

History of the Article III Appellate Courts, 1789–2021

*The Evolution of Their Geographic Scope,
Number of Judgeships, and Jurisdiction*

by

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Introduction

Although structurally situated midway between the district courts and the Supreme Court, the modern courts of appeals are no mere way station for cases originating in the federal trial courts and potentially ending up in the highest court. Rather, the courts of appeals are vitally important because they have the last judicial word in about 99 percent of all the cases they decide.¹ In the twelve months ending December 31, 2019, for example, the courts of appeals terminated 34,303 cases on the merits,² and in the twelve months ending September 30, 2020, the Supreme Court reviewed just 126 cases.³

The federal Article III appellate courts have evolved from the old circuit courts- created by the Judiciary Act of 1789 (1789 Act),⁴ to the circuit courts of appeals created by the Evarts Act of 1891,⁵ and ultimately to the modern courts of appeals, as they were renamed in 1948.⁶ As the nation expanded, territories were acquired, and new states joined the original thirteen, Congress expanded the circuits and created new ones, often transferring the geographic area of one circuit to another, sometimes more than once. Judgeships were added, roughly in proportion to the increase in cases. Jurisdiction was adjusted for the appellate courts as a group and for courts with specialized jurisdiction, such as the Court of Appeals for the District of Columbia Circuit and the Court of Appeals for the Federal Circuit. This is the story of the federal appellate judiciary’s 232-year growth in geographic scope, number of judgeships, and jurisdiction.

I. The Old Circuit Courts

*(a) Geographic Scope of the Old Circuit Courts*⁷

Although the federal courts of appeals as they exist today originated in 1891 when Congress passed the Evarts Act,⁸ their antecedents are as old as the nation. The first federal courts authorized to review on appeal the judgments of federal trial courts (district courts) were the circuit courts created by Congress in the 1789 Judiciary Act.⁹ These were the old circuit courts, not to be confused with the modern courts of appeals for the various circuits, which are often called circuit courts.

The 1789 Act established the geographic scope of the old circuit courts by first creating thirteen districts.¹⁰ Because Congress sometimes used the word “district” to mean two different geographic areas, the distinction must be explained. One use of the word identified the geographic scope of a circuit court (usually an entire state), and another use of the word identified the geographic scope of a district court (sometimes an entire state, and sometimes a part of a state).

An early example of the two meanings of the word “district” is found in the Judiciary Act of 1801 (1801 Act), the so-called “Midnight Judges Act.”¹¹ Section 21 provided that “the *district* of North Carolina shall be divided into three *districts*” (Albemarle, Pamptico, and Cape Fear).¹² Obviously, “district” and “districts” cannot mean the same thing.

Other sections of the 1801 Act revealed the two ways in which “district” was used. Section 4 provided that the states shall be divided into “districts, . . . one to consist of the state of North Carolina, and to be called the district of North Carolina.”¹³ Section 6 provided that “said districts shall be classed into six circuits,” with North Carolina in the Fifth Circuit,¹⁴ and section 7 established a circuit court for each circuit.¹⁵ At the same time, section 21 divided North Carolina into three “districts” (Albemarle, Pamptico, and Cape Fear) and established a district court for each district.¹⁶

Importantly, section 4 begins with the phrase “for the better establishment of the circuit courts,” which indicates that the “district” of North Carolina means the geographic area covered by the circuit court established by section 7. By contrast, section 21 importantly begins with the phrase “for the better dispatch of the business of the district courts of the United States,” which indicates that each of the three “districts” of the “district” of North Carolina means the geographic area covered by the district court established for each district by section 21, i.e., the districts of Albemarle, Pamptico, and Cape Fear.

Also requiring explanation are the three ways in which Congress has used the words “district court.” “District court” usually means an Article III¹⁷ court, with judges serving for life. “District court” sometimes means an Article IV¹⁸ court of a territory or other non-state area, with judges serving for terms of four¹⁹ or six years.²⁰ In addition, “district court” sometimes means a local court of a territory.²¹

The original thirteen districts created by the 1789 Act conformed to state lines, establishing a pattern that would continue thereafter, with two minor exceptions explained in the endnotes.²² One district was created in nine states (Connecticut, Delaware, Georgia, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, and South Carolina),²³ two districts were created in Massachusetts (the Maine District²⁴ and the Massachusetts District²⁵), two districts were created in Virginia (the Virginia District²⁶ and the Kentucky District²⁷).²⁸ No districts were created in North Carolina or Rhode Island, neither of which had then ratified the Constitution.

The 1789 Act established a district court in each of the original thirteen districts²⁹ and a circuit court in each of these districts except the districts of Kentucky and Maine.³⁰ These circuit courts exercised both original and appellate jurisdiction, as explained below. The district courts in the districts of Kentucky and Maine were given the trial court jurisdiction of a circuit court.³¹ As new states were admitted to the Union, the district courts in some of them were indirectly given the trial court jurisdiction of a circuit court by authorizing them to exercise the trial court jurisdiction of the district court for the district of Kentucky.³² Although the circuit court trial jurisdiction of the Kentucky district court was abolished in 1807,³³ Congress gave such jurisdiction to some district courts until as late as 1877.³⁴ Congress accomplished this after 1807 by giving some district courts the circuit court trial jurisdiction that a Kentucky district court had been given by the 1789 Act.³⁵

The 1789 Act grouped eleven of the original thirteen districts, all except the Kentucky district, which was part of Virginia, and the Maine district, which was part of Massachusetts, into three circuits: the Eastern, Middle, and Southern Circuits.³⁶ The Eastern Circuit consisted of the districts of Connecticut, Massachusetts, New Hampshire, and New York; the Middle Circuit consisted of the districts of Delaware, Maryland, New Jersey, Pennsylvania, and Virginia; and the Southern Circuit consisted of the districts of Georgia and South Carolina.³⁷

As additional states ratified the Constitution or were admitted to the Union, Congress created new districts and altered the geographic scope of some circuits. In 1790, Congress created the North Carolina and Rhode Island districts and established in each a district court and a circuit court.³⁸ The district of North Carolina was placed in the Southern Circuit,³⁹ and the district of Rhode Island was placed in the Eastern Circuit.⁴⁰ In 1791, Congress created the Vermont District, with a district court and a circuit court.⁴¹ The district of Vermont was placed in the Eastern Circuit.⁴²

In 1801, Congress significantly reorganized the federal judiciary (though only for one year). The 1801 Act added several more districts by creating the district of Ohio⁴³ and the districts of East and West Tennessee⁴⁴ and by dividing three existing districts: the district of Albany was split off from the district of New York,⁴⁵ Pennsylvania was divided into the Eastern and Western Districts of Pennsylvania,⁴⁶ and Virginia was divided into the Eastern and Western Districts of Virginia,⁴⁷ resulting in a total of twenty-two districts.⁴⁸

The 1801 Act also expanded the number of the three original circuits from three to six.⁴⁹ The 1801 Act grouped the districts into the six circuits: the First Circuit, comprising the districts of Maine, Massachusetts, New Hampshire, and Rhode Island;⁵⁰ the Second Circuit, comprising the districts of Albany, Connecticut, New York, and Vermont;⁵¹ the Third Circuit, comprising the districts of Delaware, New Jersey (called “Jersey”), and the Eastern and Western Districts of Pennsylvania;⁵² the Fourth Circuit, comprising the districts of Maryland and the Eastern and Western Districts of Virginia;⁵³ the Fifth Circuit, comprising the districts of Georgia, North Carolina, and South Carolina;⁵⁴ and the Sixth Circuit, comprising the two districts of Tennessee and the districts of Kentucky and Ohio.⁵⁵

The 1801 Act also created a new circuit court for each of the six circuits, three circuit judgeships for each of the first five circuits, and one circuit judgeship for the Sixth Circuit.⁵⁶

A different statute enacted in 1801 created a circuit court for the District of Columbia;⁵⁷ this court was replaced by the Supreme Court of the District of Columbia in 1863.⁵⁸

An act passed in March 1802 repealed the 1801 Act, eliminating the added districts and abolishing the new circuit courts and the new circuit judgeships.⁵⁹ Suspecting that the Federalists had passed the 1801 Act, at least in part, to create new district and circuit courts for President Adams’ appointees, the Jeffersonian Republicans repealed it, eliminating the new courts and the ancillary positions, such as court clerks, marshals, and United States district attorneys that the 1801 Act had created.⁶⁰ Perhaps the principal motivation for repeal was elimination of the 1801 Act’s grant of jurisdiction to the circuit courts for all cases

arising under the Constitution and laws of the United States.⁶¹ Proponents of repeal believed that this provision improperly intruded on the jurisdiction of the state courts.⁶² Federal question jurisdiction would not be restored to federal courts until 1875.⁶³

Although partisan motivations and substantive disagreements prompted the members of the first Jeffersonian Republican Congress to repeal the 1801 Act, they also saw a need for some organizational changes within the judiciary, leading them to enact a new organizational statute the next month. The “April 1802 Act”⁶⁴ preserved the increase in the number of circuits from three to six and established circuit courts (different from the circuit courts created by the 1801 Act) in each of the six circuits.⁶⁵ The April 1802 Act grouped the existing districts within the six circuits differently than the 1801 Act.⁶⁶ It also preserved one provision from the 1801 Act⁶⁷ that survives to the present, despite that Act’s repeal: the renaming of the circuits from the geographical designations of the 1789 Act (e.g., “Eastern Circuit”)⁶⁸ to numerical designations (e.g., “First Circuit”).⁶⁹

The new organization resulted in several changes in the geographic scope of the six circuits, as shown in the following table.

March 1802 Act Circuit Organization

First Circuit ⁷⁰	Second Circuit ⁷¹	Third Circuit ⁷²	Fourth Circuit ⁷³	Fifth Circuit ⁷⁴	Sixth Circuit ⁷⁵
Massachusetts, New Hampshire, Rhode Island	Connecticut, New York, Vermont	New Jersey, Pennsylvania	Delaware, ⁷⁶ Maryland	North Carolina, Virginia	Georgia, South Carolina

The April 1802 Act did not place the districts of Kentucky, Maine, or Tennessee within any circuit. Although the 1801 Act created a district of Ohio, it was eliminated by that Act’s repeal and was not created again until 1803.⁷⁷

The geographic scope of five of the old six circuits changed between the April 1802 Act and the Evarts Act in 1891. The Second Circuit remained unchanged during this period, comprising the districts of Connecticut, New York, and Vermont. The geographic scope of the old six circuits is shown in the following tables. At the first reference to a state (or territory) in all tables throughout this article, an endnote provides, or cross-references an endnote that provides, the history of the judicial district or districts of that state (or territory) and the authority of a circuit court of appeals to review judgments of courts within a circuit.

First Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	Massachusetts, ⁷⁸ New Hampshire, ⁷⁹ and Rhode Island ⁸⁰		Massachusetts, New Hampshire, and Rhode Island
1820	Maine ⁸¹		Massachusetts, New Hampshire, Rhode Island, and Maine

Second Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	Connecticut, ⁸² New York, ⁸³ and Vermont ⁸⁴		Connecticut, New York, and Vermont

Third Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	New Jersey ⁸⁵ and Pennsylvania ⁸⁶		New Jersey and Pennsylvania
1866	Delaware ⁸⁷		New Jersey, Pennsylvania, and Delaware

Fourth Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	Delaware ⁸⁸ and Maryland ⁸⁹		Delaware and Maryland
1842	Virginia ⁹⁰		Delaware, Maryland, and Virginia
1862	North Carolina ⁹¹		Delaware, Maryland, Virginia, and North Carolina
1864	West Virginia ⁹²		Delaware, Maryland, Virginia, West Virginia, and North Carolina
1866	South Carolina ⁹³	Delaware	Maryland, North Carolina, South Carolina, Virginia, West Virginia

Fifth Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	North Carolina ⁹⁴ and Virginia ⁹⁵		North Carolina and Virginia
1842	Alabama ⁹⁶ and Louisiana ⁹⁷	North Carolina and Virginia	Alabama and Louisiana
1862	Florida, ⁹⁸ Georgia, ⁹⁹ Mississippi, ¹⁰⁰ and South Carolina ¹⁰¹	Louisiana	Alabama, Florida, Georgia, Mississippi, and South Carolina
1866	Louisiana ¹⁰² and Texas ¹⁰³	South Carolina	Alabama, Florida, Georgia, Mississippi, Louisiana, and Texas

Sixth Circuit from 1802 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1802	Georgia ¹⁰⁴ and South Carolina ¹⁰⁵		Georgia and South Carolina
1842	North Carolina ¹⁰⁶		Georgia, South Carolina, and North Carolina
1862	Texas, ¹⁰⁷ Arkansas, ¹⁰⁸ Kentucky, ¹⁰⁹ Tennessee, ¹¹⁰ and Louisiana ¹¹¹	North Carolina, Georgia, and South Carolina	Texas, Arkansas, Kentucky, Tennessee, and Louisiana
1866	Michigan ¹¹² and Ohio ¹¹³	Louisiana, Arkansas, and Texas	Kentucky, Tennessee, Michigan, and Ohio

As the nation expanded throughout the nineteenth century, Congress created new circuits and new districts. The Seventh Circuit was created in 1807, comprising the districts of Tennessee, Kentucky, and Ohio.¹¹⁴ The Eighth Circuit was created in 1837, comprising the districts of Tennessee, Kentucky, and Missouri.¹¹⁵ The Ninth Circuit was created in 1837, comprising the districts of Alabama, Arkansas, Louisiana, and Mississippi.¹¹⁶ The old Tenth Circuit was created in 1863, comprising the districts of California and Oregon,¹¹⁷ and abolished in 1866.¹¹⁸

The geographic scope of the new circuits changed between 1807 and the Evarts Act in 1891, as shown in the following tables.

Seventh Circuit from 1807 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1807	Tennessee, ¹¹⁹ Kentucky, ¹²⁰ and Ohio ¹²¹		Tennessee, Kentucky, and Ohio
1837	Indiana, ¹²² Illinois, ¹²³ and Michigan ¹²⁴	Tennessee and Kentucky	Ohio, Indiana, Illinois, and Michigan
1862		Illinois and Michigan	Ohio and Indiana
1863	Michigan	Indiana	Ohio and Michigan
1866	Illinois, Indiana, and Wisconsin ¹²⁵	Michigan and Ohio	Illinois, Indiana, and Wisconsin

Eighth Circuit from 1837 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1837	Kentucky, ¹²⁶ Tennessee, ¹²⁷ and Missouri ¹²⁸		Kentucky, Tennessee, and Missouri
1862	Illinois, ¹²⁹ Michigan, ¹³⁰ and Wisconsin ¹³¹	Kentucky, Tennessee, and Missouri	Illinois, Michigan, and Wisconsin
1863	Indiana ¹³²	Michigan and Wisconsin	Illinois and Indiana
1866	Arkansas, ¹³³ Iowa, ¹³⁴ Kansas, ¹³⁵ Minnesota, ¹³⁶ and Missouri ¹³⁷	Illinois and Indiana	Arkansas, Iowa, Kansas, Minnesota, and Missouri
1867	Nebraska ¹³⁸		Arkansas, Iowa, Kansas, Minnesota, Missouri, and Nebraska

Eighth Circuit from 1837 to 1891, cont'd

1876	Colorado ¹³⁹		Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Colorado
1889	North Dakota ¹⁴⁰ and South Dakota ¹⁴¹		Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, Colorado, North Dakota, and South Dakota
1890	Wyoming ¹⁴²		Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, Colorado, North Dakota, South Dakota, and Wyoming

Ninth Circuit from 1837 to 1891

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1837	Louisiana, ¹⁴³ Mississippi, ¹⁴⁴ Alabama, ¹⁴⁵ and Arkansas ¹⁴⁶		Louisiana, Mississippi, Alabama, and Arkansas
1842		Louisiana and Alabama	Mississippi and Arkansas
1862	Missouri, ¹⁴⁷ Iowa, ¹⁴⁸ Minnesota, ¹⁴⁹ and Kansas ¹⁵⁰	Mississippi and Arkansas	Missouri, Iowa, Minnesota, and Kansas
1863	Wisconsin ¹⁵¹		Missouri, Iowa, Minnesota, Kansas, and Wisconsin

Ninth Circuit from 1837 to 1891, cont'd

1866	California, ¹⁵² Oregon, ¹⁵³ and Nevada ¹⁵⁴	Iowa, Kansas, Minnesota, Missouri, and Wisconsin	California, Oregon, and Nevada
1889	Montana ¹⁵⁵ and Washington ¹⁵⁶		California, Oregon, Nevada, Montana, and Washington
1890	Idaho ¹⁵⁷		California, Oregon, Nevada, Montana, Washington, and Idaho

Old Tenth Circuit from 1863 to 1866

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1863	California, ¹⁵⁸ Oregon ¹⁵⁹		California and Oregon
1866		California and Oregon	

Many of the changes reflected in these tables resulted from the growth of the nation and attendant increased demands on the judiciary. As new states were added to the Union, the new district(s) within those states were assigned to a circuit, and, occasionally, new circuits were created. From 1837, when the Eighth and Ninth Circuits were created, through the Civil War, more frequent reorganizations occurred, due not only to expansion but also to the demands of circuit riding by Supreme Court justices, particularly the transportation challenges. Political considerations in the aftermath of the Civil War further contributed to the placement of states in circuits and to subsequent transfers.

(b) Number of Judges of the Old Circuit Courts

The 1789 Act provided that a circuit court in each district “shall consist of any two justices of the Supreme Court, and the district judge of such districts,”¹⁶⁰ thereby imposing circuit-riding obligations on the justices. The 1801 Act, passed after the defeat of President John Adams and the Federalists in the 1800 election, authorized the appointment of a new category of judges, to be called circuit judges,¹⁶¹ who would relieve the Supreme Court justice of circuit-

riding obligations. In five of the six circuits created by the 1801 act (all except the Sixth Circuit), three circuit judges were to be appointed,¹⁶² and in the Sixth Circuit, one circuit judge was authorized who would sit on the circuit court for that district with the district judges for the districts of Kentucky and Tennessee.¹⁶³ Although the circuit courts had three judges, only two were required for a quorum.¹⁶⁴

With the repeal of the 1801 Act in 1802,¹⁶⁵ the circuit-riding obligation of the Supreme Court justices resumed, but a second statute enacted in 1802 eased their obligation from the requirement of the 1789 Act by reducing the composition of each circuit court to one Supreme Court justice and one district court judge,¹⁶⁶ reinstating the circuit court composition that Congress had provided in 1793.¹⁶⁷ In 1869, Congress authorized the appointment of a circuit judge in each of the nine existing circuits, and provided that each circuit court could be held by the Supreme Court justice assigned to the circuit, the circuit judge for the circuit, or the district judge of the district, each sitting alone, or by all three sitting together, or by the Supreme Court justice or the circuit judge sitting with the district judge.¹⁶⁸

(c) Jurisdiction of the Old Circuit Courts

The circuit courts had both trial and appellate jurisdiction. In 1789, their trial jurisdiction, concurrent with the states, extended to civil cases where the matter in dispute exceeded five hundred dollars and the United States was a plaintiff, the plaintiff was an alien, or the parties were citizens of different states.¹⁶⁹ Their trial jurisdiction, exclusive of the states, extended to all federal crimes and was concurrent with the criminal jurisdiction of the district courts.¹⁷⁰

The 1801 Act, until its repeal in 1802,¹⁷¹ briefly extended the trial jurisdiction of the circuit courts to civil cases arising under the Constitution, laws, and treaties of the United States,¹⁷² a grant of federal question jurisdiction that would not be revived until 1875.¹⁷³

In 1875, the trial jurisdiction of the circuit courts, concurrent with the states, was significantly extended to include all civil suits where the matters in dispute exceeded five hundred dollars and either (1) the suit arose under the Constitution, laws, or treaties of the United States, (2) the United States was a plaintiff, (3) the suit was between citizens of different states, or (4) the suit was between citizens of the same state claiming lands under grants of different states.¹⁷⁴ In 1887, the jurisdictional amount for circuit court jurisdiction was increased to two thousand dollars.¹⁷⁵

In 1789, the appellate jurisdiction of the circuit courts extended to final decrees and judgments in civil actions in a district court where the matter in dispute exceeded fifty dollars,¹⁷⁶ and to final decrees in a district court in causes of admiralty and maritime jurisdiction where the matter in dispute exceeded three hundred dollars.¹⁷⁷ Appeals in the latter category from the district court for the district of Maine, which did not have a circuit court, were taken to the circuit court for the district of Massachusetts.¹⁷⁸ Appeals from all

decisions of the district court for the district of Kentucky, which also did not have a circuit court, were taken to the Supreme Court.¹⁷⁹ In 1879, the appellate jurisdiction of the circuit courts was expanded to include writs of error in criminal cases in a district court where the sentence was imprisonment or a fine and imprisonment and, if a fine only, where the fine exceeded three hundred dollars.¹⁸⁰

II. The Modern Courts of Appeals

The Evarts Act of 1891 was a watershed event in the history of the federal appellate courts. Although the old circuit courts continued in existence until January 1, 1912, when they were abolished,¹⁸¹ the Evarts Act established an intermediate tier of appellate courts, referred to as circuit courts of appeals.¹⁸² Congress renamed these courts United States Court of Appeals for the [relevant] Circuit in 1948.¹⁸³

The events leading up to the Evarts Act have been well summarized by the Federal Judicial Center:

In the twenty-five years following the Civil War, the expansion of federal jurisdiction and increased litigation contributed to a growing caseload that nearly overwhelmed the federal courts. The Supreme Court fell several years behind schedule, the crowded dockets in the circuit courts prevented the circuit judges from annually attending all the courts within their jurisdiction, and district judges often presided alone in the circuit courts while also trying to manage the heavy caseload of the district courts.¹⁸⁴

In the years following the Evarts Act, Congress changed the geographic scope of several circuits and also created new circuits. These changes were likely a response to shifts in populations that led to increases in federal caseloads in particular areas. In addition to placing some states or territories in different or new circuits, Congress granted some of the new appellate courts authority to review judgments and decrees of courts in territories or other geographic areas. (These grants of review authority are shown in endnotes 189, 193, 200, 211, 212, 213, 220, 221, and 222.)

(a) The Geographic Scope of the Circuits and the Establishment of New Appellate Courts

Changes in the placement of states or territories in different circuits after 1891 are shown in the following tables.

First Circuit from 1891 to the present

Year	Districts from the following states and territories added	Districts from the following states removed	Composition after changes
1891	As of 1891: Massachusetts, ¹⁸⁵ New Hampshire, ¹⁸⁶ Rhode Island, ¹⁸⁷ and Maine ¹⁸⁸		As of 1891: Massachusetts, New Hampshire, Rhode Island, and Maine
1915	Territory of Porto Rico; ¹⁸⁹ authority to review judgments of the Porto Rico Supreme Court		Massachusetts, New Hampshire, Rhode Island, Maine, and Territory of Porto Rico

Third Circuit from 1891 to the present

Year	Districts from the following states and territories added	Districts from the following states removed	Composition after changes
1891	As of 1891: New Jersey, ¹⁹⁰ Pennsylvania, ¹⁹¹ and Delaware ¹⁹²		As of 1891: New Jersey, Pennsylvania, and Delaware
1917	Authority to review judgments of the local court of the Territory of the Virgin Islands ¹⁹³		
1925	Authority to review judgments of the federal district court of the Territory of the Virgin Islands		
1948	Territory of the Virgin Islands		New Jersey, Pennsylvania, Delaware, and Territory of the Virgin Islands

Fifth Circuit from 1891 to the present

Year	Districts from the following states and territories added	Districts from the following states and territories removed	Composition after changes
1891	As of 1891: Alabama, ¹⁹⁴ Louisiana, ¹⁹⁵ Florida, ¹⁹⁶ Georgia, ¹⁹⁷ Mississippi, ¹⁹⁸ and Texas ¹⁹⁹		As of 1891: Alabama, Louisiana, Florida, Georgia, Mississippi, and Texas
1912	Authority to review judgments of the District Court for the Territory of the Canal Zone ²⁰⁰		
1948	Territory of the Canal Zone		Alabama, Louisiana, Florida, Georgia, Mississippi, Texas, and Territory of the Canal Zone
1980		Alabama, Florida, and Georgia	Louisiana, Mississippi, Texas, and Territory of the Canal Zone
1982		Territory of the Canal Zone	Louisiana, Mississippi, and Texas

Eighth Circuit from 1891 to the present

Year	Districts from the following states added	Districts from the following states removed	Composition after changes
1891	As of 1891: Missouri, ²⁰¹ Arkansas, ²⁰² Iowa, ²⁰³ Minnesota, ²⁰⁴ Kansas, ²⁰⁵ Nebraska, ²⁰⁶ Colorado, ²⁰⁷ North Dakota, ²⁰⁸ South Dakota, ²⁰⁹ and Wyoming ²¹⁰		As of 1891: Missouri, Arkansas, Iowa, Minnesota, Kansas, Nebraska, Colorado, North Dakota, South Dakota, and Wyoming

Eighth Circuit from 1891 to the present, cont'd

1891	Authority to review judgments of the Supreme Courts of the Territories of New Mexico, ²¹¹ Oklahoma, ²¹² and Utah, ²¹³ and the United States Court for the Indian Territory ²¹⁴		
1896	Utah		Missouri, Arkansas, Iowa, Minnesota, Kansas, Nebraska, Colorado, North Dakota, South Dakota, Wyoming, and Utah
1907	Oklahoma		Missouri, Arkansas, Iowa, Minnesota, Kansas, Nebraska, Colorado, North Dakota, South Dakota, Wyoming, Utah, and Oklahoma
1912	New Mexico		Missouri, Arkansas, Iowa, Minnesota, Kansas, Nebraska, Colorado, North Dakota, South Dakota, Wyoming, Utah, Oklahoma, and New Mexico
1929		Colorado, Kansas, New Mexico Oklahoma, Utah, and Wyoming	Missouri, Arkansas, Iowa, Minnesota, Nebraska, North Dakota, and South Dakota

Ninth Circuit from 1891 to the present

Year	Districts from the following states and territories added	Districts from the following states removed	Composition after changes
1891	As of 1891: California, ²¹⁵ Oregon, ²¹⁶ Nevada, ²¹⁷ Montana, ²¹⁸ Washington, ²¹⁹ and Idaho ²²⁰		As of 1891: California, Oregon, Nevada, Montana, Washington, and Idaho
1891	Authority to review judgments of the Supreme Court of the Territory of Alaska ²²¹		
1900	Limited authority to review judgments of the district court for the Territories of Hawaii, ²²² Alaska, and Arizona ²²³		
1901	Authority to review judgments of the Supreme Court of the Territory of Hawaii		
1906	Authority to review judgments of the United States Court for China ²²⁴		
1911	Territory of Hawaii; broadened authority to review judgments of the district court of the Territory of Alaska		California, Oregon, Nevada, Montana, Washington, Idaho, and Territory of Hawaii
1912	Arizona		California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, and Territory of Hawaii
1925	Broadened authority to review judgments of the district court for the Territory of Alaska		

Ninth Circuit from 1891 to the present, cont'd

1948	Territory of Alaska		California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, Territory of Hawaii, and Territory of Alaska
1950	Limited authority to review judgments of the District Court of Guam		
1951	Territory of Guam ²²⁵		California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, Territory of Hawaii, Territory of Alaska, and Territory of Guam
1959	Alaska (a state, no longer a territory) and Hawaii (a state, no longer a territory)		California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, Territory of Guam, Alaska, and Hawaii
1977	Territory of Northern Mariana Islands ²²⁶		California, Oregon, Nevada, Montana, Washington, Idaho, Arizona, Territory of Guam, Alaska, Hawaii, and Territory of Northern Mariana Islands

The modern Tenth Circuit was created in 1929, comprising the districts of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming, which had been placed in the Eighth Circuit.²²⁷ The Eleventh Circuit was created in 1981, comprising the districts of Alabama, Florida, and Georgia, when these districts were split from the Fifth Circuit.²²⁸ In 1893, Congress created the Court of Appeals of the District of Columbia,²²⁹ renamed in 1948 the U.S. Court of Appeals for the District of Columbia Circuit.²³⁰ In 1982, Congress created the U.S. Court of Appeals for the Federal Circuit,²³¹ completing the arrangement that exists today

of eleven regional courts of appeals and two courts of appeals in the District of Columbia, one with a specialized jurisdiction.

(b) Number of Judgeships of the Circuit Courts of Appeals and the Courts of Appeals

The Evarts Act authorized the appointment of one additional circuit judge for each of the existing nine circuits,²³² giving all of them two judges, except the Circuit Court of Appeals for the Second Circuit, which the Act increased from two to three judges.²³³ Because these courts were required to have panels of three judges,²³⁴ all of them, except the Circuit Court of Appeals for the Second Circuit, had to include a Supreme Court justice or a district judge on each panel. Supreme Court justices, circuit judges, and district judges were eligible to serve, but the justices were not required to sit on the new courts.²³⁵

From 1891 on, the number of judgeships in all circuits increased, as shown in the following tables.

First Circuit

Year	Judgeships
1891	2 ²³⁶
1905	3 ²³⁷
1978	4 ²³⁸
1984	6 ²³⁹

Second Circuit

Year	Judgeships
1891	3 ²⁴⁰
1902	4 ²⁴¹
1929	5 ²⁴²
1938	6 ²⁴³
1961	9 ²⁴⁴
1978	11 ²⁴⁵
1984	13 ²⁴⁶

Third Circuit

Year	Judgeships
1891	2 ²⁴⁷
1899	3 ²⁴⁸
1930	4 ²⁴⁹
1936	5 ²⁵⁰
1944	6 ²⁵¹
1949	7 ²⁵²
1961	8 ²⁵³
1968	9 ²⁵⁴
1978	10 ²⁵⁵
1984	12 ²⁵⁶
1990	14 ²⁵⁷

Fourth Circuit

Year	Judgeships
1891	2 ²⁵⁸
1922	3 ²⁵⁹
1961	5 ²⁶⁰
1966	7 ²⁶¹
1978	10 ²⁶²
1984	11 ²⁶³
1990	15 ²⁶⁴

In 1981, the Fifth Circuit was divided to create a new Eleventh Circuit.²⁶⁵

Fifth Circuit

Year	Judgeships
1891	2 ²⁶⁶
1899	3 ²⁶⁷
1930	4 ²⁶⁸
1938	5 ²⁶⁹
1942	6 ²⁷⁰
1954	7 ²⁷¹
1961	9 ²⁷²
1966	13 ²⁷³
1968	15 ²⁷⁴
1978	26 ²⁷⁵
1981	14 ²⁷⁶
1984	16 ²⁷⁷
1990	17 ²⁷⁸

Sixth Circuit

Year	Judgeships
1891	2 ²⁷⁹
1899	3 ²⁸⁰
1928	4 ²⁸¹
1938	5 ²⁸²
1940	6 ²⁸³
1966	8 ²⁸⁴
1968	9 ²⁸⁵
1978	11 ²⁸⁶
1984	15 ²⁸⁷
1990	16 ²⁸⁸

Seventh Circuit

Year	Judgeships
1891	2 ²⁸⁹
1895	3 ²⁹⁰
1905	4 ²⁹¹
1938	5 ²⁹²
1949	6 ²⁹³
1961	7 ²⁹⁴
1966	8 ²⁹⁵
1978	9 ²⁹⁶
1984	11 ²⁹⁷

In 1929, two judgeships from the Eighth Circuit were transferred to the Tenth Circuit.²⁹⁸ This was accomplished by reassigning to the Tenth Circuit two circuit judges who resided in the portion of the Eighth Circuit that was placed in the newly created Tenth Circuit.²⁹⁹

Eighth Circuit

Year	Judgeships
1891	2 ³⁰⁰
1894	3 ³⁰¹
1903	4 ³⁰²
1925	6 ³⁰³
1929	5 ³⁰⁴
1940	7 ³⁰⁵
1966	8 ³⁰⁶
1978	9 ³⁰⁷
1984	10 ³⁰⁸
1990	11 ³⁰⁹

Ninth Circuit

Year	Judgeships
1891	2 ³¹⁰
1895	3 ³¹¹
1929	4 ³¹²
1935	5 ³¹³
1937	7 ³¹⁴
1954	9 ³¹⁵
1968	13 ³¹⁶
1978	23 ³¹⁷
1984	28 ³¹⁸
2009	29 ³¹⁹

In 1929, the Tenth Circuit added two judgeships when two circuit judges residing in the portion of the Eighth Circuit that was placed in the newly created Tenth Circuit³²⁰ were reassigned to the Tenth Circuit.³²¹

Tenth Circuit

Year	Judgeships
1929	4 ³²²
1949	5 ³²³
1961	6 ³²⁴
1968	7 ³²⁵
1978	8 ³²⁶
1984	10 ³²⁷
1990	12 ³²⁸

Eleventh Circuit

Year	Judgeships
1981	12 ³²⁹

The predecessor of the U.S. Court of Appeals for the District of Columbia Circuit was the “court of appeals of the District of Columbia,” established in 1893.³³⁰ In 1948, the court was renamed the U.S. Court of Appeals for the District of Columbia Circuit.³³¹

**Court of Appeals
of the District of
Columbia**

Year	Judgeships
1893	3 ³³²
1930	5 ³³³
1938	6 ³³⁴

**District of
Columbia Circuit**

1948	6 ³³⁵
1949	9 ³³⁶
1978	11 ³³⁷
1984	12 ³³⁸
2008	11 ³³⁹

The predecessors of the Court of Appeals for the Federal Circuit were the Court of Customs Appeals, established in 1909,³⁴⁰ and what began functioning as the “appellate division” of the Court of Claims in 1925,³⁴¹ although no statute used that label. The Court of Customs Appeals was established in 1909 with five judges.³⁴² It was renamed the Court of Customs and Patent Appeals in 1929.³⁴³ The number of judges remained at five until the court was abolished in 1982.³⁴⁴ The “appellate division” of the Court of Claims began with five judges in 1925³⁴⁵ and expanded to seven judges in 1966.³⁴⁶

In 1982, the five judges of Court of Customs and Patent Appeals and the seven judges of the “appellate division” of the Court of Claims were re-assigned to the newly created Court of Appeals for the Federal Circuit.³⁴⁷

**Court of Customs
Appeals**

Year	Judgeships
1909	5 ³⁴⁸

Court of Claims
“Appellate Division”

Year	Judgeships
1925	5 ³⁴⁹
1966	7 ³⁵⁰

Federal Circuit

Year	Judgeships
1982	12 ³⁵¹

(c) Jurisdiction of the Circuit Courts of Appeals and the Courts of Appeals

The Evarts Act gave the new circuit courts of appeals appellate jurisdiction, within their respective circuits, over final decisions of both the district courts and the old circuit courts (until the latter were abolished effective January 1, 1912),³⁵² except decisions in cases appealable directly to the Supreme Court.³⁵³

In most cases within the appellate jurisdiction of the circuit courts of appeals, their judgment was final.³⁵⁴ Such cases were “all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws and in admiralty cases;”³⁵⁵ however, in such cases, the circuit courts of appeals could certify any question of law to the Supreme Court, which could either answer the certified question or bring up and decide the entire case.³⁵⁶

Some cases in the circuit courts of appeals that were not final could be reviewed in the Supreme Court “by writ of error or appeal.”³⁵⁷ Such cases were those “in which the jurisdiction of the court is in issue,” “final sentences and decrees in prize cases,” “cases of conviction of a capital or otherwise infamous crime,” “any case that involves the construction or application of the Constitution of the United States,” “any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question,” and “any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.”³⁵⁸

The number of decisions by the circuit courts of appeals that were the end of the appellate process increased in 1925 when Congress reduced the kinds of decisions reviewable

by the Supreme Court by appeal and authorized review by petition for a writ of certiorari,³⁵⁹ which the Court had discretion to grant or deny. Today, the only decisions that the Supreme Court must review by appeal are decisions granting or denying injunctions in cases required to be heard by three-judge district courts.³⁶⁰ Decisions of courts of appeals are reviewable only by a party's certiorari petition,³⁶¹ which the Supreme Court has discretion to grant or deny, or by a court of appeals certification to the Supreme Court of a question of law,³⁶² which the Court also has discretion to grant or deny. Use of the certification procedure “has all but disappeared in recent decades,”³⁶³ and has not been used by the Supreme Court since 1981.³⁶⁴

The 1948 renaming of each of the eleven regional circuit courts of appeals as a “United States Court of Appeals” did not affect their jurisdiction.³⁶⁵ However, the jurisdiction of what became the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Appeals for the Federal Circuit requires separate explanation, beginning with the predecessors of each court.

The Court of Appeals for the District of Columbia Circuit had one predecessor court, the Court of Appeals of the District of Columbia, created in 1893.³⁶⁶ It had jurisdiction over appeals from the Supreme Court of the District of Columbia,³⁶⁷ created in 1863,³⁶⁸ and appeals from decisions of the Commissioner of Patents.³⁶⁹ In 1936, the Supreme Court of the District of Columbia was renamed the District Court of the United States for the District of Columbia,³⁷⁰ with jurisdiction over appeals from that district court continuing in what was then called the U.S. Court of Appeals for the District of Columbia,³⁷¹ renamed the U.S. Court of Appeals for the District of Columbia Circuit in 1948.³⁷² In 1929, jurisdiction over appeals from the Commissioner of Patents was transferred to the Court of Customs and Patent Appeals.³⁷³ The Court of Appeals for the District of Columbia Circuit also has jurisdiction over appeals by the U.S. Attorney General from denials of orders seeking removal of an alien terrorist issued by the Alien Terrorist Removal Court.³⁷⁴

The Court of Appeals for the Federal Circuit had two predecessor courts. One was the U. S. Court of Customs Appeals, established in 1909.³⁷⁵ It had exclusive jurisdiction over cases decided by the Board of General Appraisers.³⁷⁶ In 1929, the jurisdiction of the Court of Customs Appeals, renamed the Court of Customs and Patent Appeals,³⁷⁷ was extended to appeals from the Patent Office in patent and trademark cases, which were formerly reviewed in the Court of Appeals for the District of Columbia.³⁷⁸ After the Supreme Court ruled that the Court of Customs and Patent Appeals was an Article I court,³⁷⁹ Congress declared the court to be an Article III court in 1958.³⁸⁰ In 1980, its jurisdiction was further extended to appeals from the United States Court of International Trade.³⁸¹ The Court of Customs and Patent Appeals was abolished in 1982,³⁸² and much of its jurisdiction was transferred to the Court of Appeals for the Federal Circuit.³⁸³ The other predecessor of the U.S. Court of Appeals for the Federal Circuit was the “appellate division” of the U.S. Court of Claims, a

court established in 1855.³⁸⁴ The “appellate division” reviewed decisions of the trial judges (formerly commissioners) of that court.³⁸⁵

The jurisdiction of the Court of Appeals for the Federal Circuit is unique among the thirteen federal courts of appeals. The eleven regional courts of appeals and the Court of Appeals for the District of Columbia Circuit have jurisdiction over appeals from the district courts within their circuits, without regard to the subject matter of the case, and the Court of Appeals for the District of Columbia Circuit has, in addition, exclusive jurisdiction over appeals involving certain specified matters. By contrast, the Court of Appeals for the Federal Circuit has exclusive jurisdiction over (1) appeals from all the district courts throughout the nation in cases that concern several specified matters, and (2) appeals, regardless of subject matter, that come from particular Article I courts and one Article III court.³⁸⁶

The most significant cases in the first category (subject matter of the appeal) are district court cases concerning patents.³⁸⁷ Consolidating all patent appeals in one court was the primary reason for creating the Court of Appeals for the Federal Circuit.³⁸⁸ Other cases in the first category are those under section 211 of the Economic Stabilization Act of 1970,³⁸⁹ under section 5 of the Emergency Petroleum Allocation Act of 1973,³⁹⁰ under section 506(a) of the Natural Gas Policy Act of 1978,³⁹¹ and under section 523 of the Energy Policy and Conservation Act.³⁹² The first category also includes cases in which the United States is a defendant (except cases concerning taxes),³⁹³ as well as those under some provisions of the Federal Tort Claims Act³⁹⁴ and under some provisions concerning suits to quiet title to land in which the United States claims an interest.³⁹⁵

In the second category (source of the appeal) are appeals from the United States Court of International Trade,³⁹⁶ an Article III court, and from the following Article I tribunals and offices: the United States Court of Federal Claims,³⁹⁷ the United States Court of Appeals for Veterans Claims,³⁹⁸ the Patent Trial and Appeal Board of the United States Patent and Trademark Office (with some limitations),³⁹⁹ the United States International Trade Commission “relating to unfair practices in import trade,”⁴⁰⁰ the Merit Systems Protection Board,⁴⁰¹ an agency board of contract appeals,⁴⁰² the Congressional Office of Compliance,⁴⁰³ the Personnel Appeals Board of the General Accountability Office,⁴⁰⁴ the Secretary of Commerce, concerning some decisions relating to “instruments or apparatus,”⁴⁰⁵ and the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office or the Trademark Trial and Appeal Board “with respect to applications for registration of marks and other proceedings.”⁴⁰⁶

With the creation of administrative agencies, the United States Circuit Courts of Appeals and, after 1948, the United States Courts of Appeals were given jurisdiction over petitions to review decisions of several agencies, such as the Environmental Protection Agency,⁴⁰⁷ the Federal Communications Commission,⁴⁰⁸ the Federal Trade Commission,⁴⁰⁹ the Food and Drug Administration,⁴¹⁰ the National Labor Relations Board,⁴¹¹ and the Securities and Exchange Commission.⁴¹² Jurisdiction is available in the Court of Appeals for the circuit

where the petitioner resides or has its principal place of business.⁴¹³ Review of the orders of some agencies is also available in the Court of Appeals for the District of Columbia Circuit.⁴¹⁴ In some instances, jurisdiction is exclusively in the Court of Appeals for the District of Columbia Circuit.⁴¹⁵

III. Other Article III Appellate Courts

Three other Article Three appellate courts should be mentioned. Two are no longer in existence, and the third has an extremely limited jurisdiction, reviewing only decisions of one specialized trial court, which itself has an extremely limited jurisdiction.

In 1910, Congress established the Commerce Court, a court of five judges with exclusive jurisdiction over petitions to review orders of the Interstate Commerce Commission.⁴¹⁶ Congress authorized the President to appoint five additional circuit judges to be the first judges of the Commerce Court,⁴¹⁷ whom the Chief Justice of the United States could assign “for service in the circuit court for any district, or the circuit court of appeals for any circuit, or in the commerce court.”⁴¹⁸ The Commerce Court was abolished in 1913, and its jurisdiction was transferred to the relevant district courts.⁴¹⁹

In 1970, Congress established the Temporary Emergency Court of Appeals (TECA) with jurisdiction to review decisions of district courts concerning the Economic Stabilization Act (ESA) of 1970.⁴²⁰ TECA consisted of three or more circuit or district judges selected by the Chief Justice.⁴²¹ In 1992, TECA was abolished and its jurisdiction was transferred to the Court of Appeals for the Federal Circuit.⁴²²

In 1978, Congress established a court of review with jurisdiction to review decisions of the trial court established in the Foreign Intelligence Surveillance Act (FISA).⁴²³ FISA authorized the Chief Justice to designate seven district court judges from seven judicial circuits with jurisdiction to hear applications for, and grant orders approving, electronic surveillance anywhere in the United States for the purpose of gathering foreign intelligence information.⁴²⁴ FISA also authorized the Chief Justice to designate three district court or court of appeals judges as members of the FISA review court.⁴²⁵ The judges of both the FISA trial court and the FISA review court serve for a maximum of seven years.⁴²⁶ In 2001, the FISA trial court was expanded from seven to eleven judges.⁴²⁷

Other federal appellate courts, such as the Court of Veterans Claims and the Court of Appeals for the Armed Services, are not Article III courts and are therefore not considered in this article.

* * *

History of the Article III Appellate Courts, 1789–2021

It took more than 200 years for the Article III federal appellate court system to develop from the old circuit courts in the three circuits established by the 1789 Act to the modern courts of appeals in the thirteen circuits established by the various statutes enacted between 1891 and 1982.⁴²⁸ Many suggestions have been made to alter the structure of the federal appellate courts.⁴²⁹ To date, none has been adopted.

Endnotes

¹ I say the last “judicial” word because a small number of decisions, those involving interpretation of federal statutes, can be, and on rare occasion are, altered prospectively by Congress.

² Administrative Office of the United States Courts (“AO”), Statistical Tables for the Federal Judiciary, Tables B-1, B-8 (Dec. 31, 2019).

³ *Id.*, Judicial Business, Table B-2 (Mar. 31, 2020). The Supreme Court also reviews a few cases that come from state supreme courts or, very rarely, directly from federal district courts. Not all of the 126 court of appeals cases reviewed by the Supreme Court in the twelve months ending March 31, 2020, necessarily came from the 34,303 cases decided in the twelve months ending December 31, 2019, but using totals with a lag time of three months between the ending dates of the twelve-month periods provides a reasonable basis for calculating an approximate rate of Supreme Court review in view of the ninety days that a party has to seek Supreme Court review of a decision of a court of appeals, Sup. Ct. R. 9. The review percentage is derived by the formula $(34,303-126) \div 34,303=99.6\%$.

⁴ Act of Sept. 24, 1789 (“1789 Act”), ch. 20, 1st Cong., 1st Sess., § 4, 1 Stat. 73, 74. These circuit courts consisted of two justices of the Supreme Court and the district judge of the local district, *id.*, 1 Stat. at 74-75, creating the circuit-riding obligation of Supreme Court justices. In 1793, Congress eased this obligation by providing that only one Supreme Court justice (along with the district judge) was required but permitting the Supreme Court to assign two justices “where special circumstances shall, in their judgment, render the same necessary.” Act of March 2, 1793, ch. 22, 2d Cong., 2d Sess., § 1, 1 Stat. 333, 333. Congress also provided that if only one Supreme Court justice was a member of a circuit court and the district judge was absent or was of counsel or “concerned in interest” in any cause then pending, the circuit court “may” consist of the Supreme Court justice alone. *Id.* § 2, 1 Stat. 333, 334. The jurisdiction of these circuit courts is considered at pages 15-16, *infra*.

⁵ Act of Mar. 3, 1891 (“Evarts Act”), ch. 517, 51st Cong., 2d Sess., § 2, 26 Stat. 826, 826.

⁶ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 1 (amending 28 U.S.C. § 43), 62 Stat. 869, 870.

⁷ This discussion of geographic scope expands the useful account of Russell R. Wheeler and Cynthia Harrison, *Creating the Federal Judicial System*, Federal Judicial Center (3d ed. 2005) and draws upon the invaluable online links for the legislative history of the old circuit courts, district courts, and judicial circuits maintained by the Federal Judicial Center. See fjc.gov/history/courts.

⁸ Evarts Act § 2, 26 Stat. at 826.

⁹ 1789 Act § 4, 1 Stat. at 74.

¹⁰ *Id.* § 2, 1 Stat. at 73.

¹¹ Act of Feb. 13, 1801 (“1801 Act”), ch. 4, 6th Cong., 2d Sess., 2 Stat. 89. The 1801 Act became known as the “Midnight Judges Act” because President John Adams reportedly appointed several judges to the Act’s newly created positions late at night on his last days in office. See 1 Charles Warren, *The Supreme Court in United States History* 87 (1926). It has also been reported that John Marshall, in his capacity as secretary of state, signed commissions on the very last day of the Adams presidency, March 3, 1801, until Levi Lincoln, Jefferson’s incoming attorney general, showed Marshall a watch with the hands indicating midnight. Kathryn Turner, *The Midnight Judges*, 109 U. PENN. L. REV. 494, 522 (1961).

Another statute enacted later in 1801 concerned the times and places of holding certain district and circuit courts. Act of Mar. 3, 1801, ch. 32, 6th Cir. 2d Sess., 2 Stat. 123. Both were repealed in 1802. Act of Mar. 8, 1802 (“March 1802 Act”), ch. 8, 7th Cong., 1st Sess., §§ 1, 2, 2 Stat. 132, 132.

¹² 1801 Act § 21, 2 Stat. at 96 (emphases added).

¹³ *Id.* § 4, 2 Stat. at 89.

¹⁴ *Id.* § 6, 2 Stat. at 90.

¹⁵ *Id.* § 7, 2 Stat. at 90.

¹⁶ *Id.* § 21 (emphases added), 2 Stat. at 96.

¹⁷ U.S. Const., Art. III § 1 (“The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.”). Sometimes Congress explicitly conferred Article III status on a district

court. *E.g.*, Pub. L. No. 85-755, § 1 (“Such court [the Court of Customs and Patent Appeals] is hereby declared to be a court established under article III of the Constitution of the United States.”), 72 Stat 848, 848. Sometimes Congress changed an Article IV court to an Article III court by renaming it a “United States Court.” *E.g.*, Act of June 7, 1934, ch. 426, 73d Cong., 2d Sess. (Court of Appeals for the District of Columbia “shall hereafter be known as the United States Court of Appeals for the District of Columbia.”), 48 Stat. 926. Once Congress changed an Article IV court to an Article III court by extending the terms of its judges to life, Pub. L. No. 89-571, § 1 (“The district judges [of the District of Puerto Rico] shall hold office during good behavior.”), 80 Stat. 764, and once Congress identified new courts, the Supreme Court and the Court of Appeals of the District of Columbia, as Article III courts by giving their judges life terms, Act of Mar. 3, 1863, ch. 91, 37th Cong., 3d Sess., § 1 (Supreme Court of the District of Columbia), 12 Stat. 762, 762-63; Act of Feb. 3, 1893, ch. 94, 52d Cong., 2d Sess., § 1 (Court of Appeals of the District of Columbia), 27 Stat. 434, 434.

In *O’Donoghue v. United States*, 289 U.S. 516, 548-49 (1932), the Supreme Court relied on the appointment of judges for good behavior, *i.e.*, life in the absence of impeachment, as an indication that they were judges of an Article III court:

“It is, of course, true that Congress, in conferring life tenure upon the judges of the courts of the District [of Columbia] might have done so merely as a matter of legislative grace, without deeming it to be a matter of constitutional compulsion. Nevertheless, a practice so uniform and continuous indicates, with some degree of persuasive force, that Congress entertained the view that the courts of the District [of Columbia] and the [Article III] inferior courts sitting elsewhere stood upon the same constitutional footing.” *Id.* See *infra* note 370.

¹⁸ U.S. Const., Art. IV § 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”).

¹⁹ *E.g.*, Act of Apr. 12, 1900, ch. 191, 56th Cong., 1st Sess., § 34 (“The President . . . shall appoint a district judge . . . for said district [of the Territory of Alaska] for a term of four years, unless sooner removed by the President.”), 31 Stat. 77, 84.)

²⁰ *E.g.*, Act of Apr. 30, 1900, ch. 339, 56th Cong., 1st Sess., § 86 (“[T]here shall be established in [the] Territory [of Hawaii] a district court,” the judge of which “shall hold office for six years, unless sooner removed by the President.”), 31 Stat. 141, 158.

²¹ *E.g.*, Act of Feb. 13, 1925, ch. 229, 68th Cong., 2d Sess., § 1 (amending 1911 Judicial Code § 128(a) ¶ 5(d) (giving the Court of Appeals for the Third Circuit jurisdiction to review the decisions of “the District Court of the Virgin Islands”), 43 Stat. 936, 936; this district court presumably had jurisdiction only of cases arising under local Virgin Islands law, because it was not until 1936 that Congress established “the District Court of the Virgin Islands” with jurisdiction of both some federal cases, *e.g.*, “criminal cases . . . under the laws of the United States applicable to the Virgin Islands” and some local cases, *e.g.*, “criminal cases under the laws of the respective municipalities.” Act of June 22, 1936, ch. 699, 74th Cong., 2d Sess., §§ 25, 28(1), 49 Stat. 1807, 1813, 1814. For the history of the District of the Virgin Islands, see *infra* note 193.

²² In 1801, Congress created the Potomac District, comprising the District of Columbia and portions of Maryland and Virginia. 1801 Act § 21, 2 Stat. at 96. The Potomac District was abolished in 1802 when the 1801 Act was repealed. March 1802 Act, § 1, 2 Stat. 132, 132. In 1948, the portions of Idaho and Montana located in Yellowstone National Park were transferred to the district of Wyoming. Pub. L. No. 98-353, tit. II, § 203(a), *codified at* 28 U.S.C. § 131.

²³ These “districts” were the geographic areas covered by the circuit courts established in each of these states, *i.e.*, the states themselves.

²⁴ 1789 Act § 2, 1 Stat. at 73. The District of Maine was identified as “that part of the State of Massachusetts which lies easterly of the State of New Hampshire.” *Id.* The district court for the District of Maine was authorized to exercise the trial court jurisdiction of a circuit court. *Id.* § 10, 1 Stat. at 77-78. The District of Maine was the geographic area covered by the district court for the District of Maine, no circuit court having been established in that district.

²⁵ *Id.* The District of Massachusetts was identified as “the remaining part of the State of Massachusetts.” *Id.* The District of Massachusetts was the geographic area covered by the circuit court established in that remaining part of Massachusetts.

²⁶ *Id.* The District of Virginia was identified as “the State of Virginia, except that part called the District of Kentucky,” *id.*, which was not geographically defined. The District of Virginia was the geographic area covered by the circuit court established in the state of Virginia, except that part called the District of Kentucky.

²⁷ *Id.* The District of Kentucky was identified as “the remaining part of the State of Virginia.” *Id.* The District of Kentucky was the geographic are covered by the district court for the District of Kentucky, no circuit court having been established in that district.

²⁸ 1789 Act § 1, 1 Stat. at 73.

²⁹ *Id.* § 3, 1 Stat. at 73-74.

³⁰ *Id.* § 4, 1 Stat. at 74-75. Section 4 provided that in each of the existing districts except Maine and Kentucky “there shall be held annually . . . two courts, which shall be called Circuit Courts,” but section 5 made clear that there were to be two sessions of “the said circuit court,” not two courts.

³¹ *Id.* § 10, 1 Stat. at 77-78.

³² For example, in 1817, the district court for the District of Indiana was given the jurisdiction of the judge of the District of Kentucky, Act of Mar. 3, 1817, ch. 100, 14th Cong., 2d Sess., § 2, 3 Stat. 390, 390-91, who had the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77-78. In some instances, Congress gave district courts the circuit court trial jurisdiction of the district court for the District of Kentucky in a doubly indirect way. For example, in 1858, Congress gave the district judge of the District of Minnesota the jurisdiction of the district judge of the District of Iowa, Act of May 11, 1858, ch. 31, 35th Cong., 1st Sess., § 3, 11 Stat. 285, 285, who had the jurisdiction of the district judge of the District of Kentucky, Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. 789, 789, who had the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77-78. In one instance, Congress acted in a triply indirect way. In 1861, Congress gave the district court for the District of Kansas the jurisdiction of a district court for the District of Minnesota, Act of Jan. 21, 1861, ch. 20, 36th Cong., 2d Sess., § 2, 12 Stat. 126, 128, which had the jurisdiction of the district court judge of the District of Iowa, Act of May 11, 1858, ch. 31, 35th Cong., 1st Sess., § 3, 11 Stat. at 285, who had the jurisdiction of the district judge of the District of Kentucky, Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. at 789, who had the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77-78.

³³ Act of Feb. 24, 1807, ch. 16, 9th Cong., 2d Sess. § 1, 2 Stat. 420, 420.

³⁴ Act of Jan. 31, 1877, ch. 41, 44th Cong., 2d Sess., 19 Stat. 230.

In 1900, Congress twice gave the trial jurisdiction of a circuit court to a district court that was not an Article III court. Congress gave such jurisdiction to the district court for the judicial district of the Territory of Puerto Rico, whose judge was then given a four-year term, Act of Apr. 12, 1900, ch. 191, 56th Cong., 1st Sess., § 34, 31 Stat. 77, 84, and to the district court for the Territory of Hawaii, whose judge was then given a six-year term, Act of Apr. 30, 1900, ch. 339, 56th Cong., 1st Sess., § 86, 31 Stat. 141, 158.

³⁵ For example, in 1818, Congress gave the district court for the District of Mississippi “the jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act, entitled ‘An Act to establish the judicial courts of the United States,’” *i.e.*, 1789 Act § 10, 1 Stat. at 77-78. Act of April 3, 1818, ch. 29, 15th Cong., 1st Sess., § 2, 3 Stat. 413, 413.

³⁶ 1789 Act § 4, 1 Stat. at 74.

³⁷ *Id.*

³⁸ District of North Carolina: Act of June 4, 1790, ch. 17, 1st Cong., 2d Sess., §§ 2, 3, 1 Stat. 126, 126; District of Rhode Island: Act of June 23, 1790, ch. 21, 1st Cong., 2d Sess., § 2, 1 Stat. 128, 128.

³⁹ Act of June 4, 1790, ch. 17, 1st Cong., 2d Sess., § 3, 1 Stat. at 126. Congress placed the District of North Carolina in the Southern Circuit by stating that the district is “annexed to” the Southern Circuit. *Id.* In later years, Congress used various formulations to place a district in a circuit. *See, e.g.*, Act of July 28, 1866 (“1866 Act”), ch. 210, 39th Cong., 1st Sess., § 2 (The districts of Pennsylvania, New Jersey, and

Delaware “shall constitute” the Third Circuit.), 14 Stat. 209, 209; Act of June 26, 1876, ch. 147, 44th Cong., 1st Sess., § 1 (The district of Colorado “shall be attached to, and constitute a part of,” the eighth judicial circuit.), 19 Stat. 61, 61; Act of July 10, 1890, ch. 664, 51st Cong., 1st Sess., § 16 (The district of Wyoming “shall, for judicial purposes, . . . be attached to” the eighth judicial circuit.), 26 Stat. 222, 225; Act of Jan. 28, 1915, ch. 22, 63d Cong., 3d Sess., § 1 (The First Circuit “shall include” the districts of Rhode Island, Massachusetts, New Hampshire, Maine, and Porto Rico.), 38 Stat. 803, 803.

⁴⁰ Act of June 23, 1790, ch. 21, 1st Cong., 2d Sess., § 3, 1 Stat. at 128.

⁴¹ Act of Mar. 2, 1791, ch. 12, 1st Cong., 3d Sess., §§ 2, 3, 1 Stat. 197, 197.

⁴² *Id.* § 3.

⁴³ 1801 Act § 4, 2 Stat. at 90.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* The 1801 Act in fact created additional districts “for the better dispatch of the business of *district courts* of the United States.” *Id.* § 21 (emphasis added), 2 Stat. at 96. The District of Jersey was divided into “the district of East Jersey” and “the district of West Jersey”; “the district of Norfolk” was created out of several counties of the District of Virginia; the District of North Carolina was divided into “the district of Albemarle,” “the district of Pamptico,” and “the district of Cape Fear”; and “the district of Potomac” (an area previously known as “the territory of Columbia”) was created out of parts of the District of Maryland and the District of Virginia, an area also previously known as “the territory of Columbia.” *Id.*

⁴⁹ 1801 Act § 6, 2 Stat. at 90.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* The District of Ohio then consisted of “the territory of the United States northwest of the Ohio, and the Indiana Territory.” For the history of the District of Ohio, *see infra* note 113.

⁵⁶ 1801 Act § 7, 2 Stat. at 90.

⁵⁷ Act of Feb. 27, 1801, ch. 15, 6th Cong., 2d Sess., § 4-3, 2 Stat. 103, 1045. For the history of the District of the District of Columbia, *see infra* note 370.

⁵⁸ Act of Mar. 3, 1863, ch. 91, 37th Cong., 3d Sess., § 16, 12 Stat. 762, 764 (1863).

⁵⁹ Act of Mar. 8, 1802, ch. 8, 7th Cong., 1st Sess., § 1, 2 Stat. 132, 132 (1802).

Abolishing the new courts and the new judgeships raised two questions: (1) whether eliminating a judgeship for an Article III court was unconstitutional in view of the appointed judges’ life term, and (2) what happened to these judges. Both questions have been diligently explored in Jed Glickstein, *After Midnight: The Circuit Judges and the Repeal of the Judiciary Act of 1801*, 24 Yale J. L. & Human. 543 (2012). Although the constitutional issue and what to do about it was discussed among the displaced judges, *id.* at 558-71, none of them ever brought a lawsuit, *id.* at 556-57. Glickstein reveals as incorrect Charles Warren’s claim that a lawsuit brought by Joseph Reed, *Reed v. Prudden* (unreported), was a suit by a displaced Midnight Judge, *see* 1 Charles Warren, *The Supreme Court in United States History* 272 n.1 (1922); Warren misread a contemporary newspaper report of the *Reed* case. Glickstein, *supra* at 556 and n.84. Neither Reed nor Prudden was one of the thirteen circuit judges appointed by President Adams and confirmed by the Senate, all of whom are identified by Glickstein, *id.* at 498-517 (Although the 1801 Act created sixteen judgeships, the three men nominated to the Fifth Circuit judgeships all declined the appointment, *id.* at 548.) Prudden did raise the constitutional issue as a defense when Reed’s suit was transferred from the abolished circuit court for the Third Circuit to the original circuit court consisting of Supreme Court Justice William Patterson and District Judge Robert Morris, but the suit was dropped, *id.* at 557. *See also Laird v. Tatum*, 5 U.S. (1 Cranch) 299, 309 (1803) (upholding Congressional power to order the transfer of cases between

courts, without explicitly ruling on the constitutional question of abolishing an Article III court). The displaced judges petitioned Congress for relief, but their petition was rejected. Glickstein, *supra* at 570-74.

The fate of the displaced circuit judges varied considerably. Two became chief justices of their states' Supreme Courts, one became a governor, and two served in Congress, Glickstein, *supra* at 576; the loss of a salary and the accumulation of debts drove one into bankruptcy and another into debtors' prison, *id.*

The issue of a displaced judge of an Article III court did not arise again until 1863, when the Circuit Court for the District of Columbia was abolished, *see infra* note 370; *see also infra* text at note 346 (judges of "appellate division" of Court of Claims assigned to Court of Appeals for the Federal Circuit).

⁶⁰ 1801 Act § 22 (court clerks), § 36 (marshals), § 37 (United States attorneys); *see* Erwin C. Surrency, *History of the Federal Courts* 22 (1987).

⁶¹ 1801 Act § 11, 2 Stat. at 92.

⁶² *See* Surrency, *supra* note 60, at 22.

⁶³ Act of Mar. 3, 1875, ch. 137, 43d Cong., 2d Sess., § 1, 18 Stat. 470, 470, now *codified at* 28 U.S.C. § 1331.

⁶⁴ Act of Apr. 29, 1802, ch. 31, 7th Cong., 1st Sess., 2 Stat. 156.

⁶⁵ *Id.* § 4, 2 Stat. at 157.

⁶⁶ The 1801 Act had placed the districts of Maine, Massachusetts, New Hampshire, and Rhode Island in the First Circuit; Albany, Connecticut, New York, and Vermont in the Second Circuit; Delaware, Jersey, and the Eastern and Western Districts of Pennsylvania in the Third Circuit; Maryland and the Eastern and Western Districts of Virginia in the Fourth Circuit; Georgia, North Carolina, and South Carolina in the Fifth Circuit; and Kentucky, Ohio, and the districts of East Tennessee and West Tennessee in the Sixth Circuit. The April 1802 Act placed the districts of Massachusetts, New Hampshire, and Rhode Island in the First Circuit; Connecticut, New York, and Vermont in the Second Circuit; New Jersey and Pennsylvania in the Third Circuit; Delaware and Maryland in the Fourth Circuit; North Carolina and Virginia in the Fifth Circuit; and Georgia and South Carolina in the Sixth Circuit.

The April 1802 Act also authorized what the Act called "the chief judge of the district of Columbia," who appears to have been the chief judge of the Circuit Court for the District of Columbia, to "hold a district court of the United States, in and for the said district." *Id.* § 24, 2 Stat. 156, 166. In 1863, Congress created the Supreme Court of the District of Columbia and authorized any justice of that court "to hold a district court of the United States for the District of Columbia." Act of Mar. 3, 1863, ch. 90, 37th Cong., 3d Sess., §§ 1, 3, 12 Stat. 762, 763. For the history of the District Court for the District of Columbia, *see infra* note 370.

⁶⁷ 1801 Act § 6, 2 Stat. at 90.

⁶⁸ 1789 Act § 4, 1 Stat. at 74.

⁶⁹ April 1802 Act, § 4, 2 Stat. at 157,

⁷⁰ *Id.* Under the 1801 Act, the First Circuit had included the District of Maine.

⁷¹ *Id.* Repeal of the 1801 Act eliminated the District of Albany.

⁷² *Id.* Under the 1801 Act, the Third Circuit had included the District of Delaware. Repeal of the 1801 Act eliminated the division of each of the districts of Jersey and Pennsylvania into two districts.

⁷³ *Id.* Under the 1801 Act, the Fourth Circuit had included the districts of Eastern and Western Virginia.

⁷⁴ The districts of Albemarle, Pamptico, and Cape Fear in North Carolina had been abolished by repeal of the 1801 Act and restored by the April 1802 Act. *Id.* § 7, 2 Stat. at 162. In 1872, these three districts were reconstituted into the Eastern and Western Districts of North Carolina. Act of June 4, 1872, ch. 282, 42nd Cong., 2d Sess., § 1, 17 Stat. 215, 215. A Middle District was created in 1927. Act of Mar. 2, 1927, ch. 276, 69th Cong., 2d Sess., 44 Stat. 1339.

⁷⁵ April 1802 Act § 4, 2 Stat. at 157.

⁷⁶ For the history of the District of Delaware, *see infra* note 87.

⁷⁷ Act of Feb. 19, 1803, ch. 7, 7th Cong., 2d Sess., § 2, 2 Stat. 201, 201. For the history of the District of Ohio, *see infra* note 113.

⁷⁸ The District of Massachusetts was created in 1789 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act, § 7, 2 Stat. at 90, and the District of Massachusetts was transferred to the First Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.*, § 1. Later in 1802, a circuit court was established for the District of Massachusetts. April 1802 Act § 4, 2 Stat. at 157.

⁷⁹ The District of New Hampshire was created in 1789 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of New Hampshire was transferred to the First Circuit, *id.*, § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of New Hampshire. April 1802 Act § 4, 2 Stat. at 157.

⁸⁰ The District of Rhode Island was created in 1790 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act §§ 3, 4, 1 Stat. 73, 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. 89, 90, and the District of Rhode Island was transferred to the First Circuit, *id.* § 6, 2 Stat. 89, 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* § 1. Later in 1802, a circuit court was established for the District of Rhode Island. April 1802 Act § 4, 2 Stat. 157.

⁸¹ The District of Maine was created in 1789, consisting of that part of Massachusetts east of New Hampshire, not then placed in a circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. The District of Maine did not then have a circuit court. The district court exercised the jurisdiction of a circuit court. *Id.* § 10, 1 Stat. 73, 78. In 1801, the circuit court jurisdiction of the district court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of Maine was transferred to the First Circuit, 1801 Act § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, restoring the circuit court trial jurisdiction of the district court. In 1820, a circuit court was established for the District of Maine. Act of Mar. 30, 1820, ch. 27, 16th Cong., 1st Sess., § 1, 3 Stat. 554, 554, and the circuit court trial jurisdiction of the district court was terminated, *id.* § 2.

⁸² The District of Connecticut was created in 1789 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act, §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of Connecticut was transferred to the Second Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of Connecticut. April 1802 Act § 4, 2 Stat. at 157.

⁸³ The District of New York was created in 1789 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the district of New York was transferred to the Second Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of New York. April 1802 Act § 4, 2 Stat. at 157.

In 1814, the District of New York was divided into the Northern and Southern Districts. Act of Apr. 9, 1814, ch. 49, 30th Cong., 2d Sess., § 1, 3 Stat. 120, 120. A circuit court was established for the Southern District, *id.* § 3, 3 Stat. at 121, the district court for the Northern District was authorized to exercise the trial court jurisdiction of a circuit court, *id.*, and jurisdiction over appeals and writs of error from the District Court for the Northern District was placed in the District Court for the Southern District, *id.* In 1826, jurisdiction over appeals and writs of error from the District Court for the Southern District was transferred to the Supreme Court. Act of May 22, 1826, ch. 150, 19th Cong., 1st Sess., 4 Stat. 192. In 1837, the circuit court jurisdiction of the District Court for the Northern District was terminated, Act of Mar. 3, 1837 (“1837 Act”), ch. 34, 24th Cong., 2d Sess., § 3, 5 Stat. 176, 177, except when a session of the district court was held at Utica, *id.* § 2, 5 Stat. at 177, and a circuit court was established for the Northern District, *id.* § 3, 5 Stat. at 177.

In 1865, the Eastern District of New York was created, Act of Feb. 25, 1865, ch. 54, 38th Cong., 2d Sess., § 1, 13 Stat. 438. In 1900, the Western District of New York was created. Act of May 12, 1900, ch. 391, 56th Cong., 1st Sess., § 1, 31 Stat. 175, 175. A circuit court was established for the Western District. *Id.* § 4, 31 Stat. at 176.

⁸⁴ The District of Vermont was created in 1791 with one district court and one circuit court and was placed in the Eastern Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of Vermont was transferred to the Second Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* § 1, 2 Stat. at 132. Later in 1802, a circuit court was established for the District of Vermont. April 1802 Act § 4, 2 Stat. at 157.

⁸⁵ The District of New Jersey was created in 1789 with one district court and one circuit court and was placed in the Middle Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. 89, 90, and the District of New Jersey (called “Jersey”) was transferred to the Third Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of New Jersey. April 1802 Act § 4, 2 Stat. at 157.

⁸⁶ The district of Pennsylvania was created in 1789 with one district court and one circuit court and was placed in the Middle Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of Pennsylvania was transferred to the Third Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of Pennsylvania. April 1802 Act § 4, 2 Stat. at 157.

In 1818, the District of Pennsylvania was divided into the Eastern and Western Districts, Act of Apr. 20, 1818, ch. 108, 15th Cong., 1st Sess., § 1, 3 Stat. at 462. A circuit court was established for the Eastern District, *id.* § 4, the District Court for the Western District was authorized to exercise the trial court jurisdiction of a circuit court, *id.*, and jurisdiction over appeals and writs of error from the District Court for the Western District was placed in the District Court for the Eastern District, *id.* Later in 1818, the Western District, not having been “open and holden” as authorized, was again authorized to exercise the trial court jurisdiction of a circuit court, Act of Dec. 16, 1818, ch. 4, 15th Cong., 2d Sess., § 1, 3 Stat. 478, 478. In 1820, jurisdiction over appeals and writs of error from decisions of the district court for the Western District was transferred to the Supreme Court. Act of May 15, 1820, ch. 111, 16th Cong., 1st Sess., § 3, 3 Stat. 598, 598. In 1837, a circuit court was established for the Western District of Pennsylvania, and the circuit court jurisdiction of the District Court for the Western District was terminated, except when a session of the district court was held at Williamsport, 1837 Act § 2, 5 Stat. at 177. In 1843, the circuit court jurisdiction of the District Court for the Western District holding a session in Williamsport was terminated, and circuit courts were authorized to hold a session in Williamsport. Act of Mar. 3, 1843, ch. 97, 27th Cong., 3d Sess., § 1, 5 Stat. 688. 688.

⁸⁷ The District of Delaware was created in 1789 with one district court and one circuit court, and was placed in the Middle Circuit, 1789 Act § 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act, § 7, 2 Stat. at 90, and the District of Delaware was transferred to the Third Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of Delaware, April 1802 Act § 4, 2 Stat. at 157, and the district was transferred to the Fourth Circuit, *id.* In 1866, the District of Delaware was transferred to the Third Circuit. Act of July 23, 1866 (“1866 Act”), ch. 210, 39th Cong., 1st Sess., § 2, 14 Stat. 209, 209.

⁸⁸ For the history of the District of Delaware, *see supra* note 87.

⁸⁹ The District of Maryland was created in 1789 with one district and one circuit court and was placed in the Middle Circuit, 1789 Act § 4, 1 Stat. at 74. In 1801, the circuit court was replaced with a regional circuit court, 1801 Act § 7, 2 Stat. at 90, and the District of Maryland was transferred to the Fourth Circuit, 1801 Act § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 132, the

regional circuit court was abolished, *id.*, and a circuit court was reestablished, *id.* Later in 1802, a circuit court was established for the District of Maryland. April 1802 Act § 4, 2 Stat. at 157.

⁹⁰ The District of Virginia was created in 1789 with one district court and one circuit court and was placed in the Middle Circuit. 1789 Act §§ 3, 4, 1 Stat. at 74. In 1801, the District of Virginia was divided into the Virginia, Norfolk, and Potomac Districts with a district court for each district, 1801 Act § 21, 2 Stat. at 96; the state of Virginia was divided into the Eastern and Western Districts with a circuit court for each district, *id.* § 4, 2 Stat. at 96; and the districts of Virginia were placed in the Fourth Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, reconstituting Virginia as one district, March 1802 Act § 1, 2 Stat. at 132, and a circuit court was reestablished, *id.* Later in 1802, the District of Virginia was placed in the Fifth Circuit. April 1802 Act § 5, 2 Stat. at 157.

In 1819, Congress created a District in the Western part of Virginia (although not called the “Western District”), Act of Feb. 4, 1819, ch. 12, 15th Cong., 2d Sess., § 1, 3 Stat. at 478, and authorized the district judge for that district to exercise the trial court jurisdiction of a circuit court, *id.* § 2, 3 Stat. 479. In 1837, the circuit court trial jurisdiction of the district court in Western Virginia was terminated, 1837 Act § 3, 5 Stat. at 177; a circuit court was established for that district, *id.* § 2, 5 Stat. at 177. In 1838, the circuit court trial jurisdiction of the District Court for the Western District of Virginia was restored. Act of Mar. 28, 1838, ch. 46, 25th Cong., 2d Sess., § 1, 5 Stat. 215, 215. In 1842, the districts of Virginia were placed in the Fourth Circuit. Act of Aug. 16, 1842 (“1842 Act”), ch. 180, 27th Cong., 2d Sess., § 1, 5 Stat. 507, 507.

In 1864, the part of the Western District of Virginia that constituted the newly created state of West Virginia was established as the District of West Virginia, and the remainder of the Western District was combined with the Eastern District to form the District of Virginia. Act of June 11, 1864, ch. 120, 38th Cong., 1st Sess., § 1, 13 Stat. 124, 124. In 1871, the District of Virginia was divided into the Eastern and Western Districts. Act of Feb. 8, 1871, ch. 35, 41st Cong., 3d Sess., §§ 1, 3, 16 Stat. 403, 403.

⁹¹ The District of North Carolina was created in 1790 with a district court and a circuit court. Act of June 4, 1790, ch. 17, 1st Cong., 2d Sess., §§ 2, 3, 1 Stat. at 126, and placed in the Southern Circuit, *id.* § 3. In 1794, the District of North Carolina was divided into the Edenton, New Bern, and Wilmington Districts, Act of June 9, 1794, ch. 64, 3d Sess., 1st Sess., § 3, 1 Stat. 126, 126, and in 1797, restored as one district when the 1794 Act was repealed, Act of Mar. 3, 1797, ch. 27, 4th Cong., 2d Sess., § 2, 1 Stat. 517, 517. In 1801, the District of North Carolina was divided into the Albemarle, Cape Fear, and Pamptico Districts, 1801 Act, § 21, 2 Stat. at 96, and the three districts of North Carolina were placed in the Fifth Circuit, *id.* § 6, 2 Stat. at 90. In 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. at 89, restoring North Carolina as one district (but still three districts for the district courts), which, later in 1802, was placed in the Fifth Circuit, April 1802 Act § 4, 2 Stat. at 157.

In 1842, the District of North Carolina was transferred to the Sixth Circuit, 1842 Act § 1, 5 Stat. at 507, and in 1862, was transferred to the Fourth Circuit, Act of July 15, 1862 (“1862 Act”), ch. 178, 37th Cong., 2d Sess., § 1, 12 Stat. 576, 576. In 1872, the district of North Carolina was divided into the Eastern and Western Districts. Act of June 4, 1872, ch. 282, 42d Cong., 2d Sess., § 1, 17 Stat. 215, 215. In 1927, the Middle District was created. Act of Mar. 2, 1927, ch. 276, 69th Cong., 2d Sess., 44 Stat. 1339.

⁹² The District of West Virginia, consisting of the state of West Virginia, was created in 1864 from the Western District of Virginia, and continued to be in the Fourth Circuit, as the Western District of Virginia had been. Act of June 11, 1864 (“1864 Act”), ch. 120, 38th Cong., 1st Sess., § 1, 13 Stat. 124. In 1901, the District of West Virginia was divided into the Northern and Southern Districts. Act of Jan. 22, 1901, ch. 105, 56th Cong., 2d Sess., § 2, 31 Stat. 736, 736.

⁹³ The District of South Carolina was created in 1789 with one district court and one circuit court, 1789 Act §§ 3, 4, 1 Stat. at 74, and was placed in the Southern Circuit, *id.* § 4, 1 Stat. at 74. In 1801, the District of South Carolina was placed in the Fifth Circuit. 1801 Act § 6., and a circuit court was established for that circuit, *id.* § 7, 2 Stat. at 90. In March 1802, the 1801 Act was repealed, March 1802 Act § 1, 2 Stat. 132, and a circuit court was established for the District of South Carolina, *id.*, § 4. In April 1802, the District of South Carolina was transferred to the Sixth Circuit, April 1802 Act § 4, 2 Stat. at 157.

In 1823, the District of South Carolina was divided into the Eastern and Western Districts, Act of Feb. 12, 1823, ch. 11, 17th Cong., 2d Sess., 3 Stat. 726. In 1856, the district court sitting in Greenville was given the trial jurisdiction of a circuit court. Act of Aug. 16, 1856, ch. 119, 34th Cong., 1st Sess., § 3, 11 Stat. 43, 43. In 1862, the District of South Carolina was transferred to the Fifth Circuit, Act of 1862 Act § 1, 12 Stat. 576, 576, and in 1866, was transferred to the Fourth Circuit, 1866 Act § 2, 14 Stat. at 209. In 1898, the Supreme Court ruled that the Feb. 12, 1823, Act had divided South Carolina into “geographical divisions,” rather than judicial districts, and that South Carolina constituted one judicial district. *Barrett v. United States*, 169 U.S. 219, 228 (1898). In 1889, the circuit court trial jurisdiction of the district court sitting in Greenville was terminated, Act of Feb. 6, 1889, ch. 113, 50th Cong., 2d Sess., § 5, 23 Stat. 655, 656, and a circuit court was established for the Western District of South Carolina, *id.*, § 1, 25 Stat. at 655.

⁹⁴ For the history of the District of North Carolina, *see supra* note 91.

⁹⁵ For the history of the District of Virginia, *see supra* note 90.

⁹⁶ The District of Alabama was created in 1820 and not then placed within any circuit. Act of Apr. 21, 1820, ch. 47, § 2, 3 Stat. 564. The District of Alabama did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. *Id.* Congress conferred that authority by giving the judge the same authority as a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. 73, 77. In 1824, the District of Alabama was divided into the Northern and Southern Districts. Act of Mar. 10, 1824, ch. 28, 18th Cong., 1st Sess., § 1, 4 Stat. 9. In 1837, the circuit court jurisdiction of the district courts was terminated, 1837 Act § 3, 5 Stat. 186, when Congress created circuit courts for the districts of Alabama, *id.*, § 2, and the districts of Alabama were placed in the Ninth Circuit, *id.* § 1.

In 1838, the circuit court for the Northern District of Alabama was abolished, Act of Feb. 22, 1838, ch. 12, 25th Cong., 2d Sess., § 1, 5 Stat. 210, and the circuit court jurisdiction of the district court for that district was restored, *id.* § 2. In 1839, Congress divided the districts of Alabama into the Northern, Middle, and Southern Districts, Act of Feb. 6, 1839, ch. 20, 25th Cong., 3d Sess., § 1, 5 Stat. 315, and gave the District Court for the Middle District the same trial court jurisdiction as a United States circuit court, *id.* § 8, 5 Stat. 316.

In 1842, the districts of Alabama were placed in the Fifth Circuit, 1842 Act § 1, 5 Stat. 507. In 1873, the circuit court jurisdiction of the district courts for the Middle and Northern Districts of Alabama was repealed, Act of Mar. 3, 1873, ch. 223, 42d Cong., 3d Sess., § 1, 17 Stat. 484; the circuit court for the Southern District of Alabama became the circuit court for the District of Alabama and was given appellate jurisdiction over all the district courts for the districts of Alabama, *id.* § 4. In 1874, Congress established circuit courts for the Northern and Middle Districts of Alabama, Act of June 22, 1874, ch. 401, 33d Cong., 1st Sess., § 1, 18 Stat. 195, with the circuit court previously existing for the District of Alabama becoming the circuit court for the Southern District of Alabama.

⁹⁷ The District of Louisiana was created in 1812 when Louisiana became a state and was not then placed in any circuit. Act of Apr. 8, 1812 (“1812 Act”), ch. 50, 12th Cong., 1st Sess., § 3, 2 Stat. 701, 703. A district court for the Territory of Orleans had been created in 1804. Act of Mar. 25, 1804, ch. 38, 8th Cong., 1st Sess., § 8, 2 Stat. 283, 265 (“1804 Act”). This was the only district court established for a territory until 1900, when Congress established a district court for the Territory of Porto Rico. Act of Apr. 12, 1900, ch. 191, 56th Cong., 1st Sess., § 34, 31 Stat. 77, 84. In other territories, three-judge superior courts were established.

When created, the District of Louisiana did not have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority indirectly by giving the judge the same authority as a district judge of the Territory of Orleans, 1812 Act § 3, 2 Stat. 701, 703, who had the same authority as a district judge of the District of Kentucky, 1804 Act § 8, 2 Stat. 283, 265, who had the trial court jurisdiction of a circuit court, 1789 Act, § 10, 1 Stat. 73, 77.

In 1823, the District of Louisiana was divided into the Eastern and Western Districts. Act of Mar. 3, 1823 (“1823 Act”), ch. 44, 17th Cong., 2d Sess., § 1, 3 Stat. 744. In 1837, the circuit court trial jurisdiction of the district court for the Eastern District was terminated, 1837 Act, 5 Stat. 176, when Congress created a

circuit court for that district and assigned the district to the Ninth Circuit. *Id.* § 1. In 1842, the district was transferred to the Fifth Circuit. 1842 Act § 1, 5 Stat. 507.

The circuit court trial jurisdiction of the District Court for the Western District remained until 1845, when the 1823 Act was repealed, Act of Feb. 13, 1845, ch. 5, 28th Cong., 2d Sess., § 1, 5 Stat. 722 (1845), thereby creating what Congress called “a district court for the state of Louisiana,” *id.* § 3. A few days later, the causes pending in the District Court for the Western District that “appropriately belong[ed] to the circuit court jurisdiction” were transferred to the Circuit Court for the Eastern District. Act of Feb. 26, 1845, ch. 19, 28th Cong., 2d Sess., 5 Stat. 726. However, four years later, in 1849, Louisiana was divided into an Eastern District and a Western District, Act of Mar. 3, 1849, ch. 114, 30th Cong., 2d Sess., § 1, 9 Stat. 401, which implies that the Circuit Court for the Eastern District, referred to in the 1845 act, had statewide jurisdiction. In the 1849 act, the Circuit Court for the Eastern District was reestablished, and the District Court for the Western District was authorized to exercise the jurisdiction of a circuit court. *Id.* In 1862, the Eastern District was transferred to the Sixth Circuit, 1862 Act §§ 1, 12 Stat. 576, and, in 1866, transferred to the Fifth Circuit, 1866 Act § 2, 14 Stat. 209. Four days later, the Western District was abolished, and Louisiana was reconstituted as one judicial district. Act of July 27, 1866, ch. 280, 39th Cong., 1st Sess., § 1, 14 Stat. 300. In 1881, the District of Louisiana was again divided into an Eastern District and a Western District. Act of Mar. 3, 1881, ch. 144, 46th Cong., 3d Sess., § 1, 21 Stat. 507. In 1971, Congress created the Middle District of Louisiana. Pub. L. No. 92-208 § 3 (amending 28 U.S.C. § 98), 85 Stat. 741, 741.

⁹⁸ The District of Florida was created in 1845 and not then placed within a circuit, Act of Mar. 3, 1845, ch. 75, 28th Cong., 2d Sess. 2, § 3, 5 Stat. 788, 788. The Florida District did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the same authority as a district judge of the Kentucky District, *id.*, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77.

The District of Florida was divided into the Northern and Southern Districts in 1847, which were not then placed within a circuit. Act of Feb. 23, 1847, ch. 20, 29th Cong., 2d Sess., §§ 1, 8 9 Stat. 131, 132. The circuit court jurisdiction of the district courts was repealed in 1862 when circuit courts were created for the Northern and Southern Districts of Florida, 1862 Act § 2, 12 Stat. 576, 576, and the District of Florida was placed in the Fifth Circuit, *id.* § 1.

⁹⁹ The District of Georgia was created in 1789 with one district court and one circuit court, 1789 Act, §§ 3, 4, 1 Stat. at 74, and was placed in the Southern Circuit, *id.* § 4, 1 Stat. at 74. In 1801, the District of Georgia was placed in the Fifth Circuit. 1801 Act § 6, and a circuit court was established for that circuit, *id.* § 7. In March 1802, the 1801 Act was repealed, March 1802 Act § 1, reestablishing a circuit court for the District of Georgia. In April 1802, the District of Georgia was transferred to the Sixth Circuit. April 1802 Act § 4.

In 1848, the District of Georgia was divided into the Northern and Southern Districts, Act of Aug. 11, 1848, ch. 151, 30th Cong., 1st Sess., § 1, 9 Stat. 280, 280. The District Court for the Northern District was given the jurisdiction of a circuit court of the United States, *id.* § 8, and all cases (where the defendant resided in the Northern District) pending in the area that became the Southern District were transferred to the Northern District, *id.* § 4. In 1862, the districts of Georgia were transferred to the Fifth Circuit, 1862 Act § 1, 12 Stat. 576. In 1872, the circuit court jurisdiction of the District Court for the Northern District of Georgia was repealed, Act of June 4, 1872, ch. 284, 42d Cong., 2d Sess., § 1, 17 Stat. 218, 218, and a circuit court was established for that district, *id.*

¹⁰⁰ The District of Mississippi was created in 1818 with a district court and not then placed in any circuit. Act of April 3, 1818, ch. 29, 15th Cong., 1st Sess., § 2, 3 Stat. 413, 413. The District of Mississippi did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the same authority as a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1837, the circuit court trial jurisdiction of the District Court for the District of Mississippi was terminated, 1837 Act § 3, 5 Stat. 176, 176, when Congress created a circuit court for that district and placed the district in the Ninth Circuit, *id.* § 1, 5 Stat. at 176.

In 1838, the District of Mississippi was divided into the Northern and Southern Districts. Act of June 18, 1838, ch. 115, 25th Cong., 2d Sess., § 1, 5 Stat. 247, 247. In 1839, the District Court for the Northern District was given the trial court jurisdiction of a circuit court, Act of Feb. 16, 1839, ch. 27, 25th Cong., 3d Sess., § 1, 5 Stat. 317, 317, and the Southern District continued to have the jurisdiction of the circuit court that had been established for the District of Mississippi in 1837 (with circuit court understood to be the circuit court for the Southern District of Mississippi, as the cases of that court indicate. In 1862, the districts of Mississippi were transferred to the Fifth Circuit, 1862 Act, § 1, 12 Stat. 576, 576. In 1889, the circuit court jurisdiction of the District Court for the Northern District was terminated. Act of Feb. 6, 1889, ch. 113, 50th Cong., 2d Sess., § 5, 25 Stat. 655, 656, and a circuit court for the Northern District was established, *id.* § 1, 25 Stat. at 655.

¹⁰¹ For the history of the District of South Carolina, *see supra* note 93.

¹⁰² For the history of the District of Louisiana, *see supra* note 97.

¹⁰³ The District of Texas was created in 1845 with a district court and not then placed in any circuit. Act of Dec. 29, 1845, ch. 1, 29th Cong., 1st Sess., § 2, 9 Stat. 1, 1. Congress gave the judge of the district court the same trial court jurisdiction as a circuit court. *Id.* In 1857, the District of Texas was divided into the Eastern and Western Districts of Texas. Act of Feb. 21, 1857, ch. 57, 34th Cong., 3d Sess., § 1, 11 Stat. 164, 164. In 1862, the circuit court trial jurisdiction of the district courts was terminated, 1862 Act § 2, 12 Stat. at 576; circuit courts were established for the districts of Texas, *id.*; and the districts were placed in the Sixth Circuit, *id.* § 1, 12 Stat. at 576. In 1866, the Eastern and Western Districts of Texas were transferred to the Fifth Circuit. 1866 Act § 2, 14 Stat. at 209. In 1879, the two districts of Texas were divided into the Eastern, Northern, and Western Districts, Act of Feb. 24, 1879, ch. 97, 45th Cong., 3d Sess., §§ 1, 2, 3, 20 Stat. 318, 318. Later in 1879, a circuit court was established for the Northern District of Texas. Act of June 11, 1879, ch. 18, 46th Cong., 1st Sess., § 4, 21 Stat. 10, 10. In 1902, a district court was established for the Southern District of Texas. Act of Mar. 11, 1902, ch. 183, 57th Cong., 1st Sess., § 1, 32 Stat. 64, 64.

¹⁰⁴ For the history of the District of Georgia, *see supra* note 99.

¹⁰⁵ For the history of the District of South Carolina, *see supra* note 93.

¹⁰⁶ For the history of the District of North Carolina, *see supra* note 86.

¹⁰⁷ For the history of the District of Texas, *see supra* note 103.

¹⁰⁸ The District of Arkansas was created in 1836 with a district court and not then placed in any circuit. Act of June 15, 1836, ch. 100, 24th Cong., 1st Sess., § 4, 5 Stat. 50, 51. Congress gave the judge of the district court the trial court jurisdiction of a circuit court. *Id.* Congress conferred that authority by giving the judge the same authority as a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit judge, 1789 Act § 10, 1 Stat. at 77. In 1837, the circuit court trial jurisdiction of the District Court for the District of Arkansas was terminated when Congress created a circuit court for that district, 1837 Act § 3, 5 Stat. at 187, and placed the district in the Ninth Circuit, *id.* § 1. In 1844, the district court and the circuit court were given the same jurisdiction over crimes committed in the Indian Territory that the Arkansas territorial courts had. Act of June 17, 1844, ch. 103, 28th Cong., 1st Sess., 5 Stat. 680.

In 1851, the District of Arkansas was divided into the Eastern and Western Districts., Act of Mar. 3, 1851, ch. 23, 31st Cong., 2d Sess., § 1, 9 Stat. 594, 594, and the District Court for the Western District was given the trial court jurisdiction of a circuit court, *id.* § 3. In 1862, the districts of Arkansas were transferred to the Sixth Circuit, 1862 Act § 1, 12 Stat. at 576, and, in 1866, were transferred to the Eighth Circuit, Act of July 23, 1866 § 2, 14 Stat. at 209. In 1877, the geographic scope of the Eastern and Western Districts was slightly changed, and the District Court for the Eastern District of Arkansas, sitting at Helena, was given the trial court jurisdiction of a circuit court. Act of Jan. 31, 1877, ch. 41, 44th Cong., 2d Sess., 19 Stat. 230. In 1889, the circuit court trial court jurisdiction of the District Court for the Eastern District sitting at Helena and of the District Court for the Western District was terminated, Act of Feb. 8, 1889, ch. 113, 50th Cong., 2d Sess., § 5, 25 Stat. 655, 656 (with the existing Circuit Court for the Eastern District remaining), and a circuit court was established for the Western District, *id.* § 1, 25 Stat. at 655.

¹⁰⁹ The District of Kentucky was created in 1789 with a district court that exercised the jurisdiction of a circuit court. 1789 Act § 10, 1 Stat. at 77-78. In 1801, the District Court for the District of Kentucky was

abolished, 1801 Act § 24, 2 Stat. at 97, and Congress established a Circuit Court for the District of Kentucky and placed it in the Sixth Circuit, *id.* § 7, 2 Stat. at 90. However, in 1802, Congress repealed the 1801 Act, March 1802 Act § 1, 2 Stat. 89, restoring to the District Court of Kentucky the trial court jurisdiction of a circuit court. In 1807, the circuit court jurisdiction of the Kentucky District Court was again terminated, Act of Feb. 24, 1807, ch. 16, 9th Cong., 2d Sess. § 1, 2 Stat. at 420, when Congress established a Circuit Court for the District of Kentucky and placed the District of Kentucky in the Seventh Circuit, *id.* § 2. In 1837, the District of Kentucky was transferred to the Eighth Circuit, 1837 Act § 1, 5 Stat. 176, and, in 1862, transferred to the Sixth Circuit, 1862 Act § 1, 12 Stat. 576. In 1901, the District of Kentucky was divided into the Eastern and Western Districts. Act of Feb. 12, 1901, ch. 355, 56th Cong., 2d Sess., § 2, 31 Stat. 781, 781.

¹¹⁰ The District of Tennessee was created in 1797 with a district court, Act of Jan. 31, 1797, ch. 2, 4th Cong., § 2, 1 Stat. 496, 496, and not then placed within any circuit. Congress gave the judge of the District Court for the District of Tennessee the trial court jurisdiction of a circuit court. Act of Dec. 21, 1797, ch. 1, 4th Cong., 2d Sess., § 2, 1 Stat. at 496. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit judge, 1789 Act § 10, 1 Stat. at 77. In 1801, the District of Tennessee was divided into the East and West Districts, 1801 Act § 4, 2 Stat. at 89-90, and the District Court for the District of Tennessee was abolished, *id.* § 24, 2 Stat. 97. The March 1802 Act § 1, 2 Stat. at 132, repealed the 1801 Act, thereby restoring the District of Tennessee as one district with a district court exercising the trial jurisdiction of a circuit court. The April 1802 Act § 16, 2 Stat. at 165, divided the District of Tennessee into the districts of East Tennessee and West Tennessee in which the Circuit Court for the Sixth Circuit held sessions, *id.* § 21, 2 Stat. at 166.

In 1807, the circuit court trial jurisdiction of the district court was terminated, Act of Feb. 24, 1807, ch. 16, 9th Cong., 2d Sess., § 1, 2 Stat. 420, 420 and the District of Tennessee was restored as one district “for the purpose of” the establishment of a circuit court, *id.* § 2, 2 Stat. at 420, and placed in the Seventh Circuit, *id.* That statute divided the District of Tennessee into the districts of East Tennessee and West Tennessee “for the purpose of holding district courts” in those districts, *id.* § 4, 2 Stat. at 421. In 1808, the restoration of the District of Tennessee as one district for the purpose of a circuit court was repealed, Act of Mar. 22, 1808, ch. 38, 10th Cong., 1st Sess., § 1, 2 Stat. 477, 477, and the district was divided into the East and West Districts for the purpose of holding circuit courts in those districts, *id.*

In 1837, the districts of Tennessee were placed in the Eighth Circuit, 1837 Act § 1, 5 Stat. at 176. In 1838, a district court was established in the Western District of Tennessee, Act of June 18, 1838, ch. 117, 25th Cong., 2d Sess., § 1, 5 Stat. 249, 249, and that court was given concurrent civil jurisdiction with that of a circuit court, *id.* § 4. In 1839, the Western District was divided into the Middle and Western Districts, Act of Jan. 18, 1839, ch. 3, 25th Cong., 3d Sess., § 1, 5 Stat. 313, and the District Court for the Western District was given the trial court jurisdiction of a circuit court, *id.* § 2, 5 Stat. at 313. In 1842, the Western District of Tennessee was placed in the Eighth Circuit. Act of Apr. 14, 1842, ch. 20, 27th Cong., 2d Sess., § 1, 5 Stat. 471, 471. In 1862, the districts of Tennessee were transferred to the Sixth Circuit, 1862 Act § 1, 12 Stat. at 576.

¹¹¹ For the history of the District of Louisiana, *see supra* note 97.

¹¹² The District of Michigan was created in 1837 when Michigan became a state, and not then placed in any circuit. Act of July 1, 1836, ch. 234, 24th Cong., 1st Sess., § 2, 5 Stat. 61, 62. The District of Michigan did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit judge, 1789 Act, § 10 1 Stat. at 77. In 1837, the circuit court jurisdiction of the district court was terminated two months later when Congress created a circuit court for the District of Michigan and placed it in the Seventh Circuit. 1837 Act § 1, 5 Stat. at 176.

In 1862, the District of Michigan was transferred to the Eighth Circuit, 1862 Act, § 1, 12 Stat. 576, and, in 1863, was transferred to the Seventh Circuit. Act of Jan. 28, 1863, ch. 13, 37th Cong., 3d Sess., 12 Stat. 637. In 1863, the District of Michigan was divided into the Eastern and Western Districts, Act of Feb.

24, 1863, ch. 54, 37th Cong., 3d Sess., § 1, 12 Stat. 660, and in 1866, these districts were placed in the Sixth Circuit, 1866 Act § 1, 14 Stat. 209.

¹¹³ The District of Ohio was created in 1801, consisting of the “the territory of the United States northwest of the Ohio, and the Indiana territory.” 1801 Act § 4, with a regional circuit court, *id.* In 1802, the 1801 Act was repealed. March 1802 Act § 1, 2 Stat. at 132. In 1803, this version of the District of Ohio consisted of the state of Ohio, when Ohio became a state, act of Feb. 19, 1803, ch. 7, 7th Cong., 2d Sess., § 2, 2 Stat. 201, 201, and was not then placed in a circuit. The District of Ohio did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. *Id.*, 2 Stat. at 202. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court. 1789 Act § 10, 1 Stat. at 77. In 1807, the circuit court jurisdiction of the district court for the District of Ohio was terminated, Act of Feb. 24, 1807, ch. 16, 9th Cong., 2d Sess., § 1, 2 Stat. 420, 420, a circuit court was established, *id.* § 2, and the District of Ohio was placed in the Seventh Circuit, *id.* In 1855, the District of Ohio was divided into the Northern and Southern Districts. Act of Feb. 10, 1855, ch. 73, 33d Cong., 2d Sess., § 1, 10 Stat. 604, 604. In 1863, both districts of Ohio were placed in the Seventh Circuit. Act of Jan. 28, 1863, ch. 13, 37th Cong., 3d Sess., 12 Stat. 637. In 1866, the districts of Ohio were transferred to the Sixth Circuit. 1866 Act § 2, 14 Stat. at 209.

¹¹⁴ Act of Feb. 24, 1807, ch. 16, 9th Cong., 2d Sess., § 2, 2 Stat. 420.

¹¹⁵ Act of Mar. 3, 1837, ch. 34, 24th Cong., 2d Sess., § 1, 5 Stat. 176.

¹¹⁶ Act of Mar. 3, 1837, ch. 34, 24th Cong., 2d Sess., § 1, 5 Stat. 176-77.

¹¹⁷ Act of Mar. 3, 1863, ch. 100, 37th Cong., 3d Sess., § 1, 12 Stat. 794.

¹¹⁸ Act of July 23, 1866, ch. 210, 39th Cong., 1st Sess., § 2, 14 Stat. 209.

¹¹⁹ For the history of the District of Tennessee, *see supra* note 110.

¹²⁰ For the history of the District of Kentucky, *see supra* note 109.

¹²¹ For the history of the District of Ohio, *see supra* note 113.

¹²² The District of Indiana was created in 1817 and not then placed in any circuit. Act of Mar. 3, 1817, ch. 100, 14th Cong., 2d Sess., § 2, 3 Stat. 390, 390-91. The District of Indiana did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the same authority as a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court. 1789 Act § 10, 1 Stat. 73, 77. In 1837, the circuit court jurisdiction of the District Court for the District of Indiana was terminated, 1837 Act § 3, 5 Stat. at 177-78, when Congress created a circuit court for that district, *id.*, and placed the district in the Seventh Circuit, *id.* § 1, 5 Stat. at 176.

In 1863, the District of Indiana was transferred to the Eighth Circuit, Act of Jan. 28, 1863, ch. 14, 37th Cong., 3d Sess., 12 Stat. 637, and, in 1866, was transferred to the Seventh Circuit, 1866 Act § 2, 14 Stat. at 209. In 1928, the District of Indiana was divided into the Northern and Southern Districts. Act of Apr. 21, 1928, ch. 392, 70th Cong., 1st Sess., (amending Judicial Code, § 80), 45 Stat. 437, 437.

¹²³ The District of Illinois was created in 1819 with a district court and not then in placed in a circuit. Act of Mar. 3, 1819, ch. 70, 15th Cong., 2d Sess., § 2, 3 Stat. 502, 502. The District of Illinois did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the same jurisdiction as a district judge of the District of Kentucky, *id.* § 3, 3 Stat. at 503, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1837, the circuit court jurisdiction of the District Court for the District of Illinois was terminated, 1837 Act § 3, 5 Stat. at 177, when Congress established a circuit court for that district, *id.*, and placed the district of Illinois in the Seventh Circuit, *id.*, § 1, 5 Stat. at 176. In 1855, the District of Illinois was divided into the Northern and Southern Districts. Act of Feb. 13, 1855, ch. 96, 33d Cong., 2d Sess., § 1, 10 Stat. 606, 606. In 1862, the districts of Illinois were transferred to the Eighth Circuit, 1862 Act § 1, 12 Stat. at 576, and, in 1866, were transferred to the Seventh Circuit, 1866 Act § 2, 14 Stat. at 209. In 1905, the Eastern District was created, Act of Mar. 3, 1905, ch. 1427, 58th Cong., 3d Sess., § 12, 33 Stat. 992, 995, and in 1966, the Central District was created, Pub. L. No. 89-372, § 3 (amending 28 U.S.C. § 84), 80 Stat. 75, 75.

¹²⁴ For the history of the District of Michigan, see *supra* note 112.

¹²⁵ The District of Wisconsin was created in 1848 with a district court and not placed in a circuit. Act of Aug. 9, 1846, ch. 89, 21 Cong., 1st Sess., § 1, 9 Stat. 56, 56, effective 1848 when Wisconsin was admitted to the Union. The District of Wisconsin did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court. 1789 Act § 10, 1 Stat. at 77. In 1862, the circuit court trial jurisdiction of the district court for the District of Wisconsin was terminated, 1862 Act § 2, 12 Stat. at 576, when Congress created a circuit court for that district, *id.*, and the district was placed in the Eighth Circuit, *id.* § 1, 12 Stat. at 576. In 1863, the District of Wisconsin was transferred to the Ninth Circuit. Act of Feb. 9, 1863, ch. 28, 37th Cong., 3d Sess., 12 Stat. 648, 648 (The statute referred to “the State of Wisconsin.”) In 1866, the District of Wisconsin was transferred to the Seventh Circuit. 1866 Act § 1, 14 Stat. at 209. In 1870, the District of Wisconsin was divided into the Eastern and Western Districts. Act of June 30, 1870, ch. 175, 41st Cong., 2d Sess., § 1, 16 Stat. 171, 171.

¹²⁶ For the history of the District of Kentucky, see *supra* note 109.

¹²⁷ For the history of the District of the district of Tennessee, see *supra* note 110.

¹²⁸ The District of Missouri was created in 1822 with a district court and not then placed in any circuit. Act of Mar. 16, 1822, ch. 12, 17th Cong., 1st Sess., § 2, 3 Stat. 653, 653. The District of Missouri did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1837, the circuit court jurisdiction of the District Court for the District of Missouri was terminated, 1837 Act § 3, 5 Stat. at 177, when Congress created a circuit court for that district. *id.*, § 1, 5 Stat. at 176, and assigned the District of Missouri to the Eighth Circuit, *id.* In 1857, the district was divided into the Eastern and Western Districts for purposes of the district courts. Act of Mar. 3, 1857, ch. 100, 34th Cong., 3d Sess., § 1, 11 Stat. 197. In 1862, the District of Missouri was placed in the Ninth Circuit, 1862 Act, § 1, 12 Stat. at 576, and in 1866, transferred to the Eighth Circuit, 1866 Act § 2, 14 Stat. 209. In 1872, separate circuit courts were established for the Eastern and Western Districts. Act of June 8, 1872, ch. 334, 42d Cong., 2d Sess., § 1, 17 Stat. at 282.

¹²⁹ For the history of the District of Illinois, see *supra* note 123.

¹³⁰ For the history of the District of Michigan, see *supra* note 112.

¹³¹ For the history of the District of Wisconsin, see *supra* note 125.

¹³² For the history of the District of Indiana, see *supra* note 122.

¹³³ For the history of the District of Arkansas, see *supra* note 108.

¹³⁴ The District of Iowa was created in 1846 with a district court and not then placed in any circuit. Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. 789, effective in 1848 when Iowa was admitted to the Union. The District of Iowa did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority by giving the judge the authority of a district judge of the District of Kentucky, *id.*, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1862, the circuit court trial jurisdiction of the district court for the District of Iowa was terminated, 1862 Act § 2, 12 Stat. at 576, when Congress created a circuit court for that district, *id.* The District of Iowa was placed in the Ninth Circuit. *Id.* § 1, 12 Stat. at 576. In 1866, the District of Iowa was placed in the Eighth Circuit, 1866 Act, § 2, 14 Stat. 209. In 1882, the District of Iowa was divided into the Northern and Southern Districts, Act of July 20, 1882, ch. 312, 47th Cong., 1st Sess. § 1, 22 Stat. 172.

¹³⁵ The District of Kansas was created in 1861 with a district court and not then placed in any circuit. Act of Act of Jan. 21, 1861, ch. 20, 36th Cong., 2d Sess., § 4, 12 Stat. 126, 128. The District of Kansas did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority in a convoluted way by giving the judge the jurisdiction of a district judge of the District of Minnesota, *id.*, who had the authority of a district judge of the District of Iowa, Act

of May 11, 1858, ch. 31, 35th Cong., 1st Sess., § 3, 11 Stat. 285, 285, who had the authority of a district judge of the District of Kentucky, Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. at 789, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1862, the circuit court trial jurisdiction of the District Court for the District of Kansas was terminated, 1862 Act § 2, 12 Stat. at 576, when Congress created a circuit court for that district, *id.*, and placed the District of Kansas in the Ninth Circuit, *id.* § 1 (“[T]he districts of . . . [and] Kansas . . . shall constitute the eighth circuit.”), 12 Stat. at 576. In 1866, the District of Kansas was transferred to the Eighth Circuit, 1866 Act § 2, 14 Stat. at 209.

¹³⁶ The District of Minnesota was created in 1858 with a district court and not then placed in any circuit. Act of May 11, 1858, ch. 31, 35th Cong., 1st Sess., § 3, 11 Stat. 285, 285. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority in a convoluted way by giving the district court the jurisdiction of a district judge of the District of Iowa, *id.*, who had the authority of a district judge of the District of Kentucky, Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. at 789, which included the trial court jurisdiction of a circuit court, 1789 Act, § 10 1 Stat. at 77. In 1862, the circuit court trial jurisdiction of the District Court for the District of Minnesota was terminated, 1862 Act § 2, 12 Stat. at 576, when Congress created a circuit court for that district, *id.*, and placed the District of Minnesota in the Ninth Circuit, *id.* § 1, 12 Stat. at 576. In 1866, the District of Minnesota was transferred to the Eighth Circuit, 1866 Act § 2, 14 Stat. at 209.

¹³⁷ For the history of the District of Missouri, *see supra* note 128.

¹³⁸ The District of Nebraska was created in 1867 with a district court and a circuit court and placed in the Eighth Circuit. Act of Mar. 25, 1867, ch. 7, 40th Cong., 1st Sess., § 1, 15 Stat. 5, 5.

¹³⁹ The District of Colorado was created in 1876 with a district court and a circuit court and placed in the Eighth Circuit. Act of June 26, 1876, ch. 147, 44th Cong., 1st Sess., § 1, 19 Stat. 61, 61.

¹⁴⁰ The District of North Dakota was created in 1889 with a district court and a circuit court and placed in the Eighth Circuit, effective when North Dakota became a state that same year, Act of Feb. 22, 1899, ch. 180, 50th Cong., 2d Sess., § 21, 25 Stat. 676, 682.

¹⁴¹ The District of South Dakota was created in 1889 with a district court and a circuit court and placed in the Eighth Circuit, effective when South Dakota became a state that same year, Act of Feb. 22, 1899, ch. 180, 50th Cong., 2d Sess., § 21, 25 Stat. 676, 682.

¹⁴² The District of Wyoming was created in 1890 with a district court and a circuit court and placed in the Eighth Circuit. Act of July 10, 1890, ch. 664, 51st Cong., 1st Sess., § 16, 26 Stat. 222, 225. In 1929 the District of Wyoming was transferred to the newly created Tenth Circuit. Act of Feb. 28, 1929 (“1929 Act”), ch. 363, 70th Cong., 2d Sess., § 1 (amending 28 U.S.C. § 211), 45 Stat. 1346, 1347.

¹⁴³ For the history of the District of Louisiana, *see supra* note 97.

¹⁴⁴ For the history of the District of Mississippi, *see supra* note 100.

¹⁴⁵ For the history of the District of Alabama, *see supra* note 96.

¹⁴⁶ For the history of the District of Arkansas, *see supra* note 108.

¹⁴⁷ For the history of the District of Missouri, *see supra* note 128.

¹⁴⁸ For the history of the District of Iowa, *see supra* note 134.

¹⁴⁹ For the history of the District of Minnesota, *see supra* note 136.

¹⁵⁰ For the history of the District of Kansas, *see supra* note 135.

¹⁵¹ For the history of the District of Wisconsin, *see supra* note 125.

¹⁵² The District of California was preceded by the creation in 1850 of the Northern and Southern Districts of California, which were not then placed in a circuit. Act of Sept. 28, 1850, ch. 86, 31st Cong., 1st Sess., § 2, 9 Stat. 521, 521. These districts did not then have a circuit court. The judges of the district courts exercised the civil trial court jurisdiction of a circuit court. Congress conferred that authority by giving the district courts of these districts, “in addition to the ordinary jurisdiction and powers of a District Court of the United States, with which the southern District Court of New York has been invested, . . . concurrent jurisdiction and power in all civil cases now exercised by the Circuit Courts of the United States.” *Id.* § 10, 9 Stat. at 522–23. In 1853, the Northern and Southern Districts of California were authorized to exercise the

criminal jurisdiction of a circuit court. Act of Feb. 26, 1853, ch. 80, 32d Cong., 2d Sess., § 6, 10 Stat. 161, 169.

In 1855, the circuit court authority of the Northern and Southern Districts of California was terminated, Act of Mar. 2, 1855, ch. 127, 33d Cong., 2d Sess., § 1, 10 Stat. 631, 631, when Congress established a circuit court for the state of California to be known as “the circuit court of the United States for the districts of California,” *id.*, and limited the authority of the California district courts to that of other district courts (except for jurisdiction over decisions of a board of commissioners for the settlement of private land claims), *id.*, § 5, 10 Stat. at 631. In 1863, the districts of California were placed in the newly created Tenth Circuit, Act of Mar. 3, 1863, ch. 100, 37th Cong., 3d Sess., § 1, 12 Stat. 794, 794, the circuit court for the state of California was abolished, *id.*, § 2, 12 Stat. at 794, and new circuit courts were established for the Northern and Southern districts of California, *id.* In 1866, the districts of California were transferred to the Ninth Circuit, 1866 Act § 2, 14 Stat. at 209, and four days later California was reorganized into one judicial district, Act of July 27, 1866, ch. 280, 39th Cong., 1st Sess., § 1, 14 Stat. 300, 300.

In 1886, California was again divided into the Northern and Southern Districts. Act of Aug. 5, 1886, ch. 928, 49th Cong., 1st Sess., §§ 1, 3, 24 Stat. 308, 309. In 1966, the Central and Eastern Districts were created. Pub. L. No. 89-372 § 3(a) (amending 28 U.S.C. § 84), 80 Stat. 75, 75.

¹⁵³ The District of Oregon was created in 1859 with a district court and not then placed in a circuit. Act of Mar. 3, 1859, ch. 85, 35th Cong., 2d Sess. § 2, 11 Stat. 437, 437. The District of Oregon did not then have a circuit court. The judge of the district court exercised the trial court jurisdiction of a circuit court. Congress conferred that authority in a convoluted way by giving the judge the authority of a district judge of the District of Iowa, *id.*, who had the authority of a district judge of the District of Kentucky, Act of Mar. 3, 1845, ch. 76, 28th Cong., 2d Sess., § 2, 5 Stat. at 789, which included the trial court jurisdiction of a circuit court, 1789 Act § 10, 1 Stat. at 77. In 1863, the circuit court jurisdiction of the District of Oregon was terminated, Act of Mar. 8, 1863, ch. 100, 37th Cong., 3d Sess. § 2, 12 Stat. 794, 794, when Congress created a circuit court for the District of Oregon, *id.*, and placed the district in the newly created Tenth Circuit, *id.*, § 1, 12 Stat. at 794. In 1866, the District of Oregon was transferred to the Ninth Circuit. 1866 Act, § 2, 14 Stat. at 209.

¹⁵⁴ The District of Nevada was created in 1865 with a district court and a circuit court and placed in the Tenth Circuit. Act of Feb. 27, 1865, ch. 64, 38th Cong., 2d Sess., § 1, 13 Stat. 440, 440. In 1866, the District of Nevada was transferred to the Ninth Circuit, 1866 Act, § 2, 14 Stat. at 209.

¹⁵⁵ The District of Montana was created in 1889 when Montana became a state. Act of Feb. 22, 1889, ch. 180, 50th Cong., 2d Sess., § 21, 25 Stat. 676, 677. The District of Montana had a district court and a circuit court and was placed in the Ninth Circuit. *Id.* In 1948, the portions of Montana and Idaho located in Yellowstone National Park were transferred to the District of Wyoming. Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess. (amending 28 U.S.C. § 131), 62 Stat. 869, 895.

¹⁵⁶ The District of Washington was created in 1889 when Washington became a state. Act of Feb. 22, 1889, ch. 180, 50th Cong., 2d Sess., § 21, 25 Stat. 676, 677. The district of Washington had a district court and a circuit court and was placed in the Ninth Circuit. *Id.* In 1905, the District of Washington was divided into the Eastern and Western Districts. Act of Mar. 3, 1905, ch. 1305, 58th Cong., 3d Sess., § 1, 33 Stat. 824, 824.

¹⁵⁷ The District of Idaho was created in 1890 when Idaho became a state. Act of July 3, 1890, ch. 656, 51st Cong., 1st Sess., § 16, 26 Stat. 215, 217. The District of Idaho had a district court and a circuit court and was placed in the Ninth Circuit. *Id.* In 1948, the portions of Idaho and Montana located in Yellowstone National Park were transferred to the district of Wyoming. Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess. (amending 28 U.S.C. § 131), 62 Stat. 869, 895.

¹⁵⁸ For the history of the District of California, *see supra* note 152.

¹⁵⁹ For the history of the District of Oregon, *see supra* note 153.

¹⁶⁰ 1789 Act § 4, 1 Stat 73, 74-75.

¹⁶¹ 1801 Act § 7, 2 Stat. 89, 90.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ March 1802 Act, § 1, 2 Stat. at 132. For discussion of the constitutional issue raised by the abolition of Article III courts in the March 1802 Act and what happened to the judges, *see supra* note 59.

¹⁶⁶ April 1802 Act § 4, 2 Stat. at 157. An earlier statute had anticipated the possibility that one Supreme Court justice and one district judge might disagree. In that event, the case “shall be continued to the succeeding court,” and if, with a different Supreme Court justice sitting, the disagreement with the district judge remained, judgment “shall be rendered in conformity to the opinion of the presiding judge,” presumably, the Supreme Court justice. Act of Mar. 2, 1793, ch. 22, 2d Cong., 2d Sess., § 2, 1 Stat. 333, 334.

¹⁶⁷ *See supra* note 4. In 1793, Congress had also provided that if only one Supreme Court justice was a member of a circuit court and the district judge was absent or was of counsel or “concerned in interest” in any cause then pending, the circuit court “may” consist of the Supreme Court justice alone. Act of Mar. 2, 1793, ch. 22, 2d Cong., 2d Sess., § 2, 1 Stat. 333, 334.

¹⁶⁸ Act of Apr. 10, 1869, ch. 21, 41st Cong., 1st Sess. § 2, 16 Stat. 44, 44-45.

¹⁶⁹ 1789 Act § 11, 1 Stat. at 78-79.

¹⁷⁰ *Id.*

¹⁷¹ Act of Mar. 3, 1875, ch. 137, 43d Cong., 2d Sess., § 1, 18 Stat. 470, 470.

¹⁷² 1801 Act § 11, 2 Stat. at 92. The 1801 Act also extended the jurisdiction of the circuit courts to all civil cases where the United States was a plaintiff; all seizures on land or water made under the laws of the United States; all penalties and forfeitures arising under the laws of the United States, exclusive of the state courts, where the offense for which the penalty or forfeiture is incurred was committed within fifty miles of the place of holding court; and all action “cognizable by the judicial authority of the United States, under and by virtue of the [C]onstitution, where the matter in dispute shall amount to [*sic*] four hundred dollars and where original jurisdiction was not given to the Supreme Court or exclusive jurisdiction was not given to the district courts.” *Id.* The phrase “shall amount to” was likely intended to read “in excess of,” as is evident from the provision of the same statute permitting state court defendants to remove to the circuit courts any case against an alien or between citizens of different states where the matter in dispute “shall exceed” four hundred dollars. *Id.* § 13, 2 Stat. at 92. The 1801 Act also gave the circuit courts jurisdiction, concurrent with the district courts, of bankruptcy cases. *Id.* § 12, 2 Stat. at 92.

¹⁷³ Act of Mar. 3, 1875, ch. 137, 43d Cong., 2d Sess., § 1, 18 Stat. 470.

¹⁷⁴ *Id.*

¹⁷⁵ Act of Mar. 3, 1887, ch. 373, 49th Cong., 2d Sess., § 1, 24 Stat. 552, 552.

¹⁷⁶ 1789 Act § 22, 1 Stat. at 84.

¹⁷⁷ *Id.* § 21, 1 Stat. at 83.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* § 10, 1 Stat. at 77-78.

¹⁸⁰ Act of Mar. 3, 1879, ch. 176, 45th Cong., 3d Sess., § 1, 20 Stat. 354, 354.

¹⁸¹ 1911 Judicial Code, ch. 231, 61st Cong., 3d Sess., § 289, 36 Stat. 1087, 1167, effective Jan. 1, 1912, *id.* § 301, 36 Stat. 1087, 1169.

¹⁸² Evarts Act § 2, 26 Stat. at 826.

¹⁸³ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 1 (amending 28 U.S.C. § 43), 62 Stat. 869, 870.

¹⁸⁴ <https://www.fjc.gov/history/legislation/landmark-legislation-us-circuit-courts-appeals>.

¹⁸⁵ For the history of the District of Massachusetts, *see supra* note 78.

¹⁸⁶ For the history of the District of New Hampshire, *see supra* note 79.

¹⁸⁷ For the history of the District of Rhode Island, *see supra* note 80.

¹⁸⁸ For the history of the District of Maine, *see supra* note 81.

¹⁸⁹ In 1915, Congress placed the District of Porto Rico in the First Circuit. Act of Jan. 28, 1915, ch. 22, 63d Cong., 3d Sess., § 1 (“The First Circuit shall include the districts of . . . and Porto Rico.”), 38 Stat. 803, 803, thereby authorizing the Circuit Court of Appeals for the First Circuit to review judgments of the

District Court for the Territory of Porto Rico. The 1915 statute authorized a circuit court of appeals, not otherwise identified, to review decisions of the “district court for Porto Rico,” *id.* § 2 (amending Judicial Code of 1911, § 128), 38 Stat. at 803, and “the Supreme Court of Porto Rico, *id.* (amending Judicial Code of 1911, § 246), 38 Stat. at 804, but the circuit court of appeals understood the 1915 statute to authorize it to review judgments of the Porto Rico District Court, *see Gandia & Stubbe v. Cadierno*, 233 F. 739 (1st Cir. 1916), and the Porto Rico Supreme Court, *see Trujillo & Mercado v. Succession of Rodrigues*, 233 F. 208, 209 (1916).

The District of Porto Rico had been created in 1900, Act of Apr. 12, 1900, ch. 191, 56th Cong., 1st Sess., § 34, 31 Stat. 77, 84, with a district judge serving a four-year term, *id.*, rendering the district court an Article IV court. In 1988, Congress provided that the district judges, then two in number, “shall hold office during good behavior,” Pub. L. No. 89-571, § 1, 80 Stat. 764, 764, rendering the district court an Article III court.

¹⁹⁰ For the history of the District of New Jersey, *see supra* note 85.

¹⁹¹ For the history of the District of Pennsylvania, *see supra* note 86.

¹⁹² For the history of the District of Delaware, *see supra* note 87.

¹⁹³ In 1917, Congress authorized the Circuit Court of Appeals for the Third Circuit to hear appeals from the local courts of the Virgin Islands (then called the West Indian Islands). Act of Mar. 3, 1917, ch. 171, 64th Cong., 2d Sess., § 2, 39 Stat. 1132, 1132-33. The first case to reach the Court of Appeals acknowledged that these were local courts. *See Clen v. Jorgensen*, 265 F. 120, 122 (3d Cir. 1920). The next year, the Court of Appeals for the Third Circuit referred to the local court as “the District Court of the Virgin Islands.” *United States v. Malmin*, 272 F. 785, 788 (1921) (issuing mandamus to compel duly appointed judge to return to the court). In 1925, Congress confirmed the authority of the Circuit Court of Appeals for the Third Circuit to hear appeals from what was still called “the District Court of the Virgin Islands,” Act of Feb. 13, 1925, ch. 229, 68th Cong., 2d Sess., § 1 (amending 1911 Judicial Code, § 128(a)(Third), (d)), 43 Stat. 936, 936-37, although there is no indication that it had jurisdiction over federal cases.

In 1936, Congress established a “District Court of the Virgin Islands,” Act of June 22, 1936, ch. 699, 74th Cong., 2d Sess., § 25, 49 Stat. 1807, 1813, which was the first federal district court in the Territory of the Virgin Islands. The judge of this court was appointed by the President for a term of four years, *id.* § 26, 49 Stat. at 13, rendering the court an Article IV court; the court had jurisdiction over some federal cases, *e.g.*, “criminal cases . . . under the laws of the United States” in addition to some local cases, *e.g.*, “criminal cases under the laws of the respective municipalities, *id.*, § 28(1), 49 Stat. at 1814. The 1936 statute provided that appeals from “the District Court of the Virgin Islands shall be as provided by law in force on the date of enactment of this Act,” *id.* § 30, 49 Stat. at 1814, referring to the 1925 statute.

In 1948, Congress placed the Territory of the Virgin Islands in the Third Circuit. Act of June 25, 1948, ch. 646, § 1 (amending 28 U.S.C. § 41) (“The eleven judicial circuits of the United States are constituted as follows: . . . Third . . . Virgin Islands.”), 62 Stat. 869, 870.

In 1954, Congress established a “District Court of the Virgin Islands,” Revised Organic Act of the Virgin Islands, Pub. L. No. 517, § 21, 68 Stat. 497, 506, with the jurisdiction of a district court of the United States and appellate jurisdiction to review judgments of the inferior courts of the Virgin Islands, *id.* § 22, 68 Stat. at 506. The term of the judge of this court was extended to eight years, *id.* § 24, 68 Stat. at 506. In 1984, the judicial power of the Virgin Islands was vested in the District Court of the Virgin Islands, as well as in appellate and trial courts established by local law. Pub. L. No. 98-454, § 702 (amending § 21 of the Revised Organic Act of the Virgin Islands), 98 Stat. 1732, 1737, and the Court of Appeals for the Third Circuit was given certiorari jurisdiction to review decisions of the highest court of the Virgin Islands for fifteen years, *id.* § 704 (amending § 23 of the Revised Organic Act of the Virgin Islands), 98 Stat. 1732, 1739. The 1984 statute extended the term of the judge of the district court to ten years. *Id.*, § 706(a) (amending § 24(a) of the Revised Organic Act of the Virgin Islands), 98 Stat. at 1740.

¹⁹⁴ For the history of the District of Alabama, *see supra* note 96.

¹⁹⁵ For the history of the District of Louisiana, *see supra* note 97.

¹⁹⁶ For the history of the District of Florida, *see supra* note 98.

¹⁹⁷ For the history of the District of Georgia, *see supra* note 99.

¹⁹⁸ For the history of the District of Mississippi, *see supra* note 100.

¹⁹⁹ For the history of the District of Texas, *see supra* note 103.

²⁰⁰ In 1912, Congress established the District Court of the Canal Zone. Act of Aug. 24, 1912, ch. 390, 62d Cong., 2d Sess., § 8, 37 Stat. 560, 565, with a judge serving a term of four years, *id.*, rendering the court an Article IV court. The 1912 statute authorized the Circuit Court of Appeals for the Fifth Circuit to review the judgments of this court, *id.*, § 9, 37 Stat. at 566. In 1948, the Territory of the Canal Zone was placed in the Fifth Circuit. Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 1 (amending 28 U.S.C. § 41) (“The eleven judicial circuits of the United States are constituted as follows: . . . Fifth . . . Canal Zone.”), 62 Stat. 869, 870. The District Court of the Canal Zone was abolished in 1982 by the Panama Canal Treaty, Art. XI, effective in 1982. Act of Sept. 27, 1979, 93 Stat. 493. *See Egle v. Egle*, 715 F. 2d 999, 1001, 1009 (5th Cir. 1983).

²⁰¹ For the history of the District of Missouri, *see supra* note 128.

²⁰² For the history of the District of Arkansas, *see supra* note 108.

²⁰³ For the history of the District of Iowa, *see supra* note 134.

²⁰⁴ For the history of the District of Minnesota, *see supra* note 136.

²⁰⁵ For the history of the District of Kansas, *see supra* note 135.

²⁰⁶ For the history of the District of Nebraska, *see supra* note 138.

²⁰⁷ For the history of the District of Colorado, *see supra* note 139.

²⁰⁸ For the history of the District of North Dakota, *see supra* note 140.

²⁰⁹ For the history of the District of South Dakota, *see supra* note 141.

²¹⁰ For the history of the District of Wyoming, *see supra* note 142.

²¹¹ In 1891, the Supreme Court, exercising the authority provided by section 15 of the Evarts Act, 26 Stat. at 830, “assigned” the Territory of New Mexico to the Ninth Circuit for purposes of reviewing judgments of the Supreme Court of the Territory of New Mexico. Order of May 11, 1891, 139 U.S. 707 (1890).

In 1912, the District of New Mexico was created when New Mexico became a state and was placed in the Eighth Circuit. Act of June 20, 1910, ch. 310, 61st Cong., 2d Sess., § 13 (“[A]nd the said district shall, for judicial purposes, be attached to the eighth judicial circuit.”), 36 Stat. 557, 565. The statute authorized both a district court and a circuit court, but a circuit court was not established because New Mexico did not become a state until after the circuit courts were abolished in 1911. Act of Mar. 3, 1911, ch. 231, 61st Cong., 3d Sess., § 289, 36 Stat. 1087, 1167.

In 1929, the District of New Mexico was transferred to the newly organized Tenth Circuit. Act of Feb. 28, 1929, ch. 363, 70th Cong., 2d Sess., § 1, 45 Stat. 1346, 1347.

²¹² In 1891, the Supreme Court, exercising the authority provided by section 15 of the Evarts Act, 26 Stat. at 830, “assigned” the Territory of Oklahoma to the Ninth Circuit for purposes of reviewing judgments of the Supreme Court of the Territory of Oklahoma. Order of May 11, 1891, 139 U.S. 707 (1890).

The District of Oklahoma was created in 1907 when Oklahoma became a state, was organized into the Eastern and Western Districts, and they were placed in the Eighth Circuit. Act of June 16, 1906, ch. 3335, 59th Cong., 1st Sess., § 13 (“And the said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth Circuit.”), 34 Stat. 267, 275. Each district had a district court and a circuit court. *Id.* In 1925, the District of Oklahoma was divided into the Eastern, Northern, and Western Districts. Act of Feb. 16, 1925, ch. 233, 68th Cong., 2d Sess., § 1, 43 Stat. 945, 945.

In 1929, the districts of Oklahoma were transferred to the newly created Tenth Circuit. 1929 Act, § 1, 45 Stat. 1346, 1346.

²¹³ In 1891, the Supreme Court, exercising the authority provided by section 15 of the Evarts Act, 26 Stat. at 830, “assigned” the Territory of Utah to the Ninth Circuit for purposes of reviewing judgments of the Supreme Court of the Territory of Utah. Order of May 11, 1891, 139 U.S. 707 (1890).

The District of Utah was created in 1896 when Utah became a state; the district had a district court and a circuit court and was placed in the Eighth Circuit. Act of July 16, 1894, ch. 138, 53d Cong., 2 Sess.,

§ 14 (“For judicial purposes, the district of Utah shall be attached at the eighth judicial circuit.”), 28 Stat. 107, 111. In 1929, the District of Utah was transferred to the newly created Tenth Circuit. 1929 Act, § 1, 45 Stat. 1346, 1346.

²¹⁴ In 1891, the Circuit Court of Appeals for the Eighth Circuit was authorized to review judgments and decrees of “the United States Court in the Indian Territory.” Evarts Act § 13, 26 Stat. at 829. The United States Court in the Indian Territory had been established in 1889. Act of Mar. 1, 1889, ch. 333, 50th Cong., 2d Sess., § 1, 25 Stat. 783, 783. The Indian Territory comprised roughly the modern state of Oklahoma, *id.* (determinable from the identification of the bordering states of Arkansas, Missouri, and Texas, and the Territory of New Mexico). In 1907, the United States Court in the Indian Territory was abolished, Act of June 16, 1906, ch. 3335, 59th Cong., 1st Sess., § 13, 34 Stat. 267, 275, when Oklahoma became a state, Proclamation of Nov. 16, 1907, 35 Stat. 2160.

²¹⁵ For the history of the District of California, *see supra* note 152.

²¹⁶ For the history of the District of Oregon, *see supra* note 153.

²¹⁷ For the history of the District of Nevada, *see supra* note 154.

²¹⁸ For the history of the District of Montana, *see supra* note 155.

²¹⁹ For the history of the District of Washington, *see supra* note 156.

²²⁰ For the history of the District of Idaho, *see supra* note 157.

²²¹ 1891, the Supreme Court, exercising the authority provided by section 15 of the Evarts Act, 26 Stat. at 830, “assigned” the Territory of Alaska to the Ninth Circuit for purposes of reviewing judgments of the Supreme Court of the Territory of Alaska. Order of May 11, 1891, 139 U.S. 707 (1890). In 1900, Congress created the judicial district of Alaska, Act of June 6, 1900, ch. 786, 56th Cong., 1st Sess., § 1, 31 Stat. 321, and established a district court for the District of Alaska, *id.* § 4, 31 Stat. at 322, with three judges, *id.*, serving a term of four years, *id.* § 10, 31 Stat. at 325, rendering the court an Article IV court. Appeals from the district court in some cases were taken to the Supreme Court and in other (apparently civil) cases where the amount in controversy exceeded five hundred dollars to the Circuit Court of Appeals for the Ninth Circuit. *Id.* § 504, 31 Stat. at 414. In 1911, Congress expanded the review authority of the Circuit Court of Appeals for the Ninth Circuit to include criminal cases and provided that the decisions of the Circuit Court of Appeals for the Ninth Circuit were final. Act of Mar. 3, 1911, ch. 231, 61st Cong., 3d Sess., § 134, 36 Stat. 1087, 1134.

In 1948, Congress placed the Territory of Alaska in the Ninth Circuit. Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 1 (amending 28 U.S.C. § 41) (“The eleven judicial circuits of the United States are constituted as follows: . . . Ninth . . . Alaska.”), 62 Stat. 869, 870. Although the statute referred to “Alaska,” Alaska was then a territory. In 1959, the district court became an Article III court, effective when Alaska became a state that year, Pub. L. No. 85-508, §§ 13, 14, 72 Stat. 339, 349 (1959), and the District of Alaska was placed in the Ninth Circuit, *id.*, § 14, 72 Stat. at 349. Section 14 granted the United States Court of Appeals for the Ninth Circuit authority to review judgments of the District Court for the District of Alaska. Alaska, having been placed in the Ninth Circuit as a territory, remained in the Ninth Circuit as a state.

²²² In 1900, the District of Hawaii was created with a district court, Act of Apr. 30, 1900, ch. 339, 56th Cong., 1st Sess., § 86, 31 Stat. 141, 158, with a judge serving for a term of six years, *id.*, rendering the court an Article IV court. Appeals from the district court were taken to the Circuit Court of Appeals for the Ninth Circuit in cases where appeals from district courts could be taken to circuit courts of appeals. *Id.* In 1901, the Supreme Court, exercising the authority provided by section 15 of the Evarts Act, 26 Stat. 830, “assigned” the Territory of Hawaii to the Ninth Circuit for the purpose of reviewing the judgments of the Supreme Court of the Territory of Hawaii, Order as to Hawaii, Apr. 15, 1901, 181 U.S. 625 (1900). In 1911, Congress placed the Territory of Hawaii in the Ninth Circuit. 1911 Judicial Code § 116 (“There shall be nine judicial circuits of the United States, constituted as follows: . . . the ninth circuit shall include the districts of . . . and Hawaii.”), 36 Stat. 1087, 1131. The statute referred to “Hawaii,” but Hawaii was then a territory. In 1959, Congress declared that the District Court for the District of Hawaii was an Article III court, effective when Hawaii became a state that year, Pub. L. No. 86-3, § 9(a), 73 Stat. 4, 8 (1959). Hawaii, having been placed in the Ninth Circuit as a territory, remained in the Ninth Circuit as a state.

²²³ The District of Arizona was created in 1912, originally as two districts (Eastern and Western Districts) Act of June 16, 1910, ch. 3335, 59th Cong., 1st Sess., § 37, 34 Stat. 267, 283, effective in 1912 when Arizona became a state, *id.* The original districts were placed in the Ninth Circuit. *Id.* (The statute said “attached to” the Ninth Circuit.). The 1910 legislation authorized a district court and a circuit court, but a circuit court was not established because Arizona did not become a state until after the circuit courts were abolished in 1911, Act of Mar. 3, 1911, ch. 231, 61st Cong., 3d Sess., § 289, 36 Stat. 1087, 1167.

²²⁴ In 1906, the Circuit Court of Appeals for the Ninth Circuit was authorized to review judgments and decrees of the United States Court for China. Act of June 30, 1906, ch. 3934, 59th Cong., 1st Sess., § 3, 34 Stat. 814, 815. The 1906 statute established this court, *id.* § 1, 34 Stat. at 814, with a judge serving a term of ten years, *id.* § 7, 34 Stat. at 816, rendering the court an Article IV court. This court had exclusive jurisdiction “in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by treaties between the United States and China,” *id.* § 1, 34 Stat. at 814, except civil cases involving less than \$500 and criminal cases where the punishment was a fine of less than \$100 or a jail term of less than 60 days, *id.* §§ 1, 2, 34 Stat. at 814.

The United States Court for China was abolished in 1943. Treaty and an accompanying exchange of notes between the United States of America and China respecting the relinquishment of extraterritorial rights in China and the regulation of related matters, Jan. 11, 1943, T.S. No. 984, Art. I, 57 Stat. 767, 767.

²²⁵ In 1950, Congress established the District Court of Guam, Organic Act of Guam § 22(a), 64 Stat. 384, 389, with a judge serving a term of four years, *id.* § 24(a), 64 Stat. at 389, rendering the court an Article IV court. The 1950 statute authorized the Circuit Court of Appeals for the Ninth Circuit to review judgments of the District Court of Guam in cases involving the Constitution or treaties of the United States, habeas corpus proceedings, and other civil cases involving more than \$5,000. *Id.* § 23(a), 64 Stat. at 390. In 1951, Congress placed the Territory of Guam in the Ninth Circuit. Act of Oct. 31, 1951, ch. 655, Pub. L. No. 248, § 34 (amending 28 U.S.C. § 41) (“Section 41 of title 28, United State Code . . . is amended by inserting . . . in that part of said section relating to the composition of the Ninth judicial circuit, the following: ‘Guam.’”), 65 Stat. 710, 723, *codified at* 28 U.S.C. § 41; that placement authorized the Court of Appeals for the Ninth Circuit to review all judgments of the District Court of Guam. In 1984, the term of the district judge was extended to ten years. Pub. L. No. 98-454 § 802(a), 98 Stat. 1732, 1773.

²²⁶ In 1977, Congress established “the District Court for the Northern Mariana Islands, Pub. L. No. 95-157, § 1(a), 91 Stat. 1265, 1265, *codified at* 48 U.S.C. § 1823(c), with a district judge serving a term of eight years, *id.* § 1(b)(1), rendering the court an Article IV court. The 1977 statute placed the district court in the Ninth Circuit by providing that the District Court for the Northern Mariana Islands “shall constitute a part of the same judicial circuit of the United States as Guam,” *id.* § 1(a), and Guam had been placed in the Ninth Circuit, Act of Oct. 31, 1951, ch. 655, Pub. L. No. 248, § 34 (amending 28 U.S.C. § 41) (“Section 41 of title 28, United State Code . . . is amended by inserting . . . in that part of said section relating to the composition of the Ninth judicial circuit, the following: ‘Guam.’”), 65 Stat. 710, 723. This placement of the district court in the Ninth Circuit authorized the Court of Appeals for the Ninth Circuit to review the judgments of the District Court for the Northern Mariana Islands. In 1984, the term of the district judge was extended to ten years. Pub. L. No. 98-454 § 901(a), 98 Stat. 1732, 1774.

²²⁷ 1929 Act § 1, 45 Stat. 1346, 1346. The districts of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming had previously been placed in the Eighth Circuit. Kansas: 1866 Act § 2, 14 Stat. at 209; Colorado: Act of June 26, 1876, ch. 147, 44th Cong., 1st Sess., § 1, 19 Stat. 61, 61; Wyoming: Act of July 10, 1890, ch. 664, 51st Cong., 1st Sess., § 16, 26 Stat. 222, 225; Utah: Act of July 16, 1894, ch. 138, 53d Cong., 2d Sess., § 14, 28 Stat. 107, 111; Oklahoma: Act of June 16, 1906, ch. 3335, 59th Cong., 1st Sess., § 13, 34 Stat. 267, 275; New Mexico: Act of June 20, 1910, ch. 310, 61st Cong., 2d Sess., § 13, 36 Stat. 557, 565.

²²⁸ Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, § 2, 94 Stat. 1994, 1994. This Act became effective in 1981, *id.*, § 12, 94 Stat. at 1996.

²²⁹ Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., § 1, 27 Stat. 434, 434. In 1936, Congress changed the name of the Supreme Court of the District of Columbia to the District Court of the United States for the

District of Columbia. Act of June 25, 1936, ch. 804, 74th Cong., 2d Sess., 49 Stat. 1921. For the history of the District Court for the District of Columbia, *see infra* note 370.

- ²³⁰ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 43, 62 Stat. 869, 871.
- ²³¹ Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 101, 96 Stat. 25, 25.
- ²³² Evarts Act § 1, 26 Stat. at 826.
- ²³³ *Id.*
- ²³⁴ *Id.* § 2, 26 Stat. at 826.
- ²³⁵ *Id.* § 3, 26 Stat. at 827.
- ²³⁶ *Id.* § 1, 26 Stat. at 826.
- ²³⁷ Act of Jan. 21, 1905, ch. 51, 58th Cong., 3d Sess., § 1, 33 Stat. 611, 611.
- ²³⁸ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²³⁹ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁴⁰ Evarts Act § 1, 26 Stat. at 826.
- ²⁴¹ Act of April 17, 1902, ch. 507, 57th Cong., 1st Sess., 32 Stat. 106.
- ²⁴² Act of Jan. 17, 1929, ch. 73, 70th Cong., 2d Sess., 45 Stat. 1081.
- ²⁴³ Act of May 31, 1938, ch. 290, 75th Cong., 3d Sess., § 1, 52 Stat. 584, 584.
- ²⁴⁴ Pub. L. No. 87-36, § 1(a), 75 Stat. 80, 80.
- ²⁴⁵ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁴⁶ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁴⁷ Evarts Act § 1, 26 Stat. at 826.
- ²⁴⁸ Act of Feb. 23, 1899, ch. 186, 55th Cong., 3d Sess., 30 Stat. 846.
- ²⁴⁹ Act of June 10, 1930, ch. 438, 71st Cong., 2d Sess., 46 Stat. 538.
- ²⁵⁰ Act of June 24, 1936, ch. 753, 74th Cong., 2d Sess., § 1, 49 Stat. 1903. The judgeship created in 1936 was temporary, *see id.* § 2, but the provision making it temporary was repealed in 1938, *see* Act of May 31, 1938, ch. 290, 75th Cong., 3d Sess., § 3, 52 Stat. 584, 585.
- ²⁵¹ Act of Dec. 7, 1944, ch. 521, 78th Cong., 2d Sess., § 1, 58 Stat. 796, 796.
- ²⁵² Act of Aug. 3, 1949, ch. 387, 81st Cong., 1st Sess., § 1, 63 Stat. 493, 493.
- ²⁵³ Act of May 19, 1961, ch. 36, 87th Cong., 1st Sess., § 1(a), 75 Stat. 80, 80.
- ²⁵⁴ Act of June 18, 1968, Pub. L. No. 90-347, § 1, 82 Stat. 184, 184.
- ²⁵⁵ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁵⁶ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁵⁷ Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 202(a)(1), 104 Stat. 5089, 5098.
- ²⁵⁸ Evarts Act § 1, 26 Stat. at 826.
- ²⁵⁹ Act of Sept. 14, 1922, ch. 305, 67th Cong., 2d Sess., § 6, 42 Stat. 837, 840.
- ²⁶⁰ Act of May 19, 1961, Pub. L. No. 87-36, § 1(a), 75 Stat. 80, 80.
- ²⁶¹ Act of Mar. 18, 1966, Pub. L. No. 89-372, § 1, 80 Stat. 75, 75.
- ²⁶² Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁶³ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁶⁴ Federal Judgeship Act of 1990, Pub. L. No. 101-650, § 202(a)(2), 104 Stat. 5089, 5099.
- ²⁶⁵ Fifth Circuit Court of Appeals Reorganization Act of 1980, § 2, 94 Stat. 1994, 1994. This Act became effective in 1981, *id.* § 12, 94 Stat. at 1996.
- ²⁶⁶ Evarts Act § 1, 26 Stat. at 826.
- ²⁶⁷ Act of Jan. 25, 1899, ch. 56, 55th Cong., 3d Sess., 30 Stat. 803.
- ²⁶⁸ Act of June 10, 1930, ch. 437, 71st Cong., 2d Sess., 46 Stat. 538.
- ²⁶⁹ Act of May 31, 1938, ch. 290, 75th Cong., 3d Sess., § 1, 52 Stat. 584, 584.
- ²⁷⁰ Act of Dec. 14, 1942, ch. 731, 77th Cong., 2d Sess., 56 Stat. 1050.

- ²⁷¹ Act of Feb. 10, 1954, Pub. L. No. 294, § 1, 68 Stat. 8, 8.
- ²⁷² Act of May 19, 1961, Pub. L. No. 87-36, § 1(a), 75 Stat. 80, 80.
- ²⁷³ Act of Mar. 18, 1966, Pub. L. No. 89-372, § 1(c), 80 Stat. 75. The four judgeships created in 1966 were temporary, *id.*, but were made permanent by the Act of June 18, 1968, Pub. L. No. 90-347, § 2, 82 Stat. 184, 184.
- ²⁷⁴ Act of June 18, 1968, Pub. L. No. 90-347, § 1, 82 Stat. 184, 184.
- ²⁷⁵ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁷⁶ Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, § 2, 94 Stat. 1994, 1994.
- ²⁷⁷ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁷⁸ Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 202(a)(3), 104 Stat. 5089, 5099.
- ²⁷⁹ Evarts Act, § 1 26 Stat. at 826.
- ²⁸⁰ Act of Jan. 25, 1899, ch. 56, 55th Cong., 3d Sess., 30 Stat. 803.
- ²⁸¹ Act of May 8, 1928, ch. 508, 70th Cong., 1st Sess., 45 Stat. 492.
- ²⁸² Act of May 31, 1938, ch. 290, § 1, 75th Cong., 3d Sess., 52 Stat. 584, 584.
- ²⁸³ Act of May 24, 1940, ch. 209, 76th Cong., 3d Sess., § 1(a), 54 Stat. 219.
- ²⁸⁴ Act of Mar. 18, 1966, Pub. L. No. 89-372, § 1(a), 80 Stat. 75.
- ²⁸⁵ Act of June 18, 1968, Pub. L. No. 90-347, § 1, 82 Stat. 184, 184.
- ²⁸⁶ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁸⁷ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333. Section 201(a)(1), AO, “Chronological History of Authorized Judgeships in the U.S. Courts of Appeals,” <https://www.uscourts.gov/sites/default/files/appealschronol.pdf>.
- ²⁸⁸ Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 202(a)(4), 104 Stat. 5089, 5099.
- ²⁸⁹ Evarts Act § 1, 26 Stat. at 826.
- ²⁹⁰ Act of Feb. 8, 1895, ch. 59, 53d Cong., 3d Sess., 28 Stat. 643.
- ²⁹¹ Act of Mar. 3, 1905, ch. 1427, 58th Cong., 3d Sess., §1, 33 Stat. 992, 992.
- ²⁹² Act of May 31, 1938, ch. 290, 75th Cong., 3d Sess., § 1, 52 Stat. 584, 584.
- ²⁹³ Act of Aug. 3, 1949, ch. 387, 81st Cong., 1st Sess., § 1, 63 Stat. 493, 493.
- ²⁹⁴ Act of May 19, 1961, Pub. L. No. 87-36, § 1(a), 75 Stat. 80, 80.
- ²⁹⁵ Act of Mar. 18, 1966, Pub. L. No. 89-372, § 1(a), 80 Stat. 75, 75.
- ²⁹⁶ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ²⁹⁷ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ²⁹⁸ Act of Feb. 28, 1929, ch. 363, 70th Cong., 2d Sess., § 4, 45 Stat. 1346, 1348.
- ²⁹⁹ *Id.*
- ³⁰⁰ Evarts Act § 1, 26 Stat. at 826.
- ³⁰¹ Act of July 23, 1894, ch. 147, 53d Cong., 2d Sess., 28 Stat. 115.
- ³⁰² Act of Jan. 31, 1903, ch. 345, 57th Cong., 2d Sess., 32 Stat. 791.
- ³⁰³ Act of Mar. 3, 1925, ch. 437, 68th Cong., 2d Sess., 43 Stat. 1116.
- ³⁰⁴ Act of Feb. 28, 1929, ch. 363, 70th Cong., 2d Sess., § 2, 45 Stat. 1346, 1347.
- ³⁰⁵ Act of May 24, 1940, ch. 209, 76th Cong., 3d Sess., § 1(b), 54 Stat. 219, 219.
- ³⁰⁶ Act of Mar. 18, 1966, Pub. L. No. 89-372, § 1(a), 80 Stat. 75, 75.
- ³⁰⁷ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.
- ³⁰⁸ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.
- ³⁰⁹ Federal Judgeship Act of 1990, Pub. L. No. 101-650, § 202(a)(5), 104 Stat. 5089, 5099.
- ³¹⁰ Evarts Act § 1, 26 Stat. at 826.
- ³¹¹ Act of Feb. 16, 1895, ch. 94, 53d Cong., 3d Sess., 28 Stat. 665.

³¹² Act of Mar. 1, 1929, ch. 413, 70th Cong., 2d Sess., 45 Stat. 1414. This judgeship was temporary, but was made permanent by the Act of June 16, 1933, ch. 102, 73d Cong., 1st Sess., 48 Stat. 310-11.

³¹³ Act of Aug. 2, 1935, ch. 425, 74th Cong., 1st Sess., § 1, 49 Stat. 508, 508.

³¹⁴ Act of Apr. 14, 1937, ch. 80, 75th Cong., 1st Sess., 50 Stat. 64.

³¹⁵ Act of Feb. 10, 1954, Pub. L. No. 294, § 1, 68 Stat. 8, 8.

³¹⁶ Act of Jun. 18, 1968, Public L. No. 90-347, §1, 82 Stat. 184, 184.

³¹⁷ Act of Oct. 20, 1978, Public L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.

³¹⁸ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.

³¹⁹ Court Security Improvement Act of 2007, Pub. L. No. 110-177, § 509(a)(2), 121 Stat. 2534, 2543, effective 2009, *id.* § 509(b), 121 Stat. at 2543. When one judgeship was added to the Ninth Circuit, one judgeship was eliminated for the District of Columbia Circuit. *Id.* § 509(a)(1), 121 Stat. at 2543.

³²⁰ Act of Feb. 28, 1929, ch. 363, 70th Cong., 2d Sess., § 4, 45 Stat. 1346, 1348.

³²¹ *Id.* § 4, 45 Stat. 1346, 1348.

³²² Act of Feb. 28, 1929, ch. 363, 70th Cong., 2d Sess., § 2, 45 Stat. 1346, 1347.

³²³ Act of Aug. 3, 1949, ch. 387, 81st Cong., 1st Sess., § 1, 63 Stat. 493.

³²⁴ Act of May 19, 1961, Public L. No. 87-36, § 1(a), 75 Stat. 80, 80.

³²⁵ Act of June 18, 1968, Public L. No. 90-347, § 1, 82 Stat. 184, 184.

³²⁶ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.

³²⁷ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.

³²⁸ Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 202(a)(6), 104 Stat. 5089, 5099.

³²⁹ Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, § 2, 94 Stat. 1994, 1994.

³³⁰ Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., § 1, 27 Stat. 434-35.

³³¹ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 44(a), 62 Stat. 869, 871.

³³² Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., § 1, 27 Stat. 434, 434-35.

³³³ Act of June 19, 1930, ch. 737, 71st Cong., 2d Sess., 46 Stat. 785.

³³⁴ Act of May 31, 1938, ch. 290, 75th Cong., 3d Sess., § 2, 52 Stat. 584.

³³⁵ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 44(a), 62 Stat. 869, 871.

³³⁶ Act of Aug. 3, 1949, ch. 387, 81st Cong., 1st Sess., § 1 (amending 28 U.S.C. § 44(a)), 63 Stat. 493, 493.

³³⁷ Act of Oct. 20, 1978, Pub. L. No. 95-486, § 3(a), 92 Stat. 1629, 1632.

³³⁸ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 201(a)(1), 98 Stat. 333, 346.

³³⁹ Court Security Improvement Act of 2007, Pub. L. No. 110-177, § 509, effective 2009, 121 Stat. 2534, 2543.

³⁴⁰ Act of Aug. 5, 1909, ch. 6, 61st Cong., 1st Sess., § 28, 36 Stat. 11, 105.

³⁴¹ See WILSON COWEN *ET AL.*, THE UNITED STATES COURT OF CLAIMS: A HISTORY; PART II: ORIGIN, DEVELOPMENT, JURISDICTION, 1855–1978, at 90-91 (1978) (“The system created in 1925 has evolved through the years so that now the Court of Claims operates in two divisions, trial and appellate. . . . The commissioners are the trial judges. . . . The constitutional judges [*i.e.*, the life-tenured Article III judges, then five in number] sit . . . in an appellate capacity.”).

The Court of Claims was created in 1855 with three judges. Act of Feb. 24, 1855, ch. 122, 33d Cong., 2d Sess., § 1, 10 Stat. 612, 612. In 1863, it expanded to five judges. Act of Mar. 3, 1863, ch. 92, 37th Cong., 3d Sess., § 1, 12 Stat. 765. In 1953, Congress declared that the Court of Claims, *i.e.*, its “appellate division,” was an Article III court, Act of July 28, 1953, ch. 253, Pub. L. No. 158, § 1, 67 Stat. 226, 226. In 1966, two judges were added. Act of May 11, 1966, Pub. L. No. 89-425, § 1(a) (amending 28 U.S.C. § 171), 80 Stat. 139, 139. In 1982, the trial division of the Court of Claims was replaced by the newly created United States Claims Court with sixteen judges. Act of Apr. 2, 1982, Pub. L. No. 97-164, § 105(a) (amending 28

U.S.C. § 177(a)), 96 Stat. 25, 26. In 1992, the court’s name was changed to United States Court of Federal Claims. Federal Courts Administration Act of 1992, Pub. L. No. 102-572 § 902(a)(1), 106 Stat. 4506, 4516

³⁴² Act of Aug. 5, 1909, ch. 6, 61st Cong., 1st Sess., § 28, 36 Stat. 11, 105.

³⁴³ Act of Mar. 3, 1929, ch. 48, 70th Cong., 2d Sess., § 1, 45 Stat. 1475.

³⁴⁴ Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 122(a), 96 Stat. 25, 36.

³⁴⁵ See Cowen, *supra* note 341, at 90-91.

³⁴⁶ Act of May 11, 1966, Pub. L. No. 89-425, § 1, 12 Stat. 139, 139.

³⁴⁷ *Id.*

³⁴⁸ Act of Aug. 5, 1909, ch. 6, 61st Cong., 1st Sess., § 28, 36 Stat. 11, 105.

³⁴⁹ See Cowen, *supra* note 340, at 90-91.

³⁵⁰ Act of May 11, 1966, Pub. L. No. 89-425, § 1, 80 Stat. 139, 139.

³⁵¹ Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 101, 96 Stat. 25, 25.

³⁵² 1911 Judicial Code, ch. 231, 61st Cong., 3d Sess., § 289, 36 Stat. 1087, 1167, effective 1912, *id.* § 301, 36 Stat. 1087, 1169.

³⁵³ Evarts Act § 6, 26 Stat. at 828.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* § 5, 26 Stat. at 827.

³⁵⁸ *Id.* § 5, 26 Stat. at 827-28.

³⁵⁹ Act of Feb. 13, 1925, ch. 229, 68th Cong., 2d Sess., § 1 (amending Judicial Code § 240(a)) (authorizing petition for writ of certiorari in any civil or criminal case in circuit courts of appeals), 43 Stat. 936, 938; § 1 (amending Judicial Code § 240(b)) (authorizing appeal of decision of circuit court of appeals invalidating state statute as unconstitutional), 43 Stat. at 939; § 1 (amending Judicial Code § 240(c)) (prohibiting review of other decisions of circuit courts of appeals), *id.*

³⁶⁰ 28 U.S.C. § 1253. Three-judge district courts are required for lawsuits challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body. 28 U.S.C. § 2284.

³⁶¹ *Id.* § 1254(a).

³⁶² *Id.* § 1254(b).

³⁶³ *United States v. Seale*, 558 U.S. 985, 985 (2009) (statement of Stevens, J., with whom Scalia, J., joins).

³⁶⁴ *Id.*

³⁶⁵ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 43, 62 Stat. 869, 870 (1948).

³⁶⁶ Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., § 1, 27 Stat. 434, 434.

³⁶⁷ *Id.* § 7, 27 Stat. at 435.

³⁶⁸ Act of Mar. 3, 1863, ch. 41, 37th Cong., 3rd Sess., § 1, 12 Stat. 762, 762.

³⁶⁹ Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., § 9, 27 Stat. 434, 436.

³⁷⁰ Act of June 25, 1936, ch. 804, 74th Cong., 2d Sess., 49 Stat. 1921.

The District Court for the District of Columbia traces its origin to the 1801 Act, which created the Potomac District, comprising the District of Columbia and portions of Maryland and Virginia. 1801 Act § 21, 2 Stat. 89, 96. In another statute enacted in 1801, Congress established a circuit court of three judges authorized “to hold their . . . offices during good behavior.” Act of Feb. 27, 1801, ch. 15, 6th Cong., 2d Sess., § 3, 2 Stat. 103, 105, rendering the circuit court an Article III court. See *O’Donoghue v. United States*, 289 U.S. 516, 548 (1932) (relying on appointment of judges for good behavior to indicate that the 1801 circuit court was an Article III court). In yet a third statute enacted in 1801, Congress required “the chief judge of the district of Columbia” (presumably meaning the chief judge of the Circuit Court for the District of Columbia, “to perform, within . . . the district of Potomac, all the powers and duties now . . . performed by the district judges of the United States within their respective districts.” Act of Mar. 3, 1801, ch. 32, 6th Cong., 2d Sess., § 7, 2 Stat. 123, 124.

The Potomac District was abolished in March 1802 when the 1801 Act was repealed. March 1802 Act § 1, 2 Stat. 132. Later in 1802, Congress required “the chief judge of the District of Columbia” (again, presumably meaning the chief judge of the Circuit Court for the District of Columbia) to hold two sessions of a district court in the District of Columbia. April 1802 Act § 24, 2 Stat. at 166. In 1838, Congress established a criminal court in the District of Columbia. Act of July 7, 1838, ch. 192, 25th Cong., 2d Sess., § 1, 5 Stat. 306-07, from which judgments could be reviewed in the circuit court, *id.* In 1846, Congress ceded back to Virginia the portion of the District of Columbia in Virginia, Act of July 9, 1846, ch. 35, 29th Cong., 1st Sess., § 1, 9 Stat. 35, 35-36, thereby removing this portion from the jurisdiction of the district and circuit courts for the District of Columbia.

In 1863, Congress established the Supreme Court of the District of Columbia, Act of Mar. 3, 1863, ch. 91, 37th Cong., 3d Sess., § 1, 12 Stat. 762, 762-63 (different from another Act of Mar. 3, 1863, ch. 100, 37th Cong., 3d Sess., 12 Stat. 794), with five justices to hold office during good behavior, thereby rendering the court an article III court. *See O’Donoghue*, 289 U.S. at 548 (relying on appointment of judges for good behavior to indicate that the 1863 Supreme Court was an Article III court). This statute abolished the circuit, district, and criminal courts for the District of Columbia, *id.* § 16, 12 Stat. at 764. Abolition of these courts, especially the 1801 circuit court, whose judges had life tenure, again raised the issue encountered in 1802 whether abolition of an Article III court was constitutional, *see supra* note 57, but the constitutionality of the abolition was never challenged. Congress authorized the newly created Supreme Court to “exercise the same jurisdiction as is now possessed and exercised by the circuit court of the District of Columbia,” *id.* § 3, 12 Stat. at 763, and authorized any one of the justices of the newly created court to “hold a district court of the United States for the District of Columbia,” *id.*, and to “hold a criminal court,” *id.*

In 1893, Congress established the Court of Appeals of the District of Columbia, Act of Feb. 3, 1893, ch. 94, 52d Cong., 2d Sess., § 1, 27 Stat. 434, 434, with three justices to hold office during good behavior, *id.*, 27 Stat. at 435, thereby rendering the new court an Article III court. *See O’Donoghue*, 289 U.S. at 549-50 (relying on appointment of judges for good behavior to indicate that the 1893 Court of Appeals was an Article III court). The new Court of Appeals of the District of Columbia was given the appellate jurisdiction of the Supreme Court of the District of Columbia, *id.* § 7, 27 Stat. at 435-36, which was continued as a trial court, *id.*

In 1932, the Comptroller General ruled that the Court of Appeals and the Supreme Court of the District of Columbia were not Article III courts and ordered the salaries of the judges of these courts reduced pursuant to the Act of June 30, 1932, ch. 314, 72d Cong., 1st Sess. § 107(a)(5), 107 (reducing the salaries of all judges except those whose salaries were protected by the Constitution), 47 Stat. 302. In a suit brought by a justice of the Court of Appeals of the District of Columbia and a judge of the Supreme Court of the District of Columbia, the Supreme Court ruled that these courts were Article III courts. *O’Donoghue*, 289 U.S. at 551.

In 1934, the Court of Appeals of the District of Columbia was renamed the “United States Court of Appeals for the District of Columbia.” Act of June 7, 1934, ch. 426, 73d Cong., 2d Sess., 48 Stat. 926. In 1936, the name of the Supreme Court of the District of Columbia was changed to “District Court of the United States for the District of Columbia,” Act of June 25, 1936, ch. 804, 74th Cong., 2d Sess., 49 Stat. 1921. In 1954, Congress confirmed the Article III status of the justices of the United States Court of Appeals for the District of Columbia and the District Court of the United States for the District of Columbia, Pub. L. No. 779, § 51(a) (1954), 68 Stat. 1226, 1245, retroactive to 1948, *id.* § 51(b) (1954), 68 Stat. at 1246. In 1970, Congress established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia as local District of Columbia courts. District of Columbia Court Reorganization Act of 1970, Pub. L. No. 91-358, § 1 (amending District of Columbia Code, tit. 11, § 11-101(1)(A), (B)), 84 Stat. 473, 475.

For further details concerning the federal courts of the District of Columbia, *see Susan Low Bloch and Ruth Bader Ginsburg, Celebrating the 200th Anniversary of the Federal Courts of the District of Columbia*, 90 Geo. L. J. 549 (2002).

³⁷¹ Act of June 7, 1934, ch. 426, 73d Cong., 2d Sess., 48 Stat. 926.

- ³⁷² Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 44(a), 62 Stat. 869, 985.
- ³⁷³ Act of Mar. 2, 1929, ch. 488, 70th Cong., 2d Sess., § 2(a), 45 Stat. 1475, 1476.
- ³⁷⁴ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 401(a) (amending Immigration and Nationality Act by adding § 505(a)(1)), 110 Stat. 1214, 1263.
- ³⁷⁵ Act of Aug. 5, 1909, ch. 6, 61st Cong., 1st Sess., § 28, 36 Stat. 11, 105.
- ³⁷⁶ *Id.*, 36 Stat. 11, 106.
- ³⁷⁷ Act of Mar. 2, 1929, ch. 468, 70th Cong., 2d Sess., § 1, 45 Stat. 1475, 1475.
- ³⁷⁸ *Id.* § 2, 45 Stat. at 1476.
- ³⁷⁹ *Ex Parte Bakelite Corp.*, 279 U.S. 438, 460 (1929).
- ³⁸⁰ Act of Aug. 25, 1958, Pub. L. No. 85-755, § 1, 72 Stat. 848, 848.
- ³⁸¹ Customs Courts Act of 1980, Pub. L. No. 96-417, § 102(a), 94 Stat. 1727, 1727.
- ³⁸² Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 122, 96 Stat. 25, 36.
- ³⁸³ *Id.* § 127(a), 96 Stat. at 37.
- ³⁸⁴ Act of Feb. 24, 1855, ch. 122, 33d Cong., 2d Sess., § 1, 10 Stat. 612, 612.
- ³⁸⁵ *See Cowen, supra*, note 341, at 90-91.
- ³⁸⁶ 28 U.S.C. § 1295.
- ³⁸⁷ 28 U.S.C. § 1295(a)(1). In 2005, the Supreme Court ruled that the Federal Circuit’s patent appeals jurisdiction did not extend to patent claims in counterclaims unless there was a patent claim in the complaint, *see Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831-32 (2005), but Congress restored the Federal Circuit’s jurisdiction over patent counterclaims in the Leahy-Smith America Invents Act of 2011, Pub. L. No. 112-29, § 19(b), 125 Stat. 284, 331-32.
- ³⁸⁸ *See MEMBERS OF THE ADVISORY COUNCIL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, A HISTORY 1990–2002 at 12 (2002).*
- ³⁸⁹ 28 U.S.C. § 1295(a)(11).
- ³⁹⁰ *Id.* § 1295(a)(12).
- ³⁹¹ *Id.* § 1295(a)(13).
- ³⁹² *Id.* § 1295(a)(14).
- ³⁹³ *Id.* § 1295(a)(2).
- ³⁹⁴ *Id.*
- ³⁹⁵ *Id.*
- ³⁹⁶ *Id.* § 1295(a)(5).
- ³⁹⁷ *Id.* § 1295(a)(3).
- ³⁹⁸ 38 U.S.C. § 7292(c).
- ³⁹⁹ 28 U.S.C. § 1295(a)(4)(A). Appeals from this tribunal are available “with respect to a patent application, derivation proceeding, reexamination, post-grant review, or inter partes review under title 35, at the instance of a party who exercised that party’s right to participate in the applicable proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have a remedy by civil action pursuant to section 145 or 146 of title 35.” *Id.*
- ⁴⁰⁰ *Id.* § 1295(a)(6).
- ⁴⁰¹ *Id.* § 1295(a)(9).
- ⁴⁰² *Id.* § 1295(a)(10).
- ⁴⁰³ Congressional Accountability Act of 1995, Pub. L. No. 104-1, § 407(a)(1)(A), 109 Stat. 4, 35.
- ⁴⁰⁴ 31 U.S.C. § 755(a).
- ⁴⁰⁵ 28 U.S.C. § 1295(a)(7). Review, on questions of law only, is limited to findings of the Secretary “under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States.” *Id.*
- ⁴⁰⁶ *Id.* § 1295(a)(4)(B).
- ⁴⁰⁷ 42 U.S.C. § 7607(b)(1) (certain specified orders).
- ⁴⁰⁸ 28 U.S.C. § 2342(1).

⁴⁰⁹ 15 U.S.C. § 45(c).

⁴¹⁰ 21 U.S.C. § 371.

⁴¹¹ 29 U.S.C. § 160(f).

⁴¹² 15 U.S.C. § 78y(1).

⁴¹³ See *supra* notes 406–411.

⁴¹⁴ *E.g.*, 15 U.S.C. § 15y(1) (Securities and Exchange commission); 28 U.S.C. § 2343 (Federal Communications Commission); 29 U.S.C. § 160(f) (National Labor Relations Board).

⁴¹⁵ *E.g.*, 47 U.S.C. § 402(b) (certain orders of Federal Communications Commission); 15 U.S.C. 7607(b)(1) (certain orders of the Environmental Protection Agency).

⁴¹⁶ Act of June 18, 1910, ch. 309, 61st Cong., 2d Sess., § 1, ¶¶ 1, 2, 36 Stat. 539, 539.

⁴¹⁷ *Id.* ¶ 10, 36 Stat. at 540.

⁴¹⁸ *Id.* For example, President Taft appointed Martin A. Knapp, then serving as chairman of the Interstate Commerce Commission, “to be [an] additional circuit judge of the United States for the second judicial circuit” and “designated [him] to serve for five years in the Commerce Court.” 42 Senate Executive Journal 55 (1910). However, he never sat with the Second Circuit, serving instead on the Commerce Court and later, by assignment of the Chief Justice of the United States, with the Fourth Circuit. See Lucas C. Buzzard, *Martin Augustine Knapp* in AD HOC COMM. ON THE 125TH ANNIVERSARY OF THE CT. OF APPEALS OF THE SECOND CIRCUIT, THE JUDGES OF THE SECOND CIRCUIT (2017).

⁴¹⁹ Act of Oct. 22, 1913, ch. 32, 63d Cong., 1st Sess., section titled “Judicial,” 38 Stat. 208, 219.

Abolition of the Commerce Court precipitated congressional debate as to whether Congress could displace judges serving on an Article III court by abolishing the court, see Tara Leigh Grove, *The Origins (and Fragility) of Judicial Independence*, 71 Vand. L. Rev. 465, 482–84 (2018). However, the issue was not as serious as the one that arose with the abolition of the 1801 circuit courts, see *supra* note 59, or the 1863 District of Columbia courts, see *supra* note 370, ¶ 3, because the judges of the Commerce Court were circuit judges, eligible to be assigned by the Chief Justice of the United States to any circuit court of appeals, Act of June 18, 1910, ch. 309, 61st Cong., 2d Sess., § 1, ¶ 10, 36 Stat. at 540. For example, Judge Martin A. Knapp, after initial assignment to the Second Circuit on which he never sat, was assigned to the Fourth Circuit. See *supra* note 418. One judge, Robert W. Archbald, was impeached and convicted in 1913. Proceedings of the United States Senate and House of Representatives in the Trial of Impeachment of Robert W. Archbald, vol. III at 626.

⁴²⁰ Economic Stabilization Act Amendments of 1971, Pub. L. No. 92-210, § 2 (amending Defense Production Act of 1950, tit. II, § 211(b)(1)), 85 Stat. 743, 749. An early issue arising with respect to TECA was whether, in an appeal raising both an ESA issue and another issue, the entire appeal should go to TECA or the issues should be severed with only the ESA issue going to TECA and the remaining issues going to the appropriate regional Court of Appeals. The Second Circuit ruled that the issues should be severed. See *Coastal States Marketing, Inc. v. New England Petroleum Corp.*, 604 F.2d 179 (2d Cir. 1979).

Before creation of TECA, Congress created in 1942 the Emergency Court of Appeals, Emergency Price Control Act of 1942, § 204(c), 56 Stat. 23, 32, with jurisdiction to review decisions of the administrator of the Office of Price Administration, *id.* § 204(a), 56 Stat. at 31–32. Although called a court of appeals, this court was authorized only to exercise the powers of a district court. *Id.* § 204(c), 56 Stat. at 32. The Emergency Court of Appeals consisted of three or more circuit or district judges, selected by the Chief Justice of the United States. *Id.* This court heard its last case in 1961 and was abolished in 1962. See Federal Judicial Center, “Emergency Court of Appeals, 1942–1962,” <https://www.fjc.gov/history/courts/emergency-court-appeals-1942-1962>.

⁴²¹ Economic Stabilization Act of 1970, Pub. L. No. 92-210, § 2 (amending Defense Production Act of 1950, tit. II, § 211(b)(1)), 85 Stat. 743, 749.

⁴²² Federal Courts Administration Act of 1992, Pub. L. No. 102-572, § 102(d), 106 Stat. 4506, 4507.

⁴²³ Act of Oct. 25, 1978, Pub. L. No. 95-511, § 103(b), 92 Stat. 1783, 1788.

⁴²⁴ *Id.*, §§ 102(a)(1), 103(a), 92 Stat. 1783, 1788.

⁴²⁵ *Id.* § 103(b).

⁴²⁶ *Id.* § 103(c).

⁴²⁷ U.S. Patriot Act of 2001, § 208, 115 Stat. 272, 283.

⁴²⁸ See Evarts Act, § 2, 26 Stat. at 826 (nine circuits); Act of Mar. 3, 1863, ch. 100, 37th Cong., 3d Sess., § 1, 12 Stat. 794, 794; (Tenth Circuit); Fifth Circuit Court of Appeals Reorganization Act of 1980, Pub. L. No. 96-452, § 2, 94 Stat. 1994, 1994. (Eleventh Circuit); Act of Feb. 9, 1893, ch. 74, 52d Cong., 2d Sess., §§ 1, 9, 27 Stat. 434, 436; (District of Columbia Circuit); Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 101, 96 Stat. 25, 25 (Federal Circuit).

⁴²⁹ See, *e.g.*, dividing the Ninth Circuit into three “regionally based adjudicative divisions,” Commission on Structural Alternatives for the Federal Courts of Appeals, *Final Report X*, 30, 40-50 (1998); authorizing two-judge panels in the Courts of Appeals, *id.* 62-64; creating a National Court of Appeals between the Courts of Appeals and the Supreme Court Commission on Revision of the Federal Court Appellate System, Commission on Revision of the Federal Court Appellate System (Hruska Commission), *Structure and Internal Procedures: Recommendations for Change* 5-40 (1975); creating a National Court of Appeals to replace all Courts of Appeals, Paul D. Carrington, *U.S. Courts of Appeals and U.S. District Courts: Relationships in the Future*, in C. Harrison and R. Wheeler, eds., *The Federal Appellate Judiciary in the 21st Century* 71, 83-85, Appx. A, 227-30 (1989).