The minimum wage is another example. If it had been adjusted to match inflation over the past 20 years, it would be just above $12,000, the federal poverty line for a family of three. But if our typical divorced mother of two obtains full-time employment at minimum wage (as many must do), she will earn $8,840 before deductions—about what full-time child care for her children will cost. Would we take such a population and cut their wages every year by 3% to 5%? That is what the current numbers accomplish.

We are spending more in one area: jailing of criminals. California now has the highest juvenile incarceration rate of any state, in a nation with the highest juvenile incarceration rate among all developed countries. California's adult prison population has increased from 19,000 in 1977 to 132,000 this year, at an operating cost of $20,000 per prisoner per year. The state is now preparing for 341,000 prisoners and 41 new prisons over the next eight years. Is there a relationship between unlimited prison spending and years of decreases in basic investment in children's programs?

To be sure, many of our problems can be traced to private irresponsibility—a dependency mentality by some and, for more, a frightening abandonment of children by biological fathers. But public spending makes a difference.

Children Now indexes show that a record 28.6% of California children live in poverty and 20% have no access to private or public health care. We also have high infant disability, record low test scores and increasingly violent juvenile crime.

Each of these aspects has a relationship to public spending. It is no accident that California's falling test scores, for example, correlate with the worst student-teacher ratio in the nation and a per-pupil spending level now nearing the bottom five states, just ahead of Alabama and at half the level of New Jersey.

California is one of the richest jurisdictions in the world—we can boast of having more vehicles than licensed drivers—and our wealth increases each year. The governor predicts that personal income will increase 6% in each of the next two years.

And our tax burden has decreased. In 1989–90, we spend $6.88 from the general fund for every $100 in personal income; in the current year, we are spending $5.86 per $100, and the governor proposes a further reduction to $5.50. At the same time, he is calling for a $7-billion tax cut for the wealthy over the next three years.

Could the governor make his cutback proposals if the right numbers were used and understood? The fact is that for six years we have been giving to the wealthy and taking from the children. We just haven't been talking about it.●

WEST VIRGINIA EDUCATION

● Mr. ROCKEFELLER. Mr. President, I rise today to congratulate and commend the counties of Mercer, Monroe, McDowell, Summers, Raleigh, and Wyoming in West Virginia and their commitment to participating in a parental involvement program called, Teachers Involving Parents Successfully [TIPS]. This program seeks to promote teachers working more closely with parents to help the children learn and succeed in school.

Too often, we forget that the condition of children's lives and their future prospects largely reflects the well-being of their families. When family support is strong, stable, and loving, children have a sound basis for becoming caring and competent adults. In contrast, when parents are unable to give children the attention and support they need in the home and for school, children are less likely to achieve their full potential. As a result, many of our Nation's gravest social problems stem from problems in our families.

However, Mr. President, there is genuine reason for hope and optimism. In my home State of West Virginia, under the leadership of local education officials, a new program is changing the lives of children and their families. Its development and expansion of community-based family support provides parents with the knowledge, skills, and support they need to work with their children and the school system. Its success has been achieved through a collaborative effort among State and Federal programs, including chapter I and other programs targeted for at-risk students, and private sector efforts in the community. Each month, 2,000 special education guides are distributed, as well as news releases, public service announcements, and radio reminders that focus the community on the need for parental involvement. Teacher training and support materials have also been provided to every school in a successful effort to coordinate teacher, parent, and child activity both inside and outside of school.

When I was chairman of the bipartisan National Commission on Children, we urged individuals and the country as a whole to reaffirm a commitment to forming and supporting strong, stable families as the best environment for raising children. The West Virginia TIPS Program is an extension of that goal, and its success is a tribute to those counties that have worked so hard to insure its development. The parents, children, and teachers in these counties are providing new opportunities for children and families. Their commitment to make a difference has ensured the success of the family, which is the best strategy for helping our children. They deserve our support and best wishes for continued success.●

OPPOSITION TO S. 956, THE NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT OF 1995

● Mrs. MURRAY. Mr. President, I rise in opposition to S. 956, a bill to divide the ninth judicial circuit into two circuits.

This is the fourth time since 1983 that a bill to split the ninth circuit has been introduced in the U.S. Senate. The proposal has failed to become law because the ninth circuit is operating well and providing uniform and consistent interpretation of Federal laws across the nine Western States, and the territories of Guam and the Northern Mariana Islands.

The courts of the ninth circuit are functioning well, and, in many instances, serve as models for the rest of the country. The ninth circuit has prided itself on its experiments in judicial administration, and has been a national leader in developing innovative caseload management and court administration techniques.

The vast majority of judges, lawyers, and bar organizations in the ninth circuit have voted on several occasions against the division of the circuit.

Mr. President, I urge my colleagues to oppose this bill and to resist the temptation to meddle with an institution that is successfully administering justice in the American West.

Just 4 years ago, a comprehensive subcommittee hearing was held in the Senate on nearly identical legislation, and the proposal failed to emerge from committee. The proponents of S. 956 have identified no new reasons or change of circumstances to justify reopening this issue.

Mr. President, the ninth judicial circuit has prepared a detailed position paper opposing S. 956. I agree with the circuit's reasoning, and I commend this paper to my colleagues. I also urge them to join me in opposing this bill which is both unwise and unnecessary.

I ask that the complete text of the ''Position Paper in Opposition to S. 956—Ninth Circuit Court of Appeals Reorganization Act of 1995'' be printed in the RECORD.

The material follows:

POSITION PAPER IN OPPOSITION TO S. 956—NINTH CIRCUIT COURT OF APPEALS REORGANIZATION ACT OF 1995 (6/22/95)

Prepared by: The Office of the Circuit Executive for the United States Courts for the Ninth Circuit, P.O. Box 193846, San Francisco, California 94119–3486; Tel: 415–744–6150/Fax: 415–744–6179. [6/30/95]

Proposed legislation: S. 956 would divide the present Ninth Circuit into two unequal-sized circuits. The new Twelfth Circuit would consist of the states of Alaska, Idaho, Montana, Oregon, and Washington (6 districts), with 9 active circuit judges. The new Ninth Circuit would consist of the states of Arizona, California, Hawaii, and Nevada, and the territories of Guam and the Northern Mariana Islands (9 districts), with 19 active circuit judges.

The Ninth Circuit opposes S. 956. The Ninth Circuit is functioning well and has devised innovative ways of managing its caseload that are models for other circuits. As the nation's largest circuit, it benefits from significant advantages because of its size and believes division of the circuit is unnecessary and unwise. The Circuit Executive's Office for the United States Courts for the Ninth Circuit has prepared the following information in ''question and answer'' format to assist decisionmakers to understand the circuit's position on S. 956.

1. WHAT WOULD THE PROPOSED LEGISLATION DO?

S. 956 would create two courts—one 19-judge court and one 9-judge court—in place of a single 28-judge court. A basic problem with this proposal is that it creates more administrative problems than it solves. Quantitatively, such a circuit court would have a very small caseload. The aggregate number of cases in such a circuit based on the most recent statistics would be 1935,[1] making it the circuit court with the second smallest caseload in the country,[2] with only the First Circuit court having fewer cases. Of the 11

regional circuits, the circuit court with the median volume is the Second, with 3,986 cases; the proposed northern circuit would be less than half that number. Take away the northern states, and the Ninth Circuit court would still have the largest volume in the country. In short, such a proposal creates a very small circuit and gives not much relief.

In general, S. 956 presumes that two smaller circuits will do a better job of maintaining consistency and deciding cases promptly than the present circuit. The proposal ignores the central fact of appellate dockets: caseloads are constantly growing and dividing the circuit would simply create two courts with increasing caseloads without dealing with the fundamental problems resulting from expanding caseloads with no increase in judicial resources.

2. HOW DOES THIS BILL DIFFER FROM EARLIER PROPOSED LEGISLATION?

This is the ninth legislative proposal to split the Ninth Circuit since 1940. It is nearly identical (except for the alignment of Hawaii and the Territories) to measures introduced by Senator Gorton in 1983, 1989, and 1991. Each of those measures failed to emerge from committee and died at the conclusion of the legislative session. The Subcommittee on Courts and Administrative Practice of the Senate Committee on the Judiciary conducted a legislative hearing on the 1989 bill (S. 948) on March 6, 1990. The sponsors of the current bill have advanced no reason for dividing the circuit that was not fully considered and rejected in 1990. They have pointed to no change in circumstances that would justify yet another examination of this issue.

3. ARE THERE DRAWBACKS TO THE PROPOSED BILL?

The Ninth Circuit has functioned successfully in its present configuration for over 100 years. Any effort to abolish a successful, established institution should be cautiously examined. The proposed bill could create serious legal and administrative problems and costs that do not now exist:

(1) the potential for inconsistent law relating to admiralty, commercial trade, and utilities along the Western seaboard, including Alaska, Hawaii, and the Territories;

(2) the opportunity for litigants to forum shop by filing their cases in whichever circuit, northern or southern, they feel is most sympathetic to their cause;

(3) the substantial cost of setting up duplicative administrative structures;

(4) the loss of advantages of size (see Question #4, below);

(5) the rejection of the expressed will of the vast majority of the judges and lawyers in the circuit who oppose its division.

Common sense suggests the inadvisability of creating a new regional circuit that would require duplication of functions that are already being satisfactorily performed in a larger circuit. Administratively, the creation of a new circuit would require duplicative offices of clerk of court, circuit executive, staff attorneys, settlement attorneys, and library, as well as courtrooms, mail and computer facilities. In addition, approximately 40,000 square feet or new headquarters space would be required, all of which would duplicate offices and space in San Francisco. Further, a small circuit, with its concomitant small caseload, would underutilize judicial resources and reduce the opportunities for efficiencies available to a larger circuit.

Lawyers expressed particular concern that dividing the extended coastline in the West between two circuits would create inconsistent and conflicting application of maritime, commercial, and utility law in the two circuits, making commerce more difficult and costly, and requiring them to research the law of two circuits for every potential cross-circuit transaction. Potential inconsistencies would be especially troubling in the application of utility rates along the entire Pacific seaboard by the Bonneville Power Administration. These rate and administrative disputes should remain in a single service area, the Ninth Circuit.

On four occasions in the past 15 years, the federal judges in the Ninth Circuit and elected representatives of practicing lawyers who participate in the Ninth Circuit Judicial Conference have voted overwhelmingly in opposition to splitting the circuit. The current Almanac of the Federal Judiciary, Vol. 2, based on extensive polling, reports that the lawyers ''almost unanimously praise'' the court, and, with regard to circuit splitting, ''all seem to agree that such a division would be difficult and probably unsatisfactory.'' (1995–1, 9th Cir.)

4. ARE THERE ADVANTAGES TO A LARGE CIRCUIT?

A single court of appeals serving a large geographic region promotes uniformity and consistency in the law and facilitates trade and commerce by contributing to stability and orderly progress. In many respects, the size of the Ninth Circuit is an asset that has improved both decisionmaking and judicial administration. The court of appeals is strengthened and enriched, and the inevitable tendency to regional parochialism is weakened, by the variety and diversity of backgrounds of its judges drawn from the nine states comprising the circuit. The size of the circuit has also allowed the circuit to draw upon a large pool of district and bankruptcy judges for temporary assignment to neighboring districts with a temporary but acute need for judicial assistance.

The Ninth Circuit is a national leader in developing innovative solutions to caseload and administrative challenges. The ABA Appellate Practice Committee's Report applauded three specific operational efficiencies:

. . .issue classification, aggressive use of staff attorneys, and a limited en banc-[that] were developed by the Ninth Circuit precisely to address the issues of caseload and judgeship growth that the Subcommittee identified, and hold promise for other circuits as they continue to grow. (at p. 10).

The Ninth Circuit has served as a laboratory for experimentation in a host of other areas—from decentralized budgeting to cameras in the courts, from block case designations to improved state-federal judicial relations, from alternative dispute resolution to appellate commissioners, from improved tribal court relations to alternative forms of capital case representation. The results have inured to the benefit of the entire Judiciary. As the congressionally-mandated Federal Courts Study Committee noted in 1990, ''Perhaps the Ninth Circuit presents a workable alternative to the traditional model.'' Final Report of the Federal Courts Study Committee (1990).

5. WHAT IS THE POSITION OF THE SPONSORS?

In remarks introducing S. 853 (the immediate predecessor of S. 956[3]), Senator Gorton of Washington asserted the following grounds for the proposal: (1) a decrease in consistency of decisions due to size; (2) unmanageable caseloads; (3) inability to appreciate the interests of the Northwest; and (4) a decline in the performance of the circuit. 141 Cong. Rec. S7504 (daily ed. May 25, 1995) (statement of Sen. Gorton). Senator Burns of Montana echoed his colleague's concerns and suggested employment and local economic stability are threatened by delays in resolving lawsuits affecting timbering, mining, and water development. Delays in criminal appeals, especially those involving the death penalty, also are of concern to the Senators. 141 Cong. Rec. S7504 (daily ed. May 25, 1995) (statement of Sen. Burns) The circuit's specific responses to these contentions are set forth in the following sections.

6. HAS THE SIZE OF THE CIRCUIT ADVERSELY AFFECTED CONSISTENCY?

Consistency of court of appeals decisions is important to provide coherent guidance to lower courts and litigants. The Ninth Circuit has instituted case management devices that have effectively reduced conflicts between panels and maintained a high level of consistency in its decisions.

Since 1980, the use of a limited *en banc* panel to resolve intracircuit conflicts has proven highly effective. All 28 active judges participate in determining whether a case will be heard *en banc*. Each call for an *en banc* vote leads to careful evaluation of the development of the law of the circuit in that area. If a majority of the judges votes to hear a case *en banc* (which happens less than a dozen times a year), ten members of the court chosen at random plus the chief judge serve as the limited *en banc* court. Judges and lawyers have expressed a high degree of satisfaction with the limited *en banc* process; only a handful of requests have been made for a full court rehearing after the limited *en banc* panel has issued a decision, and none have been granted.

An objective, highly-praised scholarly study of consistency of the law in the Ninth Circuit concluded ''the pattern of [multiple relevant precedents] exemplified by high visibility issues. . . is not characteristic of Ninth Circuit jurisprudence generally. Nor is intracircuit conflict.'' *Restructuring Justice: The Innovations of the Ninth Circuit and The Future of the Federal Courts* (1990). A recent FJC study reached a similar conclusion:

In sum, despite concerns about the proliferation of precedent as the courts of appeals grow, there is currently little evidence that intracircuit inconsistency is a significant problem. Also, there is little evidence that whatever intracircuit conflict exists is strongly correlated with circuit size.

Structural and Other Alternatives for the Federal Courts of Appeals (1993).

Of greater concern is the potential for increased Intercircuit conflicts that would be spawned by the division of circuits. Dividing the Ninth Circuit would place an additional burden on the United States Supreme Court to resolve conflicts that are now handled internally within the circuit.

Nor is keeping abreast of the decisions of the Ninth Circuit a significant problem. For the past seven years, the number of published opinions issued by the circuit has remained relatively constant. In large part due to efficiencies and innovative case management methods pioneered in the circuit, the court has been able to accurately identify those selected precedential cases that truly merit publication and those routine cases which are most appropriately disposed of by a written decision sent only to the parties.

7. IS THE NINTH CIRCUIT'S CASELOAD EXCESSIVE WHEN COMPARED TO OTHER CIRCUITS?

While the caseload for the Ninth Circuit Court of Appeals is the highest in the nation in absolute numbers, the caseload level is clearly not excessive when compared to other circuits, using either of two standard measurement approaches.

Because federal statutes require that nearly all of the work of an appellate court be conducted by three-judge panels, the most accurate measure of a court's ability to manage its caseload is the number of appeals filed and terminated per panel. In 1994, the Ninth Circuit stood at 868 appeals filed per panel, very close to the median of 832 and

substantially below the numbers for the two circuits that emerged from the split of the Fifth Circuit in 1980. For the same year, the Ninth Circuit stood at 914 appeals terminated per panel, slightly above the median of 866.

Caseload levels may also be measured by case terminations per judge. The current Ninth Circuit rate of merit case terminations per judge is 446, a number which is exactly the national median. By either measure, the caseload levels in the Ninth Circuit approach the middle range for federal appellate judges.

In contrast, under the proposed bill, the new Twelfth Circuit, with nine judges, would seriously underutilize its judicial resources and create huge disparities between the two circuits. Using projected Twelfth Circuit filings of 1935, a nine-judge court would have 645 filings per panel. The new Ninth Circuit, with 19 judges and filings of 6391, would have 1014 filings per panel, or 57% more cases per panel when compared to the judges in the Twelfth Circuit and the third highest per panel filings figure in the nation.

7. IS REGIONALISM APPROPRIATE FOR AN APPELLATE COURT?

Sponsors of the legislation to divide the circuit cite the need for a court free from domination by California judges and California judicial philosophy. They assert that the Northwest states confront emerging issues that are unique to that region and that cannot be fully appreciated or addressed from a California perspective.

The premise that a judge's place of residence prejudices his or her determination of cases was rejected as completely unacceptable by former Chief Justice Warren Burger in his remarks concerning an earlier version of the sponsor's legislation: ''I find it a very offensive statement to be made that a United States judge, having taken the oath of office, is going to be biased because of the economic conditions of his own jurisdiction.'' (Record, August 2, 1991, S 12277) Calling an earlier version of legislation to split the circuit ''environmental gerrymandering,'' then-Senator Pete Wilson of California echoed Justice Burger's concerns, stating:

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 federal courts abide by a sense of localism. That is the role of the state and local courts. Ninth Circuit Court of Appeals Reorganization Act of 1989: Hearings on S. 948 Before the Subcomm. on Courts and Administrative Practice of the Senate Comm. on the Judiciary, 101st Cong., 2d Sess. 286 (1990) (written statement of Hon. Pete Wilson, U.S. Senate).

Similarly, the ABA Appellate Practice Committee's Subcommittee To Study Circuit Size reported that ''a majority of the Subcommittee questions whether regional differences should be a criterion in determining circuit size. * * * The role of circuit courts is primarily to apply federal law—a law that with few exceptions is to be applied uniformly across the land.'' (at p. 3).

8. WHAT IS THE NINTH CIRCUIT'S RECORD OF PERFORMANCE?

One measure of the efficiency of an appellate court is the average amount of time required to decide a case from the period between filing a notice of appeal and rendering of a final decision. In 1983, when an earlier version of legislation to split the circuit was proposed, the court had 4583 new filings and the average length of time from filing the notice of appeal to final decision was 10.5 months. In late 1989, the court of appeals headquarter (where cases are processed) was badly damaged and closed by the Loma Prieta earthquake in San Francisco. Court staff was scattered among six different temporary buildings until late 1991. During this period, the court has 7257 new filings and the average length of time from filing the notice of appeal to final decision role to 15.6 months. Since the court was consolidated in a single location in 1991, processing times have substantially improved. In 1994, the most recent period for which figures are available, the court received 8092 new filings, and, despite vacancies, had reduced the average length of time from filing the notice of appeal to final decision to 14.5 months, slightly less than the time required in the Eleventh Circuit.

The average time from filing to disposition, however, does not accurately reflect the time the cases are actually in the judges' hands. In the Ninth Circuit, the average time from oral argument submission to disposition—that is, the actual time the judges have the cases in their hands—is 1.9 months, or .5 months less than the national average. In short, what the court needs to reduce disposition times is more judges. Hundreds of cases are available to be heard by judges; there simply are not enough judges to hear them. This is the ''swell'' in pending cases referred to when S. 853 was introduced. 141 Cong. Rec. S7504 (daily ed. May 25. 1995) For this reason, in 1992 the Ninth Circuit requested additional judgeships. The Judicial Conference of the United States endorsed the request which is now pending before Congress. With four current vacancies on the court, the average time to disposition is unlikely to improve substantially until new judges come on board. Obviously this central problem would not be alleviated by dividing the circuit and the proposed split would materially increase the caseload of judges in the remaining Ninth Circuit.

9. IS CIRCUIT DIVISION THE SOLUTION TO GROWING CASELOADS?

The presumption that increasing the number of circuits would solve the problem of expanding federal court caseloads is the underlying fallacy of S. 956. Cases are resolved by judges, not circuits, and increasing the number of circuits without increasing the number of judges would only exacerbate the problem.

Even with the proposed division of the Ninth Circuit, the population shift and growth that is increasing litigation in the West would continue to increase the workload of the two new circuits. The old Fifth Circuit encountered the same situation when it was divided into the Fifth and Eleventh Circuits in 1980. Before the split, the Fifth Circuit had 4914 filings and 27 judgeships, compared to the Ninth Circuit's 4262 filings and 23 judgeships. By 1994, the combined Fifth and Eleventh Circuits' filings had increased 241% to 11,858, while the Ninth Circuit's had increased 190% to 8115. Dividing the Fifth Circuit had no effect on the growth of the caseload, which is at the root of the size issue.

In its study on circuit size, the ABA Appellate Practice Committee's Subcommittee to Study Circuit Size ''found no compelling reasons why circuit courts of various sizes—ranging from a few judges to fifty—cannot effectively meet the caseload challenge. Indeed for every argument in favor of smaller circuits, there is an equally compelling argument for larger circuits.'' Report (October 1992), as p. 5. The Federal Judicial Center's recent analysis of structural alternatives in response to the mandate of the Federal Court Study Committee concluded:

[T]here can be no doubt that the system and its judges are under stress. That stress derives primarily from the continuing expansion of federal jurisdiction without a concomitant increase in resources. It does not appear to be a stress that would be significantly relieved by structural change to the appellate system at this time. Structural and other Alternatives for the Federal Course of appeals (1993), at p. 155.

The Ninth Circuit is functioning well and is handling its caseload in a timely and responsible manner. It is a leader in innovative case management techniques and its size offers numerous advantages, including: the application of a uniform body of law to wide geographic area, economies of scale in case processing, the ability to serve as a laboratory for experimentation in judicial administration and adjudication, and the diversity of background of its members. The vast majority of judges and lawyers in the circuit support retention of the circuit in its present form and reject circuit division as a response to the caseload crisis.

Further Information Relating to the Issue of Splitting the Ninth Circuit:

ABA Appellate practice Committee, subcommittee to Study Circuit Size, Report (October 1992).

Baker, Thomas, ''On Redrawing Circuit Boundaries—Why the Proposal to Divide the United States Court of Appeals for the Ninth Circuit Is Not Such a Good Idea,'' 22 Ariz. S.L.J. 917 (1900).

Federal Judicial Center, J. McKenna, Structural and Other Alternatives for the Federal Courts of Appeals (1993).

Final Report of the Federal Courts Study Committee (1990).

Fourth Biennial Report to Congress on the Implementation of Section 6 of the Omnibus Judgeship Act of 1978 (1989).

Hellman, A. ed., Restructuring Justice: The innovations of the Ninth Circuit and The Future of the Federal Courts (1990).

Ninth Circuit Position Paper—1991.

Ninth Circuit Position Paper—1989.

Proposed Long Range Plan for the Federal Courts (1995).

U.S. Senate, Committee on the Judiciary, Ninth Circuit Court of Appeals Reorganization Act of 1989: hearings on S. 948 Before the Subcomm. on the Judiciary, 101st Cong., 2d Sess. (1990).

1. The caseload figures for the proposed new Ninth and new Twelfth Circuits are based upon internal court statistics for FY 1994.

2. All references are to regional circuits (the First through the Eleventh) and exclude comparisons to the two circuits that are based upon special jurisdiction rather than geography (the District of Columbia and the Federal Circuits).

3. Senator Gorton's remarks were made when he introduced S. 853 on May 25, 1995. That bill created a new Twelfth Circuit with seven judges and a new Ninth Circuit with nineteen judges. On June 22, 1995, Senator Gorton introduced a corrected bill that is identical to S. 853 except for a new Twelfth Circuit with nine judges and a new Ninth Circuit with nineteen judges. This paper is a response to the new bill and to the remarks made that the introduction of the earlier bill, S. 853.●

THE MEDIA, CENSORSHIP, AND PARENTAL EMPOWERMENT

● Ms. MIKULSKI. Mr. President, I rise today to speak on how best to control the viewing habits of America's children.

We are in a communication revolution. We have all heard about the information highway. We know that there is more and more information available to all of us. And more information available to children. Much of it is