

Testimony of

# **Circuit Judge Mary Schroeder**

U.S. Court of Appeals for the Ninth Circuit

October 26, 2005

STATEMENT OF CHIEF JUDGE MARY M. SCHROEDER  
TO THE SENATE JUDICIARY SUBCOMMITTEE ON COURTS  
Wednesday, October 26, 2005, 3:00 p.m.  
Subcommittee on Administrative Oversight and the Courts  
Hearing on Revisiting Proposals to Split the Ninth Circuit

Good afternoon. My name is Mary M. Schroeder and I am Chief Judge of the United States Court of Appeals for the Ninth Circuit. I have served in that capacity since December 2000. My home chambers are in Phoenix Arizona, where I practiced law and served on the Arizona Court of Appeals before being appointed to the federal bench.

The judiciary has changed a great deal in the last 100 years, and many of these changes were described in the 1998 report of the Commission on Structural Alternatives (the White Commission) that recommended against dividing the circuit. It concluded we were administered well. Since that time, technology has improved rapidly. We have Blackberries, cell phones, and lap tops so we can communicate instantly with each other, wherever we are on the planet. It is now easier to administer the circuit than it was when I took over in 2000.

Moreover, it is the view of the overwhelming majority of our circuit judges, bankruptcy judges, and lawyers who practice within the circuit, that a division of the circuit would not improve the administration of justice in the west. There are only three circuit judges who support division. They are all here today.

What I would like to focus upon this afternoon, however, is not how well the circuit is operating but on how harmful a circuit division would be, and especially now.

There are three principle reasons. The first is the unprecedented devastation wrought by Hurricane Katrina that has created an urgent need for resources to restore and operate courts along the Gulf Coast. The second is the temporary but unprecedented increase in the administrative immigration appeals to our court from a Board of Immigration Appeals that cannot provide sufficient, meaningful administrative review. The third is the need for court resources to prepare for new litigation spawned by the Bankruptcy Act that went into effect last week and new immigration legislation you are striving to formulate.

Katrina was serious. I was in Houston last week and visited my good friend, Carolyn King, the Chief Judge of the Fifth Circuit. She has moved the entire staff of the Clerk's Office and Circuit Executive's office of the Fifth Circuit from the courthouse in New Orleans to temporary quarters in the Houston courthouse. They are all on per diem and using rented furniture. They are receiving crisis counseling, for they are worried about their damaged homes in Louisiana, their uprooted children in new schools, and what the future holds. They are allowed to return twice a month to New Orleans to deal with insurance adjusters. All of this is very costly, not in just in money, but in time and human suffering.

The Federal Appellate Court for the Fifth Circuit, is, however, at least functioning, thanks to super human efforts on the part of its chief judge and its administrators. I understand there are trial courts that are presently not functioning.

This is clearly not the time to create an unnecessary and costly bureaucratic court structure in the west, when every bit of our very limited resources are necessary to rebuild the legal system in an area of the country where one no longer exists.

With respect to the immigration cases, they are nearly all from California. Splitting the circuit would exacerbate administrative burdens because the judges from the rest of the existing circuit would no longer be there to help. Staff resources would be cut.

Let me speak for a moment about staffing. A new circuit and new circuit court of appeals has to be staffed. They need a clerk of court, a circuit executive, technology folks, staff attorneys. We have all of that now, and very effectively so, in the Ninth Circuit. Our Clerk of Court, Cathy Catterson, is famous throughout the country for her efficiency, good humor, and ability to deal with sometimes testy folks in all three branches of government. Our Circuit Executive's office, headed by Greg Walters, is superb. They provide services to all of our judges throughout the circuit with expertise that can't be matched by smaller circuits. Their effectiveness is greatly appreciated by our district courts which they principally serve. Creating a new set of administrators of their quality is not possible.

Finally, a few words about administration. All of our living chief judges, past, present, and future oppose circuit division. This is because the existing ninth circuit has a hub and is thus easily administered by judges who may be located outside San Francisco. Nearly all of our judges and lawyers can get to San Francisco within two hours' flight time. This means that we can fly in and out for an important meeting without losing more than one day out of the office.

I happen to follow college athletics. It is not a coincidence that our courthouse in San Francisco and the headquarters of the Pacific Ten Athletic Conference are only a few bay area transit stops away from each other. We cover much the same territory in the lower 48 states. The bay area is the natural hub for us both.

Neither of the two circuits created by S. 1845 would have a similar hub. In one circuit, Hawaii would be an appendage of California, with its disparate metropolitan areas. The other circuit would extend from the Arctic Circle to the Mexican border with no central administrative hub. Judges would have to change planes in San Francisco to travel between Seattle and Phoenix, its major metropolitan areas. There is no building in Phoenix that could house a court headquarters without displacing existing federal tenants and destroying costly and recently renovated courtrooms. Millions would be required in Seattle as well.

Given the stress on the administration of justice created by the combined forces of budgetary and natural disasters, this is not the time to consider fracturing the administrative structure of the courts of the west.

Thank you.