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The Expansion of Federal Jurisdiction and the Crisis in the Courts

Harry Phillips*

Attorney General Bell has spoken on a timely topic—"Crisis in the Courts." His interest in effecting improvements in the federal judicial system is not new. Attorney General Bell was an active participant in the Pound Conference at St. Paul in April 1976¹ and, as Chairman of the Pound Conference Follow-Up Task Force, delivered a comprehensive report to the ABA Board of Governors.² Since his appointment as Attorney General, he has continued his efforts by establishing within the Department of Justice the Office for Improvements in the Administration of Justice, which I predict will be an important step in solving some of the problems facing the federal judiciary.

The federal courts are confronted with a crisis of such proportions that their dockets threaten to become unmanageable. This situation is attributable to at least three interrelated elements: a steadily rising caseload, expanded federal jurisdiction, and an insufficient number of judges to meet these demands. We must consider the sources of and remedies for this crisis, which threatens the capacity of the federal judiciary to function as it should. The time must never come when the dockets of federal courts are so congested that judges are unable to obey Judge Learned Hand's commandment: "Thou Shalt Not Ration Justice."

Although the United States Court of Appeals for the Sixth Circuit is eighty-six years old,³ more than forty-three percent of the appeals filed in its entire history have been docketed within the past ten years.⁴ Our caseload has increased 214 percent since the ninth judge was added in 1969 and has grown 444 percent since 1963, when I joined what was then a six-judge court.

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1. See *generally Addresses Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice*, reprinted in 70 F.R.D. 79 (1976) (the Pound Conference).

2. See *Report of Pound Conference Follow-Up Task Force*, reprinted in 74 F.R.D. 159 (1976).

3. The United States Courts of Appeals were created in 1891 by the Circuit Courts of Appeals Act of 1891, ch. 517, 26 Stat. 826.

4. The records of the Clerk's Office show that 13,601 cases were docketed between July 1, 1967 and October 31, 1977, and only 17,260 cases during the period between 1891 and 1966. See also HISTORY OF THE SIXTH CIRCUIT 15 n.36 (1977).

Until 1975, the court succeeded in keeping its docket relatively current and heard all cases that were briefed and ready for oral argument. Since 1975, however, it has become impossible to maintain a current status because of increased filings. A typical example is the twelve month period ending June 30, 1977, during which filings grew twelve percent. A staggering 1,827 cases were docketed during this twelve month period. As of that date, our backlog of cases was 1,242, as compared with only 489 on June 30, 1970. Even if no new cases were filed, the nine judges of our court would require approximately two years to hear all cases in the existing backlog. Presently, an attorney handling a nonpriority civil case briefed and ready for oral argument cannot hope to have the appeal heard for at least fourteen months. If the present trend continues, litigants in nonpriority civil cases soon can expect a delay of years before their appeals reach argument and disposition.

The serious backlog of cases is by no means confined to the Sixth Circuit. As one of the speakers at the Pound Conference noted, a recent law review article predicts that if the number of federal appellate cases continues to increase over the next forty years at the same rate at which it has grown during the last decade, we can expect to have well over one million federal appellate cases annually by the year 2010. Five thousand federal appellate judges would be needed to decide such a huge caseload, and one thousand new volumes of the *Federal Reporter* would have to be published each year to report the decisions.⁵

In the face of this litigation explosion, "[w]e observe the paradox of courts working furiously and litigants waiting endlessly."⁶ Our court sits five days a week for three weeks every other month from October through June, with special sessions from time to time.⁷

5. Sander, *Varieties of Dispute Processing*, 70 F.R.D. 111, 111 (1976) (citing Barton, *Behind the Legal Explosion*, 24 STAN. L. REV. 567 (1975)).

6. U.S. DEP'T OF JUSTICE, *THE NEEDS OF THE FEDERAL COURTS: REPORT OF THE DEPARTMENT OF JUSTICE COMMITTEE ON REVISION OF THE FEDERAL JUDICIAL SYSTEM* 3 (1977).

7. Two or more three-judge panels of the court meet between regular sessions for disposition of cases pursuant to Sixth Circuit Rule 9 which provides:

DOCKET CONTROL

(a) In the interest of docket control the Chief Judge may from time to time, in his discretion, appoint a panel or panels to review pending cases, or motions pending in such cases, for appropriate assignment or disposition under this rule or any other rule of the Court.

(b) If, upon the consideration of any interlocutory motion or as a result of a review under subsection (a) of this rule, the Court concludes:

1. that the appeal is not within the jurisdiction of the Court;
2. that the appeal is frivolous and entirely without merit;
3. that it is manifest that the questions on which the decision of the cause

All of the judges are present during each regular court session. Two panels sit simultaneously in two court rooms, with frequent afternoon sessions. Each judge sits as a member of a three-judge panel that hears five cases per day during three days of each week that the court is in session. Each judge regularly is assigned to hear oral arguments in 225 cases per year, which is considered the maximum caseload for an appellate judge.

In spite of these increasing pressures on the federal courts, Congress continues to be slow in providing additional judges to handle the pyramiding dockets. The Senate recently passed S.11,⁸ which would create much needed circuit and district judgeships, including two judgeships for our court and a number of new district judgeships within the Sixth Circuit. Similar legislation has been reported out by the House Judiciary Committee,⁹ but final congressional action is not expected until 1978.

The present need for these additional judges is critical, but I agree with Attorney General Bell that the long-range solution to the crisis in the courts should not be the proliferation of more and more new federal judgeships. The addition of two circuit judgeships for our court will increase the number of cases that can be heard on oral argument each year from 675 to only 825. We anticipate that well over 1,800 cases will be filed this year and that more than 1,000 of those cases will require oral argument.

What has caused such an avalanche in the caseloads of the federal courts? Obviously, the growth and increasing complexity of our society and evolving notions about the role of federal courts in mediating problems traditionally adjudicated at state and local levels have played a part. The major cause, however, is the ever-expanding jurisdiction conferred by acts of Congress. For example,

depends are so unsubstantial as not to need further argument; or
4. that clear error or an intervening decision of this Court or the Supreme Court requires reversal or vacation of the judgment or order appealed from or a remand for additional proceedings;

the panel may enter an appropriate order dismissing the appeal, affirming, reversing or vacating the judgment or order appealed from or remanding the cause for additional proceedings.

In adopting such procedures to keep abreast of the growing docket, the Court of Appeals has made an effort to provide the opportunity for oral argument in all cases in which it is justified.

8. S. 11, 95th Cong., 1st Sess. (1977).

9. H.R. 7843, 95th Cong., 1st Sess. (1977). A major difference between the House and Senate bills is that the Senate version would divide the Fifth Circuit into two courts of appeals, while the House version would not. *See* S. REP. No. 117, 95th Cong., 1st Sess. 38-46 (1977). [*Ed. Note:* H.R. 7843 was passed by the House on Feb. 7, 1978, by a vote of 319-80. 124 CONG. REC. H732 (daily ed. Feb. 7, 1978).]

the Fair Debt Collections Practice Act,¹⁰ approved September 20, 1977, contains this all too typical provision: "An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy"¹¹ A recent study demonstrates that since 1969, Congress has enacted at least forty-one other laws affecting the jurisdiction of the federal courts.¹² Several bills pending in Congress similarly would expand federal jurisdiction. For example, the Veterans Administration Procedure and Judicial Review Act,¹³ to which the Attorney General has referred, would allow veterans to appeal adverse decisions of the Veterans Administration to federal district courts. One estimate predicts that this bill would result in 4,600 new federal cases each year, thereby increasing civil filings in the district courts by 3.4 percent.¹⁴ Another example is a bill introduced in virtually every session of Congress in recent years that would make robbery of a drug store a federal crime.¹⁵

The Sixth Circuit has been directly and profoundly affected by the expansion of federal jurisdiction. One of the acute problems presently confronting the Sixth Circuit, a mass of black lung cases, resulted from a typical expansion of federal jurisdiction by act of Congress. As of March 31, 1977, 1,720 black lung cases were pending in the United States District Court for the Eastern District of Kentucky alone. Those cases all represent claims filed prior to the effective date of the 1972 amendments to the Coal Mine Health and Safety Act of 1969.¹⁶ Prior to the 1972 amendments, cases were processed administratively in a manner similar to the processing of Social Security disability cases, with the first step of judicial review in the district court. Under the 1972 amendments, however, claims filed on or after July 1, 1973, are processed under an administrative procedure established through the Department of Labor. The first step in judicial review is a petition for review in the court of appeals

10. 15 U.S.C.A. §§ 1692-1692o (Supp. Nov. 1977).

11. *Id.* § 1692k(d).

12. *See, e.g.,* Occupational Safety and Health Act of 1970, 15 U.S.C. §§ 651-678 (1970); Consumer Product Safety Act, 15 U.S.C. §§ 2051-2081 (Supp. V 1975); Toxic Substances Control Act, 15 U.S.C.A. §§ 2601-2629 (Supp. 1977); Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174 (Supp. V 1975); Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1381 (Supp. V 1975); Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801-960 (1970); Black Lung Benefits Act of 1972, 30 U.S.C. §§ 901-960 (Supp. V 1975).

13. S. 364, 95th Cong., 1st Sess. (1977).

14. THE THIRD BRANCH, Oct. 1977, at 4.

15. H.R. 2831, 94th Cong., 2d Sess. (1976).

16. 30 U.S.C. §§ 801-960 (1970), as amended by Black Lung Benefits Act of 1972, Pub. L. No. 92-203, 86 Stat. 150.

for the circuit in which the disability arose. Thus, under the new procedure, these cases come directly to the court of appeals without initially going to the district court. The most current statistics available from the Department of Labor indicate that 108,792 claims were filed between the effective date of the 1972 amendments and March 31, 1977.¹⁷ A total of 28,120 of those claims arose in the states comprising the Sixth Circuit,¹⁸ each representing a potential case in the court of appeals. Petitions to review administrative decisions in black lung cases now are beginning to reach our court. Although a prediction of the number of petitions that will be filed would be premature at this time, we are certain to experience a substantial increase in our docket from this source.

The House and Senate have passed their respective versions of the Black Lung Reform Act of 1977,¹⁹ and both are pending before a Conference Committee. The Senate bill would retain the existing procedure for review by the courts of appeals, by-passing the district courts. Under the provisions of the House bill, however, initial judicial review of black lung claims would be returned to the district courts, with a right of appeal to the appropriate court of appeals. Although this bill would alleviate the burden on the courts of appeals to some degree, it contains a provision that would increase the complexity of judicial review in all black lung cases. The House version apparently would require federal judges to weigh the evidence heard by an administrative law judge. The findings of the Secretary on any fact question would be conclusive only "if supported by the *weight* of the evidence."²⁰ I know of no other statute that presently requires a federal judge to weigh the evidence presented before an administrative tribunal in reviewing a decision of that agency. The common standard for judicial review of the decisions of most administrative agencies, such as social security claims and Labor Board cases, is whether the decision is supported by substantial evidence,²¹ and the Administrative Procedure Act employs the similar arbitrary and capricious standard.²²

The black lung legislation is an example of the acts of Congress

17. Memorandum from John P. Hehman, Clerk, United States Court of Appeals for the Sixth Circuit, to Sixth Circuit Judges, Apr. 20, 1977 (copy on file with *Vanderbilt Law Review*).

18. *Id.* As of December 31, 1976, these claims were distributed as follows: Kentucky, 10,429; Michigan, 2,861; Ohio, 12,304; Tennessee, 2,526.

19. S. 1538, H.R. 4544, 95th Cong., 1st Sess. (1977).

20. H.R. 4544, 95th Cong., 1st Sess. (1977).

21. *Universal Camera Corp. v. NLRB*, 340 U.S. 477 (1951).

22. 5 U.S.C. § 706(2)(a) (1970); see *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).

requiring judicial review of issues of fact. At a time when the number of federal cases has reached an unprecedented level, the use of federal circuit and district court judges as glorified workmen's compensation commissioners hearing claims involving nothing more than issues of fact obviously is an inefficient use of judicial manpower.²³ A black lung claimant who presents a bona fide issue of constitutional law, statutory construction, or interpretation of departmental regulations should have a right to have these issues determined by an Article III court. A non-Article III tribunal, however, could decide purely factual issues with finality, saving claimants both time and money.

The black lung bills, and many of the other bills expanding federal jurisdiction, are not submitted to the judiciary committees of either house of Congress and are not referred to the Judicial Conference of the United States. This lack of review by those committees most aware of the present state of the federal judiciary presents another aspect of the problem confronting the courts. Consequently, I agree with Chief Justice Burger²⁴ and Attorney General Bell²⁵ that a judicial impact statement should be prepared for every bill affecting federal jurisdiction.

In a similar vein, an editorial in *The Washington Post* noted the increasing interest in reexamining the jurisdiction of federal courts, stating that:

This [increased interest] could bring Congress face to face with the necessity of either rearranging the American courts or sharply increasing the number of federal district judges.

The problem behind all this agitation is that the federal courts are being asked to do more than they can do. The social legislation of the last 15 years has led to more litigation than anyone dreamed it would. And added to this has been the growing tendency around the country to take to court every claim anyone can think of. There is no relief in sight. The Mine Safety Act, for instance, could generate more than 20,000 jury trials a year—a number that the existing court system simply could not handle.

All this, of course, deserves careful scrutiny. But the proposals do seem to us to be positive in the right direction. Unnecessarily burdening the federal courts with routine cases undermines both their prestige and the quality of justice they can produce.²⁶

23. Mr. Justice Rehnquist describes this as "needle in a hay stack adjudication." Rehnquist, *The Cult of the Robe*, 15 *THE JUDGES' JOURNAL* 74, 76 (1976) (Address before the 1976 ABA Judicial Administration Dinner, Atlanta, Georgia).

24. Burger, *Year-End Report on the Federal Judiciary*, at 4 (Jan. 1, 1978); Burger, *The State of the Federal Judiciary—1972*, 58 *A.B.A.J.* 1049, 1050 (1972).

25. Bell, *Crisis in the Courts: Proposals for Change*, 31 *VAND. L. REV.* 1, 14 (1978).

26. *Washington Post*, Feb. 9, 1977, § A, at 20, col. 1.

The new legislation referred to in the *Post* editorial is not the only jurisdictional source of the crisis in the courts. Diversity jurisdiction is an anachronism responsible for a sizeable part of the federal courts' caseload. The historic argument in its support—potential bias of state courts against nonresidents²⁷—no longer has validity. The address of Attorney General Bell reflects a ray of hope for the repeal or curtailment of this senseless relic.

Almost one-fifth of the civil suits filed in the district courts in fiscal year 1975, more than 30,000 cases, were grounded on diversity jurisdiction. Diversity cases accounted for more than sixty-eight percent of all civil jury trials in federal district courts in 1975 and constituted slightly more than ten percent of the filings in the courts of appeals.²⁸

The sheer number of cases is by no means the only shortcoming of diversity jurisdiction. Under the rule of *Erie Railroad v. Tompkins*,²⁹ federal judges must apply state law in deciding questions upon which only the state courts can speak with authority. Because state law controls the disposition of these cases, they should be filed and decided in the appropriate state courts. A recent Sixth Circuit case, *Ann Arbor Trust Co. v. North American Co.*,³⁰ involving the application of the suicide clause in certain life insurance policies, illustrates the misuse of diversity jurisdiction. The insured in that case killed his wife and one of their three children, and then proceeded to reload the revolver and kill himself. During the two years preceding his death, the insured had purchased nine insurance policies on his life, all containing the standard suicide clause. Although nine suits, one on each of the policies, were filed in the Michigan state courts, four were removed to federal district court on grounds of diversity of citizenship. The only Michigan case law on point was contained in four very old decisions of the Supreme Court of Michigan, one decided in 1904 and the other three in the last century. The law on this subject was far from settled,³¹ and no tribunal except the Supreme Court of Michigan could have decided the issue with finality. Our court, however, was required to make an "educated guess" as to how the state courts would decide these issues at a time when five suits involving precisely the same ques-

27. See *Erie R.R. v. Tompkins*, 304 U.S. 64, 74 (1938); *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809) (Marshall, C.J.). But see Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483, 495-97, 510 (1928).

28. U.S. DEP'T OF JUSTICE, *supra* note 6, at 13-15.

29. 304 U.S. 64 (1938).

30. 527 F.2d 526 (6th Cir. 1975), *cert. denied*, 425 U.S. 993 (1976).

31. See Annot., 9 A.L.R.3d 1015 (1966).

tion were pending in Michigan courts. Obviously it would have been preferable to have tried all nine of these cases in the state courts of Michigan.

The ultimate absurdity of diversity jurisdiction that I have experienced during my fourteen years on the federal bench has been the adjudication in federal courts of Tennessee workmen's compensation cases. The statute is administered through the courts rather than through a Workmen's Compensation Commission.³² A more unwise use of the Sixth Circuit judges from Michigan, Ohio, and Kentucky is difficult to imagine.

The prevalent use of diversity jurisdiction as a device to delay, rather than to expedite, the trial of lawsuits is yet another reason for its repeal. Cases filed in state courts frequently are transferred by defendants to overcrowded federal courts in which the trial may be postponed for months or even years. *Thermtron Products v. District Judge H. David Hermansdorfer*³³ offers an example of the successful use of this technique. In that case two citizens of Kentucky had filed in a Kentucky state court an automobile accident suit against an Indiana corporation. The defendant removed the case to the United States District Court on grounds of diversity of citizenship. Judge Hermansdorfer remanded the case to the state court because he found that, in view of the crowded condition of his docket, there was no available time to try the action in the foreseeable future and plaintiffs could obtain a speedy decision in the state court, the forum originally chosen. The Supreme Court held that Judge Hermansdorfer had no authority to remand the case to state court and that mandamus was the appropriate remedy for compelling him to retain jurisdiction. Judge Hermansdorfer has informed

32. Among the recent Tennessee workmen's compensation cases decided by virtue of diversity jurisdiction by the United States Court of Appeals for the Sixth Circuit are: *Dawn v. Essex Conveyors, Inc.*, 498 F.2d 921 (6th Cir. 1974); *Manning v. Altec, Inc.*, 488 F.2d 127 (6th Cir. 1973); *Williams v. The Singer Co.*, 457 F.2d 799 (6th Cir. 1972); *Womble v. J.C. Penney Co.*, 431 F.2d 985 (6th Cir. 1970); *Justice v. Consolidation Coal Co.*, 421 F.2d 166 (6th Cir. 1970); *Bray v. Consolidation Coal Co.*, 416 F.2d 1 (6th Cir. 1969); *Wormsley v. Consolidation Coal Co.*, 408 F.2d 79 (6th Cir. 1969); *Ward v. Consolidation Coal Co.*, 406 F.2d 676 (6th Cir. 1969); *Lively v. Consolidation Coal Co.*, 406 F.2d 523 (6th Cir. 1969). Among the recent Tennessee workmen's compensation cases decided by United States district courts by virtue of diversity jurisdiction are: *Manning v. Mobile Aerial Towers, Inc.*, 359 F. Supp. 211 (E.D. Tenn. 1972); *Lawson v. Employers Ins.*, 330 F. Supp. 321 (E.D. Tenn. 1971); *McCoy v. Consolidation Coal Co.*, 322 F. Supp. 71 (E.D. Tenn. 1970); *Chappell v. Olin Mathieson Chem. Corp.*, 305 F. Supp. 544 (E.D. Tenn. 1969); *Dalton v. Bahnson Serv. Co.*, 302 F. Supp. 391 (E.D. Tenn. 1969); *Treadway v. Associated Trausp.*, 302 F. Supp. 301 (E.D. Tenn. 1969); *Bray v. Consolidation Coal Co.*, 286 F. Supp. 1019 (E.D. Tenn. 1968); *Wormsley v. Consolidation Coal Co.*, 278 F. Supp. 698 (E.D. Tenn. 1967).

33. 423 U.S. 336 (1976).

me that when this case finally was set for trial in his court, the parties reached a compromise and settled at the courthouse door.

Diversity jurisdiction has undergone intensive scrutiny and criticism for many years, with some commentators advocating repeal,³⁴ and others urging retention.³⁵ Among the critics of diversity jurisdiction are some of the legal profession's most prominent members. Roscoe Pound, Louis D. Brandeis, and Charles William Eliot were members of a committee that questioned diversity jurisdiction as long ago as 1914,³⁶ and Senator George W. Norris of Nebraska led the Senate Judiciary Committee in recommending repeal of diversity jurisdiction in 1928.³⁷ In 1954, Associate Justice Felix Frankfurter, an ardent foe of diversity jurisdiction, referred to "the mounting mischief inflicted on the federal judicial system by the unjustified continuance of diversity jurisdiction," and stated: "What with the increasing permeation of national feeling and the mobility of modern life, little excuse is left for diversity jurisdiction."³⁸ Justice Robert H. Jackson stated shortly before his death that "in my judgment the greatest contribution that Congress could make to the orderly administration of justice in the United States would be to abolish the jurisdiction of federal courts which is based solely on the ground that the litigants are citizens of different states."³⁹ In 1969, the American Law Institute recommended substantial curtailment of diversity jurisdiction,⁴⁰ and Chief Justice Burger has stated that "diversity jurisdiction is a classic example of continuing a rule of law when the reasons for it have disappeared."⁴¹ Nevertheless, cases grounded upon diversity of citizenship continue to crowd federal court dockets.

The most encouraging recent development in this area came on October 18, 1977, when H.R. 9622⁴² was introduced in Congress.

34. H. FRIENDLY, *FEDERAL JURISDICTION: A GENERAL VIEW* 139-52 (1973); Bratton, *Diversity Jurisdiction—An Idea Whose Time Has Passed*, 51 *IND. L.J.* 347 (1976); Friendly, *supra* note 27, at 510.

35. Frank, *For Maintaining Diversity Jurisdiction*, 73 *YALE L.J.* 7 (1963); Moore & Weckstein, *Diversity Jurisdiction: Past, Present, and Future*, 43 *TEX. L. REV.* 1, 23 (1964).

36. Friendly, *Marching Into the Third Century*, 16 *THE JUDGES' JOURNAL* 6, 8 (Spring 1977).

37. S. REP. NO. 626, 70th Cong., 1st Sess. 1 (1928). For other congressional consideration of diversity jurisdiction, see S. REP. NO. 691, 71st Cong., 2d Sess. (1930); S. REP. NOS. 530, 701, 72d Cong., 1st Sess. (1932); *Hearings on S. 466*, 79th Cong., 1st Sess. (1945).

38. *Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 53 (1954) (Frankfurter, J., concurring).

39. R. JACKSON, *THE SUPREME COURT IN THE AMERICAN SYSTEM OF GOVERNMENT* 37 (1955).

40. ALI, *STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS* 99-110 (1969).

41. U.S. DEP'T OF JUSTICE, *supra* note 6, at 14.

42. H.R. 9622, 95th Cong., 1st Sess. (1977).

This bill, which was drafted after extensive hearings by the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee, would abolish diversity jurisdiction except in interpleader actions and cases involving foreign countries or their citizens.⁴³ The sponsors of H.R. 9622⁴⁴ deserve our commendation and support. Hopefully, they have paved the way for repeal of diversity jurisdiction, a judicial reform long past due.⁴⁵

The problems of the crisis in the courts can be solved through the leadership of Attorney General Griffin Bell and others, but only with the support of lawyers, present and future, and the cooperation of both the Congress and the Executive branch of government.⁴⁶ The ideas and recommendations discussed herein—the appointment of more federal judges to meet expanding caseloads, the curtailment of acts of Congress that create new areas of federal court jurisdiction, and the abandonment of diversity jurisdiction—could serve as important first steps in alleviating the current litigation explosion and its consequent burdens on the federal judicial system.

43. *Id.*

44. The bill's sponsors are: Robert W. Kastenmeier of Wisconsin, Don Edwards of California, George E. Danielson of California, Robert F. Drinan of Massachusetts, Charles E. Bennett of Florida, Thomas F. Rallsback of Illinois, Charles E. Wiggins of California, and M. Caldwell Butler of Virginia.

45. [*Ed. Note:* H.R. 9622 was passed by the House on Feb. 28, 1978, by a vote of 266-133. 124 CONG. REC. H1569 (daily ed. Feb. 28, 1978).]

46. See Tyler, *Congressional and Executive Expansion of Federal Jurisdiction*, 71 F.R.D. 229 (1977) (Address delivered before the Sixth Circuit Judicial Conference, May 14, 1976, Columbus, Ohio).