

January 26, 1939.

Hon. Harry S. Truman,  
United States Senator,  
Senate Office Building,  
Washington, D. C.

My dear Harry:

A few days ago I saw a news article to the effect that a bill to increase the number of Federal Judges is now being prepared by the Judiciary Committees of the Senate and House, and shortly will be introduced.

The news item stated that the bill will provide for two additional Circuit Judges for the Eighth Circuit and for an additional District Judge for the Eastern District of Missouri. I understand that Judge Otis recently came out with a statement to the effect that the amount of business does not justify a new District Judge for the Western District of Missouri.

The matter of maneuvering for a new District Judge for Kansas City is one that I am sure you are looking out for. As I see it, two possible avenues are open for your consideration in this matter. The first is the one that you suggested when Chralie Carr and I talked with you at the Kansas City Club, that is, change the law making Judge Collet a Judge of the Eastern District and then have the law provide for the appointment of a new District Judge for the Western District. It may be that Judge Collet would prefer this arrangement since I have heard him complain of the fact that he has to travel so much and all over the state. He has to be away from his family a great deal. It may be that since his old home was at Salisbury, in the Eastern District, he would prefer to be permanently assigned to the Eastern District.

The second course you could pursue in case Judge Collet prefers being assigned permanently to the Eastern District, would be for him to request such a permanent assignment and let a new District Judge be appointed to fill the "at large" position he now holds. The new "at large" judge could establish his headquarters at Kansas City and we would at last have a Democratic Judge who could devote most of his time to the western side of the state, since, in the event Judge Collet should be

transferred permanently to the Eastern District, the need of the "at large" judge travelling in the eastern part of the state would largely be obviated. The new "at large" judge would still be available for duty in the Eastern District whenever he may be needed.

As stated above, the bill in course of preparation will also provide for two additional Circuit Judges for the Eighth Circuit. It is one of these places that Charlie Carr would like to have, and I sincerely hope that he is appointed a Circuit Judge. No more loyal or better qualified man could be found for such position.

In my opinion, Missouri will be justly entitled to one of the new Circuit Judgeships. I enclose a tabulation which I have prepared which reveals some startling facts. You will observe from this tabulation that the great bulk of the cases before the Court of Appeals for the years 1936, 1937 and 1938 were Missouri cases. Missouri furnishes almost half of the legal business now being handled by the Circuit Court of Appeals for the Eighth Circuit and yet Missouri does not have a single full time Judge on the Court, that is, i.e. a Judge who devotes all his time to hearing cases and writing opinions.

At the present time we have Judge Stone as the only active judge on the Court from this state. However, Judge Stone is the Senior Judge and by reason of his position a great deal of his time is taken up with administrative matters. He can devote only part time to the hearing of cases and the writing of opinions. Judge Van Valkenburgh, as you know, has retired but is doing part time work. He is not a full time judge. He can work or not as he chooses. As you know, Judge Van Valkenburgh is getting well along in years and his health does not permit him to do a large amount of work.

The other Circuit Judge of the Eighth Circuit are as follows:

- |              |                                   |
|--------------|-----------------------------------|
| Arkansas     | - None                            |
| Iowa         | - Judge Seth Thomas               |
| Minnesota    | - Judge John B. Sanborn           |
|              | - Judge Wilbur F. Booth (retired) |
| Nebraska     | - Judge Joseph W. Woodrough       |
| North Dakota | - None                            |
| South Dakota | - Judge Archibald K. Gardner      |

It would seem logical that the two new Circuit Judges should come, first, from Missouri, and, second, from Arkansas. Missouri furnishes three times the amount of work for the court as any other state in the Eighth Circuit. Arkansas, which has no Circuit Judge, ranks second with approximately 15% of the Court's entire business.

North Dakota also is without representation on the Circuit Court, but that state furnishes only about 1% of the Court's business, while Missouri furnishes more than 45%. North Dakota, therefore, has no worthwhile claim to a Circuit Judgeship.

You will observe that South Dakota is ably represented on the Circuit Court by Judge Gardner. It would seem that the Dakotas, which furnish less than 3% of the Court's business are adequately cared for. I also understand that the District Judge of North Dakota is not overburdened with work and, as you doubtless know, District Judges can be assigned to sit on the Court of Appeals should a Judge from North Dakota be needed to hear any case that may involve North Dakota law. As the tabulation shows, the cases from North Dakota are comparatively rare. The other states, with the exceptions of Missouri and Arkansas, are well represented on the Circuit Court and have Judges who devote their full time to hearing cases and writing opinions.

The recent case of *Erie R.R. Co. v. Tompkins*, 82 L.Ed. (Adv.sheets) 787, 58 S.C. 817, decided by the United States Supreme Court, on April 25, 1938, makes state laws and the decisions of the highest courts of the various states of paramount importance in deciding cases now coming before the Federal Courts.

The Supreme Court in the *Erie v. Tompkins* case changed the rule laid down in *Swift v. Tyson*, 16 Pet. 1, 10 L.Ed. 865, decided in 1842. *Swift v. Tyson* held that Federal Courts exercising jurisdiction on the ground of diversity of citizenship, need not, in matters of general jurisprudence, apply the common law of the state as declared by the highest court of a state; that the Federal Courts were free to exercise an independent judgment as to what the common law of a state is or ought to be. However, the *Erie v. Tompkins* case changes all this. *Erie v. Tompkins* as already stated, overruled *Swift v. Tyson*, and holds that in Federal Courts, except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is

the law of the state. In view of the new rule as laid down by *Erie v. Tompkins*, in future litigation in the Circuit Court of Appeals for the Eighth Circuit, the law of Missouri will figure prominently, and it is therefore, highly desirable that at least one of the additional judges be well versed in Missouri law.

A judge of Charlie Carr's fine qualifications and knowledge of the law, especially Missouri law, will be far more valuable to the court than any judge would be coming from another state.

Mr. Carr maintains an elaborate card index system on which he has tabulated the authorities dealing with various questions of law. By the use of this system he can quickly find the authorities touching on any question of law. He maintains this system for Missouri law and a similar and separate system for the Federal law.

It seems to me that you are in an excellent position to ask for a Circuit Judge for Missouri and, of course, I hope you and Bennett will join in recommending to the President the appointment of Mr. Carr.

I think you have been furnished with Mr. Carr's biographical sketch. However, in the event that you recommend Mr. Carr for appointment and you should need to supply the President and the Department of Justice with information concerning Mr. Carr's qualifications, I enclose some extra copies for your use.

With personal regards and best wishes, I remain

Sincerely yours,

WAK:GW