DIANNE FEINSTEIN
CALIFORNIA

United States Senate
WASHINGTON, DC 20510-0504

December 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:

I wanted to thank you and the other Commission members for devoting so much time to completing the report on the structure of the Ninth Circuit Court of Appeals. As the only Californian to serve on the Senate Judiciary Committee, this issue is very important to me. I feel very strongly that California must not be divided under any plan to restructure the Ninth Circuit.

Since your report was released on October 7, I have talked with federal judges, members of the Bar, and legal scholars in California to discuss the recommendations of the Commission. The overriding consensus among judicial and legal leaders is that it would be disastrous if California was split into Northern and Southern regions.

Concerns expressed to me about the proposal to divide California focus on the following issues:

* The Middle Division (Northern California) and the Southern Division (Southern California) would not be bound precedentially by each other's decisions.

* Lawyers would engage in "forum shopping" within the same State for favorable rulings.

* California corporations subject to federal jurisdiction could be subject to varying interpretations of the same federal and state laws. This could compel businesses to build headquarters in other States where there is no conflict within the federal court system.

* The lack of uniformity and certainty in the law could create chaos in our state. Imagine if two California divisions disagreed on the

constitutionality of any state-wide initiative or law. This could do extraordinary damage to Californians' faith in the integrity and fairness of the judicial system.

- Another layer of judicial review within the Ninth Circuit would have enormous costs and enlarge the federal bureaucracy.

As you can see, there is tremendous trepidation within my State about how the Commission's recommendations would impact our legal system. Republicans and Democrats from California have shared some of their observations with me and I wanted to share some of their thoughts with you now:

Judge William Enright, appointed by President Nixon to the District Court in the Southern District of California, wrote: "The thought that large law firms could debate within their own offices whether to file in Los Angeles or San Francisco and achieve a different law of the Circuit I think states the whole, difficult problem. Even though the statistics may not justify it, I think California of necessity must remain intact with or without other States."

Judge Judith Keep, who served as Presiding Judge of the District Court in the Southern District from 1990 to 1997, wrote: "The proposal would mean that if the Southern Division rendered a decision, the judges in the Central District and in the Northern Division would have no obligation to follow that decision. This would lead to great confusion among businesses that operate state wide. The business would have to draft a contract a certain way to do business in the Southern Division but would be unsure how to draft the contract if its business will take it to the Central Division. Key provisions of new federal law, such as the ADA, might be interpreted one way by a panel of the Central Division, and businesses in the Southern Division would not know whether to follow that division or not." Judge Keep added that the proposal "will lead to blatant forum shopping."

Judge Lawrence Karlton, Chief Judge Emeritus of the Eastern District of California, wrote a letter in which he objects to the "lack of evidence to support the truly radical suggestion that the law of California be split among two appellate courts which will have no precedential relationship."

The Justice Department has also objected to splitting California in written testimony to your Commission. The Department said: "We do not support dividing

any State in this manner, because, as much as possible, federal rights and responsibilities should be the same for all citizens within a State. Splitting California between two divisions that are not bound by each other's precedent would yield different interpretations of federal and state law, and could result in inconsistent federal court rulings regarding the constitutionality of the same California law. Nor would there be any guarantee of quick or certain Supreme Court resolution of those issues."

As you can see, there is widespread and strong opposition to the concept of dividing California. No other state in the union has been subjected to this type of conflicting legal structure and I sincerely hope your Commission will revise its proposal so that my home State of California remains intact.

Please feel free to contact me directly if I can be of any help to you or the Commissioners in your work.

With warmest personal regards.

Sincerely yours,

Dianne Feinstein

Dianne Feinstein
United States Senator

DF:wdc

cc: Members, Commission on Structural Alternatives for the Federal Courts of Appeals