

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

HERBERT Y. C. CHOY

SENIOR UNITED STATES CIRCUIT JUDGE

P. O. BOX 50127

HONOLULU, HAWAII 96850

May 26, 1998

Commission on Structural Alternatives
for the Federal Courts of Appeals
One Columbus Circle, N.E.
Washington, D.C. 20544

In lieu of testifying at your San Francisco hearing on May 29, 1998, I submit this letter to indicate my support of and joinder in the statements of certain of my colleagues on the Ninth Circuit Court of Appeals, which have been sent to you to date.

I was appointed to and took office on the Ninth Circuit Court on May 12, 1971 and assumed senior status on October 3, 1984 and am continuing to serve in that capacity.

I fully agree with the statements of my colleagues which dispel the notion of some critics that our court is too large to dispense justice of acceptable quality and timeliness. Those statements in chronological order are from:

J. Clifford Wallace, dated April 3, 1998

Alfred T. Goodwin, dated May 1, 1998

Charles E. Wiggins, dated May 4, 1998

David R. Thompson, dated May 12, 1998

Proctor Hug, dated May 20, 1998

Mary M. Schroeder, dated May 20, 1998

I also fully agree with the statement dated April 24, 1998 by William R. Schwarzer, Senior United States District Judge and former Federal Judicial Center Director.

While this may not strictly be within the scope of the Commission's study, it may be worth noting the Vol. 5, No. 1, Fall 1981 Hastings International and Comparative Law Review article by your Executive Director Daniel J. Meador on "Appellate Subject Matter Organization: The German Design from an American Perspective". In that article, at pages 56-57, Professor Meador says:

One of the largest American appellate courts, in terms of number of judges, is the United States Court of Appeals for the Ninth Circuit, with twenty-three judges. Appellate courts with twelve or fifteen judges are considered large in the United States. When the figure rises much above that, apprehensions increase about unmanageability and threats to coherent, uniform jurisprudence. Indeed, there is a widespread American belief that a single appellate court having more than nine judges is unmanageable. In Germany, by contrast, the smallest of the intermediate appellate courts have seventeen judges; the largest has 149 judges. (FOOTNOTE OMITTED.) The average number of judges on all of the nineteen intermediate appellate courts is seventy-two. If these appellate courts, or the top court with its 110 judges, were organized and operated like American appellate courts, there would be chaos in the law.

The key to the viability of appellate courts of such sizes lies in the system of internal subject matter organization. With a carefully designed plan of subject

matter allocation of the docket among the judges, there is almost no limit to the total number of judges who may serve on the court without destroying the coherence of the decisional law. Subject matter organization may indeed be the ultimate answer to the problem of high volume in appellate courts.

Internal subject matter organization may be worth consideration by this Commission.

Respectfully submitted,

A handwritten signature in cursive script that reads "Herbert Y.C. Choy".

HERBERT Y.C. CHOY
SR. UNITED STATES CIRCUIT JUDGE