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VIA FACSIMILE

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

Gentlemen:

My name is Michele A. Gammer. I am submitting this written statement of lieu of live testimony as I am unable to attend the May 27 hearing in Seattle due to my being lead counsel in a trial set for the same day. I am a lawyer in the Seattle area, specializing in civil litigation. For the past fifteen years, I have practiced regularly in the United States District Court for the Western and Eastern Districts of Washington and the Court of Appeals for the Ninth Circuit ("Ninth Circuit"). I have served as a lawyer representative to the Ninth Circuit Judicial Conference for the past six years and, in that role, have provided ongoing input as a member of the bar on issues of concern and interest to the judiciary. I was elected to be chair of the circuit-wide committee of lawyer representatives who participate in the Ninth Circuit Judicial Conference and serve in that position and on the Executive Committee of the Ninth Circuit Judicial Conference today. I have also been a trustee of the Federal Bar Association in the Western District of Washington and an active participant on various bar committees and task forces that have addressed the problems faced by the federal courts in Washington State, e.g., alternative dispute resolution and pro se litigation. I consider myself to be a highly experienced federal practitioner and share my personal views here about the appropriate structure of the Ninth Circuit.

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As I approach the question of whether the Ninth Circuit should be split, I begin by asking whether any present need to do so exists. I see no such need. The Ninth Circuit is doing an excellent job of deciding and managing the cases brought before it with its current configuration. The traditional boundaries and the structure of the Ninth Circuit should be preserved. This Court decides nearly one-sixth of all federal appeals and accomplishes this task in an efficient manner despite the fact that during 1997 approximately one-third of its authorized judicial positions remained vacant. Once cases are submitted to judges in this circuit, it is the third fastest in the nation in rendering its decisions after oral argument and the fastest in rendering its decisions in non-argument cases.

The Ninth Circuit has maintained a fairly uniform body of federal law among nine western states and territories. In my specialty field of employment and civil rights law, the Circuit, despite its size, has had no difficulty developing consistent legal principles that govern the application of various complex statutory schemes. Dividing the circuit would result in inconsistent and conflicting applications of laws, requiring litigants and their counsel to research the law of two or more circuits where enterprises and their employees frequently cross state lines. The court has in place effective systems that reduce the risk of inadvertent conflicts in decisions.

The greatest problem facing the Court is not its current structure, but rather the exceptionally high number of vacancies. Having too few judges deciding a large volume of cases has led to delay. Had the circuit been operating with all twenty-eight judges, litigants would not experience undue delay. It is challenging to administer an appellate system of justice when almost one-third of the authorized positions are vacant. Nevertheless, the Court has managed its workload even in the face of this challenge.

As a federal practitioner in the State of Washington, I gather that the strongest proponents of a restructuring of the Ninth Circuit may be those who personally disagree with certain appellate rulings in the environmental and criminal areas of law. Partisan politics is an inappropriate basis upon which to work a major restructuring of this Court. Moreover, the costs involved in creating a new court of appeals are significant. All of the administrative functions that are now performed well by the Ninth Circuit would have to be reorganized and duplicated with new adjudicative and administrative structures being built in the newest circuit headquarters. Given the large land areas covered by the five northern states in the circuit, any split involving those states would still require extensive travel by judges and lawyers for presentation of oral argument without any enhancement

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of the quality of decision-making. Such a circuit would also be the second smallest caseload in the country with a great disparity in the caseload-per-judge ratio between the new circuit and the remaining Ninth Circuit.

I urge that the current structure of the Ninth Circuit be retained. Thank you for consideration of my views.

Sincerely,

SEBRIS BUSTO, P.S.



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