

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

WM. FREMMING NIELSEN
Chief Judge

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May 18, 1998

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

Dear Commissioners:

The views I express in this letter are my own. While several members of my court are in agreement, I do not profess to speak for the United States District Court for the Eastern District of Washington.

Even opponents seems to agree that a division of the Ninth Circuit is inevitable. Since the issue is now before us and the split appears to be justified, I see no reason to delay the inevitable.

Over 20% of all federal litigation is carried on within the Ninth Circuit, which leaves the remainder divided among the other 11 circuits. There are 28 active appellate positions on the Ninth Circuit Court of Appeals and 10 more have been requested. The remaining circuits range in size from 17 judges on the Fifth Circuit to 6 in the First Circuit¹. The size of the Ninth Circuit

¹28 U.S.C. § 44.

and has the built-in risk of inconsistency and loss of coherence and collegiality. This is not a unified court as reflected by the fact that the law of the circuit is often times hard to define or predict.

It is not my objective to suggest how the circuit should be split, but only to voice my opinion that the time has come. This should be done following a thorough study and in a manner that would result in near equal workload between the two resulting circuits and keeping in mind the projections for future growth so as to obviate the necessity of revisiting the subject in the foreseeable future.

Very truly yours,



Wm. Fremming Nielsen
Chief United States District Judge

makes it out of balance with the rest of the federal appellate system and the problem will likely only get worse in view of the fact that the Western United States is one of the fastest growing regions of the country.

Opponents of the split allege that size is not a concern, an argument which, if carried to its logical conclusion, would suggest elimination of all circuits, with a single intermediate federal appellate court or at least a few large circuits created by combining several existing circuits. But if the original concept of circuit courts based on regional geography, demographics, a limited number of judgeships and a reasonably even distribution of caseload is to continue, then the Ninth Circuit should be divided.

The philosophy that the best government is that which is closest to home has equal appeal when considering our judicial system. To many litigants and lawyers outside of California, the Ninth Circuit is a long way from home other than just geographically.

The cumbersome nature of the Ninth Circuit is illustrated by the make-up of its three-judge panels. By using the 28 active judges, Ninth Circuit senior judges, active and senior district court judges, along with the many out-of-circuit visiting judges who sit by designation, the result is an almost infinite number of panels. This results in a court without continuity or personality