Testimony of

Circuit Judge Diarmuid O'Scannlain

U.S. Court of Appeals for the Ninth Circuit

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Subcommittee on Administrative Oversight and the Courts
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"Revisiting Proposals to Split the Ninth Circuit: An Inevitable Solution to a Growing Problem"
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Written Testimony of
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1 I previously served as Administrative Judge for the Northern Unit of our Court and for two terms as a member of our Court's Executive Committee.

Good afternoon, Chairman Sessions and Members of the Subcommittee. My name is Diarmuid F. O'Scannlain, United States Circuit Judge for the Ninth Circuit with chambers in Portland, Oregon. I am honored that you invited me to participate in this hearing on "Revisiting Proposals to Split the Ninth Circuit: An Inevitable Solution to a Growing Problem." Indeed, the urgency of restructuring the largest judicial circuit in the country is even more evident by the number of Ninth Circuit reorganization bills pending in this session of Congress, perhaps the highest in congressional history. As you know, Senator Ensign, on behalf of Senators Kyl, Murkowski, and five other sponsors, introduced the latest Ninth Circuit reorganization bill, S. 1845 "The Circuit Court of Appeals Restructuring and Modernization Act of 2005," which is, I understand, the central focus of your hearing today. It joins at least six other bills that have been introduced in the 109th Congress, including those sponsored by Congressman Simpson of Idaho, who has taken the lead on similar efforts in the House of Representatives. Indeed, since your last hearing on this subject, April 7, 2004, the House passed and sent to you a Ninth Circuit split bill late in the last session, but too late for you to consider before adjournment.

S. 1845 is laudable for recognizing and directly responding to the public concerns of those who have opposed restructuring until now, and for replying with uncommon sensitivity to the concerns of judges on my Court, the United States Court of Appeals

for the Ninth Circuit. I remain steadfast in my belief that it is inevitable that Congress must restructure the Ninth Circuit, and S.1845 would go a long way to accomplish that goal.

Most significantly, since April 7, 2004, the Judicial Conference of the United States, the policy-making arm of the federal judiciary, has gone on record as expressing neutrality on splitting the Ninth Circuit. The passage of a Ninth Circuit split bill in the House last year, the newly-expressed non-opposition of the Judicial Conference, and the widening support across the country for splitting the Ninth Circuit augurs well for Congressional action this year. I have served as a federal appellate judge for almost two decades on what has long been the largest court of appeals in the federal system (now 47 judges, soon to be 51).1 I have also written and spoken repeatedly on issues of judicial 2 See Statement of Diarmuid F. O'Scannlain, Hearing before Subcommittee on Administrative Oversight and the Courts, United States Senate, Improving the Administration of Justice: A Proposal to Split the Ninth Circuit (April 7, 2004); Statement of Diarmuid F. O'Scannlain, Hearing Before the Subcommittee on Courts, the Internet, and Intellectual Property, United States House of Representatives, Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2003 (October 21, 2003); Statement of Diarmuid F. O'Scannlain, Hearing Before the Subcommittee on Courts, the Internet, and Intellectual Property, United States House of Representatives, Ninth Circuit Reorganization Act of 2001 (July 23, 2002); Statement of Diarmuid F. O'Scannlain, Hearing Before the Committee on the Judiciary, United States Senate, Review of the Report by the Commission on Structural Alternatives for the Federal Courts of Appeals Regarding the Ninth Circuit and S. 253, the Ninth Circuit Reorganization Act (July 16, 1999); administration.2 Therefore, I feel qualified to share these perspectives on our mutual challenge to address the judiciary's 800-pound gorilla: The United States Court of Appeals and the fifteen District Courts which comprise the Ninth Judicial Circuit.

I appear before you as a judge of one of the most scrutinized institutions in this country. In many contexts, that attention is negative, resulting in criticism and controversy. Some view these episodes as fortunate events, sparking renewed interest in how the Ninth Circuit conducts its business.3 But a restructuring proposal like S. 1845 should be analyzed solely on grounds of effective judicial administration; grounds that remain unaffected by Supreme Court batting averages and public perception of any of our decisions. However one views our jurisprudence, I want to emphasize that my support of a fundamental restructuring

of the Ninth Circuit has never been premised on the outcome of any given case. Restructuring the circuit is the best way to cure the administrative ills affecting my court, an institution that has already exceeded reasonably manageable proportions. Nine states, almost sixteen thousand annual case filings, forty-seven judges, and fifty-eight million people are too much for any non-discretionary appeals court to handle satisfactorily. The sheer magnitude of our court and its responsibilities negatively affects all aspects of our business, including our celerity, our consistency, our clarity, and even our collegiality. Simply put, the Ninth Circuit is too big. It is time now to take the prudent, well-established course

and restructure this circuit. Restructuring large circuits is the natural evolution of judicial organization. Restructuring has worked in the past as you can see from Exhibit 1, pages 17-21 of the appendix to this testimony. Restructuring will work again. For these reasons alone, I urge serious consideration of S.1845.

I did not always feel this way. When I was appointed in 1986 I opposed any alteration of the Ninth Circuit. I held to this view throughout the '80s, largely because of the widespread perception that dissatisfaction with some of our environmental law decisions animated the calls for reform.

I changed my views in the early '90s while completing an LL.M. in Judicial Process at the University of Virginia. The more I considered the issue from the judicial administration perspective, the more I rethought my concerns. The objective need for a split became obvious. One could no longer ignore the compelling reasons to restructure the court, whether or not one agreed with anyone else's reasons for doing so.

Since then, I have learned a great deal about the severe judicial administration problems facing the Ninth Circuit. I have studied them and experienced them first hand, and I would like to share my thoughts and conclusions.

II

When the circuit courts of appeals were created over one hundred years ago by the Evarts Act of 1891, there were nine regional circuits. Today, there are thirteen total circuits: twelve regional circuits, including the D.C. Circuit, and the Federal Circuit. For much of our country's history, each court of appeals had only three judges. Indeed, the First Circuit was still a three-judge court when I was in law school. Over time, in an effort to stave off an explosion in appellate litigation, the circuits expanded as Congress added new judgeships.

At a certain point, larger circuits became unwieldy because of their size. Lawmakers recognized that adding new judges served only as a temporary anodyne rather than a permanent cure. Instead, Congress wisely restructured larger circuits. The District of Columbia Circuit can trace its origin as a separate circuit

4 The original name of this court was the Court of Appeals for the District of Columbia. In 1934, this court was renamed the United States Court of Appeals for the District of Columbia.

5 See Federal Courts Improvement Act of 1982, Pub. L. 97-164, 96 Stat. 25.

6 See White Commission Report.

7 See Commission on the Revision of the Federal Court Appellate System, Final Report (1973) [hereinafter "Hruska Commission Report"].

10 The Sixth Circuit has 29 total judges.

9 See Appendix. All the numerical data used in this testimony can be found in the appendix, unless otherwise noted, so from here on out I do not footnote this data.

to a few years after the enactment of the Evarts Act.4 Part of the Eighth Circuit became the Tenth Circuit in 1929, while portions of the Fifth begat the Eleventh in 1981. The next year saw the creation of the Federal Circuit.5 And, in due course, I have absolutely no doubt that the Twelfth--and even, perhaps, the Thirteenth--Circuit will be created out of the Ninth.

Congress formed each new circuit, at least in part, to respond to the very real problems posed by overburdened predecessor courts. That same rationale applies with special force to the Ninth Circuit, as many experts acknowledge. Indeed, the White Commission of 1998,6 and the Hruska Commission of 19737 before it, both concluded that the Court of Appeals for the Ninth Circuit is too big. Regardless of which party controlled Congress when the commissions were authorized, each concluded that the Ninth Circuit needs restructuring because of its unsustainable size.

A

From a purely numerical perspective, the sheer enormousness of my court is undeniable, whether one measures it by number of judges, by caseload, by population, or by geographic area. Our official allocation is 28 active judges--more than the total number of judges, active and senior combined, on any other circuit save one.8 Currently, 24 of those active judgeships are filled, and we have an additional 23 senior judges, who are in no sense "retired," with each generally hearing a substantial number of cases ranging from 100 percent to 25 percent of a regular active judge's load. There are forty-seven judges on our court today. And when the four existing vacancies are filled, our court will have 51.9 For most of my numerical data, I use caseload statistics provided by the Administrative Office of the United States Courts. U.S Courts of Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html. When statistics are publicly unavailable, I use the Ninth Circuit's internally generated statistics. Unless otherwise noted, all caseload statistics reflect appeals filed from July 1, 2004 to June 30, 2005, and, I use population statistics compiled by the United States Census Bureau for the year 2004.

10 Seven circuits posted double-digit year-over-year filing increases for the year ended June 30, 2005, and the Ninth Circuit's growth rate of 14.9% was thirdfastest. Administrative Office of the United States Courts, U.S Courts of Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html.

5

I should pause to put that figure in perspective. When vacancies are filled, the number of judges in the Ninth Circuit will approach twice the number of total judges of the next largest circuit (the Sixth with 29), and will already have more than five times that of the smallest (the First with 10). Indeed, there are more judges currently on the Ninth Circuit than there were in the entire federal judiciary at the birth of the circuit courts of appeals. And every time a judge takes senior status, we grow ever larger. Meanwhile, compared to our 47 judges (soon to be 51), the average size of all other circuits today remains at around 20 judges.

Even with the lumbering number of judges on our Circuit, we can hardly keep up with the immense breadth and scope of our Circuit's caseload. During the year ended June 30, 2005, 15,685 appeals were filed--over triple the average of other circuits, and 6,000 more cases than the next busiest court, the Fifth. In fact, our total appeals exceed the next largest circuit's by more than the entire annual dockets of the First, Third, Fourth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits. Unfortunately, such disparity has only increased, for the Ninth Circuit's caseload has increased more rapidly between 2000 and 2005 than has any other

circuit's. In fact, the Ninth Circuit's caseload increased 70% during that period, nearly five times that of the average of all other circuits. The statistical details are set forth in the Appendix. Along with yearly double-digit percentage growth in overall filings,10 we have also seen a huge upswing in immigration appeals, as the Board of Immigration Appeals' streamlined review procedures continue to add to our Circuit's caseload.

By population, too, does our circuit dwarf all others. The Ninth Circuit's nine states and two territories range from the Rocky Mountains and the Great Plains to the Sea of Japan and the Rainforests of Kauai, from the Mexican Border and the Sonoran Desert to the Bering Strait and the Arctic Ocean. This vast expanse houses more than 58 million people--almost exactly one fifth of the entire

11 Cumulative Estimates of Population Change for Incorporated Places over 100,000, Ranked by Percent Change: April 1, 2000 to July 1, 2004, http://www.census.gov/popest/cities/SUB-EST2004.html. The ten fastest growing cities of over 100,000 residents during that time period are: (1) Gilbert, AZ; (2) Miramar, FL; (3) North Las Vegas, NV; (4) Port St. Lucie, FL; (5) Roseville, CA; (6) Henderson, NV; (7) Chandler, AZ; (8) Cape Coral, FL; (9) Rancho Cucamonga, CA; (10) Irvine, CA.

12 See id. The five fastest growing cities of over 1,000,000 people between 2000 and 2004 are: (1) San Antonio, TX; (2) Phoenix, AZ; (3) Los Angeles, CA; (4) San Diego, CA; (5) Houston, TX.

population of the United States. Indeed, there are almost 27 million more people in the Ninth Circuit than in the next most populous circuit, the Sixth. As a result, our population exceeds the next largest circuit's by more than the total number of people in each of the First (encompassing Boston), Second (encompassing New York), Third (encompassing Philadelphia and Pittsburgh), Seventh (encompassing Chicago and Indianapolis), Eighth (encompassing St. Louis, Kansas City, and Minneapolis/St. Paul), Tenth (encompassing Denver and Salt Lake City), and D.C. Circuits (encompassing, of course, Washington, D.C.). And as with the number of appeals filed, the Ninth Circuit's population is growing at an exceptional rate. Of the 10 fastest-growing cities of over 100,000 residents, seven are located in the Ninth Circuit.11 Similarly, three of the five fastest-growing cities of over 1,000,000 residents are also found within the borders of the Ninth Circuit.12

No matter what metric one uses, the Ninth Circuit dominates. Compared to the other circuits, we employ more than twice the average number of judges, we handle more than triple the average number of appeals, and are approaching three times the average population. It makes very little sense to create a structure of regional circuits, and then place a fifth of the people, a fifth of the appeals, and almost a fifth of the judges into one of twelve regions. From any reasonable perspective, the Ninth Circuit already equals at least two circuits in one.

B

Numbers alone cannot tell the whole story. I have concluded as a firsthand observer that our court's size negatively affects the ability of us judges to do our jobs. For example, we all participate in numerous week-long sittings on regular appellate oral argument panels. The composition of those panels often changes

during a given week. Thus, presuming I sit with no visiting judges and no district judges--a mighty presumption in the Ninth Circuit, where we often enlist such extra-circuit help to deal with the overwhelming workload--I may sit with around 7
twenty of my colleagues on three-judge panels over the course of a year. That is less than half of the total number of judges on my court. Because the frequency with which any pair of judges hears cases together is quite low, it becomes difficult to establish effective working relationships in developing the law.

Consistency of law in the appellate context requires an environment in which a reasonably small body of judges has the opportunity to sit and to conference together frequently. Such interaction enhances understanding of one another's reasoning and decreases the possibility of misinformation and misunderstandings. Unlike a legislature, an appellate court is expected to speak with one consistent, authoritative voice in declaring the law. But the Ninth Circuit's ungainly girth severely hinders us, creating the danger that our deliberations will resemble those of a legislative rather than a judicial body.

If we had fewer judges, three-judge panels could circulate opinions to the entire court before publication, which is the practice of many other appellate courts. Pre-circulation not only prevents intra-circuit conflicts, it also fosters a greater awareness of the body of law created by the court. As it now stands, I read the full opinions of my court no earlier than the public does--and frequently later, which can lead to some unpleasant surprises. Even with our pre-publication report system, we do not get the full implications of what another panel is about to do. For, in addition to handling his or her own share of our 15,000 plus appeals, each judge is faced with the Sisyphean task of keeping up with all his or her colleagues' opinions--not to mention all the opinions issued by the Supreme Court along with the relevant public and academic commentary.

Without question, we are losing the ability to keep track of the legal field in general and our own precedents in particular. From a purely anecdotal perspective, it seems increasingly common for three judge panels to make initial en banc requests because they have uncovered directly conflicting Ninth Circuit precedent on a dispositive issue. This is as embarrassing as it is intolerable. It is imperative that judges read our court's opinions as--or preferably before--they are published. This is the only way to stay abreast of circuit developments. It is the only way to ensure that no intra-circuit conflicts develop. And it is the only way to ensure that when conflicts do arise (which is inevitable as we continue to grow), they are considered en banc. This task is too important to delegate to staff attorneys, and, as it now stands, too unwieldy for us judges adequately to do ourselves.

Many point to the en banc process as a solution to some of these problems, but it is nothing more than a band-aid. Theoretically, the ability to rehear en banc promotes consistency in adjudication by resolving intra-circuit conflicts once and for all. In my practical experience, however, this has not been the case in the Ninth Circuit. Only a fraction of our published opinions can receive en banc review. Last year we reexamined only about three percent of our published dispositions. Such a small fraction cannot significantly affect the overall consistency of a court

13 This is not to mention the over 5,000 non-precedential, unpublished dispositions

we circulate each year. See Administrative Office of the United States Courts, Judicial Business of the United States Courts: 2004 Annual Report of the Director.
14 See Administrative Office of the United States Courts, Judicial Business of the United States Courts: 2004 Annual Report of the Director.
15 See U.S. Census Bureau, State and County "QuickFacts," available at http://quickfacts.census.gov/qfd/.

that issued 691 published dispositions in 2004 alone.13

C

The Ninth Circuit's enormous size not only hinders judicial decisionmaking, it also creates problems for our litigants. In my court, the median time from when a party activates an appeal to when it receives resolution is over 15 months--four months longer than the average for the rest of the Courts of Appeals.14 No Circuit takes longer than the Ninth, and whatever point in the process to which this delay may be attributed, the striking length of time our circuit takes to dispose of cases is alarming. No litigant should have to wait that long to receive due justice. But at the same time, judges need time to deliberate and to ensure that they are making the correct decision. This backlog increases the pressure on us to dispose of cases quickly for the sake of the litigants, which, in turn, can only inflate the chance of error and inconsistency. I believe our unreasonable size is directly responsible for this serious problem.

Also, because of the circuit's geographical reach, judges must travel on a regular basis from faraway places to attend court meetings and hearings. For example, in order to hear cases, my colleagues must fly many times a year from cities including Honolulu, Hawaii, Fairbanks, Alaska, and Billings, Montana to distant cities including Seattle, Washington and Pasadena, California. In addition, all judges must travel on a quarterly basis to attend court meetings and en banc panels generally held in San Francisco. A certain amount of travel is unavoidable, especially in any circuit that might contain our non-contiguous states of Alaska and Hawaii, and our Pacific island territories. But why should any one circuit encompass close to 40% of the total geographic area of this country when the remaining 60% is shared by eleven other regional circuits?15 Traveling across this much land mass not only wastes time, it costs a considerable amount of money.

D

I am not alone in my conclusions. Several Supreme Court Justices have commented that the risk of intra-circuit conflicts is heightened in a court that
16 See White Commission Report, supra note 2, at 38.
17 The White Commission's principal findings told us: (1) that a federal appellate court cannot function effectively with a large number of judges; (2) that decisionmaking collegiality and the consistent, predictable, and coherent development of the law over time is best fostered in a decisionmaking unit smaller than what we now have; (3) that a disproportionately large proportion of lawyers practicing before the Ninth Circuit deemed the lack of consistency in the case law to be a "grave" or "large" problem; (4) that the outcome of cases is more difficult to predict in the Ninth Circuit than in other circuits; and (5) that our limited en banc process has not worked effectively.

publishes as many opinions as the Ninth.16 Furthermore, after careful analysis, the White Commission concluded that circuit courts with too many judges lack the ability to render clear, timely and uniform decisions,17 and as consistency of law falters, predictability erodes as well. The Commission pointed out that a disproportionately large number of lawyers indicated that the difficulty of discerning circuit law due to conflicting precedents was a "large" or "grave" problem in the Ninth Circuit. Predictability is clearly difficult enough with 28 active judgeships. But this figure mightily understates the problem, for it fails to consider both senior judges (most of whom continue to carry heavy workloads), and the large number of visiting district and out-of-circuit judges who are not even counted as part of our 47-judge roster. Notably, the White Commission also concluded that federal appellate courts cannot function effectively with as many judges as the Ninth Circuit has.

What the experts tell us--and what my long experience makes clear to me--is that the only real resolution to these problems is to have smaller decisionmaking units. The only viable solution, indeed the only responsible solution, is to restructure, and to carve out a new Twelfth, or even new Twelfth and Thirteenth Circuits.

III

The question then becomes how to split the circuit: nine states and two territories offer a wealth of possibilities. As I mentioned, there are several current House and Senate proposals, each of which restructures our circuit in a different way. The special virtue of most of the recent restructuring efforts is that they address substantially all of the arguments against previous proposals advanced by Chief Judge Schroeder and other opponents in recent years, clearly demonstrating that the continuing dialogue between Congress and the judiciary has led to positive results for all. These reorganization plans correct many of the problems currently facing our court by creating smaller decisionmaking units, which in turn fosters greater decisional consistency, increased accountability, collegiality among judges,

18 Statement of Mary M. Schroeder, Hearing Before the Subcommittee on Courts, the Internet, and Intellectual Property, United States House of Representatives, Ninth Circuit Reorganization Act of 2001 (July 23, 2002).

19 In 1984, Congress added new judges to every circuit save the very recently created Eleventh and Federal Circuits. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333. In 1990, Congress added new judges to the Third, Fourth, Fifth, Sixth, Eighth, and Tenth Circuits. Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089.

and responsiveness to regional concerns. And, of course, the new circuits created by these proposals would remain bound by pre-split Ninth Circuit precedent, helping to minimize confusion in interpreting the law.

Despite such similarities, each of the recent proposals offers separate restructuring plans, in turn presenting distinct sets of pros and cons. I firmly believe that the Ninth Circuit must be divided, but the particulars appropriately remain in Congress's hands. I have previously testified with respect to other

configurations, and I will not repeat those views here.
S. 1845 creates a new Twelfth Circuit comprised of the Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington. The "new" Ninth Circuit would contain California, Hawaii, and the Pacific island territories of Guam and the Northern Mariana Islands.
This bill adds five new judgeships and two temporary ones, all located in the "new" Ninth Circuit with duty stations in California. Total active judges would increase for at least the next ten years to 35, with 22 allocated to the new Ninth Circuit and 13 to the Twelfth (although I think there is a technical glitch as to the latter which should be cured in mark-up). This increase in judgeships is particularly notable, for in the past, one of the primary objections to restructuring proposals was that they did "not address the growing need for additional judgeships."18 As Chief Judge Schroeder has pointed out, these additional judgeships are sorely needed, as there have been no additional judgeships added to the Circuit since 1984.19 It is truly regrettable that we failed to request new judgeships in 1990 notwithstanding our statistical eligibility for perhaps as many as 10 new judges at the time.
I also commend S. 1845 for placing all of the new judges in California in the reconfigured Ninth Circuit. In the past, critics have condemned other proposals because they did not result in a proportional caseload distribution. This proposal directly addresses those criticisms.
The caseload of the newly created Twelfth Circuit would place it squarely within the normal operating range of the other existing circuits. The Twelfth Circuit would process more litigation than the current First, Third, Seventh, Eighth, 20Without dividing California, any reorganization plan will result in at least one Circuit with a population over 35 million.

Tenth, and D.C. Circuits. And at 341 appeals filed per authorized judgeship, the new Twelfth Circuit's caseload would compare favorably to ten of the twelve current circuits.
Of course, the new Ninth Circuit would still remain the largest circuit in the country by judges, population, and case filings--although complete parity is impossible, of course, and there will always be one "largest" circuit. However, the two new circuits would have populations of approximately 37 million and 21 million respectively. The Twelfth Circuit would be of roughly average size when compared to the other circuits, and the new Ninth Circuit would be closer to the sizes of the Fifth, Sixth, and Eleventh Circuits, which have populations of around 30 million.20
What is more important, however, is that S. 1845's new Ninth would be significantly better off, with fewer appeals, fewer judges, and a smaller population and geographical area to cover. As a result, the benefits of reorganization should be immediately apparent to all involved.
In sum, S. 1845 offers a unique solution by separating the Ninth Circuit into two and provides immediate help with the caseload crunch.
IV
Some objections inevitably survive even the most generously conciliatory

restructuring proposals. Alas, these are the same arguments that no reorganization bill can answer, as they amount to nothing more than a plea to keep the gigantic Ninth Circuit intact.

For example, one suggestion is that the Ninth Circuit should stay together to provide a consistent law for the West generally, and the Pacific Coast specifically. This is a red herring, as is the "need" to preserve a single maritime law for the Pacific Coast. The Atlantic Coast has five separate circuits, but freighters do not appear to collide more frequently off Long Island than off the San Francisco Bay because of uncertainties of maritime law back East. The same goes for the desire to adjudicate a cohesive "Law of the West." There is no corresponding "Law of the South" nor "Law of the East." The presence of multiple circuits everywhere else in the country does not appear to have caused any deleterious effects whatsoever. In fact, our long history with Circuit Courts of Appeals demonstrates that more discrete decisionmaking units enhance our judicial system. We should not be treated differently based on the assumption that our borders were fixed inviolate in 1891. Indeed, naturally coherent geographic divisions separate the highly distinct areas scattered throughout the West, each with their own climates

21 White Commission Report, supra note 2, at 38.

and cultures: there are the inter-mountain states, the Pacific Northwest states, the non-contiguous states and territories, as well as our California megastate.

Nor should cost alone be a reason to maintain the status quo. I respectfully disagree with my Chief's conclusion that any reorganization would require a new courthouse and administrative headquarters with wild cost estimates in the hundreds of millions of dollars. First, it utterly ignores the substantial savings necessarily arising from any reorganization, not to mention the smaller staff requirements of the new Ninth. Second, there are far simpler--and far cheaper--solutions. The Gus J. Solomon Courthouse in Portland has remained unoccupied since the construction of the Mark O. Hatfield Courthouse for the District of Oregon. Likewise, the William K. Nakamura Courthouse in Seattle sits empty with plenty of room for circuit operations, the Western District of Washington having moved to its newly constructed building in August 2004. Either of these physical plants would be appropriate for an administrative headquarters, and neither would require new building construction, aside from relatively modest design and remodeling expenses--expenses that must be borne regardless of what use the buildings will take. Perhaps similar alternatives may be found elsewhere throughout our circuit, such as the two federal courthouses in Phoenix which Judge Roll will discuss. Either way, these costs are much more modest than opponents claim--and pale in comparison to the administrative costs imposed by a megacircuit such as ours.

I concede that there are judges on the Ninth Circuit Court of Appeals who believe the disadvantages of splitting the circuit outweigh the advantages. But as a member of that court, I must take issue with the innuendo that they represent an overwhelming majority. Some judges are neither for nor against restructuring: they decline to express any view, feeling the matter is entirely a legislative issue. And a great number of judges on our court do indeed favor some kind of

restructuring, many strongly so. Perhaps our Chief Judge will make a good-faith effort to determine the breadth and scope of our judges' views on the issue, especially in light of the new approaches taken by both the House and the Senate and the increased probability of Congressional action. So far, she has neglected to do so. It is my earnest hope that we will be permitted, on a court-wide basis, to respond to Chairman Sensenbrenner's open invitation to suggest the most appropriate configuration from the standpoint of the existing judges.

Our circuit judges are not the only ones who may support a restructuring. Each of the five Supreme Court Justices who commented on the Ninth Circuit in letters to the White Commission "were of the opinion that it is time for a change."21 The Commission itself reported that, "[i]n general, the Justices expressed concern

22 Id.

23 See, e.g., Ninth Circuit in "Very Good" State, but Needs More Judges, Schroeder Tells Federal Bar Association Chapter, Metropolitan News-Enterprise, April 4, 2002, at 3; Procter Hug, Jr. & Carl Tobias, A Split by Any Other Name..., 15 J.L. & Pol. 397 (1999); Procter Hug, Jr., The Ninth Circuit Should Not Be Split, 57 Mont. L. Rev. 291 (1996).

about the ability of judges on the Ninth Circuit Court of Appeals to keep abreast of the court's jurisprudence and about the risk of intra-circuit conflicts in a court with an output as large as that court's."22 An increasing number of district judges have expressed support for restructuring, as well, with many practitioners concurring. Still, some bar members do not seem to care who gets appointed to this large circuit--by the luck of the draw they can get a friendly panel, or if not, a randomly selected en banc panel can give them a second shot. In any event, I truly believe that support for a split is not so thin as many objectors suggest.

Finally, I would like to reiterate my belief that these proposals to split the Ninth Circuit do not represent "a threat to judicial independence." Such a view is directly contradicted by over a century of Congressional legislation on circuit structure. Bills such as S. 1845 incorporate many provisions directly responding to the concerns voiced by split opponents, and these proposals demonstrate the goodfaith efforts made by the House and Senate reasonably to restructure the judicial monstrosity of the Ninth Circuit. Calling for a circuit split based on particular decisions is counterproductive and unacceptable, and, in my view, the case for the split stands on the grounds of effective judicial administration, supported by the statistics which show the ongoing caseload explosion.

There is nothing unusual, unprecedented, or unconstitutional about the restructuring of judicial circuits. Federal appellate courts have long evolved in response to the public interest as well as natural population and docket changes. As geographic or legal areas grow ever larger, they divide into smaller, more manageable judicial units. No circuit, not even mine, should resist the inevitable. Only the barest nostalgia suggests that the Ninth Circuit should keep essentially the same boundaries for over a century. But our circuit is not a collectable or an antique; we are not untouchable, we are not something special, we are not an exception to all other circuits, and most of all, we are not some "elite" entity immune from scrutiny by mere mortals. The only consideration is the optimal size

and structure for judges to perform their duties. There can be no legitimate interest in retaining a configuration that functions ineffectively. Indeed, I am mystified by the relentless refusal of some of my colleagues to contemplate the inevitable.23 As loyal as I am to my own court, I cannot oppose the logical and inevitable evolution of the Ninth Circuit as we grow to impossible size.

14

After denying these concerns, our past official court position straddles the fence by arguing that we can alleviate problems by making changes at the margin. Chief Judge Schroeder and her predecessors have done a truly admirable job with the limited tools they have had, chipping away at the mounting challenges to efficient judicial administration. However, I do not believe that long-term solutions to long-term problems come from tinkering at the edges. Courts of appeals have two principal functions: Correcting errors on appeal and declaring the law of the circuit. Simply adding more judges may help us keep up with our error-correcting duties, but as things now stand, it would severely hamper our lawdeclaring role. 28 judges is too many already, and more judges will only make it more difficult to render clear and consistent decisions. The time has come when such cosmetic changes can no longer suffice and a significant restructuring is necessary.

Whatever mechanism you choose, ultimately Congress will restructure the Ninth Circuit. This task has been delayed far too long, and each day the problems get worse. I do not mean to imply that our circuit as a whole is beyond the breaking point. I want to emphasize that our Chief Judge and our Clerk of the Court are doing a marvelous job of administering this circuit. Instead, my focus is on where we go from here. If the Ninth Circuit Court of Appeals has not yet collapsed, it is certainly poised at the edge of a precipice. Only a restructuring can bring us back from the brink.

V

Unfortunately, the Ninth Circuit's problems will not go away; rather, they continue to get worse. This issue has already spawned, both within and outside the court, too much debate, discussion, reporting, and testifying, and for far too long. We judges need to get back to judging. I ask that you mandate some kind of restructuring now. One way or another, the issue must be put to rest so that we can concentrate on our sworn duties and end the distractions caused by this neverending controversy. I urge you to give serious consideration to the reasonable restructuring proposals before you, and any others that might be offered.

Thank you, Mr. Chairman, for allowing me to appear before you today. I would be happy to answer any questions you have.

15

Note: All case filing figures refer to the period from July 1, 2004 to June 30, 2005. All bill references are to the current 109th Congress, unless otherwise noted.

APPENDIX

(updated October 26, 2005)

NINTH CIRCUIT REORGANIZATION

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Exhibit 1
The Evolution of the Circuits
The Judiciary Act of 1789 created three circuits: the Eastern, Middle, and Southern.
In 1802, three new circuits were created, bringing the total number to six. The Eastern Circuit was divided into
two circuits by separating New York, Vermont, and Connecticut from Massachusetts, New Hampshire, and
Rhode Island. The Middle Circuit, which encompassed the Mid-Atlantic region from Pennsylvania to Virginia,
was split into three circuits.
SOURCE: RUSSELL R. WHEELER & CYNTHIA HARRISON , FE D. JUDICIAL CT R., CREATING THE FEDERAL JUDICIAL SYSTEM (2d ed. 1994).
18
Exhibit 1 (cont'd)
Between1802 and 1837, three new circuits were created, bringing the total number to nine.
In 1842, Congress split the four states of the Ninth Circuit into two circuits and created the

noncontiguous Fifth
Circuit comprised of Louisiana and Alabama.
SOURCE: RUSSELL R. WHEELER & CYNTHIA HARRISON , FE D. JUDICIAL CT R., CREATING THE FEDERAL JUDICIAL SYSTEM (2d ed. 1994).
19
Exhibit 1 (cont'd)
In 1855, Congress created a separate judicial circuit, "constituted in and for the state of California, to be known
as the circuit court of the United States for the districts of California," with the same jurisdiction as the
numbered circuits. Rather than increasing the number of Supreme Court Justices, Congress authorized a circuit
judgeship for the circuit.
As the United States expanded westward, the nine circuits' boundaries were realigned to reflect territorial gains
and population shifts.
SOURCE: RUSSELL R. WHEELER & CYNTHIA HARRISON , FE D. JUDICIAL CT R., CREATING THE FEDERAL JUDICIAL SYSTEM (2d ed. 1994).
20
Exhibit 1 (cont'd)
In 1891, the Evarts Act created the nine circuit courts of appeals.
In 1929, the Tenth Circuit was created by splitting the Eighth Circuit in two.
SOURCE: RUSSELL R. WHEELER & CYNTHIA HARRISON , FE D. JUDICIAL CT R., CREATING THE FEDERAL JUDICIAL SYSTEM (2d ed. 1994).
21
Exhibit 1 (cont'd)
In 1948, the District of Columbia Circuit was created.
In 1981, the Eleventh Circuit was created by splitting the Fifth Circuit in two. A year later, the Federal Circuit
was created.
SOURCE: RUSSELL R. WHEELER & CYNTHIA HARRISON , FE D. JUDICIAL CT R., CREATING THE FEDERAL JUDICIAL SYSTEM (2d ed. 1994).
1982
22
Exhibit 2
The Twelve Regional Circuits Today:
The largest by far is the Ninth with about a fifth of the total
population and close to 40% of the total land mass of the
United States.
Changes since the Evarts Act of 1891:
1929 - Tenth Circuit carved out of Eighth Circuit
1948 - D.C. Circuit carved out of Fourth Circuit
1981 - Eleventh Circuit carved out of Fifth Circuit
1982 - Federal Circuit created
23
Exhibit 3

All Ninth Circuit Judges by Seniority
Judge Appointed by State City Status (Active/Senior)
1. Browning Kennedy California San Francisco Senior
2. Goodwin Nixon California Pasadena Senior
3. Wallace Nixon California San Diego Senior
4. Sneed Nixon California San Francisco Senior
5. Hug Carter Nevada Reno Senior
6. Skopil Carter Oregon Portland Senior
7. Fletcher, B. Carter Washington Seattle Senior
8. Schroeder (Chief) Carter Arizona Phoenix ACTIVE
9. Farris Carter Washington Seattle Senior
10. Pregerson Carter California Woodland Hills ACTIVE
11. Alarcon Carter California Los Angeles Senior
12. Ferguson Carter California Santa Ana Senior
13. Nelson, D. Carter California Pasadena Senior
14. Canby Carter Arizona Phoenix Senior
15. Boochever Carter California Pasadena Senior
16. Reinhardt Carter California Los Angeles ACTIVE
17. Beezer Reagan Washington Seattle Senior
18. Hall Reagan California Pasadena Senior
19. Brunetti Reagan Nevada Reno Senior
20. Kozinski Reagan California Pasadena ACTIVE
21. Noonan Reagan California San Francisco Senior
22. Thompson Reagan California San Diego Senior
23. O'Scannlain Reagan Oregon Portland ACTIVE
24. Leavy Reagan Oregon Portland Senior
25. Trott Reagan Idaho Boise Senior
26. Fernandez G.H.W. Bush California Pasadena Senior
27. Rymer G.H.W. Bush California Pasadena ACTIVE
28. Nelson, T. G.H.W. Bush Idaho Boise Senior
29. Kleinfeld G.H.W. Bush Alaska Fairbanks ACTIVE
30. Hawkins Clinton Arizona Phoenix ACTIVE
31. Tashima Clinton California Pasadena Senior
32. Thomas Clinton Montana Billings ACTIVE
33. Silverman Clinton Arizona Phoenix ACTIVE
34. Graber Clinton Oregon Portland ACTIVE
35. McKeown Clinton California San Diego ACTIVE
36. Wardlaw Clinton California Pasadena ACTIVE
37. Fletcher, W. Clinton California San Francisco ACTIVE
38. Fisher Clinton California Pasadena ACTIVE
39. Gould Clinton Washington Seattle ACTIVE
40. Paez Clinton California Pasadena ACTIVE
41. Berzon Clinton California San Francisco ACTIVE
42. Tallman Clinton Washington Seattle ACTIVE
43. Rawlinson Clinton Nevada Las Vegas ACTIVE
44. Clifton G.W. Bush Hawaii Honolulu ACTIVE

45. Bybee G.W. Bush Nevada Las Vegas ACTIVE
46. Callahan G.W. Bush California Sacramento ACTIVE
47. Bea G.W. Bush California San Francisco ACTIVE
48. [Myers] G.W. Bush Idaho Boise Nominee
49. [Vacancy] _____ California _____ Vacancy
50. [Vacancy] _____ Idaho _____ Vacancy
51. [Vacancy] _____ California _____ Vacancy
SUMMARY: ACTIVE Judges 24
Nominees 1
Vacancies + 3
Authorized Judgeships 28
Senior Judges + 23
TOTAL, including nominees and vacancies 51
24
Exhibit 4
The Ninth Circuit has eleven more authorized judgeships
than the next-largest circuit.
SOURCE: 28 U.S.C. § 44 (2004).
25
Exhibit 5
The Ninth Circuit has more than double the average
number of authorized judgeships of all other circuits.
SOURCE: 28 U.S.C. § 44 (2004).
26
Exhibit 6
The Ninth Circuit has twenty-two more total judges
(authorized + senior) than the next-largest circuit.
SOURCE: 28 U.S.C. § 44 (2004); Administrative Office of the United States Courts, Court Links,
http://www.uscourts.gov/allinks.html#1st (links to circuit court websites).
27
Exhibit 7
The Ninth Circuit has more than double the average number
of total judges (authorized + senior) of all other circuits.
SOURCE: 28 U.S.C. § 44 (2004); Administrative O ffice of the United States Courts, C ourt Links, http://www.uscourts.gov/allinks.html#1st
(links to circuit court websites).
28
Exhibit 8
Number of Authorized and Total Judges by Circuit
Court Headquarter City Authorized
Judgeships
% Senior
Judges
% Total Judges* %
First Boston, MA 6 3.6% 4 4.0% 10 3.7%

Second New York, NY 13 7.8% 10 10.0% 23 8.6%
Third Philadelphia, PA 14 8.4% 9 9.0% 23 8.6%
Fourth Richmond, VA 15 9.0% 4 4.0% 19 7.1%
Fifth New Orleans, LA 17 10.2% 3 3.0% 20 7.5%
Sixth Cincinnati, OH 16 9.6% 13 13.0% 29 10.9%
Seventh Chicago, IL 11 6.6% 6 6.0% 17 6.4%
Eighth St. Louis, MO 11 6.6% 11 11.0% 22 8.2%
Ninth San Francisco, CA 28 16.8% 23 23.0% 51 19.1%
Tenth Denver, CO 12 7.2% 8 8.0% 20 7.5%
Eleventh Atlanta, GA 12 7.2% 6 6.0% 18 6.7%
D.C. Washington, DC 12 7.2% 3 3.0% 15 5.6%
Total 167 100% 100 100% 267 100%
* Total judges includes authorized judgeships and senior judges.
SOURCE: 28 U.S.C. § 44 (2004); Administrative O ffice of the United States Courts, C ourt Links, http://www.uscourts.gov/allinks.html#1st
(links to circuit court websites).
29
Exhibit 9
The Ninth Circuit's population is 27 million more than the next-largest circuit.
SOURCE: U.S. Census Bureau, Estimated 2004 Population, http://www.census.gov/Press-Release/www/releases/archives/CB04-246.pdf;
Central Intelligence Agency, The World Factbook, http://www.cia.gov/cia/publications/factbook/.
30
Exhibit 10
The Ninth Circuit has almost three times the average population of all other circuits.
SOURCE: U.S. Census Bureau, Estimated 2004 Population, http://www.census.gov/Press-Release/www/releases/archives/CB04-246.pdf;
Central Intelligence Agency, The World Factbook, http://www.cia.gov/cia/publications/factbook/.
31
Exhibit 11
The Eleventh Circuit was carved out of the old Fifth Circuit in 1981 largely because of size. Today's Ninth Circuit has a population that is over 96% of the size of the current Fifth and Eleventh Circuits combined!
SOURCE: U.S. Census Bureau, Estimated 2004 Population, http://www.census.gov/Press-Release/www/releases/archives/CB04-246.pdf;
Central Intelligence Agency, The World Factbook, http://www.cia.gov/cia/publications/factbook/.
32
Exhibit 12
The Ninth Circuit had 6,000 more filings in 2005 than the next-busiest circuit.
SOURCE: Ninth Circuit AIMS database, July 1, 2004 to June 30, 2005; Administrative Office of the United States Courts, U.S. Courts of
Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html.

33
Exhibit 13
The Ninth Circuit had more than triple the average number
of appeals filed of all other circuits in 2005.
SOURCE: Ninth Circuit AIMS database, July 1, 2004 to June 30, 2005; Administrative Office of the United States Courts, U.S. Courts of
Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html.
34
Exhibit 14
The Ninth Circuit's caseload increased more rapidly between
2000 and 2005 than did any other circuit's.
SOURCE: Administrative Office of the United States Courts, U.S. Courts of Appeals Statistical Tables,
http://jnet.ao.dcn/Statistics/Caseload_Tables.html.
35
Exhibit 15
The Ninth Circuit's caseload increased nearly five times
faster between 2000 and 2005 than did the average of all
other circuits.
SOURCE: Administrative Office of the United States Courts, U.S. Courts of Appeals Statistical Tables,
http://jnet.ao.dcn/Statistics/Caseload_Tables.html.
36
Exhibit 16
The Ninth Circuit is the slowest circuit in the disposition of
appeals.
SOURCE: Administrative Office of the United States Courts, U.S. Courts of Appeals Statistical Tables,
http://jnet.ao.dcn/Statistics/Caseload_Tables.html. Exhibit represents the median time from filing of the notice of appeal to final disposition.
37
Exhibit 17
The Ninth Circuit takes almost 40% longer to dispose of an
appeal than the average of all other circuits.
SOURCE: Administrative Office of the United States Courts, U.S. Courts of Appeals Statistical Tables,
http://jnet.ao.dcn/Statistics/Caseload_Tables.html. Exhibit represents the median time from filing of the notice of appeal to final disposition.
38
Exhibit 18
The Ninth Circuit encompasses more states than
any other circuit.
SOURCE: 28 U.S.C. § 41 (2004).
39
Exhibit 19
The Ninth Circuit has more than double the average number

of states of all other circuits.
SOURCE: 28 U.S.C. § 41 (2004).
40
Exhibit 20
California alone accounts for nearly seventy percent of all
appeals filed within the Ninth Circuit.
SOURCE: Ninth Circuit AIMS database, July 1, 2004 to June 30, 2005.
41
Exhibit 21
No state other than California accounts for even 10% of the
appeals filed within the Ninth Circuit.
SOURCE: Ninth Circuit AIMS database, July 1, 2004 to June 30, 2005.
42
Exhibit 22
Judges, Population, and Appeals by State Within the
Ninth Circuit, 2005

State	Current Circuit Judgeships	% Judgeships	Population*	% Pop.	Appeals	% Appeals
Alaska	1	3.6%	655,435	1.1%	136	0.9%
Arizona	3	10.7%	5,743,834	9.9%	1,194	7.6%
California	14**	50.0%	35,893,799	61.6%	10,956	69.9%
Guam	0	0.0%	166,090	0.3%	34	0.2%
Hawaii	1	3.6%	1,262,840	2.2%	247	1.6%
Idaho	2**	7.1%	1,393,262	2.4%	161	1.0%
Montana	1	3.6%	926,865	1.6%	355	2.3%
Nevada	2	7.1%	2,334,771	4.0%	826	5.3%
N. Mariana Islands	0	0.0%	78,252	0.1%	9	0.1%
Oregon	2	7.1%	3,594,586	6.2%	638	4.1%
Washington	2	7.1%	6,203,788	10.6%	1129	7.2%
TOTAL	28	100%	58,253,522	100%	15,685***	100%

* All population figures were calculated using U.S. Census 2004 estimates.
** Includes two vacant judgeships.
*** Due to methodological differences, the Ninth Circuit's AIMS database yielded 15,685 filings for July 1, 2004 to June 30, 2005, while the
Administrative Office identified 15,717 filings.
SOURCE: 28 U.S.C. § 44 (2004); Ninth Circuit AIM S database, July 1, 2004 to June 30, 2005; Administrative Office of the United States
Courts, U.S. Courts of Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html; U.S. Census Bureau, Estimated 2004
Population, http://www.census.gov/Press-Release/www/releases/archives/CB04-246.pdf; Central Intelligence Agency, The World Factbook,
http://www.cia.gov/cia/publications/factbook/.
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Exhibit 23
The Circuits After the Restructuring Proposed by S. 1845
S. 1845
44
Exhibit 24
Judges for the "New" Ninth Circuit After S. 1845's Split
Judge Appointed by State City Status (Active/Senior)
1. Browning Kennedy California San Francisco Senior
2. Goodwin Nixon California Pasadena Senior
3. Wallace Nixon California San Diego Senior
4. Sneed Nixon California San Francisco Senior
5. Pregerson Carter California Woodland H ills ACTIVE
6. Alarcon Carter California Los Angeles Senior
7. Ferguson Carter California Santa Ana Senior
8. Nelson, D. Carter California Pasadena Senior
9. Boochever Carter California Pasadena Senior
10. Reinhardt Carter California Los Angeles ACTIVE
11. Hall Reagan California Pasadena Senior
12. Kozinski Reagan California Pasadena ACTIVE
13. Noonan Reagan California San Francisco Senior
14. Thompson Reagan California San Diego Senior
15. Fernandez G.H.W. Bush California Pasadena Senior
16. Rymer G.H.W. Bush California Pasadena ACTIVE
17. Tashima Clinton California Pasadena Senior
18. McKeown Clinton California San Diego ACTIVE
19. Wardlaw Clinton California Pasadena ACTIVE
20. Fletcher, W. Clinton California San Francisco ACTIVE
21. Fisher Clinton California Pasadena ACTIVE
22. Paez Clinton California Pasadena ACTIVE
23. Berzon Clinton California San Francisco ACTIVE
24. Clifton G.W. Bush Hawaii Honolulu ACTIVE
25. Callahan G.W. Bush California Sacramento ACTIVE
29. Bea G.W. Bush California San Francisco ACTIVE
30. [Vacant - Browning] _____ California _____ Vacancy
31. [Vacant - Tashima] _____ California _____ Vacancy
32. [New Judgeship]* _____ California _____ NEW
33. [New Judgeship]* _____ California _____ NEW
34. [New Judgeship]* _____ California _____ NEW
35. [New Judgeship]* _____ California _____ NEW
36. [New Judgeship]* _____ California _____ NEW
37. [Temp. Judgeship]** _____ California _____ TEMPORARY
38. [Temp. Judgeship]** _____ California _____ TEMPORARY
SUMMARY: ACTIVE Judges 13
Nominees Pending 0
Vacant Judgeships + 2
Existing Judgeships 15

New Judgeships 5
Temporary Judgeships + 2
Authorized Judgeships 22***
Senior Judges + 13
TOTAL 35
*New judgeship created by S. 1845
**Temporary judgeship not to be filled after 10 years
*** S. 1845 specifies 20 authorized judgeships for the new Ninth Circuit, which evidently does not include the two new
temporary judgeships.
S. 1845
45
Exhibit 25
Judges for the New Twelfth Circuit After S. 1845's Split
Judge Appointed by State City Status (Active/Senior)
1. Hug Carter Nevada Reno Senior
2. Skopil Carter Oregon Portland Senior
3. Fletcher, B. Carter Washington Seattle Senior
4. Schroeder Carter Arizona Phoenix ACTIVE
5. Farris Carter Washington Seattle Senior
6. Canby Carter Arizona Phoenix Senior
7. Beezer Reagan Washington Seattle Senior
8. Brunetti Reagan Nevada Reno Senior
9. O'Scannlain Reagan Oregon Portland ACTIVE
10. Leavy Reagan Oregon Portland Senior
11. Trott Reagan Idaho Boise Senior
12. Nelson, T. G.H.W. Bush Idaho Boise Senior
13. Kleinfeld G.H.W. Bush Alaska Fairbanks ACTIVE
14. Hawkins Clinton Arizona Phoenix ACTIVE
15. Thomas Clinton Montana Billings ACTIVE
16. Silverman Clinton Arizona Phoenix ACTIVE
17. Graber Clinton Oregon Portland ACTIVE
18. Gould Clinton Washington Seattle ACTIVE
19. Tallman Clinton Washington Seattle ACTIVE
20. Rawlinson Clinton Nevada Las Vegas ACTIVE
21. Bybee G.W. Bush Nevada Las Vegas ACTIVE
22. [Myers] G.W. Bush Idaho Boise Nominee
23. [Vacant - Trott] _____ Idaho _____ Vacancy
SUMMARY: ACTIVE Judges 11
Nominees Pending 1
Vacant Judgeships + 1
Existing Judgeships 13
New Judgeships + 0*
Authorized Judgeships 13*
Senior Judges + 10
TOTAL 23

* S.1845 specifies 14 authorized judgeships for the Twelfth Circuit but fails to create new judgeships.
S. 1845
46
Exhibit 26
S. 1845's Reorganization--Judges, Population, and Caseload
by Circuit
Court Authorized
Judges % Judges Pop.* % Pop. Appeals** % Appeals
Appeals
per
Judgeship
First 6 3.6% 14,008,745 4.7% 1,884 2.8% 314
Second 13 7.8% 23,352,086 7.8% 6,815 10.0% 524
Third 14 8.4% 22,044,310 7.4% 4,292 6.3% 307
Fourth 15 9.0% 27,572,528 9.3% 5,332 7.8% 355
Fifth 17 10.2% 29,908,758 10.0% 9,646 14.2% 567
Sixth 16 9.6% 31,618,515 10.6% 5,052 7.4% 316
Seventh 11 6.7% 24,460,229 8.2% 3,706 5.5% 337
Eighth 11 6.7% 19,715,119 6.6% 3,544 5.2% 322
Ninth 28 16.8% 58,253,522 19.6% 15,685 23.1% 560
Tenth 12 7.2% 15,659,315 5.3% 2,935 4.3% 245
Eleventh 12 7.2% 30,756,726 10.3% 7,707 11.3% 642
D.C. 12 7.2% 553,523 0.2% 1,369 2.0% 114
Total 167 100% 297,903,376 100% 67967 100% 384***
"New" Ninth**** 22 13.2% 37,400,981 12.6% 11,246 16.5% 511
Twelfth**** 13 7.8% 20,852,541 7.0% 4,439 6.5% 341
* All population figures are based on U.S. Census 2004 estimates. The total population for the United States, Puerto Rico, Guam, the Virgin
Islands, and the Northern Mariana Islands in 2004 was estimated at 297,903,376.
** Ninth Circuit caseload numbers come from our internal database, while other caseload numbers come from the Administrative Office of the
United States Courts. All statistics cover the period from July 1, 2004 to June 30, 2005.
***384 represents the average number of appeals per authorized judgeship for all current circuits as they stand.
**** "New" Ninth and Twelfth Circuits based on alignments and additional judgeships as proposed by S. 1845. Percent judges for
reconfigured circuits based on a total of 174 judges. Number of judges for new Twelfth Circuit omits the additional judgeship not expressly
created by S.1845, although the bill authorizes a total of 14 judgeships for the new circuit.
SOURCE: 28 U.S.C. § 44; N inth Circuit AIMS database, July 1, 2004 to June 30, 2005; Administrative Office of the United States Courts,
U.S. Courts of Appeals Statistical Tables, http://jnet.ao.dcn/Statistics/Caseload_Tables.html. U.S. Census Bureau, Estimated 2004 Population,
http://www.census.gov/Press-Release/www/releases/archives/CB04-246.pdf; Central Intelligence Agency, The World Factbook,

http://www.cia.gov/cia/publications/factbook/.
S. 1845