

KENNETH E. ROBERTS
SUITE 1800
1211 S. W. FIFTH AVENUE
PORTLAND, OREGON 97204
(503) 222-9981

May 11, 1998

N. Lee Cooper
Maynard, Cooper & Gale, P.C.
2400 Amsouth/Harbert Plaza
1901 Sixth Avenue, North
Birmingham, Alabama 35203-2602

Re: U.S. Court of Appeals for the Ninth Circuit

Dear Mr. Cooper:

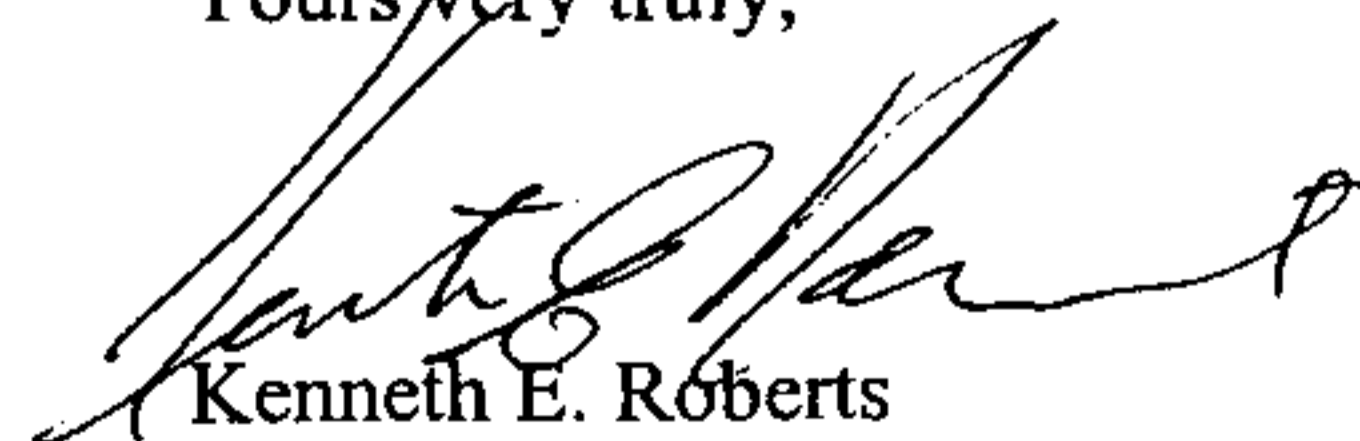
I understand that you have been appointed to the Commission which is making a study of the desirability of splitting the Ninth Circuit.

For a number of years, I have been very much in favor of splitting the Ninth Circuit and I am enclosing a copy of my letter to Sen. Hatch dated November 9, 1995, which discusses the subject. I again wrote to Sen. Hatch on February 26, 1997, supporting a splitting of the Ninth Circuit.

I was admitted to practice law in Oregon in 1951, and at that time the seven judges of the Ninth Circuit lived in and around the Bay Area of San Francisco. I believe it was in the late '50s or early '60s that newly appointed judges of the Ninth Circuit were permitted to commute to San Francisco, and this, of course, required the maintenance of two chambers, perhaps two staffs, and considerable expense in traveling to and from San Francisco. I assume that practice continues to the present day.

Based on all the facts and circumstances, it would be reasonable and proper for recommendations to be made to Congress to split the Ninth Circuit.

Yours very truly,



Kenneth E. Roberts

KER:sh

KENNETH E. ROBERTS
SUITE 1800
1211 S. W. FIFTH AVENUE
PORTLAND, OREGON 97204
(503) 222-9981

FILE COPY

November 9, 1995

Orrin G. Hatch, Chairman
Committee on the Judiciary
United States Senate
224 SDOB
Senator Dirksen Office Building
Washington, DC 20510

Re: U.S. Court of Appeals for the Ninth
Circuit

Dear Senator Hatch:

I am currently a member of the Oregon State Bar and have been so since 1951. I served as a member of the Board of Bar Examiners and of the Board of Governors of the Oregon State Bar. I have written many briefs and have argued many cases before the Ninth Circuit Court of Appeals in San Francisco. I argued the Union Oil Company of California v. San Jacinto case before the Ninth Circuit and also the Supreme Court of the United States in 1972 (409 US 140, 93 S. Ct. 368). That was a maritime collision case and was one of many cases I argued before the Ninth Circuit.

A number of arguments were made against splitting the Fifth Circuit of Appeals, but, as you know, the Fifth Circuit was split a few years ago and the Eleventh Circuit was created. From what my friends in New Orleans and Florida tell me, I understand that the split of the Fifth Circuit has been well received.

I wrote to Senator Heflin who was Chairman of the Subcommittee of the Judiciary, supporting the move to split the Ninth Circuit. I am writing to you today to express my opinion that the only reasonable and proper action for the Senate to take is to split the Ninth Circuit, as proposed by

Orrin G. Hatch, Chairman
Page 2
November 9, 1995

Senator Burns of Montana. Geographically, socially and politically, it makes sense to create a Twelfth Circuit for Montana, Idaho, Oregon, Washington and Alaska.

I am convinced that a Twelfth Circuit Court of Appeals headquartered in Seattle, Washington, would eventually be a tremendous savings to the taxpayer and would lead to a lot better collegiality between the judges of that circuit than exist at the present time. There would be a greater chance of en banc hearings on important and far reaching causes of action, and probably no conflicts between decisions in the same circuit.

From the viewpoint of the taxpayer, it seems to me that a great deal of time and expense will be saved, as judges of the new circuit would be headquartered in the Seattle area and should not be permitted to have two chambers or offices at different locations.

There were seven judges of the Court of Appeals for the Ninth Circuit in 1951. According to the Federal Reporter (Third Series), there are presently 26 active circuit judges and 12 senior circuit judges in the Ninth Circuit. The number of active and senior circuit judges and the vast differences in the laws of the states of the Ninth Circuit and the extensive geographical area warrant a splitting of the Ninth Circuit. It should have been split a number of years ago as was the Fifth Circuit.

I am reasonably sure that if the question of splitting the circuit was posed to educated laymen, the response would be in the affirmative and it would be unanimous.

Sincerely yours,

Kenneth E. Roberts