

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

JUAN R. TORRUELLA
CHIEF JUDGE
HATO REY (787) 250-1146
FAX (787) 766-5744

BOSTON (617) 223-9020
FAX (617) 223-4395

ROOM CH-119 - FEDERAL BUILDING
150 CARLOS CHARDON AVENUE
HATO REY, PUERTO RICO 00918-1763

1419 U.S. COURTHOUSE
BOSTON, MASSACHUSETTS 02109

May 6, 1998

Justice Byron R. White, Chair
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 Justice White:

I appreciate the opportunity to express my initial views on the Commission's work. I have delayed writing in order to have full opportunity to consult with the judges of my court. At a court conference last week attended by all of the active First Circuit judges, I discussed my proposed response to you, and this letter generally reflects not only my own personal thoughts but the unanimous position of the active First Circuit judges.

To my mind, the workload of the First Circuit is being handled successfully, and without any serious problems, within the present structure. While the circuit is sometimes described as small, there are currently 11 judges sitting in the First Circuit: five active judges (with a sixth just confirmed but not yet sworn in) and five senior judges, all of whom continue to sit regularly on panels. It appears likely that the court will have a number of

"active" senior judges for the foreseeable future. Finally, using the present statistical measuring rod, our workload justifies a seventh active judge when Congress next considers enlargement.

At the same time, the fact that we are unlikely to have more than a dozen appellate judges in the circuit at any one time does appear to contribute to the unusually good working relationship among the judges, our ability to detect and head off intra-circuit disagreement among panels, and the need for very few en banc proceedings. My impression is that the "law" within the First Circuit is generally familiar to district judges and experienced lawyers, and that this familiarity contributes greatly to the predictability and uniformity of case law within the circuit and the ability of lawyers to plan transactions and to anticipate, avoid or conduct litigation with reasonable confidence.

I also share the view, expressed by Chief Judge Winter in his recent letter to you, that the present multi-circuit system has provided a useful laboratory for experimentation in the methods used to do the federal courts' work, useful improvements in one circuit being copied by other circuits. But I also think that diversity of views on substantive issues is no less important in improving the decisions themselves; what some deride as undesirable conflicts among circuits is actually a process of mutual education, by which case law on most issues evolves over time toward a clear majority position or even a consensus.

Finally, the present structure represents a huge investment in learning and experience for the bar as well as the bench within each circuit. There is no justification for grand

reorganizations such as a consolidation of the circuits, nor for casual tampering (e.g., the notion that Vermont could be transferred to the First Circuit). Indeed, if the Commission is diverted by such suggestions, I greatly fear that nothing will be achieved. What is broken ought to be fixed; but what is working well--and this represents most of the current structural arrangements--ought to be left alone.

Very truly yours,



Juan R. Torruella

tlf