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VIA FACSIMILE AND U.S. MAIL

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 Members of the Commission:

I read with great interest your tentative draft report of October 1998 as well as most of the testimony and written comments in the comprehensive record that you have established. I testified at the San Francisco hearing, primarily on the point that the Ninth Circuit should not be split and particularly that California should neither be divided between circuits nor isolated in one.

The draft report emphatically and rightly rejects the notion of splitting the Ninth Circuit. The proposed statutory experiment for the Ninth Circuit, however, seems inflexible and unwise in crucial particulars. I suggest that you propose giving the Ninth Circuit more leeway during the experimental seven year period and that you make the following changes to enable the court to continue its historic role of authoritative law interpretation and application for the entire region: provide that division panel decisions have *stare decisis* effect throughout the circuit; authorize the court to strengthen its circuitwide *en banc* court and attendant procedures; and eliminate divisional *en banc* courts.

With these key changes, your report will afford the opportunity for Congress to adopt an effective approach to the structure of the federal appellate courts that allows rational experimentation and improvement.

Respectfully submitted,



Michael Traynor

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