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# Venue and Service of Process in the Federal Courts -- Suggestions for Reform

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# VENUE AND SERVICE OF PROCESS IN THE FEDERAL COURTS—SUGGESTIONS FOR REFORM

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In prescribing the rules governing the place of trial of actions commenced in the federal district courts, Congress might reasonably have been expected to follow one of two courses. On the one hand, it might have treated the continental United States as a single jurisdiction. On this basis service of process would have been permitted throughout the United States, venue rules would have been designed to channel litigation into the most convenient district, and provision would have been made for a motion for change of venue to be granted whenever the suit was commenced in a district which did not have venue. On the other hand, Congress might have treated the individual federal districts as independent states. On this basis service of process would have been restricted to the district in which suit was brought, but venue of transitory actions would have been made proper in any district in which the defendant could be found for service of process. In fact, of course, Congress has adopted neither of these alternatives. Instead it has limited venue to the residence of all the defendants or, in diversity cases, all the plaintiffs while at the same time confining service of process to the boundaries of the state in which the district court is located.

The result has been a system which narrows access to the federal courts by criteria which appear to have little in the way of either theoretical or practical justification. The plaintiff may be excluded from suing in the federal courts because service of process is not possible in any district where the venue is proper. In actions where multiple defendants residing in different states are involved there may be no district where the venue is proper for complete disposition of the controversy. The definition of venue solely in terms of residence of the parties in some situations gives the plaintiff a wide choice of venue which is subject to abuse and in other situations gives him such a narrow choice that he is prevented from choosing the district most convenient for trial of the case. The attempt to channel actions into more convenient districts by permitting transfer of actions for convenience of parties and witnesses has given to defendants a delaying weapon which itself is subject to abuse and has created many difficult choice of law problems for the federal courts wherever state law is relevant.

A complete review and overhauling of the federal venue-process

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rules is long overdue.[1] This article will attempt to present a starting point from which such a revision might proceed and will be divided as follows: (1) A brief sketch of the historical development of the present rules; (2) an analysis of the general venue and process provisions; (3) an analysis of the special venue and process statutes; and (4) general suggestions for legislative revision. The discussion is limited to the rules governing private civil litigation, with primary emphasis on personal actions.[2]

## HISTORICAL DEVELOPMENT[3]

The basic outlines of the present system have remained substantially unchanged since the Judiciary Act of 1789.[4] That act appeared to adopt the second alternative suggested above and to treat the various judicial districts as separate jurisdictions. It was construed as confining service of process to the boundaries of the district in which the action was commenced.[5] But the venue grant was broad enough to permit suit wherever service of process could be had: in civil suits against "an inhabitant of the United States" suit was permitted in the district "whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." This broad grant of venue was drastically limited, however, with respect to the largest class of cases within the jurisdiction of the federal courts—those based on diversity of citizenship. As to those the act provided for jurisdiction where "the suit is between a citizen of the State where the suit is brought, and a citizen of another State." In diversity cases, then, jurisdiction was limited to the districts of residence of the plaintiff or of the defendant whether or not service of process was possible in either of such districts.[6]

In 1875 (as a part of the post-Civil War expansion of national power)[7] the jurisdictional grants were greatly widened.[8] The diversity of

1. For a plea for revision of state venue requirements, see Stevens, *Venue Statutes: Diagnosis and Proposed Cure,* 49 MICH. L. REV. 307 (1951). See generally, Foster, *Place of Trial in Civil Actions,* 43 HARV. L. REV. 1217 (1930), *Place of Trial—Interstate Application of Intrastate Methods of Adjustment,* 44 HARV. L. REV. 41 (1930).

2. No consideration has been given to the problems raised when either the Government or an alien is a party.

3. See generally FRANKFURTER AND LANDIS, THE BUSINESS OF THE SUPREME COURT (1928); MOORE, COMMENTARY ON THE U.S. JUDICIAL CODE 31-67 (1949); Blume, *Place of Trial in Civil Cases,* 48 MICH. L. REV. 1, 29-40 (1949).

4. 1 STAT. 73, 78 (1789).

5. See Robertson v. Railroad Labor Board, 268 U.S. 619, 622, 45 Sup. Ct. 621, 69 L. Ed. 1119 (1925).

6. Kitchen v. Strawbridge, 14 Fed. Cas. 692, No. 7,854 (C.C. Pa. 1821); White v. Fenner, 29 Fed. Cas. 1015, No. 17,547 (C.C.D.R.I. 1818); Shute v. Davis, 22 Fed. Cas. 57, No. 12,828 (C.C.D. Pa. 1817); see Comment, 60 YALE L. J. 183, 186 n.19 (1951).

7. FRANKFURTER AND LANDIS, THE BUSINESS OF THE SUPREME COURT 64 (1928).

8. 18 STAT. 470 (1875).

citizenship grant was rephrased to refer to controversies "between citizens of different States," eliminating the requirement that one of the parties must be a citizen of the state where the suit was brought. The federal courts were for the first time given a general grant of jurisdiction of all suits "arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority." The venue provision was left undisturbed: venue was proper in any district where the defendant was an "inhabitant" or "in which he shall be found." Hence under this statute, and for both diversity and federal question cases, the district courts, like the courts of the states in which they sat, could hear any transitory action within their jurisdiction so long as service of process could be made within the district.[9]

Twelve years later, however, Congress (as part of an effort to cut down on the flood of cases coming to the federal courts as a result of the Civil War amendments and related legislation)[10] sharply narrowed federal venue provisions. The Act of March 3, 1887, as corrected by the Act of August 13, 1888, provided that no civil suit shall be brought against "any person" in "any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of residence of either the plaintiff or the defendant."[11] The effect of this, of course, was to re-enact the pre-1875 jurisdictional limitation in diversity cases as a venue requirement and to limit the venue in federal question cases to the district of residence of the defendant. And in 1890 the venue grant was further narrowed by a judicial construction of the act as requiring that *all* the plaintiffs or *all* the defendants, as the case might be, had to be residents of the district even though they all might be subject to service of process within the district of residence of one of them.[12]

The venue-process scheme established by the 1888 Act was incorporated into the Judicial Code of 1911[13] and carried without sub-

9. A preliminary search discloses no cases on this point decided under the 1875 Act.

10. See FRANKFURTER AND LANDIS, *op. cit, supra* note 7, c. II; Camp v. Gress, 250 U.S. 308, 311, 39 Sup. Ct. 478, 63 L. Ed. 997 (1919).

11. 25 STAT. 433 (1888).

12. Smith v. Lyon, 133 U.S. 315, 10 Sup. Ct. 303, 33 L. Ed. 635 (1890). This case involved multiple plaintiffs but suggested that the same rule would apply as to multiple defendants. It was generally applied by the lower federal courts to both plaintiff and defendant situations. The Supreme Court itself did not decide a multiple defendant case until Camp v. Gress, 250 U.S. 308, 39 Sup. Ct. 478, 63 L. Ed. 997 (1919), in which it reaffirmed the rule of *Smith v. Lyon.*

13. Judicial Code § 51 was the principal section. 36 STAT. 1101 (1911), 28 U.S.C.A. § 112 (1940). The law up to 1928 is discussed in DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE, c. 5 (1928).

stantial change until the Judicial Code of 1948.[14] There were during this period, however, several liberalizing developments. A number of special statutes were passed providing broader access to the federal courts for certain types of federal question cases. Some of these, such as the one governing patent infringement suits,[15] were included in the Judicial Code while others, such as the one governing suits under the Federal Employers Liability Act,[16] appeared only with the related substantive legislation. In 1938 the Federal Rules of Civil Procedure clarified in major part the previously cloudy rules governing the manner of service of process[17] and Rule 4(f) expressly permitted service of process throughout the state in which the district of suit was located.[18] In 1939 the venue of actions in which corporations were defendants was greatly expanded by the Supreme Court decision in *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*[19] As a result of that decision (which left a host of unsolved problems in its wake)[20] a corporation could in general be sued in a district court in any state in which it had filed with the state a consent to service of process on the theory that such a consent was *pro tanto* a waiver of federal venue requirements.

The Judicial Code of 1948[21] did not constitute a thoroughgoing revision of the rules governing venue and service of process. Instead it was "a conservative revision" that avoided "large controversial changes" but made changes of substance "within the general framework of the judicial system."[22] No changes of substance were made relating to service of process and one of the principal consultants for the Code has described the changes with respect to venue as follows: "The general framework of venue is also left undisturbed. But following the trend of the *Neirbo* case, although not building upon its

14. Title 28, U.S.C.

15. 36 STAT. 1100 (1911), 28 U.S.C.A. § 109 (1940).

16. 36 STAT. 291 (1910), as amended, 53 STAT. 1404 (1939), 45 U.S.C.A. § 56 (1940).

17. In actions at law the federal courts prior to 1938 followed in general the local state practice as to the forms of process and the method of service. In actions in equity uniform provisions for the form and service of process were made for all federal courts by the equity rules. See DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE 591, 690 (1928). Rule 4 of the Federal Rules of Civil Procedure provides both the form and method of service in all actions in the federal courts. Rule 4(d) (7) adds that service will also be proper if done in the manner prescribed by the law of the state in which the action is brought.

18. "All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held and, when a statute of the United States so provides, beyond the territorial limits of that state. A subpoena may be served within the territorial limits provided in Rule 45." FED. R. CIV. P. 4(f).

19. 308 U.S. 165, 60 Sup. Ct. 153, 84 L. Ed. 167 (1939).

20. See 3 MOORE, FEDERAL PRACTICE 2124 (2d ed. 1948); Comment, 42 ILL. L. REV. 780 (1948).

21. 62 STAT. 869 (1948).

22. MOORE, COMMENTARY ON THE U.S. JUDICIAL CODE 72 (1949).

principle of waiver, a corporate defendant is treated as a resident, for purposes of venue, of any judicial district in which it can be found. Transfer to a proper venue is provided as an alternative to dismissal where venue is laid improperly; and transfer, not dismissal to another proper and more convenient venue gives due recognition to the doctrine of forum non conveniens."[23]

This brief historical review makes it clear that Congress has not attempted to re-examine the entire framework of federal venue and process rules in order to see if they are working satisfactorily under modern conditions. Rules devised in horse and buggy days have been perpetuated in the days of the airplane and the telephone. We turn now to seeing how these rules work in practice.

### THE GENERAL VENUE AND PROCESS PROVISIONS

(1) *Single Plaintiff v. Single Defendant:*

(a) *Individuals.* Consider first the simple situation where a single individual plaintiff is suing a single individual defendant. If the jurisdiction is based solely upon diversity of citizenship, the venue is proper in either the district where the plaintiff resides or the district where the defendant resides.[24] If the jurisdiction is based in whole or in part on the presence of a case which "arises under the Constitution, laws or treaties of the United States," the venue is limited to the district where the defendant resides.[25] In either diversity or federal question cases, the plaintiff must, of course, not only select a district with proper venue but also be able to effect service of process upon the defendant within the state in which the district of suit lies.

These venue provisions based solely on residence of the parties frequently force the plaintiff to commence his action in a district which is a very inconvenient place for trial. For example, suppose that a San Francisco plaintiff has a cause of action against a New York City defendant. The cause of action arose in Chicago and the relevant witnesses, records, etc., are located there. If the cause of action is solely one of state law, the plaintiff can sue the defendant in the northern district of California if he can secure service of process in California. If service is not possible in California, or if the cause of action is one arising under federal law, the plaintiff may sue only in the southern district of New York. Unless the defendant consents,

23. *Id.* at 74.
24. 28 U.S.C.A. § 1391(a) (1950).
25. 28 U.S.C.A. § 1391(b) (1950). Neither legislative history nor decisions reveal the reason why the venue was made more restricted in federal question than in diversity cases. See HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 949 (1953). Venue in either diversity or federal question cases when removed from a state court is fixed at "the district or division embracing the place" where the suit is pending. 28 U.S.C.A. § 1441(a) (1950).

the plaintiff may not have the suit tried in the more convenient northern district of Illinois, even if the defendant is subject to service of process there.[26]

For a time it was thought that in the common situation where the plaintiff's cause of action arose out of an automobile accident in Illinois he might be able to sue in the northern district of Illinois on the theory that under the local nonresident motorists act the defendant by driving on the highways of Illinois waived not only the requirement of personal service of process in the state but also federal venue.[27] However, in *Olberding* v. *Illinois Cent. R.R.*[28] the Supreme Court rejected this theory and a nonresident motorists act is now of assistance to the plaintiff in the federal courts only when he is injured in the state of his residence and needs to rely on it for service of process reasons.

Another possibility was that the plaintiff could take advantage of the transfer provision in Section 1404(a) of the Judicial Code[29] to bring the action to Chicago by way of New York. The theory here was that the plaintiff could file his suit in the southern district of New York, obtain service of process in New York, and then move to transfer for "the convenience of parties and witnesses, in the interest of justice."[30] While the Supreme Court has not yet spoken on this question, all indications are that the plaintiff will not be permitted to use Section 1404(a) for this purpose. Initially, there is the doubt whether the plaintiff may move for a transfer under 1404(a) in any situation —at least one district court[31] has held that 1404(a) is wholly a

26. The most recent Supreme Court case reaffirming the right of the defendant to insist on trial in the state of his residence even though the accident occurred in another state is Olberding v. Illinois Cent. R.R., 346 U.S. 338, 74 Sup. Ct. 83 (1953), 7 VAND. L. REV. 414 (1954).

27. 3 MOORE, FEDERAL PRACTICE 2128 (2d ed. 1948) contains a flat statement to that effect. Most district courts faced with the problem have so ruled. See Falter v. Southwest Wheel Co., 109 F. Supp. 556, 558 (W.D. Pa. 1953) and cases cited. The Sixth Circuit also held that venue was waived. Olberding v. Illinois Cent. R.R., 201 F.2d 582 (6th Cir. 1953). The First and Third Circuits ruled contra. Martin v. Fischbach Trucking Co., 183 F.2d 53 (1st Cir. 1950); McCoy v. Siler, 205 F.2d 498 (3d Cir. 1953). See also 4 VAND. L. REV. 698 (1951).

28. 346 U.S. 338, 74 Sup. Ct. 83 (1953). The Court limited the *Neirbo* rule to situations in which there had been an "actual consent" by the defendant. Justices Reed and Minton dissented.

29. 28 U.S.C.A. § 1404(a) (1950).

30. For expositions of this theory, see Braucher, *The Inconvenient Federal Forum,* 60 HARV. L. REV. 908, 934 (1947); Keeffe et al, *Venue and Removal Jokers in the New Federal Judicial Code,* 38 VA. L. REV. 569 (1952); 60 YALE L.J. 183 (1951).

31. Barnhart v. John B. Rogers Producing Co., 86 F. Supp. 595 (N.D. Ohio 1949). *Contra:* McCarley v. Foster-Milburn Co., 89 F. Supp. 643 (W.D.N.Y. 1950), *rev'd on other grounds by mandamus sub. nom.* Foster-Milburn Co. v. Knight, 181 F.2d 949 (2d Cir. 1950). In other cases plaintiff's motion has been considered or granted without explicit consideration of his right to make the motion. Kostamo v. Brorby, 95 F. Supp. 806 (D. Neb. 1951); Otto v. Hirl, 89 F. Supp. 72 (S.D. Iowa 1950). See Kaufman, *Observations on Transfers under Section 1404(a) of the New Judicial Code,* 10 F.R.D. 595, 603

defendant's remedy as is the doctrine of *forum non conveniens* from which it was derived.[32] And beyond this, several courts of appeal, assuming *arguendo* a right by the plaintiff to move for transfer, have held that such a transfer may be only to a district where the venue is proper and the defendant subject to service of process.[33] Only such a district, they reason, is one where the action "might have been brought" within the meaning of the section.[34] Hence if these cases are upheld, as seems likely, the plaintiff will receive at most the privilege of moving to transfer to a district in which he could have commenced his suit initially.

The defendant, however, appears to have a much broader power to determine the place of trial by use of a motion to transfer under Section 1404(a). The lower federal courts (no case has yet reached the Supreme Court) have not imposed venue and service of process limitations upon the choice of a district to which to transfer the case on motion of the defendant. Since the defendant can waive both venue and service of process limitations, these courts have reasoned that the action "might have been brought" within the meaning of 1404(a) in any district in which the defendant would allow the suit to proceed.[35] Hence in the hypothetical situation outlined above if the plaintiff brought suit in either the New York or California

(1951); Note, 64 HARV. L. REV. 1347, 1348 (1951); Comment, 24 So. CALIF. L. REV. 95 (1950).

32. The Reviser's notes to § 1404(a) stated, in part: "Subsection (a) was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper." See generally Barrett, *The Doctrine of Forum Non Conveniens*, 35 CALIF. L. REV. 380 (1947); Braucher, *The Inconvenient Federal Forum*, 60 HARV. L. REV. 908 (1947); Note, 51 COL. L. REV. 762 (1951).

33. Shapiro v. Bonanza Hotel Co., 185 F.2d 777 (9th Cir. 1950); Foster-Milburn Co. v. Knight, 181 F.2d 949 (2d Cir. 1950); Atlantic Coast Line R.R. v. Davis, 185 F.2d 766 (5th Cir. 1950). These decisions are criticized in Keeffe et al, *Venue and Removal Jokers in the New Federal Judicial Code*, 38 VA. L. REV. 569 (1952), and 60 YALE L.J. 183 (1951). See also Kaufman, *Observations on Transfers under Section 1404(a) of the New Judicial Code*, 10 F.R.D. 595, 602 (1951); Note, 64 HARV. L. REV. 1347 (1951).

34. It has also been suggested that 28 U.S.C.A. § 1406(a) (1950) providing for a transfer of cases brought in a district of improper venue "to any district or division in which it could have been brought" would enable the plaintiff to avoid the service of process (though not venue) limitations. Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216, 238 (1948) ("If this means what it says, a plaintiff need only file in any district where the process can be served and sit back to await the transfer of the cause."). However, it would seem that the decisions limiting transfers by plaintiffs under § 1404(a) to districts where the defendant could be served with process because of the "might have been brought" language of that section would be equally applicable to § 1406(a) because of its "could have been brought" language.

35. Paramount Pictures v. Rodney, 186 F.2d 111 (3d Cir. 1951), *cert. denied*, 340 U.S. 953 (1951); Anthony v. RKO Radio Pictures, 103 F. Supp. 56 (S.D.N.Y. 1951); *but cf.* Arvidson v. Reynolds Metals Co., 107 F. Supp. 51 (W.D. Wash. 1952); Hampton Theatres, Inc. v. Paramount Film Distributing Corp., 90 F. Supp. 645 (D.D.C. 1950). See also Note, 64 HARV. L. REV. 1347, 1351 (1951); 50 MICH. L. REV. 347 (1951); 30 TEXAS L. REV. 256 (1951).

districts, the trial court would have discretion to transfer the case to the Illinois district on motion of the defendant even though the defendant were not otherwise subject to service of process in Illinois.

This venue-process scheme is subject to criticism on several grounds. First, it gives a substantial advantage to the defendant in all those situations in which the most convenient district for trial of the cause is one where the venue is improper or where the defendant is not subject to service of process. The plaintiff has no opportunity either to bring the suit initially in the most convenient federal forum or to transfer the case thereto. The defendant, however, is given the choice of retaining the action in the district of suit (which may at times be much less inconvenient to him than to the plaintiff) or of moving to transfer to the more convenient forum. Second, it causes unnecessary delay and waste of judicial time by provoking needless transfers of actions. Whenever the plaintiff is not permitted to sue directly in the most convenient forum, the waste motion and expense of suit in the district of residence of one of the parties plus transfer to the more convenient district is compelled.[36] Third, it creates unnecessary conflict of laws problems in those situations where state law is relevant. Whenever the district or districts of proper venue are not located in the state where all or a substantial part of the relevant facts giving rise to the cause of action occurred, the federal courts are faced with difficult problems. If the action is not transferred, they are forced under the unsatisfactory *Klaxon* doctrine[37] to apply the conflict of laws rules of the forum state. When the action is transferred, the federal courts may be placed in a serious dilemma as to the law to be applied if the state in which the action was originally filed would apply a different rule of law than the state to which the action is transferred. If the law applied is to be that of the transferee state, then the courts on transfer will be deciding not only the convenience of parties and witnesses but may also be deciding the actual outcome of the litigation with-

36. It has been suggested that a defendant who refuses a written request to waive his venue and process defenses and appear in the more convenient forum should be stopped from moving to transfer to that district under § 1404(a). Kaufman, *Observation on Transfers under Section 1404(a) of the New Judicial Code,* 10 F.R.D. 595, 604 (1951).

37. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 61 Sup. Ct. 1020, 85 L. Ed. 1477 (1941), holding that in diversity cases the federal courts must follow the conflict of laws rules prevailing in the states in which they sit. See the devastating criticism of the *Klaxon* case in HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 633-36 (1953); and *cf.* Keeffe et al, *Venue and Removal Jokers in the New Federal Judicial Code,* 38 VA. L. REV. 569, 575 (1952). See also the recent criticism of *Klaxon* by Justices Jackson, Black and Minton, dissenting in Wells v. Simonds Abrasive Co., 345 U.S. 514, 519, 73 Sup. Ct. 856, 97 L. Ed. 1211 (1953).

out examining the merits.[38] But if the law applied is that of the transferor state, equally unsatisfactory results obtain. As suggested by the facts of the *Headrick* case,[39] such a rule places the federal court in the transferee state in the position of applying a different rule of law than would be applied in the courts of the state in which it sits in an action which may have arisen within that state.[40]

One problem regarding the manner of serving process should also be mentioned here. The increased mobility of modern times has made increasingly difficult the task of finding the defendant within the jurisdiction of suit for personal service of process. What can a plaintiff in a federal court action do when the defendant is absent for extended periods from the state of his residence? If the defendant maintains a "dwelling house or usual place of abode" the plaintiff may be able to effect service under Federal Rule 4(d) (1)[41] by leaving copies of the summons "with some person of suitable age and discretion then residing therein." If there is "an agent authorized by appointment or by law to receive service of process" service can be made on the agent. But if the defendant has no agent and does not maintain a dwelling house or usual place of abode or if a person of suitable age and discretion cannot be found residing therein, federal law makes no direct provision for service of process even for federal question cases. In such a situation the plaintiff is relegated to finding a valid state provision for constructive service under the general permission given in Rule 4(d) (7) for service "in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state."[42] If no such

38. See Note, 64 HARV. L. REV. 1347, 1354 (1951); *see* Wells v. Simonds Abrasive Co., 345 U.S. 514, 519, 73 Sup. Ct. 856, 97 L. Ed. 1211 (1953) (dissenting opinion).

39. Headrick v. Atchison, T. & S.F. Ry., 182 F.2d 305 (10th Cir. 1950). A Missouri citizen was injured in a bus accident in California while a passenger on a bus owned by the Santa Fe. During negotiations for a settlement the California statute of limitations ran. Plaintiff brought suit in a New Mexico state court. The New Mexico statute of limitations, which the New Mexico courts would have applied, had not run. The defendant removed the case to the federal court and moved for a dismissal or a transfer under § 1404(a) to the northern district of California. The district court dismissed the action. The court of appeals in reversing, held that if a transfer were ordered, the California district court would be required to apply the New Mexico statute of limitations. *But cf.* Reynolds v. Baltimore & O. Ry., 185 F.2d 27 (7th Cir. 1950), applying laws of transferee state without any indication that law of transferor state differed. See Blume and George, *Limitations and the Federal Courts,* 49 MICH. L. REV. 937, 959-62 (1951).

40. One writer has suggested that the only solution to the dilemma is to refuse to transfer in any situation in which the law in the transferee state would be materially different from that in the transferor state. Note, 64 HARV. L. REV. 1347, 1355 (1951). See also Kaufman, *Observations on Transfers under Section 1404(a) of the New Judicial Code,* 10 F.R.D. 595, 600 (1951).

41. See generally 2 MOORE, FEDERAL PRACTICE 927 *et seq.* (2d ed. 1948).

42. Rule 4(d) (7) has had almost no judicial construction. See 2 MOORE, FEDERAL PRACTICE 943 (2d ed. 1948).

statute is available, the plaintiff may face long delays in bringing suit in the federal courts (or even complete denial of his right of action if it is one within exclusive federal jurisdiction) even though the defendant is within the United States and at all times subject to service within some federal judicial district.[43]

(b) *Corporations.* Consider next the situation where a single plaintiff is suing a single defendant and the defendant is a corporation. Here the venue grant is much wider. Under Section 1391(c) the Judicial Code of 1948 the plaintiff, in either a diversity or federal question case, will find the venue proper (a) in the district or districts where the defendant is incorporated, (b) in any district where the defendant is licensed to do business, and (c) in any district where the defendant is "doing business."[44] Under this statute, venue will usually be proper in the district most convenient for trial of the case. Normally, a corporation will at least be "doing business" in any district in which a cause of action arises against it.[45] In fact, the major venue problem[46] where large multi-state corporations are concerned is that the wide choice given to the plaintiff may be abused by deliberate choice of an inconvenient district in the hope of obtaining a favorable settlement. It is to this situation that Section 1404(a) is directed and most abuses can be corrected by motions to transfer under that section. If a plaintiff having access to a convenient district chooses to sue in an inconvenient one, he is in no position to complain about the delay and added expense involved in transferring the action under 1404(a).[47]

43. Other problems are raised by the fact that residence within the meaning of the venue statutes is generally equated with domicile. See, *e.g.*, King v. Wall & Beaver St. Corp., 145 F.2d 377 (D.C. Cir. 1944); Koons v. Kaiser, 91 F. Supp. 511 (S.D.N.Y. 1950); *but cf.* Townsend v. Bucyrus-Erie Corp., 144 F.2d 106 (10th Cir. 1944). Under these decisions a person who lives six months of the year in one state and six months in another has for purposes of federal venue only one residence and considerable judicial time may need to be expended to determine which state is proper. And furthermore it would seem that no federal court has venue of a federal question case where the defendant is a United States citizen who resides abroad, even though he may spend extended periods within the United States subject to service of process. See Hammerstein v. Lyne, 200 Fed. 165 (W.D. Mo. 1912), holding that no diversity jurisdiction existed in such a situation since the defendant was not a citizen of any state. See generally, Reese and Green, *That Elusive Word, "Residence,"* 6 VAND. L. REV. 561 (1953).

44. 28 U.S.C.A. § 1391(c) (1950).

45. However, there may be problems in the unusual situations where a corporation's only contact with a state is, *e.g.*, to send through that state a single truck which gets involved in an accident or a single salesman who defrauds a customer. Will such isolated acts constitute "doing business" within the meaning of the venue statute?

46. Aside from the conflict of laws problems discussed *supra* which are the same whether corporations or individuals are involved.

47. A frequent motive for suing in a forum distant from the place where the action arose is to get the advantage of the larger jury verdicts awarded in metropolitan centers. This has not been considered a sufficient reason for retaining the suit in the forum of choice. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 510, 67 Sup. Ct. 839, 91 L. Ed. 1055 (1947).

The most difficult problems in connection with corporate defendants are those of service of process. Federal Rule 4(d)(3) provides the *manner* in which service of process shall be made: "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."[48] But no general federal rule or statute deals with the problem of *where* the corporation may be served. When the action has been removed after service of process under state law or when service in an original federal court action is predicated upon a state statute under Rule 4(d)(7), the limitations of the state law upon service would seem to be applicable.[49] Thus if service is made upon an agent appointed under state law to receive service of process[50] or upon a state official under a state law providing that the doing of certain acts within the state shall constitute an implied consent to such service,[51] the limitations of the state statute and decisions upon such service would seem to be controlling. But suppose a corporation is "doing business" within the state within the meaning of Section 1391(c) and service of process is made within the state pursuant to Rule 4(d)(3) upon "an officer, a managing or general agent" of the corporation. Is the service proper only if the corporation is doing sufficient business to be subject to service under state law for suit in a state court? Should the due process restrictions upon state court acquisition of personal jurisdiction over corporations[52] be thus made applicable to the federal courts? Should a state law which requires even more extensive local activity by the corporation than due process demands as a prerequisite to service of process govern the federal courts? Does it make any difference in answering these questions whether the basis of jurisdiction in the federal court is diversity or federal question? Although the issue is by no means clearly settled, the federal courts appear to be holding that both the state law and the due process restrictions upon state law are ap-

48. See generally 2 MOORE, FEDERAL PRACTICE 958 *et seq.* (2d ed. 1948).

49. Cases so holding include Carlisle v. Kelly Pile & Foundation Corp., 175 F.2d 414 (3d Cir. 1949) (state consent statute); Bomze v. Nardis Sportswear, 165 F.2d 33 (2d Cir. 1948) (removed action; opinion by L. Hand). See also Polizzi v. Cowles Magazines, Inc., 345 U.S. 663, 73 Sup. Ct. 900, 97 L. Ed. 1331 (1953) (removed action).

50. See, *e.g.*, North Butte Mining Co. v. Tripp, 128 F.2d 588 (9th Cir. 1942), applying the limitation of a state consent statute to causes of action arising within the state.

51. *E.g.*, Pacific Employers Ins. Co. v. Parry Nav. Co., 195 F.2d 372 (5th Cir. 1952), applying the Texas statute but relying wholly on federal decisions.

52. See, *e.g.*, International Shoe Co. v. Washington, 326 U.S. 310, 66 Sup. Ct. 154, 90 L. Ed. 95 (1945); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 70 Sup. Ct. 927, 94 L. Ed. 1154 (1950); Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437, 72 Sup. Ct. 413, 96 L. Ed. 485 (1952).

plicable,[53] at least in diversity cases.[54] If these holdings are followed it means that situations will continue to arise where a corporation will not be subject to service of process for suits in a federal court where venue is proper even though a responsible officer of the corporation may be found in the state for service of process. It also means a developing confusion resulting from a uniform federal interpretation of "doing business" for purposes of venue existing alongside of 48 varying interpretations of what is sufficient doing business to permit service of process.[55]

One other problem relating to corporations is presented in diversity cases where the plaintiff is a corporation. Should the last clause of Section 1391(c) be construed as making the venue proper when a corporation is plaintiff in any district where the corporation is licensed to do business or is doing business? On its face, the statute would seem to so provide, and at least two district courts have so held.[56] On the other hand, it is doubtful that the draftsmen of Section 1391(c) intended to so widen corporate access to the federal courts[57] and at least one district court has agreed with this view.[58]

(c) *Unincorporated associations.* Finally, consider the problems in the single-plaintiff, single-defendant situation when either plaintiff or defendant is a partnership or unincorporated association. Here there is, of course, a preliminary question of capacity to sue and be

53. See, *e.g.*, Partin v. Michaels Art Bronze Co., 202 F.2d 541 (3d Cir. 1953) (applying state decisions in a diversity case on the basis of the *Erie* doctrine even though they were more restrictive than the due process requirements); Canvas Fabricators v. William E. Hooper & Sons Co., 199 F.2d 485 (7th Cir. 1952) (applying state decisions in a diversity case on basis of *Erie*); Cole v. Stonhard Co., 12 F.R.D. 508 (N.D.N.Y. 1952) (applying the state decisions in a diversity case).

In a number of cases the courts appear to have assumed that the due process restrictions on state power over foreign corporations were the measure of the federal court's power. See, *e.g.*, French v. Gibbs Corp., 189 F.2d 787 (2d Cir. 1951) (opinion by L. Hand in case of diversity action commenced in federal court with service on chairman of board of directors of corporation discussing wholly the federal cases imposing due process limitations upon the states).

"Whether a foreign corporation or other business entity is doing business in a state is a matter of general, not local law." 2 MOORE, FEDERAL PRACTICE 97 (2d ed. 1948). In Partin v. Michaels Art Bronze Co., 202 F.2d 514, 542 n.2 (3d Cir. 1953) the court rejects this statement on the theory that the *Erie* line of cases compels reference to state law.

54. At least in those federal question cases where special venue and process statutes are involved the federal courts appear to be following some notion of federal law. See, *e.g.*, United States v. Scophony Corp. of America, 333 U.S. 795, 68 Sup. Ct. 855, 92 L. Ed. 1091 (1948) (Clayton Act suit); Kilpatrick v. Texas & P. Ry., 166 F.2d 788 (2d Cir.), *cert. denied*, 335 U.S. 814 (1948) (FELA suit).

55. For an excellent and suggestive discussion of the general problem, see HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 959 (1953).

56. Hadden v. Barrow, Wade, Guthrie & Co., 105 F. Supp. 530 (N.D. Ohio 1952); Freiday v. Cowdin, 83 F. Supp. 516 (S.D.N.Y. 1949).

57. See the discussion of the legislative history in Note, 28 IND. L.J. 256 (1953).

58. Chicago & N.W. Ry. v. Davenport, 94 F. Supp. 83 (S.D. Iowa 1950).

sued in its common name. In general, unincorporated associations have litigating capacity in the federal courts in all federal question cases and in diversity cases only when they have such capacity by the law of the state in which the district court is held.[59] Assuming capacity, however, where is the residence of an unincorporated association for venue purposes? The general venue statutes do not cover the problem and the United States Supreme Court has not ruled directly on the issue. In 1942 the second circuit, in the *Sperry Products* opinion by Judge Learned Hand, held that an unincorporated association was an "inhabitant" only of the district in which was located its principal place of business.[60] While this decision rested on a construction of the special venue statute relating to patent infringement suits, it would appear to apply to "residence" within meaning of the present general venue statute and some lower courts have so held.[61] In this connection it should be noted that the liberalization of the venue provisions with reference to corporations in the 1948 Judicial Code was not duplicated for unincorporated associations. If the *Sherry Products* case represents the law, then a large unincorporated association doing business in many states would be a resident for venue purposes only of the district of its principal place of business.[62]

So long as this limited definition of venue prevails, there will normally be a question of the availability of the association for service of process only where the plaintiff in a diversity suit is suing an unincorporated association in the district of the plaintiff's residence. In this situation, the law does not make any provision regarding what is sufficient connection with the state of the district of suit to permit service. Federal Rule 4 specifies the same manner of service as provided for corporations. But no answer is given to the question of what happens when plaintiff in a diversity suit serves in the state of plaintiff's residence "an officer, a managing or general agent" of the association. Is it enough that the association is doing business? Or must it meet the same tests of doing business as a corporation would? And, as seems to be the law with respect to corporations,

59. FED. R. CIV. P. 17(b); *cf.* United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 42 Sup. Ct. 570, 66 L. Ed. 975 (1922). See the discussion in 3 MOORE, FEDERAL PRACTICE 1407 (1948).

60. Sperry Products, Inc. v. Association of American Railroads, 132 F.2d 408 (2d Cir. 1942). See generally HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 965 (1953).

61. Brotherhood of Locomotive Firemen and Enginemen v. Graham, 175 F.2d 802 (D.C. Cir. 1948); Griffin v. Illinois Cent. R.R., 88 F. Supp. 552 (N.D. Ill. 1949); Darby v. Philadelphia Transp. Co., 73 F. Supp. 522 (E.D. Pa. 1947) (partnership). See also 3 MOORE, FEDERAL PRACTICE 1415 (2d ed. 1948).

62. Of course, in the limited situations in which partnerships and unincorporated associations are required by state law to file consents to service of process, the *Neirbo* rule might be applied to find a waiver of venue. See 3 MOORE, FEDERAL PRACTICE 2129 (2d ed. 1948).

are those tests supplied by state rather than federal law? On this problem we have as yet very little judicial assistance.[63]

(2) *Multiple Parties:*[64]

(a) *Individuals.* The rules governing venue and service of process combine to close the doors of the federal courts to most cases involving multiple individual litigants residing in different states. If, for example, a New York plaintiff desires to join in one action in the federal courts two defendants, one residing in California and the other in Illinois, he must first be able to secure service of process upon both the defendants within a single state. If he is able to get over that hurdle and secure personal jurisdiction, he then faces the venue limitations. If the jurisdiction is based in part on the presence of a federal question, there will be no federal district court in which the venue is proper since the statute provides that the suit may be brought "only" in the district "where all defendants reside."[65] If jurisdiction is based solely on diversity of citizenship, venue will be proper in New York (the residence of the plaintiff) and if the plaintiff has been fortunate enough to achieve service of process there on both defendants, the case may go on. Of course, if two plaintiffs are involved, one residing in New York and the other in New Jersey (or even one residing in Buffalo and one residing in New York City), then there will not be any federal district of proper venue for even the diversity case since no district may be found "where all plaintiffs or all defendants reside."[66]

These irrational limitations have the effect of keeping out of the federal courts those cases which they are best qualified to handle—the very cases with which the state courts cannot satisfactorily deal. Where the parties necessary to the complete determination of a controversy reside in different states, it is probably the unusual situation in which the courts of any one state can obtain personal jurisdiction of all the parties. At best this requires the expense both to the parties and to the courts of piecemeal litigation of a unitary controversy. At worst, where indispensable parties are involved, it may mean that no court will have jurisdiction to adjudicate any

63. Kaffenberger v. Kremer, 63 F. Supp. 924 (E.D. Pa. 1945) suggests that the tests for unincorporated associations and partnerships are the same as for corporations. *Cf.* Western Mut. Fire Ins. Co. v. Lamson Bros. & Co., 42 F. Supp. 1007 (S.D. Iowa 1941). See HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 966 (1953). 2 MOORE, FEDERAL PRACTICE 967 (2d ed. 1948) is not helpful on this problem.

64. See generally the very detailed treatment of this problem in 3 MOORE, FEDERAL PRACTICE 2115-43 (2d ed. 1948).

65. 28 U.S.C.A. § 1391(b) (1950); *cf.* Camp v. Gress, 250 U.S. 308, 39 Sup. Ct. 478, 63 L. Ed. 997 (1919). This strict rule is modified slightly by the provisions of § 1392(a): "Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts." See also § 1393(b).

66. 28 U.S.C.A. § 1391(a) (1950).

portion of the controversy. Should not, then, the federal courts, which are national courts established by Congress, be empowered to hear these cases? Certainly, where the case is one arising under federal law, some federal court should be empowered to bring before it all the parties necessary to a complete determination of the controversy. And it is a patently ridiculous result that where indispensable parties to a federal controversy reside in different states within the United States no court, not even a federal court, may settle the controversy. Even where the jurisdiction is based on diversity, the argument for opening the federal courts to determination of cases where multiple parties reside in different states appears irrefutable.[67] Whatever may be the objections to diversity jurisdiction in other situations, here only the federal courts can do complete justice to the parties. Thus in this situation in which there is unquestionable justification for opening the federal courts to the determination of controversies based wholly on state law, the venue and process limitations close their doors.[68]

(b) *Corporations.* The venue and process rules are, of course, much less likely to close the doors of the federal courts where multiple corporate defendants are involved. The broad provision in Section 1391(c) that for venue purposes any judicial district in which a corporation "is incorporated or licensed to do business or is doing business" "shall be regarded as the residence of such corporation" makes it likely that some state will be found in which all the corporate defendants reside.[69] And since, as pointed out above, the corporations will in most instances also all be subject to service of process in such state, the case may be heard there. There will, of course, be a residuum of cases in which a joint residence cannot be found under even these broad rules and in which service of process may not be obtained within a single state. In these cases, the problems are the same as those discussed above for individuals.

The question raised above whether the last clause of Section 1391(c) applies to corporations as plaintiffs is involved here, also. If it does apply, then in diversity cases corporations incorporated in different states can join as plaintiffs and establish venue in a particular district when they are all doing business or licensed to do business in that district.

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67. Cf. HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 897 (1953).

68. Since under the rule of Sperry Products, Inc. v. Association of American Railroads, 132 F.2d 408 (2d Cir. 1942), discussed *supra*, partnerships and unincorporated associations have only one place of residence for venue purposes, the multiple party problems are the same with respect to them as with respect to individuals and will not be separately discussed.

69. See 3 MOORE, FEDERAL PRACTICE 2142 (2d ed. 1948).

SPECIAL VENUE AND PROCESS PROVISIONS

In a number of special situations Congress has recognized that the general venue and process rules are too restrictive and has provided special rules for cases arising under particular federal statutes. Furthermore, the Supreme Court has long held that the general venue statutes do not apply to suits in Admiralty—defendants in such cases may be sued in any district wherein they can be found for service of process.[70] As a result of these two developments, a substantial portion of the federal question cases do not fall under the general statutes.

(1) *Personal actions:*

The special statutes governing private litigation are of four general types. First are the statutes which broaden the venue grant without making any special rules for service of process. Most important of these (in terms of the amount of litigation affected) is the Federal Employers Liability Act which provides that suit may be brought "in the district of residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action."[71] Since FELA actions are brought normally against a single railroad corporation, the effect of this grant of venue is to permit suit in almost any district where the defendant is subject to service of process. Other important examples are the Sherman Act provision that in treble damage actions against individual defendants the suit may be brought "in the district in which the defendant resides or is found or has an agent,"[72] and the provision that suits arising under the acts relating to copyrights "may be instituted in the district in which the defendant or his agent resides or may be found."[73] The Jones Act also slightly broadens the general venue statutes by its provision that suit may be brought in the district "in which the defendant employer resides or in which his principal office is located.[74]

Second are the statutes which in addition to broadening the venue requirements provide special rules governing service of process to insure that process may be served wherever venue is proper. In patent infringement actions venue is placed where the defendant resides, or where he has committed acts of infringement and has a regular and established place of business.[75] Then it is provided that when

70. *Ex parte* Louisville Underwriters, 134 U.S. 488, 10 Sup. Ct. 587, 33 L. Ed. 991 (1890); *cf.* Brown v. C. D. Mallory & Co., 122 F.2d 98 (3d Cir. 1941).
71. 35 STAT. 66 (1908), as amended, 62 STAT. 989, 45 U.S.C.A. § 56 (Supp. 1953).
72. 38 STAT. 731 (1914), 15 U.S.C.A. § 15 (1951).
73. 28 U.S.C.A. § 1400(a) (1950).
74. 38 STAT. 1185 (1915), as amended, 41 STAT. 1007 (1920), 46 U.S.C.A. § 688 (1944).
75. 28 U.S.C.A. § 1400(b) (1950).

the suit is started where the defendant is not a resident but has a regular and established place of business, service of process may be made upon defendant's agent or agents conducting such business.[76] Similarly, the Labor Management Relations Act, after giving the federal courts jurisdiction of actions on certain labor contracts,[77] provides that proceedings by or against a labor organization may be had in the district in which the organization maintains its principal office or in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.[78] It is then provided that service of summons on an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization.[79]

Third are statutes which make a broad grant of venue which would permit suit in districts where service of process could not be effected under normal rules and then expressly permit nation-wide service of process. One of the earliest of these came in the Clayton Act, where for suits under the antitrust laws against corporations, the venue was broadened to include the judicial district of which it is an inhabitant, or where it is found or where it transacts business.[80] Then because merely transacting business within a district (which would make the venue proper) might not be enough to permit service of process, it was also provided that "all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found."[81] Under this provision, service outside the state where the suit was brought is permitted.[82] Similarly the Securities Act of 1933 and the Trust Indenture Act of 1939 provide that private suits to enforce liabilities created by the Acts "may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found."[83] A similar provision is also contained in the Securities and Exchange Act of 1934.[84] None

76. 28 U.S.C.A. § 1694 (1950).
77. 61 STAT. 156 (1947), 29 U.S.C.A. § 185(a) (Supp. 1953). Section 185(b) establishes the capacity of the labor organizations to sue and be sued. See Note, 7 VAND. L. REV. 374 (1954).
78. 61 STAT. 156 (1947), 29 U.S.C.A. § 185(c) (Supp. 1953).
79. 61 STAT. 156 (1947), 29 U.S.C.A. § 185(d) (Supp. 1953).
80. 38 STAT. 736 (1914), 15 U.S.C.A. § 22 (1951).
81. *Ibid.*
82. See United States v. Scophony Corp. of America, 333 U.S. 795, 809, 68 Sup. Ct. 855, 92 L. Ed. 1091 (1948).
83. 48 STAT. 86 (1933), as amended, 63 STAT. 107 (1949), 15 U.S.C.A. § 77v (1951) (Securities Act); 53 STAT. 1175 (1939), 15 U.S.C.A. § 77vvv (1951) (Trust Indenture Act); see Stella v. Kaiser, 82 F. Supp. 301 (S.D.N.Y. 1948) holding valid service of process in California in a New York suit.
84. 48 STAT. 902 (1934), as amended, 63 STAT. 107 (1949), 15 U.S.C.A. § 78aa

of these statutes, however, provide directly for the multiple party problem. Venue must still be proper in the district court for all defendants joined, even though service of process is effected elsewhere.[85] Of course, the very broad venue grants eliminate most of the problem—for example, in the Securities Act where as to all defendants who participated in a forbidden sale of securities the district of the sale is made proper venue, or the Securities and Exchange Act where the district "wherein any act or transaction constituting the violation occurred" is apt to provide a common venue for all defendants likely to be joined.

Fourth are the statutes in which Congress has faced squarely the multiple party problem. The most significant of these, probably, relates to interpleader. Here venue is established in the judicial district where one or more of the claimants reside[86] and service of process is authorized outside the state to bring in the outside claimants.[87] A more limited provision is made for shareholders' suits. Venue is fixed in any district where the corporation might have sued the same defendants[88] and then service beyond that district is permitted to bring the corporation into court.[89] Another provision is found in the Interstate Commerce Commission Act. In suits by shippers against water carriers to recover on awards of damages made by the Commission, it is provided that all parties who have been involved in a single Commission order may be joined as plaintiffs or defendants "and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant has his or its principal operating office."[90]

The Judicial Code of 1948 raised two problems with respect to these special venue statutes. The first of these to arise was the question whether the new transfer provisions in Section 1404(a) and 1406(a) applied to suits governed by special venue provisions which

(1951); see Robinson v. Difford, 92 F. Supp. 145 (E.D. Pa. 1950) (upholding service of process outside the state).

85. In Government prosecutions under the Sherman and Clayton Acts express provision is made for the multiple party situation and if the action is brought at the residence of one of the parties the court may order all others served and brought in regardless of their residence. 26 STAT. 210 (1890), 15 U.S.C.A. § 5 (1951); Standard Oil Co. v. United States, 221 U.S. 1, 31 Sup. Ct. 502, 55 L. Ed. 619 (1911). No similar provision is made for private litigation.

86. 28 U.S.C.A. § 1397 (1950).

87. 28 U.S.C.A. § 2361 (1950).

88. 28 U.S.C.A. § 1401 (1950).

89. 28 U.S.C.A. § 1695 (1950).

90. 54 STAT. 940 (1940), as amended, 63 STAT. 281 (1949), 49 U.S.C.A. § 908(g) (1951); *cf. id.* § 908(e).

were not located in the Judicial Code. The Supreme Court has held that Section 1404(a) is applicable to FELA and antitrust actions.[91] The reasoning used would indicate a similar result would be reached with respect to other special venue statutes and to Section 1406(a). The second question is the more difficult one and has yet to be resolved by the Supreme Court. Does the provision of Section 1391(c) that the district in which a corporation is incorporated or licensed to do business or is doing business "shall be regarded as the residence of such corporation for venue purposes" apply to special venue statutes? With respect to most of the special venue statutes, an affirmative answer will have little effect since they already fix venue in terms of where the defendant may be found or is doing business. In some cases, however, a substantial change would be effected. Patent infringement actions may be brought outside the defendant's residence only where he has committed acts of infringement *and* has a regular and established place of business.[92] Application of the definition of residence from Section 1391(c) would mean that corporate defendants would be suable wherever doing business or licensed to do business without regard to whether acts of infringement had been committed within the district. Lower federal courts have been divided on this issue.[93] Some broadening would be involved in the venue for interpleader actions. If one of the claimants were a corporation, venue would then be proper wherever that corporation was doing business or licensed to do business. Venue under the Jones Act would be widened by application of this provision—for under it the defendant if a corporation would be suable wherever doing business or licensed to do business instead of only where incorporated or where its principal office is located. Several district courts have held Section 1391(c) applicable to Jones Act cases.[94]

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91. *Ex parte* Collett, 337 U.S. 55, 69 Sup. Ct. 944, 93 L. Ed. 1207 (1949) (FELA action); Kilpatrick v. Texas & Pacific Ry., 337 U.S. 75, 69 Sup. Ct. 953, 93 L. Ed. 1223 (1949) (same); United States v. National City Lines, Inc., 337 U.S. 78, 69 Sup. Ct. 955, 93 L. Ed. 1226 (1949) (anti-trust action); see Notes, 37 CALIF. L. REV. 697 (1949), 28 N.C.L. REV. 100 (1949).

92. 28 U.S.C.A. § 1400(b) (1950); see generally Notes, 21 GEO. WASH. L. REV. 610 (1953), 47 N.W.L. REV. 699 (1952).

93. Upholding the application of § 1391(c) to § 1400(b), see Dalton v. Shakespeare Co., 196 F.2d 469 (5th Cir. 1952); Farr Co. v. Gratiot, 92 F. Supp. 320 (S.D. Cal. 1950). Rejecting the application of § 1391(c) to § 1400(b), see C-O-Two Fire Equipment Co. v. Barnes, 194 F.2d 410 (7th Cir. 1952); Gulf Research and Development Co. v. Schlumberger Well Surveying Corp., 92 F. Supp. 16 (S.D. Cal. 1950). The Supreme Court granted certiorari in the *C-O-Two Fire Co.* case but affirmed the judgment below by an equally divided Court without opinion. Cardox Corp. v. C-O-Two Fire Equipment Co., 344 U.S. 861, 73 Sup. Ct. 102, 97 L. Ed. 668 (1952). 3 MOORE, FEDERAL PRACTICE 2139, 2140 (2d ed. 1948) asserts that § 1391(c) was intended to qualify § 1400(b). See also Notes, 21 GEO. WASH. L. REV. 610 (1953), 47 N.W.L. REV. 699 (1952).

94. Phillips v. Pope & Talbot, Inc., 102 F. Supp. 51 (S.D.N.Y. 1952); Bagner v. Blidberg Rothchild Co., 84 F. Supp. 973 (E.D. Pa. 1949).

(2) *Local actions:*

The special situation regarding local actions should also be noted briefly. The courts have long read into the general venue statutes an exception for local actions. Ever since Livingston sought to sue Jefferson in the federal district court in Virginia for trespass to land in Louisiana, it has been held that residence of the defendant alone is not enough where local actions are involved.[95] Such actions must be brought where the property is. But, apparently, they can be brought in the district where the property is only if all the defendants reside in and are subject to service of process in that district.[96] Exception to these very restrictive rules is made for certain types of local actions by Section 1655 of the Judicial Code.[97] If the action is one "to enforce any lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district," then the suit may be brought without regard to the residence of the defendants. Any defendants that are not subject to service of process within the state of suit may be brought into the action by personal service outside the state, or, if that be not practicable, by publication. If the absent defendant does not appear, the judgment can affect only property which is the subject of the action;[98] if he does appear to contest on the merits even the in rem portion of the proceedings, however, he subjects himself to the jurisdiction of the court to render a personal judgment.[99]

## SUGGESTIONS FOR LEGISLATIVE REVISION

It would be premature to present a detailed draft of proposed changes in the federal venue and process rules. Instead, general suggestions will be made as to the types of changes which might be made to remove the major defects in the present rules.

95. Ellenwood v. Marietta Chair Co., 158 U.S. 105, 15 Sup. Ct. 771, 39 L. Ed. 913 (1895); Livingston v. Jefferson, 15 Fed. Cas. 660, No. 8,411 (C.C.D. Va. 1811); see Casey v. Adams, 102 U.S. 66, 67, 26 L. Ed. 52 (1880); Blume, *Actions Quasi in Rem under Section 1655, Title 28, U.S.C.*, 50 MICH. L. REV. 1, 28 (1951); *but cf.* Reasor-Hill Corp. v. Harrison, 220 Ark. 521, 249 S.W.2d 994 (1952), 6 VAND. L. REV. 786 (1953).

96. Ladew v. Tennessee Copper Co., 179 Fed. 245 (C.C.E.D. Tenn. 1910), *aff'd*, 218 U.S. 357 (1910). In HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 955 (1953) it is noted that no Supreme Court decision has directly held that a nonresident defendant could not be sued in a local action in the district where the property was.

97. 28 U.S.C.A. § 1655 (1950). The cases are discussed in Blume, *Actions Quasi in Rem under Section 1655, Title 28, U.S.C.*, 50 MICH. L. REV. 1 (1951); HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 952-57 (1953).

98. 28 U.S.C.A. § 1655 (1950).

99. Campbell v. Murdock, 90 F. Supp. 297 (D. Ohio 1950); see 2 MOORE, FEDERAL PRACTICE 2264 (2d ed. 1948); Blume, *Actions Quasi in Rem Under Section 1655, Title 28, U.S.C.*, 50 MICH. L. REV. 1, 22; *but cf.* McQuillen v. National Cash Register Co., 112 F.2d 877 (4th Cir. 1940); 51 COL. L. REV. 242 (1951).

(1) *Venue:*

As pointed out above, the chief defects in the present general venue statutes are two. First, the definition of venue solely in terms of the residence of the parties forces plaintiffs to commence many actions away from the districts most convenient for trial and thus promotes unnecessary transferring of actions. Second, the requirement that all defendants must be residents of the district in which suit is brought excludes from the federal courts a large share of the multiple party actions involving individuals residing in different states despite the fact that only the federal courts are equipped to handle such actions satisfactorily. Any revision should do something about these two problems.

Perhaps the best solution to both problems would be to create a new ground of venue defined in terms more directly related to trial convenience than is residence of the parties. The principal difficulty here is one of drafting a statute which is sufficiently specific to avoid creating extensive and continuing litigation over its application and yet which will normally place the action in a reasonably convenient district. Perhaps as close as one can come to achieving this result would be to adopt a statute similar to that proposed by Dean Stevens for state practice, providing for venue in any district "in which the wrongful act, or part thereof, occurred."[100] In the generality of cases a statute of this kind would be sufficiently clear in its application. In doubtful cases the plaintiff would be able to avoid litigation over its meaning by commencing his action in the district of residence of the defendant. Such a statute would normally provide at least one district in which all parties could be sued. It would in most instances permit the plaintiff to commence his suit in the district most convenient for trial of the case and hence avoid transfers and unnecessary conflict of laws problems. In particular cases it would, of course, be subject to abuse by opening up to the plaintiff districts which would be very inconvenient to all or part of the defendants. This problem will be discussed further in connection with motions to transfer.

Even with the addition of such a new ground of venue, it would seem that venue based on residence of the defendant should be retained as an alternative. Convenience to the defendant is an important consideration in determining the proper district for trial, and his residence may frequently be the most convenient district.[101] Two changes should be made in the present statute, however. The venue should be made proper in the district where the defendant, or de-

100. Stevens, *Venue Statutes: Diagnosis and Proposed Cure,* 49 MICH. L. REV. 307 (1951).
101. *Id.* at 311-12.

fendants, or any one of them resides.[102] This change would be desirable even with the addition of a new ground of venue which permits joinder of all defendants in some district; it would be essential if no such new ground is adopted. And special provision should be made to take care of the venue of actions against partnerships and unincorporated associations. It would seem most realistic to treat such defendants in approximately the same way that corporations are treated; hence it is suggested that venue be made proper wherever they are licensed to do business or are doing business. Again these changes would have the effect of opening up new choices to the plaintiff and hence make important the retention of provisions for transfer of actions.[103]

Venue based on residence of the plaintiff has little or no relationship to convenience for trial and should be eliminated entirely. The broad definition of residence where corporate defendants are involved in Section 1391(c) eliminated most of the practical justification for this ground of venue. Provision whereby all defendants may be joined in a single district even though they do not all reside there will eliminate any justification which may remain.

(2) *Service of Process:*

The broadened venue rules suggested above should be implemented by a general provision for nation-wide service of process. Such service is now permitted in a limited number of special situations (discussed above) and no valid reason appears why it should not be made general. In fact, personal service outside the district would seem preferable (in terms of insuring that actual notice is received) to the forms of constructive service and service upon state officials which may now be permitted through following state practice. Thus in situations in which a plaintiff is injured in the state of his residence by a nonresident motorist, present practice permits what is in effect nation-wide service of process. But instead of direct service upon the defendant at the state of his residence, the forms must be observed of service upon a state official who mails the process to the defendant. Such procedural clumsiness is compelled for actions in the state courts by due process limitations.[104] In the federal courts, however,

102. Such a provision is common in state practice. See the listing of statutes, *id.* at 327 n.111. Professor Bunn has suggested such a change limited to federal question cases. BUNN, JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES 118 (5th ed. 1949).

103. Dean Stevens deals at length with the problem of bad faith joinder of a defendant to control venue where the statute lays venue at the residence of any one of the defendants and suggests a special statute to permit attack on the plaintiff's good faith. Stevens, *Venue Statutes: Diagnosis and Proposed Cure*, 49 MICH. L. REV. 307, 329-31, 338 (1951). No such provision would appear to be needed in federal practice, however, so long as any defendant is permitted to move for a transfer of the action to a more convenient district.

104. See Hess v. Pawloski, 274 U.S. 352, 47 Sup. Ct. 632, 71 L. Ed. 1091 (1927). Also *cf.* the use of substituted service to bring the out-of-state de-

there is no constitutional impediment to Congress treating the entire country as a single jurisdiction and permitting service of process anywhere within it.[105] And in terms of sensible administration of justice, it would seem that the plaintiff should be permitted to commence his suit in the district most convenient for trial of the case and then serve process upon the defendant wherever he may be found in the United States.

Uniform and complete federal provisions governing both the manner and place of serving process should be made applicable to all actions in the federal courts. With nation-wide service of process, any need for referring to state practice would be eliminated and the federal provisions could be greatly simplified. With respect to individuals, for example, all normal situations would seem to be covered by a simple provision like that now contained in Rule 4 for service "by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein."[106] To cover the unusual situations where the defendant has no usual place of abode and is seeking to evade service of process, some form of substituted service, for which there are many models in state practice,[107] would need to be provided. With respect to corporations, partnerships, and unincorporated associations, it would seem sufficient to limit service to "an officer, a managing or general agent," such service to be permitted in any district in which such officer or agent is engaged in the business of his company. With nation-wide service of process there will always be some state in which service can be effected upon an officer or agent of the company and hence there would no longer be need for service upon statutory agents in federal court actions.

(3) *Transfer of Actions:*

(a) *For the convenience of parties and witnesses.* The liberalized rules governing venue and service of process suggested above will open up new possibilities of abuse by plaintiffs in selecting inconvenient forums. To deal with this problem, district courts must retain the power to transfer actions for the convenience of parties and

fendant before state courts as illustrated in Mullone v. Central Hanover Bank and Trust Co., 339 U.S. 306, 70 Sup. Ct. 652, 94 L. Ed. 865 (1950).

105. See Robertson v. Railroad Labor Board, 268 U.S. 619, 622, 45 Sup. Ct. 621, 69 L. Ed. 1119 (1925) ("Congress has power, likewise, to provide that the process of every district court shall run into every part of the United States").

106. FED. R. CIV. P. 4(d)(1). The additional authorization now in the Rule of service upon "an agent authorized by appointment or by law to receive service of process" would not be needed since the defendant would be somewhere subject to service under the other rules.

107. See *e.g.*, CAL. CODE CIV. PROC. §§ 412, 413 (1953); N.Y. CIV. PRAC. ACT §§ 230, 231.

witnesses and in the interests of justice. Experience with Section 1404(a) has demonstrated that it is in the main a sufficient protection of the defendant's interests. In fact, it may have gone further and given to the defendant a delaying weapon which is subject to as much abuse as is the plaintiff's choice of venue. And its use has created many difficult choice of law problems for the federal courts. Hence, certain revisions would seem to be needed.

First, consideration should be given to the possibility of listing in the statute the specific factors which are to be considered by the courts in ruling on motions to transfer.[108] The generality of 1404(a), coupled with the difficulty of appellate review, leaves the district court in each case quite at large in determining the factors to be considered. This vagueness in turn makes it easier for a defendant whose motive is delay to move for a transfer and get extended judicial consideration of his motion. No attempt is made here to draft an appropriate listing of factors. Such a task can be accomplished only after both detailed examination of the reported district court decisions under 1404(a)[109] and careful consideration by a large segment of the active federal bar.

Second, express provision should be made for motions to transfer by any single defendant in multiple party situations. If the venue rules are changed to permit the plaintiff to join all defendants in a single district no matter where they reside, the district of suit may be convenient for some defendants, inconvenient for others. In this situation any defendant should be able to invoke the discretion of the court to transfer the case to that district which is most convenient for the parties as a whole. Adoption of the broadened venue rules suggested above would eliminate any real necessity for motions to transfer by the plaintiff for convenience of parties and witnesses and hence the statute should be expressly limited to motions by defendants.

Third, no more than one transfer should be permitted of any action and all forms of direct appellate review (by appeal or by mandamus) of orders granting or denying transfer should be eliminated. Review on appeal from the final judgment would, of course, be open as in other cases and a reversal would be possible where the standard of Section 2111 of the Judicial Code could be met by a showing that the ruling on the motion to transfer did affect the substantial rights of the parties. The reasons for such limitation of appellate review have been well stated by Judge Goodrich speaking for the Court of Appeals

108. This suggestion has also been made by Judge Kaufmann, *Observations on Transfers under Section 1404(a) of the New Judicial Code,* 10 F.R.D. 595, 608 (1951).

109. See the examination of factors in Notes, 41 CALIF. L. REV. 507 (1953), 28 TEXAS L. REV. 688 (1950).

for the Third Circuit sitting *en banc:*[110] "We think that this practice [of appellate review of orders granting or denying motions to transfer under 1404(a)] will defeat the object of the statute. Instead of making the business of the courts easier, quicker and less expensive, we now have the merits of the litigation postponed while appellate courts review the question where a case may be tried.

"Every litigant against whom the transfer issue is decided naturally thinks the judge was wrong. It is likely that in some cases an appellate court would think so, too. But the risk of a party being injured either by the granting or refusal of a transfer order is, we think, much less than the certainty of harm through delay and additional expense if these orders are to be subjected to interlocutory review by mandamus.

"We do not propose to grant such a review where the judge in the district court has considered the interests stipulated in the statute and decided thereon. . . .

"We realize that the view we express is not the one which some of our judicial brethren are following with regard to this statute.[111] But we cannot escape the conclusion that it will be highly unfortunate if the result of an attempted procedural improvement is to subject parties to two lawsuits: first, prolonged litigation to determine the place where a case is to be tried; and, second, the merits of the alleged cause of action itself."[112]

Fourth, there must be a statutory abrogation of the rule of *Klaxon Co. v. Stentor Electric Mfg. Co.*[113] There are, of course, many reasons, beyond the scope of this paper, for permitting the federal courts to develop their own conflict of laws rules applicable to all federal court actions.[114] Here, it is enough to indicate that as long as the *Klaxon*

110. All States Freight, Inc. v. Modarelli, 196 F.2d 1010, 1011-12 (1952).

111. See, *e.g.,* Dairy Industries Supply Ass'n v. La Buy, 207 F.2d 554 (7th Cir. 1953); Wiren v. Laws, 194 F.2d 873 (D.C. Cir. 1951); Shapiro v. Bonanza Hotel Co., 185 F.2d 777 (9th Cir. 1950); Foster-Milburn Co. v. Knight, 181 F.2d 949 (2d Cir. 1950); Gulf Research & Development Co. v. Harrison, 185 F.2d 457 (9th Cir. 1950); Atlantic Coast Line R.R. v. Davis, 185 F.2d 766 (5th Cir. 1950); Ford Motor Co. v. Ryan, 182 F.2d 329 (2d Cir.), *cert. denied,* 340 U.S. 851 (1950). These cases are discussed and approved in 39 VA. L. REV. 105 (1953). See also Kaufman, *Observations on Transfers under Section 1404(a) of the New Judicial Code,* 10 F.R.D. 595 (1951).

112. In a recent case the Supreme Court has held that mandamus is not available to review an order of transfer under 28 U.S.C.A. § 1406(a) (1950). Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 74 Sup. Ct. 145 (1953). The Court reasoned that writs of mandate could not be used as substitutes for an appeal, that they were available only when the trial court was exceeding its jurisdiction. In ruling on a motion to transfer, the Court said that a trial judge was clearly acting within his jurisdiction. This reasoning would seem to control actions under § 1404(a) also.

113. 313 U.S. 487, 61 Sup. Ct. 734, 85 L. Ed. 1115 (1941); see Braucher, *The Inconvenient Federal Forum,* 60 HARV. L. REV. 908, 937 (1947).

114. See, *e.g.,* HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 633-36 (1953); Cook, *The Federal Courts and the Conflict of Laws,* 36 ILL. L. REV. 493 (1942); *cf.* the criticism of *Klaxon* by Justices Jackson,

rule prevails the whole scheme for transferring actions between districts breaks down whenever state law is relevant and different rules would be applied by the state courts of the transferor and transferee forums. Free transfer of actions in order to insure trial at the most convenient forum is possible only if all federal courts follow the same conflict of laws rules and hence will apply the same law to any particular action.

(b) *Where wrong venue laid.* Even under liberalized venue rules there will be situations where the plaintiff inadvertently selects a district where the venue is improper. This situation is now taken care of by the provision in Section 1406(a) that the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." This statute is deficient, however, in not providing any standards for determining to which district the transfer shall be made when there are several in which the action "could have been brought." The only relevant standards would seem to be those of convenience to parties and witnesses which are involved in Section 1404(a) transfers. Hence, a more sensible provision here would seem to be something like the following: "The district court of a district in which is filed a case laying venue in the wrong division or district shall, on timely and sufficient objection made by the defendant, transfer the case to any district or division for the convenience of parties and witnesses, in the interest of justice, as provided in section 1404(a)."

(4) *Special Venue and Process Provisions:*

Adoption of the more liberal venue and process rules suggested above would eliminate the need for substantially all of the present special venue and process rules. These statutes have been adopted in each case to provide more liberal rules than those of the general statutes. With more liberal rules generally applicable these special provisions would no longer serve a useful purpose. It may be, however, that in special situations Congress will want to narrow the broad general rules.[115] Hence, it would seem that any revision should provide that unless special exceptions are made all special statutes governing venue and process are thereby repealed. During the revision process, each of these statutes should be examined to see if there is special reason for restricting the broad general rules and, if so, explicit

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Black, and Minton, dissenting in Wells v. Simonds Abrasive Co., 345 U.S. 514, 519, 73 Sup. Ct. 57, 97 L. Ed. 634 (1953).

115. See, *e.g.*, the argument that § 1404(a) should not apply to FELA actions in Black and Black, *Injustices in the Federal Forum Non Conveniens Rule*, 3 UTAH L. REV. 314 (1953). The contrary considerations are presented in Gibson, *The Venue Clause and Transportation of Lawsuits*, 18 LAW & CONTEMP. PROB. 367 (1953); Note, 29 IND. L.J. 97 (1953).

provision should be made. One specific provision which should clearly be made is to clarify the rules governing local actions. A wise solution would appear to be to expand the coverage of Section 1655 to include all in rem or quasi-in-rem actions, and then provide that all other actions (whether or not treated as local actions at common law) shall be governed solely by the general venue and process statutes.[116] Thus it would seem clear that actions for trespass to land should be governed by the general statutes and not confined to the location of the land.

(5) *The Diversity of Citizenship Problem:*

One immediate objection to the broadened venue and process provisions suggested above will be that they will channel even more diversity cases into the federal courts with all the consequent problems of federal courts dealing with state law issues. This objection must, it seems to the writer, be met in another way. If the diversity jurisdiction is thought to be undesirable,[117] it should be directly eliminated or cut down through amendment to the jurisdictional statute. The present venue and process rules, as suggested above, combined with the *Strawbridge* rule of diversity jurisdiction,[118] have the effect of keeping out of the federal courts the very cases which they are better equipped to deal with than the state courts. Hence, an expansion of venue and process which gives the plaintiff a better opportunity to bring his action in the most convenient district (thus reducing the federal judicial burden of transfer or of trial) and which opens the doors of the federal courts to those cases where multiple defendants reside in different states and cannot all be brought before a single state court seems clearly to be desirable.

If this results in too great an expansion of federal judicial business, thought should be given to a jurisdictional statute which would give the federal courts jurisdiction of nonfederal question cases in all those situations and only those situations where there are several defendants and the defendants reside in different states, even though one or more of the defendants may reside in the same state as the plaintiff. Thus in the simple situation where Jones of New York is suing Smith of Pennsylvania on a state law issue, the litigation would take place in the state courts. But where Jones of New York has been injured through the joint or concurrent negligence or fraud of Smith of Pennsylvania and Jensen of Minnesota and Watson of New

116. See the suggestions in Blume, *Actions Quasi in Rem under Section 1655, Title 28, U.S.C.*, 50 MICH. L. REV. 1, 30 (1951).

117. See HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 893-97 (1953); Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 LAW & CONTEMP. PROB. 216, 234-40 (1948).

118. Strawbridge v. Curtiss, 3 Cranch 267, 2 L. Ed. 435 (U.S. 1806), which has been interpreted as requiring complete diversity between each plaintiff and each defendant. See HART AND WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 901-02 (1953).

York, he would be able to join them all for suit in a federal district court since it might be impossible to get jurisdiction of them all in any one state court.

(6) *The Overall Scheme:*

In general, the venue and process provisions suggested here would result in the following scheme, one which to the writer is far more logical and simpler of application than our present complex rules.[119]

The plaintiff will be given a wide choice of venue. He can select a district where the wrongful act or part thereof occurred or a district where one or more of the defendants reside. If the defendant is a partnership or unincorporated association, he will have (as he will continue to have with respect to corporations) the choice of any district in which the defendant does business. With these choices the plaintiff will in most cases be able to select a district which is reasonably convenient for trial of the case and retain it there without the expense and delay of transfer. And with nation-wide service of process, he will be able to get personal jurisdiction of all parties in any district where venue is proper.

If the plaintiff abuses his wide choice of venue and selects an inconvenient forum, the defendant will be protected by his right to invoke the discretion of the court to transfer the case to a district which is more convenient for trial. Unnecessary delay will be minimized by eliminating the possibility for appellate review of the order of transfer. Choice of law problems will be minimized by the development of federal precedents which make the same law applicable in whatever district the case is tried.

In federal question cases the present restrictions which force many multiple defendant suits into the state courts will be eliminated and the plaintiff enabled to bring all proper parties before one district court. If only the venue and process rules are changed, similar results will obtain in diversity litigation with respect to multiple party actions within the diversity litigation. If, however, the revision goes further to deal with jurisdiction, it might bring into the federal courts all those diversity cases where the defendants resided in more states than one (whether or not the *Strawbridge* rule of complete diversity is satisfied) and remand for exclusive state court determination all cases where the defendants reside in a single state.

Finally, substantially all special venue and process statutes will be eliminated as will all reference to state laws governing service of process. One uniform scheme of venue and process will govern all actions in the federal courts.

119. For strong pleas for changes along the general lines suggested here for both federal and state cases, see Foster, *Place of Trial—Interstate Application of Intrastate Methods of Adjustment*, 44 HARV. L. REV. 41 (1930); Jackson, *Full Faith and Credit—the Lawyer's Clause of the Constitution*, 45 COL. L. REV. 1, 22-24 (1945).