

MEMORANDUM IN SUPPORT OF THE CREATION
OF THE 32ND JUDICIAL DISTRICT
(Hickman, Lewis & Perry Counties)

By: Michael E. Spitzer, Circuit Judge 21st Judicial District, Division V:

Thirty-six (36) years ago when I started practicing law in the 21st Judicial District, this was a rural district. We had two (2) Judges who served Circuit and Chancery functions, a District Attorney, a handful of Assistant's and no Public Defenders. Throughout the 36 years, all elected officials surrounding the judicial environment were elected from the more populous Williamson County. Initially Williamson, like Hickman, Lewis and Perry Counties, making up the district, was somewhat rural and there was no great diversity of thought or belief. However over the past 36 years, a multitude of changes have caused the make-up of this district to be totally incapable of meeting the needs of the people. Justice is strained, court dates are infrequent, judges are unavailable, the ability of law enforcement to obtain and serve warrants is delayed and the public confidence in the system is questionable, at best.

Today, in the 21st, there are five (5) Judges sitting over circuit and chancery matters; a district attorney general and some 14 assistants, a public defender and a similar number of assistant public defenders. The more populous Williamson County (over 226,257 population of Williamson County vs. 45,213 combined for Hickman, Lewis and Perry Counties) have in the past elected the District Attorney General; the Public Defender and Four (4) Circuit/Chancery Judges. In addition every single assistant for both the district attorney's office and public defenders office reside either in Williamson County or, at least, outside of Hickman, Lewis or Perry

Counties. There has been absolutely no representation within the court system from the more rural Hickman, Lewis and Perry Counties.

Recognizing the need, in 2018 the Tennessee Legislature created a new judicial position in the 21st Judicial District designated as Division V. Prior to that time, the four (4) judges of the 21st Judicial District served Williamson, Hickman, Lewis and Perry Counties. Division V was created and specifically designated to preside over Hickman, Lewis and Perry Counties. The legislation identified the need as "for judicial economy and travel expense". The remaining four (4) judges sit in Williamson County. Several reasons for Division V were espoused but the designation of Division V to the three rural counties of Hickman, Lewis and Perry arose out of an increasing judicial need, in those counties, separate and apart from that arising out of the more urban and every growing Williamson County. By local rule, the sitting judges entered an order stating that the office of Division V must also be located in either Hickman, Lewis and Perry Counties.

On October 1, 2018, I was sworn in as Division V Circuit Judge. This position handles both civil and criminal jurisdiction and holds court in each of the three counties of Hickman, Lewis and Perry. After Division V was created, the five judges of the 21st Judicial District recognized the need and obvious desire to have Division V permanently attached to Hickman, Lewis and Perry County and recognized that unless that position were elected by the three counties served, and to the exclusion of the more populous Williamson County, all efforts made to serve these counties by a local residing judge would most likely be thwarted at the next election. To preserve what Division V had been created to establish, efforts were made and presented to Attorney General Herbert Slatery to: (a) pass legislation that would require Division V to be elected only by those people over whom that Judge presides; and/or (b) create a district within a district that

would allow an independent district for purposes of an election. This effort was unsuccessful on constitutional grounds. However, recognizing that need, Representative Michael Cursio, representing Hickman County and later joined by Senate Leader Jack Johnson of Williamson County along with numerous other senator's and representatives, including lobbying efforts, introduced various bills in the 2019 Legislative session to create what has become known as the 32nd Judicial District to include Hickman, Lewis and Perry Counties. This legislation, which included its funding, passed the Senate and today sits in the House calendar and rules committee waiting a vote in January of 2020. It is the desire of this author and a significant delegation from Hickman, Lewis and Perry Counties, that this judicial redistricting commission make a recommendation to the legislature that the creation of the 32nd Judicial District made up of Hickman, Lewis and Perry Counties is not only necessary but a viable answer to the needs of these there rural counties.

Numerous reasons exist for having a local, sitting judge, district attorney and public defender. Some of those reasons are as follows:

- Community involvement: A judge, public defender, and district attorney with a presence in these rural counties, offering their full service and attention to the needs of Hickman, Lewis, and Perry Counties, would be a huge asset to the people.

- There is a significant disconnect between Williamson County and these communities. Among other things, a local judge, public defender, and district attorney would be able to effectively collaborate to initiate community-wide programs aimed at the prevention of crime and educating young people

and the public to the dangers of drugs, which have not been possible with representation from Williamson County.

- A 2018 policy paper by the Conference of State Court Administrators entitled, *Courts Need to Provide Access to Justice in Rural America*, points out that:
 - “Judges, court staff, and attorneys who reside locally are respected for their knowledge of and commitment to their communities.”
 - “Many rural residents say they believe that justice is better served when the local judge has some knowledge of the parties, their families, and their history in the county.”
 - “In the 2017 State of State Courts poll, 60% of respondents agreed that judges need to do a better job of getting out into the community and listening to people.”
 - “Having well-respected judges in rural communities increases confidence in the court system and increases the court system’s awareness of the challenges and needs of rural communities.”
- Implicit socioeconomic bias in the judiciary
 - There is a marked difference in distinguishing between the economic capabilities and opportunities of criminal defendants in Williamson County compared to those in Hickman, Lewis, and Perry
 - Judges naturally strive to reach decisions that are both correct on the merits and correct from an ethical perspective. Implicit biases can impair the ability of judges to reach correct decision from either perspective. Simply recognizing the possible influence that implicit biases can have on judicial decision-making affords one

more opportunity to carefully consider all aspects of the decision to reach the most correct outcome from both perspectives. Recognition of implicit biases and the way in which they can impact decision-making is the first step toward seeking to eliminate whatever improper influences they might bring to the decision-making process.

- From *The Nature of the Judicial Process*, Justice Cardozo writes:
 - I have spoken of the forces of which judges avowedly avail to shape the form and content of their judgments. Even these forces are seldom fully in consciousness. They lie so near the surface, however, that their existence and influence are not likely to be disclaimed. But the subject is not exhausted with the recognition of their power. Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge. I wish I might have found the time and opportunity to pursue this subject farther. I shall be able, as it is, to do little more than remind you of its existence. There has been a certain lack of candor in much of the discussion of the theme, or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations. I do not doubt the grandeur of the conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. Nonetheless, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these

chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents, which engulf the rest of men, do not turn aside in their course, and pass the judges by.

The Task Force has published certain areas within which they had created questions, as areas of interest, and in response to those questions it is quiet evident that the creation of the 32nd Judicial District is a viable and sound option for this Task Force to present to the Legislature of this State. Those questions as responses are as follows:

1. Do weighted caseload studies indicate a need for a change in district lines?

- a. Yes, a weighted case load study for the proposed 32nd district shows a total judge need of 1.19 full-time equivalent judges.
- b. The weighted case load study is a starting point for determining judge need. It does not consider how many counties a judge presides over or the number of days in each month dedicated to each county's individual motion days, nor does it factor in the often-overlooked need of rural citizens' access to justice.

2. Are there any geographic or contiguity concerns that exist with the current judicial districts?

- a. Williamson County, the "hub" of the 21st district, is geographically removed from the other three counties. If you have low traffic number (which is getting more rare), Williamson is 1 hour from Hickman County, 1 hour and 15 minutes from Lewis County, and 1 hour and 30 minutes from Perry County.

- b. In contrast, the Hickman, Lewis, and Perry County courthouses are within 25 minutes of one another.

3. Do population changes or trends indicate a need to change district lines?

- a. Yes, the population and socioeconomic disparities between Williamson County and Hickman, Lewis, and Perry are becoming greater and greater.
- b. Williamson County's population has more than doubled since 1997.¹ Since 2010, Williamson County's population has increased 26.4%, making it the 25th fastest growing county in the United States from 2010-2018.
- c. In contrast, Lewis County's population has decreased since 2010, and Hickman and Perry have only increased by a negligible amount.²
- d. The average population per judge ratio across the state is 43,372 to 1. **The proposed 32nd district would have a population per judge ratio of 45,213 to 1, higher than the state average. The 32nd district would not be the smallest judicial district in the state.**³ (14th Judicial District population is 55,700 with 2 judges; the 29th Judicial District population is 44, 731 with 2 judges; the 31st Judicial District is 46,643 with 1 judge and the proposed 32nd would be 45,213 with 1 judge)
- e. Williamson County has the highest per capita income in the State of Tennessee. It is one of the wealthiest counties in the United States, and some studies have listed Williamson as the wealthiest overall when local cost of living is considered.

¹ 111,411 in 1997, compared to 226,257 in 2017.

² Hickman County 1.5%, Perry County 1.7%

³ The 29th Judicial District (Dyer and Lake County) has a population of 44,731. (Census Bureau 2018)

- f. In contrast, as of the 2010 census:
 - i. Hickman County – ranked 60th in per capita income
 - ii. Lewis County – ranked 74th in per capita income
 - iii. Perry County – ranked 81st in per capita income, and over 20% of the population live below the poverty line.
- g. Perry County has been designated as 1 of 15 “distressed counties” in the state, with both Hickman and Lewis being designated “at risk.”

4. What communities of interest will be affected by a change in the judicial districts as you have suggested?

- a. Court staff, clerks, attorneys, and law enforcement have worked together in these three counties for decades
- b. Every attorney who lives in one of these three counties also practices in the other two
- c. Many of the people in Hickman, Lewis, and Perry Counties know one another and commonly travel to one of the other two counties for shopping and dining.
- d. Alternative sentencing initiatives can be molded to meet the more fact specific needs of these counties.

5. What effect(s) would changing the current judicial districts have on existing collateral resources, e.g., Drug Task Forces, Recovery Courts, local grant funding, etc.?

- a. The current 21st Judicial District Drug Task force spends a significant amount of time covering I-40 which traverses Hickman County. It is our belief that this task force could stay in place and contracting between these two districts may be sought as a viable opportunity to serve each district.

- b. The 21st Judicial District Recovery Court is one of the best in the State. However, there is a negligible result, and almost insignificant participation rate for residents of Hickman, Lewis, and Perry in the 21st District Recovery Court.
 - i. Every county contributes to the funding of recovery courts across the state; however, the people of Hickman, Lewis, and Perry see very little benefit from the 21st District Recovery Court.
 - ii. Cost and travel or relocation to Williamson County are major barriers to participation and successful completion of program and the drop out rate is significant.
 - iii. Participants lose touch with local judge when they are required to move to Williamson County, find a job in Williamson County and leave the court system, which sentenced them to that Court.
- c. The Davis House child advocacy center has stated that it will continue to serve Hickman, Lewis, and Perry County
- d. In just the last six (6) months, the Division V Judge and his assistant have made contact with the Department of Mental Health Judicial Division and have commitments for a TN Rock program and we have done extensive research into grants offered by the Bureau of Justice Assistance with alternative sentencing options in mind.
- e. Hickman, Lewis, and Perry will be a new recipient of a TN ROCs program
- f. We have met with Educare Treatment Services and they have indicated that they see a strong need in Hickman, Lewis, and Perry County and have expressed an intent to expand their operation into this area.

6. Are there compelling reasons to preserve the existing districts?

- a. As to the 21st district as it currently exists--No. However, there are many compelling reasons to keep Hickman, Lewis, and Perry together.
- b. Hickman, Lewis and Perry Counties have a common dynamic in terms of family beliefs, socio-economic standards and the historical cohesiveness of these three counties. All one has to do is drive into the WalMart parking lot located in Hohenwald, Lewis County and view the tags of the cars which portray Hickman, Lewis and Perry County residents. Local festivals, school functions and rivalries and church coalitions have pulled these three counties together for many years. These counties are also served by the same utility company as well as many other shared services. The environment is analogous to the family farm where the family members leave for a while and go out into the world but always return to their roots. These counties are joined in social, economic, theological and geographic bindings. A 2013 plan suggested a division with Hickman County going into the Dickson circuit and Lewis and Perry moving to the Maury 22nd Judicial District. Such a plan would destroy the people's confidence in the judiciary and lead to an unfulfilled void within our system. If one looks at the weighted caseload studies and the judge to population ratio the creation of the 32nd Judicial District is obvious. However, when coupled with a humanistic approach that considers the dynamic of the people and with an interest in having not only a judge but district attorney and public defender, all of whom

reside and love the people of these counties, a vision for crime control and stronger belief in the judiciary become a true realistic mission.

7. How should judges be allocated/reallocated within the judicial districts of Tennessee?

- a. The newly created Division V judge for the 21st district would be transferred to the 32nd district. There would be no increase in state expenditures to staff the judiciary of the 32nd district. That position is already being funded.
- b. A weighted case load study for Williamson County shows that four (4) judges are more than sufficient for the single county district's needs.

8. How should district attorneys generals' staff and district public defenders' staffs, including attorneys, support staff, and any ancillary staff, be allocated/reallocated within the judicial districts of Tennessee?

- a. T.C.A. § 16-2-506(21)(B) currently provides for seven (7) assistant district attorney general positions in the 21st Judicial District.
- b. Through other means of funding, the 21st district actually employs fourteen (14) assistant district attorneys.
- c. Senate Bill No. 561, passed on May 2nd, reallocates the seven (7) positions provided by statute:
 - i. Four (4) to Williamson County
 - ii. Three (3) to Hickman, Lewis, and Perry
- d. The 32nd district would benefit from having a dedicated DUI prosecutor and would like to retain that grant-funded position.

- e. 50% of the A & B Felony cases come from Hickman, Lewis, and Perry
- f. 33% of the C, D, & E Felony cases come from Hickman, Lewis, and Perry.
- g. District 21 filings for 2017/2018 reflect 867 criminal filings in Hickman, Lewis and Perry against 1394 in Williamson County (Civil filings are 1,022 for Hickman, Lewis and Perry versus 2,855 in Williamson County)
- h. It is expected that Williamson County could survive with 10 assistant district attorneys.
- i. The existing support staff would remain in place and are provided for in the legislation that passed the Senate this year.
- j. A new district public defender's office would be created and the legislation provides for the transfer of three (3) assistant public defenders from the 21st district.

**Proposed 32nd Judicial District
Weighted Case Load Study for Fiscal Year 2018**

	Case Type	Case Weight	Total Filings FY 2017-18
Criminal	First Degree Murder	776	2
	Post Conviction Relief	381	0
	Felony A & B	157	116
	Felony (C, D, E)	45	234
	DUI	89	21
	Recovery (Drug) Court	167	9
	Criminal Appeals (incl. juvenile delinquency)	11	4
	Misdemeanor	29	102
	Other Petitions, Motions, Writs	28	91
	Other Petitions, Motions, Writs-Prison Districts	57	0
	Probation Violation	18	288
General Civil/Other	Administrative Hearings	204	6
	Contract/Debt/Specific Performance	104	5
	Damages/Tort	135	9
	Guardianship/Conservatorship	70	14
	Judicial Hospitalization	19	1
	Juvenile Court Appeal (Civil)	287	7
	Medical Malpractice	1320	0
	Probate/Trust	24	170
	Other General Civil	58	113
	Real Estate	259	28
	Workers Compensation	41	0
Domestic Relations	Child Support	20	111
	Divorce with Children	106	78
	Divorce without Children	40	126
	Residential Parenting	108	29
	Protection of Children (paternity, adoption, legitimation, surrender, TPR)	65	30
	Orders of Protection	32	16
	Contempt	14	277
	Other Domestic Relations	73	2
Need Computation	Total Filings		1,889
	Workload (Weights x Filings)		93,399
	Judge Year (210 days per year, 8 hrs per day)		100,800
	Average District Travel per year*		5,817
	Non-case related time (78 minutes/day)		16,380
	Availability for Case-Specific Work		78,603
	# Judges		1
	Total Judicial Officer Demand		1.19
	FTE Deficit or Excess		-0.19
	Criminal Judges Needed		0.57
Civil Judges Needed		0.30	
Domestic Relations Judges Needed		0.32	
Total Judicial Officer Demand		1.19	

*Actual travel time for court appearances only for the proposed 32nd District is calculated to be a minimum of 6,120 minutes per year, at 51 minutes per round-trip commute on an average of 10 days per month of travel to Perry and Hickman County from the Judge's office in Lewis County.