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November 6, 1998

Commission on Structural Alternatives  
for the Federal Courts of Appeal  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Re: Comments on the White Commission Draft Report

Dear Justice White and Members of the Commission:

I am writing on behalf of the Tulare County Board of Supervisors in response to the Draft Report regarding a proposed modification of the Ninth Circuit Court of Appeals. The Board supports the concept of improving judicial efficiency and economy. However, the Board vigorously opposes the manner in which the Commission proposes to accomplish this end. The Board believes that this proposal, if implemented, will seriously impair the efficiency of the Court, and could lead to significant demographic changes in the State of California which could seriously impact the ability of local government to deliver important public social services.

The Board's specific objections are as follows:

1. By the creation of Divisions, the proposal would essentially split the State of California. Since a decision in one Division is not binding on another, the distinct probability exists that a decision will be made affecting only one part of the State.

2. In an effort to avoid differing interpretations in regard to the discharge of the responsibilities of public entities, multiple lawsuits would have to be filed, one in each affected Division. This does not support judicial economy or the efficient use of public resources.

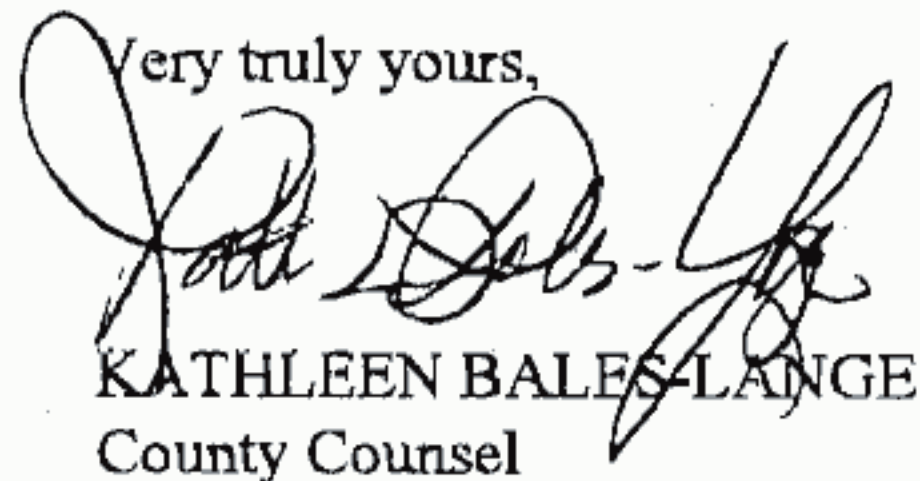
3. Even in the event that multiple lawsuits were filed, unless the decisions were conflicting, the parties would not have recourse to en banc review, but rather would have to resort to the Supreme Court. If the decisions were conflicting, the parties would have another layer of review placed on them which would not be placed on litigants in any other state.

4. Because lawsuits against public agencies often relate to the manner in which those agencies deliver public services [such as indigent aid], and because the distinct probability exists that an appellate decision in the modified Ninth Circuit regarding the delivery of such services may affect only that part of the State in a single Division, or will be different between Divisions, the virtual **certainty** exists that populations which use such services will migrate between Divisions based on which Divisional interpretation is most favorable to such recipients. This artificially directed travel within the State of California would place a severe and unfair burden on local public agencies. Several recent examples of cases which have been or are now pending in federal courts in California include those seeking interpretation of Proposition 187 [prohibition against provision of public services to undocumented aliens], Proposition 209 [prohibition against affirmative action], and Proposition 227 [prohibition against certain types of bilingual education].

5. In addition, the State courts apply federal law in criminal cases. It places a tremendous burden on the judiciary and the members of the bar to have differing interpretations of the same legal principles within the same state.

The Board is sure that the Commission will give the Board's concerns serious consideration. Please place me on any mailing list that you may have regarding this matter so that I can keep the Board of Supervisors informed of subsequent developments in this matter.

Very truly yours,



KATHLEEN BALES-LANGE  
County Counsel

cc: Chairman Charles Harness  
Hon. Procter Hug, Jr.  
Hon. Glade Roper  
Ruth Sorensen, Esq.