Little Rock, Ark.
J. O. Seth, Laughlin Building, Santa Fe, N. Mex.
Deloss C. Shull, France Building, Sioux City, Iowa.
Robert S. Gast, Thatcher Building, Pueblo, Colo.
James C. Benton, Mid-Continent Petroleum Corporation, Tulsa, Okla.
Thomas F. Doran, National Reserve Life Building, Topeka, Kans.
Charles R. Hollingsworth, 303 Eccles Building, Ogden, Utah.
J. H. Voorhees, Bailey-Glidden Building, Sioux Falls, S. Dak.
Charles A. Pollock, 7-10 Plano Building, Fargo, N. Dak.
Albert W. McCullough, Laramie, Wyo.
Thomas W. Blackburn, 312 Aquila Court Building, Omaha, Nebr.
W. H. H. Piatt, 715 Commerce Building, Kansas City, Mo.
F. H. Stinchfield, secretary, 900 Metropolitan Life Building, Minneapolis, Minn.
A. C. Paul, 854 Security Building, Minneapolis, Minn.

Mr. THATCHER. Those are lawyers in the present eighth circuit?

Mr. PAUL. This is a committee of one lawyer from each of the States in the present eighth circuit.

Mr. MOORES. Yes; 13.

Mr. PAUL. We want to study this matter. We hope that we can get a plan that will be satisfactory to the circuit judges. I should hate to come before this committee with a plan that had the opposition of any of the judges.

Mr. HERSEY. You do not want the present bill to pass, and you do not ask to have yours attached to it as an amendment?

Mr. PAUL. What I should have done, if it had not been for the opposition of these two judges, I should have had a bill prepared and introduced and had it brought before your committee, but in face of the opposition, I felt that the matter had better rest for a time. I believe that no action should be taken on this part of the bill. I think that we will get together—these lawyers forming this committee will work on this matter. The American Bar Association meets this year at Seattle, and we will have many of the eighth circuit lawyers there, and it may be that we can make some changes that will be satisfactory to Judge Kenyon and Judge Lewis and perhaps will have the approval of the others.

Mr. THATCHER. May I ask you a question at that point?

Mr. PAUL. Yes, sir.

Mr. THATCHER. Do you believe, Mr. Paul, you could ever frame a bill, or that a bill can ever be framed, that will not have some objections made to it?

Mr. PAUL. I do not think that you could ever frame a bill that would not have some objections.

Mr. THATCHER. Somebody would object to it.

Mr. PAUL. We might frame a bill that would not be violently opposed by any of the judges; that is, one that they might be willing to see go through. I am wondering if your attention has been called to the report of the Chief Justice in the judges' conference?

Mr. HERSEY. Do you mean Chief Justice Taft?

Mr. PAUL. Yes, sir; as to the condition of court business in the Federal courts. This is printed in the report of the Attorney General, and the Chief Justice says, in reference to the eighth circuit:

Judge Sanborn says:

"The trials of criminal cases, especially of the prohibition and antinarcotic cases, are occupying much less of the time of the judges than they were two or three years ago. In the Minnesota district, 1,619 criminal cases were disposed of in the year ending June 30, 1924; in the year ending June 30, 1927, 690 criminal cases were disposed of——"

Mr. MOORES. That is in the district court?

Mr. PAUL. Yes, sir.

"and all but 33 without trials. During 1924 almost all of the time of the district judges was occupied in trying criminal cases.

"The condition of the business throughout the circuit is far more satisfactory than it has been at any time within the last five years. The time of the judges is principally occupied in trying important civil cases. The criminal cases are rapidly disposed of, nearly as fast as they come in. Few criminal cases, comparatively, remain on the calendar from term to term.

"There remains yet a congestion of private civil cases, such as important equity cases, including especially patent cases; but if there is no serious change in the laws by acts of Congress, the work in this circuit will in my opinion be promptly and speedily disposed of as it comes in."

Mr. HERSEY. You are speaking of the eighth circuit?

Mr. PAUL. Yes, sir.

Mr. HERSEY. I would suggest making that extract from the Chief Justice's report a part of the record.

Mr. PAUL. I shall be very glad to submit it to the committee.

(The report referred to is as follows:)

[From report of Chief Justice at judges conference, 1927]

CONDITION OF COURT BUSINESS REPORTED MORE SATISFACTORY

The condition of business in the district courts of all the country is much more satisfactory than it was a year ago. In 1926, of the civil cases in which the United States was a party, there were commenced 17,504 cases, and there were terminated 17,236 cases. In 1927 there were 17,887 cases commenced, and there were terminated 19,952 cases, so that there were pending in 1926 18,455 cases, and in 1927 they had been reduced to 16,443 cases.

Of the criminal cases there were commenced 68,582 cases in 1926, and 64,614 in 1927. In 1926 there were terminated 76,536 cases. In 1927 there were terminated 67,279 cases. There were pending in 1926 38,858 cases. That has been now reduced for 1927 to 35,386.

With the further and more rigid enforcement of the rule recommended for the annual call of the docket and the dismissal of all cases in which without proper excuse no action has been taken for a year, we feel confident that the cases now pending can be reduced so as more clearly to show the real business on the docket.

The courts as now organized in the United States are able, we think, to take care of the business as it comes in, if they are given the additional judges in the southern and eastern districts of New York and the southern district of Iowa. There has been no opportunity fully to show the advantage which follows from the work of the judges created by the last Congress.

The language of the report made to this conference by the veteran and distinguished senior circuit judge of the whole United States as to his, the eighth circuit, the largest circuit in the United States, with 13 States in its jurisdiction, fairly states the situation not only for that circuit but for the whole United States, with the qualifications already made as to New York City and Brooklyn.

Judge Sanborn says:

"The trials of criminal cases, especially of the prohibition and antinarcotic cases, are occupying much less of the time of the judges than they were two or three years ago. In the Minnesota district 1,619 criminal cases were disposed of in the year ending June 30, 1924; in the year ending June 30, 1927, 790 criminal cases were disposed of, and all but 33 without trials. During 1924 almost all of the time of the district judges was occupied in trying criminal cases.

"The condition of the business throughout the circuit is far more satisfactory than it has been at any time within the last five years. The time of the judges is principally occupied in trying important civil cases. The criminal cases are rapidly disposed of, nearly as fast as they come in. Few criminal cases, comparatively, remain on the calendar from term to term.

"There remains yet a congestion of private civil cases, such as important equity cases, including especially patent cases; but if there is no serious change in the laws by acts of Congress, the work in this circuit will in my opinion be promptly and speedily disposed of as it comes in."

Mr. THATCHER. I should like to ask Mr. Paul some questions, if I may.

Mr. HERSEY. Are you through with your statement, Mr. Paul?

Mr. PAUL. I think I have finished.

Mr. HERSEY. Then Mr. Thatcher will ask you some questions.

Mr. THATCHER. What is the travel distance, approximately, from St. Paul to Denver?

Mr. PAUL. I do not remember; I know that it is——

Mr. THATCHER (interposing). Close to a thousand miles?

Mr. PAUL. It is a good 24-hour ride, as I remember it.

Mr. MOORES. You go by Omaha, do you not?

Mr. PAUL. Always go by Omaha; yes, sir.

Mr. THATCHER. Is it not a fact that the great distances involved there make the Circuit Court of Appeals for the Eighth Circuit practically an itinerant court?

Mr. PAUL. Well, in this way: All of the cases in what we might call the mountain section, Wyoming, Colorado, New Mexico, and Utah, go to the Denver court, unless by some special assignment they go to St. Louis or to St. Paul. All of the cases from the other part of the circuit, if they are docketed before the 1st of March, are heard at St. Paul in May. The St. Paul term is about six weeks. All of the cases docketed between March and December go to the term of court at St. Louis, which is held the first of December, the first Monday in December, but none of the cases in the four Mountain States—Wyoming, Colorado, Utah, and New Mexico—go either to St. Paul or to St. Louis, unless by motion and special order of the court.

Mr. THATCHER. In any event, it requires, of course, long distances of travel ordinarily to reach any of the courts from the major portion of the territory?

Mr. PAUL. That is true. I specialize in patent and trade-mark cases. All of my business is in the Federal courts—not all in the eighth circuit. So I have occasionally cases, ususlly several cases, at each term of court at St. Paul and each term at St. Louis, and I have had for many years.

It is not so very inconvenient to go from Minneapolis to St. Louis. That is a night's ride—a little more, perhaps. I think that so far as that goes, we get along quite well. It is a fact, however, a large number of what are generally spoken of as three-judge cases come up in this circuit.

As you know, if a case in the Federal court attacks the validity of a State statute, it must be heard by three judges, one of whom must be a circuit judge. There are many of those cases, and they come from all parts of the circuit. The presiding circuit judge must assign to hear those cases in the district, three judges. He usually, I assume, assigns those that are perhaps most convenient, that do not have to travel so far. One of those judges must be a circuit judge.

With 13 States whose statutes may be attacked on the ground that they are not constitutional, that adds a great deal to the work in the circuit. There are a great many of those cases.

Congress has recently, as I understand it, provided for appeals from the Board of Tax Appeals to the circuit courts. Some of the circuit judges think that that will add a good deal of work, but I can not say as to that.

The fact that the court must change so often makes it, the judges tell me, somewhat difficult to avoid having conflicting decisions. They have to keep in touch with one another, because the three judges on the bench to-day may have a certain question, and three judges coming a month later—three different judges—having that same question, must be careful that their decisions will not conflict.

That is perhaps the strongest reason for a division of the circuits.

Mr. THATCHER. Is it not a very strong reason, really?

Mr. PAUL. Yes; it is strong.

Mr. THATCHER. In the interest of justice?

Mr. PAUL. Yes, sir.

Mr. THATCHER. These objections that some of the circuit judges are advancing are somewhat sentimental, are they not? They are based on an attachment to certain geographical boundaries and on their association through years of service in the district?

Mr. PAUL. I think so. I might put it this way. If the court were to be constituted anew, nine new men, I think they would have no objection at least to my proposal, but they are not favorably disposed toward my proposal, and I had talked with several of them and they are much opposed to the proposal in this bill.

Mr. THATCHER. As between sentimental considerations and practical considerations, the convenience of litigants and lawyers, and of the judges themselves—considerations of that sort ought to prevail against purely sentimental considerations, should they not?

Mr. PAUL. Oh, I should say so.

Mr. THATCHER. In your study of the eighth circuit and its problems you did not undertake to make a study of the whole field of circuits also, did you?

Mr. PAUL. No, sir.

Mr. THATCHER. You restricted your study——

Mr. PAUL (interposing). I thought that we had troubles enough in the eighth circuit.

Mr. THATCHER. And you recognize that you really have a problem there?

Mr. PAUL. I do.

Mr. THATCHER. And you think that sooner or later this division, or some division, must be had in order to get relief?

Mr. PAUL. Yes; I do. But I do not think that we are quite prepared now. I hope that this committee, of which I am chairman, with one member from each State on it, may do something.

Mr. THATCHER. That committee is an informal committee; that is, it is not operating under the auspices of the Bar Association?

Mr. PAUL. No, sir.

Mr. THATCHER. It is just your own committee?

Mr. PAUL. It is our own committee.

Mr. THATCHER. The tables that we have, Mr. Paul, show, of course, a great preponderance of cases in the eighth circuit running through the years beginning in 1918 down to 1927. For instance, in 1918, in the first circuit, the cases disposed of on appeal number only 71, and in the second or New York circuit, 279, and in the eighth circuit, 248.

In 1927, for instance, the total number of cases in the first circuit was 181, with 48 undisposed of or pending; and in the second or New York circuit, 428 cases disposed of and 141 undisposed of, showing the great disparity between the first and the second circuits.

Then, coming on down to the eighth circuit, in 1927, there were 492 cases disposed of, with 299 pending cases, showing the great preponderance all the way down the line, including the last year, in the eighth circuit.

Mr. PAUL. There is no doubt about that. The largest number of cases, it is surprising to see, perhaps, are from Oklahoma.

Mr. MOORES. Were they oil cases mainly?

Mr. PAUL. No. Some of them were, but I am told that quite a large number of those were criminal cases.

Mr. THATCHER. What would you think about putting Oklahoma in the fifth circuit and retaining Arkansas either in one of these new circuits of the eighth or tied in with the St. Louis circuit?

Mr. PAUL. I think that Arkansas ought to go with Missouri, and I think you will get just as much complaint if you put Oklahoma into the fifth circuit as you getting now from Arkansas.

Mr. MOORES. The court meets at Fort Worth, which is only 30 or 40 miles away.

Mr. PAUL. Yes; I know; but we had this year a term of court for the circuit court of appeals at Oklahoma City in January, and they had 65 cases on the calendar.

Mr. THATCHER. Mr. Chairman, we have prepared a short brief, with an appendix, which we should like to put into the record; and following that I should like to have Mr. Moores answer certain statements that have been made in this record.

This short printed brief reviews the situation and gives a table showing the cases in the various circuits, and the relative number of cases tried and disposed of beginning with the year 1918.

Mr. HERSEY. Have you seen this brief, Mr. Paul?

Mr. PAUL. No; I have not.

Mr. HERSEY. Are you through questioning Mr. Paul, Mr. Thatcher?

Mr. THATCHER. Yes; I am through.

Mr. MOORE. I should like to ask a question or two.

Mr. HERSEY. Mr. Moore wants to ask one or two questions.

Mr. MOORE. Some thing has been said by these judges about keeping up with their dockets. It is one thing to keep up with a docket and another thing to have as much time as the court needs to consider the various cases that are before it. Do you think that with the number of cases that are before the judges in the eighth circuit, there is proper time for consideration of all of them under the present arrangement?

Mr. PAUL. I think that they do give their cases full consideration, but it is done because they call in so many of the district judges to sit with them, and the district judges, as I said, write the opinions in 40 per cent of the cases.

Mr. MOORE. Then, as a matter of fact, it is practically impossible for the circuit judges to give full consideration to the cases?

Mr. PAUL. Yes; that is absolutely impossible.

Mr. MOORE. That is admittedly so, is it not?

Mr. PAUL. That is admittedly so. A circuit judge who disposes of and writes the opinions in 35 to 50 cases is doing all he can do and working all the time, and I think that the six circuit judges in the eighth circuit are the hardest working men that I know. Judge Sanborn is 82 years old.

Mr. MOORE. He is 83, is he not?

Mr. PAUL. He was 82 last October. He has been on the bench since the court started. He works all the time. He sits in the court at least two weeks each term.

The plan of that court is to assign about 8 or 10 cases Monday, Tuesday, and Wednesday. No cases are assigned Thursday, Friday, and Saturday, and they nearly always—I might say almost always—clean up the calendar by Saturday night. But they have frequently to sit six days, and all day.

Then, they have told me that immediately after the hearing, without any consultation, each judge goes over the case and makes a memorandum. Then they have a conference and they come to a decision, and the case is assigned to one of the judges to write the opinion. Their opinions nearly have come out before the next term of the court. That is, the cases that are argued at the St. Louis

term will—the opinions on most of them will be handed down before the May term at St. Paul: not always, but some of the judges get out their opinions by the following term.

Mr. YATES. You say that 40 per cent of the opinions are written by the district judges?

Mr. PAUL. Forty per cent of the opinions are written by the district judges.

Mr. HERSEY. Concurred in, of course, by the circuit judges?

Mr. PAUL. Yes: but they do the work of writing the opinions.

Mr. THATCHER. If Mr. Paul is through, I should like Mr. Moores to make some statements.

Mr. HERSEY. Does anyone else on the committee wish to ask any question of the witness?

Mr. YATES. I should like to ask one question. Your suggestions apply only to the eighth circuit?

Mr. PAUL. Only to the eighth circuit. I have not considered the matters outside of the eighth circuit.

Mr. HERSEY. Do you wish to make any further statement, Mr. Paul?

Mr. PAUL. I was going to ask you if I might, after looking over this brief, and if there is anything that I want to reply to, submit an answering brief or statement to the committee?

Mr. HERSEY. You may send in a brief and it will be received by the committee. Without objection, the brief furnished by the proponents of the bill will be put in the record.

(The brief referred to is as follows:)

BRIEF IN SUPPORT OF H. R. 5690, A BILL TO AMEND SECTIONS 116 AND 118 OF THE JUDICIAL CODE

In the report of the committee on jurisprudence and law reform to the 1926 meeting of the American Bar Association (rept., 1926, p. 431), appears the following language:

THE REVISION OF THE JUDICIAL CIRCUITS OF THE UNITED STATES

At the last meeting of the association the following preamble and resolutions were adopted:

"Whereas changes in population and economic conditions, as well as in jurisdiction and volume of litigation have resulted in an unequal distribution of the work of the United States Circuit Court of Appeals for the several circuits so that, for example, in the October term, 1924, one court heard 441 appeals and another only 77; and

"Whereas the present division of the United States into nine circuits should be reconsidered in the list of the distribution of appellate work and the new conditions following upon the act of February 13, 1925, amending the Judicial Code: Therefore be it

"*Resolved*, That the committee on jurisprudence and law reform be requested to consider and report to the association its recommendations as to the advisability of a revision of the judicial circuits of the United States for the conduct of judicial proceedings, so as to distribute evenly the work of the circuit courts of appeals."

Pursuant to the instructions contained in the foregoing resolution, the committee on jurisprudence and law reform promptly proceeded to make an investigation in the several circuits throughout the country. The most obvious step seemed to be, first, to ascertain the views of members of the Supreme Court and of the senior circuit judges throughout the country. From these sources the committee has obtained much information and a free expression of views. These do not, however, afford a complete basis for definite conclusions. The questions, whether with the present circuits justice is being administered promptly and at such times and places as serve the convenience of litigants and members

of the bar, requires a consideration of the present and prospective population and the manner of its distribution, particularly in the geographically extensive circuits, the economic conditions in the several circuits, and the means of transportation from one part of a circuit to another.

Mr. Justice Van Devanter in a letter to the committee mentions another condition which can not be ignored in considering whether the present circuits should be changed. He says:

"The existing division in the circuits have been established so long, and all proceedings have become so thoroughly adjusted to it that a complete revision does not appear feasible. It is not as if a division were being made for the first time. No change should be made save where new conditions incident to increased population, enlarged development, and customary routes of travel require it."

These are matters which it would be difficult for an unofficial body like your committee profitably to investigate, or upon which its conclusions would have decisive influence. It seems to the committee that the subject is one which should be dealt with by a commission appointed by Congress or a duly authorized committee of that body. The committee is of the opinion, however, that it may perform a useful function by continuing its investigations. At present it is unable to do more than report progress, and to state some of the oustanding conditions and some of the suggestions that have been made—almost exclusively by members of the judiciary.

It needs little investigation to show that the recitals in the first preamble of the resolutions under consideration have a basis in fact, that the distribution of the work among the several circuit courts of appeals for the several circuits is unequal, and that there ought to be some effort made to bring about a greater uniformity.

Of numerous suggestions made to the committee, we call attention to the following, viz:

1. That there be one additional circuit, making the total number 10. This is based largely on the view that portions of the widely extended eighth circuit should be united to some States of the contiguous fifth and ninth circuits in forming a new circuit.

2. That the number of circuits should be reduced to six. This suggestion is made in conjunction with the further suggestion, which we will discuss later, that the number of judges of the circuit courts be increased (in some of the circuits to seven) and that a quorum of the circuit court of appeals should consist of five judges.

3. That in reducing the number of circuits to six, or in any rearrangement, the first and second circuits should be combined in one circuit, and that other consolidations be made of circuits in such a way as to eliminate the disparity in the volume of business in the new circuits.

4. That Vermont and Connecticut should be added to the first circuit, thus reducing the amount of business in the second circuit.

5. That there is no pressing need for a change in the third and fourth circuits, unless the plan of reducing the number of circuits to six should be adopted.

6. That the fifth and eighth present the most difficult problems. There is considerable support for the view that the distances from the extreme limits of these large circuits are so great that some rearrangement would be to the advantage of all concerned. Various rearrangements, based largely upon the number of cases pending in the circuits, have been proposed.

7. That changes in the sixth and seventh circuits should be made, but that they are not so much needed as in the fifth and eighth circuits.

In some of the circuits, like the second and the eighth, the inconvenience on account of the pressure of business has been somewhat removed by the appointment of additional circuit judges, but this expedient has disadvantages, and, generally speaking, it would be more desirable to arrange the circuits in such a way that the number of judges in the circuits should be uniform.

This report was signed by the following members of the committee: Henry W. Taft, chairman; Stephen H. Allen, Kansas; Wm. V. Hodges, Colorado; Paul Howland, Ohio; William Hunter, Florida; Nathan W. McChesney, Illinois; Jesse A. Miller, Iowa; Merrill Moores, Indiana; Roland S. Morris, Pennsylvania; Roscoe Pound, Massachusetts; Wm. L. Ransom, New York; Reeves T. Strickland, Washington; Edson R. Sunderland, New York; and Edmund F. Trabue, Kentucky, and was approved by the association. (Report, p. 108.) The only member of the committee, Geo. E. Beers, of New Haven, Conn., who did not sign the report favored this portion but dissented from a portion of the report dealing with expert evidence.

The pending bill was reported to the association at Buffalo, with the exception that Tennessee in the bill reported was placed in the fifth circuit and its place in the sixth taken by West Virginia and Florida was placed in the fifth. Objection being made by representatives of the bar of West Virginia, Tennessee was restored to the sixth, West Virginia to the fourth, and Florida placed in the fifth.

The association was not asked to approve the bill as written; but it did approve the general plan of the proposed legislation by the adoption of the following resolution:

"*Resolved*, That the association instruct the committee on jurisprudence and law reform to continue to promote the passage of the bills mentioned in its reports for 1926 and 1927, as having been favored by the committee and heretofore recommended by the association." (Report, p. 86.)

ARGUMENT

The main purpose of the proposed legislation is to relieve the second and eighth circuits of the heavy burden of work the judges have been forced to perform during the last 10 years and to give the circuit courts of appeals of these two circuits relief from their present choked calendars; as well as to preserve as far as may be done to litigants their right that "justice shall be administered freely, and without purchase; completely, and without denial; speedily and without delay."

It is by no means fair districting where the circuit court of appeals in one circuit disposes in 10 years of but 871 appeals, or at the rate of 87 per annum, while that in the eighth circuit in the same period disposes of 2,989 or at the rate of 299 per annum; and that of a circuit adjoining the first named disposes of 3,527 in the same time, or at the rate of 353 a year.

The Circuit Court of Appeals of the Eighth Circuit has had since March 18, 1925, six experienced judges and is to-day nearly as far behind with its work as it was when the two additional judges were appointed. One reason for this is, of course, that the Circuit Court of Appeals of the Second Circuit sits only in the city of New York, within easy reach of counsel and suitors, while the Circuit Court of Appeals of the Eighth Circuit, because of the immense size of the circuit, is of necessity an ambulatory court, required by law to sit in St. Paul, St. Louis, and Denver or Cheyenne, and with congressional permission to sit in Oklahoma City, when necessary. It goes without the saying that a stationary court is able to transact more business and do it more promptly than an itinerant court.

The distance from St. Paul to St. Louis by the shortest way is 575 miles, from St. Louis to Denver is 932 miles, and from Denver to St. Paul is 936 miles. An appellate court which must make jumps between the points at which it is required to hold sessions at least twice a year as far as from Columbus, Ohio, to New York, and as far as from New York to Chicago at least twice as often, can not hope to transact as much business as a stationary court.

A study of the attached tabulation shows that with four judges the eighth circuit court kept fairly even with a docket of from 198 to 322 cases in arrears; while with six judges, from 1925 to 1927, it has reduced the delayed cases from 322 to 299, disposing on the average some 369 cases a year.

The fair thing would be for the Congress to reduce the size of the eighth circuit and the expenses of travel for judges, counsel, and litigants and at the same time expedite the decision of appeals; and to reduce the labors of judges and expedite the decision of appeals as well by transferring appeals from Vermont and Connecticut for decision from New York to Boston, thus relieving the overcrowded dockets in the second circuit.

A study of the map of the proposed circuits will show that as far as the wealth population and litigation in the proposed circuits is concerned and as concerns the contiguity of the States and the means of communication within the new circuits, the situation has been equalized as far as possible at this time. This would require, of course, a study of the three tabulations furnished by the proponents of the bill.

A new section should be added to the effect that the act take effect on the first Monday in October after its enactment.

To the States in the third circuit should be added the Virgin Islands; to the fifth circuit should be added appeals from the Canal Zone; and to the Pacific coast circuit should be added appeals from the United States court in China. The proponents of the bill have no objection to any reasonable renumbering of the circuits; nor do they object to switching of the States of Arkansas and Oklahoma, if the committee deems that Arkansas should be in the eighth and Okla-

homa in the fifth. What the bar association, representing more than 26,000 lawyers from every State, Territory, and possession of the United States, asks is simply that decent and adequate relief be afforded by Congress to judges, counsel, and litigants in the second and eighth circuits.

MAURICE H. THATCHER,
REEVES T. STRICKLAND,
MERRILL MOORES,
Representing American Bar Association.

Litigation in circuit courts of appeals

	Disposed of cases	Pending cases
1918		
First	71	66
Second	279	66
Third	131	55
Fourth	90	57
Fifth	154	74
Sixth	144	76
Seventh	137	120
Eighth	248	198
Ninth	223	81
Average	164	85
1919		
First	65	61
Second	257	81
Third	95	50
Fourth	100	48
Fifth	154	80
Sixth	139	52
Seventh	132	82
Eighth	239	216
Ninth	157	112
Average	149	87
1920		
First	80	43
Second	265	108
Third	99	67
Fourth	90	58
Fifth	138	92
Sixth	97	85
Seventh	96	104
Eighth	227	189
Ninth	171	99
Average	138	94
1921		
First	52	37
Second	268	122
Third	124	98
Fourth	90	34
Fifth	176	88
Sixth	155	79
Seventh	132	125
Eighth	203	240
Ninth	172	121
Average	152	105
1922		
First	44	50
Second	404	96
Third	165	98
Fourth	78	69
Fifth	173	86
Sixth	131	98
Seventh	147	135
Eighth	231	261
Ninth	215	85
Average	176	108

	Disposed of cases	Pending cases
1923		
First	79	44
Second	322	107
Third	122	113
Fourth	139	48
Fifth	203	114
Sixth	194	117
Seventh	177	102
Eighth	322	231
Ninth	173	74
Average	192	106
1924		
First	77	92
Second	441	150
Third	158	103
Fourth	124	67
Fifth	232	125
Sixth	192	151
Seventh	133	118
Eighth	310	280
Ninth	231	68
Average	211	131
1925		
First	102	91
Second	428	142
Third	188	94
Fourth	143	50
Fifth	241	105
Sixth	270	130
Seventh	165	109
Eighth	339	322
Ninth	286	136
Average	242	129
1926		
First	132	121
Second	435	157
Third	141	89
Fourth	122	55
Fifth	270	93
Sixth	276	111
Seventh	191	99
Eighth	378	390
Ninth	283	120
Average	245	122
1927		
First	181	48
Second	428	142
Third	162	7
Fourth	120	43
Fifth	230	154
Sixth	240	162
Seventh	141	102
Eighth	492	299
Ninth	299	127
Average	256	128

Mr. THATCHER. I should like to have Mr. Moores make some statement relative to the action taken by the bar association.

Mr. HERSEY. Mr. Moores wishes to make an additional statement in rebuttal. You may proceed, Mr. Moores.

STATEMENT OF MERRILL MOORES, REPRESENTING THE AMERICAN BAR ASSOCIATION

Mr. MOORES. I yield to no man in my admiration for Walter H. Sanborn as a judge and as a lawyer and as a man; he is, I think, the greatest judge we have in the Circuit Court of Appeals of the United States, and it is absolutely pathetic to hear from him, after 35 years of service in the eighth circuit, having to give up, grieving over giving up a square foot of his jurisdiction, or even the number of his circuit.

Mr. HERSEY. If you will pardon me for interrupting, where does Judge Sanborn live?

Mr. MOORES. St. Paul.

Mr. HERSEY. Is that removed from the eighth circuit in any way?

Mr. MOORES. In this bill they change the number of that district to the ninth.

Mr. HERSEY. In other words, his home city is taken out of the district?

Mr. MOORES. Oh, no; the district remains the same, except that it is cut in two by an east and west line.

Mr. HERSEY. Does that put Judge Sanborn out of the eighth district?

Mr. THATCHER. It puts him in the new ninth district, but that contains the same territory, or a part of the same territory, and includes his home. It does not change his home.

Mr. MOORES. There is one other thing that I want to say in regard to George Rose's objection. I know George Rose. His father, U. M. Rose, was a great lawyer, and his statute is over here in Statuary Hall. He was a great lawyer and so is George. George likes to try his cases in St. Louis, and I do not blame him, because it is very handy to Little Rock. He has a great deal of litigation. I will not quarrel with him at all on that, and I will not quarrel with him except on one proposition. He proposes to take a tier of States immediately west of the Mississippi River and form them into one circuit and divide the circuit by running a line north and south. That is an impossible division.

Mr. HERSEY. Has anybody presented that plan to this committee?

Mr. MOORES. Yes; George Rose did in the letter that was read this morning. The trouble with that plan is this: They can be divided fairly according to population—that is, the district can—according to wealth, according to the amount of litigation, according to the residences of the judges, but the means of communication in the western half of the district between the north and south ends of the circuit simply do not exist. The railroad lines run east and west out there. They are trunk lines.

I was talking with one of the judges about it, and he suggested that the district be divided by a north and south line. I drew his attention to the railroad lines and he immediately conceded that it was impos-

sible. They can not get north and south in the western half of the circuit.

Mr. THATCHER. Those railroad lines to which you refer are the transcontinental lines, of course.

Mr. MOORES. The roads all run east and west and there are abundant means of communication between the east and west parts, but almost none between the north and south parts.

Mr. HERSEY. Mr. Paul's plan provided for three new circuit judges, if I understood him.

Mr. MOORES. Yes, sir.

Mr. HERSEY. Would your plan do the same?

Mr. MOORES. No.

Mr. HERSEY. How many new judges would we have to have under your plan?

Mr. MOORES. There would be no increase at all.

Mr. THATCHER. That was the objection that we tried to meet; to propose relief without increasing the number of judges.

Mr. MOORES. The bill as prepared by our committee makes an increase unnecessary. Here is what I want to say about that committee:

Mr. HERSEY (interposing). What committee are you alluding to?

Mr. MOORES. The committee on jurisprudence and law reform to which this matter was referred by resolution of the bar association in 1926. I have the resolution here.

Mr. YATES. That is the American Bar Association.

Mr. MOORES. I read from the report of the committee on jurisprudence and law reform, the 1927 committee. This resolution was introduced by some one from the eighth circuit, if I remember correctly. I may be wrong about that, however.

Whereas, changes in population and economic conditions as well as in jurisdiction and volume of litigation have resulted in an unequal distribution of the work of the United States circuit courts of appeals for the several circuits so that, for example, in the October term, 1924, one court heard 441 appeals and another only 77—

Those two courts are the circuit courts of appeals of the second and the first circuits which adjoin each other, and by this bill we propose to put all the New England States together in one circuit, to equalize that matter. In this resolution we were directed to consider that situation. I will continue with the resolution:

Whereas, the present division of the United States into nine circuits should be reconsidered in the list of the distribution of appellate work and the new conditions following upon the act of February 13, 1925, amending the Judicial Code; therefore, be it

Resolved, That the committee on jurisprudence and law reform be requested to consider and report to the association its recommendations as to the advisability of a revision of the judicial circuits of the United States for the conduct of judicial proceedings, so as to distribute evenly the work of the circuit courts of appeals.

Those were our directions from the association.

Mr. HERSEY. Following that, in the brief that you furnished the committee, you say that they had not made a final report.

Mr. MOORES. I will explain that to you. I was just at that point. We made a report in 1926 and we made a report in 1927 on this matter, and the substance of those reports is quoted in this brief.

The reason for not making a final report was a diplomatic one. It was a matter of courtesy. Under the law (the American Bar Association met at Buffalo last fall, early in September) Congress has provided that the nine senior circuit judges meet under the supervision of the Chief Justice of the Supreme Court in the latter part of September. Our recommendations had not been before those circuit judges at that time. They were to meet here. I think that Judge Sanborn was the eldest and Judge Gilbert of the ninth circuit next to the eldest. We were hoping to get some light from those judges as to what they thought of this, but we did not get any light from them.

Mr. HERSEY. Let me understand this. Mr. Paul's explanation, as I understood it, was that the committee of the American Bar Association at its last meeting had prepared some resolution or report practically indosring this proposed change in the districts that you propose, and that he, with the backing of certain lawyers of the eighth circuit came before that committee and presented to them their view of the matter, and they, therefore, did not make any definite report at that meeting, but held it up for the next session and they are now considering it. Do I understand that you agree to those as facts?

Mr. MOORES. No, not entirely. I would not dispute Mr. Paul's word at all, but——

Mr. HERSEY. I was asking what the American Bar Association has done in this matter that is of some light to this committee.

Mr. MOORES. Our committee was exceedingly reluctant to present any bill or any report for final action until it was submitted to the circuit judges.

Mr. PAUL. Do you not admit that Mr. Taft, the chairman of that committee, went before the association?

Mr. MOORES. You will remember what he said.

Mr. PAUL. And he withdrew the report and said that he would not make any report. You admit that, do you not?

Mr. HERSEY. What does either of you gentlemen claim was done by the American Bar Association at its last meeting that would be of any value to this committee in deciding this question?

Mr. MOORES. I am chairman of the subcommittee. Mr. Taft is in Europe, or he would be here. The subcommittee drafted this bill when we met.

Mr. HERSEY. It has not been presented to the American Bar Association at all. They have not acted upon this bill?

Mr. MOORES. It has not acted on it. It has been presented in this report which I laid before you.

Mr. HERSEY. We see that.

Mr. PAUL. May I interrupt you?

Mr. MOORES. Certainly, Mr. Paul.

Mr. PAUL. The by-laws of the American Bar Association contain this provision:

> No legislation shall be recommended or approved by this association unless there has been a report of a committee thereon and unless such legislation is approved by two-thirds vote of the members of the association present.

I do not understand how Mr. Moores as chairman of the subcommittee could present this matter here as coming from the American Bar Association.

Mr. HERSEY. I want to get the facts, whether or not the action that has been taken by the American Bar Association, if any, throws any light upon this question for us.

Mr. MOORES. It throws a great deal of light. It shows the congested condition of the circuit and the eighth circuit and the immediate need of some relief.

Mr. HERSEY. Those figures are before the committee from other sources.

Mr. MOORES. Of course they are, and the American Bar Association has resolved that that condition ought to be rectified. That throws some light on the subject.

Mr. THATCHER. Your contention is, Mr. Moores, that there is a resolution of the American Bar Association to the effect that there ought to be relief, and that the bill that is here before us is the one that you propose, but you do not claim that the bill you are proposing here has been approved by the American Bar Association.

Mr. MOORES. I do not.

Mr. THATCHER. But he is the chairman of the subcommittee appointed to prepare the bill.

Mr. MOORES. I was directed by the president of the association to be here to represent the American Association at this meeting.

Mr. THATCHER. The only reason for deferring the submission of a final report was that the circuit judges' conference was held here recently, some few weeks ago.

Mr. MOORES. We had taken Tennessee out of the sixth circuit in the bill and put it in the fifth circuit, and we put West Virginia in the sixth circuit in place of Tennessee, and there was a unanimous——

Mr. HERSEY (interposing). May I interrupt you at this point? The quorum bell has rung and the House is to meet in 10 minutes. We do not wish to have any further hearings, if we can avoid it, on this bill. We have about 10 minutes. Can you close your argument in 10 minutes?

Mr. THATCHER. I suppose that we can submit anything additional for the record?

Mr. HERSEY. Yes. We are not allowed to sit when the House is in session.

Mr. THATCHER. May I say, Mr. Chairman, that when you consider the great area involved, and the population of that area, I do not think there have been very many objections offered, and they have been largely because of sentimental considerations. There are some objections offered which I believe have some weight as to the question of contact with certain courts or districts which are schooled in the interpretation of the laws of certain States. That is the most valid point, I think, that was raised.

As to Tennessee and West Virginia, the objections which were raised and suggested by Mr. Taft as a reason for postponing action on the matter—those objections are met in this bill, because their existing status is not disturbed in the bill as it is finally drawn. So that objection is eliminated. There does remain the objection offered by Mr. Rose of Arkansas, to the effect that Arkansas should continue to remain in the eighth circuit, or with the St. Louis court, because of traditional considerations and because of their contact

with that court through many years. We think that perhaps that could be met in this bill by putting Oklahoma into the fifth circuit

Mr. HERSEY. Have you any amendments to offer to the committee?

Mr. THATCHER. We have some minor amendments concerning the United States court at Shanghai, China, putting that in the ninth circuit, and then the Virgin Islands will come into the third circuit. They do now in law, but inadvertently that was left out of the bill.

Mr. HERSEY. You may prepare your amendments, Mr. Thatcher, and submit them to the committee.

Mr. THATCHER. We will prepare those, and with your permission we may possibly prepare something that will take care of the Arkansas situation; and at the appropriate time we will submit the desirable amendments.

In drawing a bill of this sort, of course, you can not meet all possible objections. The objections from the New England lawyers——

Mr. HERSEY. You mean Vermont?

Mr. THATCHER. Vermont, yes; and Connecticut as well. They are not thinking so much of the question of relief for the second circuit as they are of what they consider the general convenience of their particular sections. But in making an adjustment to meet the requirements, there must be some little original inconvenience, possibly; you can not make any change in districts without subjecting somebody to some inconvenience, but the minor inconveniences must yield to the major consideration of getting the business expedited, and the second circuit is certainly congested.

You take the figures here as shown, and you see how the second circuit and the eighth circuit stand out in population and stand out in volume of business, and also stand out in the number of cases, and the eighth circuit stands out in its tremendous area with hundreds and hundreds of miles of travel involved, and you will see that some solution has to be secured.

Mr. HERSEY Are you willing to have this bill changed so as to include only the eighth circuit and those subdivisions?

Mr. THATCHER. We think the second circuit ought to have some relief?

Mr. HERSEY. The New York circuit?

Mr. THATCHER. Yes, we feel something ought to be done for the New York circuit.

Mr. HERSEY. That is where Vermont makes their objection?

Mr. THATCHER. Yes, but the second circuit and the eighth circuit certainly need relief.

Mr. YATES. Is Vermont the only State that you detach from the New York circuit?

Mr. THATCHER. Vermont and Connecticut. You mean Connecticut?

Mr. YATES. Yes, Connecticut.

Mr. THATCHER. Yes, and the first circuit is relatively very small compared with New York and the volume of business there, and there ought to be some adjustments made.

Mr. PAUL. May I ask a question?

Mr. THATCHER. Yes.

Mr. PAUL. Wouldn't you be willing to cut out all reference to the eighth circuit and let that go to, say, the next session of Congress?

Our committee and the American Bar committee, perhaps, can work out a plan that will be rather more satisfactory.

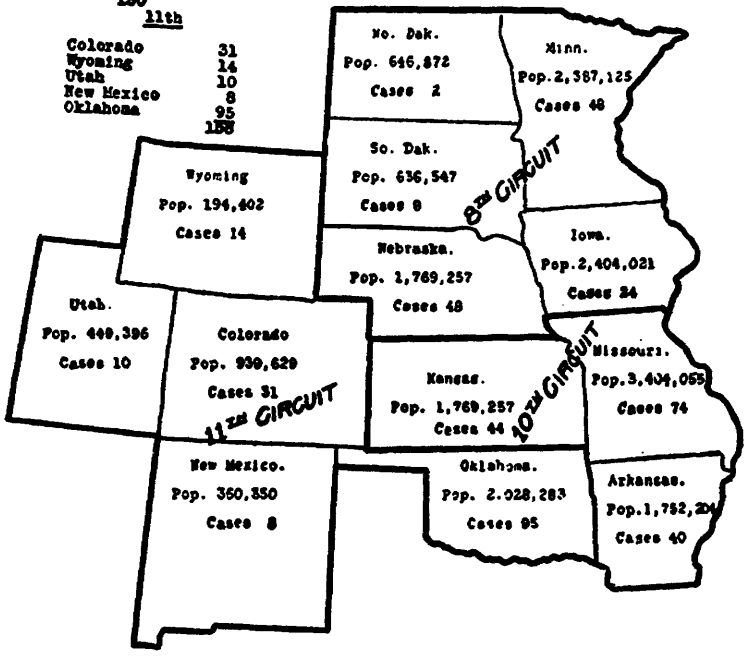
Mr. THATCHER. I think the eighth circuit is the most important.

Mr. HERSEY. It is the bone of contention.

PROPOSED DIVISION EIGHTH CIRCUIT
and
CASES DOCKETED 1926

8th		10th	
Minnesota	48	Missouri	74
Iowa	24	Kansas	44
Nebraska	48	Arkansas	40
North Dakota	2		158
South Dakota	8		
	130		

11th	
Colorado	31
Wyoming	14
Utah	10
New Mexico	8
Oklahoma	95
	158



Map of the Eighth Circuit
showing Population of each State according to the 1920 Census
and the number of Cases from each State docketed in the Circuit
Court of Appeals during the fiscal year 1926, (July 1, 1925 to
June 30, 1926).

Mr. PAUL. Of course, the American Bar Association has been studying it for several years. The question is whether with the information that the committee has and with the information that the committee can secure they might devise a better plan.

Mr. THATCHER. If you can suggest a better plan, that is satisfactory because the relief ought to be given and if the plan we propose is not the best plan and the committee can evolve a better plan all right. All we want is to get the needed relief.

Mr. HERSEY. Yes, and that is what the committee wants.

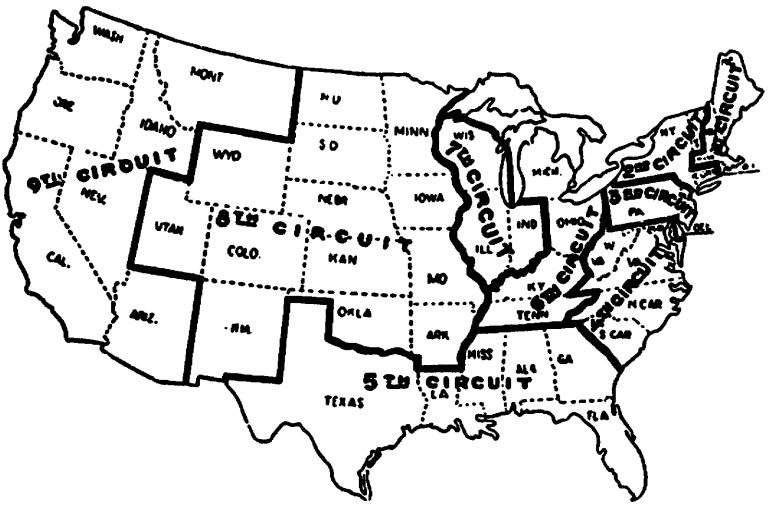
Mr. THATCHER. I believe relief should be secured at this session.

Mr. MOORES. Now, Mr. Chairman, I wish to introduce some maps. I have the whole thing here except the map of the proposed eighth circuit divided in three divisions. I want to introduce that in evidence.

Mr. HERSEY. What do you wish to introduce?

Mr. MOORES. I have a list and a map of the proposed three circuits into which the eighth circuit was proposed to be divided by Mr. Paul's committee.

Mr. PAUL. I have plenty of those maps.



Map showing States included in each of the nine Federal Judicial Circuits.

Mr. HERSEY. What is the other map? You can explain it better than I can look it over.

Mr. MOORES. The other map is a map of the proposed division of the eighth circuit.

Mr. HERSEY. You want to introduce the two maps?

Mr. MOORES. The two maps and the figures which his committee gave as to the amount of work done.

Mr. HERSEY. From whom?

Mr. MOORES. The figures, Mr. Paul prepared to introduce showing the desperate need of the eighth circuit for division.

Mr. HERSEY. Without objection that will be done.

Mr. MAJOR. Are not those included in Mr. Paul's statement?

Mr. HERSEY. No, he did not go into the figures.

Population served by the several United States circuit courts of appeal

[According to census of 1920]

Circuit and States	Square miles	Population of States
First:		
Maine	29,895	768,014
Massachusetts	8,040	3,852,356
New Hampshire	9,005	443,083
Rhode Island	1,085	604,397
Porto Rico	3,550	1,299,809
Total	51,575	6,967,659
Second:		
Connecticut	4,845	1,380,631
New York	47,620	10,385,227
Vermont	9,135	352,425
Total	61,600	12,118,286
Third:		
Delaware	1,960	223,003
New Jersey	7,455	3,155,900
Pennsylvania	44,985	8,720,017
Total	54,400	12,098,920
Fourth:		
Maryland	9,860	1,449,661
North Carolina	48,580	2,559,123
South Carolina	30,170	1,683,724
Virginia	40,125	2,309,187
West Virginia	24,645	1,463,701
Total	153,380	9,465,396
Fifth:		
Alabama	51,540	2,348,174
Florida	54,240	968,470
Georgia	58,980	2,895,832
Louisiana	45,420	1,798,509
Mississippi	46,340	1,790,618
Texas	262,290	4,663,228
Canal Zone		22,858
Total	518,810	14,487,789
Sixth:		
Kentucky	40,000	2,416,630
Michigan	57,430	3,668,412
Ohio	40,760	5,759,394
Tennessee	41,750	2,337,885
Total	179,940	14,182,321
Seventh:		
Illinois	56,000	6,485,280
Indiana	35,910	2,930,390
Wisconsin	54,450	2,632,067
Total	146,360	12,047,737
Eighth:		
Arkansas	53,045	1,752,204
Colorado	103,645	939,629
Iowa	55,475	2,404,021
Kansas	81,700	1,769,257
Minnesota	79,205	2,387,125
Missouri	68,735	3,404,055
Nebraska	76,840	1,296,372
New Mexico	122,460	360,350
North Dakota	71,195	646,872
Oklahoma	38,830	2,028,283
South Dakota	76,850	636,547
Utah	82,190	449,396
Wyoming	97,375	194,402
Total	990,945	18,268,513
Ninth:		
Arizona	112,920	334,162
California	155,980	3,426,861
Idaho	84,290	431,866
Montana	145,310	548,889
Nevada	109,740	77,407
Oregon	94,560	783,389
Washington	66,880	1,356,621
Alaska	557,390	55,036
Hawaii	6,677	255,912
Total	1,333,727	7,270,143

Comparative statement of cases docketed in the circuit courts of appeals during the fiscal years 1915 to 1926, inclusive

Circuits	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
First	57	74	83	68	63	47	46	57	73	125	101	.....
Second	330	349	296	245	272	262	282	378	333	484	419	.....
Third	129	157	131	124	90	107	155	165	137	148	179	.....
Fourth	92	74	83	105	85	105	66	113	118	113	126	.....
Fifth	126	153	160	144	160	150	172	171	231	213	221	.....
Sixth	142	139	136	124	115	130	149	150	214	255	219	.....
Seventh	112	125	109	130	91	118	153	155	144	149	156	.....
Eighth	266	244	256	223	257	200	254	252	292	359	381	446
Ninth	178	203	193	156	188	158	194	179	162	225	351	.....

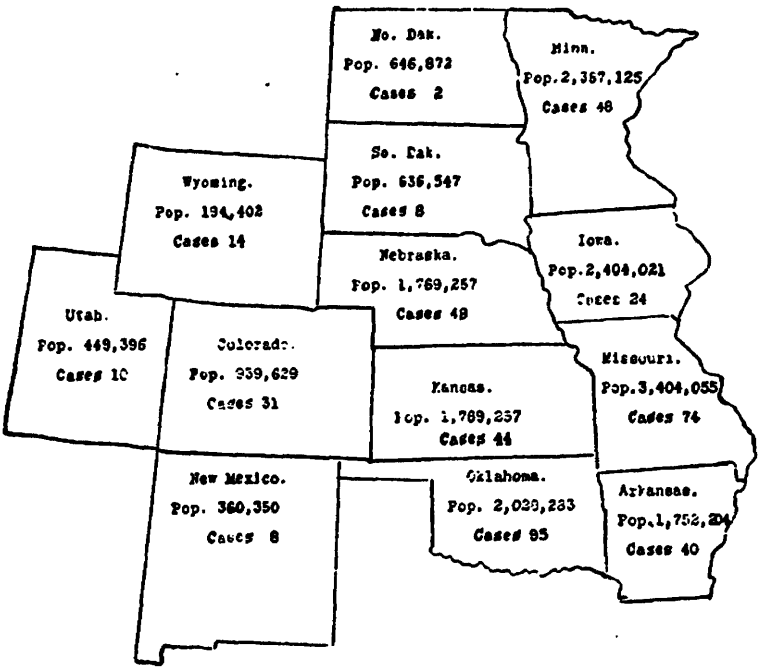
Salaries of clerks of circuit courts of appeals (fixed by Attorney General, July 1, 1922)

Circuits	Salaries	Cases docketed during fiscal year 1925
First	$4,000	101
Second	5,000	419
Third	4,500	179
Fourth	4,500	126
Fifth	4,750	221
Sixth	4,500	219
Seventh	5,000	156
Eighth	5,000	[1] 381
Ninth	5,000	225

[1] 446 in fiscal year 1926.

Mr. PAUL. As to providing these judges, we think the law is quite clear on that point. There would be no objection to a proviso in there, but if there should be any question in the minds of the committee on the existing law, I think that can be settled.

Mr. HERSEY. How long will it take before you can furnish the committee with a brief?



Map of the Eighth Circuit
showing Population of each State according to the 1920 Census and the number of Cases from each State docketed in the Circuit Court of Appeals during the fiscal year 1926, (July 1, 1925 to June 30, 1926).

Mr. MOORES. I want to introduce this tabulation and a brief.

Mr. HERSEY. How long will it take before we can have it?

Mr. MOORES. When do you wish it?

Mr. HERSEY. When would it be convenient?

Mr. MOORES. Within a few days.

Mr. HERSEY. That would be all right.

Mr. THATCHER. You see, the plan we propose in this bill does not increase the number of circuit judges. We have sought to minimize the expense involved. Of course, the plan proposed by Mr. Paul does contemplate three additional circuit judges. Of course, if that is the only plan that will bring about a solution, we would not object to it.

Mr. HERSEY. You do not agree to Mr. Paul's plan in that respect?

Mr. THATCHER. I think the plan we propose is a better plan and it is certainly more economical, but I want you to consider Mr. Paul's plan also.

Mr. PAUL. You had 492 cases in the eighth circuit. By this division you are going to get three judges in the St. Paul circuit with 130 cases and you are going to give nearly 300 cases to the three judges in the St. Louis circuit.

Mr. HERSEY. You testified to that.

Mr. THATCHER. We are very much obliged to the committee for their further consideration of this matter and we will get in some additional data to complete our own statements.

(Additional communications filed and ordered printed in the record by the chairman of the subcommittee are as follows:)

WASHINGTON, D. C., *March 8, 1928.*

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

DEAR SIR: I inclose herewith photostat copies of the letters I received from the six circuit judges of the eighth circuit in reference to the plan I suggested for dividing this circuit into three circuits. I referred to these letters at the hearing before the subcommittee having consideration of the Thatcher bill last Friday, but I did not, at that time, feel authorized to file the letters with the committee.

I also inclose letter received yesterday from Judge Van Valkenburgh and wish that you would have this letter and the copies of the inclosed letters placed in the record of the hearing on the Thatcher bill.

Very truly yours,

A. C. PAUL.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Minneapolis, Minn., October 25, 1927.

A. C. PAUL, Esq.,
Minneapolis, Minn.

MY DEAR MR. PAUL: Your letter of recent date, relative to a plan for a division of the eighth circuit, has been received, and I have considered the same.

Two main questions seem to arise: (1) Is any division necessary or desirable; (2) is the proposed division the most suitable.

As to the first question, consideration must be given to the following matters: (1) The great extent of territory embraced in the eighth circuit, 13 States—6 States more than in any other circuit; (2) the population of the circuit, upwards of 18,000,000—more by almost 4,000,000 than the population of the circuit next in size, and 11,000,000 more than the smallest circuit; (3) the ever-increasing business of the circuit court of appeals for the circuit, so that at the present time district judges are necessarily called upon to such an extent that approximately one-third of the opinions of the court are prepared by district judges; (4) the great and unjust burden that such a condition of affairs places upon the district judges; (5) the necessarily frequent and complete changes in the personnel of the court, resulting in the impossibility of preserving uniformity of decisions—a matter of the highest importance; (6) the great expenditure of time now incurred by the judges and by the attorneys in traveling to and from the four places of holding court in the circuit.

When the foregoing matters and others of allied nature are given consideration, I think the almost unanimous opinion of well-informed men, both within and without the circuit, would be that a division of some kind is imperative.

As to the second question, there is room for difference of opinion. Several subordinate questions arise: (1) Shall some of the States now in the eighth circuit be separated and placed in other circuits; (2) shall the circuit be divided into two parts; (3) shall it be divided into three parts, as proposed in your plan.

After giving the matter some thought, I am of opinion that your proposed plan is the one most suitable. Separating some of the States from the eighth circuit and putting them into other circuits, would not, I think, meet the approval either of the States so separated or of the circuits to which they were allotted.

Both the substantive and procedural law of each circuit differ in some respects from that of other circuits. Therefore, a change that would interfere as little as possible with these matters would seem desirable.

I do not think a division of the circuit into two parts would properly solve the problem. Such a division would be at best but a temporary expedient. The Mississippi Valley and the territory to the west are rapidly developing. Naturally, the business of the Federal courts keeps pace with the development of the country. There will be no trend backward. The tendency is more and more toward increased litigation in the Federal courts, at least in this circuit. This is due not only to the fact that litigants and lawyers are more frequently seeking the Federal courts, but also because the acts of Congress which are productive of litigation in the Federal courts are increasing year by year.

When the foregoing and other considerations are given weight, it is my opinion that the division of the circuit into three parts instead of two is the wisest course. The division proposed by you will perhaps meet with some opposition—as would any division which could be suggested—but I think your plan is the best that I have heard suggested. It divides the business approximately into equal parts. It would interfere very little with holding sessions of court in the present designated places. It groups the various States as logically as feasible, giving consideration to the dominant kinds of cases in the various sections. It provides for future developments in such a way that the division, if made, would probably be satisfactory for many years to come.

While there are reasons of sentiment which make all of us who are in the eighth circuit loath to see a dismemberment, yet I am convinced that a division is necessary for the good of the service; and as at present advised, I think your plan of division is the best and most logical that has yet been suggested.

Yours very truly,

W. S. BOOTH.
United States Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.
Kansas City, Mo., October 25, 1927.

HON. AMASA C. PAUL,
Minneapolis, Minn.

MY DEAR MR. PAUL: I have your letter of October 2 detailing the action of the committee appointed to obtain the sentiment of the bench and bar of the eighth circuit in reference to a proposed division of the circuit, and also what had transpired theretofore before the committee on jurisprudence and law reform of the American Bar Association; also, a plan of the proposed division and a letter from Judge Sanborn approving the plan.

It is needless for me to say that contemplation of a subdivision of the circuit, and of being placed in a fractional part thereof under a new number is attended by considerable sentimental regret. I have always lived and practiced in the big eighth, and I regret very much the apparent necessity of having it torn into fragments and myself denied the satisfaction of continuing in it nominally, at least. There is also the regret of being separated from associations of long standing upon the bench and at the bar. However, sentiment can not govern in matters of this sort, and I suppose we should face the unavoidable situation that a division of the circuit of some sort is inevitable.

I have never yet seen any proposed division of the eighth into two circuits, whether north and south or east and west, that would make a satisfactory division geographically or otherwise. Therefore, taking it for granted that the circuit must be divided, I think the present plan the best that has yet been suggested and I am constrained to favor it. Such a division would make the several circuit courts of appeals less unwieldy and would enable at least a majority of the circuit judges to sit in all the cases, thus making for stability.

I take it for granted, of course, that in designating the time and place of holding court in the new circuit the framers of the bill will consult with the circuit judges of that circuit. This, to my mind, is very important from every standpoint.

Yours sincerely,

ALBA S. VAN NALKENBURGH,
Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Fort Dodge, Iowa, October 24, 1927.

HON. A. C. PAUL.
Minneapolis, Minn.

DEAR MR. PAUL: I am in receipt of yours with plan relative to the division of the eighth circuit into three circuits. As you have asked me for my views with reference to this proposed division, and I am sure you want me to be perfectly frank about it, will say that I am opposed to the plan as suggested, and do not believe it will get anywhere. Probably all will agree that the eighth circuit should be divided, but in my judgment it should be divided into two circuits and not into three, and I do not believe that Congress will ever agree to make Kansas, Missouri and Arkansas a distinct circuit, nor do I think they should.

My own idea of the situation would be to take from the eighth circuit Arkansas, Oklahoma and New Mexico, to take from the ninth circuit Arizona, and make a new circuit consisting of Arizona, New Mexico, Oklahoma, Arkansas and Texas. That would relieve the geographical incongruity of the fifth circuit, would relieve the ninth circuit by taking Arizona therefrom, and would relieve the eighth circuit by taking Oklahoma, New Mexico and Arizona therefrom. Then let the eighth circuit consist of the balance of the States now included therein. That could be readily taken care of by the present organization of the eighth circuit.

If the effort is made to create three circuits out of the eighth circuit the net result will be to leave the eighth circuit as it now is. I merely offer these suggestions for what they may be worth.

Very truly yours,

WM. S. KENYON.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Denver, Colo., October 24, 1927.

HON. AMASA C. PAUL.
Minneapolis, Minn.

MY DEAR MR. PAUL: I have read carefully your letter of the 22d inst., informing me of the proposed division of the present eighth circuit into three circuits, each having its circuit court of appeals. If no consideration is to be given to conditions in adjoining circuits and the eighth only is to be divided, the proposed plan may be a fair one, although it seems to me that Oklahoma should be put with Arkansas, Missouri, and Kansas. That would make that proposed tenth circuit a compact one and the litigation which would come from the different States in it would be much alike, barring some special questions from Oklahoma. It further seems to me quite inconvenient to the bar of that State to attach it to the proposed eleventh circuit. It can hardly be said to be contiguous to the four Western States. The line between it and Colorado and New Mexico is not much more than a mere corner. Furthermore, the litigation from Oklahoma is in large part very unlike that in the four Western States. I do not know how heavy the litigation in the court of appeals for the ninth circuit is. My impression has been that that circuit was also heavily burdened.

There was considerable talk some 10 years ago about a new circuit to be made up of the Mountain States, each having considerable litigation over questions of mining and irrigation. The members of Congress from States adjoining the present eighth circuit will doubtless want to be heard when this subject is introduced there, and if it appear that the ninth circuit needs relief it seems to me that that relief might be brought about by making a circuit of Colorado, New Mexico, Utah, Wyoming, Montana, and Idaho, and by leaving Oklahoma in the proposed tenth circuit. I think it likely that the litigation from Oklahoma will not increase in volume but decrease in the future. But, in any event, a sufficient number of judges could be provided who would be able to take care of the work in that circuit. Under the plan I suggest, the eleventh circuit would be comparatively small in population but of wide territorial extent, all of which is being now developed, thus promising an increase in litigation therein. The number of cases that come from the different States is, I am sure, quite variant in different years, and the data in that respect as to one year is hardly a fair guide. My suggestion, as you observe is based in part on conditions in the ninth circuit, as to which I am not fully advised. I do think that Oklahoma should not be detached from the States to which it is immediately contiguous.

With regards, I am,
Sincerely,

ROBT. E. LEWIS.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Kansas City, Mo., October 24, 1927.

Hon. AMASA C. PAUL.
851 Security Building, Minneapolis, Minn.

DEAR MR. PAUL: I have your letter of 22d instant, with inclosures, concerning a proposed division of the eighth circuit. Having been a member of the court of appeals of this circuit for almost 11 years, I have a natural sentimental attachment to the circuit as it exists, but that feeling could not cause me to oppose any plan which would promote the efficient care of the judicial work in the States of that circuit. If the circuit is to be divided, I think the division suggested by you and your committee is as good as any. Apparently, it divides the work in the circuit as evenly as is possible, while at the same time maintaining as much geographical solidarity as may be.

When this movement reaches the stage where a congressional bill to effect it is to be drawn, I think the present circuit judges should be consulted as to the times and places for holding terms in their respective proposed circuits. Such subjects have an intimate bearing upon the efficient working of the court and the judges who have had experience with such matters are naturally in a better position to judge them and it would be better to have their suggestions in the original framing of the bill rather than later to Congress.

Is it the purpose of your committee to present this bill to the coming term of Congress or later?

With personal regards.

Sincerely yours,

KIMBROUGH STONE.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
St. Paul, Minn., October 17, 1927.

Hon. AMASA C. PAUL.
Minneapolis, Minn.

DEAR MR. PAUL: You write me that you are intending to send a letter to each of the circuit judges of this circuit informing them of the conferences which you and the other lawyers of the eighth circuit had at Buffalo at the time of the meeting of the American Bar Association with the members of that association and the plan for the division of the circuit which they recommended. I have considered with much care that plan and I think it is the best one that I have ever seen devised and the one most likely to be approved and passed. The judicial work in the circuit is constantly increasing, and we know from experience how difficult it will be to get additional circuit judges to do that work and the constant pressure that rests upon us all to get the work of the circuit court of appeals done when so much of the time of the circuit judges is required under the present acts of Congress in cases pending in the district courts which by those acts are given preference in our work over the work of the circuit court of appeals. It seems to me probable that the circuit will soon be divided, and in view of that fact that it would be well to try to get a division of the circuit such as would best accommodate the lawyers and the litigants rather than one that might be devised by others who have not so intimate an acquaintance with the wants of those most interested in the work of the judges of this circuit.

I have not had an opportunity to consult with any of the circuit judges of this circuit except Judge Booth about the plan for the division of the circuit which is under consideration since I learned of it, so I do not know what the views of the other circuit judges upon this subject are. You write me that you are intending to write each of them and send them a copy of the proposed plan, and I am very glad that you are about to do so.

Very truly yours,

WALTER H. SANBORN.

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND JUDICIAL CIRCUIT,
New York City, March 5, 1928.

MY DEAR CONGRESSMAN: Your subcommittee No. 2 of the Committee on the Judiciary has before it H. R. 9054. This bill has been submitted by the Attorney General after having been recommended by the senior circuit judges at their last meeting in Washington in September. It provides for a law clerk for each circuit judge at a salary of $3,000 a year.

At the meeting last September Judge Buffington, of the third circuit, and I, as senior judge of the second circuit, were appointed a committee by Chief Justice Taft for the purpose of trying to secure a law clerk for each of the judges. It was thought at first that this might be done without legislation through the appropriations of the Attorney General's office. On advice of the Attorney General, however, it was thought that legislation was necessary.

This position is similar to that now occupied by law clerks for the Supreme Court Justices and there is need for such assistance to each of the circuit judges who do appellate work in the various circuits. That fact was determined before the resolution was unanimously passed by the senior circuit judges at their meeting.

My object in writing you is to learn about when we may expect this bill to leave your committee and what its prospects of passing are during this coming session.

I wrote the chairman of your committee, Hon. George S. Graham, on January 13, but learned regretfully that he has been ill, and his secretary has written me the information that the bill is now in your committee.

Yours very truly,

MARTIN T. MANTON.

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

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
St. Louis, Mo., March 6, 1928.

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

DEAR MR. HERSEY: A copy of the brief of Hon. Maurice H. Thatcher, Hon. Reeves T. Strickland, and Hon. Merrill Moores concerning this bill has been received by me. I think there is a mistake in the first paragraph on page 7 of this brief to which I desire to call your attention. I have written a letter to Messrs. Thatcher, Strickland, and Moores calling their attention to this error, which I have no doubt was an accidental one, and I am taking the liberty of sending you herewith a copy of it and respectfully request that you give it proper consideration.

Very sincerely yours,

WALTER H. SANBORN.

ST. LOUIS, MO., *March 5, 1928.*

Hon. MAURICE H. THATCHER,
Hon. REEVES T. STRICKLAND,
Hon. MERRILL MOORES,
Washington, D. C.

GENTLEMEN: A copy of your brief for the proponents of H. R. 5690, a bill to amend sections 116 and 118 of the Judicial Code, has been forwarded to me. May I call your attention to what it seems to me is a mistake with reference to the delayed cases you refer to in the first paragraph of page 7 of your brief and in the column of pending cases on page 9, and which I am sure you will be glad to correct, unless I am mistaken. The last column on page 9 contains a statement of the pending cases in the nine circuit courts of appeal in various years. It does not, however, state at what time in each year the respective cases were pending. An examination of the Attorney General's report discloses the fact that the time in each year when those cases were pending was the 1st of July. In the first paragraph on page 7 of your brief you state:

"A study of the attached tabulation shows that with four judges the eighth circuit court kept fairly even with a docket of from 198 to 322 cases in arrears; while with six judges, from 1925 to 1927, it has reduced the delayed cases from 328 to 299, disposing on the average some 369 cases a year."

I desire to call your attention to the fact that the great majority of the cases there referred to were not, as it seems to me, either in arrears or delayed cases. The last column on page 9 of your brief shows that the 322 cases above mentioned were the pending cases July 1, 1925, and the 299 cases were those pending July 1, 1927. But the great majority of these cases were not delayed cases, if any of them were, and that is true of the pending cases stated for the other years.

Take the year 1927 in the eighth circuit for example. The act of Congress requires the eighth circuit court of appeals to hold its annual May term at St. Paul, commencing on the first Monday in that month. The practice of the court has been for at least 20 years for the clerk to prepare a printed calendar for each term, set the cases for hearing on days certain, about 20 for each week continuously, hear all of them set for that term, and then proceed to read the records and briefs and dispose of those that have not been decided during the continuous arguments. For example, there were upon the May term, 1927, calendar for hearing and disposition 176 cases. The court sat and heard arguments continuously from the first Monday in May until the 17th day of June, 1927, until all the cases on that calendar had been argued or submitted on briefs or disposed of from the bench. There then remained 132 of the 176 cases on the calendar still pending. These 132 cases had been submitted to the court but had not been decided, and these 132 cases were a part of the 299 cases which are stated as pending in the last column on page 9 of your brief, and, in view of the fact that there were only 13 days between the close of the arguments and the submission of these May term cases and the 1st day of July, 1927, they do not seem to me to be delayed cases. Furthermore, while the court was hearing arguments at this May, 1927, term, there were filed with the clerk 29 new cases in the month of May and 55 new cases in the month of June, 1927, in all 84 cases, which were a part of the 299 cases shown as pending, making 216 of the 299 cases pending July 1, 1927, which clearly were not delayed cases. Moreover, the records of the court disclose the fact that when the May term, 1927, opened only 91 cases that had been submitted to the court were undecided. What seems to me to be the same mistake in calling all the cases pending July 1 delayed cases applies to each of the years and the numbers of pending cases during the existence of this court. The mistake, which it seems to me has been made, was a very natural one. Doubtless no one knew that it was being made, and I have no doubt that you will be very glad to consider it.

Very respectfully,

WALTER H. SANBORN.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Kansas City, Mo., March 5, 1928.

A. C. PAUL, Esq.
Washington, D. C.

MY DEAR MR. PAUL: I have your letter of March 2. Inasmuch as the committee has asked for our letters written to you with respect to the division of the eighth circuit in accordance with your proposed plan, I think it would be unwise to withhold the letters, and, therefore, you are authorized to submit mine if you so desire. I think I ought to say to you that I am probably one of those to whom you refer as being lukewarm. I was constrained to approve that division, as I think you were, upon the consideration that forces were at work which would make a division of some sort inevitable, and I thought your suggestion was the best that thus far had been made. The present proposed division is, in my judgment, about the most impractical one that has been offered.

It goes without saying that there can be no object in dividing the circuit unless it will accomplish the purpose aimed at, which is, or should be, a more equal division of work between the different circuits, whatever the number, of which the country is composed. The present bill excludes Arkansas and Utah. This would leave 340 cases upon the docket of the eighth circuit for 1927. Of these it would place 218 in the southern or eighth circuit and 122 in the northern or tenth circuit; the provision being that there should be three circuit judges in each circuit in lieu of the six in the entire circuit as now organized. This would give the three judges of the southern circuit a much greater proportion of work than they now have, which would result in a still greater congestion in that circuit than now exists in the eighth circuit as a whole.

Congestion is urged as the ground for division. Such congestion can not be relieved by merely dividing the work in a different way between the same number of judges; that ought to be obvious. I do not know what is meant by the term "congestion" in this connection unless it is that it is desired that fewer district judges, if any, should sit upon the circuit court of appeals. If that is the object, it is not attained by this division except in part. I venture to suggest that it is not desirable to eliminate district judges entirely from sittings upon the circuit court of appeals. By such assignments the appellate court is kept more closely in touch with the practical problems confronting the trial judges and the

trial judges are enabled to get a more intimate understanding of the considerations which present themselves to the appellate court, which makes for better work in the districts. However this may be, the present bill accomplishes no reform in particular, if one is desired.

Your statement to the committee that our court is not behind, in any accepted sense, is absolutely correct. No term of our court is concluded without a hearing, or opportunity for hearing, upon every case that stands upon that docket; some are necessarily continued, but comparatively few, and never because the court is not ready to hear them. New cases come in, so that there is always present a fresh docket for the new term, but this is true in every jurisdiction, whether trial or appellate. I think every circuit judge should be heard from on this proposition. While it is true that Judge Stone appears to have addressed the only communication to the committee from our court, nevertheless he consulted with me upon every point and I fully concurred in what he said. I know that Judge Kenyon will be unalterably opposed to the bill now before Congress, and I am practically certain Judge Lewis also opposes it. I do not know how Judges Sanborn and Booth feel. I appreciate very much your writing me and I shall be glad to express myself upon any point that you may think advisable.

Yours sincerely,

ARBA S. VAN VALKENBURGH,
Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT,
Kansas City, Mo., March 6, 1928.

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

DEAR SIR: I am informed that the proponents of H. R. 5690 have filed a brief with your subcommittee in which it is stated:

"The circuit court of appeals of the eighth circuit has had since March 18, 1925, six experienced judges and is to-day nearly as far behind with its work as it was when the two additional judges were appointed.

"A study of the attached tabulation shows that with four judges the eighth circuit court kept fairly even with a docket of from 198 to 322 cases in arrears; while with six judges, from 1925 to 1927, it has reduced the delayed cases from 322 to 299, disposing on the average some 369 cases a year."

This statement says and seeks to leave the impression with your committee that this court was "far behind with its work" in 1925, is yet "in arrears," and had on June 30, 1927, reduced "the delayed cases from 322 to 299." The above quotation is all I have seen from the brief but these conclusions are evidently based upon the reports of the Attorney General showing cases "pending" on June 30, 1925, and June 30, 1927. These conclusions are confusions. The confusion is in treating a "pending" case as being a "delayed" case.

A case is "pending" as soon as the review papers are filed with the clerk. The filing of the review papers is merely the initial step toward a hearing. Usually at that time, the transcript (record and bill of exceptions in the trial court), upon which the case must be heard, is not even made up in the trial court. Thereafter, this transcript must be filed. Then it must be printed. Next, the appellant (or plaintiff in error) must prepare, print, and file a brief. Then the appellee (or defendant in error) must prepare, print, and file an answering brief. Finally, there is a reply brief. All of this is immemorial appellate procedure and all is necessary to a fair hearing. The appellate court can not and should not act until a fair opportunity for all these steps has been afforded the litigants. These are preliminary steps to a fair hearing. All of this takes time. Yet the cases are "pending."

Again, Congress has provided certain terms to be held by this court and every case is returnable and hearable at a certain term, which depends upon the date the reviewing papers are filed, and the rules of this court close such term filings just long enough before the beginning of a term to enable the above steps to be taken—the obvious purpose being to afford the earliest possible hearing after the filing. If the transcript or briefs can not be prepared and filed for this first returnable term it is not the fault of the curt. Often such delay occurs because of a number of entirely legitimate reasons—all beyond the control of the court. The only thing the court can then do is to continue the case to the next term to give time and opportunity to lawyers and litigants to properly prepare the presentation of their cases. It would be unjust and arouse proper

resentment and dissatisfaction were this not done. Yet all of the time these unready cases are "pending" and all of the time the court is ready and willing to hear them.

Again, of the 299 cases shown as "pending" on June 30, 1927 (report of Attorney General, p. 79), 142 had been argued and submitted, leaving only 157 which had not been heard. The large number under submission does not mean "delay" in decision because practically all of them (132) were submitted during the May term where the hearings continued from May 7 to June 18 (12 days before the end of the fiscal year), during which time the judges had little opportunity to write opinions. Of the 157 not heard, 32 were continued because not ready or for other reasons not connected with the opportunity for a hearing. The court was ready to hear every such case and had set it for hearing.

Again, it frequently happens that several related cases will come into the court. The parties will present one and stipulate that the others shall abide the result in the case submitted. The case heard may be determined by this court and then be taken to the Supreme Court by certiorari—possibly involving a year or more before finally adjudicated. All of this time the related cases are "pending" on the stipulation although they will never be heard and the parties intend they never shall.

Again, cases from four of the States (Colorado, New Mexico, Utah, and Wyoming) are, by statute, regularly returnable only to the Denver term, which is fixed by statute, to begin the first Monday in September. The closing date for that term is July 1, therefore, on June 30 there is an entire year's accumulation of cases for the Denver term—all "pending" and none of them "delayed" by the court.

Again, there are the new cases filed since the closing time for the May term (April 1) up to June 30—three months.

The above are not all of the reasons which account for cases being "pending" and which distinguish them from cases which are "delayed."

The only true test of "delayed" cases is the number which were ready to be heard and where one of the parties wanted the case heard but it could not be heard because the court was busy otherwise. In more than 11 years on this bench I have never heard of such a case. There is no such case. This court has not been and is not now "far behind" or one single case "behind with its work." It has not been and is not now "in arrears" nor has any case ever been "delayed" in this court by lack of prompt hearing.

If your committee desires detailed proof of the above statements I will have the clerk make up any character of information you may indicate concerning the work of the court. I wish the committee members to have the facts and I know of no place they can more securely go than to the judges who do the work and to the clerk who keeps the records of the work of the court.

With much respect, I am,

Sincerely yours,

KIMBROUGH STONE.

UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT,
New Haven, Conn., February 29, 1928.

Hon. GEORGE P. MCLEAN,
United States Senator, Washington, D. C.

In re: House bill 5690

DEAR SENATOR: So far as Connecticut is concerned, this bill takes our State out of New York and the second circuit and puts us in the first circuit at Boston. In my opinion this will be a mistake.

While it is true that Connecticut is a New England State, nevertheless its business interests and associations—its general tendency and leaning in all matters are very largely with and toward New York. The lawyers of the State, I believe, will much prefer to be connected with the second circuit. Our close proximity to New York, as you know, makes for a natural association with New York in almost every line of endeavor.

If the reason for putting Connecticut in the first circuit is to relieve the labors of the circuit court of appeals for the second circuit, it is not forceful enough to offset the great inconvenience which will be caused counsel in appeal cases if they are obliged to go to Boston. Judge Manton, the presiding judge of the circuit court of appeals has compiled a table of appeal cases from Connecticut, which is as follows:

1922	8
1923	11
1924	12
1925	7
1926	8

I send these observations for your careful consideration if and when the bill is presented for your consideration.

With kind personal regards, I am,

Sincerely yours,

EDWIN S. THOMAS,
United States District Judge.

SIOUX CITY, IOWA, *March 5, 1928.*

Hon. GEORGE GRAHAM,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: As I am advised, there is pending before the Judiciary Committee a bill known as the "Thatcher bill," for the division of the eighth circuit. I wish to protest against the committee recommending the passage of this bill for the following reasons:

First, the committee on jurisprudence of the American Bar Association, after a conference, advised the matter of a division of the eighth circuit should go over until the next annual meeting of the association.

Second, the lawyers of the eighth circuit appointed, at the annual meeting of the American Bar Association at Buffalo last year, a committee consisting of one member from each of the 13 States in the circuit to consider this matter and report at the next meeting of the bar association.

Third, the lawyers selected from the 13 States elected Mr. A. C. Paul, of Minneapolis, as chairman, and a secretary, and have undertaken to formulate a plan to be so recommended.

Fourth, inasmuch as the committee of lawyers from the several States of the eighth circuit are considering this matter, and were led to do so by reason of the chairman of the committee on jurisprudence of the American Bar Association advising the matter would be passed until the 1928 meeting of the association, it would be unfair to have the Thatcher bill recommended for passage at this session of Congress.

Fifth, the committee of lawyers, one from each State, of which I am a member, representing the State of Iowa, have made a plan for the division of the eighth circuit, which it expects to present to the committee on jurisprudence and law reform of the American Bar Association at its next meeting.

Sixth, from the information I have, Congressman Thatcher is of the opinion he is presenting a bill which has been recommended by the committee on jurisprudence and law reform of the American Bar Association, and approved by it. The writer has no doubt of the good faith of Congressman Thatcher, but from the records believes he is misinformed on the action of the bar association in this regard.

Very truly yours,

DELOSS C. SHULL.

SANTA FE, N. MEX., *March 6, 1928.*

Hon. GEORGE GRAHAM,
Chairman Judiciary Committee,
House of Representatives, Washington, D. C.

DEAR SIR: Reference is made to the so-called "Thatcher bill" providing for the rearrangement of the Federal judicial circuits and which I am advised is pending before your committee.

At a meeting of the lawyers of the eighth circuit held during the meeting of the American Bar Association at Buffalo last August, I was appointed a member of a committee of such lawyers representing New Mexico to consider a bill for the above purpose which would be presented to the American Bar Association. For this reason I am taking the liberty of writing you.

We understand that the so-called "Thatcher bill" follows substantially the bill under discussion at the bar association meeting and proposes to take Arkansas and Utah out of the eighth circuit and attach these States to adjoining circuits.

It was the consensus of opinion of the attorneys of the eighth circuit, present at the meeting referred to above, and is I believe of the lawyers of this State generally, that the proposed change of the eighth circuit would not be satisfactory. It was felt, and I believe this to be the case, that the changes proposed would not materially lessen the great burden of work now imposed upon the circuit judges of the eighth circuit and would not materially lessen the necessity of having district judges sit in the circuit court of appeals in nearly every case. There was also strong opposition by attorneys of Arkansas and Utah to these States being attached to adjoining circuits. They felt that inasmuch as for more than 35 years they had practiced in the eighth circuit, that the attaching of these States to new circuits would cause a great deal of inconvenience and possibly confusion. In the case of Utah particularly, strong opposition was voiced because in that State the law with reference to many matters connected with water rights and mining had been established by decisions of the eighth circuit court of appeals. In several important particulars the holdings of the ninth circuit court of appeals, to which it was proposed to attach Utah, differed from the holdings of the eighth circuit court of appeals.

At that meeting it was understood by all concerned that the whole matter would go over until the next meeting of the American Bar Association in 1923 for further discussion. For the reasons above stated I am writing you to express the hope that the pending bill may be deferred until the matter can be further considered, so far at least as the eighth circuit is concerned, by the attorneys and judges who are vitally interested in the matter.

Respectfully,

J. O. SETH.

WASHINGTON, D. C., *March 2, 1928.*

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

DEAR MR. HERSEY: I have read the brief filed by the proponents of H. R. 5690, the bill to divide the Federal circuits. I think practically all of the points in the brief are answered in the statement that I made to-day before the committee, and I do not care to file a reply brief.

I note that the writers of this brief assume that all pending cases before the court of appeals are "dalayed" cases. This, I understand, is a mistake. The tabulation is of cases docketed during each fiscal year ending July 1. At that date there will be a large number of cases that have been docketed between March 1 and July 1, as well as cases continued without being argued or submitted from the May term of the court at St. Paul. All cases docketed before March 1 go on to the calendar for the May term at St. Paul and are disposed of at that term, being argued and submitted unless they are dismissed or continued over the term. It is not correct, therefore, to speak of "pending" cases as "delayed" cases.

Very truly yours,

A. C. PAUL.

P. S.—I am sending a copy of this letter to Congressman Thatcher.

A. C. P.

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 2, 1928.

COMMITTEE ON THE JUDICIARY.
House of Representatives, Washington, D. C.

GENTLEMEN: I have a wire from one of the prominent attorneys of Minneapolis, who is also prominently identified with the American Bar Association, in reference to the above bill, which reads as follows:

"Thatcher bill, H. R. 5690, proposing division eighth circuit upon which hearing to be had before Judiciary Committee Friday, is opposed by practically all Federal judges in this circuit, and as I read it would probably legislate Judges Sanborn, Kenyon, and Booth out of office. I have telegraphed Chairman Graham asking action on bill be deferred until I can present evidence to substantiate these statements. Please do what you can to have action postponed.

"A. C. PAUL."

This measure, which changes the geographical limits of our circuit courts of appeal, is, of course, a very important measure, and I should like very much to have final action postponed until Mr. Paul can be heard.

If this appears to be out of the question, will you not advise me to-day so that I can appear personally before the subcommittee?

Thanking you, I am

Very truly yours,

WALTER H. NEWTON.

LITTLE ROCK, ARK., *February 6, 1928.*

Hon. GEORGE S. GRAHAM,
House of Representatives, Washington, D. C.

MY DEAR MR. GRAHAM: I thank you for your favor of the 3d, advising me of the hearing on H. R. 5690. I think that I am justified in assuring you that there is not a member of the Arkansas Bar who would willingly be transferred from the eighth to the fifth circuit, and that our people would be a unit in opposition to the plan if informed thereof.

Very truly yours,

G. B. ROSE.

(Whereupon, at 12 o'clock noon, the committee adjourned.)