

United States Bankruptcy Court
Northern District Of California

1300 Clay Street
Oakland, California 94612

Randall J. Newsome
Bankruptcy Judge

Phone
(510) 879-3530

May 5, 1998

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

Dear Justice White and Members of the Commission;

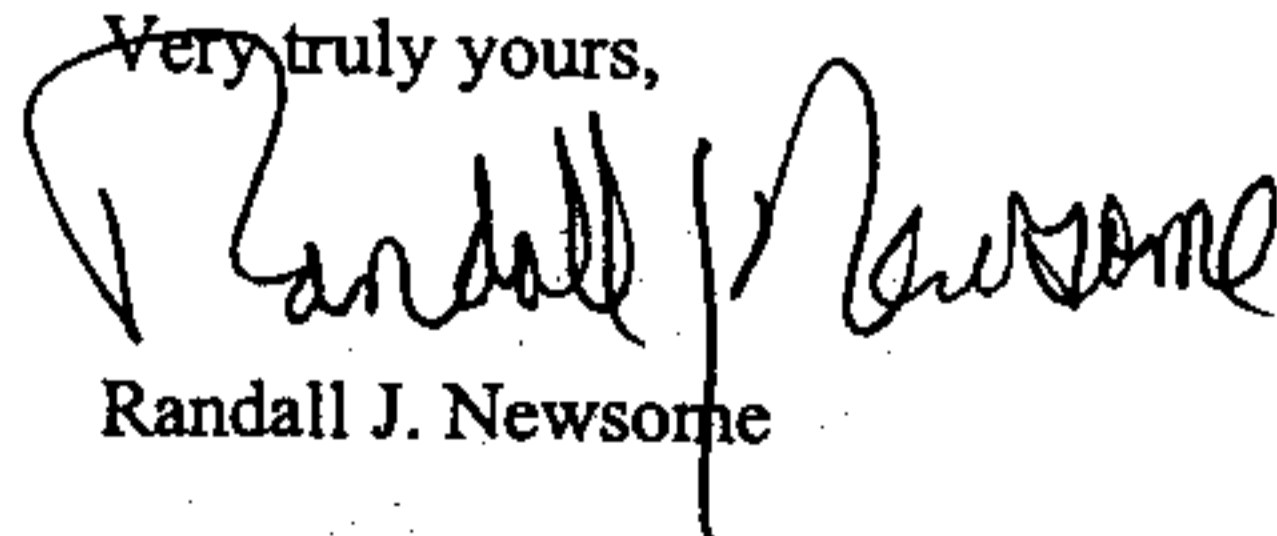
I write to express my opposition to any plan to divide the United States Court of Appeals for the Ninth Circuit. I have yet to hear a convincing reason for splitting the Ninth Circuit, not to mention a reasonable way of effectuating such a split. All of the arguments posited for splitting the Ninth Circuit could be leveled at almost any other circuit. The criticisms are particularly unfair given the chronic number of unfilled judgeships which the Ninth Circuit has experienced over the last decade. In the absence of a compelling justification for taking such extraordinary action, there should be a presumption in favor of leaving it alone.

From the perspective of a bankruptcy judge, I think there are compelling reasons for not splitting the Ninth Circuit. The institution of the Bankruptcy Appellate Panel has served the Ninth Circuit well. Having originally been a bankruptcy judge in the Sixth Circuit, which at the time had no BAP, I have found the unifying and harmonizing effects of the BAP's precedent a welcome relief from the intra-district splits and inconsistencies I experienced in the Southern District of Ohio. Any configuration being proposed for the circuit split would seriously impair the function of the BAP, both because of the number of appeals from California that cannot be heard by California judges, as well as the number of California judges who would not be available to hear other districts' appeals.

Because of the sheer numbers of bankruptcy cases, the complexity of the law and the limited resources of those who are involved in bankruptcy cases, this is surely an area where uniformity is badly needed. Obviously, the creation of more circuits will create more conflicts in bankruptcy case law. Because bankruptcy practice tends to be regional (particularly chapter 11 practice), and because of the multi-state nature of so many of the commercial transactions within the states of the Ninth Circuit, it would be disruptive to have conflicting interpretations of the bankruptcy code within the same region. If California were divided between two circuits, the disruptive effect of having conflicting rulings within the same state cannot be exaggerated.

I urge the Commission to reject the unsubstantiated claims for splitting the Ninth Circuit, and to leave it intact.

Very truly yours,



Randall J. Newsome