

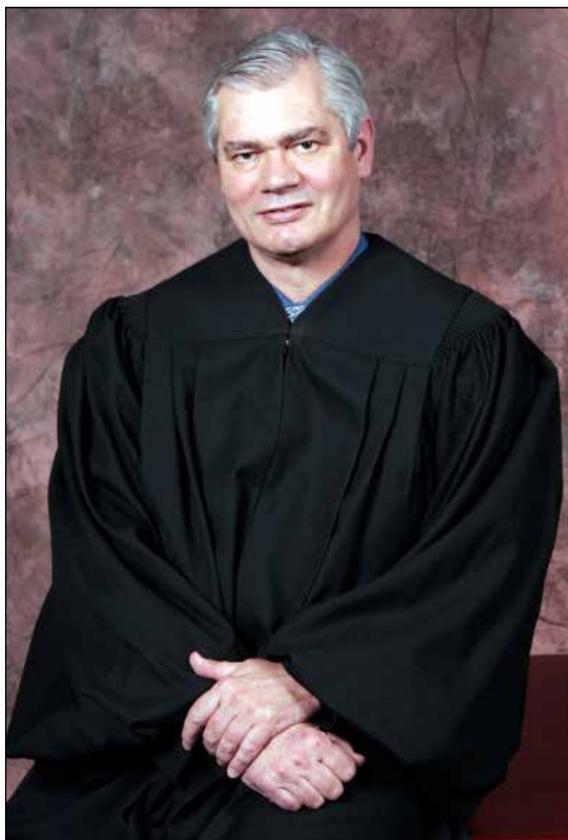


Hon. Theodore R. Essex Administrative Law Judge U.S. International Trade Commission

Judge Theodore R. Essex—known to his colleagues and friends in America, Asia, and Europe as “Ted”—is as comfortable in his role as unofficial ambassador to intellectual property lawyers and judges on those continents as he is in his capacity as administrative law judge for the U.S. International Trade Commission (USITC). Although licensed to practice law in Ohio and Louisiana and as a qualified solicitor for England and Wales, it is primarily as an administrative law judge that he brings his expertise in patent and trademark law to practitioners around the world. But more about that later.

Born in Athens, Ohio, in 1955, Judge Essex grew up in Ohio and holds a J.D. from the Ohio State University and a B.A. from Miami University of Ohio. In the early 1980s, he worked as a trial attorney in Cleveland and Marietta, Ohio, and served as public defender for Franklin County (the county encompassing Columbus, Ohio). From 1985 to 2005, he held a variety of positions with the U.S. Air Force, including chief of the General Torts Branch in Arlington, Va.; chief of aviation law with the Air Education and Training Command; deputy staff judge advocate with the Air Intelligence Agency; chief of operations law at the U.S. Air Force Headquarters in the United Kingdom; deputy staff judge advocate based in Belgium and later in Norway; and attorney advisor in the Office of International Claims and Investment Disputes at the U.S. Department of State.

Judge Essex spends a lot of time with his children, Flynn (11) and Willow (9), with whom he enjoys swimming, hiking, and rollerblading. A natural athlete, he went to Miami on a track scholarship, where he lettered for two years before a knee injury permanently sidelined him. But he enjoys sharing the active life with his children, as



well as touring the Smithsonian Museums in the nation’s capital. “Both children share my flair for the international,” he notes, “having dual citizenship as Norwegians and Americans.”

Suffice it to say, Judge Essex’s European experiences



Judge Jim Fraiser is an administrative law judge in Jackson, Miss. He has written 15 books about the history, architecture, and culture of the Deep South.

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with the Air Force whetted his appetite for international law. Nowhere is his flair for the international more available to him than as an administrative law judge with the International Trade Commission, for which he received his appointment in 2007. The independent, nonpartisan quasi-judicial federal agency provides trade expertise to both the legislative and executive branches of the government; determines the impact of imports on U.S. industries; and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement.

As a purveyor of knowledge regarding intellectual property issues, Judge Essex has brought American know-how to practitioners around the world. He has also served as president of the Giles S. Rich American Inn of Court and is a lecturer in law at George Washington University Law School. In both that capacity and as an administrative law judge, he has lectured on intellectual property law at such diverse venues as the Georgia Bar Association and the District of Columbia Intellectual Property Section, as well as the law schools at Howard University, the University of Texas, John Marshall, and George Mason.

But the “international” in International Trade Commission means precisely that. Judge Essex recently shared his expertise in intellectual property before a wide variety of international attorneys and judges, including the International Judges Conference in Brussels, Belgium; the Ministry of Knowledge and Economy (and the Korean Bar) in Seoul, Korea; the Peking University Law School and Intellectual Property School in Peking, China; the Nation of Taiwan University and Ministry of Economy Affairs; and the Seoul National University Law School.

He is quick to note that the exchange of information goes both ways. He has hosted several judges and scholars from different Asian nations in support of his international advocacy for consistent intellectual property laws. “The educational process,” he says, “has become more important in recent years with the significance of international trade in intellectual property. And we have found our Asian colleagues to be eager to learn about the American system of patent and trade jurisprudence, incredibly gracious toward us, and that our trips to Asia have led to positive exchange between their hosts and our visiting lawyers and judges. Similarly, the best moment I’ve had during these exchanges came when we hosted Korean judges here at the Commission.”

Judge Essex explained that when he hosted two Korean judges in America, he requested they attend patent litigation hearings and also meet with the general counsel’s office, the Office of Unfair Import Investigations, and the chairman. “One of my proudest moments,” Judge Essex says, “came when we were saying goodbye, and their Supreme Court justice declared that many people in Korea wondered if they could get a fair trial at the USITC, but that he was now convinced that we offer a fair and impartial process. It is gratifying to share our process with these distinguished foreign jurists and have them go away thinking we’ll deal with them in an honest and forthright way.”

His other passion, apart from writing plays and fishing the Potomac River—for crappie, bass, and, as he says, whatever

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issue and quickens decisions on the cases. Technology allows us to be able to turn out the opinions quicker, and it motivates you to uptick your skills. The law clerks are coming are from very good schools, and they are technologically sophisticated. This has been a big change, but a good change. It has enhanced our ability to get the information that we need and to be able to drill down into the cases.”

Chief Judge Stewart grew up in a close-knit family in Shreveport, La. He has said in the past that his personal role model growing up was his father, Richard Stewart. Chief Judge Stewart is also a history buff and enjoys reading and studying history’s greatest lawyers and judges, like Charles Hamilton Houston and Thurgood Marshall. Knowing his interest in historical legacy and role models, I asked him who, in his time as a judge, have been some of his greatest influences? He said, “In my second year of law school, there was an employment case that was tried at the law school. Judge Alvin Rubin came down from Baton Rouge. He heard all of the witnesses right there at the law school. At the end of the trial, Judge Rubin recounted orally what all of the testimony had been from memory and then he rendered a verdict. It was mind boggling because I had never seen a judge articulate the facts so clearly. It was also a perfect memorandum of law. It was an example of what a judge should be. It was quick, and the parties got what they needed. Seeing Judge Rubin and his style was important. He was meticulously prepared, very even handed, and even tempered. As an assistant U.S. attorney, I practiced a lot in front of Judge Stagg, and he had a similar style to Judge Rubin. I still think it’s a good model to be prepared and even tempered.”

Chief Judge Stewart is also known for his devotion to his family and the community. He and his wife Joanne Stewart have three children and three grandchildren. He is also active in his church, the Boy Scouts of America, and the Inns of Court (for which he serves as national vice president of the Inns of Court Foundation). He is also an avid photographer. He displays books full of photographs

in his office. When he came to my wedding, in 2005, he took beautiful pictures of the ceremony and reception. Many times, when I am struggling to find time for my work and all of my community and family activities, I think of Chief Judge Stewart as an example of how to maintain that balance.

I asked Chief Judge Stewart what advice he would give to young lawyers about finding time to devote to work, family, and fun. “As important as the job is, family and personal well being have to be at the top of the list. You can’t be the best at your job if you aren’t in good health or if you are stressed out. I love photography, and I’ve had a couple of exhibitions. I’ve gone out to local schools and talked about photography. It’s important to have a release outside

of the job. I have three kids and three grandchildren. It’s impossible to be stressed about work when you’re with your grandchildren. A lot of it is time management and carving out downtime. You have to carve out time to take pictures or travel. You have to be intentional. When I go on vacation I lock up my iPhone in the safe in the room. That way I’m not tempted to look at it. I’ve found that to be very therapeutic. Ninety-nine times out of 100 there are no emergency messages on it. You have to be intentional about it. If you don’t schedule time to take a day off or take your spouse out, the work will swallow you up. Judge Leon Higginbotham once said, ‘No one said from their sick bed that they wished they had one more day to go to work.’ On Sunday morning, I am not at the courthouse. I go to Sunday school, I go to church, and I go home. Maintaining those kinds of habits makes you physical, mentally, and spiritually healthy.” ☺

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“else wants to bite” —is working with the courts to reduce what he terms the outrageous costs of patent litigation, which he finds largely attributable to discovery expenses. A survey released in 2011 by the American Intellectual Property Law Association indicates that Judge Essex has reason to be concerned. For infringement litigation with potential damages of less than \$1 million, the mean cost of litigation is \$490,000. For cases involving damages in excess of \$1 million, the mean costs are \$916,000, with the highest third being more than a million. Litigation expenses—for patent cases with damages of \$1 million to \$25 million—average between \$1.6 million and \$2 million in the D.C. area. “Intellectual property owners are becoming

increasingly worried,” he observes, “that they can no longer afford a remedy for infringement, the costs of which are among the highest in any kind of American litigation. We must act to reign in those costs if we are to offer justice to those who have done the hard work and now rely upon the courts to protect the fruits of their labors.”

As I have heard Judge Essex say on more than one occasion, we must not only do justice, we must be seen to do justice. And who better than an accomplished intellectual property judge, international lecturer, and advocate for consistent intellectual property laws and reasonable litigation costs to try to make that hope a reality? ☺