



Welcoming Remarks to the Symposium

*Dean Rex Perschbacher*¹

Chief Judge Hug, other distinguished panelists and guests, friends of King Hall. On behalf of the faculty, students and staff of the UC Davis School of Law, I extend to you our warmest welcome. Thank you for joining us today to discuss: *Managing the Federal Courts: Will the Ninth Circuit be a Model for Change?*

We have a most distinguished group of discussants to shed light on this topic: federal judges – Chief Judge Procter Hug of the Ninth Circuit Court of Appeals, Judge Pamela Ann Rymer of the Ninth Circuit and Gilbert S. Merritt of the Sixth Circuit, both members of the White ‘Commission on Structural Alternatives for the Federal Courts of Appeals’; Judges James R. Browning; and David R. Thompson from the Ninth Circuit and Chief Judge Edward R. Becker of the Third Circuit; Clerk Cathy A. Catterson of the Ninth Circuit; Scott Bales, Solicitor General of Arizona; Assistant U.S. Attorney Miriam A. Krinsky; and Professors Thomas E. Baker (Drake University), Arthur D. Hellman (Univ of Pittsburgh), Lauren K. Robél (Indiana University), Carl W. Tobias (University of Nevada, Las Vegas) and our own John B. Oakley and Margaret Z. Johns.

In 1891, the Circuit Court of Appeals Act (The “Evarts Act”) created the modern structure for the federal Circuit Courts and established the

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Ninth Circuit Court of Appeals.¹ The Evarts Act empowered the Ninth Circuit to hear appeals from trials in the federal courts in California, Oregon, Nevada, Washington, Idaho, Montana and the territory of Alaska. Later, the Ninth Circuit added Arizona, Hawaii, Guam and the Northern Mariana Islands as territories and states. Moreover, an extra-territorial court operated in China for 50 years.² From its beginning, the Ninth Circuit has been exceptional. It included states and territories at very different stages of development.³

According to David C. Frederick's fascinating history of the Ninth Circuit, the Ninth Circuit began in 1896 with two judges.⁴ By 1935, the Ninth Circuit expanded to four, although two were vacant.⁵ By 1937, the Ninth Circuit had seven judges, larger than any other circuit.⁶ Today, there are twenty-eight authorized judgeships, but the court continues to be plagued with vacancies.⁷

The Ninth Circuit's size has always been an issue. Initially, the issue was principally geographic. Currently the issue is its relatively large number of judges. Debate over the size of the Ninth Circuit began before its formal creation. A year before the 1891 act, San Francisco lawyer Frank M. Stone argued to the Senate Judiciary Committee that the proposed circuit was too large. He argued that such a large circuit "would be more than any one such court of appeals . . . could possibly attend to without the business running behind, and the calendar becoming clogged if such circuit judges attended to nothing but the appeals, and sat as a court of appeals."⁸ Dividing the Ninth Circuit was debated in the 1930s; in 1940; in the Magnuson-Bone Legislation of 1941; in the 1970s; the 1980s; the 1990s⁹ and again this year. Yet, as Judge William Denman observed in 1973, "[S]o while it is inevitable that the northern part of the Circuit will eventually be separated from the southern part, the time is not yet here."¹⁰ Likewise, as Chief Judge Alfred

¹ Arthur D. Hellman, *The Crisis in the Circuits and the Innovations of the Browning Years*, in *RESTRUCTURING JUSTICE* 3-4 (Arthur D. Hellman, ed., 1990).

² DAVID C. FREDERICK, *RUGGED JUSTICE* 3 (1994).

³ *Id.*

⁴ *Id.* at 18.

⁵ *Id.* at 221.

⁶ *Id.* at 216.

⁷ *Review of 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: Hearing Before the Senate Comm. on the Judiciary*, 106th Cong. 7 (1999).

⁸ FREDERICK, *supra* note 2, at 216-17.

⁹ *Id.*

¹⁰ *Id.* at 216.

T. Goodwin reiterated in 1990, “[S]plitting the Ninth Circuit is an old idea whose time has not yet arrived.”¹¹

That debate continues here today. Since our panelists come principally from two of the very few groups in this country with life tenure, I anticipate a spirited and uninhibited exchange of views.

¹¹ *Id.*
