

have not as yet appeared on the daily assignment, may be assigned to a judge for the purpose of discussing the question of settlement if counsel for all parties agree to the negotiation conference, provided, however, that said conference shall not interfere with the trial date of the case. Should any such case be reached for trial before said negotiation conference is held, such conference shall be expedited so as not to interfere with the trial of the case.

By the Court:

DAVID A. PINE, *Chief Judge*

DUTIES OF A CIRCUIT CHIEF JUDGE

ADDRESS OF CHIEF JUDGE PRETTYMAN

Mr. President and Fellow Members of the Bar Association:

I thank you for inviting me here tonight and for the privilege of this rostrum. I also thank you for honoring the four Chief Judges. We join you in the satisfaction that all four of us are from the ranks of this bar. I have been in this spot in many capacities, but this one tonight is a new one. It is the same old face but with different habiliments. I suggested to Fred Ballard several topics about which I might speak for a few minutes, but he seemed to think I would be at my best talking more or less about myself and so selected this one from among the suggestions. The subject is, as your programs state, "The Duties of a Circuit Chief Judge."

The feeling that overpowers all other feelings whenever my mind wanders away to contemplate either momentarily or at length the fact of my being the Chief Judge of a Circuit in the federal judicial system is a well-nigh overwhelming sense of responsibility. Why that is so I shall try to develop as I address you. At the same time I think neither manners nor morals require a pretense of modesty toward the fact of my being in the position. I have a fierce pride in being Chief Judge. I think any member of our bar, being honest with

himself, would admit to the same feeling, even though he would realize, as I do, that the place is achieved only by the insensitive processes of seniority. And then I admit to an extra portion of satisfaction, because this terminal point of a lifetime in the law finds me still among the friends with whom and against whom I practiced so many years. This Circuit was a pleasant place in which to fight and play. It has been a pleasant place in which to sit awhile in the duties of judgment. It will be a pleasant place in which to turn out to pasture some day with some equally aged cronies.

The duties of a Federal Circuit Chief Judge fall into five distinct categories. The first category consists of judicial duties as such. In this work the Chief is one of nine judges, no more and no less. His influence over his brethren is his power of persuasion, and he has exactly the same amount as has any one of the nine. The Chief takes his place on the calendar exactly as do the other eight members, except that he is permitted the prerogative of taking from time to time a lesser load than they do. He does not assign judges to the panels. The Clerk makes up the calendar unaided, drawing the names out of a box; and under our system it takes almost an Act of Congress to get your name off a panel once it has been drawn. The Chief Judge on our court does not assign cases for the writing of opinions except when he sits with a panel or the court sits *en banc* and he is in the majority when the vote is taken. The majority opinion is always assigned by informal agreement or by the senior in the majority. And I might add at this point that the Chief Judge does not decide when to have hearings *en banc*. Those hearings by the full court are ordered by a majority vote of the judges and by that method alone. In the exercise of that power my fellow-workers are as strong-minded as they are when it comes to deciding cases.

While the Chief Judge has no more than exactly one-third or one-ninth, as the case may be, of the power and the duty of the court in its judicial work, as I view the job he does have an additional intangible obligation in respect to it. There are intangible attributes to a court as a court. It may be aggressive

or lackadaisical, amiable or irritable, serious about the service it renders or entirely satisfied with itself, cohesive or divided; and so on. Of course such attributes are the composite of the characteristics of the individual judges, and of course each judge can and does influence the character of the composite, either by unconscious qualities or by conscious effort. But, whether we deny it or seek to escape it or not, the Chief Judge is by the bare fact of his office in a place of peculiar obligation in respect to this intangible attribute. The observation applies to almost all organized bodies. They always have an office which has a name, be it president, grand potentate, director, chairman, worthy grand master, or chief. Even if that office is given no special measure of power, nevertheless implicit in the designation is a definite responsibility, greater than that of any other member, for that intangible attribute which comes to characterize the organization as a unit. So it is, I think, with the Chief Judge of a Circuit. He is, it is true, merely the one who is senior in commission among the judges on the Court of Appeals, and he has no extra measure of authority in respect to judicial decision or opinion. But the statute names him "the chief judge of the circuit." And with that designation goes a vague, undefinable, but universally accepted, obligation and duty peculiar to the office. We see it so clearly when we think of John Parker and Learned Hand. I think the occupant of that office ought consciously and to the full of his strength exercise his one-ninth of the power of the court toward the end that the operation and the output of the court may be the very best. As I see it, he has no easy escape in ignorance or indifference or evasion. Problems, questions, inquiries, generally tiny ones, in this area constantly pop up and swirl around. Upon the Chief, as I see it, lies an extra measure of the duty to plot a course, and an extra weight from the necessity that someone hold to the tiller with his eye on the chart.

During my tenure this part of my responsibility has been a pleasant, easy one, because, no matter how violent our intellectual and philosophical differences, all my brethren have a vigorous, aggressive, almost a belligerent ambition that the judicial work of our court be the best, indeed far and away the

best, of any appellate court in the country. We may differ as to how to achieve that objective, but these particular eight individuals need no chief to incite them to strive mightily and with high ideals.

The second category of duties of the Chief Judge relates to the administrative phases of the work of the court. Some personnel and property problems are here involved, but principally the administrative work concerns the disposition of motions, and this is a matter of mass production. Some 3,600 motions were filed with us last year, which is about 14 for each of 250 working days. We divide these motions into four parts. Petitions for hearings *en banc* go to all judges for a vote. Motions and petitions which relate to a case which has already been assigned to a division go to the judges of that division. Large numbers of motions (some 765 last year) go to a motions division. Under the system set up by our late Chief Judge Harold Stephens, we have, as you know, a motions division of three judges, who are drawn for that duty as they are drawn for cases, and who sit every Thursday. Sometimes they hear oral argument, but mostly they reach decisions on the papers in a formal conference session. Two motions clerks assist in this work, just as law clerks assist in respect to cases. Motions in the fourth class go to the Chief Judge alone. These are more or less formal matters. Every day the First Deputy Clerk comes in with the motions and orders for the day, usually some fifteen or more in the pile.

The Chief Judge also keeps his eye on the state of the calendar, and in this phase of the work he is in close cooperation with the Clerk and the Chief Deputy. The calendar must be kept moving, but at the same time we mustn't create a jam so that briefed or argued cases must stack up awaiting turns at action. At the present time we are in the pleasant position that, if lawyers want to argue a case and will so notify the Clerk, they can have their day in court the next calendar month or, at the latest, the second succeeding calendar month.

Joe Stewart, Joe Weis and I have recently been cooperating in the creation and installation of a Chart Room, and it will

shortly be open for the information of any who care to inquire. On the walls we plan to hang some eight or nine charts, which will depict the organization of the court and the progress of the judicial business. Charts will picturize the filings and terminations of cases over a ten-year period; the mean time during which cases are held under submission by our court as compared to the national average and also as compared to each of the other Circuits; the backlog of cases over the past ten years; etc. I borrowed the idea from a merchandising client of mine of the old days. We hope that this Chart Room will be a constant reminder to judges, court personnel, and bar of how we are attending to the conduct of our judicial business.

The next duty of the Chief Judge is as Chairman of the Judicial Council. I am talking now of the Council, not of the Conference. This is a little-known body. It was constituted under an Act of Congress, one for each Circuit, and presently is composed of all the judges of the Court of Appeals. The statute provides: "Each judicial council shall make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit. The district judges shall promptly carry into effect all orders of the judicial council." This Council is an administrative body, not a judicial body. In years gone by, the administrative phases of the courts were directed or supervised by the Congress, by the Department of Justice, or by each individual judge as his whim or fancy might dictate. But by this statute, enacted in 1948, that system, or lack of it, was changed. The change has been little known, understood or appreciated by either the bench or the bar. The fact of the matter is that there is in each Circuit of the federal judicial system an administrative body which has complete and full authority to enter any order which it deems to be in the interest of "effective and expeditious administration of the business of the courts within its circuit." The Chief Judge of the Circuit is the Chairman of this Council.

This statute is flat and unequivocal in conferring power. It authorizes the Council to enter any order necessary to the effective and expeditious disposition of the business of the courts

in the Circuit. With the power goes corresponding responsibility. Every member of the Council bears a share of that burden. But here again I sense an added obligation to some degree upon the Chairman. This is so in respect to every committee on which I ever sat of which I ever heard. I know that I am now repeating, but this one thread is the warp of the whole fabric of this paper. It appears throughout. The observation I just made applies to the President of this Association. He is looked to as the watchman, the instigator, the bellweather. He cannot escape the duty thus put upon him. He may do nothing about it, or he may do much. But the obligation is his, of the same kind as is the obligation of every member, but to a greater degree than is theirs. The same goes for the Chairman of the Council about which we are talking.

In our Circuit the Judicial Council meets every month and has done so for several years. We have considered many matters relating to the administration of the courts. We have followed the practice of conferring with our brethren on the District Court in respect to such matters as seem to require their attention. I think it is a significant fact that despite our monthly meetings our Judicial Council has never found it necessary or advisable to enter a formal order directed to the District Court or to any judge on that court. This is a happy state of affairs. I hope it continues always.

The next category of duties of the Circuit Chief Judge arises from the fact that he is Chairman of the Judicial Conference—note that I now say Conference and not Council. This is a body also created by an Act of Congress. The statute provides that every judge in the Circuit in active service shall be a member and shall attend. The statute also provides for “representation and active participation at such conference by members of the bar of such circuit.” Meetings are required to be held annually. The statute provides that the Conference shall be “for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit.” The Conference has only powers of recommendation; it has no power of imposition or of enforcement.

There has thus been created a forum in which the bench and bar together can consider the business of the courts and advise means of improving the administration of justice. This is an awesome imposition of terrific responsibility. It rests upon judges and upon practicing lawyers.

I say this is an awesome responsibility, and I mean it. Look at the words of that statute. It directs that we advise means of improving the administration of justice. Justice is on every list ever made of the hopes and prayers of humankind. And its administration is so far from perfect. It cries out for improvement. Any casual inquirer can produce a bill of some particulars. The problem of the indigent, the problem of the juvenile, the problem of the incompetent, the whole problem of the criminal law are all unsolved. The problems of the family are in hopeless confusion, fifty different sets of laws in one nation! People spend thousands of dollars in litigation trying to ascertain what some lawyer meant when he wrote something—a contract, or a will, or a statute, or an opinion, even of the highest courts. The delays of the law are unconscionable—now as they always have been. And so on, and so on, and so on. Is a responsibility for any or all of this on us, even in part? Well, look at the words of this statute.

Once again I see an added peculiar obligation upon the Chairman of the Conference. What I have already said about Chairmen in general and of a Chairman in particular applies here again. But, as I see it, this responsibility is a far greater one than that which accompanies the Chairmanship of the Council. The members of the Conference are busy people, absorbed in the everyday affairs which make up the business of living, even though they are willing and interested in these more remote, less tangible problems. The field of this statutory commandment is broad and deep and long. To the Chairman of this Conference more than to any other one or group the people have a right to look for suggestions as to what needs improvement and how. To my way of thinking this is the most weighty and also the most satisfying of all the duties and the opportunities of the Chief Judge of the Circuit.

The participation of the bar in the Circuit Judicial Conference poses somewhat of a problem. All the several thousand members of our bar could not participate, of course. We have met the difficulty in the last couple or three years by having a small committee, composed of an equal number of judges and lawyers, select a cross-section of the bar, trying to make it full and fair. We have thus had from 100 to 120 lawyer members. We have taken this Conference responsibility with the utmost seriousness. The attendance and participation has been almost phenomenal. Few, if any, absences have occurred without compelling excuse. We have utilized our Judicial Conference for the purposes for which it was intended. We have already inaugurated a series of projects which we have deemed to be means for improving the administration of justice. As you know, these include a study of the needs of the Juvenile Court and an emphatic recommendation for additional judge-power there; the creation of a legal aid agency, which would be semi-public and semi-private, operated by a private board of trustees, to provide a permanent paid staff of lawyers for the representation of indigents in our courts; a recommendation for the further training of police officers in the laws of arrest and other matters of legal significance in their day-by-day duties; a recommendation for the further training of young lawyers in the actual trial of cases; a recommendation for the creation of a permanent Conference on Administrative Procedure Before the Federal Agencies; a recommendation for the abolition of the mandatory death sentence; and a recommendation for experimentation with sound-recording devices in the trial courts. I think we may congratulate ourselves, all of us in this Circuit, that we have adopted the view that practicing law is more than trying lawsuits and advising clients and that being a judge entails more than trying cases; both the lawyer at the bar and the judge on the bench have additional obligations to advise means of improving the administration of justice.

The fifth and last set of duties of a Circuit Chief Judge arises from the fact that he is a member of the Judicial Conference of the United States. Here again is a body created by statute. It is composed of the Chief Judges of the eleven Circuits and

a representative District Judge from each Circuit elected by the respective Circuit Judicial Conferences. The presiding officer is the Chief Justice of the United States. The duty of this Conference is in language much the same as that which was used in respect to the Circuit Judicial Conferences, except that it covers the whole United States. This Conference meets twice a year here in Washington. The agenda usually include 20 to 25 subjects, and the meetings usually last three days.


The Conference has quite a number of committees, among them those on Court Administration, the Budget, Supporting Personnel, Bankruptcy, Criminal Law, Statistics, Pretrial, Protracted Cases, Jury System, Habeas Corpus, and Assignment of Judges. I happen to be a member of the Committee on the Budget and the Committee on Supporting Personnel. The latter holds joint meetings with the Committees on Revision of the Laws and Court Administration twice a year at different places over the country from Washington to San Francisco, usually for four or five days. This membership on the Judicial Conference (U.S.) and its Committees is one of the most pleasant and less pressing of the duties of a Circuit Chief Judge.

The Chief Judge of the Circuit has some miscellaneous duties. He is authorized, with the approval of the Judicial Conference of the United States, to call institutes on the problems of sentencing, which authority was given him by a statute passed just a year ago. We have already begun to arrange such an institute for this jurisdiction. The Chief Judge must participate in the assignment of judges, either from outside to this jurisdiction or from this jurisdiction outside to other courts. He must designate the judges of three-judge statutory courts, and he has the power to certify judges for disability.

Thus in a somewhat long recital are the duties which devolve upon the Chief Judge of a Circuit in our federal judicial system. I realize that what I have been saying is susceptible to the view that, like most of the male population of the civilized world, I have an exaggerated idea of the importance of my job. And of course every molehill looks like a mountain when viewed through a microscope. But the law is our profession,

and the administration of justice is part of it. My thesis, if I have one, is that a person who is Chief Judge of a Circuit in our federal system has manifold opportunities for constructive service and corresponding obligations inherent in the opportunities. I do not mean to stress importance; I mean to stress opportunity and obligation. In any event I thank you for your patience.

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