

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

CHAMBERS OF
THE CHIEF JUSTICE

October 22, 1998

Dear Byron,

Thank you for providing me with a copy of the October 7, 1998 Draft Report of the Commission on Structural Alternatives for the Federal Courts of Appeals. I write to commend you and the Commission for your efforts. The thorough analysis of historical and contemporary information about the federal circuit system in the United States is all the more impressive in that it was accomplished in only nine months since the appointment of the Commission. And while I believe that the entire draft report contains useful guidance for the circuit system as a whole, I write in particular support of the proposal to organize the Court of Appeals for the Ninth Circuit into three regionally based adjudicative divisions.

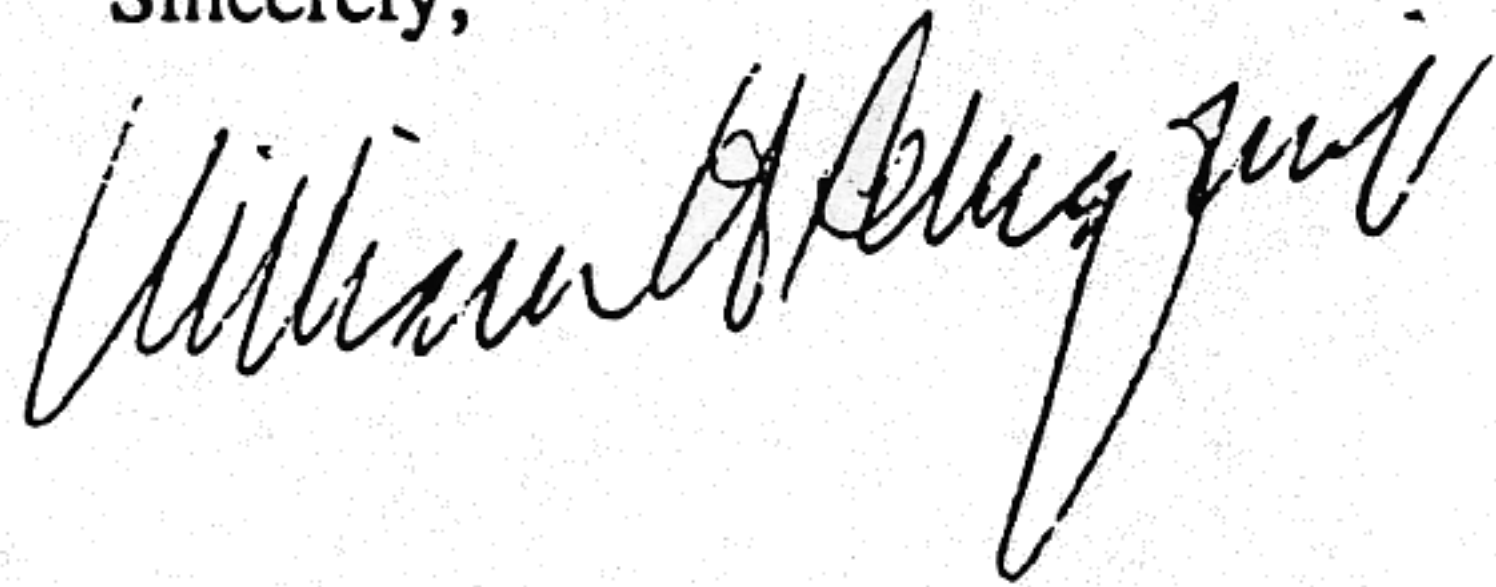
I share many of the concerns expressed by my colleagues on the Court who previously corresponded with the Commission and advocated that some change in the structure of the Court of Appeals for the Ninth Circuit is needed. The challenges to stay abreast of the law within a circuit with 28 authorized judges -- already a near impossibility -- will continue to grow as the circuit's caseload increases. Similarly, the en banc review process in a court so large is problematic. As to complaints that the Ninth Circuit is slow to dispose of its cases, I would add to the anecdotal evidence in that regard by referring to the fact that our Court will hear oral argument in our November session in Hughes Aircraft Company v. Jacobson, et al., a case that was argued and submitted to the Court of Appeals for the Ninth Circuit on November 4, 1993. The circuit opinion deciding the case, however, was not filed until January 23, 1997, and a petition for rehearing was not denied until October 23, 1997, nearly four years after oral argument. The effect of such delays on public confidence in our system of justice is obvious.

The proposal to create three divisions in the Court of Appeals for the Ninth Circuit with a Circuit Division for conflict correction strikes me as better than merely a compromise between those who have advocated a split of the circuit and those who argue for the status quo. It appears to me to address head-on most of the significant concerns raised about that court and would do so with minimal to no disruption in the circuit's administrative structure. As to the caseload problem facing not only the Ninth Circuit, but all federal courts, I agree with the Commission's statement that significant changes need to be made in the jurisdiction of the federal courts. I also agree with the separate statement filed by Judge

Merritt and you that changes in diversity jurisdiction are needed. In particular, I agree with the proposed elimination of in-state plaintiffs' diversity jurisdiction.

Congratulations again on a well-written report.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Rehnquist". The signature is written in a cursive style with a large, sweeping flourish at the end.

Justice Byron R. White (Retired)
Chairman, Commission on Structural Alternatives
for the Federal Courts of Appeals
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