

Federal Bar Association

Office of the President

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April 20, 2004

The Honorable Jeff Sessions
Chairman
Senate Judiciary Committee
Subcommittee on Administrative
Oversight and the Courts
Washington, D.C. 20510

The Honorable Charles E. Schumer
Ranking Minority Member
Senate Judiciary Committee
Subcommittee on Administrative
Oversight and the Courts
Washington, D.C. 20510

**Re: Hearing on "Improving the Administration of Justice:
A Proposal to Split the Ninth Circuit"**

Dear Senators Sessions and Schumer:

We provide the following comments in connection with your Subcommittee's April 7 hearing on three legislative proposals to split the United States Court of Appeals for the Ninth Circuit. Those three pieces of legislation are S. 562 (introduced by Senator Lisa Murkowski), S. 2278 (introduced by Senator John Ensign), and H.R. 2723 (introduced by Congressman Mike Simpson).

The Federal Bar Association maintains a longstanding interest in proposals to reorganize the Court of Appeals for the Ninth Circuit because it is the only national bar association that has as its primary focus the practice of federal law. Of the 16,000 attorneys in private and government practice across the nation who belong to the FBA, over 2,800 practice in the Ninth Circuit. With such a regional and national constituency, the FBA is both a beneficiary of direct experience with the structure and operation of the Ninth Circuit, as well as a stakeholder in the well-being of the entire federal court structure and the uniform administration of justice.

The Murkowski and Simpson bills are relatively similar in dividing the Ninth Circuit into a smaller, reconfigured Ninth Circuit and a new Twelfth Circuit. Under the Murkowski measure, the Ninth Circuit would include Arizona, California and Nevada. Under the Simpson proposal, the Ninth would embrace only California and Nevada. Under both

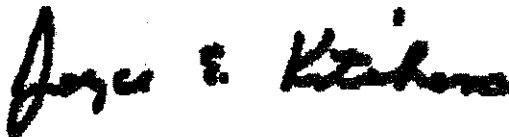
The FBA also believes that the well-being of the Ninth Circuit and the federal court system are best served by increased Congressional attention to two other concerns: the assurance of adequate judgeships; and the reversal of the trend to federalize crimes in areas traditionally reserved to the states. Both of these concerns relate directly to the capacity of courts to render justice fairly and swiftly. Indeed, we recommend that Congress, prior to the passage of any further federal criminal legislation, procedurally require of itself the generation of a "judicial impact statement" that projects the additional caseload and costs that such legislation may create.

Finally, we are indeed mindful to the fact that the caseload of the Ninth Circuit continues to expand, reflecting the demographic trends of the West, especially California. While no persuasive evidence exists today to suggest that the Court of Appeals for the Ninth Circuit is failing to appropriately administer justice, there may well come a time when there is demonstrable proof that the circuit is no longer operating effectively. At that point, it is likely that a far greater consensus among the bench, the bar and the public will coalesce to favor the division of the Ninth Circuit as a necessary remedy. We urge the Subcommittee to continue to engage in a dialogue with the bench and bar that readily discerns the existence of such a body of support, if that begins to occur.

An enormous number of challenges confront the federal judiciary. Their workload is increasing, while their resources are decreasing. Current and projected appropriations levels are creating a budget crisis. The pressing need for the maintenance of current court staffing levels, additional judgeships, courthouse renovations, improved court security systems and technology all represent important priorities. We ask for your continued help in finding legislative solutions to these serious concerns.

Thank you for your consideration of these views and support. We look forward to continuing to work with you and the Subcommittee in support of the Third Branch.

Sincerely yours,

A handwritten signature in black ink that reads "Joyce E. Kitchens". The signature is written in a cursive, slightly slanted style.

Joyce E. Kitchens
National President