

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 tem-

porary 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 rose 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 signifi-

cantly 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 (1990).

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 Districts).

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

good, and some of it is bad. The information highway includes ever-increasing numbers of television channels. These new and changing channels and the programs they broadcast are coming into our living rooms.

There is a good side to this growing technology and information, but we also know there is a bad side. Studies tell us that by the time a child enters high school, that child will watch over 8,000 murders and 100,000 acts of violence on television. How can parents know and control what their kids are watching. How can they control it when they are away from home working? How can they control what their kids see on the living room television when they are busy in the kitchen?

For some the solution is simple, just censor the networks or moviemakers. I believe there is a better way. It is the approach I believe in, and that is the approach that uses technology and information.

Mr. President, I am proud to cosponsor the Media Protection Act of 1995. This is the V-chip bill. A television that has this V chip will allow parents to block out programming that they don't want their children to see when they are away or in another room. This automatic blocking device will be triggered by a rating system that the networks can develop themselves. This is not censorship. It is no more censorship than the current movie theater rating system that was created by the movie industry less than three decades ago.

I am also pleased to cosponsor the Television Violence Report Card Act of 1995. This is the information part of what parents need. This legislation will encourage an evaluation of programming to let parents know just what to watch for or watch out for.

Some call this legislation censorship, but it is not. It is parental empowerment and parental involvement, and maybe a way to stem the tide of violence that kids are exposed to every day and evening they watch television.●

“WHY NOT ATOM TESTS IN FRANCE?”

● Mr. SIMON. Mr. President, the Washington Post had an editorial titled, “Why Not Atom Tests in France?”

The policy of France is unwise, just as our earlier policy of continuing tests was unwise.

France is not doing a favor to stability in the world with these tests.

I hope that the French Government will reconsider this unwise course.

At this point, I ask unanimous consent that this op-ed piece be printed in the RECORD.

The material follows:

WHY NOT ATOM TESTS IN FRANCE?

France's unwise decision to resume nuclear testing was an invitation to the kind of protests and denunciations being generated by Greenpeace's skillful demonstration of political theater. But even before Greenpeace set sail for the test site, several Pacific countries had vehemently objected to France's intention of carrying out the explosions at a

Pacific atoll. The most cutting comment came from Japan's prime minister, Tomiichi Murayama. At a recent meeting in Cannes the newly installed president of France, Jacques Chirac, confidently explained to him that the tests will be entirely safe. If they are so safe, Mr. Murayama replied, why doesn't Mr. Chirac hold them in France?

The dangers of these tests to France are, in fact, substantial. The chances of physical damage and the release of radioactivity to the atmosphere are very low. But the symbolism of a European country holding its tests on the other side of the earth, in a vestige of its former colonial empire, is proving immensely damaging to France's standing among its friends in Asia.

France says that it needs to carry out the tests to ensure the reliability of its nuclear weapons. Those weapons, like most of the American nuclear armory, were developed to counter a threat from a power that has collapsed. The great threat now, to France and the rest of the world, is the possibility of nuclear bombs in the hands of reckless and aggressive governments elsewhere. North Korea, Iraq and Iran head the list of possibilities. The tests will strengthen France's international prestige, in the view of many French politicians, by reminding others that it possesses these weapons. But in less stable and non-democratic countries, there are many dictators, juntas and nationalist fanatics who similarly aspire to improve their countries' standing in the world.

The international effort to discourage the spread of nuclear weapons is a fragile enterprise, depending mainly on trust and goodwill. But over the past half-century, the effort has been remarkably and unexpectedly successful. It depends on a bargain in which the nuclear powers agree to move toward nuclear disarmament at some indefinite point in the future, and in the meantime to avoid flaunting these portentous weapons or to use them merely for displays of one-upmanship. That's the understanding that France is now undermining. The harassment by Greenpeace is the least of the costs that these misguided tests will exact.●

ON THE RELEASE OF AUNG SAN SUU KYI

● Mr. MOYNIHAN. Mr. President, after 6 years of unjust detention by the Burmese military, Nobel Peace Prize winner Aung San Suu Kyi is free. While this is cause for celebration and great relief from those of us who have long called for her release, one cannot fail to stress that there is also great outrage that she was incarcerated in the first instance. The State Law and Order Restoration Council [SLORC], the military Junta in Burma, has sought to thwart democracy at every turn.

Led by Aung San Suu Kyi, the National League for Democracy [NLD] party won a democratic election in 1990, while she was under house arrest, yet the SLORC has never allowed the elected leaders of Burma to take office. Instead they have forced these leaders to flee their country to escape arrest and death.

The United States Senate has often spoken in support of those brave Burmese democracy leaders. We have withheld aid and weapons to the military regime, and have provided some, albeit modest amounts, of assistance to the

Burmese refugees who have fled the ruthless SLORC. Pro-democracy demonstrators were particularly vulnerable, yet having fled the country they found themselves denied political asylum by Western governments. In 1989, Senator KENNEDY and I rose in support of the demonstrators and won passage of an amendment to the Immigration Act of 1990 requiring the Secretary of State and the Attorney General to clearly define the immigration policy of the United States toward Burmese pro-democracy demonstrators. Congress acted again on the Customs and Trade Act of 1990 to adopt a provision I introduced requiring the President to impose appropriate economic sanctions on Burma. The Bush administration utilized this provision to sanction Burmese textiles. Unfortunately these powers have never been exercised by the current administration.

The SLORC regime had to be denounced. The Senate continued to press for stronger actions. On March 12, 1992, the Foreign Relations Committee unanimously voted to adopt a report submitted by myself and Senator MCCONNELL detailing specific actions that should be taken before the nomination of a United States Ambassador to Burma would be considered in the Senate.

Last year the State Department Authorization Act for 1994-95 contained a provision I introduced placing Burma on the list of international outlaw states such as Libya, North Korea, and Iraq, an indication that the United States Congress considers the SLORC regime to be one of the very worst in the world. The Senate also unanimously adopted S. 234 on July 15, 1994, calling for the release of Aung San Suu Kyi and for increased international pressure on the SLORC to achieve the transfer of power to the winners of the 1990 democratic election.

Thankfully, Aung San Suu Kyi has now been released. But the struggle in Burma is not over. The SLORC continues to wage war against its own people. Illegal heroin continues to be produced with their complicity. And the SLORC continues to thwart the transfer to democracy in Burma. The New York Times concludes appropriately:

The end of Ms. Aung San Suu Kyi's detention must be followed by other steps toward democracy before Myanmar is deemed eligible for loans from multilateral institutions or closer ties with the United States. It is too soon to welcome Yangon back into the democratic community.

We in the Senate must rededicate ourselves to the strong support of those in Burma working to overcome this tyranny. I congratulate Aung San Suu Kyi on her extraordinary bravery and determination, and celebrate with her family the news of her release.

I ask that the July 13, 1995, editorial be printed in the RECORD.

The editorial follows: