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NEWS from U.S. Senator Bob Dole

(R.—Kans.)

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TESTIMONY OF U.S. SENATOR BOB DOLE BEFORE SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY

Mr. Chairman: It is a pleasure to appear before the Subcommittee on Improvements in Judicial Machinery to express my support for the recommendation of the Judicial Conference of the United States that an additional Federal Judgeship be authorized for the District of Kansas.

The people of Kansas are extremely grateful for the integrity and high caliber of service provided by our Federal Judges, and I believe I speak for other members of the Federal Bar in Kansas in expressing a great deal of professional admiration for the work they perform.

As in any state the Federal Judiciary in Kansas plays an extremely important role in our society, and its importance increases with each passing year.

Expanding Federal Litigation

With every term the Constitution is being amplified and expanded by the Supreme Court to touch more citizens in additional aspects of their lives, and the Congress continues to enlarge the subject matter of Federal Statutory Law. The expansion of Federal Law -- some would call it an explosion -- was meant that the Federal litigation process is called upon with increasing frequency.

Considerable discussion has been generated by this trend. Some see it as a necessary corollary to the increased complexity of our modern, technologically-oriented and more informed society. Others take the view that too many personal, moral and political questions are being unnecessarily and ineffectually brought into the legal system.

Great Burdens on Judges

But regardless of these views or their merits, there has been one inescapable result of the trend toward more numerous, more frequent and more complex demands on the Federal litigation process: an overwhelming increase to the burdens of Federal Judicial Officers -- at all levels.

Courts in every section of the country have felt the impact as filings and caseloads have grown year by year. Fortunately, our Federal Judicial Machinery has been given the capacity to make a systematic evaluation of the work of the courts and can respond with recommendations for appropriate Congressional action. Every four years the Administrative Office of the United States Courts conducts a survey of all Federal Courts to determine the demands being placed on them and to spot areas in which additional judges are needed to deal with the work at hand. Such a survey was conducted in 1972, and it resulted in recommendations for the creation of an additional 51 judgeships across the country.

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Additional Judgeship for Kansas

The district of Kansas was identified as one of those districts where the workload has increased to the point that a new judgeship was necessary if the court were to continue to discharge its responsibilities according to the high standards of the Federal Court system.

This recommendation came as no great surprise to myself and others who for several years have been aware of the growth of litigation before our district's federal bench. I have kept in close touch with Judge Brown and on the problem and am most appreciative of his cooperation in making available such information and statistics as were available to him.

I am grateful the need in the district has been recognized and would urge that the Committee concur with the recommendation before it that a new judgeship be created.

Kansas Judges' Record

I would emphasize at this point that my support for the creation of a new judgeship carries with it only the highest regard for our four current judges. Under rising burdens they have earned great respect and admiration from the lawyers who practice before them for the diligence, determination and just plain hard work they have put into the discharge of their offices. With the invaluable assistance of Judge Brown's successor as Chief Judge, Arthur J. Stanley, who has retired to take senior Judge status, the four present Judges have made amazing progress in disposing of their crowded docket. But there are limitations on the time and energies of these men, which all their dedication and sense of responsibility cannot overcome.

The statistics and the record are persuasive. I do not wish to dwell on numbers to any great extent, but a few points are significant.

In fiscal year 1968, there were 838 Civil cases filed in the district; in 1972, the number reached 1,034 which was actually a decline from the 1,220 in FY 1971. In the same period criminal filings grew from 391 to 440.

Two Unique Factors

But more revealing than mere numbers are two particular aspects of the District of Kansas caseload which add considerably to the volume expected from a similar population.

The first factor grows out of the presence within the District of the United States Penitentiary at Leavenworth. With the Supreme Court's continuing assessment and restructuring of Criminal Constitutional Law, a steady stream of prisoner petitions, challenges and appeals flows out of Leavenworth into the Federal Court in Kansas. In FY 1971, the last year for which I have complete figures, 316 federal prisoner petitions were filed in the District of Kansas. This classification was the largest of any Civil or Criminal category, exceeding tort actions (248), contract actions (243) and nearly equalling the total criminal filings of 423.

These petitions, many of which are hand drawn, inexpertly drafted and overwhelmingly without merit, are

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a tremendous drain on the Court's energies. There is little reason to believe these filings will decrease in coming years, and in all likelihood, they will continue to increase with each new decision of the Supreme Court. State prisoner petitions are also heard in the Federal Court, but they do not constitute the unusual additional caseload factor of the Federal Penitentiary.

Numerous Criminal Jury Trials

A second unusual factor in the caseload of the Federal Bench in Kansas is an unusually high ratio of criminal cases tried to juries.

In FY 1972, out of 94 criminal cases tried, 87 were before a jury. The number of trials itself is up from 34 in FY 1968, but the ratio of jury trials is more than a complete reversal of the national pattern which is usually in the range of two non-jury trials to each jury case.

I am not aware of the factors which might contribute to this result, but as anyone who has ever practiced as either a prosecutor or a defense attorney can verify, a jury trial is infinitely more time-consuming than a case tried before a Judge.

Thus, the great number of Federal Prisoner Petitions and the large ratio of criminal jury trials illustrate that in addition to meeting the general expansion of federal litigation, the Court in Kansas has been forced to cope with these unusual and important additional demands on their time and energies.

An additional Judgeship is a necessity in the District of Kansas. This recommendation has the strong backing of the legal profession in Kansas. It is supported by the statistics. It has the firm endorsement of Senator Pearson and myself, and I would urge that it be sent at an early date to the full Senate with the approval of the Committee on the Judiciary.

I would also mention at this time that the administrative office has also recommended creation of one additional Judgeship for the Tenth Circuit Court of Appeals. The District of Kansas is within the Tenth Circuit, and just as litigation at the trial level has grown, so has work at the Appellate level. An ample statistical record has been made for providing the Tenth Circuit with another Judgeship, and I wish to also express my support for this recommendation.