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Dear Friends:

I enclose copies of articles from the September 21 Houston Chronicle and the September 22 Houston Post, which is the latest information I have on the status of the Omnibus Bill in the House. The current debate seems to be over the split of the Circuit, and as far as I know everyone seems to be in agreement upon the provisions for additional judges irrespective of the split.

You may also be interested in the enclosed clipping from this morning's Houston Post emphasizing the necessity for competence in our federal judges.

Cordially,



William C. Harvin

All Panel Members
Western Fifth Circuit Judicial
Nominating Commission

Case load, civil rights at issue

U.S. circuit court split debated

BY CRAIG HINES
Chronicle Washington Bureau

Washington — In a rare public wrangle over territory, southern federal appeals judges today debated before a House subcommittee whether the circuit court that includes Texas should be split.

The House Judiciary Subcommittee is considering a Senate bill that would divide the current 5th Circuit Court of Appeals. The split would create a new 11th Circuit, comprised of Texas and Louisiana. The new 5th Circuit would

include Mississippi, Alabama, Georgia, Florida, and the Canal Zone.

For the judges, the major dispute in the proposed division is the court's workload.

Circuit Judge John C. Godbold of Alabama, speaking for the majority of the circuit's judges who favor the split, said the court "is foundering in a flood of cases."

"The Titanic is sinking and we have run out of lifeboats. We can no longer carry our caseload through experimentation and innovation."

But one of the dissenters, Circuit Judge Thomas Gee of Texas, said the workload was not excessive and that judges were not overworked.

"I know none who has a taste for golf or foreign tours who has had to give up either one," he said.

Gee, who wrote more opinions last year than any other judge in the circuit, said "My tastes happen to run to hunting and fishing, and I have bagged more game and strung more fishing the four years I've been on the bench than in my 20 years in the practice of law."

In addition to the administrative argument, the circuit split has been criticized by some civil rights advocates and civil libertarians. They contend it would leave the new 5th Circuit with a preponderance of conservative judges.

Circuit Judge John Minor Wisdom of Louisiana, an opponent of the split, addressed that point. He said a separation that leaves a circuit of only two states "is a radical and irreversible dilution of the federalizing function of federal courts

of appeals that could lead to the destruction of the federal courts system as the principle mechanism for preserving American federalism.

"Civil rights is the most sensitive and difficult (area) in which federal courts must perform their nationalizing functions. This is where localism tends to create wide differences among our courts."

"Parochial prejudices and prejudices and built-in attachments to local customs must be expected to reduce the incentive of inferior federal courts, and of course, state courts, however excellent, to bring local policy in line with national policy."

Wisdom, a veteran liberal jurist, wrote many of the Southern desegregation decisions of the 1950s and 1960s that outraged conservatives.

The 5th Circuit, headquartered in New Orleans, is the busiest U.S. circuit court.

Other witnesses, including Atty. Gen. Griffin Bell, a former judge of the 5th Circuit, will testify later.

Lippman bequest to aid landmark at Harvard

Cambridge, Mass. (AP) — Money left to Harvard University by Walter Lippmann will be used to renovate an 1836 landmark as a home for the school's Nieman Foundation for journalists, the university announced.

The \$100,000 grant was awarded as the foundation launched a drive to raise

\$400,000 from outside contributors for Walter Lippmann House, the proposed headquarters for the Nieman program.

Lippmann helped start the program of Nieman fellowships 40 years ago to give practicing journalists an opportunity to spend a year studying at Harvard. He died in December 1974.

Judicial competence

The American Bar Association's strong endorsement of proposed legislation to create a council to investigate complaints against the federal judiciary points up a problem as old as the nation. John A. Sutro, the ABA's spokesman at Senate subcommittee hearings on the proposed Judicial Tenure Act, said the U.S. needs a more effective way to remove physically disabled or mentally incapacitated judges. Impeachment is now the only way to remove a federal judge. Only nine judges have been impeached by the House and only four convicted by the Senate in 201 years.

Sutro stressed the importance of keeping the federal judiciary "staffed with men and women who possess the physical and mental vigor which is indispensable to an effective system of justice." And he went on to say: "There is no practical way to remove, retire or censure a federal judge for misconduct or inability to carry on the duties of his office "

The proposed legislation would create a Council on Judicial Tenure to investigate complaints against federal judges. It would give the public a place to direct complaints, and such a body could dispose of unfounded complaints. Thus the legislation would serve two purposes: It would shield judges from unwarranted accusations, and it would remove from the bench judges who should no longer be seated but who will continue to be if the law is not passed.

The evidence shows that several similar state laws, and notably the one establishing the California Commission on Judicial Qualifications, have worked well. And such laws, the ABA feels, enhance public confidence in the judiciary and raise the caliber of the judiciary. The proposed legislation deserves the hearings it is receiving. Our federal judicial system has never been served by a body established to receive, investigate and evaluate complaints against federal judges.

Fifth Circuit judges disagree over appeals court's division

Post Washington Bureau

WASHINGTON — Six judges from the U.S. Fifth Circuit Court of Appeals sharply disagreed Wednesday over whether their panel should be split by Congress.

In testimony before a House judiciary subcommittee, the judges couldn't even agree on whether their caseload — the nation's heaviest docket — forces them to work too hard.

Chief Judge John R. Brown of Houston and Judges Thomas G. Gee of Austin and John Minor Wisdom of Louisiana strongly opposed Senate-passed legislation

dividing the court into a restructured Fifth Circuit — consisting of Georgia, Florida, Alabama, Mississippi and the Canal Zone — and a new 11th Circuit, composed only of Texas and Louisiana.

Judges James P. Coleman of Mississippi, Gerald B. Tjoflat of Florida and John C. Godbold of Alabama argued just as strenuously in favor of the split.

The Senate approved the creation of the new 11th Circuit as part of an omnibus court-creation bill it passed earlier this year without dissent. But the House judiciary subcommittee, which includes Democratic Rep. Barbara C. Jordan of

Houston, at least temporarily blocked the division in June while approving the rest of the omnibus package.

Jordan voted with the majority then to bottle up the measure pending more hearings because of fears by liberals and civil rights activists that the newly constituted Fifth Circuit in the Deep South would be dominated by incumbent, arch-conservative judges.

Wisdom and Gee, who are not liberals, argued Wednesday that there are other valid grounds for opposing the division, which was first proposed in 1963 and has been a controversial topic in legal circles

since.

Wisdom called it a "mutilation" of the court and pointed out that no other circuit in the country is composed of only two states, as the new 11th Circuit would be.

The whole concept of the "federalism" of the appellate court system depends, he said, on the bench being occupied by a variety of persons from different backgrounds and different states.

Gee was even blunter. Under a split, he claimed, "all diversity is lost. The eastern four are all common-law states with a common heritage and none of the

Mexican or French influence that Texas and Louisiana contribute . . . One almost feels the judges from Texas and Louisiana must have done something bad, to be sent to hold hands and stand in the corner in such a manner."

Both judges — and later Chief Judge Brown — said the reason the present Fifth Circuit is so burdened with cases (there presently are 3,629 appeals pending before the 15-member panel) is simply that district courts are sending them too many.

Under the Senate legislation, another 35 district judges would be authorized for

the six-state area. Gee warned they can be expected to generate a minimum of 1,400 new appellate filings annually — a situation that would not be solved regardless of whether there is one or two circuits.

The Austin judge, a Republican appointed to the appellate bench by former President Nixon, also forcibly insisted that despite the current heavy docket, he and other Fifth Circuit judges are not overworked.

Judge Godbold, taking the opposite position, claimed the Fifth Circuit is "foundering in a flood of cases."