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## Congress Authorizes Appellate Study Panel

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lot project under circumstances strongly indicative of relapse and use of both cocaine and alcohol.

Of the 15 graduates, only two have reappeared in Municipal Court for any offense, one for DWI and the other for domestic violence. The remainder appear to have remained clean and sober. Verification of this, however, is problematic since it depends not only on engaging in substance use or abuse, but also in being apprehended by a law enforcement agency.

The keys to success for those who completed the DWI Drug Court pilot project seem to have included three prominent factors. First, there was a group cohesiveness that created a strong interpersonal bond and a sense not only of support but also of positive peer pressure. Second, there was positive reinforcement from the project treatment staff and the Municipal Court judge. Third, successful participants had a strong support network in their lives. These networks included children, spouses and significant others, and close friends.

## Conclusions

It is important to emphasize that the pilot project conducted by the Municipal Court presents certain limitations. First, there was a conspicuous lack of funding for the program. Second, there was not random assignment into the program, nor was there a true control group for which data are available. Nevertheless, this approach seems promising. The Las Cruces, New Mexico, Municipal Court DWI Drug Court program certainly provides one technique for addressing the drinking and driving habits of multiple DWI offenders. This mechanism, like drug courts based on the Miami model, brings treatment into the court itself. It makes the judge and other members of the courtroom work group a part of the treatment team.

After the pilot project a grant of \$307,000 was received from the New Mexico DWI Local Grants Council to create a county-wide drug court for Dona Ana County. In addition, a more expansive program, with an evaluation component, is underway.

The results of the DWI drug court project are important for at least two reasons. First, the drug court model offers the promise of long-term sobriety for persistent DWI offenders. This should make them more productive citizens and less of a threat to public safety. Second, in the long run a more proactive method of dealing with drunk drivers may keep these individuals from returning to court for additional charges and adjudication. In other words, the courts may be able to save themselves a great deal of time later by investing a little time and money now. In the end we may be able to alleviate some of the docket crowding in misdemeanor courts simply by keeping some of the repeat offenders from ever returning, or at least from returning so often. ☞

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## Congress authorizes appellate study panel

by Carl Tobias

**I**n mid-November, the first session of the 105th Congress passed a measure authorizing a national commission to study the federal appeals courts. On November 26, President Clinton signed the legislation. The Commission on Structural Alternatives for the Federal Courts of Appeals has a historic opportunity to analyze carefully the federal appellate system and make valuable suggestions for improvement, thereby charting the destiny of the intermediate appeals courts for the 21st century.

The creation of the panel is important because the appellate courts are at a critical juncture. All of the regional circuits have experienced exponential docket growth. Many ob-

servers believe the courts have insufficient resources to treat the cases before them.

The provision authorizing the commission represents a compromise resulting from controversial proposals to divide the U.S. Court of Appeals for the Ninth Circuit. In June, the House of Representatives passed a measure providing for a national commission to study the federal appellate courts. (See "House authorizes appellate court study commission," *Judicature*, May-June 1997.)

In July, the Senate approved a rider to an appropriations bill that would have split the Ninth Circuit without a prior study. That proposal would have left California and Nevada in

the Ninth Circuit and created a new Twelfth Circuit encompassing Alaska, Arizona, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands. A particularly controversial provision would have created for the Twelfth Circuit two co-equal seats and two co-equal court clerks, located in Phoenix and Seattle.

Proponents of splitting the Ninth Circuit cite several concerns. Some believe that the circuit, by far the country's largest in terms of number of judges and number of states, is too big to handle its caseload efficiently. They also say that the circuit's size does not promote consistent decision making or collegiality among its judges. Moreover, many lawmakers and their constituents have been troubled by some of the court's more liberal rulings in areas such as environmental law. They maintain that

the judges of the circuit from California have an insufficient appreciation of the other Western states, and that thus California should be in a separate circuit.

The Senate measure that would have split the Ninth Circuit was strongly opposed by Representative Henry Hyde (R-Illinois), chair of the House Judiciary Committee. Hyde was joined by Representative Howard Coble (R-North Carolina), chair of the House Judiciary Subcommittee on Courts and Intellectual Property, and the entire California House delegation.

Critics articulated several reasons for their opposition. For instance, there was concern that the division would improperly allocate the caseload between the two proposed courts and that the Senate was using the appropriations process to make an important substantive decision. Critics also suggested that dividing the Ninth Circuit would have been too dramatic a measure to institute without clearly understanding the precise problems the court and the appellate system are encountering, their effects, and the best ways to treat them.

In November, a House-Senate conference committee substituted the study commission measure for the appropriations rider that would have split the Ninth Circuit. The study commission legislation essentially embodies the House proposal, with several important changes.

The commission's mandate remains identical: to "study the present division of the United States into the several judicial circuits [and] the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit," and to report "recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the federal Courts of Appeal, consistent with fundamental concepts of fairness and due process."

Significant differences between the study commission Congress approved and the one proposed earlier by the

### Commission members

**Chair: Byron R. White**, retired justice, U.S. Supreme Court

**Vice Chair: N. Lee Cooper**, immediate past president, American Bar Association

**Gilbert S. Merritt**, judge, U.S. Court of Appeals for the Sixth Circuit

**Pamela Ann Rymer**, judge, U.S. Court of Appeals for the Ninth Circuit

**William D. Browning**, judge, U.S. District Court, Arizona

**Executive Director: Daniel J. Meador**, professor of law emeritus, University of Virginia

House include the time allocated for the panel to complete its work, the entity's composition, and the authority for making appointments to the commission. The enacted legislation gives the commission a one-year life span—10 months to gather information and two months to write the report. This timeframe contrasts with the House's proposal, which would have provided the commission 18 months to conclude its work. The legislation authorizes a five-member commission to be appointed by Chief Justice William H. Rehnquist, whereas the House version would have provided for 10 members, eight of whom congressional leaders would have appointed.

### The commission's challenges

The commission may encounter considerable difficulty in finishing the study and assembling its report in the short time afforded. Moreover, Congress's charge to the commission is unclear and subject to multiple, plausible constructions.

Congress essentially left important aspects of the commission's study and its report to the discretion of commission members and their staff, who must promptly resolve these questions so that the panel can complete its work in the brief time provided. For instance, the authorizing measure requires the entity to em-

phasize the Ninth Circuit, but it is unclear how much attention that court ought to receive. While the commission should focus on the Ninth Circuit because it is the biggest and most complex court, burgeoning caseloads are a systemic problem that may need a systemic solution.

Moreover, the commission might compare the Ninth Circuit with other courts to determine whether size affects speed of disposition or case law consistency. The efficacy of the Ninth Circuit's limited en banc procedure could also be an appropriate topic of study. To help the commission with its job, Congress wisely empowered commission members and staff to invoke the expertise of the Federal Judicial Center and the Administrative Office of the U.S. Courts.

The commission's first task should be to determine whether the appellate courts and the Ninth Circuit are confronting complications that are troubling enough to deserve treatment. If the commission conclusively finds that the system or the Ninth Circuit are facing such problems, it must determine which possible resolution will best address these difficulties. For instance, if the commission recommends a reconfiguration of the Ninth Circuit, it must then determine which realignment would be superior by attempting to allocate the caseload and judicial resources evenly.

The Commission on Structural Alternatives for the Federal Courts of Appeals has a great opportunity to analyze and develop suggestions for improving the federal appeals courts at a critical time. If the commission expeditiously and efficiently discharges its duties, it should be able to recommend how the appellate courts can address the problems they are certain to face in the 21st century. ♣

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