

THE OFFICE OF THE CHIEF CIRCUIT JUDGE

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ABSTRACT

Despite famously being called, merely, “one among equals,” the Chief Judge of a federal court of appeals plays a significant role on their court. Internally, the Chief Judge is responsible for everything from overseeing the circuit’s budget to influencing how the court’s sitting calendar is set, from selecting judges who will sit by designation to reviewing complaints of misconduct against judges in their circuit. Externally, the Chief Judge serves as the court’s representative to the Judicial Conference of the United States, the national policy-making body for the federal courts. Outside of official duties, the Chief Judge may initiate projects, which are carried out in the name of their court. One might well say that the Office of the Chief Circuit Judge “contains multitudes.”

Precisely because the Office comes with considerable responsibilities—and of such different kinds—it is important to understand how the tasks of the Office have been carried out by different office-holders. How do Chief Judges manage all of these tasks? What do they delegate and what do they decide themselves? How do they balance the administrative work of the Chief with the judicial work of an appellate judge? How were they trained for this position? And how much variation is there on these matters depending upon the Chief Judge and their circuit?

This Article takes up these questions and offers a rich, descriptive account of the role of Chief Judge in the modern day, noting the significant variation that exists from circuit to circuit and from Chief to Chief. As with other studies that seek to provide a descriptive analysis of the courts, this Article rests on interviews conducted with the individuals who possess the greatest expertise on the subject—in this case, an unprecedented set of interviews of all current Chief Judges and several former Chief Judges. By providing insight into this important Office, this Article aims to be of use to scholars, practitioners, and even members of the judiciary themselves.

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INTRODUCTION

Despite famously being called, merely, “one among equals,”¹ the Chief Judge of a federal court of appeals plays a significant role on their court.² Internally, the Chief Judge presides over every oral argument that their panel hears, including all en banc panels,³ and usually makes the opinion assignments when in the majority.⁴ The Chief Judge influences how the court’s sitting calendar is set⁵ and may select visiting judges to sit by designation.⁶ The “Chief” manages several units—including the Clerk’s Office and the Staff Attorney’s Office—and oversees the circuit’s budget.⁷ The Chief receives complaints of misconduct against judges in their circuit,⁸ and then is tasked with conducting a preliminary review of each complaint.⁹ They make decisions about their court’s own governance structure, including which judges are to be assigned to which committees, and lead their circuit’s judicial

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- 1 J. Edward Lumbard, *Current Problems of the Federal Courts of Appeals*, 54 CORNELL L. REV. 29, 42 (1968).
 - 2 See, e.g., Tracey E. George & Albert H. Yoon, *Chief Judges: The Limits of Attitudinal Theory and Possible Paradox of Managerial Judging*, 61 VAND. L. REV. 1, 28 (2008) (“[T]he chief judge has a wide range of powers that may affect a court in ways small and large”).
 - 3 See 28 U.S.C. § 45(b) (“The chief judge shall have precedence and preside at any session of the court which he attends.”).
 - 4 See *id.*; George & Yoon, *supra* note 2, at 23 (“The chief is always the most senior judge on a panel, including an en banc sitting, allowing the chief, if in the majority, to assign the opinion.”). Indeed, in at least one circuit, the Chief Judge decides who will author each opinion even when they are *not* on the panel. See *infra* Part II.B.2.d.
 - 5 See Virginia A. Hettinger, Stefanie A. Lindquist & Wendy L. Martinek, *The Role and Impact of Chief Judges on the United States Courts of Appeals*, 24 JUST. SYS. J. 91, 93 (2003) (“It is . . . the responsibility of the chief judge to supervise the orderly selection of three-judge panels and the construction of the calendar of cases”). For more on the role of Chief Judges in shaping the calendar and sittings in the different circuits, see Marin K. Levy, *Panel Assignment in the Federal Courts of Appeals*, 103 CORNELL L. REV. 65, 83–92 (2017).
 - 6 See 28 U.S.C. § 291 (“The Chief Justice of the United States may . . . designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.”); 28 U.S.C. § 292 (“The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires.”).
 - 7 FED. JUD. CTR., RESOURCE GUIDE FOR CHIEF CIRCUIT JUDGES’ DESKBOOK 7 (2019).
 - 8 See 28 U.S.C. § 351(c) (Upon receipt of a complaint against a judge, “the clerk shall promptly transmit the complaint to the chief judge of the circuit”). These are usually complaints against district judges within the circuit; complaints against circuit judges are generally referred by the Chief Justice to the Chief Judge of another circuit.
 - 9 See 28 U.S.C. § 352(a) (“The chief judge shall expeditiously review any complaint received under section 351(a) or identified under section 351(b).”).

council¹⁰ and judicial conference.¹¹ Externally, the Chief Judge serves as their court’s representative to the Judicial Conference of the United States, the national policy-making body for the federal courts.¹² Outside of official duties, the Chief Judge may initiate projects,¹³ which are carried out in the name of their court.¹⁴ One might well say that the Office of the Chief Circuit Judge “contain[s] multitudes.”¹⁵

It is precisely because the Office comes with considerable responsibilities—and of such different kinds—that it is important to understand how the tasks of the Office have been carried out by different office-holders. How do Chief Judges manage all of these tasks? What do they delegate and what do they decide themselves? How do they balance the administrative work of the Chief with the judicial work of an appellate judge? How were they trained for this position? And how much variation is there on these matters depending upon the Chief Judge and their circuit?

The academic literature is almost silent on these matters. Writing in the early 1980s, Judge Wilfred Feinberg, then the Chief Judge of the Second Circuit, commented that “[l]ittle has been written” on the subject of Chief Judges.¹⁶ With a few notable exceptions—including important work by Tracey George and Albert Yoon as well Virginia Hettinger, Stefanie Lindquist, and Wendy Martinek¹⁷—Feinberg’s comment remains true

¹⁰ See 28 U.S.C. § 332 (“The chief judge of each judicial circuit shall call . . . a meeting of the judicial council of the circuit, consisting of the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit . . .”); see also Hettinger, Lindquist & Martinek, *supra* note 5, at 93 (“Among their most important statutory duties and privileges, chief judges . . . convene and preside at meetings of the circuit judicial council . . .”).

¹¹ See 28 U.S.C. § 333 (“The chief judge of each circuit may summon . . . the circuit, district, magistrate, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates . . . He may preside at such conference, which shall be known as the Judicial Conference of the circuit.”).

¹² See 28 U.S.C. § 331 (“The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit . . . to a conference . . . He shall preside at such conference which shall be known as the Judicial Conference of the United States.”).

¹³ For example, see then-Chief Judge Robert A. Katzmann’s role in developing “Justice for All” Courts and the Community, a Civic Education Initiative of the Federal Courts of the Second Circuit, available at <https://justiceforall.ca2.uscourts.gov> [<https://perma.cc/XS6W-CGEJ>].

¹⁴ Even this list is not exhaustive. For example, a Chief Judge may also be in charge of such matters as emergency preparedness and appointment of pro bono counsel. They will also need to certify the eligibility for pay increases of senior judges and determine whether and where to hold a court retreat. See *infra* Part II.B.

¹⁵ See WALT WHITMAN, *Song of Myself*, in LEAVES OF GRASS 113 (Modern Library 1993) (1892).

¹⁶ Wilfred Feinberg, *The Office of Chief Judge of a Federal Court of Appeals*, 53 FORDHAM L. REV. 369, 370 (1984).

¹⁷ See George & Yoon, *supra* note 2; Hettinger, Lindquist & Martinek, *supra* note 5. Both articles offer empirical insights into the role of Chief Judge, with George and Yoon assessing a strategic departure

nearly forty years later. One can find individual accounts of Chief Judges—reflections by judges on their time as Chief¹⁸ and tributes to Chief Judges from friends and admirers.¹⁹ And there is a valuable administrative account of the role, based primarily on the study of one Chief Judge, Alfred T. Goodwin of the Ninth Circuit, who served from June 1988 to 1991.²⁰ Finally, the Federal Judicial Center issues comprehensive administrative guides,²¹ though those are designed to be internal court documents, and the most comprehensive study is now forty years old.²² Much has changed in the courts in the interim. As but one example, filings per judgeship in the courts of appeals have increased nearly fifty percent—from 194 in 1984²³ to 288 today.²⁴ The courts function quite differently after four decades, and so do their administrative leaders.

This Article offers a descriptive account of the role of Chief Judge in the modern day, noting the variation that exists from circuit to circuit and from Chief to Chief. As with other studies that seek to provide a descriptive analysis of an office or phenomenon within the courts that is not well documented, this Article rests on interviews conducted with the individuals who possess the greatest expertise on the subject—in this case, an unprecedented set of interviews of all of the current Chief Judges, themselves.

theory of chief judge tenure, *see* George & Yoon, *supra* note 2, at 35–49; and Hettinger, Lindquist & Martinek focusing on the Chief Judge’s influence on consensus within individual panels and between the appellate panel and the district court, *see* Hettinger, Lindquist & Martinek, *supra* note 5, at 99–112.

18 *See, e.g.*, Feinberg, *supra* note 16; Patricia Wald, “. . . Doctor, Lawyer, Merchant, Chief”, 60 GEO. L. REV. 1127 (1992); E. Barrett Prettyman, *The Duties of a Circuit Chief Judge*, 46 A.B.A.J. 633 (1960).

19 *See, e.g.*, Joel F. Dubina, *A Tribute to Chief Judge Edward E. Carnes*, 69 ALA. L. REV. 647 (2018); Philip Heymann, *Tribute to the Honorable Richard S. Arnold for His Services as Chief Judge of the United States Court of Appeals for the Eighth Circuit*, 1 J. APP. PRAC. & PROCESS 198 (1999); Arthur J. Goldberg, *A Tribute to Chief Judge David L. Bazelon*, 123 U. PA. L. REV. 247 (1974).

20 Stephen L. Wasby, *The Work of a Circuit’s Chief Judge*, 24 JUST. SYS. J. 63 (2003).

21 *See, e.g.*, FED. JUD. CTR., *supra* note 7.

22 *See* RUSSELL R. WHEELER & CHARLES W. NIHAN, *ADMINISTERING THE FEDERAL JUDICIAL CIRCUITS: A SURVEY OF CHIEF JUDGES’ APPROACHES AND PROCEDURES* (1982).

23 COMM’N ON STRUCTURAL ALTS. FOR THE FED. COURTS OF APPEALS, *FINAL REPORT* 14 tbl.2–3 (1998).

24 This figure was determined by taking the number of filings during the twelve-month period ending March 31, 2020 from both the twelve regional circuits (50,258) and the Federal Circuit (1,435) and then dividing by the total number of judgeships from both courts (179). For the data on filings, *see U.S. Courts of Appeals—Cases Commenced, Terminated, and Pending During the 12-Month Periods Ending March 31, 2019 and 2020*, ADMIN. OFF. OF THE U.S. CTS., tbl.B (2020), <https://www.uscourts.gov/statistics/table/b/federal-judicial-caseload-statistics/2020/03/31> and *U.S. Court of Appeals for the Federal Circuit—Appeals Filed, Terminated, and Pending During the 12-Month Period Ending March 31, 2020*, ADMIN. OFF. OF THE U.S. CTS., tbl.B-8 (2020), <https://www.uscourts.gov/statistics/table/b-8/federal-judicial-caseload-statistics/2020/03/31>.

Specifically, as part of a larger book project on the internal operations of the federal courts of appeals,²⁵ the authors interviewed all (then) sitting Chief Judges of the eleven numbered courts of appeals and the United States Court of Appeals for the District of Columbia Circuit and the United State Court of Appeals for the Federal Circuit. We also interviewed seven former Chief Judges from a variety of circuits to acquire a broader view of the role. Finally, we sent questionnaires to (and received responses from) Chief Clerks of all thirteen circuits.

Beyond providing a descriptive account of the Office of the Chief Circuit Judge, this Article raises questions about how the Office is structured. Under the statute, the Office of the Chief Judge is to be filled by the most senior judge in regular active service who is under the age of 65, provided that the judge has served at least one year as circuit judge and has not previously served as Chief.²⁶ Given the range of responsibilities of the Chief Judge, is the current selection method the optimal one?²⁷ Should the term length—which is currently set at seven years²⁸—remain or be changed in any direction? And are there any other changes that should be made to the current statutory scheme?

The Article presents the views of the judges on these scores. Together, they make a compelling case for retaining the current selection method, noting that the alternative methods—including that Chief Judges be appointed by the President or elected to the Office by the judges of their own court—come with significant drawbacks.²⁹ The Article then reports that

²⁵ See JON O. NEWMAN & MARIN K. LEVY, WRITTEN AND UNWRITTEN: THE RULES, PRACTICES, AND INTERNAL OPERATIONS OF THE FEDERAL COURTS OF APPEALS (in progress).

²⁶ 28 U.S.C. § 45(a) (2012) (providing that when a chief judge vacancy occurs, it will be filled by the judge in regular active service who, at the time of the vacancy, is senior in commission, under the age of 65, has served at least a year as circuit judge, and has not previously served as chief judge).

²⁷ *Id.*

²⁸ 28 U.S.C. § 45 (a)(3)(A).

²⁹ Seniority is also used to select the Chief Judges of the U.S. District Courts, subject to the same qualifications applicable to selection of Chief Circuit Judges. See 28 U.S.C. § 136(a)(1). Seniority is also the selection mechanism of Chief Judges in most Article I courts. See, e.g., 10 U.S.C. § 943(a) (Court of Appeals for the Armed Forces); 38 U.S.C. § 7253(d) (Court of Appeals for Veterans Claims). But it is not used to select Chief Judges of all federal courts. The most familiar example in the federal judiciary of appointment of a Court's presiding officer selected without regard to seniority is the President's appointment of the Chief Justice of the United States, who functions as the Chief Judge of the Supreme Court. The Constitution authorizes the President, with the advice and consent of the Senate, to appoint "Judges of the supreme Court," U.S. CONST., art. II, § 2, cl. 2, and assumes the existence of a Chief Justice by providing that "the Chief Justice shall preside" at an impeachment trial of the President, *id.* art I, § 3, cl. 6. Congress provided that the Supreme Court shall consist of "a chief justice and five associate justices." 1789 Act, § 1, 1 Stat. 73. Moreover, the Chief Judge of the U.S. Tax Court is elected by the judges of that Court. See 26 U.S.C. § 7444(b).

most Chief Judges favored the current term length, though there was some support for shortening it slightly. It concludes by noting, according to those interviewed, how the training for the position might be enhanced to assist Chief Judges in the future.

The Article proceeds as follows. Part I begins by tracing the history of the Office of Chief Judge, beginning with the 1891 Evarts Act. That Act created the modern federal courts of appeals,³⁰ and identified the most senior circuit judge as the one who would preside on a panel.³¹ The administrative responsibilities of the senior circuit judge grew in 1922 when Congress required the Chief Justice of the United States to summon all senior circuit judges to an annual conference in Washington, D.C.³² (This conference would eventually become the Judicial Conference of the United States.)³³ Another milestone for the Office includes the creation of the term “Chief Judge” in 1948.³⁴

Part II—the heart of the article—then turns to the modern day, reporting the information gathered from interviews with the then-current Chief Judges of the federal courts of appeals and some of their predecessors. (Included as well are responses to a questionnaire sent to Chief Clerks of Court.) Specifically, this Part discusses how different Chief Judges perceive and carry out the job. It begins with how the Chief Judges themselves define the role—with some describing it primarily as maintaining the legitimacy of the court, others casting it in terms of building relationships and fostering collegiality, and others describing the Chief’s main responsibility as “keeping the trains running on time.”³⁵ It then turns to the considerable administrative responsibilities that Chief Judges are tasked with, and how they carry them out—from the different ways that Chief Judges ensure that the caseload is kept moving (that opinions are promptly filed) to how Chief Judges oversee

³⁰ The original circuit courts, created in 1789, *see* 1789 Act, § 4, exercised appellate jurisdiction until 1891, when their appellate jurisdiction was transferred to the modern courts of appeals, *see* Evarts Act, ch. 517, 51st Cong., 2d Sess., § 4, 26 Stat. 826 (1891) (“Evarts Act”), and they were abolished in 1911, *see* 1911 Judicial Code, § 289, 36 Stat. 1087, 1167, effective Jan. 1, 1912, *id.* § 301, 36 Stat. 1087, 1169.

³¹ Evarts Act, § 3, 26 Stat. 826, 827 (1891).

³² Act of Sept. 14, 1922, ch. 306, 67th Cong., 2d Sess., § 2, 42 Stat. 837, 838.

³³ *See* FED. JUD. CTR., *Administrative Agencies: Judicial Conference of the United States, 1948-Present*, <https://www.fjc.gov/history/administration/administrative-agencies-judicial-conference-united-states-1948-present> [<https://perma.cc/K35L-TEE6>].

³⁴ Act of June 25, 1948, ch. 646, 80th Cong., 2d Sess., § 1 (amending § 45 of the Judicial Code), 62 Stat. 869, 871.

³⁵ *See infra* Part II.B.

their administrative units and what they do and do not delegate.³⁶ The final Section takes up what the Chief Judges think of the current statutory scheme—particularly its selection method and term length—and what changes, if any, the Chief Judges would make to the role. Ultimately, this Article seeks to demonstrate how extensive the Chief Judge’s responsibilities are, how different office-holders have approached the position, and how modest proposals might be considered for better service in the future.

I. THE HISTORY OF THE CHIEF CIRCUIT JUDGESHIP

The story of the Chief Judgeship is surprisingly the story of an office that faded into existence.³⁷ Its precursor, the senior circuit judgeship, was created by the Evarts Act in 1891 at the same time that the Act created the circuit courts of appeals.³⁸ The designation was relevant when determining who would preside, if a Supreme Court Justice was not in attendance, though little else. As the courts expanded, however, the role, too, expanded. But as this Part shows, the role of Chief Judge has at times expanded almost by default. In the words of then-Chief Judge Wilfred Feinberg, “[t]he job of chief judge had the virtue of *being there*, and into this receptacle custom and Congress have poured a potpourri of duties”³⁹

The Judiciary Act of 1789 (“1789 Act”) famously established the Supreme Court⁴⁰ and thirteen district courts to hear cases in the first instance.⁴¹ What it did *not* create was a standalone tier of intermediate appellate courts with solely appellate jurisdiction. Rather, the Act divided the thirteen districts into three circuits, and created circuit courts with both original and appellate jurisdiction, to be composed of two Justices of the Supreme Court and one district judge.⁴² That arrangement shifted

³⁶ See *infra* Part II.B.

³⁷ See Feinberg, *supra* note 16, at 370 (“General MacArthur, in his famous speech to the joint [session] of Congress in 1951, said ‘old soldiers never die; they just fade away.’ Not long before, the reverse effect apparently occurred with the office of chief judge; it seems to have just ‘faded in.’”).

³⁸ Evarts Act § 3, 26 Stat. 826–27 (1891). The Evarts Act itself does not use the phrase “senior circuit judge.” Rather, it says that “the circuit judges in attendance upon the court in the absence of the Chief-Justice or associate justice of the Supreme Court shall preside in the order of the seniority of their respective commissions.” *Id.* at 827.

³⁹ Feinberg, *supra* note 16, at 373.

⁴⁰ 1789 Act, § 1, 1 Stat. 73.

⁴¹ *Id.* §§ 2–3, 1 Stat. 73.

⁴² *Id.* § 4, 1 Stat. at 74–75; §§ 11, 12, 1 Stat. at 78–79. To be sure, circuit courts were not created in every district—specifically, they were not created in the district of Kentucky or in the district of Maine. See Jon O. Newman, *History of the Article III Appellate Courts, 1789–2021, The Evolution of Their Geographic Scope, Number of Judges, and Jurisdiction* (forthcoming 2021).

somewhat following the Judiciary Act of 1869, which, among other things, created one circuit judgeship for each existing circuit.⁴³ But the 1869 Act made clear that the circuit courts would generally still consist of Supreme Court Justices and district judges along with the new circuit judges, and that Supreme Court Justices should preside if present.⁴⁴

The structure of the federal judiciary changed more dramatically in 1891, when Congress finally created a set of true intermediate appellate courts.⁴⁵ The Circuit Court of Appeals Act (often referred to as the “Evarts Act,” after its primary sponsor, Senator William M. Evarts) created a set of courts that would take appeals as of right from the federal district courts and be reviewed by the Supreme Court.⁴⁶ Importantly, Congress gave these courts a set of judges—but not a complete set.⁴⁷ Each circuit court of appeals was authorized to have two appellate judges, despite the fact that they were expected to decide cases in panels of three.⁴⁸ In line with the old circuit courts, the final jurist was expected to come from either “the Chief-Justice and the associate Justices of the Supreme Court assigned to each circuit” or “the several district judges within each circuit.”⁴⁹ But unlike with the old circuit courts, the Justices were not required to sit.⁵⁰ Without a Justice on every panel, a rule had to be fashioned for determining who would preside. The Evarts Act supplied the rule by declaring that if no Justice was on the panel, “the circuit judges in attendance . . . [should] preside in order of the seniority of their respective commissions.”⁵¹ Thus, the role of senior circuit judge was born.

The role was fairly circumscribed in the beginning. In addition to assuming presiding duties, according to the Federal Judicial Center, the senior circuit judge took on “informal administrative responsibilities” that Supreme Court Justices had “exercised” during the earlier circuit court days.⁵² These responsibilities included some oversight of district judges—for example, “admonish[ing]” them not to leak information to the press—and relaying relevant information from the capital.⁵³

⁴³ Act of Apr. 10, 1869, ch. 22, 41st Cong., 1st Sess., § 2, 16 Stat. 44.

⁴⁴ *Id.*

⁴⁵ Evarts Act § 3, 26 Stat. 826–27 (1891).

⁴⁶ *See* Newman, *supra* note 42.

⁴⁷ Evarts Act § 3, 26 Stat. 826 (1891).

⁴⁸ *Id.* at § 2.

⁴⁹ *Id.* at § 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² FED. JUD. CTR., *supra* note 7, at 65.

⁵³ *Id.*

The position of senior circuit judge expanded in 1922, during the Chief Justiceship of William Howard Taft. Taft had long had his sights on a more centralized system of judicial administration. In his 1914 “Address of the President” (then speaking as the president of the American Bar Association), Taft called for the creation of a set of judges-at-large—visiting judges who could be “distributed” across the country as needed “to dispose of the entire mass of business promptly.”⁵⁴ Taft was so committed to the project that “within hours” of being confirmed as Chief Justice of the United States several years later, he wrote to Attorney General Harry Daugherty about judicial reform.⁵⁵ For his part, Attorney General Daugherty appointed a special committee to consider various reform measures.⁵⁶ Consistent with Chief Justice Taft’s vision, the committee recommended that Congress create a number of “judges-at-large” to provide workload relief.⁵⁷ The committee further recommended that Congress create a judicial conference, to be composed of the Attorney General, Chief Justice, and all senior circuit judges, which would meet on a regular basis to consider pressing issues of administration.⁵⁸

Sadly for Taft, Congress opted not to authorize any judges-at-large. It did, however, through the 1922 Judiciary Act, create the Conference of Senior Circuit Judges as a crucial administrative body for the federal judiciary.⁵⁹

The significance of the senior circuit judge continued to grow in the following decades. The 1930s saw a major expansion in judicial administration with the creation of the Administrative Office of the U.S. Courts (“AO”).⁶⁰ The establishment of such an agency was important on its own terms, but also meant greater responsibility for the senior circuit judges.

⁵⁴ See William H. Taft, *Address of the President*, 37 ANN. REP. A.B.A. 359, 384 (1914).

⁵⁵ See PETER GRAHAM FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 26 (1973) (citing Letter from William Howard Taft, C.J., U.S. Sup. Ct., to Harry M. Daugherty, Att’y Gen. of the U.S., June 3, 1921, Department of Justice Files, No. 144446, Sec. 2).

⁵⁶ See FISH, *supra* note 55, at 26; Walter F. Murphy, *Chief Justice Taft and the Lower Court Bureaucracy: A Study in Judicial Administration*, 24 J. POL. 453, 455 (1962); Judith Resnik, *Constricting Remedies: The Rehnquist Judiciary, Congress, and the Federal Power*, 78 IND. L.J. 223, 275 (2003).

⁵⁷ See FISH, *supra* note 55, at 26; Murphy, *supra* note 56, at 455.

⁵⁸ See Murphy, *supra* note 56, at 455–56.

⁵⁹ Act of Sept. 14, 1922, ch. 306, 67th Cong., 2d Sess., § 2, 42 Stat. 837, 838. Congress further permitted the expansion of visiting practices among judges so long as the senior circuit judge of the “borrowing” circuit certified their need, and the senior circuit judge of the “lending” circuit consented to the transfer. See Marin K. Levy, *Visiting Judges*, 107 CALIF. L. REV. 67, 90 (2019) (footnote omitted).

⁶⁰ Act of Aug. 7, 1939, ch. 501, 76th Cong., 1st Sess., § 1 (amending § 302 of the Judicial Code), 53 Stat. 1223, codified at 28 U.S.C. § 444 (1939).

The statute that created the AO specifically noted that its director would “have charge, under the supervision and direction of the conference of senior circuit judges” of various judiciary-related duties that had been previously the responsibility of the Department of Justice.⁶¹ The same act also formalized the process by which the senior circuit judge should call a circuit conference twice a year to oversee, among other things, the management of court dockets.⁶²

The next significant milestone for the position came in 1948, when the phrase “Chief Judge of the Circuit” formally entered the Judicial Code.⁶³ The relevance of this entry, however, is not entirely clear. On the one hand, as the Federal Judicial Center has pointed out, “[a]ccording to the Reviser’s Notes, Congress adopted the term ‘chief judge’ ‘in recognition of the great increase in administrative duties of such judges.’”⁶⁴ On the other hand, then-Chief Judge Feinberg wrote that the “chief reviser of the Code indicated that this was a mere change in nomenclature, like the contemporaneous change in the name of the court on which a chief judge sits, from circuit court to court of appeals.”⁶⁵ (Indeed, in the section that Chief Judge Feinberg cites, the chief reviser does refer to the change as simply one in “nomenclature,” in contrast to other “major changes of law” in the surrounding revisions to the Code.⁶⁶) Moreover, according to Chief Judge Feinberg, “[m]ost of the few commentators who took note of the change thought it of no moment.”⁶⁷ For its part, the ABA Journal published an article following the revisions to the Code that claimed that “[t]he revision recognizes that an administrative head is needed in each circuit, and accordingly creates the office of Chief Judge of the Circuit, to be held by the Circuit Judge senior in commission.”⁶⁸

Whatever one makes of the decision to create the title “Chief Judge,” it is readily apparent that the role has become more important in the time

61 *See id.*

62 FED. JUD. CTR., *supra* note 7, at 66.

63 Act of June 25, 1948 (1948 Act), ch. 646, 80th Cong., 2d Sess., § 1 (amending § 45 of the Judicial Code), 62 Stat. 869, 871.

64 FED. JUD. CTR., *supra* note 7, at 67 (citing Reviser’s Note, Epochal Legislation, New Title 28, United States Code, Judiciary and Judicial Procedure, United States Code Congressional Service, Appendix, 1701 at 1706 (1948)).

65 Feinberg, *supra* note 16, at 370 (citing Barron, *The Judicial Code: 1948 Revision*, 8 F.R.D. 439, 441 (1949)). (We note that, in fact, the old name was “United States Circuit Court of Appeals” and the new name was and is “United States Court of Appeals.”)

66 William W. Barron, *The Judicial Code: 1948 Revision*, 8 F.R.D. 439, 441 (1949).

67 Feinberg, *supra* note 16, at 370.

68 Albert B. Maris, *New Federal Judicial Code: Enactment by 80th Congress a Notable Gain*, 34 A.B.A. J. 863, 865 (1948).

since. As some have pointed out, in 1948 when the Code was revised, the federal courts of appeals were quite small, with eleven circuits composed of a total of fifty-eight judges.⁶⁹ Chief Judge Feinberg opined that “[w]ith numbers so small and with administrative matters for the court as a whole so few, the title of chief judge might almost have seemed out of place.”⁷⁰ However, in the decades that followed, the workload of the federal courts increased dramatically, and Congress increased the size of those courts—today there are thirteen federal courts of appeals⁷¹ with 179 active judgeships.⁷² Moreover, as former Chief Judge of the D.C. Circuit Patricia Wald wrote, it is not simply that the courts have expanded: “There is much more administering to do now; more cases, more judges, more court personnel, more technology, more public relations, and more coordination with other courts and with centralized support offices like the Administrative Office of the United States Courts (AO) and the Federal Judicial Center.”⁷³ Again, relying on the words of Chief Judge Feinberg: “With this quantum leap in scale and in scope, it was inevitable that the position of chief judge would change from its scarcely noted formal beginning in 1948. Indeed, had the job not existed, we would have had to create it.”⁷⁴

The changes in the job are apparent from reading accounts by those who have held it. Writing in 1992, Judge Wald reflected on the remarks of one of her predecessors—Chief Judge E. Barrett Prettyman, writing in 1960.⁷⁵ Judge Prettyman had described his position as “pleasant”—to which Judge Wald remarked, “[t]hat is not quite the word I would use.”⁷⁶ She continued: “Since Judge Prettyman’s time, the life of a Chief Judge has undergone a sea change. Her role as a member of the United States Judicial Conference, for instance—which since Judge Prettyman’s time has become a far more active body in setting policy on judicial personnel, budget, ethical rules, judgeship needs, and pending legislation—has taken on a much higher priority.”⁷⁷ She then detailed all that a Chief Judge does in the modern day, from setting the agenda and running the circuit judges’ court meetings to presiding over all en banc courts and annual circuit conferences—just to name a few items.⁷⁸

69 See, e.g., Feinberg, *supra* note 16, at 371.

70 *Id.*

71 See 28 U.S.C. § 41.

72 See 28 U.S.C. § 44(a).

73 Wald, *supra* note 18, at 1131.

74 Feinberg, *supra* note 16, at 372.

75 Wald, *supra* note 18, at 1131 (citing Prettyman, *supra* note 18, at 633).

76 *Id.*

77 Wald, *supra* note 18, at 1131.

78 *Id.* at 1132.

It is perhaps unsurprising that as the Office of the Chief Judge expanded in scope, Congress started to “scrutinize[]” it more carefully.⁷⁹ In 1951, Congress added the qualification that the Chief Judge of a Circuit must be a Circuit Judge in regular active service.⁸⁰ Then, following reports of some older Chief Judges who were “unable to carry on their administrative duties adequately,”⁸¹ Congress mandated an age limit of seventy in 1958.⁸² (The same Act added the requirement that the Chief Judge have served as a Circuit Judge for at least one year.⁸³) Congress continued, in 1982, by mandating that no one over the age of sixty-four could become Chief Judge in the first place.⁸⁴ As part of the same Act, the term of the Chief Judge was set at seven years and the qualification added that a Chief Judge not have served previously as Chief.⁸⁵

These changes to the position, set forth nearly forty years ago, are all still in place today. Thus, to become a Chief Judge at present, a Circuit Judge must have seniority over other active Circuit Judges, must not be older than sixty-four, must have served at least one year as a Circuit Judge, and must not have served previously as Chief Judge.⁸⁶ If no Circuit Judge meets the statutory qualifications, the youngest Circuit Judge in regular active service who is sixty-five or older and has served as a Circuit Judge for at least one year acts as Chief Judge;⁸⁷ and if no judge sixty-five or older has served as a Circuit Judge for at least one year, the Circuit Judge in regular active service

⁷⁹ Feinberg, *supra* note 16, at 373.

⁸⁰ Act of Oct. 31, 1951, ch. 655, 82d Cong., 1st Sess., § 35 (amending 28 U.S.C. § 45(a)), 65 Stat. 710, 723.

⁸¹ See 1956 Annual Report of the Proceedings of the Judicial Conference of the United States 312 (Report of the Proceedings of a Special Session of the Judicial Conference of the United States (March 13 and 14, 1956)); see also S. Rep. No. 1780, 85th Cong., 2d Sess., reprinted in 1958 U.S. Code Cong. & Ad. News 3256, 3257–58, 3260.

⁸² Pub. L. No. 85-593, § 1 (amending 28 U.S.C. § 45(a)), 72 Stat. 497 (1958). The 1958 Act also provided that if all the Circuit Judges in regular active service are 70 or older, the youngest shall act as Chief Judge until a Circuit Judge has been appointed who is under the age of 70 and has served for at least one year. *Id.* A subsequent attempt to do away with the age limit some twenty years later was unsuccessful. See 125 Cong. Rec. 6949 (1979).

⁸³ Pub. L. 85-593, § 1 (amending 28 U.S.C. § 45), 72 Stat. 497 (1958). The 1958 Act also provided that if all the Circuit Judges in regular active service are 70 or older, the youngest shall act as Chief Judge until a Circuit Judge has been appointed who is under the age of 70 and has served for at least one year. *Id.*

⁸⁴ See Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 201, 96 Stat. 25, 51 codified at 28 U.S.C. § 45(a)(1)(A).

⁸⁵ *Id.* § 45(a)(1)(C).

⁸⁶ *Id.* § 45(a)(1).

⁸⁷ *Id.* § 45(a)(2)(A).

who is senior in commission and has not served previously as Chief Judge acts as Chief Judge.⁸⁸

Once in place, the relevant statute today provides that “the chief judge of the circuit . . . shall serve for a term of seven years and shall serve after expiration of such term until another judge is eligible . . . to serve as chief judge of the circuit.”⁸⁹ Finally, as the Federal Judicial Center guide notes, service as Chief Judge is not mandatory: 28 U.S.C. § 45(c) allows a Chief Judge to advise the Chief Justice that they wish to step down, whereupon the next eligible judge becomes Chief.⁹⁰

* * *

In sum, the story of the Circuit Chief Judge, like the story of the federal courts of appeals themselves, is a story of expansion. Indeed, as the federal appellate judiciary grew, so, too, did a need for a judge to handle core administrative responsibilities—responsibilities that have also grown over time.⁹¹ The Office of the Circuit Chief Judge today has duties that would be difficult to imagine when the phrase was coined in 1948—duties that the next Part details.

II. AN ACCOUNT OF THE CHIEF CIRCUIT JUDGESHIP IN THE MODERN DAY

In reflecting upon her tenure as Chief Judge of the D.C. Circuit, Patricia Wald noted that during her term, she kept a “tickler list” of the items that took up her time.⁹² A typical week included the following:

[M]eeting with the Chief Judge of the District Court on rules governing the use of the courthouse by outside groups; speaking on ethics to the new law clerks during their orientation sessions; . . . working up a budget for the court’s non-appropriated fund derived from admission fees to benefit bench and bar; calling judges from other circuits to ask them to sit with us so that we could hold more oral arguments and decide more cases; meeting with foreign counterparts from Uganda, Madagascar, and the Netherlands; establishing emergency medical procedures for the courtroom after a lawyer collapsed during argument . . . ; and reading, researching, and writing a

⁸⁸ *Id.* § 45(a)(2)(B).

⁸⁹ *Id.* § 45(a)(3)(A).

⁹⁰ *See* 28 U.S.C. § 45(c) (“If the chief judge desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the chief judge of the circuit shall be such other circuit judge who is qualified to serve or act as chief judge under subsection (a) [of 28 U.S.C. § 45].”).

⁹¹ *See* Feinberg, *supra* note 16, at 373.

⁹² Wald, *supra* note 18, at 1132.

memorandum dismissing a complaint against a judge under the Judicial Disability and Tenure Act.⁹³

As Judge Wald concluded, “[i]t was quite a grab-bag.”⁹⁴

There is no doubt, as the preceding Part documents, that the role of Chief Judge has expanded significantly since the time of the “senior circuit judge.” Today it encompasses numerous responsibilities, ranging, as Judge Wald noted, from overseeing the budget to overseeing misconduct proceedings, from supervising unit executives to managing the case flow.

This Part endeavors to capture the myriad responsibilities of the Office from the perspective of current and past office-holders. It is not meant to provide a fully exhaustive list of every task a Chief Judge might be charged with—as Judge Wald’s recitation of a given week’s schedule indicates, such a list could quickly result in a book manuscript. Rather, this Part is meant to convey the primary responsibilities of the Chief Judge, as reported by the Chief Judges themselves, as well as how current and some former Chiefs were trained for the position. Part A details the methodology that we employed to gather data on the Office of the Chief Judge. Part B then presents the findings, noting the responsibilities that are internal and external, and concluding with the views of the Chief Judges about the role more broadly.

A. Methodology

It is well established that qualitative methods can be important for providing a “thick” descriptive account of certain institutions.⁹⁵ As one of the authors has written elsewhere, gathering information about the judiciary can be aided substantially by interviewing those who serve on the courts.⁹⁶ Furthermore, interviews are a particularly helpful research tool here, given

⁹³ *Id.* at 1132–33.

⁹⁴ *Id.* at 1133.

⁹⁵ MICHÈLE LAMONT & PATRICIA WHITE, WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH. 10 (2005), https://www.nsf.gov/sbe/ses/soc/ISSQR_workshop_rpt.pdf [<https://perma.cc/2SY8-XTXK>].

⁹⁶ See Levy, *Panel Assignment in the Federal Courts of Appeals*, *supra* note 5, at 79 (“Gathering data about court practices often requires interviewing judicial actors, including the judges themselves and court administrators.”); Marin K. Levy, *The Mechanics of Federal Appeals: Uniformity and Case Management in the Circuit Courts*, 61 DUKE L.J. 315, 326–27 (2011) (explaining the qualitative methods used by the author to gather data on the case-management practices of different circuit courts, including interviews with judges, Clerks of Court, Chief Circuit Mediators, Directors of Staff Attorney Offices, and supervisory staff attorneys).

that one aim of this project is to learn what the judges themselves think about the Office.⁹⁷

As part of a forthcoming book project focused on the internal practices of the courts of appeals, we began in 2020 by interviewing every then-sitting Chief Judge of the eleven numbered courts of appeals, the D.C. Circuit, and the Federal Circuit.⁹⁸ Though our primary interest was in documenting current practices, we also hoped to understand how different Chief Judges have exercised their responsibilities in different ways—not simply across circuits but also within circuits over time. Accordingly, we also interviewed seven former Chief Judges (all from different circuits) whom we knew to have a particular interest in judicial administration. For all of these interviews, the subjects were first contacted by letter and, as noted, the participation rate was 100%.

As for the structure of the interviews, nearly all were held following the onset of the COVID-19 pandemic and therefore were conducted by videoconference (with only a few by telephone). The majority of our interviews lasted approximately an hour, with some closer to ninety minutes. The interviews were all semi-structured; we asked each subject a list of questions about the role of Chief Judge (included in the Appendix), though sometimes a Judge's answer would cover matters that were addressed in subsequent questions (and so some questions were answered out of order) and sometimes a Judge's answer would bring us to an unanticipated topic altogether.⁹⁹ As a way to ensure that each subject was as candid as possible, we assured each person we spoke with that the interviews would not be recorded and that we would not quote any subject by name.¹⁰⁰ This is why,

⁹⁷ See LAMONT & WHITE, *supra* 95, at 10 (“Qualitative research enables scholars to gather detailed data about the experience of individuals within social contexts in a way that surveys conventionally cannot. Qualitative approaches allow for the inclusion of subjective experience and cultural sense making that play a vital role in understanding all facets of social life.”).

⁹⁸ See NEWMAN & LEVY, *supra* note 25.

⁹⁹ For a discussion of semi-structured interviews, see generally MARGARET C. HARRELL & MELISSA A. BRADLEY, *DATA COLLECTION METHODS: SEMI-STRUCTURED INTERVIEWS AND FOCUS GROUPS* (2009).

¹⁰⁰ Assurances of anonymity are not uncommon in interview-based studies about the federal judiciary. See, e.g., Tracey E. George, Mitu Gulati & Ann C. McGinley, *The New Old Legal Realism*, 105 NW. U. L. REV. 689, 709 n.98 (2011) (“We formally began each interview with a statement about the subject’s rights of confidentiality and anonymity, repeating information included in our oral and written communication with them prior to the interview.”); Mitu Gulati & Richard A. Posner, *The Management of Staff by Federal Court of Appeals Judges*, 69 VAND. L. REV. 479, 480 (2016) (“The judges interviewed for this study were promised anonymity and that no identifying information would be disclosed.”).

consistent with past practice, we attribute information and opinions to “a Judge” identified only by their interview date.¹⁰¹

Our chosen methodology, like all methodologies, is not without its limitations. First, there are the natural limitations that come with single (or, in this case, double) interviewers—namely, that they can interview only so many subjects for a project. There are arguments to be made that it would have been useful to look beyond current and past Chief Judges; in particular, that valuable information could be learned by speaking to additional judges, Clerks of Court, Circuit Executives, and staff attorneys *about* the Chief Judge role. While we acknowledge that these arguments have merit, it did not seem feasible for the two authors here to speak together with more than the twenty subjects interviewed. This, again, is a limitation that comes with any elite interviewing project, but it is one to note, nonetheless.

Furthermore, as with any study that gathers data by conducting interviews, this study is limited to the information provided by the subjects,¹⁰² and it is possible that the subjects did not provide complete accounts or might have amplified their answers given more time. We have tried to mitigate these possibilities, where feasible, by cross-checking information—with local rules, internal operating procedures, and a survey sent to all Clerks of Court about the internal operations of each court.

With these qualifications in mind, the next Section presents the results of the interviews, which provide an account of the role of Chief Judge as told by those who currently occupy it and some of those who did so in the past.

B. Findings

1. Defining the Role, Necessary Skills, and Training

a. Defining the Role

One of the first questions we asked the current and former Chief Judges was how they would define their role. Given how many responsibilities are vested with the Office, we thought it would be important, at the outset, to understand how each Chief conceived of the position. Several themes emerged from the responses detailed below.

¹⁰¹ See Levy, *Panel Assignment in the Federal Courts of Appeals*, *supra* note 5, at 81.

¹⁰² See, e.g., George et al., *supra* note 100, at 709 (noting that some interviewees may not have been completely candid).

A number of the judges emphasized the administrative nature of the job. As one put it, the primary function of the Chief Judge is to “keep the trains running on time”¹⁰³ and as another said, it is to ensure that “the ship is running in the way that the ship is designed to run.”¹⁰⁴ In a similar vein, another judge said that the principal role of the Chief Judge is to be the captain of the ship—the first among equals from an administrative perspective¹⁰⁵—and another responded that it is to make the system work properly.¹⁰⁶

Some of the judges emphasized that the role of the Chief Judge is to carry out these administrative functions in order to ensure that their colleagues on the court are free to focus on their own (judicial) responsibilities. As one judge said, the principal role of the Chief Judge is to make management invisible to the other judges so that they can do their jobs.¹⁰⁷ Another captured this same sentiment by comparing the Chief Judge to a lead goose, who must cut through the air for the others and eventually go back to their original position.¹⁰⁸ And another judge described the role as clearing the underbrush for the others on the court.¹⁰⁹

One judge added that the primary role of the Chief Judge is not limited to *doing* the administrative work, but thinking critically about it and investigating whether any part of the court’s administration could be improved. Specifically, the judge noted that the Chief Judge is the person who has to ask why certain practices or procedures aren’t working better, aren’t more effective, and aren’t completed more promptly.¹¹⁰ This same judge suggested that part of the role of the Chief Judge is engaging with judges in other circuits, even experts in other disciplines, to ascertain how their own court can function better.¹¹¹

When describing the administrative role of the Chief Judge, some judges emphasized how the role extended to the district courts in the circuit. One judge noted that the Chief Judge is really the Chief Executive of the court *and* of the circuit—and has to ensure the proper daily operation of the circuit

¹⁰³ Interview with a Judge (Apr. 27, 2020).

¹⁰⁴ Interview with a Judge (July 8, 2020).

¹⁰⁵ Interview with a Judge (May 20, 2020).

¹⁰⁶ Interview with a Judge (Aug. 19, 2020).

¹⁰⁷ Interview with a Judge (Nov. 21, 2020).

¹⁰⁸ Interview with a Judge (Aug. 6, 2020).

¹⁰⁹ Interview with a Judge (July 21, 2020).

¹¹⁰ Interview with a Judge (Aug. 18, 2020).

¹¹¹ *Id.*

as a whole.¹¹² A few judges noted that how extensive this role can be is tied to the particulars of the circuit. A judge from one of the large circuits said that Chief Judges are not only tasked with running the court of appeals but also have a responsibility over other court units, including pretrial services and bankruptcy courts—a significant portfolio in his circuit.¹¹³ This can be contrasted with the role of the Chief Judge of the Federal Circuit, which, as another judge pointed out, has no district courts to supervise.¹¹⁴

While some judges focused on the administrative role that the Chief Judge plays, several others focused upon the hand the Chief has in maintaining collegiality—with a large majority of judges commenting upon its importance. One judge noted that he saw maintaining collegiality and keeping the peace as the primary role of the Chief Judge;¹¹⁵ another said that a Chief Judge needs to provide leadership that will foster collegiality;¹¹⁶ and another said that the Chief Judge needs to be understood as the chief judicial officer of the court, and part of that job is promoting the collegiality and the unity of the court.¹¹⁷

As part of the discussion of collegiality, several judges said that the main function of a Chief Judge is to ensure that no acrimony develops among the members of the court. As one judge described the role, the Chief is responsible for making sure that everyone is getting along or, at least, making sure that antagonisms are avoided.¹¹⁸ Another suggested that the Chief should help ensure factions do not develop,¹¹⁹ and another noted that the job of the Chief is to make sure that judges do not “form hatreds.”¹²⁰

In a different vein, one judge described the principal role of the Chief Judge as looking out for the court.¹²¹ From this perspective, individual judges may focus on particular cases, but there is a need to have someone ensure at a high level that the institution is served.¹²² This judge described the Chief as

¹¹² Interview with a Judge (Oct. 27, 2020).

¹¹³ Interview with a Judge (May 13, 2020).

¹¹⁴ Interview with a Judge, *supra* note 109.

¹¹⁵ Interview with a Judge (July 2, 2020).

¹¹⁶ Interview with a Judge (Mar. 27, 2020).

¹¹⁷ Interview with a Judge, *supra* note 112. Similarly, another judge said that, from the global court perspective, the principal role of the Chief Judge is maintaining the collegiality and productivity of the judges on his court. Interview with a Judge (May 27, 2020). Another noted that it is important to bring a sense of respect for your colleagues and a commitment to collegiality, given that the Chief Judge is not elected by their peers. Interview with a Judge, *supra* note 113.

¹¹⁸ Interview with a Judge, *supra* note 104.

¹¹⁹ Interview with a Judge (May 5, 2020).

¹²⁰ Interview with a Judge (Nov. 6, 2020).

¹²¹ Interview with a Judge, *supra* note 104.

¹²² *Id.*

having that job—of needing to take into account how a particular matter would reflect upon the court as a whole.¹²³

Relatedly, another judge said that the overall goal of the Chief Judge is to maintain the legitimacy of the court.¹²⁴ Part of that goal then connected to points echoed by other judges in that, in this judge's view, fostering civility and collegiality among the judges was important in ensuring that the court works regularly and reasonably according to the present rules.¹²⁵ But the larger point was that the main responsibility of the Chief Judge is to leave the court in as high repute as they received it.¹²⁶ Another judge made a similar point—that the Chief plays a role in overseeing all those who work in their circuit, and so has a hand in maintaining confidence in the judiciary more broadly.¹²⁷

Despite the importance of these functions, as articulated by the judges, several noted that that the Chief Judge comes with little in the way of formal power. One judge noted that Chief Judges have a significant amount of responsibility without much authority.¹²⁸ Similarly, another judge said that Chief Judges do not really have power—they are simply one in a group of peers—and so they need to lead by example and be persuasive to get tasks accomplished.¹²⁹ Another judge made a similar point—that Chief Judges have few formal powers, and so Chief Judges need to talk and listen to the rest of the court in order to build consensus and determine what changes are achievable at the end of the day.¹³⁰

b. Describing the Necessary Skills

After asking the judges to define the principal role of the Chief Judge, we asked what skills they thought were necessary to be an effective Chief. There was variation in the responses, but themes emerged. In particular, many answers focused on soft skills (including being patient and a good listener) or managerial skills—though several judges noted the need for both.

¹²³ *Id.*

¹²⁴ Interview with a Judge (Sept. 18, 2020).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Interview with a Judge, *supra* note 108.

¹²⁸ Interview with a Judge, *supra* note 109. This same judge noted that the role has become more important in the midst of the pandemic; specifically, she noted that the Chief Judge of her circuit has become much more of a central figure in administrative decisionmaking. *See id.*

¹²⁹ Interview with a Judge, *supra* note 119.

¹³⁰ Interview with a Judge (Dec. 4, 2020).

Beginning with soft skills, many of the judges said that a necessary skill for being an effective Chief Judge is to be able to listen to people.¹³¹ One judge noted that a Chief needs to be a good listener but followed it up by saying that a Chief also needs to know when it is time to say that what the court should do with respect to a particular matter.¹³² Another described the ability to listen well as useful in diffusing tensions; a given judge might be frustrated with a colleague, and the Chief Judge can help by simply listening to the judge's frustrations.¹³³ And another paired the skill of listening well with others attributes—being fair, objective, and remembering that the Chief is Chief Judge of the entire court and not a particular subset of judges.¹³⁴

In addition to being able to listen well, several judges said that Chief Judges need to be able to communicate well. Specifically, one judge said that she thought Chief Judges must be able not only to listen to others, but also to convey information to others.¹³⁵ One noted that Chief Judges need to have certain communication abilities, including speaking and writing clearly,¹³⁶ and another stressed the need for emotional intelligence and communication skills.¹³⁷ Indeed, one judge went so far as to say that those who do not like to communicate, and who prefer the monastic nature of the judicial role, in all likelihood would not be particularly good candidates for Chief Judge.¹³⁸

In a related vein, a few others suggested that Chief Judges need to have good diplomatic skills. Specifically, one judge said that Chiefs need to be diplomats, negotiators, and even cajolers.¹³⁹ Another said diplomacy was valuable, but that a Chief Judge also has to demonstrate that they will not be a pushover.¹⁴⁰ And yet another ticked off several of the skills noted here that a Chief should excel at: listening, inclusion, and diplomacy.¹⁴¹

Still within the realm of soft skills, several judges spoke of needing to have good instincts and having a feel for the others on the court. One judge stressed that a Chief Judge has to know whom to trust—who would be reliable on particular committees, for example.¹⁴² He went on to stress that

¹³¹ See, e.g., Interview with a Judge, *supra* note 109.

¹³² Interview with a Judge, *supra* note 119.

¹³³ Interview with a Judge, *supra* note 120.

¹³⁴ Interview with a Judge, *supra* note 105.

¹³⁵ Interview with a Judge (May 22 & May 29, 2020).

¹³⁶ Interview with a Judge, *supra* note 108.

¹³⁷ Interview with a Judge, *supra* note 116.

¹³⁸ Interview with a Judge, *supra* note 115.

¹³⁹ Interview with a Judge, *supra* note 103.

¹⁴⁰ Interview with a Judge (Feb. 14 & Feb. 24, 2020).

¹⁴¹ Interview with a Judge (Nov. 5, 2020).

¹⁴² Interview with a Judge, *supra* note 107.

Chief Judges should also have a sense for what issues are apt to be contentious.¹⁴³ Another judge described a similar set of skills—having a sense of what makes each of the members of the court tick and what might set them off if not handled well.¹⁴⁴ Looking more broadly, one judge commented that Chief Judges should have good instincts when it comes to what could reflect poorly on the federal court system as a whole.¹⁴⁵

Apart from soft skills, many of the judges stressed the importance of managerial skills. In fact, we were repeatedly told that previous managerial experience and administrative experience are “important” and “helpful.”¹⁴⁶ As one judge said, a Chief Judge runs a large organization not unlike a big law firm, and so being able to manage the Circuit Executive’s Office and the Clerk’s Office, including knowing how to delegate tasks, is critical.¹⁴⁷ As with responses to other questions, however, there was consideration for the variation across circuits; one judge noted that while there is a significant administrative dimension to the job of the Chief Judge overall, that dimension is less substantial for courts such as the D.C. Circuit that do not contain a large number of district courts.¹⁴⁸

A few judges mentioned the importance of not just possessing administrative skills or experience, but also enjoying administration. Specifically, one judge said it is helpful to have administrative experience and an interest in judicial administration.¹⁴⁹ Another said that Chief Judges have to, or should, enjoy management—that one really needs to be interested in how the various parts of the court system operate.¹⁵⁰ And one judge even suggested that if a judge does not enjoy administrative work, they should turn down the position of Chief Judge.¹⁵¹

Finally, several judges noted that it is important to be in good standing with the rest of the court. One judge said a Chief Judge should be someone who people think will not have an agenda—not a personal agenda, ideological agenda, or judicial philosophy agenda—and therefore has the

¹⁴³ *Id.*

¹⁴⁴ Interview with a Judge, *supra* note 140.

¹⁴⁵ Interview with a Judge, *supra* note 141.

¹⁴⁶ Interview with a Judge, *supra* note 109; Interview with a Judge, *supra* note 112; Interview with a Judge, *supra* note 124.

¹⁴⁷ Interview with a Judge, *supra* note 117.

¹⁴⁸ Interview with a Judge, *supra* note 124.

¹⁴⁹ Interview with a Judge, *supra* note 113.

¹⁵⁰ Interview with a Judge, *supra* note 140.

¹⁵¹ Interview with a Judge, *supra* note 116. In recent times, one judge eligible to become Chief Judge turned the job down. *See infra* note 504 and accompanying text.

respect of their colleagues.¹⁵² Similarly, another judge said that a Chief Judge has to have credibility with all of the judges on the court.¹⁵³ One more suggested that it would be helpful (though not necessary) for the Chief Judge to be a respected jurist in their own right.¹⁵⁴

A few of the judges ultimately noted that several different models could succeed. One commented that he had seen Chief Judges with different personalities but that were all very effective.¹⁵⁵ And one remarked that he would bet that there are people who have all of the proper ingredients for being an effective Chief Judge, but it had been his experience that any number of different personalities and styles could be successful.¹⁵⁶

c. Describing the Training

Given all that a Chief Judge is expected to do, one key question is how are judges trained for the position? As one judge said, judges are lawyers (by training); judges are not administrators.¹⁵⁷ And so we asked what kinds of training each judge had received prior to becoming Chief and how useful it ultimately was.

First and foremost, we asked whether the judges had received formal training by the Administrative Office of the U.S. Courts. All of the judges we spoke to had received such training, with several also noting training by the Federal Judicial Center.¹⁵⁸ (It is worth bearing in mind that some judges received their training several years ago, and some of the training has since been updated.¹⁵⁹ The training from the Administrative Office was described as an orientation session for new Chief Judges¹⁶⁰—and, as one judge said, that session was meant to be helpful primarily in understanding the relationship between the individual court and the Administrative Office and various entities like the Judicial Center.¹⁶¹ Another judge made a similar point, describing his session with the AO as lasting two days, and involving

¹⁵² Interview with a Judge, *supra* note 124.

¹⁵³ Interview with a Judge, *supra* note 119.

¹⁵⁴ Interview with a Judge, *supra* note 103.

¹⁵⁵ Interview with a Judge, *supra* note 130.

¹⁵⁶ Interview with a Judge, *supra* note 103.

¹⁵⁷ Interview with a Judge, *supra* note 120.

¹⁵⁸ *See, e.g.*, Interview with a Judge, *supra* note 108 (noting that the Administrative Office and Federal Judicial Center both provided orientation opportunities and sessions for new Chief Judges).

¹⁵⁹ According to a few of the judges we interviewed, the Federal Judicial Center has been updating its training modules recently. Interview with a Judge, *supra* note 103; Interview with a Judge, *supra* note 119.

¹⁶⁰ Interview with a Judge, *supra* note 109.

¹⁶¹ Interview with a Judge, *supra* note 140.

presentations from representatives of the different sections of the AO—something he described as helpful for becoming acquainted with the resources that exist at the national level.¹⁶² This judge noted that it was less helpful for assisting with the daily duties of a Chief Judge and all that goes with them.¹⁶³

A number of judges said that the formal orientation or training was not as critical for them because of their past work experiences. For example, a few judges cited their time in their states' Attorney General's Office, which was likened to a large public law firm.¹⁶⁴ Another described his time as Chief Judge of a district court, and how his administrative experience in that role reduced his need for formal training for his current position.¹⁶⁵

Several of the judges spoke about experiences they had had as judges, particularly certain committee assignments that they described as providing invaluable training. One judge noted that she had served on the Committee on Court Administration and Case Management of the U.S. Judicial Conference and found that to be one of the best forms of training to be Chief Judge.¹⁶⁶ She also said that she would strongly recommend that anyone who is to be named Chief Circuit Judge serve on one of the important Judicial Conference committees prior to becoming Chief.¹⁶⁷ Another judge noted that past Chief Judges on his court had advocated for him to be appointed to the Judicial Resources Committee and later to the Budget Committee of the Judicial Conference, and that this, along with serving on key committees on his circuit, provided the training that he needed.¹⁶⁸ Another judge made the same point, noting that soon after joining his circuit, he was appointed to the Judicial Resources Committee, and he concluded that there was no better training for becoming Chief Judge than chairing that committee, the Budget Committee, or the Committee on Court Administration and Case Management.¹⁶⁹

Experience on these U.S. Judicial Conference Committees was not the only relevant committee experience noted. One judge mentioned his time on the Conference's Standing Rules Committee (the Committee on Rules of Practice and Procedure), and how that served as useful training for becoming

¹⁶² Interview with a Judge, *supra* note 105.

¹⁶³ *Id.*

¹⁶⁴ Interview with a Judge, *supra* note 117; Interview with a Judge, *supra* note 112.

¹⁶⁵ Interview with a Judge, *supra* note 115.

¹⁶⁶ Interview with a Judge, *supra* note 141.

¹⁶⁷ *Id.*

¹⁶⁸ Interview with a Judge, *supra* note 112.

¹⁶⁹ Interview with a Judge, *supra* note 117.

Chief Judge.¹⁷⁰ And another emphasized the time he spent on his court's internal committees—from the Budget Committee to the Space Committee—and how the assignments were good preparation for later assuming a leadership role on his court.¹⁷¹

Along with particular committee assignments, several judges noted that what was most valuable was the training they received from their predecessors—which, in turn, involved some circuit committee assignments. But not everyone received training from former Chief Judges, and among those who did, there was substantial variation.

Starting with those who did receive training, one judge noted that the primary preparation and guidance she received for the position was from her immediate predecessor.¹⁷² Specifically, she noted that in the year before she became Chief Judge, the then-Chief began involving her more in the work of certain committees and had her chair the Judicial Conduct and Disability Committee.¹⁷³ She also noted that he continued to be a resource once she became Chief.¹⁷⁴ Similarly, another judge commented that the Chief Judge who preceded him, almost a year before the transition, began including him in various administrative decisions that she had to make—and that he had found this to be invaluable in making his own transition to the role of Chief “more seamless.”¹⁷⁵ And in the same vein, another judge described how his predecessor, within about three years of the end of his term, began to copy the Chief-to-be on certain matters related to the Office, and put him in charge of the Circuit Conference the year before he became Chief to “get a feel” for the role.¹⁷⁶ This judge added that his predecessor also brought him in on some budgeting issues and overall was a very hands-on mentor.¹⁷⁷ Several other judges shared similar experiences.¹⁷⁸

By contrast, a few judges described far less training from their predecessors, or none at all. One noted sitting down with a few former Chief Judges of her circuit for a couple of hours and “pick[ing] their brains” about various matters.¹⁷⁹ Another said that he had no formal training from his

¹⁷⁰ Interview with a Judge, *supra* note 106.

¹⁷¹ Interview with a Judge, *supra* note 140.

¹⁷² Interview with a Judge, *supra* note 119.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Interview with a Judge, *supra* note 103.

¹⁷⁶ Interview with a Judge, *supra* note 108.

¹⁷⁷ *Id.*

¹⁷⁸ Interview with a Judge, *supra* note 135; Interview with a Judge, *supra* note 113; Interview with a Judge, *supra* note 104; and Interview with a Judge, *supra* note 141.

¹⁷⁹ Interview with a Judge, *supra* note 109.

predecessors; that from time to time there was something ad hoc but no orientation and no assignment to particular committees with an eye toward him becoming Chief Judge one day.¹⁸⁰ And still another noted that there was no real succession planning on his court, and that he had gone out of his way to provide more guidance and training for his successor.¹⁸¹ Another Chief Judge took the same position, noting that he purposefully involved his successor in some recurring management issues, including magistrate judge selection, and was also helping to get him on one of the AO committees, as he thought it would be good training.¹⁸² In short, he said he was trying to be more forward-thinking about his successor.¹⁸³

Finally, one judge noted that he had little formal training from his predecessors but felt there was less need for such training because he was on a smaller, highly collegial circuit—and so “we’re talking with one another all the time.”¹⁸⁴ And because he and his predecessors were in the same courthouse, he said that they could easily talk about Chief Judge issues over lunch quite frequently.¹⁸⁵ Another judge shared a similar experience; he noted that his direct predecessor had chambers only a few floors apart from his own, and that there were times when the two spoke daily—as a result, he felt he received “first-class training.”¹⁸⁶

d. Whether One Wanted to be Chief

Given the many responsibilities that come with being Chief Judge, and given that one does not run for the position but rather becomes Chief by virtue of seniority and age, we asked all of the judges whether they had wanted to hold the Office.

Several of the judges stated that they had no particular desire to be Chief, but did not decline it out of a sense that it was “their turn.” As one judge said, he became Chief because his time came up.¹⁸⁷ Another noted that he did not have a strong desire to be Chief Judge, but he simply ended up next in line.¹⁸⁸

¹⁸⁰ Interview with a Judge, *supra* note 116.

¹⁸¹ Interview with a Judge, *supra* note 124.

¹⁸² Interview with a Judge, *supra* note 117.

¹⁸³ *Id.*

¹⁸⁴ Interview with a Judge, *supra* note 107.

¹⁸⁵ *Id.*

¹⁸⁶ Interview with a Judge, *supra* note 106.

¹⁸⁷ Interview with a Judge, *supra* note 124.

¹⁸⁸ Interview with a Judge, *supra* note 105.

A third judge noted that somebody has to be Chief—somebody has to be the administrative head—and his turn came.¹⁸⁹

A few judges stressed that they were not eager to give up their “day job.” One said that he became a judge because he loved judging, and did not want being a Chief to take him away from that role.¹⁹⁰ He went on to say that if being Chief had required taking only a fifty percent caseload, he would have turned down the job.¹⁹¹ Another judge responded that he would have been perfectly happy—indeed, happier—if he had not become Chief Judge.¹⁹² Another judge was pleasantly surprised by his time in the position; because he considered his principal job to be deciding cases, he was uncertain about taking on the role of Chief, but said he ultimately was very glad to have done it.¹⁹³

Others spoke of looking forward to the “honor” of being Chief Judge. One judge said he had wanted to take on the role because it is good to “step up and do your part,” and an “honor” to lead your colleagues.¹⁹⁴ Another said he thought it was a privilege to be of service to the court—a role that he had been looking forward to.¹⁹⁵ Finally, one judge said that she wanted to become Chief because there had never been a female Chief Judge in her circuit before and had not been many female Chief Judges generally.¹⁹⁶ She concluded that the demands of the job were significant, though ultimately worth it.¹⁹⁷

2. *Describing the Work of the Chief Circuit Judge*

a. *Quantifying the Amount of Time Spent Working on Chief Judge Tasks*

Our next set of questions focused on how each judge managed the work that came with being Chief Judge. We asked each judge how much time they spent on Chief Judge tasks (out of their schedule as a whole) and what reduction, if any, they took in their judicial work upon becoming Chief. The responses varied considerably, in part due to differences across circuits, and in part due to differences in the Chief Judges’ commitments.

¹⁸⁹ Interview with a Judge, *supra* note 107.

¹⁹⁰ Interview with a Judge, *supra* note 130.

¹⁹¹ *Id.*

¹⁹² Interview with a Judge, *supra* note 103.

¹⁹³ Interview with a Judge, *supra* note 124.

¹⁹⁴ Interview with a Judge, *supra* note 116.

¹⁹⁵ Interview with a Judge, *supra* note 140.

¹⁹⁶ Interview with a Judge, *supra* note 141.

¹⁹⁷ *Id.*

To begin, each judge provided a rough estimate of the percentage of time they spent working on Chief Judge matters. Several noted that, over their terms, there were significant swings in this percentage. Some of the variation was due to external challenges. One judge said that when there was a government shutdown, there were days when he did nothing but “put out fires.”¹⁹⁸ Similarly, he said, when the pandemic first began, he spent a significant part of his day focused on Chief Judge tasks (a point others also made).¹⁹⁹ Some of the variation was due to the commitments of the Chief Judge. One judge suggested that the time spent dedicated to Chief Judge tasks doubled when he was appointed to a significant U.S. Judicial Conference committee, and increased yet again when he became committee Chair.²⁰⁰ Keeping in mind that these percentages were estimates—and could easily shift up or down, depending upon the challenges the court was facing and the commitments of the Chief Judge—we note that the responses of time on Chief Judge tasks ranged from twenty to twenty-five percent on the low-end to ninety percent on the high-end.

Specifically, a few judges reported that their Chief Judge duties took up approximately twenty to twenty-five percent of their working time,²⁰¹ though two added that in the midst of the pandemic that figure was higher,²⁰² with one pegging it at fifty percent.²⁰³ Several said that their Chief Judge duties occupy between thirty and fifty percent of their time,²⁰⁴ again, with one noting that that figure was now higher due to the pandemic, estimating a figure of at least sixty percent.²⁰⁵ And a few more suggested that they spent over fifty percent of their time on Chief Judge tasks,²⁰⁶ with a judge in one of the larger circuits estimating that he spent eighty percent of his time on such duties before the pandemic and ninety percent in the midst of it.²⁰⁷

¹⁹⁸ Interview with a Judge, *supra* note 108.

¹⁹⁹ *Id.*; see also Interview with a Judge, *supra* note 109.

²⁰⁰ Interview with a Judge, *supra* note 124. Another made a similar point about the same committee assignment. Interview with a Judge, *supra* note 103.

²⁰¹ Interview with a Judge, *supra* note 116; Interview with a Judge, *supra* note 117; and Interview with a Judge, *supra* note 109.

²⁰² Interview with a Judge, *supra* note 117; Interview with a Judge, *supra* note 109.

²⁰³ Interview with a Judge, *supra* note 109.

²⁰⁴ Interview with a Judge, *supra* note 103; Interview with a Judge, *supra* note 115; Interview with a Judge, *supra* note 135; Interview with a Judge, *supra* note 112; and Interview with a Judge, *supra* note 104.

²⁰⁵ Interview with a Judge, *supra* note 103.

²⁰⁶ Interview with a Judge, *supra* note 105; and Interview with a Judge, *supra* note 113.

²⁰⁷ Interview with a Judge, *supra* note 113.

A few of the judges suggested that these figures do not fully capture all of the effort spent on Chief Judge tasks, as Chief Judge matters were constantly “in the background.” One judge noted that he was always thinking about the job, even when he was working on a case-related activity—that it was always in the back of his mind.²⁰⁸ He went on to say that on a given day, he tries to spend the first few hours of the morning focusing on judge work as he assumes that the rest of the day will be broken up by Chief Judge matters.²⁰⁹ Another judge made a similar point, noting that it is not the quantum of added time that comes with being Chief Judge so much as the unpredictability of the job that can be challenging.²¹⁰ He said that you can be trying to carve out forty-five minutes or an hour to focus on an opinion and then the phone rings and something lands on your desk from 35,000 feet up; you can never tell when that will happen, and when it will be a crisis that has to be acted upon.²¹¹

In order to accommodate their Chief Judge work, several of the judges said that they take some kind of reduction in caseload—though here, too, there was variation. (And it is worth noting that many of the judges who took reduced caseloads came from circuits with heavier per-judge workloads.) One judge said that he takes one fewer sitting per year than his active colleagues.²¹² But he went on to say that he often ends up with additional cases as vacancies can arise on panels (say, if a judge becomes ill), and he then steps in to fill the place.²¹³ A few judges stated that they take or took a caseload of approximately seventy-five percent of the caseload of active judges.²¹⁴ Again, one judge noted that this figure was not set in stone—that he sometimes ended up with more cases if, for a variety of reasons, another judge had to bow out of a sitting.²¹⁵ Another judge said that he began by taking 100% of an active judge’s caseload, but as the caseload overall grew, he found he could not keep up and is at about sixty percent now.²¹⁶ And one judge reported taking a two-thirds caseload when he was Chief (but then said that there was a period of time, when he served on the

²⁰⁸ Interview with a Judge, *supra* note 140.

²⁰⁹ *Id.*

²¹⁰ Interview with a Judge, *supra* note 130.

²¹¹ *Id.*

²¹² Interview with a Judge, *supra* note 115.

²¹³ *Id.*

²¹⁴ Interview with a Judge, *supra* note 140; and Interview with a Judge, *supra* note 117; Interview with a Judge, *supra* note 120.

²¹⁵ Interview with a Judge, *supra* note 120.

²¹⁶ Interview with a Judge, *supra* note 103.

Executive Committee of the Judicial Conference and eventually as Chair of the Committee, when that figure went down to fifty percent).²¹⁷

Further down, a few judges noted that they generally take a fifty percent caseload of what an active judge hears in a year.²¹⁸ One judge noted that this was simply the tradition of his court (though he, too, added that the percentage was often higher as he sometimes volunteers to take the place of another judge on a panel).²¹⁹ One judge from the Ninth Circuit noted that the Chief is permitted to take a reduced caseload on assuming the position—and typically it is about half of the normal caseload.²²⁰ He pointed out that the Chief Judge sits on all of the en banc cases (unlike other active judges on that court), and that the Ninth Circuit can have as many as twenty-five en banc proceedings per year.²²¹ Accordingly, the caseload reduction (when coupled with the additional en banc work) can end up being something of a wash.²²² Another judge of a larger circuit noted that he thinks it is advisable to have the Chief Judge not take a full load, suggesting that you otherwise would not have the necessary time to think about how you could improve operations at your court (which might require studying, traveling, and reading).²²³

A few judges, however, said that they take the same number of sitting days as an active judge.²²⁴ Importantly, several of these judges take work reductions in other ways. One judge noted that he has a greatly reduced role in screening cases for oral argument (a task the judges on his court perform), and that he does far less motions work.²²⁵ Another judge noted that the Chief Judge in his circuit historically did not sit on special panels (what several other circuits call motions panels) and he followed this custom.²²⁶ He also noted that Chief Judges previously had not heard complex cases, though he did as Chief.²²⁷ He finally noted that as his Chief Judge duties grew over time, he did not reduce the number of cases that he heard but he began writing fewer opinions—and he estimated that this figure was about three-quarters of the

²¹⁷ Interview with a Judge, *supra* note 106.

²¹⁸ Interview with a Judge, *supra* note 105; Interview with a Judge, *supra* note 113.

²¹⁹ Interview with a Judge, *supra* note 105.

²²⁰ Interview with a Judge, *supra* note 113.

²²¹ *Id.*

²²² *Id.*

²²³ Interview with a Judge, *supra* note 110.

²²⁴ *See, e.g.*, Interview with a Judge, *supra* note 112; and Interview with a Judge, *supra* note 109.

²²⁵ Interview with a Judge, *supra* note 112.

²²⁶ Interview with a Judge, *supra* note 124. Another judge from the same circuit reported that he, too, had not served on this type of panel as Chief Judge. Interview with a Judge, *supra* note 104.

²²⁷ Interview with a Judge, *supra* note 124.

opinions he had authored previously.²²⁸ Similarly, another judge noted that the Chief Judge on his court does not serve on administrative panel cases (which mostly consider motions) and does not take screening panel cases (cases that are screened for non-argument).²²⁹ Accordingly, he noted that while the Chief Judge hears a full set of argued cases on any given sitting day, overall the Chief has a slightly diminished judicial workload.²³⁰

A few others who hear a full caseload mentioned particular circumstances surrounding their decision to do so. As noted earlier, one judge began with 100% of an active judge's caseload—and was able to maintain that because filings were down (and later reduced his caseload as the number of cases per judge increased).²³¹ In a different direction, one judge noted that she takes a full caseload because there were several vacancies on her court for a couple of years, and she would not have felt comfortable hearing fewer cases than her colleagues.²³² She then added that when the vacancies were filled, taking a full caseload was quite manageable.²³³

Finally, two judges noted that Chief Judges on their court traditionally took a reduction in caseload of some kind but that they had elected not to do so. One said that the Chief Judges on her court were expected to take only seventy-five percent of the sitting days of an active judge but that she opted to take 100% because she did not want to give up her “day job.”²³⁴ Another judge noted that the Chief Judges of his court do not have to decide cases that are not set for oral argument, but he chose to take them anyway.²³⁵ By way of explanation he said that such cases were important for his primary job as judge; that he serves as Chief by statute but that he is an Article III judge first and foremost.²³⁶ (He also said lightheartedly that he was a glutton for punishment.²³⁷)

b. Overseeing the Calendar

²²⁸ *Id.*

²²⁹ Interview with a Judge, *supra* note 108.

²³⁰ *Id.*

²³¹ Interview with a Judge, *supra* note 103.

²³² Interview with a Judge, *supra* note 119.

²³³ *Id.*

²³⁴ Interview with a Judge, *supra* note 109.

²³⁵ Interview with a Judge, *supra* note 116.

²³⁶ *Id.*

²³⁷ *Id.*

One of the Chief Judge's responsibilities is overseeing the creation of the oral argument calendar. Some judges play a more direct role in setting the calendar than others, in part due to the practices of their circuit.

One judge noted that there is a customary court sitting schedule in his circuit—that they sit the first week of every month for eleven sittings out of the year, and usually hear six cases a day for the full week.²³⁸ Approximately a year and a half before the start of a new term, the Circuit Executive circulates a schedule.²³⁹ If they do not have enough cases to fill the schedule, the judge said he has a discussion with the Clerk of Court about whether they will go down from six cases to five per day or if a panel will be cut off for a particular month.²⁴⁰ Another judge whose court also has a customary sitting schedule said that he decides, within the set number of weeks, how many days his court will sit—three or four.²⁴¹ He then circulates the calendar a year and a half in advance and the judges of the court vote on it.²⁴²

A judge of a court that does not have a default sitting schedule said that he works closely with the Clerk of Court to have a sense of what his court's projected workload will be, and on that basis, determines the number of sitting days.²⁴³ He said he tries to gain a sense from his colleagues as to whether they would prefer to have fewer days with more cases or more sitting days with fewer cases, and so his decision is not a unilateral one.²⁴⁴ Another noted that in conjunction with both the judge who is designated the "proctor" for the Clerk's Office and the Clerk's Office itself, she endeavors to assess how many oral argument panels will be needed given the court's projected caseload.²⁴⁵ The Chief Judge later reviews the argument panels—created by the Clerk of Court and the judge who is the scheduling proctor, based upon a computer program—and ultimately is tasked with approving it.²⁴⁶

Other judges reported playing a less hands-on role with the creation of their court's calendar. One noted that his court determines the number of sitting days for active judges.²⁴⁷ Another judge noted that the

²³⁸ Interview with a Judge, *supra* note 103.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Interview with a Judge, *supra* note 116.

²⁴² *Id.*

²⁴³ Interview with a Judge, *supra* note 140.

²⁴⁴ *Id.*

²⁴⁵ Interview with a Judge, *supra* note 135.

²⁴⁶ *Id.*

²⁴⁷ Interview with a Judge, *supra* note 113.

Circuit Executive is in charge of creating the calendar (with a computer program) and prepares three schedules for the Chief Judge to consider.²⁴⁸ The Chief then sends those options to the case management committee for their approval.²⁴⁹

c. Inviting Judges to Sit by Designation

A related way in which Chief Judges play a role in setting the calendar concerns whether other judges will be invited to their court to sit by designation or “visit”—and then, whom to invite. Regarding the second question first—whom to invite—a number of judges said that this was a matter for the Chief Judge to determine. One judge noted that he is the one to decide on any given visitor.²⁵⁰ In another circuit where visitors are consistently used, the Chief Judge decides whom to invite.²⁵¹ Another judge noted that his court had not invited judges to sit by designation recently, as they did not need the caseload assistance, but that if they were going to invite visitors, he would decide whom to invite.²⁵² And another judge said that the Chief Judge determines who will be invited to sit with her court, but that she would not extend an invitation without first consulting with the other judges.²⁵³ She went on to say that when she planned to invite two judges to sit by designation recently, she emailed the rest of the court to ask if they had any questions or concerns.²⁵⁴

Regarding the first question—whether to have visitors at all—there was variation across the circuits as to who had the authority to make the determination. A judge of one circuit described how, just prior to becoming Chief, he suggested that his court stop importing visiting judges from outside the circuit, even though doing so would mean each judge on his court would hear more cases.²⁵⁵ Though the prior Chief Judge had reservations about the proposal, he put the matter to a vote by the court (which then approved the decision to limit the use of visitors).²⁵⁶ By contrast, a judge of another circuit said that whether to bring in visitors is the Chief Judge’s prerogative on her

²⁴⁸ Interview with a Judge, *supra* note 105.

²⁴⁹ *Id.*

²⁵⁰ Interview with a Judge, *supra* note 116.

²⁵¹ Interview with a Judge, *supra* note 113.

²⁵² Interview with a Judge, *supra* note 117.

²⁵³ Interview with a Judge, *supra* note 109.

²⁵⁴ *Id.*

²⁵⁵ Interview with a Judge, *supra* note 112.

²⁵⁶ *Id.*

court.²⁵⁷ She then noted that a previous Chief Judge had decided on his own that only judges of the circuit would hear their cases.²⁵⁸ Similarly, a judge from another court of appeals reported that whether they use visiting judges at all has largely been in the hands of the Chief Judge (though other judges will offer their thoughts).²⁵⁹

d. Opinion Assignment

During sittings, the Chief Judge is the presider over oral argument when on a panel. And in that capacity, the Chief Judge has certain responsibilities. One judge noted that as presider, you try to keep on top of the motions in the first instance if you are able, and, depending upon the circuit, you might prepare short, summary orders.²⁶⁰ Furthermore, the Chief Judge as the presider will assign opinions (when in the majority).²⁶¹ But one point of variation among the circuits was that one Chief Judge reported being the ultimate authority in assigning opinions for *all* of the panels on his court.²⁶²

Specifically, this Chief Judge described that during oral argument weeks, all of the judges of his court come together.²⁶³ (And because the judges are all together for arguments, they can—and do—sit with different judges throughout the week.) At the end of the sitting week, every panel presider writes a letter explaining who that judge would recommend for opinion assignments.²⁶⁴ The Chief Judge of that court said that he then considers the judges' relative caseloads and makes the assignments, estimating that he follows the recommendation of the lead panel judge ninety percent plus of the time.²⁶⁵ But, as he said, officially the Chief Judge makes all of the assignments.²⁶⁶ A judge of another court stated that this was previously the practice in his circuit.²⁶⁷ He then cited a former Chief Judge who was ultimately responsible for assigning all of the opinions, and who, he said, spent a lot of time making sure that there was an equitable distribution of cases overall.²⁶⁸

²⁵⁷ Interview with a Judge, *supra* note 119.

²⁵⁸ *Id.*

²⁵⁹ Interview with a Judge, *supra* note 105.

²⁶⁰ Interview with a Judge, *supra* note 140.

²⁶¹ *Id.*

²⁶² Interview with a Judge, *supra* note 116.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ Interview with a Judge, *supra* note 103.

²⁶⁸ *Id.*

e. Moving the Business of the Court

The vast majority of the Chief Judges interviewed said that they thought it was part of their job to ensure the prompt filing of opinions.²⁶⁹ Indeed, one judge said it was a “major” part of her job as Chief.²⁷⁰ It was also agreed that this task is neither easy nor pleasant. As one judge described the problem, “You hear oral argument on a given date, Judge X is assigned to write the opinion, and then there is just the sound of silence for months and months . . . and what does one do to get that judge moving to circulate an opinion?”²⁷¹ This was precisely the question we asked the judges—how do you ensure the timely filing of opinions? Once again, while there were some commonalities—many of the Chief Judges noted that they rely on circulating reports that list which judges have cases outstanding—there was also significant variation across circuits.

At the outset, it is important to note that some Chief Judges had easier jobs than others in moving the business of the court, in part due to their own court’s rules and calendar. Some of the judges stated that their courts have nonpublic rules about when opinions should be filed.²⁷² For example, one judge mentioned that his circuit has a policy whereby judges are supposed to circulate opinions within ninety days of argument.²⁷³ Relatedly, panel judges are generally supposed to respond within five business days of a majority opinion being circulated (unless they have a reason that they provide for responding later).²⁷⁴ A judge of another circuit noted that within the last two years, his court had put into their internal policies voluntary guidelines for circulating and responding to opinions with specific time periods set out.²⁷⁵

Some of the policies have specific consequences for breaches. One judge mentioned that according to the informal policies of her court, if a judge has more than one opinion that is over a year old or four opinions over 180 days old, the judge cannot sit.²⁷⁶ A judge in another circuit, whose court has formal terms each year, said that by mid-August, if a judge has more than two outstanding opinions, that judge cannot sit when the new term

²⁶⁹ One judge said that he did not consider it part of his role because it had never been necessary (meaning that the judges of his court were generally prompt in filing opinions). Interview with a Judge, *supra* note 108.

²⁷⁰ Interview with a Judge, *supra* note 141.

²⁷¹ Interview with a Judge, *supra* note 105.

²⁷² Interview with a Judge, *supra* note 104.

²⁷³ Interview with a Judge, *supra* note 124.

²⁷⁴ *Id.*

²⁷⁵ Interview with a Judge, *supra* note 105.

²⁷⁶ Interview with a Judge, *supra* note 109.

commences in September.²⁷⁷ The judge then added that no Chief Judge wants to be the one to say to a colleague that they cannot sit, and so it is on the Chief Judge to make sure that everyone is following the rule.²⁷⁸ And so, this particular judge said that as Chief, he would send out a reminder of the rule in May, and then a note to those who had more than two opinions outstanding in June, and then he would begin making phone calls as the summer neared an end.²⁷⁹

The majority of Chief Judges, though, rely, at least in part, on their court generating a report that lists the cases in which the judge assigned the opinion has not circulated a draft. There were differences across circuits in the particulars of the reports—for example, one judge said that his court prepares a list of cases under submission for sixty days,²⁸⁰ another said that his court prepares lists of cases under submissions for sixty days and ninety days,²⁸¹ and another noted that his court has a seventy-five-day list.²⁸² But the key point is that in many circuits, the list is circulated to the other members of the court and sometimes discussed at a court meeting. The underlying mechanism, is, as one judge put it, social pressure²⁸³ (another described it as shaming²⁸⁴). One judge described what happens at the court meeting—the judges go around the table and every judge (who has an opinion not circulated) has to explain “why it’s taking so long.”²⁸⁵ Another judge pointed out that this practice can be an effective deterrent; he said that in his court, the list is circulated two weeks before the court meeting and many cases come off that list (because the opinions end up being circulated) in those two weeks.²⁸⁶ And so, he concluded, the list (and subsequent discussion at the court meeting) can serve a disciplining function.²⁸⁷

Some of the judges said that while their court circulates a list, it is not discussed at a court meeting. One judge noted that his court used to go over

²⁷⁷ Interview with a Judge, *supra* note 124.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Interview with a Judge, *supra* note 140.

²⁸¹ Interview with a Judge, *supra* note 108.

²⁸² Interview with a Judge, *supra* note 116.

²⁸³ Interview with a Judge, *supra* note 107.

²⁸⁴ Interview with a Judge, *supra* note 113.

²⁸⁵ Interview with a Judge, *supra* note 107.

²⁸⁶ Interview with a Judge, *supra* note 140.

²⁸⁷ *Id.* Another judge reported a similar phenomenon in his circuit. Once a year, at a court meeting, the judges discuss (among other things) matters that are more than nine months old. He calls judges approximately three weeks in advance to inform them that they are on the agenda and often they are able to get the opinion out so that they are not ultimately on the agenda. Interview with a Judge, *supra* note 105.

each opinion that was outstanding and *why* it was outstanding once every month but that the judges no longer do this.²⁸⁸ He suggested that being on the list was embarrassing enough—he likened it to when a country club posts the names of the members with bills past due.²⁸⁹ Another judge of the same court said that circulating the list was sufficient because the judges of the court could see who was behind; as he put it, the case flow was monitored by “eyeballs!”²⁹⁰ A judge of another court said that they circulate their list but do not discuss it at court meetings.²⁹¹ Her explanation was that they see each other frequently; accordingly, there is “just no need to.”²⁹² And a judge on another circuit noted that not only is the list not discussed at court meetings, but it is only circulated to those who are on it—with a blind carbon copy—and not to the court as a whole.²⁹³

A few other Chief Judges said they receive reports about uncirculated opinions but that these reports are not routinely shared with the other judges on the court. One judge expressed concern over circulating such a report, saying that if the list has one or two judges sticking out “like sore thumbs,” it would be an “irritant or embarrassment” for those judges.²⁹⁴ (He did note that while the list was not provided to the court, individual judges could request it.²⁹⁵) Accordingly, he said he tries to simply bring up the matter directly with the judges who are behind.²⁹⁶ A judge of another circuit said he did not know the reason why the court did not circulate a list, but then supposed it had to do with collegiality and tradition.²⁹⁷ He said that he speaks to late judges directly, and that his court discusses the value of productivity at judicial retreats—in a “private setting.”²⁹⁸ This Chief Judge went on to say that other courts have the equivalent of hall monitors that prod judges to get their opinions in on time; he said his court had not taken that route (though he said, somewhat in jest, that he might be tempted to do so in the future).²⁹⁹

There was a separate question of what the Chief Judges would do if these initial actions—speaking directly to judges who were late with their work or

288 Interview with a Judge, *supra* note 130.

289 *Id.*

290 Interview with a Judge, *supra* note 116.

291 Interview with a Judge, *supra* note 109.

292 *Id.*

293 Interview with a Judge, *supra* note 124.

294 Interview with a Judge, *supra* note 115.

295 *Id.*

296 *Id.*

297 Interview with a Judge, *supra* note 117.

298 *Id.*

299 *Id.*

circulating a list of uncirculated opinions (and their assigned authors)—were unsuccessful. One judge said that his rule was that you could not write an en banc decision if you had a backlog, as it was not fair to the rest of the court.³⁰⁰ A judge of another court said that he has told other panel members that he would not assign them anything to author for the sitting week so that they could catch up with their backlog—and that he found this strategy works as a form of peer pressure.³⁰¹ A judge of another circuit noted that he can provide calendar relief to judges who are behind, though he made clear that this remedy is rarely used.³⁰² He also mentioned (returning to internal court provisions) that if a judge has not circulated a dissent within a certain period of time, the panel can go ahead and file the majority opinion.³⁰³ And a judge of another circuit said that they have an internal operating procedure stating that if a case goes beyond six months, the Chief Judge can reassign it.³⁰⁴ Furthermore, the Chief of that circuit has the authority to stop assigning the judge who is behind on their work to new argument dates.³⁰⁵ The judge added that the power has never been used, but it “sits there.”³⁰⁶

Other responses seemed more remedial in nature, even if they had a deterrent effect. For example, one judge said that what he typically does is offer to take the late judge off the case assignment list until they are able to catch up.³⁰⁷ There are other available remedies in this circuit—for example, asking if the judge needs relief from a panel that considers motions and nonargument cases.³⁰⁸ But, in this judge’s experience, simply having the conversation with the judge is what “gets the case out the door.”³⁰⁹ Another judge described how he encouraged one particularly delinquent judge to take some time off in order to get his backlog down.³¹⁰ This former Chief Judge said that the judge who was behind did so and said he would never have asked for the time but was very glad he had been given it.³¹¹

³⁰⁰ Interview with a Judge, *supra* note 110.

³⁰¹ Interview with a Judge, *supra* note 112.

³⁰² Interview with a Judge, *supra* note 113. Other judges mentioned that they could take away sitting days as needed. *See, e.g.*, Interview with a Judge, *supra* note 135.

³⁰³ Interview with a Judge, *supra* note 113.

³⁰⁴ Interview with a Judge, *supra* note 107.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ Interview with a Judge, *supra* note 103.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Interview with a Judge, *supra* note 130.

³¹¹ *Id.*

In a similar vein, other judges mentioned offers of assistance to judges who were behind. One judge noted that she would call up a judge who was late with their work and offer to help, including sometimes taking the judge off the case rotation, and also provide additional law clerk assistance.³¹² She also mentioned that sometimes other judges took over opinions.³¹³ And a judge of another circuit said that on one occasion he provided more assistance to a judge who was behind by assigning staff attorneys for support.³¹⁴

f. Non-Case Related Work Matters

Apart from case management matters, Chief Judges have a number of other responsibilities—from approving their court’s budget to overseeing building renovations, from handling judicial misconduct complaints to hiring and terminating high-level court employees. With many of these responsibilities, some Chief Judges reported being more “hands on” than others, in part due to the circumstances of their court. What follows is a brief discussion of these topics, with an emphasis on what many judges agreed was the most difficult and unpleasant aspect of the job—handling judicial misconduct complaints.

For some of the Chief Judges, managing space and facilities is a significant part of their job and involves interacting quite a bit with the General Services Administration (“GSA”). One judge mentioned that during funding sequestration in particular, this part of his portfolio was considerable.³¹⁵ He went on to note that his circuit is geographically vast and has many rural areas, some of which have part-time courthouses³¹⁶—and so there are substantial facility responsibilities that he has (that other Chief Judges, in smaller circuits, might not have). Another judge from a large circuit said that he is involved in decisions about space and facilities, and indeed, one of their projects is a space reduction initiative across the circuit.³¹⁷ Even so, given the size of the circuit, he mentioned that they had about fifteen construction projects underway at that time.³¹⁸ Another judge described spending a

³¹² Interview with a Judge, *supra* note 141.

³¹³ *Id.* A judge of another circuit said that the same happens on her court—a judge will write an email that says, “I see you’re far behind and why don’t you let me take that case?” as the court overall is collegial. Interview with a Judge, *supra* note 135.

³¹⁴ Interview with a Judge, *supra* note 106.

³¹⁵ Interview with a Judge, *supra* note 108.

³¹⁶ *Id.*

³¹⁷ Interview with a Judge, *supra* note 113.

³¹⁸ *Id.*

significant portion of his time as Chief Judge focused on a major courthouse renovation, and regularly walking through the construction project and going over plans.³¹⁹ A judge of another circuit noted that her court has historic buildings and that, given their location, they can have security issues—and so she is often in contact with GSA.³²⁰ But other judges described overseeing buildings and improvements as less time-consuming. One noted, for example, that much of this work goes through the Circuit Executive’s Office; space allotment and approval of projects have to come through the Chief Judge but he has only had to approve a few requests for projects of late.³²¹

The Chief Judge is also responsible for approving the Court’s spending plan. Overall, most of the judges reported that this was not a particularly time-intensive job. As one Chief Judge said, the budgetary role is quite limited—they are provided a set amount of money from Washington and have certain categories of budgetary allocation where there is some discretion but not much.³²² He added that his court has a Budget Committee on which he sits, which also includes the next two Chief Judges and one other judge but the task is not time-consuming.³²³ Another Chief Judge said that the budget is largely in the hands of his court’s Circuit Executive, though the two discuss it.³²⁴ He added that there are unit heads who have their own budgets as well and that he meets with them a few times a year to discuss them.³²⁵ Another judge reported that he probably has a half dozen meetings a year between him, the Circuit Executive, and the unit heads, to develop the next year’s budget and to see where they are “in appropriate stewardship” of the current year’s budget.³²⁶ Still, he noted that, with experienced executives, he does not have to be as hands-on with the budget as he was earlier in his term.³²⁷

Another judge noted that she generally does not play a large role with respect to her court’s budget, but said that how time-consuming the job is depends upon the circumstances of the court.³²⁸ She told us that her court was

319 Interview with a Judge, *supra* note 120.

320 Interview with a Judge, *supra* note 109.

321 Interview with a Judge, *supra* note 104.

322 Interview with a Judge, *supra* note 140.

323 *Id.*

324 Interview with a Judge, *supra* note 105.

325 *Id.*

326 Interview with a Judge, *supra* note 103.

327 *Id.*

328 Interview with a Judge, *supra* note 119.

audited recently and so she had to take time to meet with their auditors.³²⁹ She further noted that during government shutdowns, some matters had been quite consuming, and she was very involved in adopting belt-tightening measures.³³⁰ Another judge made a similar point—that dealing with sequestration and shutdown posed unusual obstacles and required him to be a bit more proactive in those instances.³³¹ But usually, he regarded the budget as an administrative matter.³³² And indeed, the more common response from judges was that, as one judge said, there is an oversight function to perform but most of the budget is worked up by the Circuit Executive.³³³

One area that *does* demand the Chief Judge's attention—and that was universally described as one of the most difficult aspects of the job—is handling judicial misconduct complaints. As one judge said by way of summarizing the duties, the Chief Judge is responsible for reviewing and rendering decisions in all complaints filed under Rule 6 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, reviewing nonconforming complaints under Rule 5, determining whether to initiate complaints under Rule 5, and serving on any special investigating committee appointed under Rule 12.³³⁴

The judges noted different practices for handling the complaints. One judge said that the Circuit Mediation and Judicial Support Office assists her in these duties, including initial review and recommendations for routine complaints.³³⁵ A judge of another circuit noted that complaints go through his court's senior motions group within the Staff Attorney's Office.³³⁶ That Office has a few attorneys who write a memo and a proposed order and send them to the Chief Judge, who then handles the matter himself.³³⁷ And another judge noted that for a long time the Circuit Executive would look at the files and the Chief Judge would be the final reviewer.³³⁸

Several judges noted that the majority of the complaints they review are without merit, but that a few matters can be difficult. One judge said it is a challenge, before adding that the vast majority of the complaints are

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Interview with a Judge, *supra* note 115.

³³² *Id.*

³³³ Interview with a Judge, *supra* note 104.

³³⁴ Interview with a Judge, *supra* note 135.

³³⁵ *Id.*

³³⁶ Interview with a Judge, *supra* note 105.

³³⁷ *Id.*

³³⁸ Interview with a Judge, *supra* note 119.

straightforward—the complainant is simply annoyed that the District Judge did not rule their way.³³⁹ Still, this judge noted that she had had to convene investigating committees for several serious matters.³⁴⁰ Another judge made the same point, suggesting that ninety-nine percent of the complaints are filed by individuals who are upset about the merits ruling, but that the remaining one percent of complaints are quite trying.³⁴¹ He added that he thought handling those complaints presented the “toughest” part of being Chief Judge.³⁴² A judge of a larger circuit said that one year they had received as many as 300 complaints.³⁴³ He went on to say that most of them were frivolous; but, he mentioned that they had received a small number of complaints that were serious and that these were the least pleasant part of the job.³⁴⁴

This same judge discussed the difficulty around calls that an older judge might be “slipping.”³⁴⁵ Another judge echoed this point, saying that he thought the single most important task of the Chief Judge is persuading “over-the-hill” judges to retire.³⁴⁶ He said this was less of an issue with judges who had taken senior status because they rely upon certification, and if he thought someone was not up to the job, he would tell them to get an exam to screen for dementia.³⁴⁷ The larger problem was with judges who refused to take senior status, and he noted the efforts on the part of other judges (and himself) to “ease out” judges in this category.³⁴⁸

The final topic we discussed in the vein of non-case-related work was the hiring and termination of employees. By and large, the judges said that they did not usually become involved in personnel issues—though many noted that they were directly involved in hiring unit heads. One judge said that he had hired his court’s Clerk of Court, Librarian, and Senior Staff Attorney.³⁴⁹ He added that because he works so closely with them, he could not imagine delegating that function to someone else.³⁵⁰ Another judge noted that he was

339 *Id.*

340 *Id.*

341 Interview with a Judge, *supra* note 116.

342 *Id.*

343 Interview with a Judge, *supra* note 113.

344 *Id.*

345 *Id.*

346 Interview with a Judge, *supra* note 107.

347 *Id.*

348 *Id.*

349 Interview with a Judge, *supra* note 103.

350 *Id.*

involved in selecting his circuit's Clerk of Court and Circuit Executive.³⁵¹ And another judge noted that he usually interviews high-level employees (and that if a high-level employee is to be terminated, that decision is run by him).³⁵² One other judge noted that it is only when there is a major appointment of some sort that he might get involved, though he does like to look over the resumes of those applying for positions.³⁵³ And another judge expressed a similar view, noting that she usually leaves personnel matters to the Circuit Executive and Clerk of Court but, for example, likes to look over resumes when the court is hiring senior staff attorneys; she reviews who is being brought on.³⁵⁴

g. Describing the Committee Structures

The Chief Judge has an important role in determining what court committees there will be and which judges will serve on them. A few judges described these decisions as residing solely with the Chief. As one judge said, if he thinks they need a new committee, he forms it and assigns judges to it.³⁵⁵ Another judge said that committee membership is completely up to the Chief Judge.³⁵⁶ He then added that his circuit has a relatively small number of committees and they are currently examining their committee structure.³⁵⁷ But overall, he said that the Chief Judge picks the chair and the members of each committee.³⁵⁸ And another judge noted that he inherited a set of committees from his predecessors, though he did create one new one.³⁵⁹ He further noted that he has the authority to appoint judges to those committees and does so.³⁶⁰

A few other judges described the input they receive from others when making committee decisions. One judge said that he receives recommendations for membership of his court's committees from the Circuit Executive and Special Assistant to the Chief Judge (the equivalent of a chief of staff), and he oversees all of this.³⁶¹ Another judge said that his predecessors

³⁵¹ Interview with a Judge, *supra* note 106.

³⁵² Interview with a Judge, *supra* note 113.

³⁵³ Interview with a Judge, *supra* note 140.

³⁵⁴ Interview with a Judge, *supra* note 119.

³⁵⁵ Interview with a Judge, *supra* note 117.

³⁵⁶ Interview with a Judge, *supra* note 105.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ Interview with a Judge, *supra* note 140.

³⁶⁰ *Id.*

³⁶¹ Interview with a Judge, *supra* note 104.

had set up committees and had decided who would be on them.³⁶² For his part, while he has come up with ideas for committees, he has always sought the approval of the judges of his court before establishing any (though he names the judges who will serve on the committee and no one objects).³⁶³

There were two particular points of variation in the committee structures of the circuits that stood out. One was the practice of one of the larger circuits of designating judges to be what are called “court proctors” for different administrative areas.³⁶⁴ The Chief Judge explained that these positions might be best understood as liaisons.³⁶⁵ And so, if a judge has an issue that pertained to the Clerk’s Office, rather than call the Clerk’s Office directly, that judge could call the proctor supervising that Office (and the protector could then decide to take the matter to the Clerk).³⁶⁶ The Chief Judge explained that the proctor system was established so that the unit heads would not become overwhelmed with different, conflicting requests.³⁶⁷ It further appeared to be a way for the Chief Judge to delegate some tasks—for example, one of the proctors is responsible for reminding judges if they are behind on opinions.³⁶⁸ The Chief Judge determines which judges will serve as proctors.³⁶⁹ No other circuits reported having comparable positions.

The other important point of variation was that some, but not all, of the Chief Judges noted that their court has an Executive Committee of judges to assist the Chief Judge. One Chief Judge who reported having such a committee in his circuit explained that it has seven members, including the person next in line to be Chief Judge, and that they have meetings four times a year.³⁷⁰ Another judge added that the same Executive Committee has a membership that is ratified by the entire court, and that an effort is made to ensure that different viewpoints are represented.³⁷¹ On the whole, he explained, the Committee is able to resolve a number of issues and not concern the rest of the court.³⁷²

A few other judges noted that their circuits also have Executive Committees, though they are smaller in size. One judge noted that the

³⁶² Interview with a Judge, *supra* note 103.

³⁶³ *Id.*

³⁶⁴ Interview with a Judge, *supra* note 135.

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ Interview with a Judge, *supra* note 113.

³⁷¹ Interview with a Judge, *supra* note 110.

³⁷² *Id.*

Executive Committee for his court is composed of five members—the Chief Judge and then the next four judges in seniority.³⁷³ A judge of another circuit said that his Executive Committee is composed of the prior two Chief Judges (and himself).³⁷⁴

Several other Chiefs reported not having a formal Executive Committee. One judge responded that he consulted with former Chief Judges when there were questions that were new to him, particularly administrative issues, but that he did not have an Executive Committee as such.³⁷⁵ A judge of another circuit also said he has no Executive Committee; he then added that his court is not particularly large and their judges are fairly accessible, and so there is no need.³⁷⁶

h. Fostering Collegiality

As noted earlier, all of the Chief Judges stated that fostering collegiality among the members of their court was an important part of their role. That said, there were substantial differences in how Chief Judges approached this responsibility. Some emphasized holding social functions outside of the courtroom setting, while others emphasized the need to reduce friction when deciding cases. But there was general agreement that, in the words of one judge, a noncollegial court is like a bad marriage—that is, something to be avoided if at all possible.³⁷⁷

What follows is a discussion of what different Chief Judges do to foster collegiality on their court. But it is worth appreciating at the outset just how important the differences in the circuits are for these purposes. First, and most plainly, the circuits are of different sizes, and trying to foster collegiality among the fifty judges of the Ninth Circuit (active and senior) is a different task than trying to do the same among the ten judges of the First Circuit. This is not to say that one is easier than another—indeed, a judge of a larger circuit commented that some would argue it is a little easier to stay collegial on a big court since the judges do not see each other every day³⁷⁸—but

³⁷³ Interview with a Judge, *supra* note 112.

³⁷⁴ Interview with a Judge, *supra* note 115.

³⁷⁵ Interview with a Judge, *supra* note 124.

³⁷⁶ Interview with a Judge, *supra* note 108.

³⁷⁷ Interview with a Judge, *supra* note 105.

³⁷⁸ Interview with a Judge, *supra* note 113. In the same vein, a judge of a smaller circuit said that there is closer personal contact in the smaller circuits, so “you have to pay attention to that.” Interview with a Judge, *supra* note 141.

rather to appreciate that they are different in meaningful (and not always obvious) ways.

Second, in some circuits, many, if not all, of the judges have chambers in the same courthouse. By contrast, in other circuits, the judges are spread out across several states. Proximity (or lack thereof) can also impact collegiality. One judge, describing the way he tried to diffuse tension with other judges, said he would walk down the hallway to another judge's chambers and meet face to face, noting the advantage of being in the same building.³⁷⁹ This possibility is not available to all Chief Judges. On the other hand, a judge from a circuit that has all of its judges in the same courthouse noted that his colleagues rarely get together for dinners because there is an interest in going home, and seeing family at the end of the day.³⁸⁰ He pointed out that in the circuits where judges have to travel for sittings, the judges are all away from home and they have a ready-made occasion for coming together over dinner.³⁸¹

Third, a court may have set court weeks for oral arguments before several panels, during which all of the judges of the court come to one location. Some, however, have one-panel sittings throughout much of the year, with some judges hearing cases during the first week of the month, some during the second, and so forth. Plainly, these differences in calendars affect the availability of all judges to get together for social events, such as dinners the evening before or after sittings.

Fourth, differences in the composition of the courts can affect collegiality—including how many judges have young children, and how many have spouses who work. One judge noted that her court used to have certain social events—say, lunch on argument days—but some of those practices have diminished as there are more out-of-town judges who want to get home to their families.³⁸² A judge of another circuit said that judges of his court used to bring their spouses to sitting weeks (which was helpful for building collegiality) but that this is less true now that many of the judges have working spouses.³⁸³

³⁷⁹ Interview with a Judge, *supra* note 124. Similarly, one judge said that a big part of the job is walking the halls. He added that he is able to walk the halls because he and his colleagues are all in one place. Interview with a Judge, *supra* note 104.

³⁸⁰ Interview with a Judge, *supra* note 104.

³⁸¹ *Id.*

³⁸² Interview with a Judge, *supra* note 119.

³⁸³ Interview with a Judge, *supra* note 117.

Appreciating these key differences between circuits, many of the judges we interviewed spoke of social events that they organize to foster collegiality, including court dinners,³⁸⁴ lunches,³⁸⁵ and retreats.³⁸⁶ Specifically, one judge said that it has been helpful to have dinners with panel members when they come together for a sitting—he called it an incredible success at encouraging collegial behavior.³⁸⁷ He also revitalized his court’s Social Committee, which has planned numerous gatherings for the judges.³⁸⁸ This same judge added that he felt if you get people together in a social setting, it is harder to fight the next day.³⁸⁹ With that in mind, he usually has a lunch in the judges’ lounge before an en banc argument so that the judges have to interact socially—“it just takes the edge off the argument,” he said.³⁹⁰ A judge of another court similarly mentioned having a court dinner (where spouses or guests are invited) the evening before en banc arguments.³⁹¹ This judge also noted having an annual judges-only retreat where they discuss court matters but also try to engage in leisure activities so that they may get to know each other better socially.³⁹² A judge of another court said that they have chambers dinners—dinners with a few judges and their law clerks—during sitting weeks.³⁹³ They also have a fall dinner that honors all of the law clerks, where the entire court comes together.³⁹⁴ This judge added that the judges of his court make it a point to recognize and honor the personal side of life, too (say, if there was recently a wedding or birth in a judge’s family) and so, he concluded, people feel connected in that regard.³⁹⁵ A judge of a larger circuit stressed how critical collegiality is for the judges on his court, given

³⁸⁴ For example, one judge reported that his court had dinners together every six months. Interview with a Judge, *supra* note 107. Another said that his court has dinners around their court meetings, which are held quarterly. Interview with a Judge, *supra* note 140.

³⁸⁵ For example, one judge said that, prior to the onset of the pandemic, her court used to have lunch together every day during a sitting week. Interview with a Judge, *supra* note 141. A judge of another circuit mentioned a former Chief Judge organizing weekly lunches for judges who are in town and for those who have come from out of town for a sitting. Interview with a Judge, *supra* note 140.

³⁸⁶ For example, one judge noted that he had organized a retreat every year when he was Chief Judge that lasted at least two days. But, he added that this tradition has always been left to the Chief Judge and has not been continued. Interview with a Judge, *supra* note 106. A judge of another court said that his court holds retreats once every several years. Interview with a Judge, *supra* note 140.

³⁸⁷ Interview with a Judge, *supra* note 105.

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ Interview with a Judge, *supra* note 135.

³⁹² *Id.*

³⁹³ Interview with a Judge, *supra* note 116.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

their size.³⁹⁶ He noted that his court gets together once a year for a retreat (with spouses) and he said that this event has been important in trying to keep everyone connected.³⁹⁷ He added that he personally tries to check in on judges to make sure that they are connecting on a human level, not just a judge level.³⁹⁸

One former Chief Judge said that he tried to ensure that when the court got together, it would be in a celebratory or “feel-good setting.”³⁹⁹ He mentioned, as examples, holding an annual dinner with law clerks, a dinner with Justices of a state supreme court, and a holiday party.⁴⁰⁰ His point was that if every meeting of the court could be in a positive setting, that helped to build the collegiality of the court as a whole.⁴⁰¹ A judge of another court made a similar point. He noted the various events that his court hosts for the judges—including a court dinner every fall, and a number of ceremonial events, including investitures.⁴⁰² In his words, those latter events in particular become a “celebration of the court family.”⁴⁰³ Another judge also described the importance of having his court come together for an annual dinner in similar terms—as he put it, it was a chance to bring together the entire “court family.”⁴⁰⁴

A few of the judges spoke of fostering collegiality not in the context of social events but rather in the context of deciding cases. For example, one judge mentioned that it is important to decide only the issue that is dispositive to the case, not a broad array of issues, as this will reduce acrimony.⁴⁰⁵ This judge also stressed the importance of “de-snarking” opinion language.⁴⁰⁶ He discussed how judges can get caught up in the heat of going back and forth when writing majority opinions and dissents, and how critical it is to reread them in the cold light of the morning and strike hostile language.⁴⁰⁷

³⁹⁶ Interview with a Judge, *supra* note 113. A judge of the same court noted that when the court was smaller, they used to meet for lunch every day. When their court was expanded, they couldn’t have everyone to the court at the same time. Interview with a Judge, *supra* note 110.

³⁹⁷ Interview with a Judge, *supra* note 113.

³⁹⁸ *Id.*

³⁹⁹ Interview with a Judge, *supra* note 130.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Interview with a Judge, *supra* note 124.

⁴⁰³ *Id.*

⁴⁰⁴ Interview with a Judge, *supra* note 108.

⁴⁰⁵ Interview with a Judge, *supra* note 124.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

And a few others spoke of fostering collegiality by limiting court meetings. As one judge said, the primary approach he took to fostering collegiality was to get management issues “out of people’s hair” and not have them discuss issues that were not judicial.⁴⁰⁸ A judge of another court had the same philosophy.⁴⁰⁹ He said that as Chief Judge, he tried to promote collegiality by holding meetings to a minimum, because meetings were either “unbearably tedious” or “unbearably contentious.”⁴¹⁰

Several of the judges stressed the importance of impressing upon new members of the court the value of collegiality. One judge said that every time a new member joins the court, it becomes a different court, and the challenge is to maintain their shared sense of collegiality.⁴¹¹ He added that this is something that he thinks about a great deal.⁴¹² One judge said that he had recently met with the new members of his court to stress the importance of collegiality.⁴¹³ Another said he had done the same as Chief Judge, in order to convey that collegiality and the “family-sense” of the court is very important.⁴¹⁴ He added that it is much easier to have these conversations at the beginning of a judge’s time, when there is nothing “on the table,” as it were.⁴¹⁵ And yet another judge mentioned that his court was planning to meet together in a relaxed setting with the new judges to help them as they transition onto the court and to help preserve the court’s norms.⁴¹⁶

And a few of the judges spoke of how vital it is for the Chief Judge to model collegiality and be seen as an honest broker. Specifically, one judge mentioned that an important role of the Chief is to lead by example in collegiality and temperament.⁴¹⁷ Another said a Chief Judge needs to be understood as a neutral person in the process—and not to put their thumb on the scale one way or another.⁴¹⁸ The thought was that the Chief Judge being perceived in this way was a key part of building the collegiality of the court.

Ultimately, many of the judges reflected on the value of collegiality, likening the relationship with other judges again to familial bonds and even

⁴⁰⁸ Interview with a Judge, *supra* note 107.

⁴⁰⁹ Interview with a Judge, *supra* note 130.

⁴¹⁰ *Id.*

⁴¹¹ Interview with a Judge, *supra* note 115.

⁴¹² *Id.*

⁴¹³ Interview with a Judge, *supra* note 113.

⁴¹⁴ Interview with a Judge, *supra* note 124.

⁴¹⁵ *Id.*

⁴¹⁶ Interview with a Judge, *supra* note 140.

⁴¹⁷ Interview with a Judge, *supra* note 135.

⁴¹⁸ Interview with a Judge, *supra* note 105.

marriage. One judge said that when she came to the court, her first reaction was that she did not need any new friends, but she later came around to the view that these are the people she is going to grow old with.⁴¹⁹ And another said that the judges of the court can become scorpions in a bottle—and some circuits have had that regrettable experience and it can be difficult to “dig out of that.”⁴²⁰ He concluded by saying that even a forced marriage can be a happy marriage.⁴²¹

i. Describing Outward-Facing Responsibilities

After asking the judges about their internal court responsibilities (from overseeing the calendar to fostering collegiality among the members of their court), we asked them about their outward-facing responsibilities. Specifically, we asked them about their role concerning the Circuit Judicial Council, the U.S. Judicial Conference, bar association meetings, and the like. Regarding the Circuit Judicial Council and the U.S. Judicial Conference, the responses were fairly uniform.

One judge said that she sets the dates for the two Circuit Judicial Council meetings per year—one in the fall and one in the spring.⁴²² If interim meetings are necessary, she said that she calls those.⁴²³ She also determines the agenda and leads the Council meeting.⁴²⁴ Several other judges reported the same. One said that in cooperation with his Circuit Executive, he sets the agenda.⁴²⁵ And another stated that he sets the agenda for his Circuit’s Judicial Council meetings and presides at them.⁴²⁶

On the topic of the U.S. Judicial Conference, several of the judges said that the meetings themselves are not particularly time-consuming, but that one has to prepare by going through all of the reports beforehand, and that could take a few days.⁴²⁷ But what clearly affected each judge’s role concerning the U.S. Judicial Conference was their committee assignments. Several judges noted that their Chief Judge workload increased when they were appointed to the Conference’s Executive Committee.⁴²⁸ But they also

⁴¹⁹ Interview with a Judge, *supra* note 109.

⁴²⁰ Interview with a Judge, *supra* note 117.

⁴²¹ *Id.*

⁴²² Interview with a Judge, *supra* note 135.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ Interview with a Judge, *supra* note 113.

⁴²⁶ Interview with a Judge, *supra* note 116.

⁴²⁷ *See, e.g.*, Interview with a Judge, *supra* note 140.

⁴²⁸ *See, e.g.*, Interview with a Judge, *supra* note 124.

stressed the value of that appointment. One said that this is a committee where you can be of service to your circuit because you gain a sense of the problems across the system and how they may affect your court.⁴²⁹ Accordingly, he considered the assignment to have been very valuable.⁴³⁰ Another judge said that his service on the Executive Committee had been very rewarding.⁴³¹

One place where there was variation in responses concerned the extent to which the judges attend bar association meetings and other public events as a representative of their court. Some of these differences seemed to stem from the differences across the circuits and the location of the Chief Judge; some circuits encompass more states than others (and thus more bar associations), and some Chief Judges live in a city with many such associations (whereas others do not). One judge noted that if you live in a large city, the demands on your time may be greater as there are so many bar association activities that go on.⁴³² He noted that there can be bar associations associated with the city, with the state as a whole, as well as specialized bar associations and affinity-based bar associations.⁴³³ He then said that if you attend an event for one association, you have to attend events for the others and so overall, it can be time-consuming.⁴³⁴ But he added that it is a role that needs to be taken seriously, particularly because the court may have to depend upon the support of the bar when they are under budgetary constraints or there are attacks on the independence of the judiciary.⁴³⁵ He concluded that participating in bar association events is something Chief Judges should do so that there is a shared respect.⁴³⁶

Another relevant factor seemed to be the personality of the Chief Judge. One noted that he thinks the extent to which judges participate in outside events probably varies from Chief to Chief, and that he tends to be more of a “homebody” or “introvert.”⁴³⁷ He said that he tends to be involved in CLEs when asked, but that he personally does not give many speeches and “that

⁴²⁹ Interview with a Judge, *supra* note 140.

⁴³⁰ *Id.*

⁴³¹ Interview with a Judge, *supra* note 113.

⁴³² Interview with a Judge, *supra* note 140.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ Interview with a Judge, *supra* note 140. In a similar vein, another judge said that as Chief Judge, you tend to speak at a fair amount of ABA, Federal Bar, and state bar functions, and that overall, he tries to keep a close relationship with the attorneys. Interview with a Judge, *supra* note 113.

⁴³⁷ Interview with a Judge, *supra* note 103.

kind of thing.”⁴³⁸ And while he usually attends various bar functions, in other instances he will designate another judge to appear in his place.⁴³⁹ He concluded that while it may be fruitful ground for a Chief Judge to raise the profile of the court, attending a large number of public events was not really his “cup of tea.”⁴⁴⁰

On the subject of raising the profile of the court, one judge mentioned outreach that she undertook with the senators of her circuit.⁴⁴¹ Specifically, because she felt it was important to have the support of those senators, every time that she went to Washington, D.C. for the U.S. Judicial Conference meetings, she went out of her way to visit half of them (so that she met with each of them about once a year).⁴⁴² She said this kind of outreach might not work well in every circuit, but it worked well in hers and she thought it provided an important benefit to the judiciary, particularly when there were budget issues.⁴⁴³

Finally, we asked the judges if they had undertaken any initiatives as Chief Judge. One judge mentioned that he had started a civic education initiative, which had received great participation from his colleagues on the bench.⁴⁴⁴ A judge of another circuit mentioned that they were following the lead of the aforementioned court, and that they had created a Civics Education Outreach Committee that had been quite active.⁴⁴⁵ In a similar vein, another judge mentioned that his court had focused on public education, and held events for high school students to celebrate Constitution Day.⁴⁴⁶

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As noted, the preceding account of all that a Chief Judge does is not intended to be exhaustive. Echoing Chief Judge Wald’s earlier description of her typical day, one judge listed the myriad responsibilities on her plate

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ Interview with a Judge, *supra* note 141.

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ Interview with a Judge, *supra* note 140; see also Robert A. Katzmann, *Thomas E. Fairchild Lecture: Civic Education and the Federal Courts*, 2019 WIS. L. REV. 397; Jesse Wegman, *New York City High Schoolers Get Their Day in Court*, N.Y. TIMES, Nov. 23, 2018 (editorial); *Justice For All: Courts and the Community*, <https://justiceforall.ca2.uscourts.gov> [<https://perma.cc/XS6W-CGEJ>] (exhibiting an initiative of the federal courts of the Second Circuit); Tom McParland, *Gorsuch, Sotomayor Boost 2nd Circuit Efforts to Engage Communities, Revive Civic Education*, N.Y. L.J., October 31, 2019.

⁴⁴⁵ Interview with a Judge, *supra* note 105.

⁴⁴⁶ Interview with a Judge, *supra* note 116.

beyond those mentioned here, including, among others: review of audit reports and memoranda from the Administrative Office; review of Criminal Justice Act vouchers in capital cases; appointment of the Merit Selection Panel of the Judicial Council that solicits, interviews, and ranks applicants to fill a bankruptcy judge vacancy; appointment of a special evaluation committee that assists the court in determining whether to reappoint an incumbent federal public defender; and periodically conferring in a telephone conference with the Chief Judges of the District Courts in her circuit.⁴⁴⁷ Indeed, when asked what the Chief Judge's administrative responsibilities include, one judge said, "it's so many things."⁴⁴⁸

Still, we hope that the preceding section conveys the majority of the most important functions of the Chief Judge, and how the different judges have carried out those functions. The next section discusses the judges' views regarding the structural elements of the position—including the term length and selection method—and whether any should be changed.

3. *Collecting Views of the Current Statutory Framework*

a. *The Term Length*

The majority of the judges favored, or at least accepted, the current seven-year term. Certainly, there was consensus that there should be a term of some set length. As one judge put it, he neither favored nor disfavored the current term, but the old rule was roughly for life, and there was widespread agreement that that was a bad idea.⁴⁴⁹ He said this was because, although the old rule meant that people who were good at the job would stay for a long time, it also meant that people who were terrible at the job would stay for a long time—and so, it was better to "cut your losses" even if it meant you would "cut your gains."⁴⁵⁰ A judge of another court said one benefit of the current term is that it does not create the potential for the unfortunate misuse of power that can occur over decades—something that could occur before the law was changed.⁴⁵¹ Another judge added that if a person held the Office indefinitely, it would breed resentment,⁴⁵² and yet another added that she would not want the position to be indefinite.⁴⁵³

⁴⁴⁷ Interview with a Judge, *supra* note 135.

⁴⁴⁸ Interview with a Judge, *supra* note 116.

⁴⁴⁹ Interview with a Judge, *supra* note 107.

⁴⁵⁰ *Id.*

⁴⁵¹ Interview with a Judge, *supra* note 108.

⁴⁵² Interview with a Judge, *supra* note 130.

⁴⁵³ Interview with a Judge, *supra* note 119.

Regarding a term of seven years specifically, many said that they thought the length was fine. One judge said that you could quibble about the length but ultimately, he thought that seven years was appropriate.⁴⁵⁴ Another judge answered that he would not favor changing it,⁴⁵⁵ and another said seven years seemed to be a fair length.⁴⁵⁶ A judge of another circuit responded that he thought the term was about right, though said it is difficult to analyze in the abstract.⁴⁵⁷ And one more judge said that he had no problem with the seven-year period, before adding that he did not know why anyone would want to do the job for more than seven years!⁴⁵⁸

A few judges affirmatively favored a seven-year term, and explained why they thought it struck the appropriate balance. One described that after seven years, you begin to “lose steam” or “go too much on automatic pilot.”⁴⁵⁹ And so, he concluded, the time is just about right.⁴⁶⁰ Another judge put it more colorfully, saying that seven years is long enough to master what you have to do but it is not so long that one becomes enraged with one’s colleagues!⁴⁶¹

In this vein, several judges said that they needed some amount of time to adjust to the role and then accomplish whatever goals they had set out. One judge said that short terms—two or three years—are not nearly long enough to have a successful run and that seven years is more plausible.⁴⁶² A judge of another circuit said that it takes several years to fully understand the complexity of the federal court system, especially the different committees of the U.S. Judicial Conference.⁴⁶³ Another judge said that he thought seven years is a good period of time to allow adjustment to the role and to have a meaningful impact.⁴⁶⁴ And yet another said that he felt he had hit his stride by the fifth year but still needed a couple more years to finish a few projects that he hoped to complete.⁴⁶⁵ Finally, one judge pointed out that seven years is helpful for the U.S. Judicial Conference—that a seven-year term for Chief Judges allows the Conference to have a mixture of

⁴⁵⁴ Interview with a Judge, *supra* note 124.

⁴⁵⁵ Interview with a Judge, *supra* note 116.

⁴⁵⁶ Interview with a Judge, *supra* note 112.

⁴⁵⁷ Interview with a Judge, *supra* note 113.

⁴⁵⁸ Interview with a Judge, *supra* note 115.

⁴⁵⁹ Interview with a Judge, *supra* note 130.

⁴⁶⁰ *Id.*

⁴⁶¹ Interview with a Judge, *supra* note 120.

⁴⁶² Interview with a Judge, *supra* note 107.

⁴⁶³ Interview with a Judge, *supra* note 141.

⁴⁶⁴ Interview with a Judge, *supra* note 108.

⁴⁶⁵ Interview with a Judge, *supra* note 117.

experience and new blood.⁴⁶⁶ Underscoring the point, he said that if the terms were shorter, you would not have the experience you would want on the U.S. Judicial Conference and if the terms were too long, you would not have the necessary open-mindedness.⁴⁶⁷

The other key point for many of the judges was that if a Chief Judge wanted a shorter term, the Chief could simply step down early. As one judge noted, you can step down whenever you like.⁴⁶⁸ Another made the same point, saying that though he did not have a window into whether the term is too long, he thought the beauty of the statutory scheme was that the term length was ultimately in his control—he could choose not to be Chief Judge anymore.⁴⁶⁹ And another judge underscored the idea, citing a colleague who stepped down after six years, and said that there is no downward constraint to the term.⁴⁷⁰

A few judges were open to a slightly shorter term. One said this was on account of having run into too many difficult issues over the course of his tenure, and a concern that a Chief can become stale.⁴⁷¹ He then said that he thought the term should be five or six years.⁴⁷²

A judge of another circuit observed that one's view of the optimal term length might be tied to where one is in their term, with judges who have served longer more open to a shortened term.⁴⁷³ He continued by saying that he thought most Chief Judges who are six years into their term probably favor the term being shorter, since they have had to deal with all of the administrative issues over the years.⁴⁷⁴ He ultimately concluded that he did not have strong views about it being shorter but did not think it should be longer, and that he had heard some Chief Judges six years into their term say that five or six years would be about right.⁴⁷⁵

Finally, one judge tied the length of the term to the selection method (discussed below) and suggested that a shorter term might be appropriate as an insurance policy of sorts; if the court were ever to have a Chief Judge who was not well-suited to the role (and who was not inclined to step down early),

⁴⁶⁶ Interview with a Judge, *supra* note 130.

⁴⁶⁷ *Id.*

⁴⁶⁸ Interview with a Judge, *supra* note 120.

⁴⁶⁹ Interview with a Judge, *supra* note 104.

⁴⁷⁰ Interview with a Judge, *supra* note 119.

⁴⁷¹ Interview with a Judge, *supra* note 103.

⁴⁷² *Id.*

⁴⁷³ Interview with a Judge, *supra* note 105.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

it would be better to have that judge as Chief for five years rather than seven.⁴⁷⁶ To echo an earlier point, the thought was that it would be best to minimize losses, even if that also meant forgoing some gains. Another judge had a similar thought, saying that if you have a poor manager for a Chief Judge, he was sure the judges on the court would want a shorter term.⁴⁷⁷ He then concluded that he thought a seven-year-term was workable but five years would be the minimum if one wanted to change the statutory scheme.⁴⁷⁸

b. The Selection Method

When it came to assessing the selection method for the Chief Judge, all of the judges favored the current rule. Many of the judges said that relying on seniority had some drawbacks, but overall was a far better approach than the alternatives. Specifically, one judge commented that he thought at first perhaps it would be better to have people who actually aspired to the position in the Office, but in the end he did not think that would be a very good idea.⁴⁷⁹ And so, he concluded that the current method was the best among the options; he favored selection based upon “an accident of birth” and “of appointment time.”⁴⁸⁰ Another judge said that she did not think the selection method is great, but she did not have a better solution; certainly she did not think the Chief Judge should be elected, and the so current method was fine.⁴⁸¹ In the same vein, another judge said that he thought the current method was probably as fair as it can be.⁴⁸²

In particular, there was concern that if judges were not selected by seniority, they might be selected by election and that this would lead to open campaigning on the court.⁴⁸³ One judge said that she favored the current selection method, as she did not think people should lobby to be Chief Judge.⁴⁸⁴ Another said he thought it helps to take the potential for politics out of the selection of the Chief Judge and certainly did not want

⁴⁷⁶ Interview with a Judge, *supra* note 140.

⁴⁷⁷ Interview with a Judge, *supra* note 117.

⁴⁷⁸ *Id.*

⁴⁷⁹ Interview with a Judge, *supra* note 103.

⁴⁸⁰ *Id.*

⁴⁸¹ Interview with a Judge, *supra* note 109.

⁴⁸² Interview with a Judge, *supra* note 105.

⁴⁸³ That said, one judge noted that another alternative would be presidential appointment and said he did not think the court would benefit from that approach. Interview with a Judge, *supra* note 107.

⁴⁸⁴ Interview with a Judge, *supra* note 141.

the campaigning that would take place if individuals aspired to it.⁴⁸⁵ Yet another judge said that he was happy to keep politics out of the selection,⁴⁸⁶ and one more mentioned not wanting the matter to be decided by “popularity contests.”⁴⁸⁷

Drilling down further still, one judge was concerned that if the courts used a system where there was competition among candidates to be Chief Judge, this would erode collegiality.⁴⁸⁸ Another judge said he would not want a popular vote, as he would not want someone doing things “with an eye toward wanting to be Chief Judge.”⁴⁸⁹ He concluded by saying that the less we have of that, the better.⁴⁹⁰ And another judge worried that if an election method were used, it would become political and could devolve into Democrats versus Republicans, which he thought would be “tragic” for the courts.⁴⁹¹

In discussing these concerns, several judges noted that many state courts elect their Chief Justices, and they thought those courts served as cautionary tales. As one judge said, from everything he could see about the state systems where the Chief is elected, it seems highly political or “unhappy.”⁴⁹² Another judge noted elections can produce all kinds of frictions and trade-offs and logrolling—the kinds of things that should not be part of a judicial branch.⁴⁹³ A judge of another circuit worried, based upon what he had seen on the state courts, that elections could politicize the federal courts.⁴⁹⁴ A different judge said, after watching the supreme court of his state, that elections could be divisive and have corrosive aspects.⁴⁹⁵ And one more, who had spent time as a state court judge, said that there was a fair amount of politicking that occurred with elections and that it was not useful and sometimes very destructive, so he would not change the current selection method.⁴⁹⁶

A few judges said that the current system provides an affirmative benefit—namely, that the court can know, well in advance, who the next Chief Judges will be. One judge said that a byproduct of the current system

485 Interview with a Judge, *supra* note 108.

486 Interview with a Judge, *supra* note 116.

487 Interview with a Judge, *supra* note 119.

488 Interview with a Judge, *supra* note 140.

489 Interview with a Judge, *supra* note 104.

490 *Id.*

491 Interview with a Judge, *supra* note 110.

492 Interview with a Judge, *supra* note 107.

493 Interview with a Judge, *supra* note 130.

494 Interview with a Judge, *supra* note 115.

495 Interview with a Judge, *supra* note 117.

496 Interview with a Judge, *supra* note 106.

is its predictability for planning purposes for the court, and he thought there were benefits to that.⁴⁹⁷ Similarly, a judge of another circuit said that the fact that her court knows the identity of the next two Chief Judges affords a stability that is beneficial to the court.⁴⁹⁸

That said, a few judges recognized a downside to the current selection method: that someone not well-suited for the Office could nevertheless become Chief Judge just by seniority. As one judge said, who becomes Chief Judge is the luck of the draw and sometimes you can have terrific Chiefs and sometimes you can have some people who do not do a very good job.⁴⁹⁹ Another said that anyone who has been Chief Judge knows that there are administrative matters to handle, and some people are better at that than others.⁵⁰⁰ Another said that because the selection method is somewhat arbitrary, it does not necessarily lead to the best selection.⁵⁰¹ One judge thought that a weak Chief Judge would not prove to be fatal as long as the court had a strong Circuit Executive,⁵⁰² but again, there was the recognition that the current selection method did not always lead to the best-suited judges holding the Office.

Some judges noted that if someone were truly ill-suited for the job, they could turn it down⁵⁰³—and several judges cited an example of a judge who had declined the position.⁵⁰⁴ That said, one judge pointed out that very few judges turn it down, even if they are not strong administrators.⁵⁰⁵ Another judge agreed that the safety valve of declining the role should be utilized more, noting that he did not think everybody who was eligible to become Chief Judge should take the position, and those who do not like administrative work certainly should not take it.⁵⁰⁶

But some judges pointed out that a drawback to leaving to the officeholder the decisions of declining the job or stepping down early was that it could lead to strategic behavior or politicking. Two types of strategic behavior were mentioned, both involving stepping down early in the seven-year term. The first was leaving a Chief Judgeship early in order to give the

⁴⁹⁷ Interview with a Judge, *supra* note 112.

⁴⁹⁸ Interview with a Judge, *supra* note 109.

⁴⁹⁹ Interview with a Judge, *supra* note 113.

⁵⁰⁰ Interview with a Judge, *supra* note 115.

⁵⁰¹ Interview with a Judge, *supra* note 105.

⁵⁰² Interview with a Judge, *supra* note 117.

⁵⁰³ Interview with a Judge, *supra* note 105.

⁵⁰⁴ *See, e.g.*, Interview with a Judge, *supra* note 116; Interview with a Judge, *supra* note 120.

⁵⁰⁵ Interview with a Judge, *supra* note 110.

⁵⁰⁶ Interview with a Judge, *supra* note 116.

next judge in line the opportunity to become Chief before that judge exceeded the maximum age limit on becoming Chief Judge. The second was also leaving a Chief Judgeship early, but for the purpose of *denying* the *second* judge in line the opportunity to become Chief because the seven-year term of the first judge in line would leave that second judge above the age limit on becoming Chief Judge. The judges discussed both maneuvers as problematic, especially the second one.

Specifically, several judges spoke about purposefully blocking another judge from becoming Chief and referred to such an episode in one of the circuits. One judge described how this court was particularly fractious, and the Chief Judge did not get on well with the person who was slated to succeed him.⁵⁰⁷ In an act of spite, the Chief Judge stepped down early, thus causing the Office to go to a judge that the Chief Judge liked (and thus denying the would-have-been successor the position because that judge exceeded the age limit when the position came open again).⁵⁰⁸ Another judge shared the same account and said there was a certain amount of drama surrounding it all.⁵⁰⁹

A few judges also spoke about Chief Judges stepping down early to allow the next judge in line to become Chief—in fact, one judge said his predecessor had deliberately stepped down early because he wanted the judge next in line to succeed him.⁵¹⁰ But here, too, there were concerns. One judge recounted how she knew of a very able judge who expected his Chief Judge to step down early so that he, the able judge, could serve as the next Chief.⁵¹¹ The Chief ultimately did not step down early, and it caused acrimony within the court.⁵¹² Another judge said that it had come home to him that if he stepped down a year early, one of his colleagues could become Chief for a year, but the judge we spoke to did not approve of that.⁵¹³ He concluded that he did not think the Chief Judgeship was an honorary position but a work position, and since he had done the work to continue on, he thought he would do so until the end.⁵¹⁴

c. Other Statutory Changes

⁵⁰⁷ Interview with a Judge, *supra* note 120.

⁵⁰⁸ *Id.*

⁵⁰⁹ Interview with a Judge, *supra* note 105.

⁵¹⁰ Interview with a Judge, *supra* note 115.

⁵¹¹ Interview with a Judge, *supra* note 141.

⁵¹² *Id.*

⁵¹³ Interview with a Judge, *supra* note 120.

⁵¹⁴ *Id.*

The final question asked was whether there were changes to any part of the statutory scheme or Office generally, not already touched upon, that should be considered. Many of the judges said no. As one put it, he could not really think of anything (to add or subtract).⁵¹⁵ That said, there were three possible reforms that were mentioned.

First, a few judges raised the fact that Chief Judges are required, by statute, to review and certify excess compensation vouchers for counsel under the Criminal Justice Act. The general sentiment was that this task could be quite time-consuming—one judge noted that his court receives about 8,000 excess vouchers a year⁵¹⁶—and was not something that Chief Judges should be spending their time doing. One judge described it as a bean-counting task and said that it was not an effective use of the Chief Judge’s time.⁵¹⁷ Another made the same point, saying that having judges review counsel costs was not the “highest and best use” of the Chief Judge’s time.⁵¹⁸ Several others agreed that it would be beneficial if the tasks could be delegated to someone else.⁵¹⁹

Second, a few judges wondered if the age limits should be changed. Focusing on the front end, one judge noted that you cannot be 65 or older when becoming a Chief Judge, and that this “knocks out some really stellar folks.”⁵²⁰ He recognized that there could be some complications with eligibility for taking senior status if the age limit was raised, but that nevertheless he would be open to raising it.⁵²¹ Focusing on the back end, one judge reported that it seemed to him at this point that the age of seventy as a mandatory stop point is rather artificial.⁵²² Another said that he thought that raising the cap could be good—that society has changed and lifespans have changed since the caps were first imposed—and so perhaps seventy-five should be the new limit.⁵²³ Another referenced a Chief Judge who stepped down at seventy after serving five years, but who could have served well for two more—accordingly, the judge suggested that there could possibly be a provision for an extension.⁵²⁴ That said, not everyone supported a change in the age restrictions. One judge said that the fact that you cannot be over

⁵¹⁵ Interview with a Judge, *supra* note 124.

⁵¹⁶ Interview with a Judge, *supra* note 113.

⁵¹⁷ Interview with a Judge, *supra* note 103.

⁵¹⁸ Interview with a Judge, *supra* note 119.

⁵¹⁹ Interview with a Judge, *supra* note 105; Interview with a Judge, *supra* note 113; Interview with a Judge, *supra* note 107.

⁵²⁰ Interview with a Judge, *supra* note 103.

⁵²¹ *Id.*

⁵²² Interview with a Judge, *supra* note 115.

⁵²³ Interview with a Judge, *supra* note 105.

⁵²⁴ Interview with a Judge, *supra* note 113.

sixty-four to take the job and have to retire by the age of seventy struck him as sensible, and he concluded that it “hits the age bracket just about right.”⁵²⁵

Finally, moving beyond the statutory scheme, a few judges had suggestions for improving the training of Chief Judges. One suggestion concerned timing; one of the judges noted that he received an orientation right around the time that he became Chief, and he thought going forward that the training should happen before the putative Chief Judge comes into the Office (three to six months before).⁵²⁶ Two other suggestions concerned content. One judge thought that Chief Judges would benefit greatly from more substantive training in the misconduct procedure.⁵²⁷ And another emphasized how helpful it would be to have orientation sessions on how to manage a team, particularly to appreciate what human resources issues can arise.⁵²⁸

Conclusion

The position formerly known as the senior circuit judge has come a long way. Indeed, it is remarkable to think that the Office that began with but a few administrative duties now encompasses everything from overseeing the calendar to overseeing the budget, from keeping the trains running on time to fostering collegiality and leading the court as a whole. And perhaps more remarkable still is that it all seems to work.⁵²⁹

To be sure, there is always room for improvement of some kind. To borrow the key question from one former Chief Judge, we must always ask, how can we make the court(s) run better? Here, we have found answers from the judges. Perhaps it is worth considering a shorter term or raising the age limits to be Chief Judge. And perhaps it is worth considering how to enhance the training that judges receive to take on this extraordinary position.

But the larger hope is that in documenting the practices of different Chief Judges in different circuits, lessons may be drawn by the judges themselves. One former Chief Judge emphasized the need for Chief Judges to study other courts, through traveling and reading, to learn of new practices to try out. At

⁵²⁵ Interview with a Judge, *supra* note 130.

⁵²⁶ Interview with a Judge, *supra* note 103.

⁵²⁷ Interview with a Judge, *supra* note 117.

⁵²⁸ Interview with a Judge, *supra* note 140.

⁵²⁹ Writing about the method for selecting Chief Judges specifically, then-Chief Judge Feinberg noted: “My own judgment, to paraphrase Winston Churchill, is that seniority is the worst way to select a chief judge, except for all the other ways. Also, to my astonishment, it seems to work.” Feinberg, *supra* note 16, at 373.

a time when we may not be able to travel as easily as we would like, reading may have to suffice—and the goal of this Article is to share information about the judiciary, in part for the judiciary.

Chief Judge Feinberg concluded his article on Chief Judges by writing that he hoped to “have added to an understanding of this rarely examined office.”⁵³⁰ Much has changed on the courts, and in the world, since those words were written. But forty years later, it is our hope, too.

APPENDIX

Questions Asked Regarding the Role of the Circuit Chief Judge:

How long have you been Chief Judge?

Do you favor the current length of the Chief Judge’s term or do you think it should be changed? If changed, to what length?

Did you want to be Chief Judge?

Do you favor the current method of selecting a Chief Judge or do you think it should be changed? If changed, in what way?

What do you think is the principal role of a Chief Judge?

What kinds of skills do you think are necessary for being an effective Chief Judge?

Prior to becoming Chief Judge, did you receive any orientation or training concerning that role:

—from the Administrative Office? If so, was it useful?

—from any of your predecessors? If so, was it useful?

—from any written materials? If so, please describe them.

—from any other source? If so, was it useful?

What percent of an active judge’s caseload/sitting days do you take as Chief Judge? Has that percent changed over time or remained constant?

Is there any category of cases you do not hear as Chief Judge? If so, please describe them.

What percent of your working time is spent on Chief Judge tasks?

What kinds of administrative responsibilities do you have as Chief Judge?

Do you or do you not consider monitoring the reasonably prompt filing of opinions by the judges of your Court to be part of your role as Chief Judge? If you do, how do you try to accomplish that?

⁵³⁰ *Id.* at 389.

Who decides how many days a year the active judges of your Court will:

—hear appeals?

—be assigned to special panels?

If you decide, how do you make that decision?

Who determines the assignment of judges to panels? If you are involved in that process, please describe.

How does your Court make the decision whether to have other judges sit by designation? If you have a role in that decision, how do you perform it? If your circuit has judges sit by designation, do you have a role in which judges are invited?

What role do you play in administering the Judicial Misconduct procedure?

What is your role with respect to the budget?

What is your role with respect to decisions about building and equipment improvements?

What role do you play in hiring and terminating court employees?

What role do you have in the internal governance of your Court? For example, did you decide what committees there would be within your circuit? Do you select staff members to assist those committees?

Are there any parts of your job related to fostering collegiality among members of the Court? If so, please describe.

Please describe your role concerning Circuit Judicial Council meetings.

Please describe your role concerning the United States Judicial Conference.

Please describe your role representing your Court in other capacities, e.g., bar association meetings, public events.

Do you initiate or carry out any projects in your Court's name? If so, please describe.

Have you found that it was clear what matters were appropriate for decision by you as Chief Judge and appropriate for decision by the Court, or was it sometimes not clear? If not clear, did you encounter that choice rarely, occasionally, or often?

Are there any Chief Judge tasks specified in statutes that you think should not be in statutes or any Chief Judge tasks not now specified in statutes that you think should be in statutes? If so, what are they?

Is there anything else you would like to add about the role and responsibilities of the Chief Judge?