

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUDGE JOHN PAUL STEVENS

August 24, 1998

Honorable Byron R. White
Chairman, Commission on Structural Alternatives
for the Federal Courts of Appeals
Thurgood Marshall Building
One Columbus Circle, N. E.
Washington, D. C. 20544

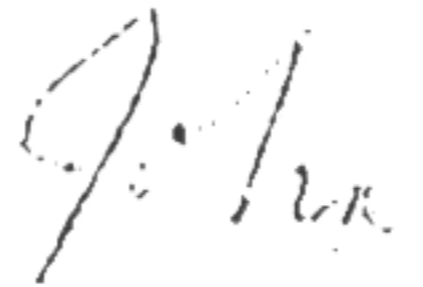
Dear Byron:

Please forgive me for being so slow in responding to your invitation to comment on the Ninth Circuit issue. I would like to make just one point. In my opinion the arguments in favor of dividing the Circuit into either two or three smaller circuits overwhelmingly outweigh the single serious objection to such a change. That objection, of course, is the concern about placing some California districts in one circuit and the remainder in another.

I realize that members of the California Bar regard this possibility as unacceptable, but I have long believed that their concerns are seriously exaggerated. It is, of course, true that occasionally there will be conflicting interpretations of both State and Federal issues that will require resolution either by use of the certification process for the former, or by our Court's review of the latter, but such temporary uncertainty is not new to the law. It would differ only in degree from the comparable uncertainty that attends conflicting rulings on state court questions in different California jurisdictions, conflicting rulings on federal questions in different federal districts within California and in different federal circuits today. In my considered opinion, the importance of this concern pales in comparison with the disadvantages associated with a circuit that is so large that even the most conscientious judge probably cannot keep abreast of her own court's output.

Having some notion of the time and effort that you have devoted to this assignment, I want to express my special thanks for what you have done and are continuing to do. It is characteristic of someone who never pauses to ask what his country can do for him because he has answered the more important question so often and so consistently.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. M. ...".

Copies to the Conference