The CHAIRMAN. Well, I think you will find just thousands of restrictions put upon the President's appointive power on less-than-Cabinet officials—on lesser officials, the whole civil service system, for example, is a limitation on the President's appointive power. And surely it does not do violence to the Constitution to say that before you appoint the head of the INS in Puerto Rico, you consult.

Mr. DENNIS. I am assuming that is not a civil service—I mean, if it is a civil service position, then obviously we would be constrained by civil service restrictions.

The CHAIRMAN. Well, look at it over there. Because I would think we would do it if it is constitutional. I cannot imagine the President going to court to say it is deeply offensive to the Constitution that I have to have my personnel man make a phone call or write a letter.

Mr. DENNIS. I am sure that happens. I cannot imagine that we—not only for Puerto Rico, but for any state—any appointments made without consultation with officials there, if it is an appointment, as opposed to a civil service position. So I am confident that that happens.

But if it were to be more than window dressing, and I would assume that we would not engage in having legislation that would be meaningless, I feel that, at least insofar as the appointment authority of the President, it would present some problems.

The CHAIRMAN. All right.

If there is nothing further to add at this point, Mr. Dennis, we will stand in recess until 2:00 p.m.

Mr. DENNIS. Thank you, Mr. Chairman.

[Whereupon at 12:20 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

We continue this afternoon with our hearing. And we begin with a panel, with Hon. Stephen G. Breyer, Circuit Judge of the U.S. Court of Appeals for the First Circuit, representing the Judicial Conference of the United States; and Hon. Levin H. Campbell, Chief Judge of the United States Court of Appeals for the First Circuit, from Boston, Massachusetts.

Your Honors, we are pleased to have you as a panel here. As you know, your full statements will be put into the record. If you would prefer to summarize, we would be glad to have that, but you may proceed as you wish.

STATEMENT OF LEVIN H. CAMPBELL, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT, BOSTON, MA

Judge CAMPBELL. Thank you, Senator Johnston. We are honored to be here today at your invitation.

I am Levin Campbell, Chief Judge of the U.S. Court of Appeals for the First Circuit. For many years, the First Circuit in Boston has included within it the U.S. District Court for the District of Puerto Rico. We are very proud of our long-standing relationship with the District of Puerto Rico.

In 1988, nearly 400 appeals from the District Court in Puerto Rico were filed in the Court of Appeals for the First Circuit. Many of these appeals are heard in Boston at our court's monthly Boston sittings. But, in addition, a panel from our court sits in San Juan in November and March of each year.

Just to note the size of our involvement, I would point out that the number of appeals from the District of Puerto Rico heard in the First Circuit is almost as large as the number we hear from the District of Massachusetts.

My testimony relates solely to the commonwealth option provisions in S.711 and S.712, providing specifically, that if any parties request, federal court proceedings in Puerto Rico shall be conducted in Spanish, rather than as currently, in English. These language provisions are part of a number of fairly major changes in the role of the District Court that appear in the commonwealth option. And I will limit my testimony to the language provision.

Judge Breyer, who will be testifying on behalf of the Federal Judicial Conference, will speak to the other provisions.

In 1978, Judge Frank Coffin and I testified before Congress on a previous bill to allow federal court proceedings in Puerto Rico to be conducted in Spanish. We pointed out then that a Spanish language option in a United States district court presented serious practical difficulties of implementation, primarily because of the difficulty of conducting an appeal from a Spanish record to the next level of federal court, to the Court of Appeals, which is an English-speaking court.

The present language proposal is far more sweeping than the 1978 proposal was.

The CHAIRMAN. What do you mean the present proposal?

Judge CAMPBELL. The proposal in the legislation that I am speaking to that the commonwealth definition would include.

The CHAIRMAN. The commonwealth. Okay.

Judge CAMPBELL. That provision provides that, at the request of any one party to a lawsuit, all the proceedings in the federal court would thereafter be conducted in Spanish. The proposal that came up 10 years ago required the agreement of all the parties in the case, and I think also was in the discretion of the presiding judge.

All my fellow judges and I regretfully but unanimously believe the present proposal would cause enormous problems of implementation. We are joined in this position by all seven of the Federal District Judges now sitting in Puerto Rico; all of whom, of course, are themselves native Spanish speakers, but who do not believe that Spanish should be an option, as well as English, in the District Court proceedings.

A separate resolution to this effect, signed by the Puerto Rico District Judges has been filed with your committee. And of course I filed a more extended statement than I have any intention of making here.

Let me make clear that our opposition to having this option of using Spanish in the Puerto Rico District Court in no way reflects hostility to the Spanish language, nor insensitivity to the concerns that have propelled this language proposal.

Several years ago, our court upheld as being constitutional Puerto Rico's local requirement that Spanish be used exclusively in the Commonwealth's own domestic court system.

Our position here is merely that in the very small seven-judge, Article III, United States District Court for Puerto Rico, the language spoken should remain the same as that used throughout the federal judicial system, and throughout our entire Federal Government.

To introduce another language will greatly slow down, and may cripple, the ability of the Federal Courts of Appeal to review the decisions of the Puerto Rico District Court. Additionally, the proposal threatens to isolate the Puerto Rico Federal Court and its bar from all other Federal courts.

While we recognize that the availability of Spanish would have some desirable features for some people, the tradeoff, in terms of the diminished ability of the Federal Court in Puerto Rico and of the Court of Appeals to administer justice, seems to us to make the proposal undesirable.

Now I have already outlined in my statement, my reasoning, and I would like to limit myself to giving the three principal reasons why we think this is undesirable.

First, permitting one party in a multi-party case to require all proceedings in that case to be conducted in Spanish, threatens to effectively close the District Court in Puerto Rico to non-English speaking attorneys.

That means that government attorneys from Washington, such as strike force prosecutors, Justice Department attorneys, Labor Board and tax attorneys, and others, who today routinely appear in federal courts around the Nation, including in Puerto Rico, would be unable to appear unless they happen to be Spanish speakers, provided one party in the case chose Spanish as the dominant language.

Recently, one of the Puerto Rico District Judges, Judge Accosta, has been ably presiding over a consolidated proceeding, composed of the hundreds of lawsuits arising from the tragic Dupont Hotel fire in San Juan. Somewhere in the order of 77 attorneys, representing the victims and their families, have participated in this consolidated litigation in San Juan.

Had the proposed rule existed today, it is highly unlikely that this proceeding could have been conducted in the Puerto Rico District Court, since fewer than half of the predominantly tort lawyers from the continental United States who have played a leading role in this litigation would be able to practice in Spanish.

My point is simply that the federal court in Puerto Rico, like federal courts around the country, should remain open to English-speaking lawyers. No Article III federal court in our history has ever had a rule that could effectively disbar most attorneys from the continental United States.

I emphasize that—and I think this is an important point to make about Puerto Rico—that there is a large, sophisticated Spanish-speaking judiciary in Puerto Rico, headed by the seven-member Supreme Court of Puerto Rico. I support and very much admire that institution. But a United States District Court, it seems to me,

should never be closed to English-speaking attorneys, since it is a part of an exclusively English-speaking judicial system.

A second reason why I believe this proposal is unwise is that it is very difficult to see how a Spanish trial record could be effectively and timely translated for speedy appellate review in our English-speaking court of appeals.

Various suggestions have been made as to how to do this, and I believe I have studied them all. But I regretfully conclude that the expense and the time involved would seriously undercut the ability of the U.S. courts to function as they are intended, and would threaten the right to a speedy appeal.

We already have the time spent on transcribing the record. To this you would have to add four, five, six, seven, perhaps more, months, to translate the record into English, further delaying the appeal.

It should be realized that a federal court, unlike purely local courts, bases its jurisprudence on the Federal Constitution, the statutes of Congress, the regulations of federal agencies, and the opinions of the various federal courts, including the Supreme Court. None of these materials normally appear in any language other than English.

It would not be easy to conduct federal court proceedings in a different language from English. And once conducted in another language than English, it would be time-consuming and difficult to translate the record into English for appellate review purposes.

It would also be expensive. And the court would be dependent upon extensive financing by Congress. We estimate costs of somewhere between $2 million and $7 million to develop a sophisticated translation section. If, for example, 200 of the 400 appeals that we now have from Puerto Rico were translated, we would anticipate that you would need somewhere approaching 50 translators, full-time, to do this in an expeditious and in a speedy manner. This is based on what we discovered, that the average of a record in a federal appeal is around 700 pages.

Finally, let me point out that in 1987, the Southern District of Texas reported 9,464 instances in which a Spanish-language interpreter was used in a judicial proceeding. That is four times more the use of Spanish interpreters than occurred in the District of Puerto Rico in the same period.

Actually, there are seven federal districts besides Puerto Rico that report greater utilization of Spanish interpreters. I mention these figures, because if the option proposed is granted in the District of Puerto Rico, the obvious question arises whether the Congress can justifiably refuse a Spanish option in these other district courts around the country, where there are actually more people who desire to use Spanish.

May I close by emphasizing that I understand and sympathize with the desire to use one's own language, but the present system, utilizing interpreters for non-English speakers, works, perhaps not perfectly, but it has worked adequately. And there is perhaps no perfect solution when two languages are involved.

And one must balance whatever advantages the proposal might afford to some litigants against the impact the required use of

Spanish will have upon the ability of the Federal courts to administer justice.

The federal court has had a long association with Puerto Rico. We hope to continue that association, should the people of Puerto Rico so desire. But like all institutions, the federal court has a certain form and structure, and doubtless, certain limitations as well as strengths.

We are not infinitely malleable. If the time comes that the people of Puerto Rico feel that their interests diverge so greatly from the United States that an English-speaking federal court in ordinary form is no longer wanted, I suppose another option would be to give consideration to the possibility of not having a federal court in Puerto Rico.

That, rather than reengineering the federal court, so that it is greatly different from federal courts elsewhere, might be a preferable consideration.

That ends my comments.

[The prepared statement of Judge Campbell follows:]