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# United States Senate

WASHINGTON, DC 20510-4701

COMMITTEES:  
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ENERGY AND NATURAL  
RESOURCES  
INDIAN AFFAIRS

November 3, 1998

The Honorable Byron White  
Chairman  
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:

It was a pleasure to speak with you the other day, and I would again like to commend the Commission on a job well done. The draft report was thoughtful and balanced. I concur with its general recommendations regarding the Ninth Circuit, and would be pleased to introduce legislation in the next Congress to effect them.

I would like to reiterate, however, the three issues we discussed, and ask that the Commission please consider these when preparing the final report. First, the Commission recommends that Hawaii and the Pacific Islands be included in the Middle Division. I suggest that you consider including them in the Northern Division. During the first session of the 105th Congress, the Senate passed legislation to split the Ninth Circuit and, at the request of the Senators from Hawaii, this legislation placed Hawaii and the Pacific Islands in the same appellate jurisdiction as the Pacific Northwest states. Although both Hawaii Senators ultimately voted against the legislation, I understand that they were reflecting the preferences of the Hawaii and Pacific Island bars when they requested that, if a split was to occur, Hawaii and the Pacific Islands be included with the Pacific Northwest and not California.

The second issue I raised in our discussion concerns the Commission's recommendation to assign non-resident judges to divisions for specified terms of at least a year. I have some reservations about this proposal, which I suspect will be opposed by the Ninth Circuit judges. Please consider whether assigning non-resident judges from time to time on an ad hoc basis would be preferable to institutionalizing the assignment.

My last question was whether or not the statute implementing your recommendations for the Ninth Circuit should allocate judges among divisions. If the statute does this, what provisions should be made to preserve the informal norms linking geography to the appellate appointments?

I appreciate your considering these items, and thank you and the Commission on your fine work.

Sincerely,

A handwritten signature in black ink, appearing to read "Slade Gorton". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Slade Gorton  
United States Senator