

## JUDGE PROCTER HUG, JR. AND GOOD JUDGMENT

Carl Tobias\*

Practically all of the tributes above demonstrate how Judge Procter Hug possesses, to an unparalleled degree, the very attributes that the American Republic seeks in those who serve as Article III judges. These tributes attest to Judge Hug's great intelligence, industriousness, and independence. They also describe the jurist's judicial temperament evinced, for instance, in his equanimity, compassion, and sense of humor. One quality that the tributes emphasize and that Judge Hug exhibits in substantial measure is good judgment. Two vignettes reveal this valuable, albeit extremely rare, quality.

Upon Judge Hug's ascension to the chief judgeship, the jurist assumed ultimate responsibility for an important project which his predecessor, Judge J. Clifford Wallace, had instituted. This was the duty imposed by Congress and the Supreme Court upon each Circuit Judicial Council to scrutinize local requirements prescribed by district courts within its jurisdiction for consistency with corresponding federal rules and legislation, as well as to eliminate or alter violative provisos.<sup>1</sup> Judge Wallace placed substantial and initial responsibility for discharging the obligation in the Chief District Judges Conference of the Ninth Circuit. The Chief District Judges Conference concomitantly appointed a Local District Rules Review Committee.<sup>2</sup> Between 1994 and 1997, the Committee reviewed the local procedures adopted by the fifteen federal districts within the Ninth Circuit's purview for uniformity with the federal rules and statutes.<sup>3</sup>

The Committee spent several years assessing those local provisions and suggested that the districts abrogate or modify those local procedures that the Committee found contravened analogous federal requirements, a recommendation with which the districts complied as to most of their local provisions.<sup>4</sup> The Committee then prepared a report for the Circuit Judicial Council suggesting that the Council abolish or change those local procedures which the districts

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<sup>1</sup> See 28 U.S.C. §§ 332(d)(4), 2071 (1994); FED. R. CIV. P. 83.

<sup>2</sup> I had the privilege of serving as a member of the Committee.

<sup>3</sup> I rely substantially in this sentence and the next two paragraphs on DISTRICT LOCAL RULES REVIEW COMM., REPORT TO THE NINTH CIRCUIT JUDICIAL COUNCIL (1997). See generally Carl Tobias, *Local Federal Civil Procedure for the Twenty-First Century*, 77 NOTRE DAME L. REV. 533, 561-63 (2002).

<sup>4</sup> See Carl Tobias, *Contemplating the End of Federal Civil Justice Reform in Montana*, 58 MONT. L. REV. 281, 283-84 (1997); Carl Tobias, *Ongoing Federal Civil Justice Reform in Montana*, 57 MONT. L. REV. 511, 515 (1996); see also Walter W. Heiser, *A Critical Review of the Local Rules of the United States District Court for the Southern District of California*, 33 SAN DIEGO L. REV. 555, 563-64 (1996).

would not eliminate or alter.<sup>5</sup> Judge Hug referred the report to an entity comprised of two chief district judges, who studied the issue and proposed that the Council take no additional action, a recommendation that the Council followed.<sup>6</sup>

Some members of the Committee were concerned because the Council chose not to implement the Committee suggestion that the Council abrogate or modify the remaining violative strictures, a proposal the Committee premised on considered judgment after several years of concerted effort. In retrospect, however, the decision to take no further action seems appropriate. The fifteen federal districts had already complied with more than three quarters of the Committee's recommendations by abolishing or changing local provisions.<sup>7</sup> These ideas meant that Circuit Judicial Council action to eliminate or alter the remaining requirements might well have harmed, or at least eroded, already fragile relationships between the circuit and appellate judges on the one hand, and district courts and district judges on the other. Thus, Judge Hug's wise decisions to create and seek advice from an entity constituting two chief district judges, while following the counsel proffered, simultaneously preserved the substantial gains in procedural reform achieved and the delicate relationships within the Ninth Circuit.

The second vignette involves the controversy over splitting the Ninth Circuit. After the Commission on Structural Alternatives for the Federal Courts of Appeals had issued its Final Report, which recommended a divisional arrangement for the Ninth Circuit,<sup>8</sup> there was considerable uncertainty about what might happen. Several senators introduced proposed legislation that embodied the Commission's divisional approach in January 1999,<sup>9</sup> less than a month after the Commission had issued its report and recommendations. The Senate and House Judiciary Committees subsequently scheduled hearings on the bill for the summer of 1999.

The editors of the *Journal of Law and Politics* contacted Judge Hug in spring of 1999, asking that he contribute to a symposium edition on the Commission's work which the journal was assembling.<sup>10</sup> When Judge Hug reviewed the list of participants compiled by the editors, he found that the group included substantially more invitees who appeared to favor the Commission's report than seemed to oppose it. Judge Hug, thus, politely suggested to the editors that the list of participants should be neutral, or at least more balanced, and he proposed the names of several individuals who might ameliorate the situation. The editors thanked Judge Hug for his input but clearly indicated

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<sup>5</sup> See Tobias, *supra* note 3, at 562-63; see also REPORT, EXECUTIVE SUMMARY, *supra* note 3.

<sup>6</sup> See Tobias, *supra* note 3, at 563.

<sup>7</sup> See *id.*

<sup>8</sup> See Commission on Structural Alternatives for the Federal Courts of Appeals, Final Report (1998). See generally Carl Tobias, *A Divisional Arrangement for the Federal Appeals Courts*, 43 ARIZ. L. REV. 633 (2001).

<sup>9</sup> See S. 253, 106th Cong. (1999).

<sup>10</sup> See *Special Issue on the Commission on Structural Alternatives for the Federal Courts of Appeals*, 15 J.L. & POL. 379-580 (1999). See generally Symposium, *Managing the Federal Courts: Will the Ninth Circuit be a Model for Change?*, 34 U.C. DAVIS L. REV. 315-591 (2000).

that they would not change the list of invitees. The jurist then submitted his own critique of the Commission work, a contribution which increased balance and which demonstrated his propensity to treat adversity with a smile and redoubled efforts to improve the circumstances.<sup>11</sup>

In short, Judge Procter Hug has exhibited throughout his lengthy, distinguished career the finest attributes of the Article III judiciary. The jurist has always exercised excellent judgment, which these two recent vignettes clearly demonstrate.

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<sup>11</sup> Judge Hug graciously agreed to co-author the submission with me, which was one of the few instances in which he exercised questionable judgment. See Procter Hug & Carl Tobias, *A Split by Any Other Name*, 15 J.L. & POL. 397 (1999). See generally Procter Hug & Carl Tobias, *A Preferable Approach for the Ninth Circuit*, 88 CAL. L. REV. 1657 (2000).