



# ALLIANCE FOR JUSTICE

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## MEMBERS:

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Business and Professional People for the  
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Center for Law and Social Policy  
Center for Law in the Public Interest  
Center for Public Representation  
Center for Reproductive Law & Policy  
Center for Science in the Public Interest  
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The Tides Center  
The Wilderness Society  
Welfare Law Center  
Women's Law Project

Commission on Structural Alternatives for  
Federal Courts of Appeals  
Washington, D.C. 20544

June 1, 1998

Dear Commissioners:

The Alliance for Justice is a national association of public interest organizations that works on federal judicial issues and access to justice on behalf of underrepresented persons. The Alliance has long been concerned with the integrity of the federal courts and more particularly about current efforts to restructure the federal court system.

For more than 25 years, some Members of Congress have suggested splitting the Ninth Circuit, claiming that it is too large in population, geography, and case filings. Proponents argue that the court is so overburdened that it is last among all circuits in terms of the time delay between filing an initial notice of appeal and final disposition of the case. However, the Administrative Office of the United States Courts recently released statistics showing that the Ninth Circuit is third most timely among all circuit courts in terminating appeals on the merits.

To the extent that there are problems with the ongoing review of cases, this situation has occurred primarily because of the slow filling of vacancies by the United States Senate, and not because of the size of the court. For much of 1997, 10 out of 28 seats in the Ninth Circuit were vacant, and, even with three confirmations so far in 1998, seven remain. The effect of these vacancies has been immense. While the Ninth Circuit had begun to make significant progress in managing its large caseload, the vacancy crisis has had a debilitating effect, leading Chief Judge Proctor Hug, Jr., to state: "We simply do not have enough active . . . judges to hear and decide cases in a prompt and timely manner."

While a vocal contingent in Congress propose an immediate split of the court, virtually all Ninth Circuit judges and bar associations in the jurisdiction support a single unified Ninth Circuit. When the *Almanac of the Federal Judiciary* recently conducted 110 interviews with Ninth Circuit practitioners in preparation for its May 1998 supplement, more than 65 offered unsolicited comments opposing any split of the Circuit and only two lawyers favored the split. Those who spoke in favor of a unified circuit praised its efficiency in handling the large caseload, and the benefits stemming from the circuit's diversity and size.

The real purpose behind efforts to split the Ninth Circuit is to support the resource-development interests of the Upper Northwest, which see the court as unfriendly to their claims. Timber industry advocate Mark Rutzick of Preston, Thorgrimson, Ellis & Holman states that: "judges removed from the Pacific Northwest tend to have a limited understanding of the facts that are so critical to the decisions the district court judges make. They don't understand the practical effects, in terms of the environmental issues in the Pacific Northwest—timber-harvesting and road building on public lands." This sentiment is reflected in statements by split proponents in Congress who state that the court is dominated by "California-centered justice and a California philosophy."

Responding to these critiques, Alfred Goodwin, a former Ninth Circuit Chief Judge, said they, "see Californians as spending most of their time in Malibu, not being aware of life in the rugged outdoors. . . . It's a funny coincidence that every time they start to build up steam [to split the circuit], an environmental case has just come down." Ninth Circuit Judge Alex Kozinski proclaims: "I'm no big friend of the environment—I'm pretty conservative. And I haven't seen a lot of outrageous things happen. I've seen a bunch of laws written in a mushy way getting applied by judges who have a view, but who aren't doing anything terribly outrageous. . . . If you want to change what courts do, you're going to have to write better laws." And, Chief Judge Hug contends that "if there are a few high-profile cases that are decided in such a way as to be unpopular, there is a remedy for that through the Supreme Court. My sense is that this is a wholly inappropriate reason to suddenly decide on changing the entire structure of a court." Even California Governor Pete Wilson has noted, "the real issue appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit while keeping others in another because of concerns, whether perceived or real, over particular judges' perspectives or judicial philosophy."

The Alliance for Justice opposes any legislation which would split the Ninth Circuit on the basis of decisions rendered by the court. Doing so would set a dangerous precedent and upset nonpartisan Congressional oversight of court administration and structures. We urge the Commission to recommend to Congress that it maintain a single unified Ninth Circuit Court of Appeals.

Sincerely,



Nan Aron  
President