STATEMENT OF U.S. SENATOR PETE WILSON
BEFORE THE COMMITEE ON THE JUDICIARY
UNITED STATES SENATE
MARCH 6, 1990

NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT

Mr. Chairman and members of the Committee, it appears that few things attract members of Congress to a hearing better than a proposal to redraw a map, especially if there is a hint of gerrymandering.

Well, that is exactly what is being proposed to the Committee today -- environmental gerrymandering.

Some who are promoting a split of the Ninth Circuit believe that they can gain some advantage by drawing new lines, by cordoning-off some judges and keeping others. The late Congressman Phil Burton must be looking down and smiling -- at least at the device being used.

On the other hand, Phil was an environmentalist. Yet, those who seek to gerrymander the Ninth Circuit are apparently attempting to gain some advantage in the courts against those who want to protect the environment. So, Phil might like the means, but object to the end.

Well, Mr. Chairman, I do not like the means or the end. The federal judicial map should be drawn without regard to the seeking of advantage. Gerrymandering is wrong, but it is plain wrong when the Judicial Branch is added to its list of victims.

Mr. Chairman, I am told that there is concern in some states encompassed by the Ninth Circuit that "California judges" are making law in other states. Not only is this statistically incorrect, it is also based on a faulty premise.

Statistically, the number of judges on the Circuit appointed from California is less than it should be if it were commensurate with the number of cases appealed from the District Courts in California.

As to the bill resting on a faulty premise, let me make two comments. First, no judge, from California or otherwise, should be "making law" anywhere in the Circuit. The judges of the Circuit are there to apply the law, not make it.

Second, even in their application of the law, it is not intended that the federal courts abide by a sense of localism. That is the role of state and local courts.

Yes, the Circuit Court does apply state laws in some instances, but cases which have come to the federal courts without a federal claim -- diversity cases -- constitute less than four percent of all cases heard by the Ninth Circuit. And if these cases are a concern, then we should abolish diversity -- which would have other beneficial effects, such as reducing the caseload of the District Courts.

Beyond the weakness of the arguments being used to support the pending bill, its passage would actually harm the federal interest in uniformity in the application of federal laws.

The Supreme Court is unable to handle more cases. If there were an intermediate court of appeals, then problems created by intercircuit conflicts would not be as significant. But we do not have such a court, so this bill, if enacted, would exacerbate the intercircuit problem.

Rather than undermine uniformity, we should engender it, in the environmental area as elsewhere. We should have uniform application of the laws on endangered species, on forest management, on maritime oil spills, on clean air and on clean water.

After all, the environment does not respect state boundaries; it transcends them: The Klamath River begins in Oregon and ends on the California Coast. There are proposals pending to develop the river. I don't want to see a race to the courthouse to see which circuit -- the Ninth or the Twelfth -- will handle the case.

If, in the end, some feel that the laws have been misapplied by the courts, then they should promote changes in the laws, not in the Courts.

Mr. Chairman, for a more detailed rebuttal to this bill I commend to you the views filed by the Office of the Circuit Executive of the Ninth Circuit. I also note that all of the active judges of that court oppose S. 948, and that the ABA recently withdrew its endorsement.

Thank you.