

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

DONALD P. LAY
Circuit Judge
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May 19, 1998

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

Dear Dan:

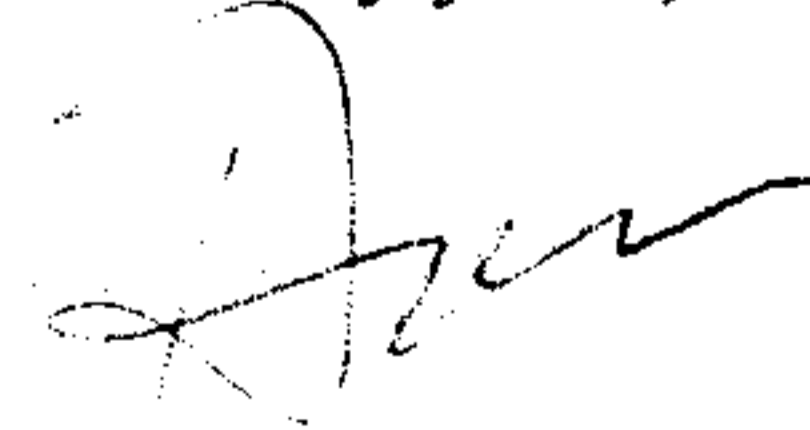
Thank you for your acknowledgment of May 4. In looking over my letter to the Commission, I forgot to mention an added fact. I have attached a separate document that perhaps you could attach to my letter.

It has been some time since our paths have crossed. I do hope everything is going well for you.

I am sitting as a senior judge now throughout the country and, as my attachment shows, I sit a good deal with the Ninth Circuit. However, I am also teaching Civil Procedure at William Mitchell College of Law. I enjoy this very much.

With kind personal regards.

Sincerely yours,



DONALD P. LAY

May 19, 1998

TO: The Commission on Structural Alternatives for
the Federal Courts of Appeals

FROM: **Honorable Donald P. Lay, Senior Circuit Judge**
U.S. Court of Appeals for the Eighth Circuit

I wish to amend my letter of April 27, 1998. I failed to mention that, as a senior judge, I have had the privilege of sitting with the Ninth Circuit on several occasions. As you know, they are short-handed and through the courtesy of Chief Judge Proctor Hug, I have been invited to sit on various panels over the past three to four years. I just returned from sitting in San Francisco with Judge Kozinski and Judge T.G. Nelson. In two weeks I will sit in Seattle with Judge Goodwin and Judge Pregerson. I mention this because I would like to add my personal insight on issues of the Ninth Circuit.

One of the factors that is often cited about getting a large number of judges on the same circuit is a possible lack of collegiality. I want to express my feeling that I do not believe that this has happened on the Ninth Circuit. In reality, I think the Ninth Circuit remains one of the most collegial courts with whom I sit. I have always found the judges very cordial, friendly, and cooperative. In addition, they are all very diligent and, in my judgment, very intelligent individuals. I have never sat with any judge on the Ninth Circuit that does not manifest intellectual abilities and concerns.

I appreciate that the press likes to point out that the Ninth Circuit has been reversed by the Supreme Court on more occasions than other circuits. I tell people who raise this question that one of the reasons is that the Ninth Circuit carries almost twice the workload of any other circuit.

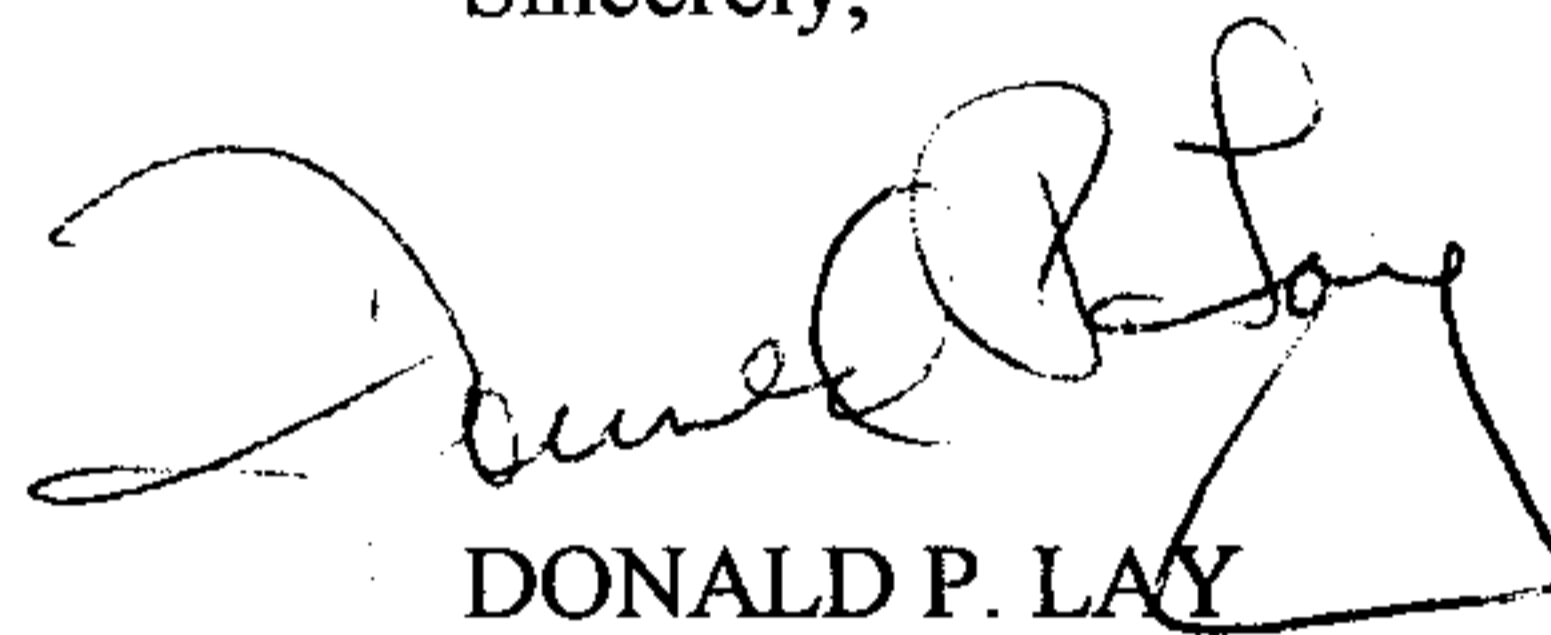
In addition, because of the vast geographical diversity of interests and people who are living within the Ninth Circuit, I feel that many of the issues that we address are issues of first impression.

One of the other criticisms of large circuits has been the possible lack of predictability. My experience with the Ninth Circuit judges is that they are very loyal to their own precedent and adhere to precedent by other panels. To my knowledge, this has not been a problem of that circuit.

I continue to believe that the Ninth Circuit is one of the most efficiently operated circuits in the country. I have been acquainted with the last three chief judges and I know a great deal of the credit for that efficiency should be attributed to their leadership and partly to the excellent administrative abilities of their Clerk of Court, Cathy Catterson, and their Circuit Executive, Gregory Walters.

From my personal experience, I would recommend that the circuit not be divided. My overall philosophy in this case is borrowed from the old adage "If it isn't broken, don't fix it."

Sincerely,

A handwritten signature in black ink, appearing to read "Donald P. Lay". The signature is written in a cursive style with a large, sweeping initial "D".

DONALD P. LAY