

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

October 29, 1998

Commission on Structural Alternatives  
for Federal Court of Appeals  
Thurgood Marshall Federal Judiciary Building  
1 Columbus Circle, N.E.  
Washington, DC 20544

Dear Commission Members:

I very much appreciate receiving the Commission's "Tentative Draft Report" dated October 19, 1998.

The Commission has written a comprehensive report, and in all sincerity I cannot agree with its recommendation that the Ninth Circuit be separated into three divisions.

I suggest that realignment of the Ninth Circuit into two or more newly constituted circuits is the sound and proper way to proceed. Option A (p. 46) the "classical split" would probably meet the approval of most of the lawyers practicing in the Ninth Circuit. However, Guam and Hawaii should be included in the "new Ninth Circuit," along with Arizona, California and Nevada, and the reasons given for the exclusion of those two island communities is not meritorious as "there is no strong judicial administration reason for using one circuit over the other for the island jurisdictions."

Option B as an alternative merits consideration.

Again, I would reiterate the successful splitting of the Fifth Circuit a number of years ago and creation of a new Eleventh Circuit.

The proposed statute to reduce diversity jurisdiction, if adopted, would lead to extensive hearings on whether "the out-of-state party shows with reasonable certainty that local influence would prejudice

Commission on Structural Alternatives  
for Federal Court of Appeals  
October 29, 1998  
Page 2

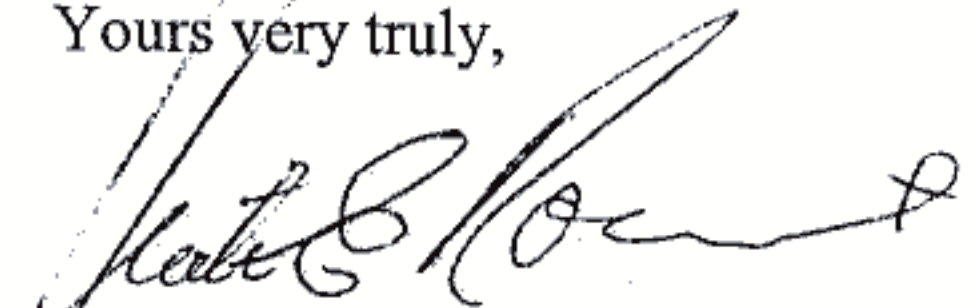
that party, making a federal forum decidedly preferable to the state court or any other state courts to which the party may transfer the case under state law.”

The diversity jurisdiction language should be unchanged, although the amount in controversy should perhaps be raised to something above the recommended \$75,000.

I believe a recommendation to enact a new 28 U.S.C. §46 to provide for divisional organization of large Court of Appeals and for two judge panels is not an appropriate solution to the problems presently encountered in the Ninth Circuit or any other circuit with similar problems.

The sound, efficient and proper administration of justice mandates the splitting of the Ninth Circuit.

Yours very truly,



Kenneth E. Roberts

KER:sh